

**THE NATIONAL POLICY ON FOREIGN  
DIRECT INVESTMENT IN RELATION TO  
ZAMBIA DEVELOPMENT AGENCY ACT:  
DOES IT SAFEGUARD THE INTERESTS OF  
THE ZAMBIAN PEOPLE?**

**BY**

**SABI CHARITY ZULU**



**COMPUTER No. 25077660**

**An Obligatory Essay Submitted to the University of Zambia,  
Law faculty, in partial fulfillment of the award of the Degree of  
Bachelor of Laws (LLB).**

**The University of Zambia**

**PO BOX 32379**

**LUSAKA**

**UNZA**

**9<sup>th</sup> April, 2010**

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**9<sup>TH</sup> APRIL 2010**

**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

I recommend that this Obligatory Essay prepared under my supervision

By

**SABI CHARITY**

Entitled

***THE NATIONAL POLICY ON FOREIGN DURECT INVESTMENT IN RELATION  
TO ZAMBIA DEVELOPMENT AGENCY ACT: DOES IT SAFEGUARD THE  
INTERESTS OF THE ZAMBIAN PEOPLE?'***

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**Mr. S.P NG'AMBI**

I Sabi Charity, Computer No. 25077660 do declare that I am the author of this document entitled,

**‘THE NATIONAL POLICY ON FOREIGN DIRECT INVESTMENT IN  
RELATION TO ZAMBIA DEVELOPMENT AGENCY ACT; DOES IT  
SAFEGUARD THE INTERESTS OF THE ZAMBIAN PEOPLE?’**

I further solemnly declare that this work represents my own ideas and is not a production of any other work produced or submitted by any other person to the University of Zambia or to any other institution. Due acknowledgement has been given where other scholarly work has been cited.

Student's name..... SABI CHARITY ZUKU

Signature..... Sabi

Date..... 09/04/2010

## ABSTRACT

→ Essay

The essence of this essence was to examine the national policy on foreign Direct Investment in relation to Zambia Development Agency Act and demonstrate that it could be enhanced to ensure maximum benefit for Zambia.

The main objective of the research was to highlight and examine the pitfalls of ZDA Act in relation to the national policy on foreign direct investment in terms of investment promotion and guarantees, incentives and licences, permits and certificates of registration.

The methodology employed was two-prolonged viz; Desk Research and Field Research.

Chapter one discussed what foreign direct investment is? The types of FDIs as well as its advantages and disadvantages.

Chapter two discussed the investment climate, benefits and problems in less developed countries that investors are likely to face.

Chapter three has analysed the strength and the weaknesses of ZDA Act of 2006.

Chapter four has discussed the successes of FDI, the impact of FDI on the Zambian economy and the problems with FDI in Zambian copper mines.

Chapter five draws a conclusion and makes some recommendations about the essay. Thus Zambia as a nation does not benefit fully from FDI. The Zambian Government must develop the political will and institutional capacity to effectively enforce existing labour safety and environmental legislation.

## **DEDICATION**

This research report is dedicated to my late brother **Sabi Mwila Brian**. May his soul rest in eternal peace.

## **ACKNOWLEDGEMENT**

To write a research report of this nature requires help and encouragement from colleagues and friends. Therefore, I am indebted to the following people who made this work become a reality.

Mr.S.Ng'ambi, my supervisor for his assistance, guidance, patience and support, he gave me throughout my work. Nothing went unnoticed.

To my family, I thank you for your love and financial support.

Lastly, to my Almighty God for the good health I have enjoyed while at UNZA.

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## INTRODUCTION

Does this sentence make sense?

Zambia is one of <sup>many</sup> underdeveloped countries in Africa. There is a lot of underdevelopment in most parts of this nation. Partly, this underdevelopment is caused by the so called foreign direct investment.<sup>1</sup>

Development of any nature is based on levels of investment in all sectors of the nation. This could be health, education, agriculture, tourism, industry, commerce, trade, to mention a few.

The World Trade Organisation (WTO) defines foreign direct investment to occur when an investor based in one country (the home country) acquires an asset in another country (the host country) with the intent to manage that asset.<sup>2</sup>

According to the International Monetary Fund (IMF) a direct investment of a country is the amount invested by its residents in an enterprise or other commercial property abroad effectively controlled by its residents.<sup>3</sup>

Capital is directly invested in foreign countries in practically all fields of economic activities from agriculture to services-but there is a marked preference for investment in primary industries and public utilities in underdeveloped countries for investment in manufacturing in industrial nations.<sup>4</sup> In our country, private foreign investment is mostly

<sup>1</sup> M Ndulo, Studies in Youth Development. Ndola: Mission Press (1981)

<sup>2</sup> FDI, United Nations Conference on Trade and Development, [www.cunctad.org](http://www.cunctad.org) on 21<sup>st</sup> November, 2008.

<sup>3</sup> International Monetary Fund [IMF] (1993) Balance of Payments Manual 5<sup>th</sup> ed. Washington. → *Publ...*

<sup>4</sup> Kunkel I. (1970) society and economic growth: a behavioral perspective of social change. London. → *Publ...*

done by transnational companies such as British Petroleum, Coca-Cola Company and recently some Chinese corporations such as Non-Ferrous Company-Africa. These corporations continue to invest in Zambia because ~~there is~~ <sup>at the</sup> low cost of labour. They exploit the Zambian masses by paying little for the hard job they do. The workers are treated like slaves. They work tirelessly regardless of their social, physical and psychological requirements. The post reports that this new form of slavery is taking root in our nation and is more dominant in institutions run by foreign investors, whose manifest function is to reap Zambia of its resources at whatever cost.<sup>5</sup>

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Essentially, the main objectives of the of the research is to highlight and examine the pitfalls of ZDA Act in relation to the national policy on foreign direct investment in terms of investment promotion and guarantees, incentives and licences, permits and certificates of registration.

It is therefore, the essence of this research to examine the national policy on foreign investment in relation to Zambia Development Agency Act and demonstrate that it could be enhanced to ensure maximum benefit for Zambia. There is need to reconcile the ZDA Act with our labour laws in order to safeguard the interests of the Zambian people at large not just to serve the interest of a few people. Hence the research will provide a basis for the formulation of future policies which are best designed to safeguard the interests of Zambian people

The methodology yet to be employed will be basically two-prolonged viz; Desk Research and field Research .Data collected will be by way of personal communication with

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<sup>5</sup> The Post 22/01/2005

persons acquitted with the problem By and large the proposed research will draw also on personal experience of different people who have found themselves victims of the problem under research. Although this is a legal research, an effort will be made to incorporate in the research non legal factors.

## CHAPTER ONE

### WHAT IS FOREIGN DIRECT INVESTMENT?

Foreign Direct Investment (FDI) is considered the most important means of bringing goods and services to foreign markets. It is the principal way to link national economies.<sup>6</sup>

Investment is a term with several related meanings in finance and economics. It refers to the accumulation of some kind of assets in hopes of getting a future return from it.<sup>7</sup>

The World Trade Organisation (WTO) says foreign direct investment occurs when an investor based in one country (the home country) acquires an asset in another country (the host country) with the intent to manage that asset.

*Does this definition include buying shares? Does Rabobank's investment in LONACO classify as FDI under this definition?*

According to the International Monetary Fund (IMF) a direct investment of a country is the amount invested by its residents in an enterprise or other commercial property abroad effectively controlled by its residents.<sup>8</sup>

Foreign Direct Investment in its classic definition is defined as a company from one country making a physical investment into building a factory in another country. Its

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<sup>6</sup> Baker J.C. (1999) Foreign Direct Investment in Less Developed Countries. London: Quoran books P.1

<sup>7</sup> Ibid 2

<sup>8</sup> Ibid 3

definition can be extended to include investment made to acquire lasting interest in enterprise operating outside of the economy of the investor.<sup>9</sup>

Investment is made to acquire a lasting interest in an enterprise operating in an economy other than that of an investor, the investor's purpose being to have an effective choice in the management of the enterprise.

*You go on quite a bit. It is a shame that you did not effect the advice given during our sessions.*

## TYPES OF FDI

### Greenfield Investment

Direct investment in new facilities or the expansion of existing facilities. Greenfield investments are the primary target of a host nation's promotional efforts because they create new production capacity and jobs, transfer technology and know-how, and can lead linkages to the global market place. The Organisation for International Investment cites the benefits of Greenfield investment for regional and national economies to include increased employment investments in search and development; and additional capital investments. Criticism of the efficiencies obtained from Greenfield investments includes the loss of market share for competing domestic firms. Another criticism of Greenfield investment is that profits are perceived to bypass local economies, and instead flow back entirely to the multinational's home economy.<sup>10</sup>

### Mergers and Acquisition

*→ You could have transferred this heading to the next page*

<sup>9</sup> FDI, United Nations Conference on Trade and Development, www. Unctad.org on 21/11/2008

<sup>10</sup> <http://encyclopedia.stateuniversity.com/pages/7638/foreign-direct-investment-FDI.html#ixzzoXE3uVeSZ>

Transfers of existing assets from local firms to foreign firms takes place; the primary type of FDI. Cross-border mergers occur when the assets and operation of firms from different countries are combined to establish a new legal entity. Cross-border acquisitions occur when the control of assets and operations is transferred from a local to a foreign company, with the local company becoming an affiliate of the foreign company. Unlike Greenfield investment, acquisitions provide no long term benefits to the local economy- even in most deals the owners of the local firm are paid in stock from the acquiring firm, meaning that the money from the sale could never reach the local economy. Nevertheless mergers and acquisitions are a significant form of FDI and until around 1997, accounted for nearly 90% of the FDI flow into the United States. Mergers are the most common way for multinationals to do FDI.

*What about 2000*

### **By motive**

FDI can also be categorized based on the motive behind the investment from the perspective of the investing firm:

#### **Resource-seeking**

Investments which seek to acquire factors of production that are more efficient than those obtainable in the home economy of the firm. In some cases, these resources may not be available in the home economy at all (e.g. cheap labor and natural resources). This typifies FDI into developing countries, for example seeking natural resources in the Middle East and Africa, or cheap labor in Southeast Asia and Eastern Europe.<sup>11</sup>

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<sup>11</sup> ibid

## Market-seeking

Investment which aim at either penetrating new markets or maintaining existing ones. FDI of this kind may also be employed defensive strategy; it is argued that businesses are more likely to be pushed towards this type of investment out fear of losing a market rather than discovering a new one. This type of FDI can be characterized by the foreign mergers and Acquisitions in the 1980's by Accounting, Advertising and Law firms.<sup>12</sup>

## Efficiency-seeking

Investments which firms hope will increase their efficiency by exploiting the benefits of economies of scale and scope, and also those of common ownership. It is suggested that this type of FDI comes after either resource or market seeking investments have been realised, with the expectation that it further increases the profitability of the firm.<sup>13</sup>

## ADVANTAGES OF FOREIGN DIRECT INVESTMENT

*→ You should have used the word advantages*  
The pros of Foreign Direct Investment are the flow of cash into the country. It will stimulate economic activity in the country. Foreign Direct Investment enables the producers to take advantages of the economies of scale. FDI makes it possible for the investors to move beyond domestic market into international market and therefore makes it worthwhile to specialize and produce on a large scale and thereby to lower cost per unit.<sup>14</sup><sup>15</sup>

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<sup>12</sup> ibid

<sup>13</sup> ibid

<sup>14</sup> ibid

<sup>15</sup> For five African LDCs, 2002 a bad year for FDI <http://www.unctad.org/templates>

If different countries worked in isolation new technology developed in one country would remain confined locally. Through FDI technological process tends to feed on each other, technology goes on being improved successively<sup>16</sup>.

Another advantage of foreign direct investment is that due to the onset of high quality competition, domestic industry will be forced to produce quality products and at the same time be very innovative so they can compete with products from well established and developed nations.<sup>17</sup>

Foreign direct investment will prevent monopoly of trade by the local or domestic industries in that they will have a challenge from other country that are producing the same products.<sup>18</sup>

Foreign Direct Investment helps bring in revenue which can be used by the host country to improve its infrastructure. This is considered as long-run dynamic gains. Dynamic gains from FDI, stimulates economic growth through the raising rate saving and investment. Increase in real national income of a country obtained through FDI leads to a higher level of saving. The higher level of saving ensures a higher rate of investment and capital formation which stimulates growth. The higher rate of saving makes it easier for the developing nations to break the vicious circle of poverty and to take off into-sustained growth.<sup>19</sup>

Another advantage of FDI is that the government of the host country will be taken seriously during international summits because the number of stakeholders in the country

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<sup>16</sup> ibid

<sup>17</sup> FDI insight from the FT' Authoritative data on green field investment project s world wide [www.f dintelligence.co](http://www.f dintelligence.co).

<sup>18</sup> Ibid

<sup>19</sup> Michel P. Todaro, Economic Development [2008] New York

will have increased. This illustrates that the country experiencing increasing levels of FDI will have a greater voice at international summits.<sup>20</sup>

Among the other advantages of the FDI will also include, access to employment. A good number of people of the host nation will be employed in these industries. Access to transfer of patented technologies, access to scarce managerial skills, access to overseas market networks. Through trade barriers to foreign markets can be overcome. Diplomatic relations can also be improved through FDI for there will be interaction between the home country host country as they strike a better deal. It must be noted that not only do multinationals provide financial resources and new factors to poor countries, but the also supply a package of needed resources, including managerial experience ,entrepreneurial ability and technological skills that can be transferred to their local counterparts by means of training programs and the process of learning by doing.<sup>21</sup>

## DISADVANTAGES OF FOREIGN DIRECT INVESTMENT

Among the notable disadvantages of the FDI are as follows; there is a huge cost of traveling and communication abroad.<sup>22</sup> In order to do business the investors have to travel to and from that is home country and host country and also they have to communicate. In addition to this the cost relating to transportation of equipment and machinery as well as the transportation of finished goods. The investor also faces the problem of language and cultural differences.<sup>23</sup> This affects communication and relationships between the investor

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<sup>20</sup> ibid

<sup>21</sup> Jeffrey A. Spring (1994) Multinational Business Review [www.findarticles.com/p/articles/m](http://www.findarticles.com/p/articles/m)

<sup>22</sup> Ibid

<sup>23</sup> Mwangala Kamuwanga, 'negotiating investment contracts' (1995) multimedia publications, Lusaka p 150

and the indigenous population. What may be a taboo in one society may not be taboo in another society.

*Space* In terms of technology there is tendency not to share technological expertise or skill among the trading companies. The technology might also be harmful to the environment.

With the technology which is brought, most people will be laid off for they will be operated by skilled people and the work will be done on capital -intensive basis. The companies also have the choice of policies regarding employment.<sup>24</sup>

The management, entrepreneurial skills, ideas, technology and overseas contacts provided by MNCs may have impact on developing local sources of these scarce skills and resources and may in fact inhibit their development by stifling the growth of indigenous entrepreneurship as a result of the MNC's dominance of local markets.<sup>25</sup>

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<sup>24</sup>Ibid

<sup>25</sup>ibid

## CHAPTER TWO

### THE INVESTMENT CLIMATE AND FDI

The attraction and securing of investment is not an exact science and the determinants of investment cannot therefore be defined with precision. However, as a broad generalisation, investment is driven by some companies looking for opportunities to make a return on investment. This may be preceded by other considerations such as market access, but the ultimate goal is return on investment.<sup>26</sup>

Against this background, the practical factors which affect a company's decision on location for a new investment are many and varied, but the following covers all those which regularly come into play.

**1) Political stability**-practically all studies into the factors that influence a company's investment decision show political stability in the recipient country to be near the top of the list. Zambia is the regional, epicenter of stability, security and peaceful environment for businesses and investors, with the continued support of government in promoting investment, facilitating access to information and resources and creating a positive operating environment.<sup>27</sup>

**2) The general business and regulatory climate**-including the banking and financial infrastructure, crime and corruption levels and the standards of corporate governance. In Zambia the financial system was liberalised following the inception of the Banking and Financial Service Act 1994/2004. Public confidence in the Zambian financial system has grown with the advent of technological advances automated teller machines (ATMs) and

<sup>26</sup> Michael P. [2009] COMESA-Investor Relations & Servicing System. Cairo

<sup>27</sup> Fawzia Husain [2006] An Investment Guide to Zambia; Opportunities and conditions. UN International Short-Term Advisory Resource

computerized transactions. In recent years, the banking industry in Zambia has undergone transformation with the introduction of technology, growth in business and changing customer needs and global.<sup>28</sup>

v) **Skills and labour available**-the availability and cost of labour are very important. The availability of particular skills may be especially important during economic booms and for specific growth industries. The workforce is skilled and trained in their respective professions, but where they are not, the workforce is flexible and easily trainable. These factors, coupled with sound Technical and Vocational training institutes and Universities, makes the Zambian labour force relatively competitive in the region.<sup>29</sup>

v) **Taxation**-taxation in all its form is an important factor not only because of its influence on the financial performance of a company, but also as a result of its emotive relevance, particularly for United States corporations. Although the amount of tax paid by a company is often influenced more by the ability of its accountants to reduce tax liability and by its corporate financial structure than by the national rate of taxation in a country, a low rate of corporation tax is a compelling incentive to most companies. Transfer pricing is used by many companies to reduce tax liability or at least to transfer the liability to a country where lower taxation rates apply. The financial structuring of an investment, with capital provided in the form of a parent company loan on which interest can be charged, enables companies to reduce taxation liabilities. Similarly, management charges from the parent company may be applied as a means of reducing taxation. All residents and non-

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<sup>28</sup> ibid

<sup>29</sup> ibid

residents, receiving income from a source in Zambia, are liable to pay tax under the income Tax Act. Income tax allowance is allowed on buildings used for manufacturing, mining or hotels qualify for a wear and tear allowance plus an initial allowance, based on cost, in the year in which the building is first used. Capital expenditure on farm improvements qualify for an allowance.<sup>30</sup>

✓) **Infrastructure** and its effect on the ease and cost of transportation (roads, rail, ports and airports), as well as telecommunications

✓) **Market and market potential**-nearly all investment decisions are influenced by market opportunities. Decisions may be influenced by the wish to protect an existing market where competitors are more active and a manufacturing presence in the market will give an advantage. There may desire to expand an existing market or a plan to develop a new market where, again, a presence in the country will help to achieve this. In any case, market opportunity will nearly always be a factor. The market Zambia offers is bigger due to its regional and international organisation membership. Growth is further strengthened by the country's membership to the common market for Eastern and Southern Africa ([COMESA]) Free Trade Area, ratification of the Southern Africa Development Community ([SADC]) Trade Protocol and the opening up of the U.S market to Zambian products through the Africa Growth Opportunities Act ([AGOA]) and Everything-But-Arms ([EBA]) protocol. The cancellation of outstanding debt by a number

Why are you using square brackets

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<sup>30</sup> ibid

of European Union (EU) countries and Japan, contributed to further positive affirmation of Zambia's economic direction.<sup>31</sup>

The key message for governments at all levels is that a top priority should be to improve the investment climates of their societies. To do so, they need to understand how their policies and behaviors shape the opportunities and incentives facing firms and of all types, domestic and foreign, formal and informal, small and large, urban and rural. The agenda is broad and challenging, but delivering on it is the key to reducing poverty, improving living standards, and creating a more inclusive, balanced, and stable world.<sup>32</sup>

## **BENEFITS AND COSTS OF FOREIGN DIRECT INVESTMENT FOR AFRICAN DEVELOPMENT**

FDI carries costs as well as benefits for the host country. The initial inflow of capital from FDI is a benefit; the subsequent outflow of profits is a cost. The production of foreign subsidiaries may be a benefit, but if it displaces existing local production, there is an offsetting cost. Similarly, extra exports may require higher imports of equipment, materials or components. Where, the firm does not create new assets, but merely takes over existing ones, the net benefits may be particularly hard to discern.<sup>33</sup>

Following independence, disappointing returns (in terms of jobs, fiscal revenues and foreign-exchange earnings) from hosting FDI provoked a series of state interventions in

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<sup>31</sup> The Balance of Payments Statistical Committee of the Government of the Republic of Zambia, Foreign Private Investment And Investor Perceptions In Zambia 2007/2008

<sup>32</sup> <http://siteresources.worldbank.org/INTWDR2005/Resources/Complite-Report>

<sup>33</sup> Richard Kozul-Rethinking The Role of FDI in Africa UNCTAD

→ Years?

Africa, including nationalisation of existing plant and equipment, not only in an effort to bolster reinvested profits and help build local linkages but also to affirm national sovereignty over politically sensitive and strategic parts of the economy, particularly natural resources. The record of these interventions was mixed. Many State-owned enterprises proved to be high-cost and low-productivity operations and a drain on the public purse, often acting as a conduit for siphoning away rents to politically favoured groups and individuals. However, a number of countries did make more effective use of their primary rents through a combination of public intervention and market-based incentives, including with FDI. Botswana and Mauritius stand out in this regard.<sup>34</sup>

Why?

Recently, surges of FDI into the extractive sector in some African countries have spurred growth recoveries and have been welcomed as a potential source of increased employment, government revenues and foreign exchange and as a catalyst for a more diversified industrialization path. There has also been a good deal of optimism expressed that corporate behaviour and market conditions are, if not fully favourable, at least many being than in the past.<sup>35</sup>

In the case of mining, changes to the mining codes have orchestrated a steady state withdrawal from the sector. While these changes have gone through various stages, the underlying rationale has been to shift government objectives towards generating tax revenues, with privatization as the main policy pillar. In the perceived absence of local entrepreneurs who might take over previously state-owned enterprises, the emphasis has,

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<sup>34</sup> ibid

<sup>35</sup> ibid

more and more, been placed on attracting new high risk capital from foreign mining companies. To do so, legal, employment, financial and fiscal frameworks have been further amended to accommodate corporate objectives. In return, governments are expected to receive a “fair” slice of increased rents generated in the sector.<sup>36</sup>

As a result of the reforms Africa has certainly become much more “attractive” as a location for mining FDI, leading some observers to warn of a new “scramble” for Africa’s natural resources. In any event, successfully attracting FDI can only be part of the story. Governments typically have a wide set of economic considerations in mind when designing strategies to best exploit these assets, aiming to maximize the value of locally retained earnings, counting on the creation of forward and backward linkages to the economy, the transfer of technology and job creation, minimizing environmental damage and social impact, and expecting firms, regardless of their ownership, to compensate for damages incurred.<sup>37</sup>

Reconciling these interests with the profit-making objectives of mining TNCs is far from straightforward. At one level, governments share an interest in maximizing export and fiscal revenue, particularly as a means to breaking potentially binding savings and balance of payments constraints on faster growth in the early stages of development. Still, relying on FDI means governments will have to balance their expectations with those of the industry. In doing so, governments are invariably faced not only with trade-offs vis-à-vis support for other sectors but also with locational incentives offered by other countries.

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<sup>36</sup> Moyo, D [2009] *Dead Aid* Penguin Group.\*London

<sup>37</sup> *ibid*

Consequently, and perhaps more than in any other the industry, mining is subject to complex bargaining pressures over the terms of investment and with it conceptually different tax regimes aimed at reconciling the interests of the different actors involved.<sup>38</sup>

Still, from the host country perspective, in order to assess the outcome of the reforms and incentives extended to attract FDI, governments need to consider whether these have been commensurate with the desired outcomes outlined above. This means policy makers asking a series of fundamental questions which carry wider relevance beyond FDI in the extractive sectors: the likely extent of positive spillovers and linkages generated by FDI and whether domestic firms are positioned to benefit; the likelihood and extent of increased import dependence and profit repatriation; possible impacts on costs and profitability for domestic firms; and the potential problems of nurturing future generations of domestic firms once TNCs gain a dominant position.<sup>39</sup>

Already in the case of extractive industries, some observers have described the incentive competition as a “winners curse” whereby investment competition among host countries can trigger a “race to the bottom” both in the more static sense of foregone fiscal earnings and in terms of giving up policy options which would be needed to organize a more dynamic long-term growth path. Certainly the tax incentives provided to mining TNCs carry an immediate opportunity cost in terms of lost government revenues. Consequently, and particularly given the limited employment and linkage effects associated with FDI in

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<sup>38</sup> *ibid*

<sup>39</sup> *ibid*

this sector, a lot would appear to hinge on significantly augmented government revenues over the longer run.<sup>40</sup>

Recent evidence from a number of African countries where profit-investment-export nexuses in the mining sector have been established (or revived) around attracting FDI suggest that, to date, the trade-off has not been a favourable one for these host countries, given the revenues actually generated from their export booms, and particularly when environmental and social costs are factored in to the calculation. But this conclusion appears also to extent to more recent episodes of expansion in the oil and gas sectors in Africa.

In the light of the growing demand for energy, metals and ores, the challenge for policy makers in Africa's resource-rich countries would therefore appear to be how to avoid the longstanding problems of enclavism while maximizing benefits from this sector, and minimizing their costs. This is likely to involve a reversal of the current sectoral approach to attracting FDI in favour of a holistic one that emphasizes the contribution of the sector to much wider development objectives through backward and forward linkages to the rest of the economy, including higher value added processing activities.<sup>41</sup>

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<sup>40</sup> *ibid*

<sup>41</sup> *ibid*

## PROBLEMS FOR FOREIGN INVESTORS IN LESS DEVELOPED COUNTRIES

Few would dispute the fact that Africa is a priority, ready-made for FDI. Its labour costs are low, its investable opportunities are high and even theoretically, as home to some of the poorest countries in the world, Africa should be FDI's natural suitor.<sup>42</sup>

There are hurdles for investors to overcome. For the most part infrastructure (roads, telecommunications, power supply, etc.) is scant, and of poor quality, making the costs of overall production of goods and service [when transport costs are figured in] steep-which explains why it is cheaper to make almost anything in Asia and ship it to Europe, produce it in Africa, although the continent is much closer.<sup>43</sup>

*→ Could have used a better word.*

However, physical constraints are nothing when compared with man-made disincentives; widespread corruption, a maze of bureaucracy, a high circumscribe regulatory and legal environment, and ensuing needless streams of red-tape.<sup>44</sup>

The World Bank's annual 'Doing Business' survey provides data on the relative ease [or difficult for the matter] with which business can be around the world. The results are all too revealing, and do much to explain why Africa remains at the bottom of any FDI investors' list.<sup>45</sup>

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<sup>42</sup> Dambisa Moyo (2009) Dead Aid, Penguin Group, England

<sup>43</sup> ibid

<sup>44</sup> ibid

<sup>45</sup> ibid

It's not only the red-tape. Investors do not know where to go, or whom to ask. In a number of meaning-dependent countries, rather than the government offering parcels of land in open auction, prospective investor are expected to provide government with specific land coordinates. The geological survey offices know where the ore lies, but they just not willing to help the investors along. Though the countries livelihoods depend significantly on such entrepreneurs coming in, given the nature of doing business it is hardly surprising that this much-needed investment stays away.<sup>46</sup>

The former UN Secretary General, Kofi Annan, states, 'For many people in other parts of the world, the mention of Africa evokes images of civil unrest, war, poverty, disease and mounting social problems. Unfortunately, these images are not just fiction. They reflect the dire reality in some African countries, though certainly not all.'<sup>47</sup>

Another challenge which a foreign investor is likely to face is the economic instability. This is given by the fact that being least developing countries, the currency value may discourage the foreign investor. The currency is likely not to be proportionately convertible to the foreign currency which is stronger in value. The regular devaluation of the local currency may act as hindrance to the foreign investor who wants to enjoy a stable financial exchange in his area of investment. As a matter of fact, it is generally not easy to establish investor confidence in the domestic market where there is no stability in

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<sup>46</sup> ibid

<sup>47</sup> ibid

the exchange value of the currency. Therefore investors will not feel secure and confident in such a country with a weak currency.<sup>48</sup>

*→* A further challenge to a foreign investor would be the social and cultural factors such as corruption, crime and unemployment. It is obvious that in a state, more so a least developed, corruption would be available as the economic resources would not be sufficient. Such a situation often results in UN equal distribution of the material and financial resources. Therefore corruption becomes the order of the day.<sup>49</sup>

It is also true that crime thrive in such poor economies. And also unemployment becomes prevalent as the domestic industries may not be able to absorb all the unskilled, semi-skilled and skilled man power. This leads to unstable social environment where all sorts of crimes, which include thefts, murders and the like, are frequently occurring across the country. It is obvious that such an environment would not guarantee security to a foreign investor.<sup>50</sup>

A further challenge which is likely to be faced by the foreign investor would be the technological factor. Being less developed countries, its technological advancement is below that of developed countries. This means that less developed countries have unsatisfactory physical and economic infrastructure development. The level of technology and the poor infrastructure would discourage the foreign economy of scale in terms of production of quality of products which can be favourably compete on the

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*U.T.P.F.S.D.C.C.*  
<sup>48</sup> E.I. Nwogugu, the legal problems of foreign investment in developing countries [1965] Manchester; Manchester university press pages 9-10

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<sup>49</sup> Baker, J.C. [1999] foreign direct investment in less developed country London Quoran Books P.5

<sup>50</sup> ibid

international market. The foreign investor can only achieve economies of scale by having at his disposal modern technology. A serious investor would like to invest in a country where he is assured of reaping huge profits.<sup>51</sup>

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<sup>51</sup> *ibid*

## CHAPTER THREE

**Analysis of Zambia Development Agency Act in terms of Part IV [investment Promotion and guarantees], Part VIII [Incentives], PART X [Licences, Permits and certificates of Registration]**

### THE STRENGTH OF ZDA ACT

The establishment of a single agency was to create a legal framework that addresses the bottlenecks that existed in the previous legislations [Zambia Investment Center, Zambia Privatisation Agency, Export Body of Zambia and Export Processing Zones Authority] in order to enhance private sector development.<sup>52</sup>

Registration of enterprises in order to qualify for any incentives should be encouraged as it enables the identification of all foreign and major local enterprises seeking incentives. ZDA assist companies that qualify for incentives to access the incentives through the Customs and Excise Act. The unit makes recommendations to the Ministry of Finance and National Planning by submitting schedules of qualifying items. The Ministry of Finance approved the schedules which are later submitted to Zambia Revenue Authority for implementation. During the second quarter for 2009, the following companies were assisted to access incentives:

Mc Steel Ltd

Medicare International

<sup>52</sup> Ford Mwandenga-ZDA comments AC final February 06

*You could have  
either bulleted  
or numbered  
them.*

Fairy Bottling Ltd

Gourock Industries

MM Integrated Steel

*Tha*  
ZDA's assistance in obtaining licenses, permits, and certificate of registration is welcome as it saves time and frustration by investors.<sup>53</sup> The unit has assisted in the acquisition of both Work Permits and self Employment Permits. During the second quarter report for 2009, the following companies were facilitated:

Zambezi Sawmills Limited

Abercombie and Kent Safaris Limited

Little Park Limited

Wood Stock Limited

China Civil Engineering Construction Corporation Zambia Limited<sup>54</sup>

The Agency facilitated visa acquisition and also arranged for necessary meetings for delegations/investors who visited Zambia to explore investment opportunities. During the period April to June 2009, the unit provided facilitation services for the following:

-A third visit to Zambia was undertaken by KOTRA and HYOSUNG of Korea where it was agreed that a Memorandum of Understanding would be signed with the Zambia Development Agency, Rural Electrification Authority and Ministry of Energy as a

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<sup>53</sup> Swot analysis

<sup>54</sup> ZDA Second Quarter Report 2009

prerequisite to accessing a loan from Korean Export Import Bank for setting up of a Solar Energy Plant in Zambia<sup>55</sup>

-Facilitated visit by the Bharat Scans delegation of India to Zambia. The delegation was in the country to explore investment opportunities in the provision of quality medical care and services. The delegation met with various government institutions and conducted a tour of some of the major hospitals in Lusaka and Livingstone. The delegation also met with Professor Nkanza and discussed possibilities of forming a joint venture to form a high tech diagnostic centre and clinic.<sup>56</sup>

Support by ZDA to enterprises to acquire land and support services, if achieved, would serve as a great advantage in expediting investment development.<sup>57</sup>

Facilitation of land acquisition for Wuhan Kaidi of China in Western Province where over 700, 000 hectares of land was identified for investment in biofuels.<sup>58</sup>

Facilitation of land acquisition for Man Ferrostaal a bio-diesel project in Northern Province. Man Ferrostaal of Germany plan to go into a Public Private Partnership with Zambia on a biofuel project. The project will eventually be looking for 150, 000 hectares of land.<sup>59</sup>

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<sup>55</sup> ZDA, Second Quarter Report 2009

<sup>56</sup> ibid

<sup>57</sup> Clause 64 of the ZDA Act 2006

<sup>58</sup> ibid

<sup>59</sup> ZDA; Second Quarter Report 2009

Facilitation of land for University of Lusaka has resulted in the securing of about 2 hectares of land in Lusaka where the university will locate the graduate portion of the institution.<sup>60</sup>

The ZDA Act 2006 is too broad-based and therefore lacks focus in many areas such as Micro and Small Enterprises, but it is very detailed in some areas useful to big businesses. It therefore provides an opportunity to place Micro and Small Enterprises under the Citizen Economic Empowerment Act 2006 which is available and should be explored further.<sup>61</sup>

Investment and use of development funds outside line of rail, could spur rural development. There is need for rural presence by ZDA.<sup>62</sup>

Creation of multi facility and special processing zones, industrial parks as provided under clause 18, if adequately funded, would be a major inducement to investment promotion.<sup>63</sup>

Thresholds could help to sieve out low value investments. This can be used to improve and ensure only quality foreign investment flows into the country.<sup>64</sup>

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<sup>60</sup> ZDA Second Quarter Report 2009

<sup>61</sup> Interview with the chairman of ZDA Mr. L. Mbewe

<sup>62</sup> Section 48(2) of the ZDA Act 2006

<sup>63</sup> ZDA Act 2006

<sup>64</sup> Clause 56 of the ZDA Act 2006

The essence of the Act is to place all associated investment promotion under one roof. The expanded Board representation should help to remove unnecessary conflicts. Liaison officers from ZDA could help to reduce frustration suffered by investors.<sup>65</sup>

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<sup>65</sup> Interview with chairman of ZDA, Mr. L. Mbewe

## WEAKNESSES OF THE ZDA ACT 2006

The Zambia Development Agency Bill was rushed through Parliament with inadequate stakeholder involvement. The Board of ZDA should have included prominent representative from the critical players in the knowledge-based economy, such as the universities.<sup>66</sup> This is because the Board of the Agency is required to formulate, coordinate and implement policies for the development of Micro and Small Enterprises.<sup>67</sup>

Further, the Agency is also engaged in research and dissemination of information on Micro and Small Enterprises.<sup>68</sup>

The wording of the Act excludes several definitions and thresholds. It therefore, needs revision as it introduces several lacunas and leaves serious gaps. The investment of not less than five hundred thousand United States Dollar is too high for Zambians and too low for the foreign investment we seek to attract and provide incentives.<sup>69</sup>

Most Zambia enterprises are disqualified on account of high threshold levels, at k2Bn to access incentives and kwacha does not qualify as a convertible currency.<sup>70</sup>

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<sup>66</sup> swot

<sup>67</sup> Part 2 of the ZDA Act 2006

<sup>68</sup> Swot analysis

<sup>69</sup> Clause 56 of the ZDA Act 2006

<sup>70</sup> Swot analysis

Qualifications for self-employment permits for investor and expatriate employees at a minimum of two hundred and fifty thousand United States Dollars or the equivalent in convertible currency is too high for the local investors.<sup>71</sup>

Focus on large enterprises will marginalize and disadvantage Micro and Small Enterprises. The threshold for Micro and Small Enterprises is not established.<sup>72</sup>

Entrepreneurship and technical capacity-building has not been emphasised. The ZDA Act 2006 is too broad-based such that it has been difficult to assess their success in implementing aspects of the mandate. For instance Development Funds Management.<sup>73</sup>

There is on law in Zambia which compels foreigners to engage Zambians as partners in running of businesses. The Act is not harmonized with other Acts such local councils, Immigration and Deportation Act so they can assist investors to come in and see one detailed legislation.<sup>74</sup>

The Board of Directors is not private sector dominated but is full of government representatives. Of the 16 members, not less than 12 are from Government or Government agencies.<sup>75</sup>

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<sup>71</sup> Clause 65(1) of ZDA Act 2006

<sup>72</sup> Swot analysis

<sup>73</sup> Interview with chairman of ZDA Mr. L. Mbewe

<sup>74</sup> *ibid*

<sup>75</sup> *Ibid* 71

## CHAPTER FOUR

### HAS ZAMBIA BENEFITED FROM THE PROVISIONS OF THE POLICY?

#### [A CASE STUDY OF MINES IN ZAMBIA]

#### SUCSESSES OF FOREIGN DIRECT INVESTMET

The Zambian Government states that the privatization strategy has worked. The Permanent Secretary of the Ministry of Mines states that, “it has been very successful. Closed mines have opened up, new mines are coming up and the existing mines that were limping and they are all doing very well.”<sup>76</sup>

#### **New money**

This is a fair description of the current boom in Zambia. Under ZCCM, facing historically low global copper prices, the industry was short of foreign direct investment and was dying on its feet. Significant change has now been delivered, re-invigorating the industry and increasing production. Despite criticism of the privatization, even the Mineworkers Union of Zambia (MUZ) recognizes that , since 1998 we have close to \$1.4 billion which has into the mining industry, into refurbishment of plants, and purchases of spares and machinery.<sup>77</sup>

#### **Higher production**

Reflecting the new investment, production has rebounded, available figures suggest that this rebound was only to 400, 000 tons by 2004, which is certainly higher than the figure in the last few years of ZCCM, but is not unusually high in the history of the Zambian

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<sup>76</sup> Interview with Lennard Nkata

<sup>77</sup> Interview with Charles B. Muchimba

industry. Production in 1982 was 591, 853 and dropped gradually throughout the 1980s to 415, 645 tons in 1998. From then on, production fell steadily through the 1990s to just over 250, 000 tons before starting a revival in 2000.<sup>78</sup>

### **New Mines**

Foreign direct investment has led to the opening of new mines for the first time in twenty five years. Lumwana, which is the biggest mine in Africa, is currently under construction in a green-field site in North-western Province. As the Permanent Secretary at the Ministry of Mines notes: *it was a rural area, in the bush. Now the standard of living is becoming comparable to what is on the Copperbelt. That is the nature of large-scale mining-it just transforms a rural area into a high standard living. The Copperbelt was rural at one time. It's there like that now because of mines.*<sup>79</sup>

The other prestige project is the Konkola Deep Mining Project (KDMP), owned by Vedanta at KCM. KDMP is sensitive because of the high hopes of the project, and the bitter experience of Anglo pulling out. The Resident Director claims, Vedanta has been here for a short period of time and has committed \$750m, placing orders for \$400m. Major future projects include KDMP, a concentrator aligned to that and a smelter at Chingola.

### **New Profits**

It is unsurprising then that the new investors are themselves now making significant sums. Quantum's net earnings exploded from \$4.6 Million in 2003 to \$152.8 Million in 2005. First Quantum returned approximately 10% of the 2005 after tax profit to shareholders, who were also rewarded with exceptional share price performance. Since

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<sup>78</sup> Chamber of Mines

<sup>79</sup> Alastair Fraser and John Lungu, For Whom the Windfalls? (2006) P.20

2000, first Quantum's shares have returned more than 1,000%, or an average annual rate of 200%.<sup>80</sup> As the company's 2005 Annual Report notes, "*As good as 2005 was, 2006 is shaping up to be a better year for the company. Copper production is expected to climb to approximately 200,000 tonnes (441 million pounds), a 68% increase over 2005. To date in 2006, copper prices have risen well above \$2.00 per pound and this will provide a further increase to our already healthy margins.*"<sup>81</sup> By November, the company was reporting that profits in the third quarter of 2006 were triple those in the same period in 2005. First Quantum was selling copper at an average of \$3.17 per pound, more than the price it was achieving a year earlier. Similarly, KCM's operating profit increased from \$52.7 Million in the year to 2005 \$206.3 Million in 2006.<sup>82</sup>

## **THE IMPACT OF FOREIGN DIRECT INVESTMENT ON THE ZAMBIAN ECONOMY**

Mines privatization was claimed to hold the key to turning the economy around in the medium term. Firstly, it was said, taking responsibility for what had become a loss-making industry out of Government hands would reduce the burden on the Zambian state. Secondly, if reinvestment could make the industry profitable again, it was hoped that new taxes would flow into the state coffers that the companies would train the Zambian workforce up to international standards, and new linkages would be made to local firms.<sup>83</sup>

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<sup>80</sup> First Quantum Minerals Ltd Annual Report 2005

<sup>81</sup> *ibid*

<sup>82</sup> First Quantum Minerals record triple profits, Times of Zambia, Thursday November 16, 2006

<sup>83</sup> Alastair Fraser & John Lungu, For Whom the Windfalls (2006) P.54

## Foreign ownership

The clearest impact of privatization is that it places ownership of the copper mines in private hands, rather than being in the control of government, and in Zambia's case, because there are few if any Zambian companies with enough wealth to buy a copper mine, it places ownership in the hands of foreign firms rather than Zambian nationals. This makes it likely that profits from mining leave the country without having any positive impact on the Zambian economy, and, rather than being re-invested in building up the national economy, will be placed in banks or re-invested in companies outside the country. As the permanent secretary notes, "today the public is saying that these large-scale mines are now with foreigners. Mining is the backbone of the Zambian economy, so the backbone is in foreign hands. What about as nationals-cant we participate in ownership? Government should have put in place measures to allow Zambian private individuals to participate in the ownership of these mines."<sup>84</sup> There is one obvious problem. There are not very many individual Zambian nationals or nationally-based companies with sufficient capital to make a go of taking over and investing in the rehabilitation of a major mining company. The original privatization model did attempt to provide some wider 'participation' of Zambians in the process. The idea was that ZCCM-investment Holdings (ZCCM-IH) would be set up as a state-equity company, holding minority interests in each company. The company would therefore make some money for the state as the mines become profitable. At a later date, the aim was somehow to widen the share-owning base of ZCCM-IH. This has not yet happened, and asked how to increase local participation in the mining sector; the permanent secretary recognized that ideas about how to proceed are thin on the ground. "It's a challenge. How can one do it?"

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<sup>84</sup> Interview with Lennard Nkhata

Provide loan facilities or do what? Well the feelings of the population at large is that they would wish they had participated and that Government should have come up with measures to make that possible. Of course they don't explain how Government would have done it. They just want the Government to have thought of something. I think it's possible to use ZCCM-IH as a vehicle for individual Zambians to own shares in those mines. So something creative could have been worked out. There are opportunities. It's not impossible to come up with measures to let nationals participate in large scale mines. It just takes some exercise of the mind.”<sup>85</sup>

### **The tax take from Zambian mining**

Placing the mines in private hands means that any income to the state is not directly from sales and profits from the mines, but rather from any taxes that can be levied on the companies – in the form of income tax for employees, VAT paid on services purchased by the mines, border taxes paid on imports and exports, corporate taxes on profits, and mineral royalties on sales of copper. However, as we have seen, in their Development Agreements, the mining companies managed to negotiate exemptions from paying most of these taxes.

The World Bank argues that “The main feature of the mining sector is that most of the incentives are negotiated on case-by-case basis by companies which have purchased privatized entities from ZCCM. This feature makes it difficult to analyse the sector as a whole. However, in general, mining contributions to total tax revenues are extremely small.”<sup>86</sup> Nonetheless, the Bank calculates an aggregate figure, called the ‘marginal Effective tax Rate’ (METR) to describe how much each industrial sector is taxed and

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<sup>85</sup> Interview with Lennard Nkhata

<sup>86</sup> Zambia: Sectoral study of the effective tax burden, December 2004, foreign Investment and Advisory Services (FIAS), a joint service of the World Bank and IFC.

concludes that, “Because of the relatively low tax rates and significant incentives, the mining sector enjoys on METR of around 0%. In particular, the expensing of many equipment purchases and moderately accelerated depreciation deductions for the rest, the METR on machinery reflects the largest subsidy (-18.3 percent) received in any sector for any asset.”<sup>87</sup> Mining is the most favoured sector in the Zambian economy, a source of significant resentment as the Government is thus favouring international investors over local business owners.

**Fig. 2: Comparative Marginal Effective Tax Rate for different industrial sectors in Zambia.**

Mining	0%
Tourism	0-10%
Manufacturing	0-10%
Small Businesses	20-25%
Financial	25-35%

Source World Bank

As shown in Appendix 8, even the chamber of mines own statistics, presented to make the case that tax on the mines should not be increased, demonstrate that, while the revenue generated for Government from mining has increased since ZCCM’s nadir in the second half of the 1990s, the 2005 contribution, of around \$75 million, is less than one third of the contribution made to the national treasury by ZCCM in 1991.

The mining industry does contribute to Government revenue through the taxes paid by its employees in form of income tax. However, in their Development Agreements, companies negotiated to pay lower tax rates than apply to other industries. Because they

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<sup>87</sup> FIAS, 2004, p. ix

are also able to roll losses from previous years forward and to write off profits that would have been taxable, the mining sector barely contributes at all. As shown in Appendix 8, mining contributes less corporation tax than small sectors such as the financial services and telecoms sector. The mining sector also claims back from the Zambian Government all of the VAT that it pays on goods that it buys locally. Since the company from which these goods were initially bought will have paid the VAT aspect of the price charged to the Government, and the Government then pays that back to the purchaser, VAT contributions show up as a minus figure—a subsidy from Government to the mines.<sup>88</sup>

Bwana Mkubwa is already paying tax. They are forecasting about \$150million next year and Mopani joined suit in 2007-2008. They have invested no capital but their 10% holding in the various companies have gone up. So when the dividends do get paid, which will be happening in the next year to two years, and they will be reaping benefits for outweighing any attempt at a 2.5% royalty they are looking at. Now that it goes not happen anywhere else in the world.<sup>89</sup>

### **Training of the local workforce**

Mining companies can contribute to the Zambian economy by providing experience and training for their own management and workforce. However these benefits will only occur if the companies develop good human resource and training programmes and commit to building up the skills of Zambians, rather than employing the expatriate workers in all the senior and technical roles.<sup>90</sup>

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<sup>88</sup> Alastair Fraser & John Lungu, *For Whom The Windfalls?* [2006] p. 56

<sup>89</sup> *ibid*

<sup>90</sup> Interview with Derek Webbstock

Foreign investors tended to bring in entirely new management teams at the moment of purchase of the mines. They seem to have been able to do so because Zambian labour laws are antiquated. While the IMF suggests that simply doesn't have a labour market law, one ex-miner noted, the labour laws dated from the 1960s. We have had two new Republican Constitutions since then. How can we not have changed the labour law?<sup>91</sup>The IMF goes stated; the current labour laws are so weak on the engagement of expatriate staff by new investors and the differences between their incomes and those of local staff. Many new investors take advantage of the situation by recruiting their managers in the management positions and paying them heftily, compared to local experts of similar qualifications and experience.<sup>92</sup>

This situation has created significant resentment, as much of the most educated and skilled workforce from ZCCM was laid off. Many of those Zambians have left the country and taken their skills and knowledge with them. as already noted this is the situation at firms such as NFCA that employ just one Zambian manager and even bring in shift bosses from China. However, other companies clearly are making an effort to redress the situation. Vedanta brought in Indian management wholesale after the bought KCM. However, they are now altering the balance, and have identified 40-50 Zambian young business leaders who are fast-tracking on a management training scheme. KCM claims to be the only company that has taken Zambian staff out of the country to work on its other international programmes, to gain international experience.<sup>93</sup>

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<sup>91</sup> Interview with Reuben Mandoka, Former employee & MUZ Branch Chairman, Chibuluma Mines, Kalulushi

<sup>92</sup> Mark Alleyne, Zambia IMF Resident Representative, The Zambian Economy in Perspective: The Impact of IMF Policies, Paper presented at the Copperbelt University, October 2002, p.62

<sup>93</sup> Interview with Deb Bandyopadhyay

## **Problems with foreign direct investment in Zambian copper mines.**

### **One sided deals**

Companies took advantage of the fact that the Zambian state was desperate to secure new investment to negotiate their purchase of ZCCM assets under 'Development Agreements' that exempt them from covering most of ZCCM's liabilities, including pensions for its employees, from paying many taxes and from many national laws, for example on environmental pollution. These agreements have a highly unusual legal status, only otherwise accorded the Zambian Constitution. They cannot be contradicted by future legislation as 'stability periods' ensure the policies in place when agreements were made cannot be changed for between 15 and 20 years.<sup>94</sup>

### **Inadequate regulation, illegal operations and impunity**

The Zambian Government was advised by the World Bank and IMF ahead of privatization that, in order to bring investment, the country had to make itself more attractive than its neighbours and competitors by developing an investor-friendly regulatory regime. The Bank and Fund then used Zambia's dependence on them for aid and debt relief to ensure that the laws were passed. Some investors have taken advantage of the fact that Zambian state institutions are too weak to effectively regulate their behaviour. The state also seem to have developed some political relationships with certain mining houses that mean health and safety, labour, immigration and environmental regulation can be ignored with impunity, causing significant resentment.<sup>95</sup>

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<sup>94</sup> John Lungu, *Winners and losers in the privatization of Zambia's copper mines*. P.2

<sup>95</sup> *ibid*

## **Casualisation of the workforce**

Although foreign direct investment has created some new jobs, there has been a collapse in the quality of employment, with around 45% of those working in the mines now unable to access permanent, pension able contracts.<sup>96</sup> The jobs have been contracted out to companies that pay in many cases less than half the monthly wage offered permanent workers for the same work in the same mine.<sup>97</sup>

## **Deepening pensioner poverty**

**Before privatization** there was already a crisis of pensioner poverty on the Copperbelt as ZCCM's pension provision slowly worsened. This was exacerbated when the new investors refused to take on the company's liabilities to workers who had given a lifetime of service to develop the mining industry, insisting that the Government to pay. However, the Zambian state faced tight budget constraints and struggled to finance the payments. Privatization thus got off to a very bad start as thousands saw no pension payments.<sup>98</sup>

## **Lack of linkages to local business**

Many local suppliers have lost the business they used to conduct with ZCCM. They are unable to compete on quality and price with foreign suppliers. Although the Zambian Government frequently raises this issue, it seems either unwilling or unable to enforce on the mining companies a system of constraints and incentives that would make up not just a mining policy, or an investment policy, but an industrial policy designed to support local suppliers and to build a local manufacturing base processing copper in Zambia.<sup>99</sup>

## **Failure to protect the social infrastructure**

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<sup>96</sup> See appendix 4

<sup>97</sup> See appendix 6

<sup>98</sup> *ibid*

<sup>99</sup> *ibid*

ZCCM provided everything that held society together in the Copperbelt: jobs, hospitals, schools, housing, and a wide range of social services including HIV-AIDS and malaria awareness and prevention programmes. The new investors have made little effort to pick up these responsibilities. They are clear that their core business is mining and that the provision of social infrastructure goes beyond this remit. According to free market ideology, and the Development Agreements, these goods and services should now be provided either by the local authorities or by market forces.<sup>100</sup>

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<sup>100</sup> Mark Alleyne, Zambia IMF Representative

## CHAPTER FIVE

### CONCLUSION



This paper has endeavoured to highlight the national policy on foreign direct investment and whether it safeguards the interest of the Zambian people. In addressing these questions, the paper has extensively discussed the impediments which have caused the country to argue that they do not benefit fully from foreign direct investment.

From the discussion in this document, it is clear that Zambia as a nation does not benefit fully from foreign direct investment. However, this does not mean that the nation has not benefited from foreign direct investment. In fact great improvements can be seen in terms of more money have been brought into mining; pits that were threatened with closure have stayed open. New mines have opened up. Production and profits have significantly increased. What really is an issue are the differing expectations about who should get what benefits from digging the wealth out of the ground? Ng`andu Magande stated that, as the prices of copper and other metals continue to boom on the world market, the country needs to benefit as well<sup>101</sup>.

Mines privatization was claimed to hold the key to turning the economy around. Firstly, it was said, FDI would take responsibility for what had become a loss-making industry out of Government hands and this would reduce the burden on the Zambian state. Secondly, if reinvestment would make the industry profitable again, it was hoped that the new taxes would flow into state coffers; that the companies would train the Zambian workforce up to international standards, and new linkages would be made to local firms.

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<sup>101</sup> Former Zambian Minister of Finance and Planning

However, it was always possible that new companies would revive the profitability of the copper industry without reviving the national economy. If the companies made themselves profitable principally by cutting back the workforce, reducing wages and stripping the assets of the mines, before leaving the country with their profits, without re-investing, Zambia would benefit not at all.

Further, the paper has highlighted that one of the first problems with Zambian privatization which paved way for FDI to show up was the absence of constraints on companies to encourage them to adopt a longer term perspective rather than making a quick buck and getting out. Anglo-American and Banani pulled out completely, early in the process, without suffering any significant regulatory penalties. They committed the companies to making investment in the first few years of their ownership.<sup>102</sup>

The paper has also highlighted that the 'investor-friendly' regulatory regime which was created by the Zambian Government upon being advised by the World Bank and IMF ahead of privatization in order to bring in investment has not worked to the advantage of the national economy and indeed the Zambian people at large.

Nonetheless as we have already seen, overall the FDI did bring in new investment.

*This is not a paragraph*

It is from the issues outlined above that the next part of the chapter proceeds to make a series of policy recommendations to Government, companies and donors.

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<sup>102</sup> Alastair Fraser & John Lungu, For Whom the Windfalls [2006] p. 54

## RECOMMENDATIONS

### **It suggests that the Zambian Government**

- Increases the tax rate take from mining companies.
- Develops the political will and institutional capacity to effectively enforce existing labour, safety and environmental legislation.
- Urgently reform labour legislation to overcome the culture of casualisation, union-bashing and poverty wages.
- Ends the culture of secrecy that surrounds the mining industry, publishing all of the Development Agreements as well as companies' annual reports.
- Use subsidy, tax and tariff policies to develop manufacturing industries that maximize value added to copper goods in Zambia rather than exporting primary commodities with unstable prices.
- Adopts, as a Constitutional commitment, a transparent and democratic process of parliamentary approval for contraction of future loans in order to a return to debt dependency or a mortgaging of Zambian democracy
- Revise the Employment Act and Industrial Relations Act to end the culture of sub-contracting and casualisation in the mining industry, securing quality jobs and equal treatment of local workers with expatriates. This reform should secure more clearly the freedoms of association of workers and the requirement on employers to recognize collective bargaining rights of unions.

### **It suggests that Mining Companies**

- Make public commitments to respect Zambian legal framework and to co-operate with regulatory bodies.

- Open their books and operational records for public inspection
- Establish purchasing policies to benefit local companies.
- Increase technology transfer of clean technologies that can reduce water and air pollution around mines.
- Work with local authorities to support health, education and other social programmes to local communities.
- Develop comprehensive company-specific malaria and HIV-AIDS policies.
- Develop plans to manage the foreseeable closure of the mines as copper ore deposits are exhausted.
- Strengthen the Chamber of Mines as a representative body.

**The international community should consider the following policy proposals:**

- WTO members should secure a fairer global trade regime to raise and stabilize primary commodity prices.
- Rich countries should stop using WTO, bilateral free trade deals, aid and debt relief to limit policy space for industrial policies.
- Where Zambia does require aid financing to achieve its own plans and ambitions, such funds must be provided in sufficient quantities, and without onerous administrative and policy conditions.
- Rather than constantly pushing deregulation international aid donors should allow their support to be used to support an industrial policy that aims to create maximum quality employment.

inally, the paper notes that if these recommendations were to be implemented would  
ave a positive effect on the national's economy as well as on its people.

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Overall a sound obligating  
essay. I was saddened to  
see that although you went  
through great lengths to put  
your point across; ignored a  
large bulk of advice  
given on paragraphs, referencing,  
being too emotional in your  
arguments etc. Nonetheless  
this did not warrant a fail grade.

