

INTERNATIONAL JOINT VENTURE WITH A  
GOVERNMENT PARTNER CASE STUDY: COPPER MINING IN ZAMBIA

by

KOFI A. ANNAN

B.A., Macalester College  
(1961)

R. ANTONY H. AITKEN

M.A., Oxford University  
(1966)

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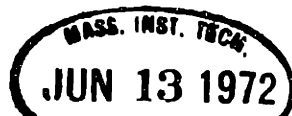
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Signature of Author .....  
Alfred P. Sloan School of Management, May 12, 1972

Certified by .. .....  
Thesis Supervisor

Accepted by .....  
Chairman, Departmental Committee on Graduate Students



## ABSTRACT

INTERNATIONAL JOINT VENTURE WITH A GOVERNMENTAL PARTNER  
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by

Kofi A. Annan  
and R. A. H. Aitken

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Theories of international investment suggest that the joint venture will receive increasing attention as a model by both host governments and foreign investors. Its popularity has increased as the political implications of 100% foreign ownership become more apparent and as investors appreciate the economic advantage of having a local partner.

The terms of such partnerships are usually dictated by the political and economic pressures of the time. Should these change, the basis for agreement may well disappear, thus putting pressure on one or other of the partners to renegotiate.

The paper reviews the history leading up to the 1969 nationalization of the copper mining companies in Zambia. Evidence suggests that there are conflicts within the resulting joint-venture which do not seem to have immediate solutions. Even assuming a stable political environment in Zambia, the pressures which exist already in the country may increase these conflicts to such a proportion that a continuing relationship on the same terms become impossible.

The authors undertook interviews of company and government officials in London, Lusaka and on the Zambian copperbelt. These interviews are not reported individually because of the highly political and confidential nature of many of the opinions offered.

Thesis Advisor: Dr. R. D. Robinson  
Title: Senior Lecturer

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## LIST OF ABBREVIATIONS

AAC	The Anglo American Corporation group of companies.
RST	Roan Selection Trust (earlier Rhodesian Selection Trust) group of companies.
UDI	Unilateral Declaration of Independence, made by the Smith regime in Southern Rhodesia.
LDC	Less Developed Country.
BSAC	The British South African Company.
UN/ECA/FAO	United Nations Economic Commission for Africa and Food and Agricultural Organization.
LME	The London Metal Exchange.
BTU	British Thermal Unit.
INDECO	The Industrial Development Corporation.
ZCI	Zambia Copper Investment, Ltd.
NCCM	Nchanga Consolidated Copper Mines, Ltd.
RCM	Roan Consolidated Mines, Ltd.
ZIMCO	Zambian Industrial Mining Company
MINDECO	Mining Development Corporation, Ltd.
ZAMIC	Zamanglo Industrial Corporation.
FINDECO	Financial Development Corporation.
CIPEC	Intergovernmental Council of Copper Exporting Countries.
OPEC	Organization of Petroleum Exporting Countries.
ICSID	International Centre for the Settlement of Investment Disputes.

\*\*\*\*\*

Currencies: For consistency, all figures have been converted into dollars.

Rates: ₤ 1 sterling = 2.4 dollars  
1 kwacha = 1.4 dollars

## Chapter 1

### JOINT VENTURE INVESTMENT - OBJECTIVES AND CONSTRAINTS

The international joint business venture has developed as an important vehicle for foreign direct investment in all countries of the world in the last twenty years - not the least in the LDCs where political aspirations have not always provided the ideal climate for the vast injections of capital needed to stimulate economic growth.

Friedman and Beguin<sup>1</sup> start their recent book on joint ventures with a warning:

Many of the basic problems of contemporary foreign investment in developing countries are independent of the particular legal and business form chosen for the investment and they are therefore shared by joint international business ventures with other forms of investment, when the ownership may be entirely either in national or in foreign hands. Problems of association between investors from the developed world and the developing countries derive essentially from the need to combine the minimum business attractiveness for corporations which have many alternative profitable forms of investment, with the integration of the investment in the general and economic plans of the host country.

While not intending to deal with the major problem in depth, they list the major objectives which must be considered in any joint venture and between which some form of compromise must be reached. Those of the host partner would be:

1. The joint venture must be integrated into the national economic plan.
2. The foreign partner must be encouraged to bring in capital in the form of cash, machinery or other assets.
3. There must be a training scheme with a gradual replacement of expatriate manpower by local trainees.

4. Local resources should be used to substitute for imports or to build an export industry.
5. Infrastructure should be developed as much as possible.

The foreign investor's objectives will be:

1. A return on investment commensurate with an investment of that type.
2. Some form of guarantee of the investment.
3. Some special privileges to compensate for any increase in risk.

But the objectives of the foreign investor may well be significantly different if capital is already invested, if he is seeking protection of sunk assets as opposed to being attracted into a new venture. In such a case the bargaining position may well be changed, and it is necessary to consider the pressures for any demands for participation, their background, and the relative strengths and weaknesses of the proposed partner.

A further environmental model which can be useful to investors is suggested by Tomlinson.<sup>2</sup> Trying to describe the trend in attitude toward Foreign Investment, he defines:

1. Unilateral Antagonism - the state of mind induced by fear of the dangers of economic imperialism by investors from developed nations. This often follows on clear examples of exploitation by the foreign private sector at a time when socialism and new-found independence may be watchwords.
2. Mutual Suspicion - When a new country is struggling with the problems of foreign exchange shortages, and yet has to accept its own needs for modern technology, and its own inability to supply it. At the same time the foreign investor appreciates the political tightrope he may be expected to walk, even assuming that the government with whom he is negotiating manages to stay in power.
3. Joint Acceptance - Relaxation of suspicions as the

investment is seen to play its part in economic development, and as the investor finds that he can look back on a period of minimal interference.

4. Sophisticated Integration - Growing economic and political maturity may encourage investment - fiscal incentives might do even more, in contrast to the controls of earlier years.

Tomlinson based his research on questionnaires sent to major British firms who were asked to analyze the nature of their joint venture activities in India and Pakistan, and in particular to recall the basis for the original joint venture decision. His categories are reproduced here since they embraced the whole of his sample, no company having used the last sweep-up option even though there is evidence that a few unusual reasons have existed in other samples.

Reasons cited by British firms for choosing the Joint Venture form of Investment in India or Pakistan were:

1. Explicit pressures by the host government.
2. Implicit pressures by the host government.
3. Desire to spread the risk of the venture.
4. The need for local facilities and resources.
5. Attracted by associate's project.
6. Local identity benefits.
7. Other reasons -

Without going into his analysis in great depth - and remembering that the study concentrates on new investments and not readjustment of existing ones - it is interesting that the most important single reason for choosing a joint venture investment seemed to be the need for local facilities or resources. If, however, the two types of pressure from host



governments were combined, this single reason-of actual and perceived government pressure - came out as most important.

Tomlinson also attempted to relate the answers he received to the significant political dates in the histories of India and Pakistan, so that he could obtain some understanding of the variations over time in the reasons given for choosing a joint venture. Going back to his four-stage environmental model mentioned above, it seems that the coming of independence saw a marked increase in joint ventures undertaken for government pressure reasons, and that by ten years after independence this climate had already shown a tendency to return to a much less restrictive state, when mutual suspicion and even joint acceptance were more usual.

Further analysis of the same data suggested that there was a tendency for larger British investors to feel that they had been forced into a partnership, while smaller companies were usually seeking the local resources and facilities which they lacked - although Tomlinson was not dogmatic on this point. It did seem, however, that those firms who felt that they had acted under pressure also believed that they had little opportunity to select their partner.

Finally, Tomlinson discusses the theory put forward by Hymer<sup>3</sup> that international direct investment is the result of bilateral monopoly, or the bargaining between a potential foreign investor and a host government. Under this theory the advantage would seem to favor the government as time passed, since once the investment is made, and once education standards in the host country begin to improve, so the investor tends to lose his position of monopolistic strength. The facts of the oil industry bear this out,

where engineering advances have made exploration and refining less complicated technically; but there are industries where advances in education have not shown many signs of bridging the middle-management gap so that an established company considering the joint-venture possibility may still have cards enough to play at the negotiating table. The bilateral monopoly theory, however, should be considered in the light of Tomlinson's environmental model as well. As he puts it, carrots are preferred to big sticks in all but the most extreme cases, and as the investment climate improves, more companies will tend to choose joint-ventures for positive reasons, rather than as defensive models. This increased sophistication of host country governments is perhaps the most significant development in the field. It may be that pressures exerted in the years close to independence may be reduced in other countries, in which case, although joint-ventures may still be favored, they may be selected on a more rational basis, and with greater regularity.

If the joint-venture model is to be considered by a firm, either as the structure for a new enterprise or as an adjustment of an existing one, it is most important to be aware of the relative bargaining positions of both sides, and perhaps some form of cost-benefit study might be helpful. Such an approach has been recommended by Robinson<sup>4</sup> who suggests that joint-enterprises should be considered in the light of the synergy which they generate, the confidence of parties in the measurement of costs and benefits, and their appreciation not only of the controls required to support their own case, but also of the perceived costs, benefits and controls expected by the other prospective partner.

Thus again the subject returns to an appreciation of the objectives of the other partner, and it is useful at this stage to consider the kind of problem areas which have arisen consistently in international joint ventures.

A good summary of the problem areas in joint venture management were quoted by Bivens and Lovell<sup>5</sup> from an interview with a United States company president.

1. Lack of thorough understanding by the local partners of your long- and short-range objectives.
2. Conversely, a lack of your thorough understanding of of your local partner's desires (many times a question of poor communications or language barrier).
3. Conflict of interests particularly if the local partners have other interests which are interrelated to the joint venture (e.g. joint venture provides raw materials or components for partner's other interests).
4. Lack of full appreciation by your local partners of your home office procedures, information requirements and home office approvals.
5. Salary and compensation problems for a mixed local and foreign management.
6. Generally limited capital availability from local partners which affects growth of the venture.
7. Difficulty of integrating the joint venture marketing policies with your overall marketing policies, particularly in areas outside the country in question.
8. Difficulty in coordinating local marketing policies in two different joint ventures in the same country.

In the light of so many areas of potential conflict, it might seem that joint ventures presented greater operating problems and concessions in control than might be warranted by the advantages perceived by investors

in the replies to Tomlinson's questionnaire. But to look at a reduction in equity holding from 100% to 49%, or even 25%, and to draw conclusions about changes in control would be simplistic.

As Béguin points out<sup>1</sup> in his chapter on the control of joint ventures, the extent to which majority ownership ensures real control of a joint venture is open to question. There are many other constituents of control which may specifically deny the power usually associated with holding a majority of the shares in an enterprise. Probably the actual holding of the host partner has more political than managerial significance, and however delicate this situation may be, the foreign investor must be clear in his own mind why a particular level of participation is required by a partner, since the rest of the negotiations may well reflect this desire. Thus voting control can be established with a minority of shares by allocation of votes to certain shares in a disproportionate ratio to their equity participation - as in the case of Pechiney in Guinea. Equally board directors can be given veto powers which although not constructive as a management tool, at least prevents any structural change in the investment, or any other action which could endanger their interests. The existence of management contracts, often demanded by institutional investors who are providing loan finance, can also provide the degree of control required. Finally, market restrictions might be required by multinational firms who would attempt to protect their investments elsewhere in the world. All or any of these restrictions can be used - and many more - provided both parties make clear their objectives at the negotiation stage, and provided clear agreements are drawn up to implement

those objectives.

To summarize, existing or potential investors should be aware of the political environment in which they operate, and should analyze their reasons for maintaining or adjusting their equity position in the light of such a climate. During any negotiations both sides should be aware of the economic and political motives involved, and should attempt to evaluate any differences in perception of such motives, since what is a political necessity to one may be insignificant or controllable to the other.

### A Government Partner

Throughout the paper so far there have been allusions to the important role played by the government of the host country. The political posture of the country was a major consideration in investment decisions, and pressures exerted by the government are perceived to be important where the choice of the joint venture form - and even of the partner - is concerned. It is perhaps surprising that, whatever weight is given to Marxist ideology in developing nations and in their definitions of socialism, the government itself often sees fit to be a partner with foreign investors. Dr. Nkrumah himself, for all his attacks on neo-colonialist international companies, consistently stressed the view that the ideas of socialism can coexist with private enterprise - and how could it coexist more clearly than as a partner in a joint venture? Friedman<sup>6</sup> explains this trend by indicating those areas in which government is more suitable than the local investor.

1. The local entrepreneur may not be willing or able to undertake the venture because the investment would be too great, the risk too high and the payoff too dis-

tant and uncertain.

2. Social and political ideas define certain sectors of the economy as areas where the government should be in direct control.
3. The growing complexity of certain social and government functions require more independence from direct ministerial intervention.

For these reasons the government may well decide to form a public enterprise, often in the form of a development corporation, and it is then committed to struggle with a problem which exists in any organization of that type, and which developed nations fail to subdue after many years of experience: this is the proper balance of managerial autonomy and political responsibility. Friedman<sup>6</sup> suggests general principles as follows:

1. Ministerial control should apply to principles only - not to day-to-day management, and the limits of that control should be spelled out.
2. Direction from the minister should be open, not disguised or informal, so that public and parliament can be aware of the level of political interference, and can evaluate the performance of politician and manager alike.
3. Control should be coordinated by a development agency with an adequate staff.
4. The government agency should not be treated as merely another arm of government, but should be constituted under its own statute, since regulation should not necessarily be the same as for the civil service.

Bradley and McAuslin<sup>6</sup> indicate some of the dangers of such government development corporations and agencies, using East Africa as their example. The main issues seem to be that very quickly a complicated administration is built up with inadequate staffing and control. Too many bodies do similar work, and too many personnel changes take place, largely

because of the limited numbers of the local educated élite. The next stage is that there are fewer and fewer members of the legislature who are not involved in some way with the administration of the various boards. Then recommendations for mergers and rationalizations are blocked because of vested interests, and coordination between the boards, so necessary if development plans are to be successful, begins to decline. Further, the complicated and ill-understood legal natures of the different agencies, often with widely differing constitutions, make it difficult to keep within the letter of the law, and the converse is unfortunately obvious.

To avoid these traps, governments would be well advised to reduce the numbers of such development corporations, and also reduce the degree of ministerial control. Those that remain should be coordinated more carefully, and they should be given a clear indication of their powers and functions.

Finally, it would be wrong to suggest that a government partner could not provide considerable benefits to a foreign investor beyond those of perhaps being the only local investor who could provide the necessary resources. With the problems of governmental control must go certain benefits of communication or lobbying which might not be so readily available to an entirely free-enterprise partnership. This might be seen to be most important when a company constitutes a large sector of the economy, and where changes in social conditions are important to create or maintain a suitable environment for operation. The only major drawback to this approach is that invariably political implications will receive a very high priority at quite low levels in the civil service of an LDC.

## Chapter 2

### ZAMBIA - POLITICAL AND ECONOMIC FACTS

#### Political Independence and Ideals

To understand the climate in Zambia preceding the 1969/1970 nationalization the interests of the Anglo-American Corporation (AAC) and Roan Selection Trust (RST), it is necessary to describe the major political and economic events between Independence in 1965 and the invitation from President Kaunda on August 15, 1969 that the mining companies should offer a 51% equity stake to the Government.

Zambia was the last British colony to obtain its independence in the sweeping "wind of change" introduced by Harold Macmillan in 1959. The collapse of the Central African Federation of Northern and Southern Rhodesia and Nyasaland was almost certain, given the supreme confidence of African nationalists in the cause of majority rule, championed by Kaunda and Banda; it is all too easy now to recognize the wisdom of Nyerere who realized that the Federation was probably the only insurance policy available to the 4 million Africans in Southern Rhodesia: without it they were abandoned to the minority rule of the Smith Rhodesian Front party, to his Unilateral Declaration of Independence (UDI) and to the varying degrees of oppression which have existed there since 1966.

Thus Zambia obtained independence in 1964 expecting to be the spearhead of development for further African states in the South and then suddenly found itself an outpost. The first whispers of U.D.I. had been heard in Southern Rhodesia in 1964 when, objecting to being called a 'colony'



and excluding expropriation as a course of action for the new government. Since the British government had also been doing some research on the legality of the original concessions obtained by Rhodes, and was also aware of the level of feelings against BSAC, the company suddenly found that all hands were against it.

Next, counsel for the Northern Rhodesian Government submitted their firm opinion that the mineral rights of BSAC were not valid in law, since in the original deal between Rhodes and the local chief, the latter had far exceeded his sovereignty in transferring the concessions for areas over which he had no control. This supported the findings of the independent consultants and put the government in an entirely new negotiating position, which it proceeded to strengthen by issuing a well-timed white paper. The following day (September 1965) the question of compensation was finally opened for discussion in London. The Northern Rhodesia government now took the line that the BSAC no longer had bargaining stature in the case at all, since the British Government was at fault in allowing the concessions in the first place and should answer for its action. The conference in London reached no conclusion, beyond a \$4.8 million (contrast \$103 million) offer from the government of Northern Rhodesia to the British Government, which sum would in fact be passed on to BSAC.

The company by now realized the weakness of its position, and in October they offered to accept \$19.2 million in complete settlement. Harold Wilson then further weakened the company position by a public statement in his pre-election speeches refusing to assist BSAC financially, stating that the company had received enough already. With independence

largely because of the precedents it would set in other Commonwealth countries, there was considerable dismay in the colonial offices in Lusaka. By now it was 1964, and fears increased that independence might be granted in 1965 without a settlement, in which case it could reasonably be expected that the new government would be under pressure to expropriate the royalties, with the attendant risk to the credit rating of the new nation, and embarrassing relations between Britain and her largest copper supplier, the Oppenheimer mining empire. Meanwhile, new economists and advisors had arrived at the Ministry of Finance and there followed a four-month period in which no advances were made by either side; new strategies were prepared and the government commissioned consultants from Britain to study the economics and a senior counsel to review the legal position. Hall, at this time editor of the Weekly African Mail which was read widely by Africans throughout the country, published three articles entitled "Secret History of BSAC Royalties." Simultaneously, a UN/ECA/FAO report<sup>10</sup> had recommended that Zambia should:

take over the mineral rights and collect the royalties now imposed upon copper sales by the British South Africa Company.

and

presumably, an independent government will not let such quantities of foreign exchange continue to flow out of the country, under an agreement originally signed 40 years ago by the colonial office of a Government no longer administering the territory.

The BSAC, meanwhile, had been attempting to persuade the British government to guarantee its position by including passages in the new constitution of Zambia, then being drafted, acknowledging the company's rights

feelings of the nationalists towards this arrangement. Add to that a complete failure of BSAC to reinvest any funds in Northern Rhodesia - decisions of a South African controlled board - and a Zambian government attempt to acquire the mineral rights was a certainty. Already, before independence, the Northern Rhodesian Minister of Finance, a colonial official, had perceived the inequities of the situation and started negotiations which indicated a purchase price of about \$103 million. Other sources suggested that no more than \$72 million could be reasonably expected, since with the price of copper only just supported at \$560 per ton, the royalties would cause the closure of two mines belonging to RST in the near future. At much the same time, Oppenheimer, chairman of BSAC and a major liberal force in South Africa, had realized the impossible nature of the situation and had shown that BSAC was quite prepared to negotiate a sale of the royalty rights on reasonable terms. Finally, a solution was proposed to BSAC by the Northern Rhodesian Government in which the Government accepted a net present capital value of \$84 million to be paid to BSAC in 22 annual installments of \$5.4 million and one of \$4.1 million, discounted at a notional 3 1/2%. Faber reports<sup>9</sup> that BSAC was prepared to accept these terms, subject to four conditions.

1. That payments should be made in London in Sterling.
2. That there would be no obligation to reinvest the funds in Northern Rhodesia.
3. That the payments would be exempt from United Kingdom and Northern Rhodesia taxes.
4. That payments would be guaranteed by the British government.

When the fourth condition was turned down by the British government,

major theaters such as Vietnam and China. Thus the LDCs must rely on their own resources to lift themselves out of their current problems, and it may be that Zambia has shown itself most able to do so, even if, with the greatest wealth per capita of all under-developed countries, it has a flying start.

### Newfound Wealth and Suspicions - The British South Africa Company

Zambia produces 40% of the world's exports of copper, and ranks third in production behind the USA and the USSR with 14% of world production - about the same as Chile at pre-1970 output levels. In 1964 copper provided over 40% of Gross Domestic Product and over 90% of export earnings. Thus any attempt to finance the development plans of President Kaunda's new independent government had to rely to a large extent on fiscal control of this major sector of the economy and his plans began with an attack on the royalty rights of the British South Africa Company. In name and association BSAC was a relic of colonialism since it had been set up by Cecil Rhodes under charter from Queen Victoria and 1889, when he had obtained treaties from chiefs in Central Africa giving him exclusive rights over all minerals in the region. A successor to the Rhodes Empire, BSAC had sold concessions to the forerunners of the Anglo American Corporation and Roan Selection Trust (AAC and RST) in the early thirties, and since that time had collected about \$384 million in gross royalties, paying about \$96 million of this to the British government in taxes. It is suggested that the outlay of Britain on the Northern Rhodesia protectorate over the same period was about \$12 million so that it is not difficult to understand the

of Britain, the white minority began to demand sovereignty for their country, a concession which Britain could not countenance in Africa in the mid-60's considering the status of the other white minority, South Africa, who had been granted sovereignty in the less informed atmosphere of 1910. The assassination of Verwoerd in 1966 saw the end of white isolationism policies, with a more assertive Vorster believing that South Africa had a strong economic role to play within the continent of Africa. This change in direction had been preceded by six months by the overthrow of Nkrumah, the idol of African nationalism, and suddenly Zambia had lost hope of receiving real support in the moral war against white minorities; economic survival became the immediate objective.

The details of this change are best told by Hall<sup>8</sup> who suggests that it was so dramatic because of the false impression Black Africa had of its own potential. As he describes the independence movement,

No real battle had been joined to try its muscles. In a score of countries independence had been a gift from metropolitan countries resolved to shed their imperial burdens.

Nominal nations, bounded by arbitrary lines on the map, possessed the trappings but not the means. In national assemblies there was the regalia of European democracy without the experience - even assuming the desires - to make the system work. Development plans were drawn up, despite an absence of skills to carry them through. Political philosophies, based on various concepts of African socialism, were often undermined by bourgeois attitudes inherited by a new élite from its former white rulers.

While laying the blame for this situation firmly at the door of the colonial powers, Hall admits that interest in the independent African countries had also waned on the part of the other super-powers. Reductions in Aid were the immediate result of increasing preoccupation with other

celebrations only a few hours away, the Chairman of BSAC and the Commonwealth Secretary of the newly elected Wilson arrived in the country together and ultimately BSAC were forced to accept \$9.6 million, half of which would be taxed. Zambia was seemingly on the road to economic as well as political independence.

But the BSAC affair had further implications. The team that worked on the royalty case probably never expected that so much political ammunition would come to light, and by capitalizing on it they created an atmosphere of distrust which was to last for many years. Certainly it is felt that this initial victory over the evils of South African international mining interests colored the national perception of international investors. Any politician was now assured credibility if he wished to make an issue of exploitation by foreign investors, especially those with South African contacts, and certain scholars managed to keep the issue well alive by discussing the significance of interlocking directorates between the South African mining world, and AAC and RST in Zambia.<sup>9</sup>

#### Economic Independence or Dependence

Zambia was now assured of royalty income of \$168 million from the copper industry, whether collected as before in direct taxes on tonnage mined, or, as the mining companies wanted, as a more conventional corporation tax which would not penalize the high cost mines. That the new government would not accept the requests of the mining companies is perhaps an example of the mutual suspicion described by Tomlinson. After the unilateral antagonism of the royalty negotiations it was perhaps psychologically impossible to accept any recommendation from foreign mining interests, and

probably the logic was that any requests from that quarter should be turned down on principle since they could not be in Zambia's best interests by definition. That the change was ultimately made as part of the takeover negotiations suggests that, by then, the new government was better advised of the implications, and better prepared to work in partnership with the mining companies.

But the Zambian economy was still at risk, as far as future stability was concerned. One factor already mentioned was the dependence for 95% of export earnings and 40% of GDP on the copper mining industry - a common malaise in Africa where colonial powers were undoubtedly more concerned about developing raw material sources than in avoiding single product economies. Bostock and Harvey<sup>14</sup> provide an interesting table pointing up this dependence on copper as compared with the other major copper producers - Zaire, Chile and Peru. (See Table 1)

Taken by itself, and with the high price of copper prevailing between 1965 and 1970, it would seem that the new Zambian government was in a strong position to diversify the economy, since its strong foreign exchange potential should allow high imports of capital goods and the building all-important infrastructure to attract foreign investment. But the country still had two important weaknesses; one internal and the other external.

At independence the total extent of the education of the Zambian population of 4 million amounted to approximately 100 university graduates and 1000 secondary school graduates.<sup>12</sup> Although most of the blame for this

Table 1

COPPER PRODUCTION IN MEMBER STATES  
 PARTICIPATING IN THE INTERGOVERNMENTAL COUNCIL OF  
 COPPER EXPORTING COUNTRIES 1965 (PERCENTAGES)

	<u>GDP</u>	<u>GNP</u>	<u>Exports</u>	<u>Revenue</u>	<u>Employment</u>
Zambia	40	34.0*	93	68	15
Congo	18*	23.0*	51	45*	2*
Chile	4	3.0*	65	14	3
Peru	2	1.5*	18	12	1

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\* Estimated



situation must be laid at the door of successive British governments, it is worth remembering that from 1953 to 1963 the Federation of the Rhodesian and Nyasaland was run from Salisbury by Welensky, and major advances in education for Africans were unlikely to take place in that environment. Whatever the historical background, clearly the demands of government on this limited élite were considerable in 1965, leaving few available for commerce or industry, and although the main thrust of budget proposals since independence has been towards education, it will be some time before investments at the secondary level and at the University of Zambia show results. Clearly, then, Zambia must still rely to a large extent on expatriate technical and management skills, whatever the political and economic impact of these shortages. But precisely this reliance encourages the continued existence of a two-level economy. Wage awards reflected the demonstration effect of high expatriate salaries in the mining companies and inflationary pressures generated by strong unions following independence. Bostock and Harvey<sup>13</sup> show clearly the impact of the major concessions granted by the Brown Commission in 1966, implying that although the degree of spread between high expatriate salaries and low Zambian wages was reduced, this was only accomplished at great cost. African earnings, increasing at 12% in 1965 and 1966, jumped 39% and 18% in 1967 and 1968. The total increase between 1964 and 1968 was 106% as against 53% for all non-Africans. Perhaps more significant still, however, was that 106% compares with a 70% increase for African miners implying that increases in the mining sector following the Brown Commission were the signal for vast in-

creases averaging over 20% per year in the rest of the economy. In isolation and considering the inequities of the compensation structure of the country, no-one could criticize these changes. But considered within the more complex system of Africa as a whole the impact was much more important. The breakdown of the East African Federation had many effects on the Zambian economy, not the least of which was the end of the large transfer payments from the riches of the copper belt to the less fortunate areas of Nyasaland and the acquisitive white government based in Salisbury. In fact, between 1953 and 1963, Northern Rhodesia lost \$240 million in reserves, and at the break-up of the Federation was saddled with \$230 million out of the Federal debt of \$672 million - a debt which was largely in respect of assets built up in Southern Rhodesia. Another effect was that for the first time Zambia - still then Northern Rhodesia - could begin to protect small infant industries with tariff walls. But if these were ever to become competitive in export markets - an essential move in Zambia's flight from dependence on copper - then labor costs must be competitive elsewhere in the continent. Perhaps for this reason Zambia has not pushed her application to join the East African Common Market formed by Kenya, Uganda and Tanzania in 1967. Since that date, inflation has priced her products far above those of her competitors.

The external pressure on the Zambian economy has probably had more far reaching effects, even if these are not easy to quantify in total. On November 10, 1965 Prime Minister Ian Smith made his famous Unilateral Declaration of Independence (U.D.I.), and Zambia found herself at the front line of a battle with an enemy who controlled her supply lines, many of her

imports and almost all her electrical energy. The other independent nations in Africa and the rest of the world clamoured for economic sanctions, while offering little financial help to Zambia, who perhaps stood to lose more than Southern Rhodesia herself.

Before 1965 Zambia's economy operated almost entirely on a laissez-faire basis, with the minimum of currency or import controls, and little government participation in industry or commerce. The first sign of control was the Exchange Control Act of June, 1965, followed in December by a regulation requiring licences for all imports from all countries, thereby implementing the United Nations Security Council's Resolution on Rhodesia. At the same time, exchange control regulations were introduced to restrict payments to Rhodesia. But whatever principle demanded was not to be. Zambia relied almost entirely on the railway line to the South through Southern Rhodesia to Beira and Lourenco Marques, both for the movement of imports and of exports of the precious copper. Prime Minister Wilson had pressed Zambia to stop exporting copper through Southern Rhodesia, since he did not want it said that Britain was relying on Smith for her copper supplies in the face of the United Nations Sanction's policy. Rhodesia retaliated immediately by saying that all freight, both imports and exports, would be blocked unless payment was made in advance in dollars or Swiss francs. The copper companies, meanwhile, had built up stocks worth over \$48 million, forecasting \$240 million by the end of 1966 unless some relaxation were allowed, and fears increased that the price of copper on the London Metal Exchange (L.M.E.) could crash when stocks began to move again. The solution, the payment of freight charges by the companies into a Swiss

bank account, was a necessary compromise, albeit illegal under new British legislation prohibiting payments to Rhodesia. Thus the impotence of Zambia in the face of external pressure from Rhodesia was clear for all to see.

But if Zambia lost the first round, the changes induced in the economy between 1964 and 1971 were impressive. By 1970 imports from Southern Rhodesia at \$31 million were 7% of total imports compared with \$87 million 40% in 1964. Ninety percent of the 1969 imports were coal from Wanki and power from Kariba, both essential in copper production, but by 1971 Zambia was expected to be self-sufficient in coal, and in 1975 the Kafue River and Kariba North Bank projects should allow even further import reduction.

Transport, however, was less flexible. In 1968 the Zambian government had to agree with the Rhodesian authorities to guarantee movement of 25,000 tons of copper per month via the railway system to Beira and Lorenzo Marques in return for an agreement that Zambian traffic would not be discriminated against. Any signs that this agreement was being broken would have led to drastic retaliation, such as a 50% surcharge imposed on all imports for Zambia in February 1970 until the level returned to normal. Meanwhile as many imports as possible have been routed through adequate port facilities at Dar-es-Salaam and over the infamous 1000 mile road journey down the Tam-Zam road, suitably called the "Hell-run" by Zambians who know of the appalling accident rates and the wear and tear on vehicles and goods alike. Matters improved slightly in September 1968 when a petroleum products pipeline was completed between Zambia and Dar-es-Salaam. The strangle-hold of Rhodesia will be shaken off finally when the Peoples Republic of China complete the \$402 million Zambia-East Africa Rail Link scheduled for 1975 - provided there are by then adequate handling facili-

ties at Dar-es-Salaam. The cost of these constraints is calculated by Bostock and Harvey<sup>14</sup> as a 36% increase in the transport of exports and 133% in fuel costs. The 36% increase would be less than that for transport costs of all imports, since some copper does go out by Rhodesia, a much cheaper route than the Tam-Zam road to Dar-es-Salaam. The enormous increase in fuel costs reflects the use of low grade Zambian coal which is expensive to mine and produces only 84% of the BTU thermal efficiency of the Rhodesian coal from Wankie. At the same time the low grade coal damages smelter linings, so much so that it is now washed in a new plant, thereby increasing thermal efficiency to 12,000 BTU against 12,500 for Wankie, but at additional cost.

Clearly, mining equipment is an important input to mining production in Zambia. The nature of the economy and its failure to develop good engineering supplies has meant continuing reliance on South Africa, where mining equipment is cheaply and efficiently produced. But Tanzania follows a policy of strict sanctions against the apartheid policies of south Africa, which means that no imports of machinery can come to Zambia via Dar-es-Salaam, thus forcing shipment through Rhodesia by road and rail.

In light of these cost pressures, added to falling ore grades at Nchanga, (from 5.4% in 1964/1965 to 3.65% in 1969, which mine produces 30% of Zambian copper and is the second largest open pit mine in the world), it is perhaps not surprising that AAC and RST had reservations about committing large amounts of new investment in Zambia. At the same time, there were signs that the price of copper could drop from its exceptional 1969 levels, making justification even more dubious, particularly in view of forecasts

of overcapacity in copper-mining until 1973 or 1974. Finally, following President Kaunda's Mulungushi speech of 1968, repatriation of profits had been limited, and state participation in various other industries had been requested.

### Chapter 3

#### THE TAKEOVER ANNOUNCEMENT

##### The Matero Speech

On August 11, 1969 in Matero, a Lusaka suburb, President Kaunda revealed his Government's decision to take 51% ownership of the two major mining companies - Anglo American and Roan Selection Trust.

The move was not unexpected since earlier on April 19, 1968, with a memorable understatement President Kaunda had said he was asking 25 major companies "to invite the Government to join their enterprise." As a direct result of this so-called Mulungushi Declaration and the previous transfer of assets from the colonial government, the state acquired through its Industrial Development Corporation (INDECO), a monopoly or majority interest in a sizeable share of the economy: airways, railways, electric power, coal, agricultural marketing, brewing, transportation, building supplies, large scale consumer retailing and wholesaling, publishing, fertilizers, hotels, oil pipelines, farm machinery, maize milling, tobacco marketing and copper fabrication.

Since one of the main reasons advanced by the Government for the far-reaching economic measures announced in Mulungushi was "economic independence," it had been obvious that the industry that really molded the country's economic future could not be left intact for any length of time. Copper provided more than 95% of Zambia's export earnings.

It is worth noting that, after Mulungushi, Zambian Copper shares had fallen sharply, indicating that the stock market had been anticipating this

possibility since April 1968, so it would be erroneous to suggest that the August 1969 invitation came as a surprise. Although President Kaunda was on record with denials that he intended to take over the mining companies and apparently did not consult even his cabinet before the announcement, after the event he offered the shrewd comparison of the need for secrecy before devaluation. As leakages are a serious problem in the developing nations (and Zambia is no exception), one cannot therefore caution his wisdom

The takeover, or partial takeover, in itself did not come as a surprise to informed observers of the Zambian economy and its political philosophy. What surprised both the local and the international communities was the timing of the President's announcement - a subject to be considered at a later stage. The President's Matero speech not only indicated the broad terms of nationalization and other changes that would substantially affect the operations of the mining industry, but also provided some background or, at least, the official reasons for the takeover. For full understanding of the Government's attitude and traditional suspicions of the Mining Companies, an extract of the President's Matero speech is reproduced as Appendix 1.

At Matero, the President began his speech by reviewing with great satisfaction the progress and effective implementation by the Industrial Development Corporation of the 1968 Mulungushi nationalizations and then went on to comment on Agricultural policy. Next, the President turned his attention to the mining sector. He recollected his disappointment the previous year and pointed out the almost complete lack of mining development since Independence in 1964. Although at the time of independence the



Zambian Government had taken over the mineral rights of the British South African Company, the mining companies still held the mining rights in perpetuity. The Government levied royalties on the metal extracted but had no control over the rate of extraction or development.

We as a people's government had legally no power to take away their mining rights and offer them to other Groups which were willing to commence new mining developments . . . . We could not tell the Mining Companies you either develop the areas which you have or we shall take them away from you and give them to somebody else who is willing to do so. We could not even tell them we shall take them away and develop them ourselves in the interest of the Nation.

Here the President was referring to Clause 18 in the Constitution inherited at the time of Independence, containing a guarantee against compulsory acquisition by the state. This offending Constitutional Clause was repealed by a referendum (in June 1969) and by Constitutional Amendment, thus clearing the way for the fundamental changes the President wished to make in the copper industry and in particular permitting the President to announce that all mineral rights of whatever kind would revert to the state. In these sweeping reforms the President replaced the complicated and out-moded system of granting mineral rights via a system of prospecting, exploration and mining licenses. Under the new system, mining licenses would be granted for 25 years for the extraction of a proven deposit. These licenses would automatically be given to cover the areas developed and about to be developed by the mining companies already in operation, the size of the area covered depending on the rate of extraction and prospective plans. Furthermore, with new mines, the state would have the right or the option to purchase 51% of the ownership of the mine at the time of granting of the

mining license. As a direct result of this reform, prospecting and exploration licenses covering various areas have been offered to a number of different international companies, such as Suico, a consortium of Mitsui Mining and Smelting Company and the Continental Ore Corporation, and Italian, Romanian, and Yugoslav groups. There also are possibilities of other companies coming in from the United States, Canada, Western Europe, Japan, South Africa and Southern Europe.

On the question of taxation the President said:

Last year, I promised that I would review the royalty formula and that I would base it on profitability in order to meet the Mining Companies' point of view . . . . Instead of Royalties and instead of the Export tax I ask the Mining Companies to pay 51% of their profits in the form of a new mineral tax which I intend to introduce . . . (this) is based on profit and in this I have met the Mining Companies demands one hundred percent . . . .

The President continued:

. . . Comrades, I have given a great deal of thought to the Mining Economic Reforms which I have just announced. I am confident that they cover every aspect of mining development past, present and future and I have no doubt that they will lead to an increase of mining investment. However, when I opened the subject I said that I wanted the Mining Economic Reforms to set the nation well and truly towards Economic Independence. I do not think that this can be achieved without the nation acquiring full control of the existing mines, as it intends to do for the mines which will open from now on. I have therefore decided that I shall ask the owners of the mines to invite the Government to join their mining enterprises. I am asking the owners of the mines to give 51% of their shares to the state . . . . I intend to leave it to INDECO to negotiate the value and terms of payment but again I want to make it clear that what INDECO will pay is a fair value represented by book value. At the same time I want to make it clear that the Government has no money to pay as a deposit against these shares . . . . INDECO will therefore have to negotiate payment out of future dividends bearing in mind the advantage the shareholders derive from associating with the state.

### Timing

What were the Government's reasons for deciding to take over the mining companies at the time it did? It has been argued that the invitation to AAC and RST to sell 51% of their shares was politically motivated. That, however, is a truism, since politics and economics are less clearly divisible in Africa than usual - a consequence of the colonial legacy. It is correct that at the time, there was a generally unstable political climate within the country and the ruling party. Both were divided by factionalism and a major move such as the nationalizations could certainly enable President Kaunda to assert his authority more easily over the rival groups. This may have been achieved, for two weeks after nationalization the Vice President, Simon Kapwepwe, announced his resignation as Vice-President of the country and party. President Kaunda, acting with a lightning speed, announced that he was going to suspend its Constitution and run the party as Secretary-General. Thus the timing of the takeover announcement could be seen as providing President Kaunda the necessary leverage to take over complete control of the Party and to gain a breathing space in sorting out the animosity between its factions.

It has also been suggested that the President might not have acted as early as he did but for three encouragements - the ease with which INDECO had handled the first round of 51% negotiations in 1968, the final success of the Congo Nationalizations and advice from Chile, this being the culmination of a relationship springing from the 1964 meeting between Presidents Kaunda and Frei.

In addition to these political factors, it would be fair to say that

the President sought to maximize the national income benefit accruing as a result of such a change, this benefit arising out of the added foreign exchange, investment, employment and fiscal revenue that might be anticipated. The President had also mentioned other goals in economic diversification, income distribution and economic independence.

Copper is the mainstay of the Zambian economy; almost 95% of her foreign exchange earnings come from mineral exports. Furthermore 50% of Government revenues come from the mining industry and an additional 20% from industries based on it. The mines are relatively large employers of labor, and employment in many other industries is dependent on the level of activities of the mining companies and on their requirements. In these conditions, therefore, the social benefits of increased mining production are possibly higher than the private benefits. Consequently unless the fiscal and physical control systems at the disposal of the government are such that decisions made in the private interest are also in the public interest, such decisions could lead to an inefficient allocation of resources.

To achieve these social benefits it was necessary to induce a more active exploration and development program which would result in increased mining investment, production and employment. This may be stimulated in the longer run by the revised mining rights system and the redistribution of prospecting and exploration licenses. In the shorter run, however, there was need for increased production through capital expenditure in existing mines and the development of known deposits. The Government was confronted with two choices - either to encourage this trend through indirect fiscal and physical control mechanisms or to ensure its implementation by assuming

direct control. It chose the latter as the quicker and the cheaper method. Complete nationalization was ruled out since it was likely that the resultant disorders and disruptions to output would have reduced the social benefits and these fears were reinforced when, at the subsequent negotiations, AAC and RST conveyed at an early stage that if terms were too harsh they might walk away and leave the industry to its fate.

Besides the political and economic considerations it would be fair to point out that RST and AAC had committed at one time or another some of the classic mistakes foreign companies often make, thus antagonizing the host government. These would be:

1. Discrimination against local people in employment, compensation, promotion and training opportunities.
2. Transfer of profits abroad; these are often deemed excessive in absolute terms, in relation to total profits, current investments, and inflow of capital. The profits of RST and AAC had been well over \$240 million in the first four years after independence, although the state skimmed off about \$600 million per year in taxes and royalties.
3. Inadequate reinvestment of profits and the use of the locally generated profits to build up other foreign assets. It should be remembered that over the past 14 years, while Zambian Copper production has risen 80%, the total of new capital invested in expansion still amounted to less than one half of the sum total of dividends sent abroad.
4. Decisions of multinational companies that conflict with local Government interests, negating development plans and thwarting national aspirations. Such a case might be the proposed new investments by RST and Botswana when no further investment had taken place in Zambia.

5. Size: The dominance of the copper industry in the Zambian economy gave the two mining companies undue political power or influence.
6. Discrimination against local people in selection or subcontractors.
7. Expansion in the private sector based on local borrowing: advances by the banks rose from \$19 million to \$58 million in the first three years after independence.

The President was painfully aware of these serious shortcomings in the operations and activities of RST and AAC. At Mulungushi, sixteen months earlier, he had castigated the mining companies as follows:<sup>15</sup>

The companies claim that the royalty system has been against new development. Nevertheless, I think they have not done enough towards further development of the country in which they make their great profits. Let me also say that I do not agree with the Mining companies that royalties have been the obstacle to the development of the industry. I have been following their accounts and I know very well that they could have embarked upon further expansion if they chose to divert part of their profits for this purpose. Instead of re-investing they have been distributing over 80% of their profits every year as dividends. However, I am going to change the royalty system. I cannot announce details yet but I can say that the new system will give the Government the same money while it will meet the companies point of view. But at the same time I want to see more of these locally made profits used in mining development . . .

In terms of the incidence of tax the new provisions had minimal effect on the companies. A 51% minerals tax plus the standard Zambian Company tax rate of 45% (mineral tax being treated as cost) meant a total tax rate on profits of 73.05% which was approximately equal to the rate paid by the companies before the reform.

Sir Roland Prain emphasized this point when he informed RST shareholders that: "We welcome the establishment of the new principle of a tax

based on profitability; nevertheless, a mineral tax at 51% when taken in conjunction with income tax is high by world standards and has the effect of actually increasing the amounts to be paid to the Government, compared with the present level, if and when copper prices fall."

This was a master stroke - a tax structure apparently reformed to conform to needs of mining industry and yet also granting the Government the same or more revenues, compared with the previous system. Thus all parties, the mining companies, and political radicals, should be satisfied. Also by announcing the new taxation rates, the future rate of tax on taxable profits was eliminated as a possible additional parameter in the nationalization negotiations.

Another relevant point in the President's speech dealt with exchange control. In the 1968 Mulungushi speech the President announced that any company owned by expatriates would be subject to exchange control regulation. Such a company would be allowed to remit abroad in any one year a maximum of 30% of equity capital or one half of the net profits, whichever was the lower. The purpose of this was to curtail the 'undesirable tendency of a number of foreign controlled companies to remit very large percentages of their profits abroad each year.' This regulation was relaxed in the Matero speech:

I wish to give incentive to those resident expatriates to make joint ventures with Zambians in the Agricultural, the Industrial and all other productive business fields. For this reason I am prepared to relax the exchange control regulations and I am prepared to consider that a company which has 51% Zambian participation shall be treated as a Zambian company for exchange purposes.

The mining companies, now 51% owned by the Government, were thus

exempted from the exchange control restrictions.

### Government Objectives

The main Government objectives for the takeover are discussed under the following headings:

- a. Production and Investment
- b. Foreign Exchange
- c. Personnel
- d. Control
- e. Economic Independence

#### Production and Investment

The investment policies of the mining companies had been far from satisfactory from the Zambian point of view since independence. If the companies were discounting the possibilities of nationalization at some future date as inevitable, then there was little incentive for them to invest more capital which might later be expropriated on unfavorable terms. The companies were also anxious about soaring production costs and complained that the royalties system inherited from the BSA days prevented the opening of lower grade mines. The Government showed its disapproval of the investment rate by the companies and asked Chile for advice on ways to force the pace of output. The purpose of the government move was to ensure the continuation of current production levels as well as expansion in the future, through higher reinvestment in the industry and consequent expansion of production capacity.

#### Foreign Exchange

A serious area of conflict was the high proportion of post-tax



profits paid out as dividends to the mainly foreign share-holders. In the Mulungushi speech in 1968 the President made it clear that he regarded the rate of development and reinvestment to be inadequate and introduced at that time an exchange control regulation limiting the overseas payment of dividends by companies that were less than 100% Zambian owned to 50% of post tax profits, or 30% of paid up equity, whichever was smaller. The effect of this on the mines finances was to cause a large accumulation of liquid funds (estimated at \$84 million) in Zambia, despite increased capitalization by both groups. As mentioned earlier, the restriction was relaxed at the time of the takeover of the mining companies. Nationalization can therefore be viewed in part as the quid pro quo for the relaxation.

### Personnel

Another principal cause of friction between mining companies and the Government was the question of the employment, training and promotion of local personnel in place of expatriates. Except for the short-term loss of efficiency as a new man settles into a job, local people in general cost less than expatriates. This was recognized by the mining companies before independence but their efforts to promote local personnel were frequently frustrated by the white trade unions. Since Independence, however, there had been a major exodus of the white South African and Southern Rhodesian miners who had formed the backbone of the Zambian union movement. Thus this stumbling block had been removed and the government could hope to use the takeover to dictate the pace of Zambianization.

### Control

To Zambia it had become intolerable that an industry producing nearly half the national product and virtually all the foreign exchange earnings should remain under foreign management and ownership. There was little that Zambia could do about the foreign management but it could take majority ownership and thus control the future development of the mining industry. The Government also hoped to control the abuse of inter-company transactions. Manipulation of prices in purchases and sale transactions with associated companies can be used to transfer profits from one country to another, thus avoiding taxation and exchange control regulations and restrictions. The establishment of backward and forward linkages can be delayed if the foreign investor owns facilities in other countries. To what extent this was applicable to Zambia is not clear. The Zambian Copper Companies have not in general purchased significant proportion of inputs from associated companies since they are more horizontally than vertically integrated internationally. Also a high proportion of copper is fully refined in Zambia, unlike the Congo or Chile before President Frei's Chileanization program. Nevertheless suspicion of price manipulation was one reason for the official reluctance to drop the taxation of copper based on published price and tonnage produced and exported.

### Economic Independence

There is a general belief in the underdeveloped countries that political independence should be followed by economic independence and this belief is partially shared by all countries. The Chilean, Congolese and Zambian Copper takeovers are only examples of a much wider concern in

Tanzania and Uganda as well as in Canada and France. Various names are ascribed to these trends. Sometimes it is associated with socialism (Tanzania) or a "move to the left" (Uganda) but Zambia's official philosophy of Humanism specifically rejects the doctrines of socialism. Despite the current concern of the French and Canadian governments for economic independence, one could hardly describe them as left wing. President Kaunda drove home the point when he said at the opening of a new Standard Bank Headquarters in Lusaka in 1969 that "we have confidence that each change brings us closer to our goal of economic and political independence based on self-reliance . . . those who want development with a human face will come and join us as participants in this great venture, which my Government is prepared to undertake to its logical conclusion." It should be understood that the primary motive in many cases is economic independence rather than a move to the left or acceptance of communist doctrine.

In the Zambian case, for instance, one must note that large foreign firms have been nationalized at the same time as small Zambian businesses have been encouraged, often to the point of driving out small foreign businessmen. In both situations the Government is simply using the most easily available instrument to achieve economic independence.

## Chapter 4

### THE SETTLEMENT

On December 24, 1969, four months after the President's Matero speech and after intensive negotiations, the final master agreements were duly signed by all parties. The terms of the settlement were as follows:

#### A. Compensation

The Zambian Anglo American Group announced the details of the settlement in a statement to its shareholders on April 27, 1970. The Group's assets, undertakings and liabilities of Nchanga, Rhokana, the Rhokana Copper Refineries and Bancroft were consolidated into one operating company, Nchanga Consolidated Copper Mines, Limited (NCCM). The newly created Government Mining Company, MINDECO Ltd was to hold 51% of the shares. Other Anglo American assets, the remaining 49% NCCM shares and the compensation bonds were to be vested in a new company, Zambian Copper Investments, Ltd. (ZCI). The previous shareholders of the Anglo American Mining Companies were issued ZCI loan stock in proportions to their original holdings of the company's shares.

The book value, indicated by the audited assets of the company at 31 December 1969 was used as the basis for the settlement. This book value was \$345 million, 51% of which amounted to \$176 million and after adding 3 months' interest at 6% per annum, totalling \$178 million. Payment for the 51% interest in NCCM was effected by the issue of Zimco bonds. Zambian Industrial Mining Company (Zimco) is wholly owned by the Government and Zimco in turn owns 100% of MINDECO ltd. The bond issue is repayable

with interest at 6% by twenty-four equal semi-annual installments beginning October 1970 and terminating on April 1, 1982. This means a semi-annual payment of \$10.5 million.

The Government therefore acquired 51% of Zambian Anglo American's operating assets for \$179 million repayable at 6% over 12 years.

The terms of financial compensation for RST were similar. The operating assets of RST were amalgamated into one operating company; Roan Consolidated Mines Limited (RCM). These assets were valued at \$230 million as at December 31, 1969, 51% of which was \$118 million with interest repayment at 6% being in 16 semi-annual payments each of \$9.5 million, beginning October 10, 1970. The shareholders of RST therefore held 49% shareholding in RCM and also received the compensation bond. Payment of both sets of bonds are guaranteed by the Zambian Government. The amounts are payable in U. S. dollars, and are free from any Zambian exchange control restrictions (except for Rhodesian residents) and free from all present and future taxes except those normally applied to residents in Zambia. The bonds are freely negotiable. In an explanatory note to its shareholders (dated June 30, 1970) RST states "the Bonds will enjoy an unconditional guarantee of Zambia and the full faith and credit of Zambia will be pledged for the due and punctual payment of the principal and interest on the bonds and for the performance of all obligations of Zimco with respect thereto." Consequently the redemption payments on the Zimco Bonds need not depend on the future profits of RCM and NCCM respectively. But given the Government's dependence on Copper as a major foreign exchange earner (95% of the total foreign exchange earnings) and the major source of Government revenue,

clearly the payments can be met only if copper profits are adequate. Consequently, the Government's ability to pay is directly linked to the profitability of RCM and NCCM. Certainly the Government expects to meet the payments out of MINDECO's dividends.

As part of the financial arrangements, an agreement was reached with Zambia Government's Exchange Control Authority permitting RST and ZAA to transfer outside Zambia certain non-mining assets. RST was authorized in particular to transfer abroad \$25 million but it had to give the undertaking that to the extent that it was called upon to do so, it would reinvest or contribute a maximum of \$21 million towards capital finance required by RCM for the development of existing or opening of new mines. ZAA was similarly permitted to transfer abroad \$40 million with the undertaking to reinvest \$16.8 million over a five-year period ending December 31, 1974. In addition both companies were allowed to transfer abroad their pension funds.

#### B. Management and Consultancy Contract

An essential part of the nationalization agreements were the management contracts held by Anglo American (Central Africa) limited, and RST Management Services Limited for the management of NCCM and RCM respectively. Besides the management contracts which are valid for ten years from 1970 - 1980 these foreign companies were granted sales, purchasing and recruiting contracts.

For rendering these services (managerial, financial, commercial and technical, etc.) RST will receive from RCM and AAC from NCCM fees of 3/4% of gross sales proceeds plus 2% of profit after 51% mineral tax but before deduction of 45% company tax. There is also an engineering service fee of

3% with all costs reimbursed. Besides, RCM and NCCM will pay the salaries and related allowances of all staff seconded from the two foreign parent companies.

The sales and purchasing contracts carry commissions of: 3/4% of gross sales proceeds of copper products and 2 1/2 of gross sales proceeds of cobalt products, with no commission collectable on local sales. These contracts may expire after two year's prior written notice by either party after 31 December 1979 or rescinded with two years' notice before 31 December 1979: (1) by the operating companies (RCM and NCCM) if interests of the foreign parent companies (RST and AAC) fall below 20% or if services rendered are not satisfactory. (2) by RST and AAC if their advice is repeatedly rejected or not implemented by the Government ("A") directors. Policy decisions would naturally be made by the boards of RCM and NCCM but all major decisions, particularly those involving financing and investment, must be approved by separate majorities of "A" directors (representing the Government) and "B" directors (for the companies). It is worth pointing out that the agreement also stipulates that the companies must be operated so as to "optimize production and profits." As contradictory as this may seem, it is the type of compromise solution that comes out of such negotiations and which may eventually become the source of bitter argument.

Copies of the original agreements were not available to the authors at the time of writing but details of the agreements as they appear in Bostock and Harvey's book, Economic Independence in Zambian Copper, are reproduced as Appendix II.

The agreements signed with both ZAA and RST provided that the following events constituted default:

1. Default for 30 days in the payment of principal or interest due on the bonds and loan stock;
2. The sale of Zimco or RCM or NCCM of all or a substantial part of assets;
3. The bankruptcy, liquidation or amalgamation of Zimco, MINDECO, RCM or NCCM or in the event of any one entity entering into arrangements prejudicial to bond as stock holders.
4. Unlawful cancellation or abrogation by RCM or NCCM of the management and consultancy or sales and marketing contract;
5. Unlawful abrogation or breach by Government or Zimco of its obligations under the Master Agreement (e.g. undertakings in respect of taxation and exchange control);
6. Material failure by RCM and NCCM to abide by any of the provisions of their Articles of Association designed for the protection of the "B" shareholders (e.g. ignore the veto power of B Directors, described in Appendix II).
7. Failure by RCM or NCCM to pay net profits on dividends to the extent required by Articles of Association;
8. Unlawful cancellation or abrogation by the Zambian Government, Zimco, RCM, or NCCM of obligations to arbitrate disputes in the manner described under the section dealing with arbitration of disputes.

The agreement also stipulated that if two-thirds of the MINDECO dividends from RCM or NCCM exceeded the annual bond redemption payments of \$19.0 million and \$21.1 million respectively, the excess would be applied to additional redemption of the bonds. These accelerated payments could shorten the period of repayment, but they would not reduce the obligation



to make the same semi-annual payments in future years until the bonds and loan stock were completely redeemed. Curiously enough there was no deceleration clause in the agreement; more will be said about this point later.

Breach of these agreements, including the management contracts, would render all the outstanding Zimco bonds due and immediately payable. In fact, Zambia could not possibly pay in one installment the huge amounts involved unless the balance had been diminished considerably. In reality the only weapon the creditors might have would be to take the dispute to the International Centre for the Settlement of Investment Disputes (ICSID) with maximum publicity in the hope of generating enough pressure on Zambia. The Government would probably accept any ICSID ruling so as to retain its standing with other creditors and potential creditors.

This series of agreements has placed considerable restrictions on the Government since management can block any undertaking outside the normal operations of the mining companies. Furthermore, investments for which loans on normal commercial terms cannot be found can also be vetoed.

The Government obligations include an agreement not to raise the present level of taxation for mining operations and not to change the exchange control regulations. These are onerous restrictions on the normal freedom of action of the Government but with a tax rate of 73% and a Government share of 51% of dividends there is little scope for increasing taxation.

Other Government undertakings were to apply, to all matters affecting the mining companies, Zambian law as of December 31, 1969 and the new legislation enacted to incorporate the takeover agreements themselves regardless

of any subsequent changes in the law.

The nationalization package was apparently negotiated in a friendly and cooperative spirit, and officials of both companies and Government have indicated that the agreements, including the compensation for the properties, are fair. It should be noted in passing that there is a body of opinion, both inside Zambia and elsewhere, that believes that the settlement was overgenerous.

The Government accepted these restrictions because it was most anxious to reach an amicable settlement with the companies for the following reasons:

1. It recognized its inability to operate the mines without foreign management and skills and without a large number of expatriate staff for many years.
2. The Government could not afford the loss of revenue that might have accompanied a production stoppage following a breakdown of negotiations.
3. Government was very anxious to maintain its international credit standing, which would have been seriously jeopardized by an allegation by the companies of expropriation without fair compensation.

The peculiarly strong position enjoyed by the mining companies within the overall economy of Zambia accounts in part for the "good" treatment they received. Table 2 indicates quite clearly how important the copper industry is to the entire national economy.

Any country dependent as is Zambia upon one resource and industry, could not afford to risk the possible disruption that would probably have followed a breakdown in negotiations or a total takeover of the industry.

Table 2

## CONTRIBUTION OF COPPER INDUSTRY TO DOMESTIC PRODUCT REVENUE AND EXPORTS

	Net domestic product (K mill.)	Contrib. to net domestic product (K mill.)	%	Government revenue (K mill.)	Contribution gov't revenue (K mill.)	%	Value of domestic exports f.o.r. 3) (K mill.)	Value of exports (K mill.)	Copper and Cobalt Contrib. to exports %
1961	375	177	47	75	28	38	241	224	93
1962	369	171	46	75	26	34	241	222	92
1963	387	173	45	72	25	34	260	329	92
1964	457	215	47	108	57	53	327	302	92
1965	576	246	43	189	134	71	375	348	93
1966	725	342	47	255	163	64	490	466	95
1967	807	334	41	276	146	53	467	440	94
1968	872	365	42	306	183	60	538	519	96
1969	1171	631	54	401	237	59	754	729	97
1970	1088	453	42	416	218	52	671	650	97

Source: MINDECO Mining Year Book of Zambia, 1970

Table compiled from published government reports, other official data and industry sources. 1970 figures compiled from incomplete data.

Consequently the mining companies had to be treated with caution.

It cannot be over emphasized that it is the bargaining powers of the two parties in such negotiations that ultimately dictates the settlement. These powers, real or perceived, may shift over a period of time and may lead to subsequent renegotiations, cancellation of previous settlements or total expropriation, e.g. the Chile copper nationalizations. It is well and good for the mining companies to come out of the 1969 negotiation with water tight agreement and all the safeguards and guarantees entailed therein. What happens subsequently may be another matter.

In fact, the agreements concluded do contain a good deal of ammunition for a political radical or potential challenger of President Kaunda. One thing is certain; when it comes to the showdown, the issue will not be settled by legal niceties but by political power and exercise of sovereign national rights. We need not go far for an example; the dubious Clause 18, which the powerful mining companies managed to have inserted in the Constitution at the time of Independence in 1964, to prevent reversion of mineral rights to the Independent Zambian Government, had a short life of five years even though a national referendum was required to amend it in 1969.

Chapter 5

## STRUCTURE OF MINING INDUSTRY

Following the takeover on January 1, 1970, the structure of the  
Zambian mining industry is as follows:

RCM (Formerly RST)

The Government's 51% share in RCM is held and administered by the Mining Development Corporation, Limited (MINDECO), a new holding company and a subsidiary of the Zambian Industrial and Mining Corporation Limited (ZIMCO).

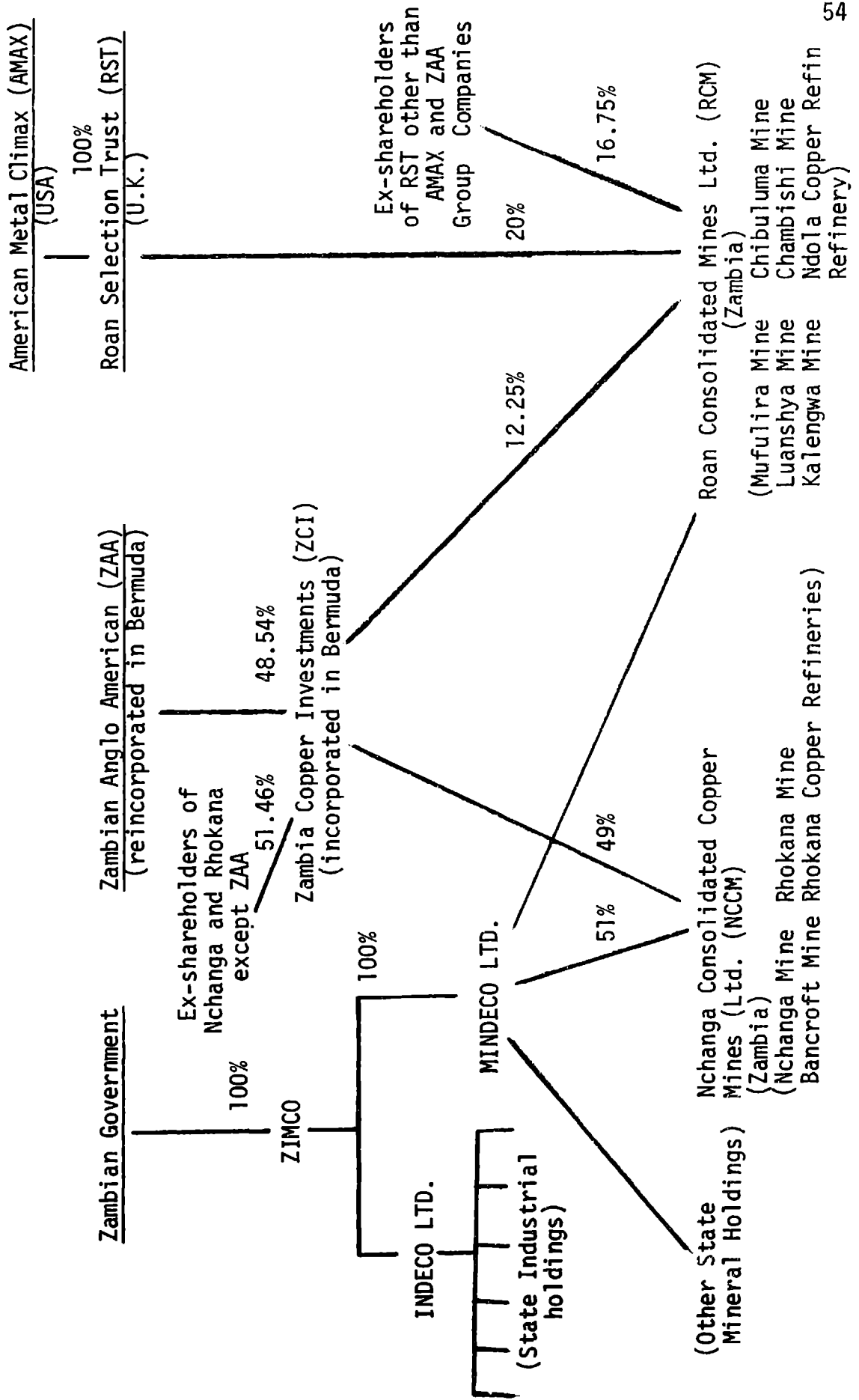
The original RST was reorganized as RST International and is now a wholly owned subsidiary of the U. S. American Metal Climax (AMAX). RST International holds a 20% share in RCM. The other major shareholder is an affiliate of the Anglo American Corporation of South Africa, with a holding of 12.25%; the remaining 16.75% share in RCM is held by private shareholders, mainly American. The mines owned and managed by RCM are Mufulira, Luanshya, Chilbuluma, Chambishi and Kalengwa mines, as well as the Ndola Copper Refinery.

NCCM (Formerly AAC)

Here again the Zambian Government's 51% interest in NCCM is administered by MINDECO. AAC reorganized and changed its domicile to Bermuda. Two new companies were set up. (a) Zambian Copper Investments (ZCI) Incorporated in Bermuda, holding Anglo American Interests (49%) in NCCM and interests in other prospecting companies; and (b) Zamanglo Industrial Corporation (ZAMIC), Incorporated in Zambia, holding AAC's industrial interests. The new company NCCM owns and operates Mchanga, Rhokana, Bancroft Bwana Mkubwa and Nampundwe Mines as well as the Rhokana Copper Refinery. (See Table 3).

Table 3

THE FINAL CORPORATE STRUCTURE  
-THE ZAMBIAN COPPER INDUSTRY-



## Role of MINDECO

MINDECO completes the pattern of governmental control over industry and commerce in Zambia. The control introduced in 1968, with INDECO taking a 51% share in 27 private companies, has now been complimented by the creation of MINDECO for mining industry and FINDECO for the banking and insurance industry. But, as a controlling influence clearly MINDECO has the greater potential from an economic and social point of view.

With offices in the new Zimco building on the main street of Lusaka, close to the head offices of AAC and RCM, MINDECO plays little more than an advisory and audit role with a staff of about fifteen Zambians and expatriates. Clearly such a holding company should be responsible for general direction of its subsidiaries, while at the same time acting as the custodian of the government's copper mining interests. Since nationalization, it has restricted itself to inquiry in two major areas - marketing and rationalization - with differing effectiveness.

MINDECO has taken a keen interest in copper pricing and sales and has established an office in London in order to keep close touch with the London Metal Exchange (LME). Whereas there are no obvious differences between MINDECO and the foreign companies regarding pricing policies, MINDECO has suggested that there should be more rigorous marketing of copper, the feeling being that in the past copper was placed and not marketed. Although this may be true, it is not clear what effect MINDECO can have on world copper prices, now was it certain that it had anything concrete planned. Historically, the pricing of copper has fluctuated widely, largely due to the marginal nature of the LME, and their interest in the marketing of copper is not surprising when it is realized that such fluctuations make economic planning impossible. In 1964, under a scheme proposed by Sir Roland Prain,

Chairman of RST. the two Zambian Mining groups sold their copper on a basis of "fixed producer price," which was adjusted periodically. The purpose of the scheme was ostensibly to stabilize the market for copper and to reduce the threat of substitution by other materials. It was perhaps wishful thinking to expect that the Zambian producers by themselves could have achieved such a monumental feat. The net result of this ill-conceived scheme was the loss of substantial revenues and profits for the Government and producers alike. When the scheme was abandoned in April 1966 the LME price and Chilean price were over \$1680 per ton while the Zambian prices, depending upon the grade of Copper, were down to about \$790.

Four months after Zambia's reversion to LME pricing, however, the LME price itself fell by about \$600 per ton, reflecting in part the sudden increase in supply of copper when AAC released its stock piles of the previous two years and RST, which had cut down production during the same period, expanded its output.

Surprisingly there was no pressure from the Government on the mining companies to sell copper at prevailing world prices, perhaps due to lack of experience and ignorance on the part of the government officials concerned with copper production and marketing. During this period however the royalties payable to the Government were calculated on the LME price.

As stated in the 1971 Executive Chairman's statement, the London office of MINDECO was opened with a view to establishing and maintaining links with the international mining community. The main theme of this activity is undoubtedly on the marketing front, although its effectiveness can be questioned. In 1965 Chile, Peru, Zaire and Zambia created the Inter-governmental Council of Copper Exporting Countries (CIPEC), a clear para-



like to the highly successful Organization of Petroleum Exporting Countries (OPEC). CIPEC has the reputation of having built up a highly competent secretariat, but the objectives of the member states are unlikely to be as clear cut as those of OPEC, largely because of the political importance of labor intensive copper extraction within their economies. Where OPEC can control oil supply by turning a valve at an oilfield, a CIPEC country must consider the more drastic effects of production cut-backs. Equally the dispersion of copper deposits throughout the world is contrasted with the concentration of oil in regions in North Africa and the Middle East which share similar political aspirations. As well as this, production costs vary considerably from one mine to another within the CIPEC group, so that control of output can affect the profitability of the mines of member nations in varying degrees. Finally, CIPEC will find it harder to organize against major buyers because of the all-important secondary markets in scrap copper. Discussions with commodity consultants predicted little success for CIPEC until perhaps Canada and Australia were persuaded to join the organization. Meanwhile the price of copper will continue to reflect the relationship of the current over-capacity in producing countries following the downturn in world economic activity in 1970 and 1971, a situation which may well continue until 1973 or 1974 unless some major unpredictable factor occurs.

The MINDECO management is also looking into the question of closer co-ordination and future integration of NCCM and RCM in order to achieve rationalization and possible economies. So far the two mining companies operate almost independently with little coordination. Before the takeover RST and AAC ran completely separate operations, although some managers

admit that there are opportunities for economies of scale especially in refining operations, computer services, and purchasing.

Given the nature of the management contracts signed with the two foreign mining companies, it is doubtful that MINDECO can press for rationalization without abrogating some of the terms of these contracts. The two mining companies can be expected to cooperate with MINDECO in any effort to achieve economies of scale provided these efforts do not curtail their rights or freedom of action under the management contracts.

The centralization MINDECO is now striving to achieve might have been established at the time of the takeover by simply offering one management contract to either RST or AAC to run the mines belonging to both groups. This probably would have entailed higher compensation for the company that was denied the management contract since this was an integral part of both settlements. It is not clear to what extent this possibility was explored at the time of the takeover but, having decided to keep both AAC and RST involved, MINDECO must now find a formula to persuade the mining companies not only to cooperate with it, but to coordinate activities between themselves.

The companies feel that one of the greatest benefits to be derived from partnership with a Government is in the area of staff and labor relations, since the Government and companies now find common cause in attempting to control wage demands or secure qualified staff to man technical and managerial posts.

These expectations of the companies have not been entirely met. The companies, which still depend largely on expatriates for technical and

managerial staff, assert that conditions of employment offered by Zambia are no longer competitive by world market standards and that they are finding it increasingly difficult to recruit. They had hoped that MINDECO, which shares the companies' concern in such matters will try to obtain some relaxation of Government controls on expatriate salaries and allowances. Salary increases for expatriate staff are unpopular, politically and socially, and MINDECO is not anxious to take on such a sensitive issue. The MINDECO management has also avoided labor relations issues, maintaining that these problems properly belong with the operating companies. MINDECO's long-term policies on these issues will inevitably reflect the Government line and this is not yet known. The Government must now decide what line to take on labor questions now that it is a direct party (on the management side) to any dispute, while still drawing much of its political support from the copper belt workers.

At this stage it is worth reminding ourselves of the objectives of the government partners in such a joint venture. Friedman suggested<sup>6</sup> that there might be areas of the economy in which the government felt that it should be in direct control, but that complete political control might be unwise since the enterprise would still need to be run on commercial rather than state-nationalized lines. When first incorporated, the MINDECO board reported through its chairman and managing director to the Zimco board, the holding company board which was chaired by President Kaunda himself and on which the Minister of Mines sat as an ex officio member. This was a two-edged benefit, for the companies hoped that the MINDECO Chairman could use his position on the Zimco board to obtain the ear of the President on

their behalf, while having the same status as the Minister of Mines, who was of course politically responsible for all mining operations; but at the same time this made the political profile of the MINDECO Chairman very high, something which was not his personal taste and which made it more difficult for him to remain uncompromised in his efforts to create the right environment for the commercial operation of the mines.

But this structure was not to survive. While being careful not to be drawn into a socio-political discussion of the strength and weaknesses of President Kaunda himself, it is important to recognize the significance of the great shortage of really able Zambians on whom he can call for political and administrative office, and the relatively delicate balance of power he must maintain in a country in which tribal differences are still strong. Any official might be able to build up a significant power base when there are so few of his compatriotes to act as checks and balances to his ambition, and it is noticeable that few major officers in government or administration have held their posts for long, but have been moved to control some completely different ministry or department. It might be a mistake to read too much into this, especially since one way of using such scarce management resources would be to shuffle them around in the hope that short doses of competence would bolster up areas of weakness. But it was a significant move when President Kaunda effectively emasculated the Zimco holding board as a policy-making cabinet, making the Minister of Mines chairman of MINDECO, and allowing the chairman and managing director to drop back a little from the political limelight when he simply retained the post of managing director.

The implications of the move can be taken many ways. Another MINDECO director was approving in that the managing director would now be less likely to be moved himself as part of a political reshuffle - a move which Zambians and expatriates alike would view with apprehension since he has shown great competence and tact throughout his dealings with the mining companies. Equally the mining companies now see that their lobby to the President has been weakened at a time when low copper prices, rising costs and a competitive labor market internationally are presenting them with many more semi-political problems.

Thus it can be seen that the political temperature in Zambia is still most important to the mining companies, even if their political profile has been reduced by the nationalization. The fears of professional management - that day to day decision processes should become completely politically constrained - is a real problem. It was made clear that one of the greatest impacts of the nationalization had been the increased efforts necessary on the part of senior corporate management to keep MINDECO officials informed of all decisions which could conceivably contain political implications.

The issue of MINDECO's management and technical competence suggests an important area of inconsistency in the perceived objectives of the mining management of AAC and RST and MINDECO itself. The management contracts, as negotiated in 1969, both terminate in 1980. It was therefore an obvious line of inquiry to ask the parties what relationship they predicted for 1981. Replies ranged from a statement that no-one could look that far ahead in Zambia in 1972, to a long discussion of the need for

continuity of management. Perhaps surprisingly the first opinion was heard from a mining company official in London, and the second from a MINDECO official in Lusaka.

Later discussions of the Zambianization process will imply that, whatever the performance to date, unless enough Zambians prepare themselves for technical and management positions in the mines by opting for suitable training, instead of the usual liberal arts degrees at universities, there will still be a significant need for expatriate skills in 1980. The debate then changes to one of organizational structures. Clearly the status quo might continue, with both AAC and RST receiving management contracts for a further term. If this were to be so the ideal situation would be an early statement to this effect from MINDECO so that the two companies can plan their own resources accordingly. But such a declaration of intent is probably impossible in the current political climate. It may well be that informal discussions have already taken place. Certainly MINDECO was aware of the problem and its political risks, but no sign of any clear policy was available. The alternatives are limited, but provide problems of their own. MINDECO could elect to take over the management of the mines entirely in 1980, offering employment or expatriate contracts to the employees of AAC and RST as they needed them. Problem areas here might be that a government corporation could find difficulty in justifying in political and social terms the maintenance of high salaries for qualified expatriate staff, and also there might be fears on the part of some of the expatriates who could see continuity of employment within AAC or RST as assured, but who would be less happy about working for the Zambian government. At the same time,

international monetary sources have usually taken an interest in the record and motivation of the management contract holders when considering new investments, and perhaps AAC and RST have a different credit rating from that of MINDECO. Finally MINDECO might take its existing rationalization program to its logical conclusion and request the two existing management teams to merge, thus retaining the benefit of their skills and considerable experience, while at the same time being able to show changes in the structure as a political sweetener, since extension of any management control agreement is certain to incur criticism.

Discussions with MINDECO officials suggested that they were thoughtful not only of their own competence, but also of their impact on the management of the mining companies. They appreciated their own problems in acquiring and keeping good Zambian staff when MINDECO was committed to what they described as no more than a consultative and overseeing role. Equally they could not imagine the possibility of building up the MINDECO staff to anything like the capability required to run the mines outright by 1980. The redundancy of manpower would be prohibitive, especially in a country where there were such shortages. This redundancy had already been commented on by mine officers, and by corporate staffs in London who had questioned the relevance of a London office for MINDECO.

It still seemed, however, that the consensus of opinion was that MINDECO would, at least ostensibly, take over the management of the mines in 1980. Some signs were found in discussions with the companies that, as optimists, they should assist this process as far as possible by encouraging rationalization plans so that hasty action could not damage the

performance of the mines thereafter - their optimism being the assumption that they would still own a 49% interest in the mines. In general these attempts at cooperation seemed reasonable, and there was no evidence of any action directly obstructive to the desires of MINDECO. But then there was no evidence either of the kind of petty shows of force which a certain major oil company claimed to have encountered with one of the other government holding companies, where both auditors and lawyers had been changed by the 51% interest - not to Zambian firms, as might be expected, but to other international firms in London. Thus the working relationship seemed extremely mature, something mentioned gratefully by the management of both AAC and RST, who thus seem prepared to respond to the suggestions and tactful inquiries of MINDECO.



## Chapter 6

### POINTS OF CONFLICT

The partnership is now firmly established and there is almost complete harmony between Government officials in MINDECO and the expatriate officials operating RCM and NCCM. It would be ideal if such relationships were maintained, and 1970-1972 does not become recorded as honeymoon period followed by serious disagreements and possibly a total break. It would perhaps be a fair guess to suggest that the cordiality is likely to persist as long as there is no substantial change in or a threat to the present political leadership of Zambia. Besides the political climate, however, there are areas of conflict which if not carefully handled could pose a serious threat to the future of the partnership. These areas of conflict are:

1. Zambianization
2. Industrial Relations
3. Production
4. Compensation
5. Control

#### Zambianization:

This is a sensitive issue and has been so for many years. It first became a public issue in 1940 when the Northern Rhodesian Regiment opened fire on rioting crowds, killing nineteen African workers during disturbances in the copper belt. Following the disturbances, a commission of inquiry was set up under the chairmanship of Sir John Forster Q. C., to look into the causes of the rioting and the killings. The commission, though not required by its terms of reference to consider "African advancement," did so at some

length in a section of the report dealing with "racial difficulties." The issue raised in 1940 by the phrase "African advancement" was whether Africans employed in the mining industry would be given the opportunity to undertake, without regard to their racial origin, work for which they were fitted by inherent ability or acquired skill. The farsighted recommendation of the Forster Commission on this point was summarized in these words:<sup>17</sup>

The mine managements should consider with representatives of the Government and the Northern Rhodesian Mine Workers Union\* to what positions now open to him the African worker should be encouraged to advance.

The reaction of the Northern Rhodesian Government to this recommendation was somewhat negative and the companies and the union ignored the recommendation. At the end of the war the companies and the Northern Rhodesia Mine Workers Union concluded an agreement that was to retard the advancement of African Workers.

The Company agrees that work of the class or grade that is being performed or job that is being filled by an employee at the time of the signing of the agreement shall not be given to persons to whom the terms and conditions of this agreement do not apply.<sup>18</sup>

This provided a legal basis or recognition for a color bar which existed on the mines in the copper belt, reserving all jobs with any meaningful content for the Europeans. This situation persisted despite the findings of subsequent commissions of inquiry, which deplored this state of affairs. In 1954 a Board of Inquiry, under the chairmanship of Forster

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\*The Northern Rhodesian Mine Workers Union was formed in 1936 to represent the interests of the daily-paid European workers in industry.

ruled:

It has been agreed by all parties in the inquiry, and we accept the view, that the African in the copper mining industry is capable of industrial advancement and that he has not yet been permitted to advance to the full extent of his capabilities.

However, it was not until 1955, fifteen years after the issue had first been raised and ten years after World War II, that the first steps were taken by the industry in the area of African advancement. In that year the RST group of companies reached a compromise with the European Union. Under this settlement the union agreed to release from schedule "A" (which was the name given to the list of those jobs up to that time solely represented by the European Union) certain jobs of low skill content, together with certain "identical or ragged edge" jobs previously performed by Africans in some mines and by Europeans in others.

In 1962 as the Federation of Rhodesia and Nyasaland came to an end and Zambia began to prepare for Independence, the achievements in the field of African advancement at that time can be summarized as follows:

1. All jobs in the industry were open to Africans and some Africans had already passed into schedule "A" employment.
2. A group of intermediate jobs had been created to bridge the gap between the old African wage structure and schedule "A", the predominantly European field of employment.
3. The first steps had been taken to create a unified wage structure.

The end of the Federation and the approach of Independence for Zambia forced the companies to undertake a critical and major review of their employment policies. The mining companies recognized the need for

change and began to evolve new policies during 1962-1963. The objectives of these new policies were:

1. To reorganize the manning structure of the mines so that there was no obstacle to rapid Zambianization. This involved a vast increase in the fragmentation and modification of jobs so that a well-ordered hierarchy was produced.
2. To establish a permanent local wage structure, incorporating the new jobs, responsive to local economic factors rather than ties to a temporary European wage structure which had been conditioned by the economic environment of more highly developed countries.
3. To recognize the temporary nature of the European's employment on the mines, in the light of the policy of Zambianization, and so to establish for him the status of an expatriate who would supply skills and experience only for so long as these could not be provided locally. As the Europeans had been encouraged to regard themselves as permanent "settlers" during the Federal era, this represented a major change in status and involved a number of steps. The first was to transfer daily rated Europeans to staff positions. This move helped reduce their growing feeling of insecurity at a time of rapid political change and also made training and supervision of Zambians a normal part of the expatriate's job. Next their conditions of service were adjusted so as to provide for a displacement formula to be applied when an expatriate had to make way for a Zambian who had been trained to replace him. Finally, the establishment of expatriate status for Europeans was introduced, i.e. they were given fixed period contracts.
4. To develop a comprehensive and relatively long term programme of Zambianization to meet as quickly as possible aspirations of Zambians consistent with the maintenance of production standards

and safety margins. And, to institute new and comprehensive training programs.<sup>19</sup>

The next major event in employment conditions for Africans came in 1966 when the nonindependent Government of Zambia appointed a commission of inquiry under the chairmanship of Judge Brown to look into the wage structure and other conditions of service of the mining industry.<sup>18</sup>

The terms of reference required the commission to:

1. Inquire into the conditions of service, including wages, housing, leave and social facilities, of employees in the mining industry serving on local conditions of employment evolved by the mining companies whether through negotiations with employee organizations or otherwise.
2. Inquire into the disparity which exists between the conditions of service, including the aforesaid matters, of employees in the mining industry serving on expatriate conditions of employment and employees in the mining industry serving on local conditions of employment.
3. Determine whether the disparity referred to in paragraph two hereof should be eliminated or reduced having regard to the national interest; to the consequences, whether financial, economic, social or otherwise, which would result from such elimination or reduction; and to the improvement in industrial relations which might be expected to follow from such elimination or reduction.

The commission found that the existence of the dual wage structure was not justified and therefore recommended the establishment of single basic scale for all employees of the industry with the stipulation that expatriate staff be paid, in addition, certain inducement and related allowances. As a direct result of the commission's findings and in order to bridge the gap between the two scales, the African workers were awarded 22% increase in 1966.

One other outcome of these findings was the formation of a Zambian-

ization committee in 1966 to oversee the training and advancement of  
Zambians in the copper industry. The composition of the committee is as  
follows:

Minister of State for the Cabinet and Public Service - Chairman  
Minister of State for Technical Education  
Secretary to the Cabinet  
Permanent Secretary, Ministry of Lands and Mines  
Staff Development Adviser, Cabinet Office  
Director of Civil Service Training  
A representative of the Anglo-American Group of Companies  
A representative of the Roan Selection Trust Group of Companies  
President, Zambia Mineworkers Union  
General Secretary, Zambian Mineworkers Union  
Chairman, Zambia Expatriate Mineworkers Association

The mining companies have achieved a good deal of success with their  
Zambianization program since independence. They have had to contend, how-  
ever, with one major constraint - availability of local manpower. In spite  
of the enormous expansion of education and training in the 1960's, the  
number of educated Zambians at the end of the decade was still too small to  
reduce very significantly the chronic dependence on non-Zambians over al-  
most the whole range of the country's most skilled and influential occupa-  
tions. (See Table 4)

Table 5 puts these figures in perspective, by comparing them with  
other countries in West, East and Central Africa. With the exception of  
Botswana, Zambia in recent years has been far more dependent on expatriate  
manpower than Kenya, Tanzania, Nigeria or Sudan. The contrasts between  
Zambia and the other countries exist at all levels, from graduate to middle

Table 4

ACTUAL EDUCATIONAL QUALIFICATIONS OF THE ZAMBIAN EMPLOYED  
LABOUR FORCE 1965/66

<u>Actual educational level</u>	<u>Africans</u>	<u>Non- Africans</u>	<u>Total</u>	<u>percentage non-Africans</u>
Degree	150	3,500	3,650	95.7
Diploma or "A" level	500	5,900	6,500	92.0
Secondary School Certificate	1,500	12,000	13,500	88.8
Form 2	7,300	11,400	18,700	61.0
All other	<u>261,700</u>	<u>1,900</u>	<u>263,600</u>	<u>0.7</u>
TOTAL	271,100	34,800	305,900	11.4

Source: Manpower Report, p. 14.

Due to rounding, some totals are not exact.

Table 5

PERCENTAGE OF EXPATRIATES IN HIGH LEVEL POSTS IN SELECTED AFRICAN COUNTRIES

Manpower Category <sup>(b)</sup>	Botswana		Kenya <sup>(a)</sup>		Nigeria		Sudan		Tanzania		Zambia <sup>(a)</sup>	
	Date:	1967	1964	1964	1964	1967	1964/5	1965/6				
Degree Level or Equivalent		96	77	39	12	82	96					
Post school certificates 1-3 years formal education or training			25	5	6	23	92					
School certificate		81	54	**	2	31	88					
Middle Secondary School Level		<u>37</u>	<u>18</u>	<u>**</u>	<u>0</u>	<u>9</u>	<u>41</u>					
TOTAL <sup>(c)</sup>		31	48	13	3	31	62					

(a) Refers to all non-Africans.

(b) Some differences exist in the categories used by different countries, but the categories quoted are broadly comparable.

(c) Weighted average all middle secondary school level and above.

Source: Manpower Surveys of countries listed.



and secondary school. Even though the Zambian data refers to a later period than for most of the other countries, Zambia had at all educational levels far less local manpower than Nigeria and the Sudan and at all education levels except graduates much less than Tanzania and Kenya.

Since Independence education has been massively expanded to provide the long run solution to this chronic scarcity of skilled and educated citizens. The University of Zambia was founded in 1966 and by 1970 had over 1200 students enrolled and several hundred more were studying in universities abroad. Secondary school enrollments reached 50,000 in 1970 compared with 7,000 in 1963. A Commission for Technical Education was also started in 1968 headed by a Minister of State and given responsibility and considerable funds for all forms of technical education and training.

The mining companies are also undertaking considerable training of their staff and are now spending over \$16 million a year on training. The industry runs a training school for registered nurses as well as trade training institutes which they operate on behalf of the Commission for technical Education and Vocational Training. The new trade schools opened in 1970 with 100 full-time students and this number was expected to exceed 150 by the end of 1971.

If only half of the efforts poured into education since independence produces a reasonable return, Zambia will be well on the way to solving its problems of skills shortages by the end of the 1970's. In the meantime the mining companies are expected to show good faith through rapid Zambianization, in an atmosphere that is traditionally distrustful and suspicious.

It has been suggested that the takeover should have been used as an

occasion for a formal deal on localization. An agreement on this issue would have committed the companies to a timetable but would also have required the Government to guarantee an adequate number of school leavers and technical college and University graduates to make the scheme feasible.

The current arrangements require the mining companies to submit a five-year schedule of Zambianization to the Zambianization committee for review and approval. The schedules should show the progress of Zambianization to date and the Zambianization program for the subsequent five year period. A summary of one of these forecasts is reproduced in Table 6.

In the most recent Zambianization schedule<sup>20</sup> covering the period 1970-1975, the section dealing with Technological and Technical reads:

This category includes mining engineers, mechanical and electrical engineers, metallurgists, geologists, chemists, operational research scientists, doctors, and qualified medical staff.

At the end of 1970 the industry had 12 Zambian technical graduates. This number should increase to 90 at the end of 1975 if all those now at universities complete their courses and return to the mines. The number of staff now employed at graduate or equivalent level is approximately 1,200 and if the mines are to maintain the present standard of efficiency, then the Zambianization of staff at this level must only take place on a "one for one" basis as Zambians with technical training and experience take over from expatriates.

In face of Zambia's critical manpower shortage, this may be an honest and realistic expectation but to suspicious Zambians this may appear as a deliberate attempt to sabotage Zambianization. The rapid progress of Zambianization made in 1960 is rather misleading because there was a good deal of fragmentation of jobs. It was not uncommon to divide amongst two or three promoted Zambians a job previously done by one European. An

Table 6

STATISTICAL SUMMARY OF THE PROGRESS OF  
ZAMBIANISATION ON THE MINES

(including Broken Hill and Ndola Copper Refineries)

	<u>Total No. of Expatriates</u>	<u>Total No. of Zambians in the Field of Expatriate Employment</u>
*December, 1964	7,621	704
*March, 1966	6,592	1,138
*September, 1966	6,358	1,884
*October, 1967	5,671	2,617
*June, 1968	5,024	3,671
+December, 1969	4,444	4,102
+December, 1970	3,774	4,661
+December, 1971	3,551	5,195
+December, 1972	3,168	5,578

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\*Actual Strengths.

+Forecast.

Table 7

## CONSOLIDATED ZAMBIANIZATION SCHEDULE 1970-1975

Mining - UndergroundIndustry

<u>Industry Title</u>	Present Establishment as at						Estimate of Future Establishment as at					
	Dec 1970		Dec 1971		Dec 1972		Dec 1973		Dec 1974		Dec 1975	
	E	L	E	L	E	L	E	L	E	L	E	L
Mine Superintendent	7		7		7		7		7		7	
Assistant Mine Superintendent	6		6		6		6		6		6	
Underground Manager	19		21		22		22		22		22	
Assistant Underground Manager	32		33		33		35		35		35	
Mining Engineer Senior/Assistant/Junior	30	6	34	14	31	18	28	20	25	23	23	16
Mine Captain Technical/Specialist/Training	57	1	62		64		64		63	1	62	2
Mine Captain R.D.S.	80		81		82	5	75	14	67	22	56	11
Mine Captain Other	48		31	20	21	30	13	39	10	42	3	49
Shift Boss Technical/Specialist/Training	93	12	87	15	78	25	71	30	65	35	59	41
Shift Boss R.D.S.	118	127	91	169	64	209	40	228	25	243	17	260
Shift Boss Other		193		199		204		209		212		212
TOTALS	490	339	453	417	408	491	361	540	325	578	290	613

E = Expatriate Employees

L = Zambian (Local) Employees

extract from a company report summarizes the situation;

During the transitional period, generally the standard of local shift boss is not as high as the expatriate he replaced, largely due to lack of supervisory experience and usually because of the difference in education. Therefore, in some areas, it has been found necessary to reduce the size of the sections supervised by local shift bosses and increase supervision at Mine Captain and Assistant Underground Manager level. It is hoped that as local shift bosses gain experience and confidence, they will be able to accept additional responsibility and the levels of supervision can again be reduced.

It was apparent throughout discussions that MINDECO appreciated the problems of mine management under the Zambianization program. MINDECO's primary responsibility is to produce copper; its secondary one is to produce that copper profitably, and finally to do so with the minimum employment of expatriates. That the companies might quarrel with the secondary nature of profitability is clear, and this will be discussed later, but there is a difficult trade-off for MINDECO itself between production and Zambianization. The responsibility carried by a mine captain 3,400 feet below ground level was obvious even to the inexperienced observer.

With the history of Zambianization as laid out above, obviously one must discount any statements as to the incompetence of Zambians to take responsibility, but it is important to realize that safety standards are crucial, and that MINDECO appreciates the risks. The major complaints of the companies were not so much of any inherent disability in Zambians - just that there were too few of them selecting mining as a career. There was mention of a lack of ambition in Zambians who had taken the first steps in promotion - perhaps to Shift Boss - but who seemed disinclined to take further responsibility. Equally, it was suggested that the concept of

industrial discipline was not natural to all Zambians: such discipline is obviously essential when lives and equipment are at stake below and above ground.

The companies have now reached a stage at which Zambianization of staff must only take place on a "one for one" basis if efficiency is to be maintained. The consequent slow down or perceived slow down of this process can lead to serious conflicts between the foreign mining companies and the local authorities.

The 1970-1975 Zambianization schedule, dealing with the underground mining sector, for both NCCM and RCM is reproduced in Table 7. These figures indicate that by the end of 1975 the most senior Zambians will be mining engineers and that all the 70 senior posts (mine superintendents, assistant mine superintendents, underground managers, and assistant underground managers) will still be held by expatriates. The progress of Zambianization in some of the non-technical areas has been much faster. The Personnel Department is supposed to be completely Zambianized and there are two Zambian Directors on the Board of NCCM.

Management of the companies were disturbed at the prospect of handling Zambianization in the near future. Their own experience of putting Zambians in control of the personnel function in the early 60s did not promise well for other management positions. A policy decision was taken then that the "shadow" principle (which refers to the practice of an expatriate assistant working under and alongside a Zambian manager) should not be used. The result was that the most significant manpower functions were split off leaving the responsibilities of the new Zambian manager limited.

Initially this may have been reasonable, since at least the Zambian could perform reasonably in the restricted area allowed to him. But his own training and opportunity for advancement were reduced. Thus experience suggests that it would be better to Zambianize managerial positions at least initially with an expatriate assistant built into the structure, allowing the Zambian to learn to handle all functions of the job. But such a policy is probably politically impossible given the orientation of the Zambianization Committee and the pressure groups represented within it. An alternative was suggested by a mine executive - specifically that audit of their Zambianization program might be the responsibility of MINDECO. But on reflection it would seem that this would only increase the political profile of Mindeco, which might be more disastrous in the long run. At this stage it is difficult to see how this conflict can be resolved. There is no doubt that in the political environment of the country there are pressures to push Zambianization ahead faster than the productivity of the mines could stand. Until the universities and Zambian Industry Training boards produce enough qualified men, and until those men have obtained the experience on the job necessary for real competence, this problem will be a major headache for AAC, RST and MINDECO. The situation is, of course, more emotive than any other, and the companies are always at risk to accusations of maintaining Zambia's dependence on their technical skills. But if the politicians need ammunition to force expropriation of the 49% interest at some later stage, they could probably find good evidence. The defense against them would be hard to argue - that Zambianization was progressing as fast as possible given primary objectives of production and profit, and the

current importance of foreign earnings to the country. It is almost impossible to make an estimate of the real dangers to production afforded by faster Zambianization since no opinion could be entirely objective given the conflicting aims of the parties involved. Suffice to say that where Chile could rely on highly competent Chileans trained in mining for many years, Zambia as yet cannot count that asset as fully mature.

#### Industrial Relations:

It has already been suggested that MINDECO is not prepared to take up the case of the companies in national policy formation on industrial relations. In fact the relationship between the mine management and the unions is good - infinitely better than in the Federation days when independence groups used the unions as a vehicle for action, and the companies found themselves at the centre of a political battle in which strike action was often used. Once independence came, however, President Kaunda appreciated the importance of copper production to his own budgets, and strike action often resulted in the ringleaders finding themselves in prison.

But clearly AAC and RST must take note of national policies in their wage negotiations since the demonstration effect of mine awards is considerable, and to maintain good communications with MINDECO during wage negotiations with unions obviously increases the risk of a leak of company policies.

More significant problems may have been introduced by the 1971 Industrial Relations Act,<sup>80</sup> and here also the companies were not successful in persuading MINDECO to lobby in their behalf. In general the Act is



thought well of by the Companies, but it introduces the concept of workers' committees developed in Yugoslavia, a country which is joined to Zambia by a strong friendship between Marshall Tito and President Kaunda.

Industrial relations executives in both companies were most disturbed by the change. They feared that the concept would lead to fragmentation of the unions since these are now largely unaffected by local party politics, and if another faction begins to make representations in their capacity as the workers' councils, the unions will probably become involved in local political struggles. It seemed to them to introduce too much democracy into an industrial relations environment which is already trying to overcome the deterioration in productivity since independence. Once again, one sees a conflict between short term management goals, and President Kaunda's efforts to build a sense of pride in the population of Zambia.

### Production

One of the main economic reasons for the takeover was the dissatisfaction with the rate of growth in Zambia's copper output and productive capacity. In an address delivered in November 1970 President Kaunda stated that prior to the nationalization agreements the companies forecasted an increase in their production from 749,000 tons in 1969 to 793,000 tons by 1975. He then went on to say "under our control the expansion plans have been revised and accelerated, and production is expected to reach 967,000 tons by 1975, an increase of nearly 200,000 tons." A recent official forecast for 1975 production is 900,000 tons - 500,000 for NCCM and 400,000 for RCM.

It is important to question why the foreign mining companies agreed to a higher level of investment to increase output by at least 100,000 tons over the 1970-1975 period. Since changes in ownership, taxation, and exchange control were all announced simultaneously it is virtually impossible to identify the exact cause of the increase in projected expansion. The previous tax structure consisted of a combination of royalties based on value of output, an export tax and income tax. This tax system resulted in high cost mines paying a higher percentage of their gross earnings in taxes than did low cost mines. Both the royalty and the export tax were based on production without regard to cost or net earnings, and this made it unprofitable to mine certain ore bodies of low grade or difficult location.

So, whereas the President may argue that the projected higher rate of output following takeover is a direct result of increased Government control over the mining industry, it is important to realize that another major factor could be the tax reform, which shifted the tax structure to a straight percentage of net profits. Perhaps additional incentive for investment for expansion, from the companies' point of view, was the increased cash flow over the next 8 to 12 years as result of the nationalization agreement; neither the compensation payments nor dividends are subject to exchange controls.

To implement these expansion plans a considerable amount of external financing is anticipated, and the burden for finding this financing will fall mainly on the foreign companies. Both companies are able to use their relatively unleveraged position to borrow funds for expansion, this being necessary since the current low price of copper does not generate enough

funds for bond redemption and expansion plans. A recent bond issue by NCCM in London was not guaranteed by the Zambian Government - a letter of good intent was all that was provided - but presumably the market has enough confidence in copper prospects, given their low leverage position. Barring a sharp fall in copper prices or a drastic change in Zambia's investment climate, the expectations are that the foreign companies would make a strong effort to meet their 1975 production targets.

Failure to do so because of unwillingness to provide capital financing might generate adverse political reactions which could jeopardize the arrangements under the nationalization agreement.

#### Compensation Payments

Copper prices are extremely volatile and 1970, the year of the Zambian copper takeover, provides an excellent example: prices fell from a high of \$175. to a low of \$1,040 per metric tonne.

There is no evidence to indicate the extent of discussion at the negotiations of the consequences of a serious fall in price of copper and an attendant deterioration of Zambia's balance of payments, tax structure, the level of Government revenue, and hence of Zambia's ability to meet the bond redemption payments. The absence of a payment deceleration clause in the nationalization agreement has resulted in considerable discussion. Taken together with the highly favorable management contracts negotiated by the copper companies, it leads to the possible conclusion that the Zambian bargaining team was not as able as had been thought originally. Certainly the absence of a deceleration clause is significant if one takes the view

that AAC and RST were already expecting a fall in copper prices when they were asked to offer 51% ownership to the Zambian government. If this were so, and it seems highly likely, the company negotiators would have been careful to ensure that their own cash flows were assured whatever happened to copper prices. Their strategy would seem to have been founded on the premise that a reduction of their holding to 49% would release considerable funds which might be invested far more profitably outside Zambia during the early seventies.

Expansion of the Zambian copper production was discussed in the previous section. By the end of 1972 Chilean capacity is expected to be increased 51% over its 1966 outputs, Peruvian by 143% and Canadian by 35%. There are other major increases planned for Australia, Rhodesia and the Republic of South Africa, besides the prospect that Mauritania and Botswana may be exporting copper by 1973. Thus unless demand for copper begins to exceed long term projections there is a strong likelihood of copper surplus in the 1970's and subsequent weakening of copper prices.

The fear of world overproduction and of a lower price may have accounted partially for the Zambian mining companies' hesitation to enlarge their production capacity. The Government's position, however, is at the other extreme; realizing that Zambia has diminishing influence on world price, it is important from the Government's point of view that as new deposits are opened up throughout the world, production should be increased so as to minimize foreign exchange losses as prices fall.

A sharp drop in copper prices may not only find the partners at

cross-purposes, but might also force the Government either to default on the bond redemption payments or renegotiate the entire agreement.

### Control

It is difficult for an outsider to believe that the two mining companies are actually under majority Government ownership or have recently changed ownership. True, the Government holds the majority control of the two mining companies but at present that appears to be the extent of its involvement. Due mainly to the Government's ignorance of the industry and the need to give management a free hand to make profits, a considerable amount of power has been awarded the management group the areas of managerial control, financial planning and policy formulation. Thus, management can reject investment that is not profitable, as well as any transactions that are not on normal commercial terms, and any expansion into other fields of business beside mining.

Once again, although there may not be a direct conflict between MINDECO and the mining companies on the question of control, the political stability of the country becomes a major factor. Even if the companies hoped to reduce their visibility by selling 51% to the government the pattern has seemed to be that MINDECO appears determined to maintain a fairly low profile. Practically, it is not possible for a transfer of shares to make any difference to visibility when RCM and NCCM are still clearly associated with RST and AAC through management contracts. Performance under those contracts will always be judged politically in the light of the past history of the foreign based management companies rather than as an

attribute of the nationally controlled mining companies. Thus, any issue which results in open conflict could easily deteriorate into demands for complete expropriation based on complaints that the 1969 negotiations were inequitable in the light of current knowledge.

Chapter 7  
CONCLUSIONS

The previous chapters have described the historical aspects of the 1969 nationalization and the pressures which exist within the industry today. In conclusion the authors will attempt to summarize the relative successes and failures of partnership, and the prospects for the future.

It seems quite possible that the companies welcomed the 1969 developments. They were able to externalize \$84 million frozen in Zambia since the Mulungushi speech of 1968. They may well have foreseen the 1970 fall in the price of copper following the mid-60's expansions in capacity throughout the copper-producing world and opted to assure themselves of a cash flow. Possibly the nationalization clarified the investment climate in Zambia. Indeed it seems probable that the stock market had already discounted a move of some sort. Reasonable compensation and a continued presence in Zambia was believed much better than uncertainty which rendered it difficult to implement investment plans. Finally the bond repayments that the companies were able to negotiate, the unfreezing of blocked funds already mentioned above and promises of unrestricted remittance of dividends and contract fees released considerable resources for investment elsewhere. The companies also expected help from their partners in two areas, liaison with government departments and in industrial relations. The former has been shown to be a vain hope, as MINDECO treads the delicate balance between an active lobby on their behalf and maintaining as low a political profile as possible. On the latter front the proposed of worker's council might

complicate relations between the companies and the unions.

The Zambian Government on the other hand expected much of the partnership: speedy Zambianization of staff; increased investment - the total cost of the expansion program for NCCM alone is estimated at \$280 million; increased output by an additional 150,000 tons over 1970-1975; and finally, control over the direction and rate of development of the mining industry.

Expansion of facilities was also an objective of the new taxation and licensing regulations introduced as part of the negotiations whereby the companies had to give up many of their exploration concessions. But it has been suggested that the high taxation rate, which follows a three-year tax haven, coupled with the 51% government option in successful exploration, makes only the highest grade deposits economically viable. Thus new mining facilities are unlikely to come on stream, especially as Zambia is fast losing its reputation for being a low cost producer due mainly to the enormous increases in fuel and transportation costs since U.D.I.

The result of the negotiations was a joint venture with a government partner, but success or failure cannot really be measured within 24 months of the formation of that partnership. It is worth reviewing, however, the implicit objectives of the association: as of the end of December, 1971 production levels have not increased to anything approaching the expectations of the Government, even allowing for the disaster at Mufulira in late 1970. Output levels for 1971 when announced will probably be almost 20% below forecast. Already so far behind schedule, Zambia is unlikely to reach the estimated 900,000 ton level in 1975, the level forecast by the companies in 1970. Failure by the companies to meet their 1975 investment plans and



forecast output levels might introduce the serious strains in the association. Since the performance of the companies is monitored constantly this friction might occur well before 1975 if the Government were to find their efforts in meeting their targets sluggish or inadequate.

For some time now, the Zambian Government has been concerned about its almost total dependence on copper. In the second national development plan, currently under implementation, economic diversification and mechanization of agriculture are stressed. Zambia has also made and is making huge investments in the development of infra-structure; for example, The Tanzam Railway at an estimated cost of \$400 million, (to be shared with the Republic of Tanzania). At the same time the import-bill must be met; since 1964 this has grown from \$218 million to \$500 million per year - an increase of 129 percent. This is an economic package that demands large infusion of capital and real resources. It would therefore be difficult for Zambia to maintain such level of economic activity and meet the bond redemption payments should copper prices fall.

Such acquisitions by a Government are not only politically delicate but can evoke serious economic objections. As Hirschman puts it:

from the economic point of view, the use of any capital and, worse, foreign exchange resources for the purchase of property rights over assets already located and functioning within the territories of the developing countries seems perverse to those who remain basically convinced that the pace of economic development is conditioned on little else than the availability of capital and foreign exchange<sup>23</sup>

Political motives apart the Zambian Government could conceivably have attained control over the development and direction of the mining industry through effective manipulation of physical, monetary, fiscal and exchange

controls. Such control may have been preferable if one considers the fact that the change in the structure of ownership has not in itself increased real government control over the mining industry.

The authors agree with Beguin who questions the extent to which majority ownership ensures real control of a joint venture and argues that there are many other constituents of control which may specifically deny the power usually associated with holding a majority of the shares in an enterprise. Under the current arrangements the Zambian government has been denied such power. Assuming that real control was one of the main reasons why the Government paid nearly \$300 million for majority ownership of the mining companies, then the Zambian authorities could be expected to make a move (at some stage) to correct this imbalance. In the meantime the companies must continue to review their position not only with respect to the working of the agreements but also considering the original intent behind the act of nationalization. It may well be that to avoid a clash over the issue of control AAC and RST may well decide not to exercise their restrictive rights under the nationalization agreements.

Thus it follows that the joint venture seems unlikely to live up to its potential. Rather it may well lead to a somewhat strained relationship arising out of the political necessity for the government to own 51 percent of the industry and the economic and technical necessity for real control to remain with the operating companies. In the light of history, both in Zambia and in Chile, it is quite understandable why the particular arrangement was adopted, but in hindsight it is worth considering whether the government could not have induced increased expansion and Zambianization by more

subtle pressures, in which case the foreign exchange outflows in the seventies need not have been so high. What economic programs might have been introduced since nationalization by utilizing the \$59 million which have already left the country as compensation payments for other purposes is not the subject of this paper. Agriculture is one sector which demands attention; any increase in agricultural productivity would have a twofold benefit; as well as reducing the dependence on copper it would begin to affect those areas of the country where the largest and poorest section of the population lives. Suffice to say that this is an area for development which could suffer if earnings from copper drop over the next few years. The government must somehow reconcile its general responsibility for developing the economy with its stake in the mining industry.

The future clearly holds considerable uncertainty for the mining companies. As Mikesell explains, contracts of the nature of those negotiated in 1969 have little meaning if the government partner should decide to renegotiate. Whatever their standing in international law before the International Centre for the Settlement of Investment Disputes, if the bargaining position of either side should change considerably, it can be expected that some form of renegotiation might take place. Thus the absence of a deceleration clause, criticized in most accounts of the negotiations, might well not be the asset which the mining companies perceive it to be. If the industry was hit by a large drop in price, the political position might change so drastically in Zambia that renegotiation was the only possibility.

The position both sides might take in 1980 when the management

sales and purchasing contracts terminate, depends on a variety of factors discussed in those sections dealing with the structure of the industry and the role of MINDECO. The companies have to operate from the position that they cannot get qualified Zambians to manage all aspects of their operations but at the same time their progress towards Zambianization is monitored regularly and is held to be a measure of how well they intend to cooperate with government objectives. Meanwhile their 49% minority must be protected as far as adequate profitability is concerned. Unless there is some major political change in Zambia or a serious friction between the partners, it seems likely that the 49% will not be expropriated before 1980 and after that date it may still survive as a foreign shareholding with perhaps reduced participation on the management contract front. Certainly the Zambians will need some help to run the mines, and in many ways the bargaining positions of the two sides will not have changed violently in 1980 from their relationship in 1969. Obviously Zambianization will have progressed by then, but still many top positions will be filled by expatriates if the performance of the mines is to be maintained.

International joint business ventures involve much more than mere financial partnership and perhaps much more important is the technical and human cooperation between countries and peoples with different traditions and aspirations; consequently, the authors have emphasized the managerial and human aspects of the partnership. It is an association which demands an unusual amount of good faith and a clear understanding of each of the partners' ultimate goals. Such congruence is difficult to achieve even within one culture and international joint ventures by their nature

tend to generate misunderstandings, frictions, delays and compromises. The Zambian partnership does not escape these drawbacks.

The benefits of joint ventures have been canvassed at great length but it is now recognized that they are best seen more as a vehicle for change than as a permanent structure. On these lines Rosenstein-Rodan, Streeten and Vernon<sup>24</sup> advocate that gradual transfer of ownership into local hands should be scheduled as part of the initial joint venture agreement. The case for such a transfer is particularly strong in those situations where foreign participation - on the financial, managerial and technical levels - becomes completely redundant.

This phase-out formula is a long-term solution which the Zambian partners might wish to consider, should the association last that long.

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Appendix I

AN EXTRACT OF PRESIDENT KAUNDA'S MATERO SPEECH  
ON ECONOMIC REFORMS



I would now like to say a word or two on the mining companies. You will recollect, Comrades, that last year I expressed my disappointment at the virtual lack of mining development since Independence. I said of the mining companies:

First of all, I want to say to the mining companies that I am very disappointed at the virtual lack of mining developments since Independence. Apart from very small developments at Kalengwa and Mimbula Fitula and some further development at existing mines, we have seen nothing. The companies claim that the royalty system has been against new development. Nevertheless I think they have not done enough towards further development of the country in which they make their great profits. Let me also say that I do not agree with the mining companies that royalties have been the obstacle to the development of the industry. I have been following their accounts and I know very well that they could have embarked upon further expansion if they chose to devote part of their profits for this purpose. Instead of re-investing they have been distributing over 80 percent of their profits every year as dividends.

I am afraid, having gone into the matter very thoroughly in my capacity as Minister of Mines, I now hold even stronger views than I did last year. You are all familiar as to how Cecil Rhodes and his clique in the British South Africa Company, at the beginning of the century, acquired mineral concessions from our chiefs. On Independence we took over the mineral rights which were held by the British South Africa Company. However, in practice this meant nothing except that we were able to levy a royalty on the extraction of minerals from our own soils.

We found that all areas which were rich in mineral deposits were passed on in perpetuity by the British South Africa Company to the two major mining groups, the Anglo American Corporation and the Rhodesian Selection Trust which is now the Road Selection Trust.

If you examine a geological map of Zambia you will find that most of

the northern area of the country, the Copperbelt and the North-Western Province, is shared between these two groups. These groups hold the mining rights in perpetuity, i.e., forever and ever. All we obtained on Independence was the right to charge a royalty on the value of the minerals which were extracted from our soils. However, in order to charge the royalty we had to wait for the pleasure of the mining companies to develop a mine. Since they had the mining rights in perpetuity they were not particularly in a hurry to embark upon further development. We, as a people's Government, had legally no power to force them. We, as a people's Government, had legally no power to take away their mining rights and offer them to other groups which were willing and able to commence new mining developments. Regardless of whether we needed development very badly we could not safeguard against a possible drop in the price of copper and consequent loss of Government revenues which would bring a halt to our development plans, present and future. We could not tell the mining companies, you either develop the areas which you have or we shall take them away from you and give them to somebody else who is willing to do so. We could not even tell them we shall take them away and develop them ourselves in the interests of the nation. The Constitution which was handed down to us by our previous colonial masters made sure that we did not have this power.

Clause 18 of the Constitution was inserted for this specific purpose. And what is worse, clause 18 could not be repealed by an Act of Parliament but only by a Referendum and in order to win the Referendum the Government, as I explained earlier, had to get a YES vote from at least 51 percent of

all the voters registered on the Voters' Roll.

Now that the nation has given me the mandate through the Referendum I am able to announce far-reaching mining economic reforms which will set this nation well and truly on the road to its economic independence. In the interest of the nation and depending on the mandate that it gave me on the 17th June, 1969, I hereby proclaim that all rights of ownership or partial ownership of minerals must revert to the state. These include:

- (1) The North Charterland Concession which covers almost the entire Eastern Province and which is owned by LONRHO.
- (2) The Rhodesian Katanga Concessions around the Mkushi area and which is partially owned by a British Company called the Tanganyika Concessions.
- (3) The Big Concession which is partially owned by the African Gold and Base Metal Holdings, an affiliate of the Anglo American Corporation.
- (4) Six ten-square mile areas, partially owned by Bechuanaland Exploration Company.

Three ten-square mile areas which are partially owned by the Kafue Development Company.

Rhodesia Railway Farms.

Kawimbe Farm and Nyamokolo Farms entirely owned by the London Missionary Society.

These Concessions I just mentioned gave the holders the right to all minerals in the areas. In addition, they gave them the right to explore and mine these minerals for their own account without even paying royalty to the State. Furthermore, they gave them the right to grant mining rights to others and charge a royalty for their own benefit.

We have been trying since Independence to negotiate with the holders to purchase back these concessions in the interests of the nation. We were faced with demands amounting to as high as half a million kwacha and this

only for some of them.

Comrades, this is an important moment for this young nation. As I have said already, in the interests of the nation and upon the mandate that it gave me on the 17th June, 1969, I hereby announce that I shall be cancelling all these concessions.

I shall now deal with the other types of Mineral Rights.

Litunga's Rights. The Litunga holds rights to determine conditions of prospecting licences, mining leases, etc., and to claim royalty on minerals in certain areas. I am afraid I have to terminate these rights completely and without compensation. The rights of the Litunga should not be different to those of our other traditional rulers. The rights of the Litunga are not different to those of the nation, and I and my Government are the elected custodians of the interests of the nation. The Litunga can rest assured, however, that we shall exercise these rights in the best interests of the nation as a whole.

Exclusive Prospecting Licences. These confer the right to prospect for the discovery of minerals in specified areas in the country. There are a number of such licences in existence, most of them extending up to the end of 1970. I am going to allow these licences to cover their full course but the holders of these licences will have to accept the new conditions that I shall impose upon them. The most important condition is that the State will have the right to take up (at least) 51 percent of the shares in any mine that may be established as a result of a discovery of Minerals.

Special Grants and Mining Locations. These are the rights that Cecil Rhodes and his successors, the British South Africa Company, have passed on

mainly to the two mining groups in Zambia to enjoy in perpetuity, i.e. forever and ever.

These Special Grants cover vast areas of the country. Some of them have been lying idle, and the holders of the Special Grants did not even make an attempt to explore in these areas the existence of minerals.

Some of them are in the process of being explored now.

Some of them have been explored and minerals have, in fact, been discovered.

Some others represent the existing mines on the Copperbelt and elsewhere.

Now, Comrades, I intend to tell you how I propose to deal with them. Before that, let me say again:

In the interests of the nation and upon the mandate it gave me on the 17th June, 1969, all rights of ownership or partial ownership of Minerals must revert to the State. Cecil Rhodes 'perpetuity' or his 'forever and ever' is now buried and I hope and pray never to rise again in this part of Africa. I, therefore, proclaim that all Special Grants of any type, whether they are lying idle or are in the process of being explored, or contain minerals which have been discovered, or contain mines which are in operation, will revert to the State.

Having made this quite clear I must now reveal to you, Comrades, how I propose to deal with them:

#### FIRST

Existing Mines: Where there is a mine in operation I propose to give the owners of the mine a lease to work the mine for twenty-five years. I am afraid Cecil Rhodes has not lived in 'perpetuity', i.e., 'forever and ever', and I am not as generous as he was to give away national rights forever

and ever to anyone. As I said, I shall give them a lease for twenty-five years over an area immediately surrounding the mine which contains sufficient ore for them to keep them going over the period. The size of the area will, therefore, depend on the rate of extraction. If they are prepared to give me programmes for accelerated extraction they will get a bigger area. If their extraction is slow they will naturally get a smaller area.

#### SECOND

If the holders of a Special Grant have discovered a mineral deposit they can have a choice: either they apply for an exploration licence which will give them sufficient time to prepare a programme for mining development with the subsequent right of a mining lease or they can apply directly for a mining lease. The exploration licence will give them a period of three years to complete their exploration and prepare their mining programme. The mining lease will cover adequate reserves to enable them to mine for the period of twenty-five years. But they must fulfill one other condition. They must give the State the right to obtain 51 percent of the mining venture.

#### THIRD

If the holders of the Special Grant are still exploring the area, they will be able to apply for an Exclusive Prospecting Licence or an Exploration Licence in order to complete their task. These licences will give them the right to apply for a mining lease for twenty-five years if they discover a mineral and they will give the State the right to obtain 51 percent of the mining venture.

If they are not carrying out prospecting operations in their Special Grants or if they cannot produce evidence that they have done so since Independence they must hand the Special Grant back to the State immediately.

Before I leave this subject, Comrades, I must cover some anomalies of the mining set-up and inform you how I propose to deal with them.

There are some small mines, especially in the Central Province, which are being worked by small private individuals under tribute agreement, with the holders of the Special Grant. In other words, these unfortunate men slave away and sometimes are unable to make a living out of a small mine and yet they have to pay a percentage to the holders of the Special Grant who most of the time are not even residents of the country. When in difficulties these small-scale miners have often received royalty exemption from the Government. Yet they had to pay the tribute. Sometimes they come to Government for financial assistance, which the holder of the Special Grant refuses to provide and yet carries on receiving the tribute.

Comrades, I admire these small-scale miners. I admire their self-denial, their hard work and their faith in the country. For this reason I shall give them the right to apply for a mining lease and not the exploiters who have been sitting back and enjoying the fruits of other people's labour.

The mining lease will, of course, be subject to the usual conditions, including the rights of the State for participation.

The very last anomaly is the Bwana Mkubwa and Kansanshi Mines, the so-called royalty-free mines. I do not intend to waste my breath, Comrades, over this ridiculous issue. Bwana Mkubwa and Kansanshi, like all other mines, will be entitled to a mining lease similar to those I have already

described as applicable to existing mines.

I think, Comrades, you have already seen what I meant when I blamed the mining companies for lack of mining development since Independence. If they had all the areas which are potentially rich in minerals under their control and they have done nothing to start new mines, I must blame them. Of course, I do remember that one of their arguments was that the royalties were too high and, as a result, they could not afford to develop new mines.

Countrymen, we have been charging the mining companies royalties on exactly the same formula as the British South Africa Company had been charging them before Independence. Until Independence Day on the 24th October, 1964, the mining companies were willingly paying the royalties that the British South Africa Company was charging them. I do not remember that they complained about it. I do not remember any of the chairmen of the mining companies in their annual statements to their shareholders complaining that the royalties charged by the British South Africa Company were too high. But after Independence we have been hearing nothing else.

Countrymen, all the same I always say that wise men do not live in the past. Last year, I promised that I would review the royalty formula and that I would base it on profitability in order to meet the mining companies' point of view. I like to think that we keep our promises and I now wish to announce the new royalty system which will incorporate the export tax which is in existence at the moment.

Instead of royalties and instead of the export tax I ask the mining companies to pay 51 percent of their profits in the form of a new mineral tax which I intend to introduce. The mineral tax, which replaces the royalties



and copper export tax, is based on profit and in this I have met the mining companies' demands 100 percent.

I wish to clarify this so that there is no shadow of misunderstanding that the mineral tax is being introduced to replace the royalty and export tax. It has nothing to do with income tax which naturally will have to be paid on the balance of profits.

I wish now to explain the method of collection of the mineral tax.

As you know, royalty and export tax are collected almost immediately whereas taxes based on profits have to wait until audited accounts become available and until my Minister of Finance, through his Commissioner of Taxes, has had time to calculate the amount of tax payable. However, we cannot afford to give the mining companies a tax holiday until their audited accounts are ready before they pay the mineral tax. We need to collect this tax immediately because we need the money for our development plans. The mineral tax will, therefore, be collected on the PAYE basis in the form of a fixed charge per ton of copper produced. This will be calculated and announced by the Minister responsible for Mines at three-month intervals, in the light of prevailing conditions, so as the total collected in the form of a fixed charge will be as close as possible to the Government share of the anticipated profits. Naturally, when the accounts of the mines are ready an adjustment will be made so as the total payment shall not exceed, or fall short, of the 51 percent of the total taxable profits.

Comrades, I have given a great deal of thought to the mining economic reforms which I have just announced. I am confident that they cover every aspect of mining development past, present and future and I have no doubt

that they will lead to an increase of mining investment. However, when I opened the subject I said that I wanted the mining economic reforms to set the Nation well and truly towards its economic independence. I do not think that this can be achieved without the Nation acquiring full control of the existing mines, as it intends to do for the mines which will open from now on.

I have, therefore, decided that I shall ask the owners of the mines to invite the Government to join their mining enterprises. I am asking the owners of the mines to give 51 percent of their shares to the State.

I wish to remind the owners of the mines, that according to the exchange control regulations, they can only remit 50 percent of their profits outside the country. I wish to point out to them that it is to their advantage to offer 51 percent of their shares to the Government in that as a result and in line with what I announced earlier their remittance of dividends will no longer be subject to exchange control.

I also wish them to know that the Government's business record is excellent and the companies, which have associated themselves with INDECO in line with last year's Mulungushi Reforms, are perfectly happy and satisfied with INDECO's businesslike approach, both in concluding the negotiations and subsequently in managing the enterprises under its control.

This year again I intend to leave it to INDECO to negotiate the value and terms of payment but again I want to make it clear that what INDECO will pay is a fair value represented by the book value. At the same time I want to make it clear that Government has no money to pay as a deposit against these shares; it also cannot afford to release part of the mineral tax or

the income tax in payment for these shares. The revenue from the mineral tax and the income tax is badly needed for our development programme. INDECO will, therefore, have to negotiate payment out of future dividends bearing in mind the advantage the shareholders will derive from associating with the State.

Before I leave this subject, I must say a few words about my plans for future mining development. As you have seen, I am giving the mining companies twenty-five years to operate, under Government control, all mines working for profit. I am giving them the opportunity to prepare plans for mining development for areas which they have already explored and where they have located minerals. I am also giving them the opportunity to complete their investigation in areas where they are carrying out prospecting now and prepare programmes for mining development if they locate mineral deposits. But they will have to surrender, immediately the Parliament passes the necessary legislation, all other areas which they hold in perpetuity forever and ever.

These areas, as I said, will revert to the State and in my capacity as Head of State and as Minister of Mines I shall procure groups from other parts of the world to come and develop these mines as a joint venture with the State. The new rules which will apply in regard to future mining development, whether by the mining companies already operating in Zambia or by new ones to come, will be as follows:

First and foremost, all minerals belong to the Nation and cannot be given to anybody in perpetuity. They will only be leased for periods of up to twenty-five years for exploitation by companies in which the State holds at least 51 percent of the shares. In other words, from now on all new mining companies, which are going to emerge, will be controlled by the

State and the State will have the majority on their boards of directors. I am confident, Comrades, that many organizations from many parts of the world will come forward and establish mining ventures jointly with the Government of Zambia.

For the sake of our investors, I now wish to outline the procedure which will be followed in the future for the establishment of new mines.

Potential investors will obtain a prospecting licence or an exploration licence to look for minerals. These licences will have two main conditions:

- (1) That if they locate minerals they will be entitled as of right to a mining lease not exceeding twenty-five years.
- (2) That the State will be entitled to obtain 51 percent of the mining venture.

When the State participates in a new mining venture it will undertake to pay its share in the Prospecting and Exploration expenses which have already been incurred. If no minerals are located, however, the prospecting and exploration costs will be the entire responsibility of the investor.

A new mine will be subject to the same conditions as all other mines, and therefore subject to the payment of mineral tax. However, the Minister responsible for mines will have the right to postpone the payment of mineral tax or even exempt the mine altogether from payment for a number of years until the operation of the mine has reached satisfactory profitability.

I wish to take this opportunity to remind our mining companies and at the same time inform potential investors of our extremely generous tax incentives for new mining development provided for in our already existing income tax legislation.

According to the Income Tax Act of 1966 the following most favourable allowances have been provided:

Any capital expenditure incurred in the first year of opening a mine is divided by five. One-fifth of the capital expenditure is, therefore, written off against profits in the first year. In the second year, the balance from the first year, which has not been allowed, is added to the capital expenditure in the second year, and this figure is divided by four. Therefore, a quarter is written off. In the third year to the balance which has so far not been written off is added to capital expenditure of the third year and one-third is written off. This process continues until the fifth year, when all the outstanding capital expenditure and the capital expenditure for that year is all written off. From that time on, all capital expenditure in a given tax year is allowable as a deduction against the profits of the company.

It can, therefore, be seen from this summary that we are encouraging mining operators to open new mines by allowing all capital expenditure to be written off against the profits of the company. I must emphasise that the provisions only apply to the mining operations of a mining company and not to any other interests they may have.

On my part and indeed on your behalf I want to assure potential investors in this field that we intend that all these companies in which the State has majority control shall be run on strictly businesslike lines.

Appendix II

EXTRACTED FROM:  
ECONOMIC INDEPENDENCE AND ZAMBIAN COPPER:  
A Case Study of Foreign Investment.

Edited by  
MARK BOSTOCK and CHARLES HARVEY

## MANAGEMENT AND CONSULTANCY CONTRACT

RCM and NCCM agreed to enter into separate management and consultancy contracts with RST and a company within the Anglo-American group. Details of the RST contract are given below. The Zamanglo contract is in similar terms, although the precise details have not been disclosed.

### Management and Consultancy Functions

"RST shall provide to RCM all managerial, financial, commercial, technical and other services which, prior to 1st January, 1970 were supplied or procured by the RST group to Mufulira, Luanshy and Mwinilunga with the intention that the business affairs and operations of RCM shall be maintained in a manner no less efficient and standard no less than those before 1st January, 1970, and which shall be directed towards the optimization of production and profit of RCM and any subsidiary companies." These services include:

1. Technical services such as "preparing progress reports, short and long term plans and viability studies for maintaining, expanding, or improving operations and production, capital expenditure estimates, advice on operating problems in the mining, geological, metallurgical and engineering activities, advice on scheduling copper production, recommending policies on ore reserves, research and development, and the provision or procurement of further technical services if reasonably called upon to do so."

2. General services "in connection with all aspects of RCM's

business and operations, including advice on the preparation of company reports and financial statements, production and marketing, financial matters, development and processing of minerals, operational research, work-study, computers and management information services, labor relations, public relations, purchasing services and all aspects of the administration of RCM's affairs."

3. Specialized services

a. Civil, metallurgical, mechanical, electrical, structural and mining engineering services; in other words, RST will act as engineering consultants to RCM.

b. Recruitment of expatriate staff required by RCM. Contracts relating to the terms and conditions of service of recruits will be determined by RCM.

c. Purchasing services on behalf of RCM outside Zambia on a cost reimbursable basis. These services are exclusive to RST until June 30, 1971, but may be terminated by RCM giving twelve months' notice to expire at any time after June 30, 1972. RCM will fulfill its own purchasing requirements within Zambia.

4. Provision of personnel: "RCM shall employ such personnel as may be necessary or desirable for the efficient operation of its business. RST shall procure the provision of staff either by recruitment for RCM, or by attachment or transfer of RST personnel. The cost of administration of and the emoluments of attached personnel will be borne by RCM. The terms and conditions of employment shall be attractive enough to ensure the recruitment and retention of suitable personnel."

Remuneration

Remuneration to RST under the contract will be as follows:

1. The amount of .75 percent of RCM's gross sales proceeds.



2. Two percent of RCM's consolidated profits after charging "all revenue expenditure and outgoings and after provision for replacements and mineral tax and after the deduction of all the fees payable by RCM to RST under their agreement, but before all other income tax and before deduction of reserves."

3. An engineering service fee of 3 percent of the constructed cost of projects undertaken by RCM "which involve expenditure on capital account or expenditure on such replacement items as involve improvement of modernization but excluding all items, whether capital or replacement, which RCM on the recommendation of the Managing Director may decide to undertake itself."

4. A recruiting fee of 15 percent of total emoluments (before taxes) payable in respect of each expatriate employee's first year.

#### Managing Director

RST will nominate one of the "B" directors of RCM as Managing Director and "shall afford such assistance as RCM shall, through its Managing Director, request of both an executive and as advisory nature towards effecting the policies and directions of the Board of RCM and towards the general management of RCM's business and specifically directed towards the optimization by RCM of production and profit."

#### Terms of Contract

The Contract shall be deemed to have commenced on 1st January, 1970 and shall continue in force until terminated as follows:

(a) by RST or RCM on giving to the other two years prior written notice to expire on any date after 31st December, 1979;

(b) by RCM on notice in writing if at any time RST shall cease to own the Prescribed Minimum Interest (as defined below). In the event that this Interest is not held by RST at any time before 1st July, 1972, the notice shall be one month, otherwise it shall be two years, provided that termination shall not take effect if RST restores its Minimum Prescribed Interest within three months of the date of service of the notice or the period of notice, whichever is the shorter;

(c) by RST on two years notice in writing if advice material to the conduct and development of the business of RCM is repeatedly not accepted or implemented by the "A" Directors of RCM; or

(d) by RCM on two years notice in writing if the performance by RST of its duties under the Contract shall fall below the standard hitherto exercised by the RST Group in the management of the businesses of RCM and its predecessors, so as to prejudice the efficient operation of the business of RCM or any significant part thereof, unless such a fall in standards is the result of circumstances beyond the reasonable control of RST or from obstructions by RCM.

#### PRESCRIBED MINIMUM INTEREST

RST and Zamanglo agreed in terms of the Master Agreement to maintain a 20 percent beneficial interest (direct or indirect) in the issued equity capital of RCM and NCCM respectively until July 1, 1972. Therefore, if RST or Zamanglo ceases to hold this interest at any time before July 1, 1972, the Master Agreements would be breached. In these circumstances, the management, sales, and marketing arrangements could be terminated by RCM or NCCM on one month's notice.

After July 1, 1972, RST and Zamanglo are at liberty to dispose of their "prescribed minimum interest" in RCM and NCCM respectively in terms of the Master Agreements. However, in this event, RCM or NCCM may give two

years' notice of termination of the management and sales contracts provided that termination shall not take effect if RST or Zamanglo restore its prescribed minimum interest within a prescribed period of time.

#### SALES AND MARKETING CONTRACT

Similar agreements were made with the RST and Zamanglo groups for services to be provided under sales and marketing contracts with RCM and NCCM respectively. The details below are taken from the RST contract.

With regard to marketing functions, the RST sales and marketing contract states:

RST shall provide and ensure the continuation of sales and marketing services for RCM of a standard that prior to 1st January 1970 were supplied or procured by the RST Group to Mufulira, Luanshya and Mwinilunga with the intention that the sales and marketing business and operations of RCM shall be maintained in a manner no less efficient and to an extent and standard no less than those given before 1st January 1970, and shall be directed towards the optimization of profit of RCM and any subsidiary companies.

The contract also includes the following provisions:

1. Exclusive agency. "RST will be the exclusive agent of RCM in every country for the purpose of finding purchasers for all ores, metals and minerals and any by-products recovered from the mining or treatment of ores, metals or minerals produced by RCM and any subsidiaries from time to time."
2. Performance. "RST's obligations may be performed by the existing sales facilities of the RST Group, but an appointment of new agents must have the approval of RCM."
3. Sales obligations. "RST shall, as RCM's agents, in accordance with the general policy of the RCM Board, use its best endeavors to secure

contracts with customers at the best prices and on such terms and conditions as may be determined by RCM from time to time on the advice of RST."

Remuneration will be based on .75 percent of gross sales proceeds for all sales throughout the world of copper metal and 2.5 percent on cobalt sales. No commission will be payable on sales to the Zimco group of companies for their own consumption for purposes of fabrication.

The terms of the sales and marketing contracts with regard to commencement and termination follow those in each management and consultancy contract.

With regard to staff attachments, the RST sales and marketing contract states: "RST shall provide facilities for the attachment of employees of Mindeco or of RCM to RST's organization providing services to RCM in respect of marketing and selling. RST shall give each such employee full and proper experience within the organization," at RCM's expense.

## TAXATION

The Zambian Government made several tax concessions to the RST and Zamanglo groups in connection with the takeover. The most important of these were:

1. In order to facilitate the corporate reorganization of the Zamanglo and RST groups pursuant to the acquisition by government of its 51 percent interest, the Zambian Government provided for the exemption of the Schemes of Arrangement involved in such reorganization (including the reduction of capital by RST) from all Zambian taxes and stamp duties.
2. The Zambian Government has agreed that the overall rate of tax

payable by RCM and NCCM shall not be increased so long as any part of the Zimco loan stock 1982 or Zimco bonds 1978, as the case may be, is outstanding (i.e., a maximum tax rate of 73.05 percent of gross profits).

3. The Zambian Government agreed to enact legislation to ensure that the companies did not incur any tax that would not have been incurred (or lose any relief to which they would have been entitled) if the takeover had not taken place

4. The government agreed that all payments with respect to the bonds and loan stock would be exempt from all taxes in Zambia.

5. The government agreed that as long as any bonds and loan stock were outstanding there could be no tax on dividends paid by RCM or NCCM to Mindeco or other shareholders who were neither citizens nor residents of Zambia. In addition, both RCM and NCCM would not be subject to any discriminatory stamp duty, excise tax, or import duty.

At the same time that the mines takeover was announced, the Zambian Government announced certain changes in the tax laws relating to mining generally (these are discussed at length in Chapters 6 and 8). In addition to replacing royalty payments and export taxes by a mineral tax (income tax remaining), the general provisions relating to capital allowances and taxation of prospecting expenditure were enacted into law in the Income Tax (Amendment) Act 1970 and the provisions relating specifically to the takeover were enacted into law in the Income Tax (Special Provisions) Acts (No. 1 and 2) 1970. The Zambian Government agreed that as long as the Zimco bonds and loan stock were outstanding none of the provisions of these acts would be altered.

## EXCHANGE CONTROL

The Zambian Government agreed to exempt from exchange control the following:

1. All payments made with respect to the Zimco bonds and loan stock except to Rhodesian residents.
2. All dividends and other payments in RCM and NCCM securities to persons not resident or citizens of Zambia (non-Zambian shareholders can freely convert Zambian currency at the IMF parity rate).
3. All payments made in connection with both the management and sales contracts.
4. All "B" shares transferred to persons other than citizens and residents of Zambia.

The above exemptions are incorporated in the Mines Acquisition (Special Provisions) Act 1970.

## ARTICLES OF ASSOCIATION

Dividends

RCM and NCCM will pay dividends to the holders of "A" and "B" shares in an aggregate amount equal to the consolidated net profits of RCM and NCCM respectively (and the respective subsidiaries) after deduction only of appropriations in respect of capital expenditure, expenditure for exploration and prospecting, and reserves for necessary working capital. Appropriations for capital, exploration, or prospecting expenditures require the approval of both "A" and "B" directors voting separately.

### Shareholder Protection

1. Preemptive rights: MINDECO (as holder of the "A" shares) and the holders of the "B" shares have preemptive rights entitling them to subscribe to new issues of shares of the same class before such shares are offered to the public.
2. Voting rights: Certain major corporate actions by RCM or NCCM require the approval of both the "A" and "B" shareholders, voting separately. The corporate actions which require such approval are, inter alia: disposal by RCM or NCCM of a substantial part of its assets or its concessions or mining rights; the winding up, amalgamation or reconstruction of RCM or NCCM; any change in the powers of the board of RCM or NCCM or any change in the proportion of "A" and "B" directors or their voting rights; and major changes in the RCM or NCCM Articles of Association (e.g., any change in the provisions requiring separate approval of the "B" directors described below).
3. "B" director veto: The following are the main actions that require the alternative votes of a majority of both the "A" directors and the "B" directors, voting separately, "which alternative vote shall not be unreasonably withheld having regard to the interests of RCM (and NCCM) and to the interests of the shareholders":
  - a. The winding up of RCM or NCCM or the appointment of a liquidator for the purpose;
  - b. Any amalgamation or reconstruction of RCM or NCCM to which the companies are a party;
  - c. Any disposal of all or any substantial part of the assets of RCM or NCCM or the assignment or grant of any of their concessions, mining or other substantial rights to others;

- d. Any change in the proportion of "A" directors to "B" directors, in the directors' voting rights, or in the power of the Board;
- e. The engaging by RCM or NCCM in any business or activities of a nature substantially different to the mining companies taken over, or the expenditure by RCM or NCCM of any funds not in the ordinary course of its business, or the making of any financial commitments in respect of any new mining operation or facility or the expansion of an existing mining operation or facility in respect of which commitments or expansion RCM or NCCM is unable to raise such monies as may be required on commercially competitive terms or in respect of which the "B" directors are not satisfied of the commercial validity;
- f. The issue of additional "A" or "B" shares or the creation or issue of any other class of share capital, or of securities convertible into share capital, or the borrowing of any funds, whether by the issue of bonds or other securities;
- g. The sale of any products or the making of any purchases other than for cash, or at a price or on condition other than those in general application and use in the relevant world market, or for any currency that is not freely convertible;
- h. Appropriation in respect of capital expenditure or expenditure for exploration or prospecting (discussed above);
- i. Any act, dealing, arrangement, or transaction that, in the opinion of a majority of the "B" directors, is not directed toward and/or calculated to attain the optimization of production and profit of RCM or NCCM; and
- j. Variation or modification of any provision of the Memorandum and Articles of Association of RCM or NCCM.

#### SETTLEMENT OF DISPUTES

As part of the takeover, the Zambian Government agreed to adhere to the convention establishing the International Centre for the Settlement of Investment Disputes (ICSID). In addition, the Master Agreements require the Zambian Government and RCM and NCCM to enter into formal arbitration agreements as soon as possible after the convention has been



ratified.

The Zambian Government and Zimco agreed that all disputes arising under the following documents be governed by arbitration by ICSID: (1) Heads of Agreement; (2) any general agreement governing the transaction; (3) the trust deed or indenture pursuant to which the bonds and loan stock are issued; (4) the Memorandum and Articles of Association; (5) the management and sales contract; and (6) any assurances given to foreign shareholders or employees embodied in legislation enacted or agreements entered in connection with the takeover.

The Master Agreements contain an interesting provision with respect to the law that will be applied in arbitration. In particular it is provided that all disputes be governed by "frozen Zambian law," i.e., the law of Zambia (including its rules on the conflict of laws) as in force at the date of execution of the Master Agreements, disregarding all legislation, instruments, orders, directions, and court decisions having the force of law in Zambia (other than those contemplated by the Master Agreements) adopted, made, issued, or given subsequent to the date of execution of the Master Agreements. In addition, the arbitrators may determine any dispute arising under the Master Agreements in their discretion ex aequo et bono. (It should be noted that all disputes other than those arising under the Master Agreements are determined under "frozen Zambian law" only and not by ex aequo et bono.)

#### OTHER GOVERNMENT UNDERTAKINGS

The Zambian Government also agreed (1) that RCM and NCCM would be per-

mitted to conduct their operations on a commercial basis; (2) that the provisions in the Memorandum and Articles of Association of RCM and NCCM for the protection of all classes of shareholders would not be altered by any change in the law of Zambia; and that no change in the law of Zambia will alter or affect the legislation passed to give effect to the Master Agreement.

### ZAMBIAN LEGISLATION

In order to facilitate the takeover, the Zambian Parliament enacted several laws that had the effect of making many of the key terms of the Master Agreements part of the statute law of Zambia. Such legislation included the following:

1. The Mines Acquisition (Special Provisions) Act, 1970. This act contains provisions, inter alia: giving the Minister responsible for Finance the power to grant all guarantees and undertakings necessary to implement the Master Agreements; exempting various documents and transactions from stamp duties and transfer and registration fees; setting forth the exemption from exchange control; and providing for the vesting of assets in the new companies. In addition, in order to give the Zambian Government the power to take immediate action in the event of unforeseen circumstances arising in connection with the takeover, the act contained a clause giving the President power to make amendments to existing laws by statutory instrument if such amendments were necessary to give effect to the Master Agreements and to do anything necessary or expedient to give full and complete effect to the Master Agreements.

2. Tax legislation: As indicated above, the provisions of the Master Agreements relating to taxation were enacted into law by the Income Tax (Special Provisions) Act 1970 and the Income Tax (Amendment) Act 1970.

3. The Mines Acquisition (Special Provisions No. 2) Act 1970. As a part of its group reorganization, Zambian Anglo-American Limited decided that it would change its domicile from Zambia to Bermuda. In order to facilitate this move, the Zambian Parliament enacted an unusual piece of legislation that enabled Zamanglo to cease to be incorporated in Zambia without winding up. Bermuda enacted complementary legislation to enable Zamanglo to continue its business in Bermuda as a going concern. The combination of the Zambian and Bermudan legislation enabled Zamanglo to transfer its domicile as a going concern without winding up.

4. Investments Disputes Convention Act 1970. As part of its agreement to join ICSID, it was necessary for the Zambian Government to provide for the recognition and enforcement of any ICSID award in Zambia. The Investment Dispute Convention Act 1970 provides, inter alia, that any ICSID award will have the same force and effect in Zambia as a judgment of the Zambian High Court.

#### THE MINES AND MINERALS ACT OF 1969

Although the Mines and Minerals Act of 1969 was not specifically part of the takeover arrangements, provision was made in the Master Agreements for both RST and Zamanglo to have first option on those mining rights that, under the 1969 Mines and Minerals Act reverted to the State on January 1, 1970. This legislation made provisions for the State to have an option, to

a maximum of 51 percent, of any mining ventures arising from the issue of any new prospecting and exploration licence after January 1, 1970.