

Anglo American plc

Adherence to the OECD Guidelines for Multinational Enterprises in respect of its operations in Zambia

Submission to the UK National Contact Point

Introduction

January 2002

RAID

Rights & Accountability in Development



Inter-African Network for Human Rights & Development

Principal abbreviations

AIDS	Acquired Immune Deficiency Syndrome
BIAC	Business and Industry Advisory Committee
CDC	Commonwealth Development Corporation
CEP	Copperbelt Environment Project
COMET	Copper Mines Enterprises Trust
EA	Environmental Assessment
EAZ	Economic Association of Zambia
ECZ	Environmental Council of Zambia
EIS	Environmental Impact Statement
EMF	Environmental Mitigation Fund
EMP	Environmental Management Plan
ERIP	Economic Recovery and Investment Promotion Credit
ESAC	Economic and Social Adjustment Credit
ESAF	Enhanced Structural Adjustment Facility
GMI	Global Mining Initiative
GRZ	Government of the Republic of Zambia
HIV	Human Immunodeficiency Virus
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
ICME	International Council on Metals and the Environment
ICR	Implementation Completion Report
IDA	International Development Association
IDF	Import Declaration Fee
IFC	International Finance Corporation
ILO	International Labour Organisation
KCM	Konkola Copper Mines
MCM	Mopani Copper Mines
MMD	Movement for Multiparty Democracy
MUZ	Mineworkers Union of Zambia
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Development
PAR	Performance Audit Report
PID	Project Information Document
PIRC	Privatization and Industrial Reform Credit
PRA	Privatisation Revenue Account
PSREPC	Public Sector Reform and Export Promotion Credit
R&R	Report and Recommendation to the Executive Directors
RAID	Rights and Accountability in Development
RAMCZ	Roan Antelope Mining Company of Zambia
SHE	Safety, Health and Environment
TUAC	Trade Union Advisory Committee
WBCSD	World Business Council for Sustainable Development
WHO	World Health Organisation
ZACCI	Zambia Association of Chambers of Commerce and Industry
ZAM	Zambia Association of Manufacturers
ZCCM	Zambia Consolidated Copper Mines Ltd
ZCCM-IH	Zambia Consolidated Copper Mines Investment Holding Company
ZCI	Zambia Copper Investments Ltd
ZPA	Zambia Privatisation Agency

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Introduction

This submission examines the conduct of Anglo American plc and its predecessor and subsidiary companies in the privatisation of Zambia Consolidated Copper Mines (ZCCM), both during the sale itself and in its management of those privatised operations which it now controls. This assessment is made against the benchmark of the OECD Guidelines for Multinational Enterprises (hereafter 'the *Guidelines*').

The *Guidelines* lay down recommendations governing the activities of multinational enterprises.¹ It is recognised within the *Guidelines* that multinational enterprises can fulfil an important role in the promotion of economic and social welfare.² However, the supranational organisation of such enterprises 'may lead to abuse of concentrations of economic power and to conflicts with national policy objectives'.³ The common aim pursued through the *Guidelines* encourages multinational enterprises to make positive contributions to economic, environmental and social progress while minimising difficulties arising from their operations.⁴

The *Guidelines* have been adopted by governments in all OECD member countries and by certain non-members.⁵ They are endorsed by representative union and business bodies.⁶ In sum, they therefore carry significant normative legitimacy. The *Guidelines* were revised in June 2000 to ensure their continued relevance and effectiveness.⁷ While their observance is voluntary and not legally enforceable,⁸ the OECD *Guidelines* represent 'Member countries' firm expectations for multinational enterprise behaviour.'⁹

The *Guidelines* apply to the conduct of Anglo American by virtue of the fact that, since 24 May 1999, the primary listing of the parent company, Anglo American plc, has been on the London Stock Exchange in the United Kingdom. The *Guidelines* are jointly addressed by adhering governments, including the United Kingdom, to multinational enterprises operating on their territories.¹⁰ They are addressed to both parent companies and local entities within the multinational enterprise according to the actual distribution of responsibilities among them.¹¹ Domestic enterprises too are subject to the same expectations in respect of their conduct wherever the *Guidelines* are relevant.¹² Moreover, and because multinational enterprises are organised on a global basis, support for the extension of the *Guidelines* to cover their operation in all countries is recognised.¹³

Prior to the privatisation of the mines in Zambia, Anglo American had a significant minority interest in the parastatal Zambia Consolidated Copper Mines (ZCCM) through its subsidiary Zambia Copper Investments (ZCI).¹⁴ This interest was retained until Anglo/ZCI traded its holding in ZCCM for \$30 million on deferred terms to the Government on concluding its purchase of ZCCM assets in March 2000, that is, until after Anglo obtained a UK listing. It currently owns major copper prospects and operates key mines - the former productive core of ZCCM - through its subsidiary Konkola Copper Mines (KCM), in which it has a controlling interest via ZCI.¹⁵ It is with particular reference to developing countries such as Zambia that efforts are to be undertaken under the *Guidelines* to improve the welfare and living standards of all people 'by encouraging the positive contributions which multinational enterprises can make and by minimising and resolving the problems which may arise in connection with their activities.'¹⁶

The *Guidelines* are designed to complement and reinforce private standards governing company conduct.¹⁷ Anglo American has developed company-wide standards and management principles in the areas of safety, health, the environment and community, and is a founder member of both the Global Mining Initiative (GMI) and the International Council on Metals and the Environment (ICME), fully endorsing the latter's 2000 Sustainable Development Charter.¹⁸ This involvement is welcomed. Indeed, the fact that the *Guidelines* complement Anglo American's own stated corporate principles must give rise to the expectation that the company will welcome their use in the scrutiny of its operations. This accords with its own stated belief in accountability:

It is incumbent on multinational companies both to make a good return for shareholders and to show the rest of society that they work to the wider benefit of the societies in which they operate.¹⁹

In the same spirit, it would be regrettable, and ultimately counterproductive, if legalistic or technical arguments were to be employed in an attempt to limit the applicability of the *Guidelines*. This would be contrary to their non-judicial nature.²⁰

The privatisation of ZCCM took place over several years. In respect of this submission, the first key date is the rejection of an initial consultancy report on options for the privatisation of ZCCM at the end of 1994. The effects of the privatisation are ongoing, and there is no cut-off date as such. Over the period 1994 to the present, the *Guidelines* have been revised and Anglo American has obtained a UK listing. It is therefore necessary to clarify which version of the *Guidelines* - original or revised - apply and the degree to which they are applicable to Anglo's prior conduct.

In a first phase, even though Anglo American did not register in the UK until May 1999, an examination of the company's prior conduct from 1994 to this date is warranted because the negotiations it had entered into to purchase ZCCM assets were not finalised until the end of March 2000. In other words, the company's earlier conduct had continuing effect at a time when it was required to act in accordance with the original *Guidelines*, even if this meant reversing those prior actions which were not in conformity. The second phase of the company's conduct between its UK listing and 27 June 2000 is reviewed in respect of the original *Guidelines* in force at the time. However, when it can be shown that the company continues to the present day to derive benefit from its conduct during this period and/or has not sought to offer redress in those areas where its actions are not in conformity, appeal is also made to the revised *Guidelines*. Its conduct in a third phase after 27 June 2000 is reviewed solely in respect of the revised *Guidelines*, adopted on that date.

The body of the submission is structured in three parts.

Background: The programme of recent economic reform in Zambia, culminating in privatisation, is summarised. Deficiencies in the regulation of privatisation are highlighted while further detail is provided on the privatisation of ZCCM.

Applicability of the Guidelines: Anglo American's conduct during and after the sale must be assessed against accepted criteria. This part of the submission therefore draws on the *Guidelines* and related instruments to establish this benchmark. International Labour Organisation (ILO) standards and human rights instruments, as cited in the *Guidelines*, are pertinent in this regard, as is adherence to the company's own corporate standards.

Substantive concerns: Seven specific areas of concern vis-a-vis Anglo American's conduct are each examined in detail: manipulation of the privatisation regime; anti-competitive practices during the sale negotiations; the tabling of extraordinary tax concessions; the extent of continued social provision; employment, redundancies, training and co-operation with local business; environmental deregulation; and disclosure and accountability.

Notes

¹ A precise legal definition of a Multinational Enterprise is not given in the *Guidelines*. They may be of private, State or mixed ownership. Characteristically such enterprises are established in different countries and are so linked to that they may co-ordinate their activities in various ways. One or more of them may be able to exercise a significant influence over the activities of others. (*Revised Guidelines*, I. Concepts and Principles, 3).

² *Original Guidelines*, preface, para. 1.

³ *Idem*.

⁴ *Original Guidelines*, preface, 2; *Revised Guidelines*, Preface, para. 10.

⁵ Member countries of the OECD are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, the UK, and the USA. Four non-member countries - Argentina, Brazil, Chile and the Slovak Republic - have also declared their adherence to the *Guidelines*.

⁶ The *Guidelines* are endorsed by a corpus of multinational companies, represented through the OECD's Business and Industry Advisory Committee (BIAC), and by employees, represented through the corresponding Trade Union Advisory Committee (TUAC).

⁷ Statement by the Chair of the Ministerial, June 2000, reproduced in *The OECD Guidelines : Meeting of the OECD Council at Ministerial Level* (Paris: OECD, 2000), p.5.

⁸ *Original Guidelines*, preface, para. 6; *Revised Guidelines*, I. Concepts and Principles, para. 1.

⁹ *The OECD Guidelines for Multinational Enterprises*, GD(97)40 (Paris: OECD, 1997). See Chapter IV Commentary on the Guidelines, p. 21. An essentially similar formulation is employed in the revised text: 'The *Guidelines* clarify the shared expectations for business conduct' (*Revised Guidelines*, Preface, para. 7).

¹⁰ *Original Guidelines*, preface, para. 6; *Revised Guidelines*, I. Concepts and Principles, paras. 1 and 2.

¹¹ *Revised Guidelines*, I. Concepts and Principles, para. 3.

¹² *Revised Guidelines*, I. Concepts and Principles, para. 4.

¹³ *Original Guidelines*, preface, para. 3. *Revised Guidelines*, I. Concepts and Principles, para. 2.

¹⁴ The Government of Zambia owned 60.3% of the equity in ZCCM, ZCI owned 27%, and the balance was held by private investors. Anglo American, in turn, owns 51% of the shares in ZCI.

¹⁵ ZCI has a 65% holding in KCM while CDC and IFC each hold 7.5%. The Government of Zambia has a 20% retained stake. Anglo retains a majority interest of 50.9% in ZCI.

¹⁶ *Original Guidelines*, preface, para. 3.

¹⁷ *Revised Guidelines*, Preface, para. 7.

¹⁸ See Anglo American plc, *Safety, Health and Environment Report 2000* [hereafter *SHE Report 2000*], p.23.

¹⁹ Anglo American plc, *Annual Review 2000*.

²⁰ Observance of the *Guidelines* is voluntary and not legally enforceable. See *Original Guidelines*, preface, para. 6; *Revised Guidelines*, I. Concepts and Principles, para. 1.

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1. Economic reform and privatisation

a. Economic reform, deregulation and liberalisation

The Movement for Multiparty Democracy (MMD) was elected to office in November 1991 on a platform of committed free market reform. It has embarked on what has been described as 'one of the most ambitious economic reform programs on the African continent.' In a first phase, from 1991 to 1994, with the backing and approval of the World Bank and IMF, two major types of programmes concerned with structural adjustment and macroeconomic stabilisation were implemented. Structural adjustment sought to change the basis of the Zambian economy through expansion of agricultural production, the liberalisation of trade and industry, the privatisation of the loss making parastatal sector and the rationalisation of the public sector. The allied stabilisation programme was a set of policies designed to bring the Government's finances under control. In Zambia, stabilisation has sought to reduce inflation, balance the Government's accounts - to include the control of public expenditure - and to rationalise and consolidate the financial sector. In a second phase, from 1994/5 to the present, while the fundamental reforms which were already under way have continued, there has been a new emphasis on supporting key economic sectors earmarked for growth, investing in infrastructure, and explicitly addressing the problem of poverty.

In order to bring about structural adjustment, key institutions and underlying laws in Zambia have been reformed at a fast pace in two broad and overlapping phases of liberalisation and privatisation. In a drive to liberalise the economy, subsidies and price controls have been eliminated, controls on the quantity of imports allowed into the country have been removed and customs duties and tariffs have been reduced. Legislation has been introduced to protect privately-owned assets from expropriation as a necessary reassurance to foreign investors. A Securities and Exchange Commission and the Lusaka Stock Exchange have been established so that shares in private and privatised companies can be readily bought and sold. The reform of the banking system and the money markets has allowed for the free determination of interest and exchange rates. Foreign exchange regulations have been abolished so that companies are now free not only to bring in foreign money for investment, but also to take out foreign exchange made by their Zambian operations and send it to their corporate offices or shareholders in other countries. Individual and corporate taxes have been reduced while capital allowances have been increased to attract investment.

b. Privatisation

Liberalisation was the precursor to privatisation *per se*. Under the Second Republic of Kenneth Kaunda, Zambia became one of the most heavily nationalised economies in Africa. Hence some 150 state-owned enterprises have been privatised and sold off as 280 separate companies or units. To begin the process, a Privatisation Act was introduced in 1992 and the Zambian Privatisation Agency (ZPA) was established. In January 1995, the Government announced its decision to sell ZCCM to private investors. To many minds, ZCCM was Zambia as the country has been built upon copper revenues which accounted for eighty per cent of export earnings. By August 2001, the Zambia Privatisation Agency lists 255 state owned enterprises as privatised and the whole process is almost complete.

It is the Privatisation Act (1992) which has governed privatisation in Zambia. The Act establishes the ZPA whose purpose is to plan, manage, implement, and control the privatisation of State owned enterprises by selling them to those with the expertise and capital to run them on a commercial basis.¹ The Act further determines how the list of enterprises to be sold is drawn up and what modes of sale are allowable.² It lays down parameters for competitive bidding and the conduct of negotiations.³ Arrangements for the issue and holding of shares are specified for when the option of public flotation is used.⁴ The Act also specifies the extent to which information relating to the sale process will be made public, how the sale proceeds will be recorded and banked, and the uses to which the money may be put.⁵

The Privatisation Act appears to be comprehensive and to present a sound basis upon which privatisation may proceed in a transparent and independently regulated manner. By establishing the Zambia Privatisation Agency as an independent body, the Act seeks to ensure that the privatisation process is conducted in an accountable way and is as free from political manipulation as possible.⁶ There is a division of decision-making power within the Act between the Government and the ZPA. While the Government determines the overall direction and timing of privatisation,⁷ ostensibly it is left to the ZPA to handle and close each sale without political interference. The ZPA is to advise on the mode of sale in each case, although final approval resides with the Cabinet.⁸ The available options for the disposal of a business include, *inter alia*, negotiated or competitive bids, the public offering of shares, the sale of the assets and business of a State owned enterprise which thereby ceases to exist in its own right, and management or employee buyouts.⁹ The Privatisation Act lays down the parameters for the conduct of each sale, while ZPA has developed mechanisms by which the Act is implemented.¹⁰

Regrettably, and on closer scrutiny, both flaws within the primary legislation and malpractice have combined to undermine the integrity of the privatisation program in Zambia. Decisions on privatisation - including the crucial determination as to who is awarded the sale of an enterprise - are ostensibly taken by the Members of the ZPA, in effect a board of directors. Yet Members of the ZPA are appointed by the President.¹¹ Several of the positions on the ZPA board have remained unfilled, a situation criticised by both the Parliamentary Committees on Public Investments and Economic Affairs and Labour.¹² These vacancies reflect the fact that the members of the ZPA board have had little control over privatisation. Furthermore, procedural ruses have been used to reverse decisions of the full ZPA board.¹³ In reality, decisions over the most important privatisations - including that of ZCCM - have been taken by a special Cabinet subcommittee (also known as the Committee of Ministers). There has been a lack of transparency. For example, the consultancy listings in neither the *Gazette* nor in the ZPA's progress reports reveal who is in each independent negotiating team nor the extent to which any one firm or individual has been used.¹⁴ There has often been a protracted delay in revealing the details of certain deals.¹⁵ This has engendered mistrust: '[h]ere in a country and under a regime where nondisclosure normally means there is something to hide, we the Zambian public are justified in maintaining a fair degree of scepticism at the way the financial results of the recent mines privatisation are being withheld from public scrutiny.'¹⁶ Omissions are often of equal, if not greater, importance. Hence details of how much an enterprise was valued at originally are not published. This has made it impossible for an informed public to judge whether the business in question was sold at a fair price. There has been deviation from the Privatisation Act in that privatisation proceeds have not been paid into the specified Privatisation Revenue Account (PRA). The fact that certain revenues have not been accounted for, allied to allegations of corruption and self-dealing, has prompted Transparency International to describe the privatisation process as a 'looting exercise.' According to one commentator the programme stalled 'amid accusations of incompetence graft and asset-stripping' and became 'a source of corruption.'¹⁷ Transparency International and Zambian journalists have accused a cabal of ministers and officials of buying smaller businesses at bargain prices while failing to close on the sale of major industries. Some of the most serious deviations from the Privatisation Act have concerned the sale of ZCCM.

2. The privatisation of ZCCM

The privatisation of ZCCM had not originally been part of the MMD's policy agenda in 1991. It had hoped to run the mining parastatal by attracting new investments through joint ventures. According to the Bank, the recognition that there was no alternative to privatise became apparent due to falling production levels in 1993-94.¹⁸ This was the immediate context for the completion of a study by the German consultants Kienbaum in September 1994. In accordance with prior speculation, the recommendation was that ZCCM should be unbundled into five operating divisions run as partnerships between the Government and private sector companies as majority shareholders.¹⁹ The study was championed by few inside the Government, the notable exception being the deputy Minister of Mines who attributed the lack of support to vested political and personal self-interest.²⁰ He was duly sacked the following month. The entrenched ZCCM management were against the report's findings and were fighting a rearguard action to resist privatisation *per se*.²¹ Anglo American, although an advocate of privatisation, was opposed to unbundling which ran contrary to its belief that the conglomerate was better managed as a single entity.²² Anglo harboured ambitions to take control of the whole of ZCCM.²³ A bitter domestic exchange was waged in the media between the proponents and opponents of unbundling and, indeed, those resisting any move to privatisation of the mines.²⁴

ZCCM was established by the Kaunda Government in 1981 by the merger and full nationalisation of Nchanga Consolidated Copper Mines Ltd and Roan Consolidated Mines Ltd.²⁵ From the outset, any attempt to privatise ZCCM was complicated by two factors. Firstly, the company was not wholly owned by the Government: Anglo American had a significant holding in the company. The ZCCM Board was split into two groups of A and B Directors. The eight A Directors were appointed by Government through the state-owned ZIMCO holding company to look after the Government of Zambia's 60 per cent controlling interest in ZCCM. The seven B Directors were all appointed by Anglo American via its holding company ZCI which had a 27 per cent holding in ZCCM. Given Anglo/ZCI's position as principal minority shareholder, privatisation could not proceed without its agreement. Furthermore, Anglo had pre-emptive rights under an act of parliament over any shares offered for sale by the Government once the latter's holding dropped below 50 per cent. Secondly, ZCCM was the vehicle through which the Zambian Government had sought to fulfil certain social rights on the Copperbelt. It had operated as a parallel administration in providing all manner of municipal services. It had also run schools, hospitals, clinics and other social amenities in mining communities. Smallholders farmed land rented to them by ZCCM, while extensive squatter settlements on mine land had long been tolerated by the company. Hence there were noncommercial aspects to the privatisation which had to be addressed.

The fact of ZCCM's continued decline and its cost to the economy was a powerful argument for privatisation. An announcement was finally made in the budget speech in January 1995 that ZCCM would be privatised within two years. The Government Mining Privatisation Team was duly established and tasked with identifying suitable privatisation advisers. The World Bank paid for the hiring in October 1995 of consultants - the investment Bank N. M. Rothschild and Sons and the international legal firm Clifford Chance - to produce a second report and plan on the best way to privatise ZCCM.

The Rothschilds report was commissioned and produced in the context of an ever more urgent push by the World Bank, other donors, and ZCCM's creditors to see the conglomerate sold. Over the period March 1993 to March 1996, broadly corresponding to the dates when the Kienbaum study was first commissioned and when Rothschild's subsequent report was completed, the copper output of ZCCM had declined by thirty per cent.²⁶ The adoption of a ZCCM privatisation plan was made a specific Bank condition for the release second tranche of its ERIP Credit.²⁷ This pressurised climate was not conducive to allowing meaningful consideration of the future of social provision.

Rothschild's recommendations in the form of a privatisation report and plan were presented to the Government in April 1996. The mode of privatisation recommended was to unbundle ZCCM and sell its assets in business packages. This was to happen in two stages. First, the majority shareholdings in the new successor companies (packages A - L) were to be sold to trade buyers. ZCCM, in the capacity of an investment holding company, was to retain a minority interest in each company. For a summary of the sale packages on offer and their eventual purchasers, please see the attached supplement. Second, pending the successful conclusion of the first stage, the Government would have the option to sell its shares in the ZCCM holding company to Zambians and other investors.²⁸ This privatisation plan was approved by both the Government and the ZPA in May 1996 and unanimously by the ZCCM Board in June 1996. However, the Board made it clear at the outset that the privatisation mode would take into account consents from the company's shareholders.²⁹

As with all other privatisations, the sale of ZCCM ought to have been handled in accordance with the Privatisation Act. Regrettably, this has not been the case. Rather the sale of the mines has been characterised by malpractice, political manipulation, and a lack of transparency. To contend that a company could not have used its influence to gain unfair advantage in the sale of ZCCM because of the rigour with which the privatisation process was regulated lacks credibility.

Negotiations over the sale of the mining parastatal were being led by Rothschilds as the ZPA's appointed advisers. However, at the end of March 1997, a former chairman and chief executive of ZCCM, Francis Kaunda, was appointed by the President, rather than by the ZPA board, to head the GRZ/ZCCM Privatisation Negotiating Team. This was done in contravention of the Privatisation Act, an interpretation confirmed by the Parliamentary Committee on Economic Affairs and Labour which states that '[o]nly the ZPA Board has legal Authority to appoint a Chairman of a negotiating team'.³⁰ The same committee has observed that members of the GRZ/ZCCM PNT were unaware of their terms of reference and 'were merely co-opted into the Team'.³¹ The politicisation of the sales process and the seemingly unlawful removal of ZPA as the body tasked with carrying out the privatisation has resulted in one leading bidder taking court action. The power of decision over the sale of ZCCM has been the preserve of a special Cabinet subcommittee (also known as the Committee of Ministers).³² Again, this contravention of the Privatisation Act has been criticised by the same Parliamentary Committee which notes that 'the ZPA Board's participation was limited to endorsing decisions retrospectively, and not as provided for in the Act'.³³ This subcommittee kept in close contact with the negotiating team throughout to ensure that the sale of ZCCM assets went ahead in accordance with its wishes. There have been concerns

over conflicts of interest. The chief executive of ZPA was a Director of ZCCM.³⁴ One of the known member's of the ZCCM Privatisation Negotiating Team was also a Director of ZCCM.³⁵ The person appointed to head the GRZ/ZCCM PNT did not publicly terminate his relationship with one of the bidders nor exclude himself from negotiations over the sale package which included the ZCCM assets in question.³⁶ The proceeds from the sale of core ZCCM assets were not paid into the Privatisation Revenue Account, as specified under the Act. Proceeds from the irregular sale of non-core assets cannot be traced and the manner of their disposal had been declared illegal.³⁷ Overall, many commentators and professional bodies are highly critical of the way in which the sale of ZCCM was conducted and of the outcome achieved.

Supplement - The sale of ZCCM

Irregularities in the Privatisation of ZCCM

While the sell-off was underway, the Parliamentary Committee on Public Investments denounced deviation from the Privatisation Act and urged the Government to ensure that privatisation is carried out in accordance with its provisions.³⁸ The Parliamentary Committee on Economic Affairs and Labour, in its review of the privatisation of ZCCM, observed that: 'The process of privatising the mines was characterised by personal differences amongst key players, and not by observance of due process in the best interests of the nation. In some cases, political considerations appear to have overridden public interest, transparency, and even the law.'³⁹ The Committee concludes: 'The Ministers of Commerce, Trade & Industry, Finance and Economic Development, and Mines and Minerals Development, their representative Permanent Secretaries, the Attorney General, the ZPA Board, the Chairman of the GRZ/ZCCM Negotiating Team and the Committee of Ministers, have all been negligent in performing their legal and/or moral responsibilities in protecting and preserving public assets.'⁴⁰

Deviation from the Privatisation Act - Prior to the finalisation of the sale of the mines, fears grew that ZCCM did not have the capacity to dispose of compromised ZCCM assets at reasonable prices and hence action was necessary to expedite the sales. The Chairman of the GRZ/ZCCM PNT - while still claiming that the process was in conformity with the Privatisation Act - has confirmed that:

'The Shareholders of ZCCM, therefore, developed a transformation plan with technical assistance from the World Bank. In this plan, all the assets were divided into three categories: (a) Core assets (b) Non-core, subsidiary companies (c) Miscellaneous[.] There were then appointed group leaders to lead the negotiations for the disposal of each category of assets, under the overall supervision of GRZ/ZCCM PNT Chairman who convened regular meetings of the Team for the purpose of being apprised of progress in the groups' negotiations.'⁴¹

The ZPA has testified that the appointment of the GRZ/ZCCM Privatisation Negotiating Team did not follow the spirit of the Privatisation Act and that the ZPA was 'merely Informed of the decision, rather than being allowed to scrutinise and affect the appointment.'⁴² Subsequently, the Negotiating Team did not report back to the ZPA board: '...although the Terms of Reference of the GRZ/ZCCM Privatisation Negotiation Team were very specific as regards the role to be played by the Team (i.e., Advisory to the ZPA Board) the reality was that the Team concluded Sales Agreements with the various bidders in the sale of the mining assets.'⁴³ Formal approval of the mine sales by the ZPA Board has been described by the Chairman of the ZPA as 'an academic exercise to fulfil statutory requirements', as the decision-making power had been usurped by the GRZ/ZCCM Privatisation Negotiating Team.'⁴⁴ ZACCI has expressed its disquiet over role of GRZ/ZCCM Team as it 'appeared to override ZPA' which was properly constituted by parliament and should have been answerable for whole privatisation programme.'⁴⁵ The replacement of ZPA made it difficult to catalogue offers, created uncertainty over the value of the mines and therefore missed opportunities to sell, and resulted in a lack of uniformity in the terms and conditions of each sale. ZAM has condemned the removal of the ZPA as negotiator: 'the ZPA Act was torn up when the Government appointed a GRZ/ZCCM Privatisation Negotiation Team, which operated outside the ZPA.'⁴⁶ The Permanent Secretary to the Ministry Commerce, Trade and Industry has conceded that the ZPA board 'had expressed concern at the lack of clarity on the procedures and mandate of the Team and the role of the Committee of Ministers, particularly with regard to the law'.⁴⁷

The mis-sale of Luanshya Mine - A court case disputing the sale of another ZCCM mine reveals the extent of deviation from the Privatisation Act. Luanshya and Baluba, was sold to an Indian company, the Binani Group in June 1997.⁴⁸ The other bidder, First Quantum of Canada, sought a reversal in the High Court of the decision to sell to Binani.⁴⁹ The legal action brought a number of facts to light. First Quantum had indeed originally been selected, on a purely commercial basis, as the winning bidder by ZPA.⁵⁰ In doing so, the ZPA board followed the expert recommendation of its advisors, the merchant bank N.M. Rothschild, rather than the wishes of the Government/ZCCM. This decision was officially reversed following an urgent meeting between Cabinet members and a minority of the ZPA board, in an apparent contravention of the Privatisation Act.⁵¹ Binani's last minute bid bettered First Quantum's offer by a precise margin, prompting First Quantum to allege that details of its own bid had been leaked.⁵² Binani had no copper mining experience, had not conducted full underground studies, and analysts questioned whether it had the necessary financial backing to fund its ambitious plans for the Luanshya operations.⁵³ Their fears have proved to be well-founded. The deterioration in employment conditions, coupled with persecution of the local union leader, prompted unprecedented industrial unrest in Luanshya in November 1998.⁵⁴ There have been negative repercussions for social provision in the local community. Mismanagement of the mine has led to a series of financial crises, culminating in the mine going into receivership in November 2000. The Parliamentary Committee has pronounced the sale of Luanshya Division as irregular, stating that '[t]he Committee of Ministers had no legal authority to reverse the decision of the ZPA Board.'⁵⁵ The ZPA has confirmed the mis-selling of the Luanshya package and the MUZ, ZACCI, ZAM have all roundly criticised the sale.⁵⁶ Even the Secretary to the Treasury has conceded that the sale was based on 'shaky foundations' and should have been revisited.⁵⁷

The diversion of sale proceeds - The issue of the diversion of funds was raised by the Committee on Public Investment in December 1997.⁵⁸ Subsequently, the ZPA has stated that it has no details on how the sale proceeds of the mines had been handled or utilised and the EAZ believes that '[t]here had been lack of transparency, as the general public was not aware as to how these proceeds had been utilised to date.'⁵⁹ The Attorney General has conceded that transparency had not always been observed in the sale of ZCCM assets and has confirmed that all privatisation proceeds should have been despoiled in the PRA and hence that '[a]ny other arrangements were ultra vires the law.'⁶⁰ ZAM has criticised the mine sales for being 'less than transparent' and has been critical of irregularities concerning the sale of ZCCM non-core assets.⁶¹ The Permanent Secretary to the Ministry Commerce, Trade and Industry has confirmed this view.⁶² The Attorney General has testified to Parliament that, although his office should have been consulted for legal advice over all sales under the Constitution, this had not been done in respect of a considerable number of non-core ZCCM assets or those owned by the company abroad.⁶³ No fewer than forty-six such irregular sales of significant assets are listed.⁶⁴ According to the Attorney General, two Team Leaders in the GRZ/ZCCM PNT had been appointed to dispose of non-core assets, but that these transactions were not ratified by the ZPA board as required. His office had queried the disposal of certain assets by 'deed of gift', in a way not provided for under the law, but to no avail.⁶⁵ The Parliamentary Committee, despite extensive questioning of key parties, declared itself unable to obtain a full and true list of all ZCCM non-core assets and could not verify what was owned, what has been sold to whom, at what price, or on what payment terms.⁶⁶ It confirmed that the proceeds of such sales had not been remitted to the PRA and that, contrary to the law, neither the ZPA Board, the Attorney General nor the Minister of Finance and Economic Development had signed/approved the sale of a number of non-core assets which had therefore been sold illegally by the GRZ/ZCCM PNT.⁶⁷

Chronology of key events in the privatisation of ZCCM

January 1995 - An announcement is made in the budget speech that ZCCM is to be privatised within two years

October 1995 - The merchant bank N. M. Rothschild and the legal firm Clifford Chance are hired to produce a privatisation plan for ZCCM.

April 1996 - The Rothschilds report recommends the unbundling of ZCCM into ten principal sale packages to be privatised through international competitive tender. The Government is to retain a 'golden share' - typically 15 per cent - in the successor companies which it has the option to sell to Zambian and other investors at a later date.

May - June 1996 - ZCCM privatisation plan approved by both the Zambian Government and the ZCCM board.

February 1997 - The bidding process closes. Each package attracts at least one bid.

A memorandum of understanding is signed between the Government/ZCCM and Anglo American for the exclusive purchase of the extensive Konkola Deep deposit outside of the main bidding process. This deal cements Anglo American's acceptance of the privatisation process, but the option granted to the company to purchase the smelter from another sale package jeopardises the future of the Mufulira mine.

The Kafue Consortium of three leading mining houses (Avmin of South Africa, Noranda of Canada, and Phelps Dodge of the USA) and UK financiers, the Commonwealth Development Corporation, enter into negotiations to purchase the core Nkana/Nchanga asset package.

March 1997 - Appointment by the President of Francis Kaunda to take over ZCCM sale negotiations from Rothschilds and the ZPA negotiating team.

June 1997 - Finalisation of the Nkana/Nchanga sale to the Kafue Consortium appears imminent. In retrospect, the best price for these mines was achieved at this time.

October 1997 - Conclusion of the sale of the Luanshya and Baluba mines to the Binani Group of India.

December 1997 - The Consultative Group meeting with donors to renew balance of payments support is postponed, ostensibly because of governance issues, but also because of the failure to conclude the privatisation of ZCCM.

April - May 1998 - After a year of protracted negotiations, during which time the price for copper has fallen sharply, the final reduced offer of the Kafue Consortium is rejected and the bidding group dissolves.

Balance of payment support from the donor community agreed at the Consultative Group meeting is made conditional on significant progress in the privatisation of ZCCM.

Mid 1998 - Anglo American formulates a rescue plan to repackage the unsold assets of ZCCM.

September 1998 - Over two years after the privatisation was announced, less than 20 per cent of ZCCM's operating capacity has passed into private ownership.

October - November 1998 - Anglo American agrees to relinquish its purchase rights over the Mufulira smelter in the event of an agreement being reached allowing it to purchase the other key ZCCM assets as a single package. A prospective buyer is found for the Mufulira mine.

December 1998 - January 1999 - Anglo American negotiates the option to purchase all remaining key ZCCM assets. A number of preconditions are set by the company to include the identification of a suitable partner, the securing of finance, and the implementation of a ZCCM redundancy program to be paid for using donor funds.

New lending instruments are agreed with the World Bank and IMF as a result of the memorandum of understanding signed between the Government/ZCCM and Anglo American. However, the release of funds is made conditional on conclusion of the deal and transfer of ownership.

March 1999 - The original deadline for conclusion of the sale of the remaining key ZCCM assets passes. The preconditions set by Anglo American for the purchase have not been met.

October 1999 - Anglo American revises the basis of the original deal. A new agreement is reached whereby the high cost Nkana mine is excised from the sale, although the South African Company retains its option to run and purchase the Nkana smelter, crucial to its wider operations in Zambia. Anglo American refuses to take over social assets associated with the mines.

February - March 2000 - While a number of non-operational and smaller ZCCM mines, as well as the Power Division, were privatised relatively early, the eventual sale of the key mine packages at the core of ZCCM to Anglo American (Konkola, Nchanga, Nampundwe and a contract to run Nkana smelter) and First Quantum/Glencore (Nkana Mine and Mufulira) was only concluded at the end of March 2000.

The sale packages

Package A - Nkana and Nchanga Divisions, originally including the Chibuluma Copper Mine <ul style="list-style-type: none"> • Nchanga sold as part of the final sale to Anglo American with minority stakes held by International Finance Corporation and the Commonwealth Development Corporation (Konkola Copper Mines). • Nkana mine sold to Gencore/First Quantum of Switzerland/Canada (Mopani Copper Mines) • Nkana smelter under a management contract with Anglo/SmelterCo 	Package H - Ndola Precious Metals Plant <ul style="list-style-type: none"> • Sold to Binani Industries (Minerva)
Package B - Luanshya Division <ul style="list-style-type: none"> • Sold to Binani Industries of India (Roan Antelope Mining Company Zambia or RAMCZ) • Now in receivership 	Package J - Power Division <ul style="list-style-type: none"> • Sold to the Copperbelt Energy Consortium made up of Midlands Power International Limited and the National Grid Company plc (both UK-based companies) in partnership with five Zambian senior management staff.
Package C - Mufulira Division <ul style="list-style-type: none"> • Sold to Gencore/First Quantum (Mopani Copper Mines) 	Package L - Chingola Refractory Ore Dumps
Package D - Chambishi Copper Mine <ul style="list-style-type: none"> • Sold to China Non-ferrous Metals (NFC Africa Mining) 	Special package - Konkola North Development Area <ul style="list-style-type: none"> • Sold to Avmin
Package E - Kansanshi Copper Mine <ul style="list-style-type: none"> • Sold to Cyprus Amax of the USA, itself taken over by Phelps Dodge of the USA. 	Special package - Konkola Deep Mining Project <ul style="list-style-type: none"> • Sold to Anglo American/IFC/CDC
Package F - Nampundwe Pyrite Mine <ul style="list-style-type: none"> • Sold as part of the final sale to Anglo American/IFC/CDC (Konkola Copper Mines) 	Prior sale - Bwana Mkubwa disused mine and tailings <ul style="list-style-type: none"> • Sold to First Quantum.
Package G - Chambishi Cobalt and Acid Plant <ul style="list-style-type: none"> • Sold to Avmin (a subsidiary of Anglovaal of South Africa) 	

Notes

- ¹ Privatisation Act (1992), respectively sections 3 and 8. An Act to amend the Privatisation Act (1996) introduced some minor changes to the principal Act. The analysis which follows takes into consideration these amendments.
- ² Privatisation Act (1992), respectively sections 8(2)(e), 8(2)(f), 17, and 22.
- ³ See *ibid.*, section 8(2)(i). On the appointment of an independent negotiating team, see section 32.
- ⁴ *Ibid.*, section 29.
- ⁵ *Ibid.*, respectively sections 38 and 39.
- ⁶ The ZPA describes itself as 'an autonomous agency of Government' and emphasises that it is an independent body. See ZPA (undated), 'About Zambia Privatisation Agency'; ZPA (undated), 'Legal Issues in Privatisation,' section 2; and ZPA (undated), 'How far have Zambians participated in the privatisation programme? - Questions and Answers,' q.21. Available at <www.zamnet.zm/zamnet/zambus/zpa>.
- ⁷ Both policy guidelines on privatisation and the divestiture sequence plan are prepared by ZPA in accordance with sections 8(2)(a) and (e) of the Privatisation Act (1992). However, the Cabinet has final approval over both policy and divestiture: it determines which State owned enterprises are to be privatised and the order in which they are to be sold.
- ⁸ Privatisation Act (1992), section 8(2)(f).
- ⁹ Two other methods specified under the Privatisation Act (1992) are the offer of additional shares in a State owned enterprise to an existing shareholder to reduce the Government's holding and the issue of lease and management contracts whereby a private sector company runs a State owned enterprise for a specified period.
- ¹⁰ See Privatisation Act (1992), section 8(2)(i); also, in general, Part IV, Procedure for Privatisation and Commercialisation. Sale tender procedures are prescribed in Statutory Instrument 40. For a summary and analysis of these procedures, please see ZPA (undated), 'Bid Evaluation Process'.
- ¹¹ Although the Privatisation Act determines which organisations are Members of the ZPA, each individual representative is appointed by the President, having first received the approval of a Select Committee of the National Assembly (Privatisation Act (1992), section 5(1)).
- ¹² For criticisms made by the Parliamentary Committee on Public Investments, see *Special Report on Privatisation*, presented before the House in December 1997. See also 'Composition of ZPA Board worry MPs,' *The Post*, 1 December 1997. As of June 1998, the Law Association of Zambia, the Bankers Association of Zambia, the Zambia Institute of Chartered Accountants, and the Churches of Zambia were not represented. See ZPA (1998b), *Progress Report No. 12*, Members of ZPA: Names and Affiliations, Appendix 2. For criticisms made by the Committee on Economic Affairs and Labour, see 'Review of the Privatisation of Zambia Consolidated Copper Mines Limited', Report for the Fourth Session of the Eighth National Assembly appointed on 10 February 2000 [hereafter '*Parliamentary Report*'], para. 22, p.12.
- ¹³ Procedural ruses further undermine the independence of the ZPA board. First, an urgent ZPA board meeting can be called without the usual fourteen days notice (Privatisation Act (1992), section 9(3)). Indeed, meetings have been convened at very short notice making it impossible for all members to attend. Second, only five members of the board are required to decide and vote on any matter (*Ibid.*, section 9(4)). Provided all three of the Lusaka-based Government members are in attendance, then the Government has an automatic majority on the board. Manipulation is not merely a theoretical possibility, but has occurred in practice: see *infra* for a critique of how the sale of the Luanshya Mine package was conducted.
- ¹⁴ '...not much is known about the process of picking the independent valuers, consultants and lawyers working the ZPA trail...there is a great need to remove suspicions that these lucrative engagements with the ZPA have been circulating among a clique privileged by their social positioning.' ('Pitfalls of privatisation hearsay,' *Times of Zambia*, 3 December 1997).
- ¹⁵ For example, Sales Agreements for Luanshya and Baluba mines to the Binani Group were signed on 30 June 1997; for the sale of Power Division to the Copperbelt Energy Consortium on 6 October 1997; for the sale of Chibulua mine to the Metorex consortium on 31 July 1997. However, by the end of the year no full details of the value of the bids received or the reason for the award of the sale to any of the companies concerned had been made public. Independent Lusaka Central MP Dipak Patel, in the parliamentary debate over the Committee on Public Investments *Special Report on Privatisation*, raised the issue of ZPA's failure to comply with section 38 of the Privatisation Act providing for the publication of sales information in the Government Gazette. See 'Committee cries foul,' *The Post*, 4 December 1997.
- ¹⁶ Theo Bull, 'ZCCM - the story nears its close,' *Profit Magazine*, December 1997/January 1998, p.19.
- ¹⁷ Colin Barraclough, 'Trouble in Lusaka,' *Institutional Investor*, December 1998
- ¹⁸ World Bank, *Implementation Completion Report: Economic Recovery and Investment Promotion Credit* [hereafter, '*ERIP ICR*'] (Washington D.C.: World Bank, 1998), para. 10.
- ¹⁹ Theo Bull, 'ZCCM - the future lies in unbundling,' an advert taken out in the *Times of Zambia*, 26 September 1994, in response to a previous piece sponsored by senior ZCCM board members: 'ZCCM Replies,' advert taken out in the *Times of Zambia*, 14 September 1994. This advert was itself a response to Bull's original article which appeared in the September 1994 issue of *Profit Magazine*.
- ²⁰ Dr. Mpanda. See Theo Bull 'ZCCM - Light at the end of the tunnel?,' *Profit Magazine*, March 1996.
- ²¹ The ZCCM management plan to resurrect the company is roundly criticised by Bull in 'ZCCM cries for a policy to survive,' *Times of Zambia*, 7 May 1994.
- ²² See Bull, 'ZCCM - the future lies in unbundling'.
- ²³ See *ibid.*; also Bull, 'ZCCM - the story nears its close.'
- ²⁴ See Bull, 'ZCCM - the future lies in unbundling.'
- ²⁵ Both Nchanga Consolidated Copper Mines Ltd and Roan Consolidated Mines Ltd, owned respectively by Anglo American of South Africa and Roan (formerly Rhodesian) Selection Trust, were partly nationalised in 1969. In 1973 the Government terminated its special concessions to the mining companies and in 1979 increased its shareholding from 51 per cent to just over 60 per cent prior to the formation of ZCCM two years later. See Bull & Simpson, 'ZCCM - privatisation's golden opportunity,' *Profit Magazine*, March 1993
- ²⁶ *ZCCM Annual Report 1996*, Historical Summary, p.43.
- ²⁷ *ERIP ICR*, para.11. The legal covenant under Schedule 3,7 of the ERIP requires the Government to '[a]dopt and furnish IDA a satisfactory plan to privatize ZCCM.'
- ²⁸ See 'Cabinet Resolution: Privatisation of the ZCCM Assets,' reproduced in ZPA, ZPA Progress Report No. 12, p.29; see also A. N. Chikwese, 'Zambia Consolidated Copper Mines Limited (ZCCM) - Progress Report,' Paper presented at the weekly seminar for professional staff, Ministry of Finance and Economic Development, 28 November 1997.
- ²⁹ *ZCCM Annual Report 1996*, p.14
- ³⁰ Section 32 of the Privatisation Act (1992) stipulates that all members of the team shall be appointed by the Zambia Privatisation Agency Board. See *Parliamentary Report*, Observations and Recommendations, paras. 9 - 10, p.111.
- ³¹ *Parliamentary Report*, Observations and Recommendations, para.11, p.112.
- ³² This subcommittee is chaired by the Minister of Finance. Its other members are the Minister of Mines and Mineral Development, the Minister of Commerce, Trade and Industry, and the Minister of Energy by virtue of the sale of ZCCM's Power Division.
- ³³ *Parliamentary Report*, Observations and Recommendations, para.12, p.112.
- ³⁴ Mr. Valentine Chitalu. As listed in Financial Times Energy, *Mining 1999* (London: FT Energy).
- ³⁵ Mr. Willa Mung'omba, *ibid.*
- ³⁶ At the close of bidding for the Chibuluma mine in February 1997, the Metorex Consortium openly acknowledged that it was being represented in its negotiations to purchase the mine by Francis Kaunda. The following month, Kaunda was appointed to handle negotiations over the privatisation

of ZCCM. Chibuluma Mine was split from the recommended sale package and awarded to Metorex on 31 July 1997. Kaunda did not publicly terminate his connection with Metorex, nor resign from the negotiating team, nor exclude himself from negotiations over the sale package which included Chibuluma. See Murray Sanderson, 'Is Francis Kaunda linked to Metorex?' *Times of Zambia*, 13 August 1997.

³⁷ *Parliamentary Report*, Observations and Recommendations, paras 22 ff, pp.113 - 114.

³⁸ Parliamentary Committee on Public Investments, *Special Report on Privatisation*, op. cit.

³⁹ *Parliamentary Report*, para. 13, p.112.

⁴⁰ *Parliamentary Report*, para. 31, pp. 113 - 114.

⁴¹ *Parliamentary Report*, p.106.

⁴² *Parliamentary Report*, p.26.

⁴³ *Parliamentary Report*, p.26.

⁴⁴ *Parliamentary Report*, p.26.

⁴⁵ *Parliamentary Report*, p.46.

⁴⁶ *Parliamentary Report*, p.51.

⁴⁷ *Parliamentary Report*, p.81.

⁴⁸ The sale agreements were signed on 30 June 1997. The Luanshya and Baluba mining and metallurgical complex was handed over to the new owners on 15 October 1997 and operated under the name Roan Antelope Mining Corporation Zambia Plc (RAMCZ or RAMCOZ).

⁴⁹ *First Quantum Mineral Limited vs. Zambia Privatisation Agency, Zambia Consolidated Copper Mines Limited, and Binani Industries Limited, The High Court for Zambia*, case 1997/HP/2065.

⁵⁰ 'ZCCM Limited: Privatisation of Bco (Luanshya/Baluba Mine),' Minutes of the ZPA board, ZPA/336 6/97, 26 June, para. 4.11.

⁵¹ The ZPA board had approved award of the sale to First Quantum Minerals on 26 June 1997. This decision ran contrary to the wishes of the Cabinet. A Special Meeting of the ZPA board with the Committee of Ministers was convened at short notice for 30 June 1997 which meant that only the Lusaka-based Agency Members were able to attend, to include two Government members and three others. The earlier decision of the full ZPA board was effectively annulled and the letter from the ZPA to the Committee of Ministers confirming the award of sale to First Quantum withdrawn. This paved the way for the subsequent award of the sale to the Government's preferred buyer, Binani Industries, confirmed in a meeting of the ZPA board on 4 July 1997. This chain of events is revealed in documents presented before the High Court for Zambia. In particular, see 'ZCCM Limited Privatisation Reporting Structure,' Minutes of 38th Special Meeting of the ZPA board, ZPA/344 7/97, 4 July, 1997.

⁵² The cash component of the Binani bid at \$35 million bettered the final bid of First Quantum by \$1 million - an amount considered 'insignificant' by Rothschilds in its bid evaluation. (See 'ZCCM Limited: Privatisation of Bco (Luanshya/Baluba Mine),' op. cit., para. 4.7(i)). An accusation by First Quantum that details of its final bid had been leaked was made in a letter from the Chairman of First Quantum to the Chairman of the ZCCM Privatisation Negotiating Team, dated 2 July 1997. See Founding Affidavit, Philip Pascall, 30 October 1997, *First Quantum Mineral Limited vs. Zambia Privatisation Agency, Zambia Consolidated Copper Mines Limited, and Binani Industries Limited, The High Court for Zambia*, case 1997/HP/2065.

⁵³ Its background lies rather in zinc manufacture and the trading of non-ferrous metals, although it has recently sought to diversify.

⁵⁴ Afronet, Citizens for a Better Environment, Rights and Accountability in Development, *Zambia: Deregulation and the denial of human rights*, Submission to the Committee on Economic, Social and Cultural Rights, March 2000.

⁵⁵ *Parliamentary Report*, para. 14, p.112.

⁵⁶ See, respectively, *Parliamentary Report*, ZPA testimony, p.26, MUZ testimony, pp.32 & 35, ZACCI testimony, pp. 46 & 49, ZAM testimony, p.51.

⁵⁷ *Parliamentary Report*, p.61.

⁵⁸ In its report on privatisation, the Committee notes instances when the GRZ/ZCCM Privatisation Negotiating Team sold ZCCM assets such as schools without the prior authorisation of the of the ZPA board. It has questioned the deposition of proceeds from the sale of the mines and their associated assets into a ZCCM account, apparently to be put towards meeting the company's obligations, and not into the Privatisation Revenue Account as required under the Privatisation Act. See *Special Report on Privatisation*, op. cit.; also 'Committee cries foul,' *The Post*, 4 December 1997. Under the Privatisation Act, proceeds from the sale should be deposited in the privatisation revenue account (PRA) at the Bank of Zambia which is controlled by the Minister for Finance. It is difficult to determine how much money has been generated as figures for the amount of money in the privatisation revenue account are not made public. Initially, the ZPA progress reports did list how much money from each sale went into the PRA, but this practice ceased altogether after the end of 1995, and before the bulk of the sales went through.

⁵⁹ Respectively, *Parliamentary Report*, pp.24 and 44.

⁶⁰ *Parliamentary Report*, p.77.

⁶¹ *Parliamentary Report*, pp. 51 - .52.

⁶² *Parliamentary Report*, p.81.

⁶³ *Parliamentary Report*, pp. 76 - 77.

⁶⁴ *Idem*.

⁶⁵ *Parliamentary Report*, p.77.

⁶⁶ *Parliamentary Report*, para. 25, p.113.

⁶⁷ *Parliamentary Report*, paras. 26 - 29, p.113.

Anglo American plc

Adherence to the OECD Guidelines for Multinational Enterprises in respect of its operations in Zambia

Submission to the UK National Contact Point

Applicability of the Guidelines

January 2002

RAID

Rights & Accountability in Development



Inter-African Network for Human Rights & Development

Principal abbreviations

AIDS	Acquired Immune Deficiency Syndrome
BIAC	Business and Industry Advisory Committee
CDC	Commonwealth Development Corporation
CEP	Copperbelt Environment Project
COMET	Copper Mines Enterprises Trust
EA	Environmental Assessment
EAZ	Economic Association of Zambia
ECZ	Environmental Council of Zambia
EIS	Environmental Impact Statement
EMF	Environmental Mitigation Fund
EMP	Environmental Management Plan
ERIP	Economic Recovery and Investment Promotion Credit
ESAC	Economic and Social Adjustment Credit
ESAF	Enhanced Structural Adjustment Facility
GMI	Global Mining Initiative
GRZ	Government of the Republic of Zambia
HIV	Human Immunodeficiency Virus
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
ICME	International Council on Metals and the Environment
ICR	Implementation Completion Report
IDA	International Development Association
IDF	Import Declaration Fee
IFC	International Finance Corporation
ILO	International Labour Organisation
KCM	Konkola Copper Mines
MCM	Mopani Copper Mines
MMD	Movement for Multiparty Democracy
MUZ	Mineworkers Union of Zambia
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Development
PAR	Performance Audit Report
PID	Project Information Document
PIRC	Privatization and Industrial Reform Credit
PRA	Privatisation Revenue Account
PSREPC	Public Sector Reform and Export Promotion Credit
R&R	Report and Recommendation to the Executive Directors
RAID	Rights and Accountability in Development
RAMCZ	Roan Antelope Mining Company of Zambia
SHE	Safety, Health and Environment
TUAC	Trade Union Advisory Committee
WBCSD	World Business Council for Sustainable Development
WHO	World Health Organisation
ZACCI	Zambia Association of Chambers of Commerce and Industry
ZAM	Zambia Association of Manufacturers
ZCCM	Zambia Consolidated Copper Mines Ltd
ZCCM-IH	Zambia Consolidated Copper Mines Investment Holding Company
ZCI	Zambia Copper Investments Ltd
ZPA	Zambia Privatisation Agency

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Anglo American plc

Adherence to the OECD Guidelines for Multinational Enterprises in respect of its operations in Zambia

Submission to the UK National Contact Point

Applicability of the Guidelines

Establishing a benchmark: the OECD Guidelines and related instruments

Before continuing with an account of the privatisation of ZCCM and an examination of Anglo American's conduct, it is valuable to review what has already been established. From the outset, the decision to privatise ZCCM was contentious; two detailed studies were necessary before the parameters of the sale could be agreed; decline and losses at ZCCM increased the pressure to act; acceptance of the Rothschilds report resulted in a decision to deliberately exclude a consideration of the future of social provision on the Copperbelt beyond the short term; and, when the actual sell-off commenced, it soon became the object of political interference and malpractice as the regulatory framework of the Privatisation Act was bypassed.

Different actors, including the Government, the World Bank, and private companies are implicated to varying degrees in the debacle. It is therefore essential to clarify the degree to which any one actor is responsible for specific failures. This necessitates the use of benchmark standards to define acceptable and unacceptable actions: hence the use of the OECD *Guidelines* and related instruments to assess business conduct.

The purpose of this section is to affirm the standing of the *Guidelines*. Explicit reference is made within the *Guidelines* themselves to other instruments which are deemed complementary and relevant and which, in specific instances, offer elaboration. Hence due consideration will be given to the complementarity of human rights instruments, ILO standards and Anglo American's own corporate codes of conduct. The aim is not to make an undifferentiated appeal to such instruments and standards, but rather to make use of specific provisions within such instruments when this is provided for in the text of the *Guidelines*.

a. The standing and applicability of the *Guidelines*

i. Normative endorsement

The OECD Guidelines for Multinational Enterprises were adopted in their original form in 1976 as one part of the OECD Declaration on International Investment and Multinational Enterprises.¹ They have a wide endorsement and therefore carry considerable normative value. They are supported not only by all 29 Member countries of the OECD, but also by a corpus of multinational companies, represented through the OECD's Business and Industry Advisory Committee (BIAC), and by employees, represented through the corresponding Trade Union Advisory Committee (TUAC).² Certain non-Member countries fully support the *Guidelines* through their adherence to the underlying Declaration and Decisions on International Investment and Multinational Enterprises.³

ii. Supranational applicability

A key question is whether a company is expected to apply standards which go beyond national requirements in the conduct of its business. Three observations are pertinent. They relate to the supplementary nature of the *Guidelines*, the prior influence of companies in framing legislation, and the recognition within firms of corporate-wide codes of conduct

First, it is recognised in the *Guidelines* that '[e]very State has the right to prescribe the conditions under which multinational enterprises operate within its national jurisdiction'; yet this right is qualified as 'subject to international law and to the international agreements to which it has subscribed.'⁴ Hence explicit recognition is given to the application of overarching obligations. At the same time, '[t]he entities of a multinational enterprise located in various countries are subject to the laws of these countries.'⁵ However, the perception that companies need only comply with national laws is based on a partial interpretation of the *Guidelines*. While they are not viewed as a substitute for national law and practice, the recommendations within the *Guidelines* are perceived in *supplementary* terms and the firm expectation is that companies will adhere to them.⁶ Hence adherence to the *Guidelines* may necessitate that Anglo complies with standards over and above those required in Zambian law; it does not mean that the company, by doing so, is in direct conflict with or contravenes national law.⁷ This is precisely what is meant when the *Guidelines* are viewed as a supplement to national law and practice. After all, their *raison d'être* is the need for standards applicable across national boundaries to mirror the organisation and operation of multinationals.

Second, to accept that companies are automatically absolved of responsibility for their conduct as long as they are in compliance with Zambian law and the terms of development agreements is profoundly misplaced because it ignores the question of prior influence. National laws in many developing countries are framed according to the stipulations of the private sector, together with the World Bank, IMF, and other advocates of deregulation. Furthermore, firm or industry-level agreements reflect the strong negotiating position of companies in their individual or collective capacity. The original *Guidelines* recognise the influence of private companies on Government policy and the regulatory environment and caution enterprises to take into account, *inter alia*, economic, social, and environmental policy objectives.⁸ In Zambia, there are instances when the terms *first* agreed in negotiations are *subsequently* reflected in law. Under the revised *Guidelines* there is explicit recognition of the principle that MNEs should refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework.⁹ In Zambia, there have been stark instances when this framework has itself been altered, at the behest of Anglo American, to frame such exemptions.

Third, companies have themselves devised corporate-wide standards which are to be applied to their operations on a global basis. Anglo American is one such company. Hence the expectation is that it must abide by its own supranational standards, even when these standards exceed the requirements of national legislation in Zambia (notwithstanding that the law has been drafted to reflect corporate interests).

b. Complementarity of the *Guidelines*

i. Anglo American's corporate standards on Safety, Health and the Environment

In the preface to the revised *Guidelines*, it is confirmed that public concern over the neglect of appropriate corporate standards has prompted responsible enterprises to develop internal programmes, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct.¹⁰ In this regard, the development by Anglo American of company-wide standards is welcome. It has established a board-level Safety, Health and Environment (SHE) Committee which is responsible for developing framework policies and guidelines for safety, health and environmental management and ensuring the progressive implementation of the same throughout the Group.¹¹ In the area of safety and health, the stated aims of the company's SHE policy are: to prevent or minimise work-related injuries and health impairment of employees and contractors; and to contribute to addressing priority community health issues. In the area of the environment, the aims are: to conserve environmental resources; to prevent or minimise adverse impacts arising from operations; to demonstrate active stewardship of land and biodiversity; to promote good relationships with, and enhance capacities of, the local communities; and to respect people's culture and heritage.¹² These aims are to be implemented across all divisions and companies by adherence to a set of management principles so that Anglo's safety, health, environmental and social management systems 'are in line with international best practice'.¹³ Anglo aims to have fully implemented its SHE corporate management system by 2003.¹⁴ The company also draws attention to its involvement in sector-wide initiatives. Anglo is a member of both the Mining and Minerals Working Group of the World Business Council for Sustainable Development (WBCSD) and the Global Mining Initiative (GMI), a joint endeavour of ten major mining and metals companies to further the concept of

sustainable development and to explore the opportunities this creates for business excellence.¹⁵ It also subscribes to the ICME Sustainable Development Charter.

That there is an overlap between the company's own standards and initiatives and the *Guidelines* is apparent:

'Anglo American, our divisions and companies, will uphold the values of good corporate citizenship and seek to contribute to wider economic, social and environmental well-being in all the countries where we do business.' [Vision statement, *Safety, Health and Environment Report 2000*]

The aim of the *Guidelines*:

'...is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise.' [Revised *Guidelines*, Preface, paragraph 10]¹⁶

This confirms the perception that the *Guidelines* both complement and reinforce private efforts to define and implement responsible business conduct.¹⁷

A number of expectations follow from this principle of complementarity: that common ground exists should mean that application of the *Guidelines* is non-contentious; Anglo American should not view the *Guidelines* as incompatible with its corporate objectives; it should welcome their use, alongside its own codes, in the scrutiny of its operations; it should not seek to argue that the *Guidelines* do not apply to its conduct in Zambia.

ii. *Human rights instruments*

As part of the OECD Declaration on International Investment and Multinational Enterprises, adopted in 1976 and reaffirmed in 2000, adhering Governments 'jointly recommend to multinational enterprises operating in or from their territories the observance of the *Guidelines*...having regard to the considerations and understandings that are set out in the Preface and are an integral part of them'.¹⁸ Reference is made in the Preface to the international legal and policy framework in which business is conducted.¹⁹ The Universal Declaration of Human Rights is cited as part of this framework and its relevancy to corporate conduct duly noted.²⁰ As an integral part of the International Bill of Human Rights, the Universal Declaration is implemented via the two corresponding International Covenants on Civil and Political and Economic, Social and Cultural Rights.

Furthermore, the revised *Guidelines* specify that enterprises should:²¹

Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

It is pertinent to note that Zambia has ratified both International Covenants. It is therefore a requirement of the revised *Guidelines* that Anglo American respect the human rights of those affected by its activities in Zambia in accordance with provisions within these instruments. The Commentary on the revised *Guidelines* makes it clear that this respect for human rights applies not only to the dealings of MNEs with their employees, but also to their relations with others affected by their activities.²²

iii. *ILO labour standards*

The *Guidelines* in both original and revised form complement both the UN Principles and Rules on Restrictive Business Practices and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.²³ The latter, approved by the ILO Governing Body in 1977, is addressed to governments, business and labour in the ILO's 174 member countries, thereby lending considerable normative legitimacy to the Declaration.²⁴ Zambia is an ILO member State. The multinational companies involved in the privatisation of ZCCM, including Anglo American, all operate out of countries which are members of the ILO.

Whereas the *Guidelines* cover a broader range of issues pertaining to the conduct of multinational enterprises, the ILO Tripartite Declaration limits the extent of its consideration to the fields of employment, training, working conditions, and industrial relations.²⁵ However, in these specific areas the ILO Declaration provides more detailed standards. The accompanying Commentary gives explicit recognition to the use of the ILO Tripartite Declaration in interpreting the revised *Guidelines*:²⁶

'The OECD Guidelines and the ILO Tripartite Declaration refer to the behaviour expected from enterprises and are intended to parallel and not conflict with each other. The ILO Tripartite Declaration can therefore be of use in understanding the Guidelines to the extent that it is of a greater degree of elaboration.'

Both the OECD and ILO instruments are referred to in the analysis which follows, drawing on the scope of the former and the detail of the latter. Multinational enterprises, as well as employers' and workers' organisations, are recommended to observe the principles set out in the ILO Tripartite Declaration, again on a voluntary basis.²⁷ While all parties concerned should respect the sovereign rights of States and obey national laws and regulations, the Declaration places particular and specific emphasis on respect for international standards.²⁸ Concerned parties, including multinational enterprises, 'should respect the Universal Declaration of Human Rights and the corresponding International Covenants...as well as the Constitution of the International Labour Organisation and its principles according to which freedom of expression and association are essential to sustained progress.'²⁹ The ILO Tripartite Declaration constitutes guidance for all concerned parties, including multinational enterprises, when taking measures or adopting social policies.³⁰ In this regard, the relevancy of ILO Conventions and Recommendations for social policy formulation is underlined.³¹ Governments who have not ratified ILO Conventions Nos. 87, 98, 111 and 122 are urged to do so.³² All Governments, whether or not they are State parties to these Conventions, should apply the principles they embody through national policies. Governments are reminded of their obligation to ensure compliance with the Conventions they have ratified. Where there is non-compliance, all parties, including multinational enterprises, should refer to them for guidance in their social policy.³³

The sequence is clear: ILO labour standards and UN human rights instruments are to be used in interpreting the ILO Tripartite Declaration which may, in turn, be used in interpreting the *Guidelines*. Furthermore, there is no barrier to the use of the ILO Tripartite Declaration in the analysis of Anglo American's conduct over the entire period from its UK listing to the present day: complementarity is recognised in both the original and revised *Guidelines*.

The revised *Guidelines* further recognise the relevancy of the 1998 ILO Declaration on Fundamental Principles and Rights at Work.³⁴ The Commentary on Employment and Industrial Relations determines that the International Labour Organisation (ILO) is the competent body to set and deal with international labour standards, and to promote fundamental rights at work as recognised in its 1998 Declaration.³⁵ It is recognised that the provisions of the Employment and Industrial Relations chapter echo relevant provisions of the 1998 Declaration, as well as the Tripartite Declaration.³⁶ Furthermore, it is specified that the *Guidelines* have a role to play in promoting observance of ILO standards and principles among multinational enterprises. It is acknowledged that the principles and rights in the 1998 Declaration 'have been developed in the form of specific rights and obligations in ILO Conventions recognised as fundamental.'³⁷ It is therefore pertinent to refer to the corpus of ILO Conventions when interpreting the *Guidelines*. In this regard, reference is made not only to the ILO Declaration on Fundamental Principles and Rights at Work and the Tripartite Declaration, but also to the ILO Social Policy (Basic Aims and Standards) Convention 1962 (No. 117), the ILO Protection of Wages Convention 1949 (No. 95) and the ILO Termination of Employment Convention 1982 (No.158). While the relevancy of ILO standards to the *Guidelines* is reinforced by provisions in the revised text, the complementarity of the original *Guidelines* to the ILO Tripartite Declaration is a sufficient basis for their consideration.

iv. *Other OECD standards*

Reference must also be made to the recently adopted OECD Principles on Corporate Governance which address issues of corporate conduct relating to accountability to shareholders, relations with other stakeholders, disclosure and transparency, and board responsibility. As such, the Principles complement the *Guidelines* and are cited in the Preface to the latter revised instrument.³⁸ The first set of disclosure recommendations under the *Guidelines* is now identical to disclosure items outlined in the Principles and it is explicitly noted that the *Guidelines* should be construed in relation to the annotations which guide interpretation of disclosure under the Principles.³⁹

The OECD Corporate Governance Principles are intended 'to assist Member and non-Member governments...to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, and to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that have a role in the process of developing good corporate governance.'⁴⁰ They focus upon publicly traded companies, but are applicable, at least in part, to state-owned enterprises. Particular recognition is given to the global nature of investment and the need for strong corporate governance arrangements in order to attract 'patient' capital.⁴¹ The OECD Corporate Principles are also widely endorsed. Their development is the result of a decision taken at the Ministerial level among the Member countries of the OECD.⁴² Not only do they embody the views of Member countries on the issue of corporate governance, but non-OECD countries, the World Bank, the International Monetary Fund, the business sector, investors, trade unions, and other interested parties were all consulted in their formulation.⁴³

v. *Other instruments*

Further reference is made in the revised *Guidelines* to the Rio Declaration on Environment and Development and Agenda 21 and to the Copenhagen Declaration for Social Development.⁴⁴ In relation to the former, it is recognised that the text of the Environment Chapter broadly reflects the *principles* and objectives contained in Agenda 21 of the Rio Declaration.⁴⁵ Based on the recognition of the relevancy of the Copenhagen Declaration, use will be made of certain of its provisions where these complement recommendations within the *Guidelines*.

Notes

- ¹ The three other parts to the Declaration are *The National Treatment Instrument* (NTI) on the equal treatment of foreign and domestic enterprises; an instrument to improve cooperation on *International Investment Incentives and Disincentives*; and an instrument seeking to minimise or avoid *Conflicting Requirements* imposed by different countries on multinational enterprises. See *The OECD Declaration and Decisions on International Investment and Multinational Enterprises - Basic Texts* (Paris: OECD, 1992). Major reviews in 1979, 1982, 1984, and 1991 contain clarifications, comments and explanations on the *Guidelines*. When the text of the *Guidelines* was revised in 2000, a new commentary was issued.
- ² *The OECD Guidelines for Multinational Enterprises*, GD(97)40, op. cit., Chapter I. Introduction, p.4.
- ³ As of 27 June 2000, the non-Member countries of Argentina, Brazil, Chile and the Slovak Republic have adhered to the *Guidelines* as part of the OECD Declaration on International Investment and Multinational Enterprises.
- ⁴ *Original Guidelines*, preface, para. 7. This principle is unaltered under the *Revised Guidelines*: the text of the clause is simplified (*Revised Guidelines*, I. Concepts and Principles, para. 7).
- ⁵ *Ibid.*
- ⁶ *The OECD Guidelines for Multinational Enterprises*, GD(97)40, op. cit., Chapter IV. Commentary on the Guidelines, p. 21. See also *Revised Guidelines*, Commentary on General Policies, para. 2.
- ⁷ See, for example, *Revised Guidelines*, Commentary on General Policies, para. 2: 'While the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements.'
- ⁸ *Original Guidelines*, General Policies, paras. 1 & 2.
- ⁹ *Revised Guidelines*, II. General Policies, para. 5.
- ¹⁰ See *Revised Guidelines*, Preface, paras. 6 and 7.
- ¹¹ Anglo American plc, *Annual Report 2000*.
- ¹² *SHE Report 2000*, p.1.
- ¹³ Chief Executive Officer's Letter, *SHE Report 2000*, p.9.
- ¹⁴ *Ibid.*
- ¹⁵ *SHE Report 2000*, p.7.
- ¹⁶ An almost identical formulation is to be found in the *Original Guidelines*, preface, para. 2.
- ¹⁷ *Revised Guidelines*, Preface, para. 7.
- ¹⁸ Declaration on International Investment and Multinational Enterprises, 27 June 2000, part I. The formulation used in the text of the 1976 Declaration is essentially similar.
- ¹⁹ See, respectively, *Revised Guidelines*, Preface, para. 8; Commentary on General Policies, para. 4: 'The Universal Declaration of Human Rights and other human rights obligations of the government concerned are of particular relevance in this regard.'
- ²⁰ *Idem.*
- ²¹ *Revised Guidelines*, II. General Policies, para. 2.
- ²² *Revised Guidelines*, Commentary on General Policies, para. 4.
- ²³ *The OECD Guidelines for Multinational Enterprises*, GD(97)40, op. cit., p. 28; also *idem*, Chapter II, p.7. *Revised Guidelines*, Commentary on Employment and Industrial Relations, para. 20.
- ²⁴ ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 4: 'The principles set out in the ILO Declaration are commended to governments, employers' and workers' organisations of home and host countries and to the multinational enterprises themselves.'
- ²⁵ See *Revised Guidelines*, Commentary on Employment and Industrial Relations, para.20; also ILO Tripartite Declaration, para. 7.
- ²⁶ *Revised Guidelines*, Commentary on Employment and Industrial Relations, para.20.
- ²⁷ The recommendation is likewise addressed to Governments. However, nothing in the Declaration shall 'limit or otherwise affect obligations arising out of ratification of any ILO Convention.' In other words, primacy is given to the binding undertakings of State parties.
- ²⁸ See ILO Tripartite Declaration, paras. 8 and 9: all concerned parties should respect the Universal Declaration and the two International Covenants, as well as ILO standards. Furthermore, in para. 5, multinational enterprises and other concerned parties are advised to consider ILO Conventions and Recommendations in formulating social policy and action.
- ²⁹ ILO Tripartite Declaration of Principles, para. 8.
- ³⁰ ILO Tripartite Declaration of Principles, para. 5.
- ³¹ *Idem.*
- ³² ILO Tripartite Declaration of Principles, para. 9. Respectively, Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - ratified by Zambia on 23/10/1979; and Employment Policy Convention, 1964 (No. 122) - ratified by Zambia on 23/10/79.
- ³³ ILO Tripartite Declaration of Principles, para. 9.
- ³⁴ *Revised Guidelines*, Preface, para. 8.
- ³⁵ *Revised Guidelines*, Commentary on Employment and Industrial Relations, para. 20.
- ³⁶ *Idem.*
- ³⁷ *Revised Guidelines*, Commentary on Employment and Industrial Relations, para. 20.
- ³⁸ Specific references are made to the *Guidelines* within the Preamble, para. 4, of the OECD Principles on Corporate Governance. Furthermore, in the annotations to the principle of disclosure and transparency within the Principles, reference is made to the relevancy of the *Guidelines*. See *OECD Principles of Corporate Governance*, SG/CG(99)5 (Paris: OECD, 1999), Chapter IV, Disclosure and transparency, p.19. To underline this complementarity, the Principles are cited in the Preface to the *Revised Guidelines*, para. 9.
- ³⁹ *Revised Guidelines*, Commentary on Disclosure, para. 13.
- ⁴⁰ OECD Principles of Corporate Governance, Preamble, para. 1.
- ⁴¹ *Ibid.*, Preamble, para. 5. The term 'patient' is not further defined; however it is assumed to refer to investment which is sustainable and non-exploitative.
- ⁴² The OECD Council, meeting on 27 - 28 April 1998, called for the development of corporate governance guidelines and standards. An Ad Hoc Task Force on Corporate Governance was tasked with developing the Principles. See *OECD Principles of Corporate Governance*, SG/CG(99)5, op. cit., introductory paragraph, p. 2.
- ⁴³ *Idem.*
- ⁴⁴ *Revised Guidelines*, Preface, para. 8.
- ⁴⁵ *Revised Guidelines*, Commentary on the Environment, para. 30.

Anglo American plc

Adherence to the OECD Guidelines for Multinational Enterprises in respect of its operations in Zambia

Submission to the UK National Contact Point

Substantive concerns

January 2002

RAID

Rights & Accountability in Development



Inter-African Network for Human Rights & Development

Principal abbreviations

AIDS	Acquired Immune Deficiency Syndrome
BIAC	Business and Industry Advisory Committee
CDC	Commonwealth Development Corporation
CEP	Copperbelt Environment Project
COMET	Copper Mines Enterprises Trust
EA	Environmental Assessment
EAZ	Economic Association of Zambia
ECZ	Environmental Council of Zambia
EIS	Environmental Impact Statement
EMF	Environmental Mitigation Fund
EMP	Environmental Management Plan
ERIP	Economic Recovery and Investment Promotion Credit
ESAC	Economic and Social Adjustment Credit
ESAF	Enhanced Structural Adjustment Facility
GMI	Global Mining Initiative
GRZ	Government of the Republic of Zambia
HIV	Human Immunodeficiency Virus
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
ICME	International Council on Metals and the Environment
ICR	Implementation Completion Report
IDA	International Development Association
IDF	Import Declaration Fee
IFC	International Finance Corporation
ILO	International Labour Organisation
KCM	Konkola Copper Mines
MCM	Mopani Copper Mines
MMD	Movement for Multiparty Democracy
MUZ	Mineworkers Union of Zambia
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Development
PAR	Performance Audit Report
PID	Project Information Document
PIRC	Privatization and Industrial Reform Credit
PRA	Privatisation Revenue Account
PSREPC	Public Sector Reform and Export Promotion Credit
R&R	Report and Recommendation to the Executive Directors
RAID	Rights and Accountability in Development
RAMCZ	Roan Antelope Mining Company of Zambia
SHE	Safety, Health and Environment
TUAC	Trade Union Advisory Committee
WBCSD	World Business Council for Sustainable Development
WHO	World Health Organisation
ZACCI	Zambia Association of Chambers of Commerce and Industry
ZAM	Zambia Association of Manufacturers
ZCCM	Zambia Consolidated Copper Mines Ltd
ZCCM-IH	Zambia Consolidated Copper Mines Investment Holding Company
ZCI	Zambia Copper Investments Ltd
ZPA	Zambia Privatisation Agency

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Anglo American plc

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Substantive concerns

Seven areas of concern

The initial focus (a) is upon how Anglo American used its influence to set the parameters for the privatisation of ZCCM in the preparatory phase. (b) It was later to use its privileged position as the principal minority shareholder in ZCCM to secure exclusive treatment in the actual sale: its conduct is examined against the benchmark of the *Guidelines* under the rubric of anti-competitive practice. The remaining sections examine five substantive areas of concern in detail: (c) exclusive financial incentives and concessions; (d) the extent of continued social provision; (e) employment, training and co-operation with local business; (f) environmental deregulation; and (g) disclosure and accountability.

The preparatory phase of the privatisation of ZCCM lasted from September 1994 when the Kienbaum report was completed until June 1996 when the subsequent Rothschilds report was accepted by the ZCCM board. Anglo American therefore exerted its initial influence during this phase at a time when it was not a UK registered company. Similarly, during the actual sale, it also signed a number of memorandums of understanding with the Government prior to its listing on the London Stock Exchange in May 1999.

The initial phase - A consideration of the company's conduct in respect of the *Guidelines* prior to its UK registration is warranted because the negotiations it had entered into to purchase ZCCM assets were not finalised until the end of March 2000. The company's conduct after its UK listing was informed by its prior conduct. Its actions, viewed as a continuum, had repercussions contrary to the *Guidelines* after May 1999 and continue to have such repercussions to the present day. The review of Anglo's actions during this initial phase is principally carried out with reference to the text of the original *Guidelines*. However, when the company's conduct during this period causes continuing harm in the absence of redress or when the company continues to the present day to derive benefit from such prior conduct, then the *Guidelines* in force throughout the time during which advantage is derived or failures persist must apply. Under these circumstances, appeal is therefore made, on occasion, to the revised *Guidelines*.

The interim phase - The company's conduct between its UK listing in May 1999 and 27 June 2000 is also reviewed principally in respect of the original *Guidelines* in force at the time. However, occasional reference is again made to the revised *Guidelines* when the principles of continuing benefit and/or failure of redress apply.

The current phase - The company's conduct after 27 June 2000 is reviewed solely in respect of the revised *Guidelines*, adopted on that date.

a. Influencing the regulatory framework: the rejection of the Kienbaum report and the setting of parameters for the Rothschilds report

The influence of private companies on Government policy and the regulatory environment is recognised as an area of concern under the original *Guidelines* which were in force when Anglo's purchase of the core of ZCCM was concluded. Hence, enterprises should '[t]ake fully into account established general policy objectives of the Member countries in which they operate' and '[i]n particular, give due consideration to those countries' aims and priorities' with regard to, *inter alia*, economic and social progress, including industrial and regional development, the protection of the environment and consumer interests.¹ This is a sufficient basis for examining Anglo's influence vis-a-vis the setting of the parameters for the ZCCM sale. Citing the principles of continued benefit and failure of redress, it is also pertinent to consider the concern over regulation and prior influence articulated in the revised *Guidelines*:

Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets.²

Governments are called upon to provide 'effective domestic policy frameworks' that include, *inter alia*, non-discriminatory treatment of firms, appropriate regulation and prudential supervision, impartial law enforcement and efficient and honest public administration.³ From this endorsement, it follows that enterprises should neither obstruct the development of such a domestic framework nor actively pursue exemptions from it. There is recognition within the revised *Guidelines* that MNEs face a variety of legal, social and regulatory settings and that unscrupulous enterprises may exploit this circumstance.⁴ Hence enterprises are encouraged to co-operate in the development and implementation of policies and laws.⁵ When they act with Government in the development of regulation, enterprises are expected to consider the views of other stakeholders, to do so in a spirit of partnership, and to use the *Guidelines* as one element in their approach.⁶ Conversely, when companies use their influence to engineer inappropriate and anti-competitive regulation which is at odds both with the principles of sustainable development and equity, then they must do so in contravention of the *Guidelines*.

A fundamental part of the framework for regulating the privatisation of ZCCM are those studies which recommended how the conglomerate was to be split up and sold. From the outset, Anglo American sought to exert an influence on the way in which the privatisation was to proceed, to the point where it used its position on the ZCCM board through its ZCI appointed directors to disapprove the Kienbaum report. This study did seek to address the implications of disentangling ZCCM's social and commercial functions.⁷ A system of tax credits was to be used to prevent the rapid withdrawal of private companies from social provision after the sale of ZCCM.⁸ Services were to be offered at a subsidised price by the new owners to allow for their use by poor residents.⁹ Concerned by a systematic and deliberate reduction in local government funding, the consultants recommended a review of council budgets and emphasised the need to plan for any transfer of social responsibilities in advance.¹⁰ This proposal and others in the Kienbaum study were never taken forward and the report as a whole was rejected. The abandonment of the system of social incentives it proposed is at odds with the concept of sustainable development recommended in the *Guidelines* and articulated within Anglo American's own corporate standards.¹¹ It is important to discover the company's reasons for its own opposition to the report.

Anglo American insists: 'We urged the new MMD Government to proceed with privatisation as fast as possible from the early 1990s, largely because we were aware that the long-term under-investment in the mines was in danger of triggering terminal decline.'¹² Yet the World Bank has expressed its frustration over the position of both certain politicians and Anglo American which it viewed as the driving force behind the rejection of the first study:

'ZCCM was a powerful company able to resist privatisation because of its deep links with parliamentarians. It was also partially owned by Anglo-American (about 26 per cent) complicating the decision to privatise....The first preparatory study for privatization made recommendations which Anglo-American did not accept. Eventually, a new preparatory study was launched early in 1995; its recommendations were accepted and they are the basis for the current negotiation of the sale.'¹³

The company stated publicly that it opposed the splitting-up of ZCCM on the grounds of inefficiency and the difficulty of organising investment.¹⁴ An underlying reason was that Anglo would stand to become the controlling shareholder if the company was to be privatised as a single unit.¹⁵

The Bank has described the failure to privatise ZCCM expeditiously after the completion of the initial Kienbaum study as 'a missed opportunity' which would have 'helped prevent its deteriorating financial condition and might have given

the private sector significant growth impetus.¹⁶ The Parliamentary Committee on Economic Affairs and Labour has reached the same conclusion: that the rejection of the Kienbaum resulted in a delay in unbundling ZCCM 'at great loss to the country.'¹⁷

Significantly, it is apparent that the subsequent report by Rothschilds had to be acceptable to Anglo American: the Bank concedes that the rights of other ZCCM shareholders had to be considered and protected in drawing up the privatization plan.¹⁸ Others were not consulted. The Mineworkers' Union of Zambia (MUZ), for example, has confirmed that while it was consulted as a key and important stakeholder in the preparation of the Kienbaum report, their views were not sought in the drawing up of the Rothschilds report.¹⁹ In order for privatisation to proceed broadly in accordance with the latter, a memorandum of understanding was drawn-up between Anglo/ZCI and the Government of Zambia.²⁰ This confirmed, *inter alia*, that ZCI appointed directors would give proper consideration to bids and vote in favour of proposals from bidders where, in their opinion, acceptance would be in the best interests of ZCCM and its shareholders.²¹ As the proposed sale process was to unbundle ZCCM and to sell a majority holding in the relevant package to the selected buyer at the first stage, followed by the disposal of the Government's remaining holding at the second stage, Anglo/ZCI also agreed to waive its pre-emptive rights to purchase shares. Overall, however, and notwithstanding this understanding between the Government and Anglo/ZCI, it is essential to recognise that the B directors appointed by the company retained the right to vote on the final acceptance or rejection of each winning bid and that a key criterion in reaching a decision in each case is the extent to which the deal is deemed to be in the best of interest of the company and its shareholders. The crucial influence of Anglo American is confirmed in an attachment to the Rothschilds report, reproduced as a document in a court case brought over the alleged mis-sale of one of the ZCCM packages:

'The Board of Directors of ZCCM comprises GRZ and ZCI [an Anglo subsidiary] directors. Despite GRZ directors been [sic] in the majority[,] the Articles of Association provide that any decision to dispose of major assets or shares of ZCCM requires approval by a quorate of directors. A decision can therefore not be made by simple majority and requires the consent of both sets of directors....The Agency [ZPA] Members should note that while the objectives of GRZ in the privatisation of ZCCM are broad and encompassing, those of the minority shareholders may be narrower and focusing [sic] more on maximising value for their shareholding in ZCCM in the short and long term. For instance, the objective of diversifying ownership of Copperbelt assets may not necessarily be consistent with that of maximising value...Therefore, any decision reached in the sale of ZCCM's assets will require a delicate balance between these possibly varying objectives of GRZ and the minority shareholders.'²²

The Rothschilds report, drawn up within the parameters acceptable to, *inter alia*, Anglo American, became the blueprint for privatisation. As such, it should be viewed as a crucial part of the regulatory framework. It established the way in which ZCCM was to be unbundled and privatised by competitive tender. It detailed a programme of deep-seated rationalisation and mass retrenchment. It identified the need for concessional funding to cover the cost of these redundancies. In the narrow interests of a rapid sell-off of the loss making conglomerate, it set aside an assessment of ZCCM's complex social role and plans for the future delivery of services after privatisation. The ad hoc solution adopted was the use of development agreements under which the new buyers were to run social assets in the short-term for two years. Yet the model development agreements proposed - covering many areas of concern under the *Guidelines* - undermined and weakened protection in the areas of social provision, environmental protection, sustainable development and regulation of the fiscal and financial regime. However, the model development agreement as sketched represented the *minimum* advantages which a new proprietor was likely to enjoy. Anglo American, as a precondition in its purchase of the core assets of ZCCM, has sought and secured exemptions and incentives over and above those agreed in the Rothschilds report and the standardised development agreements. This appears to be in direct contravention of the recommendation under the revised *Guidelines*:

[E]nterprises should: Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.²³

It is appropriate to consider the exemptions secured by Anglo against the benchmark of the revised *Guidelines* as the company continues to derive significant benefit from these concessions and should now operate in full accordance with current OECD standards. An assessment of its conduct vis-a-vis taxation and finance and the environment is undertaken in sections (c) and (f), respectively. The immediate concern in the next section is with the actual sale and those aspects of Anglo American's conduct which appear to be anti-competitive.

b. Anti-competitive practices

In the initial stages of the second phase - the actual sale of ZCCM - a number of bidders pre-qualified and bids for all the packages were received by the target date of 28 February 1997. The aim was to complete the privatisation by June 1997. Unfortunately, the sale of ZCCM did not proceed according to plan. On the contrary, it has been characterised by delay, indecision on the part of the MMD administration, overt pressure from multilateral donors, and corporate exploitation of the Government/ZCCM's weak bargaining position in a falling copper market. By September 1998, over two years after the privatisation was announced, less than 20 per cent of the conglomerate's operating capacity had passed into private ownership.²⁴ As of January 2000, the sale of the key mine packages at the core of ZCCM - Konkola, Nkana, Nchanga and Mufulira divisions - had still not been finalised. The conclusion reached by *The Economist* magazine in November 1999 is damning: 'As an object lesson in how not to privatise, the sale of Zambia Consolidated Copper Mines (ZCCM) is exemplary.'²⁵ *Mining Magazine*, in a review of the ZCCM sale, is of the view that '[s]adly, it has been one of the most protracted and problematic mining industry privatisations of all time.'²⁶

There are three aspects to Anglo American's conduct in the privatisation of ZCCM which can be construed as anti-competitive: first, its negotiation of an exclusive option to purchase huge copper reserves outside of the main sale; second, its stipulation of clauses within a memorandum of understanding which allowed the company to redefine the mine sales packages and to delay concluding its own Konkola purchase until the sale of other key assets had been concluded; and, thirdly, the misuse of its strong negotiating position to secure advantages not enjoyed by its competitors.

i. *The exclusive option to purchase Konkola Deep*

Under the rubric of competition within the original *Guidelines*, enterprises should:

'[r]efrain from actions which would adversely affect competition in the relevant market by abusing a dominant position of market power, by means of, for example: a) Anti-competitive acquisitions...'²⁷

A memorandum of understanding was originally signed on 11 February 1997 between the Government and a consortium led by Anglo American to conduct feasibility studies into developing mining at Konkola South.²⁸ The exclusive arrangement reflected Anglo/ZCI's powerful position as the principal minority shareholder in ZCCM. ZCCM was to retain a 20 per cent holding in the project. As well as the existing Konkola mine, the concession encompasses massive untapped copper deposits. Initial reserves are estimated at 350 million tonnes of high-grade copper ore, sufficient to sustain mining for thirty years. These deposits are to be explored and mined through the Konkola Deep Mining Project.

Konkola was the only mine package *not* to be offered for sale by competitive tender. Given its potential and its pivotal importance to the future of the Copperbelt, it is reasonable to question why other mining companies were not invited to bid for this asset? It is apparent that Anglo American's own opposition to the unbundling of ZCCM was dropped after the company had entered into negotiations to purchase Konkola outside of the main sale.²⁹ This arrangement is confirmed in the ZCCM Chairman's Statement for the year ended 31 March 1996. By the time the Rothschilds report was accepted by the ZCCM board in June 1996, Anglo American's claim on Konkola was already established. It is also implausible to argue that the fact of Anglo's preemptive rights meant that an exclusive deal over Konkola was inevitable and that alternative means of disposing of the asset were precluded. When other ZCCM asset packages were privatised by competitive tender, arrangements were, of course, in place whereby Anglo/ZCI waived its preemptive rights.

It is further specified under the original *Guidelines* that enterprises should:

'[r]efrain from participating in or otherwise purposely strengthening...restrictive agreements which adversely affect or eliminate competition and which are not generally or specifically accepted under applicable national or international legislation'.³⁰

The exclusive arrangement to purchase Konkola secured by Anglo was evidently restrictive and anti-competitive: other companies were deprived of the opportunity of bidding for the package. It is also apparent that the company derived benefit from its option over Konkola when negotiations to purchase the core assets of ZCCM were still underway throughout 1999 and the first quarter of 2000. By this time, the company was UK listed and should have acted in accordance with the prohibitions on anti-competitive practice set out in the *Guidelines*. Yet it could be argued that Anglo American, in securing the Konkola option, conducted its affairs within the bounds sanctioned by the Government. Indeed, under the Competition chapter of the *Guidelines*, the caveats 'while conforming to official competition rules and established policies of the countries in which they operate' and 'not generally or specifically accepted under applicable national legislation' apply.³¹ However, it is apparent that Konkola was not packaged and sold in the same way as other

ZCCM assets in accordance with established policy: it did not figure in the mine packages identified by Rothschilds to be sold by competitive tender whereas it had been included in the previous Kienbaum study; nor was it ever envisaged that it would be disposed of by the ZPA in accordance with existing legislation, i.e., the Privatisation Act. The key question is to what degree the Government was compelled to accede to Anglo American's demands? This much is clear: Anglo American had already been instrumental in rejecting the recommendations of the Kienbaum study and, because of its position on the ZCCM board and by virtue of its pre-emptive rights, the company was in a position to block the privatisation process. In other words, unless a deal was brokered with Anglo American, then ZCCM could not be split up and sold.

ii. Anti-competitive and restrictive provisions arising from the memorandum of understanding

Anglo American negotiated a memorandum of understanding which was detrimental to the sale of other ZCCM assets in two other major respects: (1) it enabled it to delay the purchase of Konkola until after the sale of other core assets had been concluded, a provision which became significant in the light of the collapse of the bid by the Kafue Consortium to buy the key Nkana and Nchanga mines; and (2) it allowed the company to change the recommended sale packages, thereby threatening the viability of certain operations.

1) Postponement of the Konkola purchase: unreasonable refusal to deal

Under the original *Guidelines*, it is recognised that enterprises should:

[r]efrain from actions which would adversely affect competition in the relevant market by abusing a dominant position of market power, by means of, for example:...c) Unreasonable refusal to deal...³²

The purchase of Konkola by Anglo was always conditional on the prior sale of the Nkana and Nchanga mines. This stipulation, framed within the memorandum of understanding, can be construed as an unreasonable refusal to deal which adversely affected competition and therefore ran contrary to the *Guidelines*. Again, the fact that the Government was party to this arrangement is not an adequate defence: it is difficult to explain why the Government would have agreed to these stipulations if it had not been under pressure from Anglo American to do so.

Despite initial progress in selling non-operational and smaller ZCCM mines, as well as the Power Division, the failure to conclude the sale of the Nkana/Nchanga mines to the Kafue Consortium is recognised as marking the point at which the privatisation stalled. The Consortium comprised three major international mining companies - Phelps Dodge of the USA, Noranda of Canada, and Avmin of South Africa - and the UK Commonwealth Development Corporation to provide development finance. A year of protracted negotiations saw the replacement of ZPA/Rothschilds by a Government/ZCCM negotiating team in apparent contravention of the Privatisation Act; the refusal of the Government team to accept a deal in June 1997 worth over \$1 billion in cash, debt assumption, and investment; the excise of the Chibuluma Mine from the overall Nkana/Nchanga package to be sold to a rival bidder; a collapse in the price of copper reflecting overproduction and continued repercussions from the Sumitomo trading scandal;³³ the failure of the Government to conclude a deal worth a total of \$700 million it had accepted in October 1997; the onset of recession in Asia and Japan and further falls in the copper price; and progressively lower bids by the Consortium, culminating in a reduced final offer in May 1998 which were flatly rejected. The Consortium dissolved and all its former members finally pulled out of negotiations in June 1998.³⁴ The Zambia Association of Chambers of Commerce and Industry (ZACCI) and the Zambia Association of Manufacturers (ZAM), together with many analysts, are critical of what they perceive as the mishandling and eventual collapse of the sale.³⁵ ZAM is of the view that the reasons behind the failure of the deal have never been adequately explained.³⁶

When the sale of the Nkana and Nchanga package to the Kafue Consortium collapsed, the pressure on Anglo to finalise its purchase of Konkola was removed while its rights to the Mufulira smelter, to all intents and purposes, precluded the privatisation of the remainder of the package. The privatisation of ZCCM was effectively halted while the conglomerate continued to lose between an estimated \$1 million to \$2 million each day. At the same time, World Bank conditionality regarding the sale of ZCCM hardened. Previously, disbursement of its credits, although linked to progress towards privatisation, had avoided tying support to the actual sale of ZCCM 'in order to keep the playing field level for ZCCM and the Government vis-à-vis potential buyers.'³⁷ However, the effective collapse of the Nkana/Nchanga deal prompted the multilaterals to withhold balance of payments support. The release of \$235 million pledged at the consultative group meeting on May 1998 was made conditional on the swift privatisation of ZCCM.³⁸ The Government was forced to plunder its foreign currency reserves and even transfer resources out of the domestic budget. The equivalent of \$183 million was transferred from the domestic budget in 1998 alone to meet servicing on foreign debt.³⁹ Any vestige of the Bank's policy which resisted tying balance of payments support to the final sale of ZCCM, on the grounds that potential buyers could exploit such conditionality for their own ends in negotiations, was therefore abandoned.

It is in this context, when the Government was dependent upon the restoration of balance of payments support, that Anglo American entered into talks to repackage the remaining bulk of ZCCM to its advantage. In August 1998, the company indicated that it would be willing to operate Nkana and Nchanga on a management contract. In October 1998, it affirmed its interest in buying Konkola, Nkana, Nchanga and Nampundwe pyrite mine as a single package. Indeed, it was not until the company had signed an initial memorandum of understanding with the Government over the purchase of Nkana, Nchanga and Konkola on 24 November 1998, that the donor community indicated that it would consider the approval and release of funds.

The Bank's long-awaited \$170 million Public Sector Reform and Export Promotion Credit was approved by the Bank's Board of Executive Directors on 26 January 1999, but only after the memorandum of understanding between the Government/Anglo American over the sale of remaining ZCCM assets had been affirmed in a 'final' agreement signed on 19 January 1999.⁴⁰ The first \$65 million tranche of the PSREPC was specifically designed to facilitate completion of the privatisation of ZCCM by bankrolling a labour reduction program required by Anglo.⁴¹ However, further payments were linked to the completion of the ZCCM sale.⁴² At the end of March 1999, the IMF Board finally approved its follow-on ESAF worth a total of \$349 million and designed to support the 1999/2001 economic and financial program as outlined in the Policy Framework Paper agreed between the Fund, Bank and the Government.⁴³ IMF lending in the first year, worth \$55 million, was conditional not only on a number of fiscal and monetary benchmarks, but also on structural performance criteria to include continued 'substantial progress' being made in the privatisation of ZCCM which was understood by the Zambian Government to mean 'the transfer of the major asset packages of the ZCCM.'⁴⁴

Before the sale to Anglo could be concluded, a number of preconditions arising from the January agreement had to be met: the securing of third party 'non-recourse' financing; an agreement with an international mining company to partner Anglo in the venture; confirmation on the part of Government that ZCCM would implement a redundancy programme on the basis of finance secured from multilateral donors; and the completion of a favourable due diligence study. The hopeful deadline for the completion of the privatisation by 31 March 1999 passed. Anglo entered into talks with several major mining houses over partnership arrangements, but no deal was struck. In April 1999, IMF Directors, while welcoming 'recent progress made in the sale of the major assets of the ZCCM to a prominent international mining house' noted that 'the sales agreement had not yet been finalized, and strongly urged the authorities to do everything in their power to expedite the transfer of the assets.'⁴⁵ Without the assurance of a partner to spread the risk of investment, Anglo successfully modified its proposal of January 1999. The Government signed revised heads of agreement on 27 October 1999 which was converted to a sale and purchase agreement officially signed on 15 December 1999, setting a deadline of 31 January 2000 for completion of the sale.

On 27 January 2000, Anglo American confirmed yet another setback in finalisation of the sale. The company blamed complex legal and administrative problems for the delay. The Government downplayed speculation about the failure to complete by the January 31 deadline, referring to this as an arbitrary target date.⁴⁶ In an address to Parliament on 27 January, the Minister of Mines cited low copper prices as a factor which made the conclusion of the sale difficult. Others pointed to delays in securing finance for the sale and in agreeing arrangements for retrenchments. On the same day, extensive concessions to the buyers of the remaining ZCCM were framed in the budget. The Government also announced that it would make provision to pay miners their redundancy packages and would meet ZCCM's obligations to creditors. K423 billion, the equivalent of 4 per cent of GDP, has been set aside to settle part of ZCCM's colossal debt to local suppliers. The sale of the core of ZCCM to Anglo American was finally completed on 31 March 2000.

The *Guidelines* apply to Anglo American's conduct. Firstly, there is no doubt that Anglo American continued to benefit for a considerable period of time from the provision in the memorandum of understanding which allowed it to delay its purchase of Konkola. Indeed, the purpose of the provision was precisely to maintain Anglo American's strong negotiating position into the future. The original memorandum might have been signed in February 1997, but its effect lasted for over three years, right up until the deal to purchase the core of ZCCM was concluded by Anglo American on 31 March 2000. By this time - and by virtue of its registration in the UK - the company had fallen under the purview of the *Guidelines* for almost a year. Secondly, the company's LSE listing was not accompanied by a reversal of its anti-competitive strategy. Anglo American's conduct of negotiations after May 1999 is characterised by a refusal to conclude the deal, a stance it was able to maintain until all the other aspects of the ZCCM sale had been finalised to its satisfaction. Anglo American is of the view that '[i]t was a considerable achievement to have concluded the transaction in such a short period.'⁴⁷ In contradistinction, the Secretary to the Treasury has cited the delay of Anglo/ZCI in making a decision on final package of assets and constant repackaging demands of the purchasers as a problematic for the privatisation of ZCCM.⁴⁸ The Permanent Secretary to the Ministry of Mines and Minerals Development has made the same observation.⁴⁹ The Chairman of the GRZ/ZCCM Privatisation Negotiation Team has confirmed that: 'The international donor community's linking of ZCCM privatisation to the [sic] Balance of Payment support...was used by potential buyers to pressurise the government to sell the mines at any price'.⁵⁰

The price paid for the productive core of ZCCM amounted to just \$90 million in cash, the bulk of which is on deferred payment terms. In terms of initial investment, the expectation is that \$260 million will be committed in capital expenditure to rehabilitate Nchanga, the existing Konkola mine and facilities, and Nampundwe. Anglo is to provide investment capital of at least \$208 million, but a sizeable proportion of the initial investment is to be delivered by the International Finance Corporation (IFC) and the UK's Commonwealth Development Corporation (CDC). The former is to invest \$30 million in equity and loans. A similar level of investment is to come from CDC: both corporations will each hold a 7.5 per cent stake in KCM. Anglo/KCM is to commence implementation of the Konkola Deep Mining Project (KDMP) within eighteen months. The cost of developing KDMP is calculated at \$523 million.⁵¹

In stark contrast, the offer of the Kafue Consortium - for broadly comparable assets but *excluding* Konkola and KDMP - accepted in October 1997, but never successfully concluded by the Government/ZCCM, was worth \$150 million in cash, with debt take-over of \$75 million, and investment commitments of \$400 million. ZCCM was to retain a 12 per cent holding and benefit from profit sharing worth up to \$75 million. Even the Consortium's reduced offer at the end of March 1998 had been worth \$105 million in cash with the assumption of \$35 million debt and retention of the profit sharing component: 'How badly the country has been served since then, by those who have allowed the value to fall so far to what it is today. Quite apart from the loss in value of the operations, what has been the toll caused by disrupting management and destabilising the workforce in general?'⁵²

The misgivings of ZACCI over the low price obtained for the major assets by Anglo American Corporation is recorded in the report of Parliamentary Committee into the privatisation of ZCCM.⁵³ The Association viewed the incentives given to Anglo as excessive given the price it had paid for the assets. Likewise, the views of ZAM, in the light of the collapse of the Kafue deal, are recorded in the same report: 'the long lead-time in effecting a sale to Anglo led to a 'fire sale' and a diminution of the return for the sale of these assets. In ZAM's view, the final deal took too long to conclude and that by the time it was concluded the sale was lopsided in favour of the buyer.'⁵⁴ ZAM observed that the Government had virtually paid Anglo to take the mines.⁵⁵ *The Economist* concluded:

'Anglo American, the original owners of many of Zambia's mines, will pay only \$90m for three mines in one of the richest copper deposits in the world. Last year, Zambia turned down an offer worth nearly twice as much.'⁵⁶

The objectives of the privatisation plan for ZCCM were, *inter alia*, to 'diversify ownership of Copperbelt assets' and to 'conduct the privatisation as quickly and transparently as was consistent with good order'.⁵⁷ After a protracted sale, the final outcome is that one company - Anglo American - has either bought or controls the core assets of ZCCM.

2) *Excise of the Mufulira smelter and preconditions relating to the sale of Nkana Division*

Anglo American has fully exploited its privileged position as the principal minority shareholder in ZCCM. At the very outset, in accepting the Rothschilds report, the ZCCM board, including Anglo/ZCI directors, indicated that the recommended packages were open to alteration: 'It should be noted...that the eventual composition of these packages will very much depend on the reactions of the buyers and the outcome of individual negotiations. For this reason, and in order to obtain optimum results, it will be necessary for the Government to exercise flexibility in its responses to proposals by the buyers.'⁵⁸

It is appropriate to recall the provision under the original *Guidelines* which specifies that enterprises should refrain from participating in restrictive agreements which adversely affect or eliminate competition.⁵⁹ By virtue of the initial agreement it signed with the Government in February 1997, Anglo American secured the option to buy the Konkola concentrator, together with the refinery and modern smelter excised out of the Mufulira sale package, in order to process the mined copper ore. This constituted a restrictive agreement. Once more, official competition rules, as specified under the Privatisation Act were set aside. The arrangement ran contrary to established policy and was not in accordance with the sale package recommended by Rothschilds. Mufulira Division, designated as package C, originally comprised the mine and associated refinery and smelter. The mine itself extends deep underground and mining is technically difficult. The refinery and modern electric smelter were therefore seen as crucial to the Division's profitability. As well as extracting copper from the ore produced by the Mufulira mine, excess capacity in the smelter can be sold at a profit to process copper product from other mines.

The option secured by Anglo to hive-off the smelter and refinery from the Mufulira package was perceived as a threat to the viability of the Mufulira mine and caused significant controversy in Zambia. The MUZ has confirmed that it objected strongly to the original intention to split Mufulira in two.⁶⁰ The long delay in disposing of the Mufulira package must reflect the uncertainty over its future created by the original memorandum of understanding signed with Anglo American. One of the key problems of the privatisation of ZCCM is identified by the Chairman of the GRZ/ZCCM Privatisation Negotiating Team as: 'The lack of interest in Mufulira Division due to the fact that a Memorandum of

Understanding had already been signed with Anglo American Corporation for the development of KDMP including Mufulira Smelter.⁶¹

It was only after the collapse of the Kafue deal and moves by Anglo American to renegotiate its own options that Mufulira's future was clarified. When, in October 1998, the company put forward a proposal to buy the core of ZCCM, it indicated that, in the event of agreement being reached on the sale, it would relinquish its option of buying the Mufulira smelter.⁶² This at last appeared to allow the Mufulira Mine to be sold as a viable unit.⁶³ A month later, Reunion Mining of the UK announced that it had signed an memorandum of understanding with Mufulira's existing management with a view to tabling a combined bid.⁶⁴ However, Reunion pulled out of the purchase after it was taken over by a subsidiary of Anglo American, thereby increasing the pressure on the Government to find an alternative buyer.⁶⁵

It was a year before Anglo American signed the modified memorandum of understanding in October 1999. This set preconditions for the sale of other packages. The two main changes to the revised offer were the scaling down of investment commitments and the withdrawal of the offer to buy Nkana mine, although not the division's associated plant. The mine was high cost and had been starved of investment. However, Nkana remains crucial to Anglo's ventures because the company needs to merge their mined and concentrated copper with product from Nkana to ensure an adequate smelting mix. Hence, although Anglo was unwilling to buy Nkana mine, it negotiated the right to veto its sale if the purchaser could not guarantee investment and development of reserves in a way suited to its own requirements.⁶⁶ In the event, a buyer was found who was willing to accept the preconditions. The Mufulira mine and associated concentrator and smelter, as well as the Nkana mine, were sold to First Quantum/Glencore. The sale was concluded on 31 March 2000 and now operates as Mopani Copper Mines (MCM). Anglo/KCM has retained control over the smelter, acid plants and refinery at Nkana, which it is managing under contract for five years, with an exclusive option to buy the facilities during the first three years.⁶⁷ An option price for the Nkana plant of \$7 million was agreed. Anglo has a right of first refusal, which runs for the final two years of the contract, should other bids be received. In the meantime, the facilities, known as SmelterCo, remain in the ownership of ZCCM-IH. A grant from the British Government of \$81 million has been on-lent by the Zambian Government to SmelterCo to pay for capital and operating expenditure.⁶⁸ If Anglo does not exercise its option to purchase the assets, it will nevertheless have benefited from the refurbishment programme: servicing of the loan and other liabilities are to be assumed by the final buyer of SmelterCo. ZACCI has criticised these arrangements, reasoning that any prospective buyer should have the information to reach a decision within one or two years.⁶⁹

In sum, the repercussions stemming from the restrictive and anti-competitive nature of these successive arrangements are threefold. Firstly, the concession of February 1997 which allowed Anglo first refusal to purchase the Mufulira smelter amounted to a restrictive agreement which prevented Mufulira mine from being sold as a viable package for an extended period and thereby precluded the participation of other companies in the sale. This almost certainly resulted in a lower sale price being achieved because, by the time the Mufulira Division was sold, the copper price had fallen markedly. Secondly, the February 1997 agreement between the Government and Anglo American was instrumental to the company's final negotiating position. The company relinquished its option over the Mufulira smelter in return for an agreement which allowed it to purchase a package of ZCCM assets which included the Nkana smelter. Thirdly, however, it then renegotiated this arrangement by excising the Nkana mine from the purchase while setting preconditions for a prospective buyer and insisting on access to the all important smelter. Ultimately, therefore the original provision which had secured Anglo's access to the Mufulira smelter was replaced by an equally prescriptive agreement concerning the Nkana smelter. Stipulations associated with the running of Nkana mine and access to the smelter undoubtedly restricted the field of potential bidders and/or impacted on the price achieved for the assets. This final outcome was negotiated in October 1999, i.e., after Anglo's listing in the UK when it became subject to the original *Guidelines*; yet it was an outcome set in train by, and dependent upon, the unequal bargaining power created as a result of the original 1997 agreement.

iii. Tax and environmental exemptions: unfair competitive advantage

The question as to whether or not the tax, financial and environmental related concessions which Anglo American secured in its purchase of the core of ZCCM constitute exemptions from regulation is examined in later sections of this submission. Discussion in this section centres solely on the anti-competitive nature of these concessions.

KCM has been granted a twenty year stability period to bring all environmental liabilities into statutory compliance when other mining have been fifteen years within which to comply.⁷⁰ In 2000, the Mines and Minerals Act was amended to the benefit of the new owners so that environmental liabilities that have arisen or which arise in the future as the result of ZCCM operations prior to their sale will be assumed and vest in GRZ.⁷¹ Environmental liabilities arising after acquisition are also the responsibility of GRZ, provided the mine is operated in compliance with an agreed environmental management plan.⁷² The owners of mines purchased earlier in the privatisation process have signed development agreements under which they have assumed additional environmental liabilities. The tax concessions granted to Anglo American include, *inter alia*, a lower level of company income tax, a doubling of the normal period for the carry forward of losses, a reduction in the power tariff by almost a fifth compared to other mine operators, a reduced rate of mineral royalty tax and ceilings on the total payable, a higher ceiling on custom duty exemptions and the designation of KCM as 'a 1975 new mine' allowing the company to write off capital expenditure.⁷³

Opposition to the Income Tax (Amendment) Act which confirmed the preferential tax regime for Anglo American centred on its partisan nature. There were calls for the concessions to be extended equitably to all operators in the mining sector.⁷⁴ The Zambia Institute of Chartered Accountants, while welcoming the incentives, observed that the concessions should have been spread across the industry. The accountants Price Waterhouse Coopers, in their budget analysis, recognised the need to boost mining operations, but noted that a second tier of tax rates would be created within the sector.⁷⁵ ZACCI is of the opinion:

The core assets (bought by Anglo American Corporation) were probably hurriedly given away because government's financial position was such that it could no longer continue paying more for the loss-making mines. Thus, Anglo American Corporation ensured that they obtained a lot of incentives (which were even etched in the 2000 National budget) before signing the Purchase and Sale Agreement. The incentives that Zambia Copper Investments (ZCI) received had generated some unease in some sections of the business community that equally would welcome equivalent incentives.⁷⁶

The Parliamentary Committee on Economic Affairs and Labour is equally critical of the concessions sought and secured by the company. It views them as anti-competitive:⁷⁷

The concessions granted to the Anglo-American Group as part of the sale of Nchanga and Nkana Mines have worked against the spirit of fair business competition. These concessions have provided long-term unfair advantage to the purchasers of these assets compared to other investors in the mining sector.

Moreover, the Government will almost certainly be under pressure to extend similar concessions to other companies. For example, a clause in the Development Agreement for another operator stipulates that the tax regime will not be altered in a way which discriminates against the purchaser 'when compared to other mining companies or joint ventures conducting similar operations...'.⁷⁸ Overall, while the Government retains its power to alter the tax regime, to do so in a way which adversely affects or discriminates against the buyer will require reimbursement or the use of offsets to ensure the company is fully and fairly compensated.⁷⁹ Other operators therefore have grounds for demanding treatment on the same terms as Anglo/KCM.

The anti-competitive nature of the concessions had also created difficulties for the workforce in negotiations over working conditions: The MUZ has confirmed to the Zambian Parliament that it 'had experienced problems after the Government granted concessions to the Anglo Group with the other investors in the industry claiming they were disadvantaged and could therefore, not improve conditions for their employees.'⁸⁰

The recommendation in the original *Guidelines* that enterprises should '[r]efrain from actions which would adversely affect competition in the relevant market by abusing a dominant position of market power' is contravened.⁸¹ This notwithstanding, the creation of a level playing field, whereby other mining companies are accorded the same concessions, would further undercut Government revenue and have serious repercussions for social development in Zambia. As argued in the next section, Anglo American should not have elicited such deep-seated and long-lasting concessions in the first place. To grant them to other companies now would merely compound the original breach of the *Guidelines*.

c. Seeking and accepting financial incentives and concessions

i. Exclusive tax exemptions

In the sphere of normative codes governing company conduct, it is recognised in both the ILO Tripartite Declaration and the *Guidelines* that enterprises should 'take fully into account established general policy objectives of the Member countries in which they operate'.⁸² In particular, it is specified within the ILO Declaration that '[t]heir activities should be in harmony with the development priorities and social aims...of the country in which they operate' while under the *Guidelines*, multinational enterprises should give due consideration 'to those countries' aims and priorities with regard to economic and social progress...'⁸³ Recalling the principle of complementarity between the revised *Guidelines* and the Copenhagen Declaration for Social Development and the principle of continuing effect, multinational enterprises, in their pursuit of a favourable taxation regime, ought to take into consideration Commitment 9 which aims to increase significantly and/or utilize more efficiently the resources allocated to social development by, *inter alia*, ensuring that 'taxation systems are fair, progressive and economically efficient, cognizant of sustainable development concerns, and ensure effective collection of tax liabilities'.⁸⁴

Foreign investors are entitled to incentives under the Privatisation Act in accordance with a comprehensive range of tax concessions and duty exemptions under the Investment Act.⁸⁵ This has reduced the amount of revenue which could, in theory, be used to increase social expenditure of benefit to all. Separate legislation or schedules under the Income Tax Act and the Mines and Minerals Act deal with incentives and taxation for the mining sector.⁸⁶ These concessions have been made more favourable still in successive budgets, and protected in the long term through model development agreements; yet still private mining companies, notably Anglo American, have pressed to secure ever greater advantage.

Provisions in the 1998 budget reflected those already confirmed in development agreements. The budget allowed for the offset of 100 per cent of losses against profits and to carry forward losses for ten years.⁸⁷ Mineral royalty tax was reduced from 3 to 2 per cent.⁸⁸ Withholding tax on interest and dividends was reduced from 15 per cent to 10 per cent.⁸⁹ Designated mines were already allowed to write-off 100% of capital expenditure against tax.⁹⁰ Mining-related concessions in the 1998 budget alone were calculated to result in a revenue loss of K18 billion in one year.⁹¹ The total cost to the Government will increase year upon year while the concessions remain in place. In addition, an import declaration fee (IDF) was abolished across all sectors in the 1998 budget, a move which cost the Government K20 billion in revenue in the expectation of encouraging modernisation and increased investment in albeit imported machinery.⁹²

Prompted by IMF concern over the effect of preferential tax treatment on revenue, the Government committed itself to refrain from introducing any further tax concessions in 1999. However, tax incentives relating to the sale of ZCCM were explicitly exempted.⁹³ Certain members of the IMF voiced significant reservations about this arrangement: '...some Directors expressed concern about the generosity of the tax concessions granted in the context of the privatization of ZCCM, which would entail significant fiscal costs in the long term, while other Directors agreed that these concessions were important for the recovery of the copper sector in Zambia.'⁹⁴

The revised *Guidelines* are explicitly opposed to manipulation of the regulatory environment:

[E]nterprises should: Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to...taxation, financial incentives, or other issues.⁹⁵

Since the time when the concerns of IMF directors were made public, the Zambian Government has proceeded to announce a raft of additional and extraordinary concessions in its 2000 budget to benefit the new buyers of the remaining ZCCM operations.⁹⁶ The measures will largely benefit Anglo American and are not applicable to the mining sector as a whole.

The concessions are unprecedented. Anglo American has secured a lower level of company income tax in order to improve the internal rate of return from the Konkola Deep Mining Project as it progresses.⁹⁷ The tax rate to be applied to KCM is 25 per cent in comparison to the normal rate of 35 per cent (or 30 per cent for mining companies listed on the Lusaka Stock Exchange).⁹⁸ Based on existing concessions at the time relating to the offset of losses for ten years, it was calculated that any profits from KDMP would not be taxed until its eleventh year of operation. The period for the carry over of losses has since been doubled to twenty years. In addition, Anglo American has been guaranteed a reduction in the power tariff by almost 20 per cent.⁹⁹ This will significantly reduce the company's costs and increase profitability.¹⁰⁰ The new buyers are also exempted from paying customs duty on the first \$16 million worth of consumables imported for operations in the first year and on consumables worth \$15 million in each of the next four years.¹⁰¹ This extends the range of goods imported by Anglo/KCM which are effectively exempt from duty when, for other mining companies,

such exemptions were limited to machinery and equipment.¹⁰² Moreover, KCM will not be charged any excise duty on electricity consumed. Neither will they be required to pay withholding tax on interest, dividends, royalties and management fees paid to shareholders and affiliates. Mineral royalty was to have been reduced from an already low 2 per cent to 1 per cent. In the event, the reduction has been even greater, to just 0.6 per cent of the gross value. Fees relating to copper and cobalt price participation will be tax deductible. Finally, for the purposes of the Income Tax Act, the mines will be deemed 'a 1975 new mine', allowing them to qualify for the deduction of 100 per cent of capital expenditure.

The concessions were granted in order to facilitate recapitalisation and encourage investment in the mining industry. As justification for their exclusivity, it was stated that the remaining assets suffered operational problems which translated into lower output and export earnings.¹⁰³ However, the bottom line is that Anglo American insisted upon these concessions as a precondition for completing its purchase of the core of ZCCM. They are over and above the level of incentives written into existing legislation at the time and the sequence of their subsequent incorporation is clear: first the concessions were included in legally binding sale and development agreements, then were announced in the budget and were finally consolidated through amendments to the Mines and Minerals Act, the Income Tax Act, and the Customs and Excise Act.¹⁰⁴ Indeed, the Permanent Secretary to the Ministry of Mines and Minerals Development has confirmed that 'bidders requested the GRZ/ZCCM Negotiating Team for various concessions including amendments to existing legislation.'¹⁰⁵ The Zambian Parliamentary Committee on Economic Affairs and Labour corroborates the process by which exemptions were sought and secured: 'In order to provide legal backing for the concessions provided, relevant amendments to the legislation were effected.' This is in direct contravention of the revised *Guidelines*, as these apply to the company's conduct: Anglo/KCM currently benefits from the tax concessions it elicited, and will continue to do so for decades to come.

The Commissioner General has conceded that the new owners will enjoy exemptions on duty for virtually all imports and that, therefore, there will be no direct increase in trade taxes.¹⁰⁶ The Economic Association of Zambia (EAZ) has recognised that the benefits to the economy would only accrue in real terms after a period of up to twenty years because of the concessions - however necessary - introduced for successor companies of ZCCM.¹⁰⁷ Likewise, in evidence presented to the Parliamentary Committee on the privatisation of ZCCM, ZACCI states that the incentives granted to some of the new owners would result in significant loss of revenue, while noting that some incentives ran for the entire duration of the operational lives of some of the mines in question.¹⁰⁸ ZACCI has questioned whether the government could afford such incentives and has also criticised their selective nature.¹⁰⁹ While welcoming any prospect for revitalisation on the Copperbelt, ZAM views the concessions on duty for imported consumables as 'the major impediment to local growth'.¹¹⁰ It believes that domestic participation in the supply of the mines is made unnecessarily difficult because of the advantage accorded to imported finished products; and that the extensive tax concessions granted to the new mines would contribute little in terms of Government revenue for many years to come.¹¹¹ The problems faced by other industries as a result of the concessions granted to the mining sector were of sufficient seriousness for the Permanent Secretary to the Ministry of Commerce, Trade and Industry to undertake to raise them with the Ministry of Finance and Economic Development.¹¹² The Deputy Governor of the Bank of Zambia has conceded that direct government revenues would be reduced because of buyer concessions, although suppliers to the mines would now be in a position to pay their own tax bills.¹¹³ The Permanent Secretary to the Ministry of Mines and Minerals Development, in evidence to the parliamentary Committee on Labour and Economic Affairs, has acknowledged that: 'The Government may not immediately realise substantial revenues from taxes and Mineral Royalties due to the incentives accorded to the companies involved in exploration and development of mining resources.'¹¹⁴ Juxtaposed to the extensive array of tax concessions accorded to KCM is revenue from PAYE.

The recommendation made by Kienbaum in its original consultancy report on strategic options for ZCCM was for the use of a system of tax credits to be used to reward companies for their continued support of social services. Instead, not only have private buyers rejected responsibility for social provision, but they have also demanded, and have been granted, extraordinary tax concessions.

ii. Foreign exchange controls and the repatriation of profits

Enterprises should, in managing the financial and commercial operations of their activities, and especially their liquid foreign assets and liabilities, take into consideration the established objectives of the countries in which they operate regarding balance of payments and credit policies. [Original *Guidelines*, Financing chapter].

The ZPA, in its selective presentation of privatisation to the public, emphatically denies that foreign firms will take money out of Zambia.¹¹⁵ However, at the same time it is conceded that foreigners may 'externalise profits'. What is critical for Zambia's economic future is the level at which profits are taken out of the country in comparison to the amount of capital which is reinvested in the domestic economy. Zambia removed restrictions on how much hard currency could be brought in and out of the country by abolishing the Exchange Control Act in 1994. Development Agreements reiterate the absence of foreign exchange controls in Zambia and the freedom of the company to, *inter alia*, bring in or remit foreign currency and to retain outside of Zambia money made from overseas sales.¹¹⁶ For the stability period, mining companies are exempted from any subsequent foreign exchange controls in specified key areas while they will always be entitled to buy and sell currency on no less favourable terms than other commercial operators should controls be reintroduced.¹¹⁷ On the one hand, this means that an investor can now repatriate all amounts of capital introduced into Zambia, and can send out of Zambia all dividends, interest earned, and after tax profits without restriction. All earnings by expatriates can also be externalised without difficulty. On the other hand, this removal of restrictions is precisely what is attractive to overseas companies in the first place. Investment can flow in at the same time as profits flow out.

Clarification

- How long is the stability period and what is the precise nature of provision under the KCM development agreement in respect of foreign exchange controls and the repatriation of profits?
- The company is asked to provide figures showing foreign exchange movements in and out of Zambia as a result of its operations in that country.

However, there are reasons why countries like Zambia are at a disadvantage when it comes to the free movement of foreign exchange. In common with many countries in the developing world, Zambia is already short of hard currency which it needs to service Zambia's foreign debt; to build up reserves to be used by the Government in the event of unforeseen crises such as drought, a drastic fall in copper prices, or interruptions in foreign exchange coming in from international donors; and to fulfil the needs of domestic businesses which must purchase equipment and machinery from overseas, meet expatriate wages, and to repay off loans to foreign banks.¹¹⁸ For example, the Government's poor record on governance and the failure to conclude the sell-off of ZCCM in 1997/98 resulted in the suspension of balance of payments from donors. This caused an almost complete lack of foreign exchange: less than \$4 million in total was delivered from non-traditional exports and one bilateral donor in the first quarter of 1998, forcing the Government to release reserves.¹¹⁹

The Permanent Secretary to the Ministry of Commerce, Trade and Industry, while expressing faith in the benefits resulting from the recapitalisation of the mines, betrays some disquiet over concessions and the free repatriation of foreign exchange granted to the new mining houses: 'there were assumptions underlying the accrual of such benefits and these may not always happen, in which case the benefits may not accrue.'¹²⁰ The EAZ has observed that macroeconomic indicators 'could not be stabilised by privatisation alone' and that 'the remittances of gratuities, pensions and dividends, which had now been allowed by law, would not help stabilise the macroeconomic indicators.'¹²¹ Indeed, at the end of 2000, the Government warned foreign investors to stop externalising their foreign exchange earnings after a 40% depreciation of the Kwacha over the course of the year.¹²² The mining companies were summoned to account for the repatriation of earnings from copper and cobalt. The Government also accused Anglo and other companies of forcing down the exchange rate when they exchanged currency.

d. The extent of continued social provision

i. Applicable standards

The UN Special Rapporteur on the Realisation of Economic, Social and Cultural Rights recognises that '[w]here measures designed to stimulate the private sector are put into place, what often occurs is the de facto relinquishment of what were previously State responsibilities....Even in cases where the State remains committed to at least aiming to guarantee the range of economic, social and cultural rights, it is unable to do so.'¹²³ The parallel with the evolving situation in Zambia is unequivocal. Privatisation of ZCCM has seen the relinquishment of parastatal social responsibilities. At the same time, the ability of the Zambian State to take up direct responsibility for social provision through central or local government is precisely undermined by the tactics adopted by powerful corporate players: first, by use of their negotiating power to demand and win financial concessions which deprive the Government of revenue and its capacity, if so minded, to increase social spending; and second, by their insistence to withdraw from social provision without acknowledging longer term responsibilities to local communities and the necessity for a carefully planned transition period.

It has been established that the revised *Guidelines* entreat enterprises to '[r]espect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.' Several articles of the Covenant on Economic, Social and Cultural Rights are relevant to company conduct under the rubric of social provision: the right of everyone to an adequate standard of living, including the right to housing, and the continuous improvement of living conditions;¹²⁴ the right of everyone to the enjoyment of the highest attainable standard of health;¹²⁵ and the right of everyone to education.¹²⁶

In the sphere of normative standards applicable to company conduct, Principle III of the OECD Principles of Corporate Governance states that:

'The corporate governance framework should recognise the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.'

Stakeholders referred to by the OECD include investors, employees, creditors, and suppliers.¹²⁷ In addition, recognition is given to stakeholders with broader interests whose relationship to a company is not necessarily formulated in legal terms: 'Even in areas where stakeholder interests are not legislated, many firms make additional commitments to stakeholders, and concern over corporate reputation and corporate performance often require the recognition of broader interests.'¹²⁸ Companies are not only responsible for ensuring that the legally recognised interests of employees are respected, but also that due recognition is given to wider community interests. In the Zambian context, this must encompass, at the very minimum, ensuring that long-standing social provision is not neglected, curtailed or ended unless and until adequate measures are in place to ensure its take-over by other parties so as not to diminish enjoyment of the right to an adequate standard of living. It should be recalled that the ILO Social Policy (Basic Aims and Standards) Convention recognises that 'improvement of standards of living shall be regarded as the principal objective in the planning of economic development' and that 'all practicable measures shall be taken in the planning of economic development to harmonise such development with the healthy evolution of the communities concerned.'¹²⁹ The ILO Tripartite Declaration requires that where enterprises provide workers with basic amenities such as housing, medical care, these amenities should be of a good standard.¹³⁰

ii. Social service provision on the Copperbelt after privatisation

The framework development agreement appended to the Rothschilds report sets the parameters for company take-over of social responsibilities. As a result, none of the new proprietors of the mines are committed to providing social services beyond the short term. Yet, despite the fact that their social obligations are limited at the outset, many of the purchasers have sought to modify the sales and development agreements to which they are party. There is therefore little uniformity across the companies in respect of which services they provide and how these services are run: please see the accompanying table. Furthermore, the confidentiality of these agreements makes it impossible to assess compliance.

Social provision after privatisation

Of the ZCCM packages privatised prior to 2000, three are associated with significant social assets. Two of these - Luanshya and Chibuluma - are operational mines, while the third is the former ZCCM Power Division. The Copperbelt Energy Consortium, as purchaser of the latter, has made a public commitment to provide social services at a standard not worse than that at the time of take-over. However, details of the exact nature or extent of CEC's continued social responsibilities have not been made available.¹³¹ Social services connected to the relatively small Chibuluma Mine, sold to the Metorex Consortium of South Africa in July 1997, include the Kalulushi Hospital and a primary school, as well as the usual infrastructure - roads, sewers, water systems. According to information released in the public domain, the company agreed to run these assets until they were themselves privatised. Luanshya and Baluba mine was sold to Binani of India in October 1997. The new owners made commitments to maintain municipal services and infrastructure, but only for a maximum period of two years. In respect of the running of schools and hospitals, no time-frame was stipulated. By the terms of the agreement, the company, while it could opt to continue to run schools, hospitals and clinics, was not bound to do so and was permitted to contract out or privatise such provision. Overall, caveats allowed it to withdraw from provision at any time for any reason provided certain conditions are met. As it is, these arrangements have been overtaken by events as the mine was placed in receivership in November 2000 and has ceased operating. This notwithstanding, it is assumed that similar terms relating to social provision are common to those other development agreements which remain confidential, thereby qualifying public statements about the secure future of service provision.

The situation in respect of other assets privatised in the initial round of sales wave is somewhat different. Little in the way of social assets passed over to Avmin, the buyer of the Chambishi Acid and Cobalt Plants. In the formulation of the sale agreement made public, there is a somewhat vague commitment to provide social services of an acceptable standard.¹³² Chambishi Mine, purchased by China Non-ferrous and operating as NFC Africa Mining Limited, was on a care and maintenance programme and was, therefore, non-operational at the time of sale. The company has pledged that those social service projects it did inherit would be kept in good condition and has promised to contribute to public welfare and to continue with its sponsorship of district facilities, where available resources permit.¹³³ However, for the most part, the company maintains that ZCCM has failed to supply or co-ordinate the provision of medical, educational and recreational services in accordance with the transaction agreements.¹³⁴ Facilities were instead transferred to other employers, leaving NFC in the position of having to pay commercial rates of access. To alleviate the problem, the company has since purchased the former ZCCM Hospital at Nkana for \$270,000.¹³⁵ However, the narrow concern of the company over access of its employees to medical care should not be conflated to a wider commitment to social provision.

A general appraisal of the current extent of social provision on the Copperbelt is provided in a study commissioned by ZCCM Investment Holdings PLC, the company set up to manage the former parastatal's liabilities and to administer the Government's minority share in the privatised mines. The report provides an environmental assessment of the World Bank funded Copperbelt Environment Project, which is to be implemented principally by ZCCM-IH.¹³⁶ It was published in May 2001, and hence postdates the ending of many of the two year interim agreements in respect of social services:

'Some municipal and community services previously supported by ZCCM are no longer provided by the mines. Local authorities do not presently have the infrastructure, capacity or funding to take over these services. Assigning these responsibilities to local authorities may severely reduce the availability and quality of: (i) mosquito spraying and disease control, (ii) health services and hospitals, (iii) education, (iv) recreation and social amenities, (v) housing and township maintenance, (vi) road infrastructure, (vii) electricity, (viii) potable water, (ix) sanitation and sewerage, (x) social safety nets.¹³⁷

According to the report, prior to privatisation, ZCCM operated 10 hospitals, 38 clinics and 14 plant site clinics. These have all been sold and are now operating as commercial entities.¹³⁸ As part of its Life Village Benefits, ZCCM used to pay for periodic pneumoconiosis examinations for over 5000 ex-miners. The new owners have refused to take over responsibility for this service.¹³⁹ In the educational sphere, ZCCM operated seven Trust Schools, a secondary school, trade schools, an accounting college and two nursing colleges: 'ZCCM has discontinued providing these services, the schools and colleges [have been] privatised and a very insignificant number of scholarships are offered to [sic.] the new mine owners.'¹⁴⁰ Recreation and social amenities operated by ZCCM have been sold off or abandoned. The mining parastatal used to maintain housing in the mine townships. As part of the privatisation process, 48,000 housing units were sold to sitting tenants who are now responsible for the upkeep of the properties. ZCCM formerly subsidised electricity to those living in the mine townships. Residents are now required to pay for their electric at economic tariffs.¹⁴¹ Cleanliness of the townships now depends on the residents' ability to pay for municipal services. The Environmental Assessment observes how some of the new owners are reluctant to take on the responsibility for roads, resulting in their severe disintegration. Sanitation, formerly provided by ZCCM, will no longer be subsidised by most of the new owners. The liability for municipal sewage plants and solid waste dumps has passed to an asset holding company.¹⁴² Following privatisation, it has been difficult to ensure law and order. Deforestation by local communities was previously controlled by ZCCM's security network. This has now been disbanded and deforestation on mine land is now uncontrolled.¹⁴³ Security in mine townships has deteriorated in the absence of ZCCM police. According to the

ZCCM-IH report, social safety nets, the Mukuba Pension Scheme, the Copper Mines Enterprises Trust (COMET), the Retirees Resettlement Scheme, as well as humanitarian aid to financially constrained local councils, have all been discontinued after privatisation.¹⁴⁴

The overall social impact analysis contained in the report is stark in its conclusions:

'Privatised mines are not required to offer community services as previously provided by ZCCM. Municipal agencies have neither the infrastructure nor the funding to replace the community services that have been, and will be lost. Privatised mines are downsizing their staff and retraining only essential personnel. Several of the mines will be closed within the next 10 - 15 years.'¹⁴⁵

The picture presented in the ZCCM-IH report details the current state of social provision across the Copperbelt and the assessment is therefore assumed to encompass all operations, including those owned by KCM/Anglo. However, in the context of this submission, it is necessary to examine the company's social conduct in greater detail. The fact that the development agreements are not made available in the public domain hinders this assessment.

iii. The future of social provision at KCM

Extensive social services are associated with the mines at Nkana, Nchanga, Konkola and Mufulira, yet the future of such services is uncertain. At the time of the sale, the uncompromising refusal of Anglo American and First Quantum to take on social provision is confirmed in public documents of the World Bank:¹⁴⁶

'Within the context of the current negotiations for the sale of the remaining ZCCM assets, private investors have been unwilling to take responsibility for assets that are not directly linked with copper mining. Investors are looking to the GRZ to provide mechanisms that will assure the continuation of an adequate and reliable range of vital urban services for their employees. Without a reasonable level of confidence that these services can be fully provided, the sale of the mines could be jeopardized.'

Both the Permanent Secretary to the Ministry of Mines and Minerals Development and the Secretary to the Treasury have confirmed that the new owners were to concentrate on mining operations and had resisted taking over social responsibilities. Service provision was therefore to be transferred to local municipalities and an asset holding company:¹⁴⁷

1) Municipal services

Anglo American insists that the debate surrounding the provision of municipal services (including water, sewage services, domestic electricity, refuse removal, street lighting) had already been conducted with other potential investors long before Anglo commenced negotiations for the assets acquired by KCM.¹⁴⁸ Three points are salient: first, Anglo agreed its option to purchase Konkola at the very beginning of the ZCCM privatisation and therefore must have been active in this debate; second, other purchasers - for example, CEC at the Power Division, Metorex at Chibuluma, and Roan Antelope at Luanshya - did agree to provide municipal services, albeit for a defined transition period; third, the fact that other buyers refused to take on this provision in the long term is not in itself commendable and Anglo, in following suit, jeopardises the very principle of sustainable development it espouses. More specifically, and recalling the complementarity of the Covenant on Economic, Social and Cultural Rights and the principle of continuing harm, the company's stance raises the issue of non-compliance with the revised *Guidelines*. In particular, under the right to health, steps are to be taken to improve all aspects of environmental and industrial hygiene and to prevent, treat and control epidemic and endemic diseases.¹⁴⁹ The withdrawal by companies from municipal service provision, in the absence of alternative State provision, is likely to lead to the violation of these aspects of the right to health, especially amongst the poorest.

Under the terms of the one development agreement available in the public domain, the company concerned has assumed ownership, operational control and responsibility for the social assets connected to the mine:¹⁵⁰ medical and education services, recreational facilities, sports clubs and essential municipal infrastructure, including electricity and water supply and sewerage systems.¹⁵¹ It agrees to apply existing eligibility criteria for registering dependants entitled to these services.¹⁵² In respect of municipal services, these are to be provided not only to employees and their dependants, but also to persons in the wider community eligible to use them under an existing Private Social Services Access Agreement.¹⁵³ The level of service is to be appropriate to the number of clients and offer at least the same standard of service as before.¹⁵⁴ Charges to miners are to be no greater than those levied by ZCCM, taking into account inflation, while others are charged in accordance with the Private Social Services Access Agreement.¹⁵⁵

It must be emphasised that there are other clauses in the development agreement which are detrimental to the future of social provision. These limit the company's responsibilities in time and scope, and sideline employees, the wider community and the local council in resolving disputed claims.¹⁶⁰ However, the model development agreement did at least envisage a transition period and a number of new proprietors did take on the social obligations specified. Anglo American must therefore explain why it has rejected responsibility for municipal services and has instead sought an arrangement whereby these are to be run on a commercial basis by an Asset Holding Company supported by the World Bank.

The Asset Holding Company

The Bank responded to the refusal of Anglo American and MCM to take on the responsibility, even in the short-term, for service provision by preparing a last minute package of assistance. The principal objective of the \$37.7 million Mine Township Services Project is to support the Government's own belated plans for an Asset Holding Company to manage water supply and sewerage services in the five mine townships of Nchanga, Nkana, Konkola, Mufulira and Luanshya during the transition period following the privatisation of ZCCM. The project has four specific aims: firstly, to introduce a management structure to promote private sector participation and commercialisation; secondly, to implement cost recovery and 'demand management mechanisms'; thirdly, to develop and make operational a longer term strategy to integrate the running of water and sewerage services in the mine townships with those provided by the local councils - again on a commercial basis - in non-mine areas; and, finally, to undertake selected rehabilitation and maintenance of the existing infrastructure.¹⁵⁶

The Bank's Public Information Document for the project betrays a number of ostensible misconceptions. It is stated that the ZCCM water and sewerage systems are 'self-contained' when, in fact, certain councils are reliant on ZCCM plant and infrastructure.¹⁵⁷ The systems are characterised as having been 'fully supported by ZCCM' and 'sheltered from the maintenance decline of the majority of the country's infrastructure.'¹⁵⁸ While this assessment has some validity in relative terms, the Environmental Impact Statements commissioned by ZCCM and completed in March 1997 prior to privatisation record a system which is overwhelmed by demand and dilapidated to the point where there is a threat to public health.

Once again, the Bank seen to be reacting, in the main, to the dictates of a private company:

'The need to put in place a transitional arrangement to oversee the urban/municipal services and reassure the new mine owners of the continuation of these services, cannot be overemphasized.'¹⁵⁹

Clearly the timing of each stage of the project cycle was managed to coincide with the final purchase negotiations. Following the signing of the conditional agreement between the Government/ZCCM and Anglo American on 27 October 1999, the project was due to be appraised by Bank staff in November 1999 for projected board approval in March 2000. The delay in finally concluding the sale resulted in the appraisal date being put back to February 2000. The project was finally approved on 20 June 2000.

KCM acknowledges that the newly created private water and sanitation services on the Copperbelt 'face serious capacity problems and are unable to provide quality services without KCM assistance'.¹⁶¹ Yet, despite stating that it has a social responsibility to provide assistance to local authorities to ensure mutual benefit from effective service delivery, KCM appears to limit its interventions to 'emergency repairs' aimed at ensuring that services are rendered to the largely mine employee population.¹⁶² The bottom line is that KCM has distanced itself from responsibility for municipal service provision:

'The immediate challenge for local authorities is to absorb the responsibilities previously held by ZCCM. KCM also faces this challenge, not to do the work of the council but to ensure that the local environment is conducive to the successful operation of the mines.... The challenge for KCM is to be socially responsible at the same time as not creating a dependency on the mine either through taking over essential services or through the perception that KCM is a service provider. In the current local context of social and institutional poverty this challenge is immense.'¹⁶³

Not only is it a requirement of the sale of ZCCM's core assets to Anglo the proprietor's social responsibilities to the wider community are ended, but the expectation is that the Government, the World Bank and, ultimately, employees themselves will henceforth meet the costs associated with aspects of their social welfare. In order to be able to do so, employees must be paid a wage which allows them to afford market prices for these services. KCM, in its own social assessment of the impact of its operations, has recognised that:

'Chingola faces a potential crisis in service delivery due to the large numbers of retrenched mineworkers who have been unable to secure alternative income sources and who are therefore unable to pay for water, electricity and maintenance services. This has reduced cost recovery of bulk service utilities (i.e. Asset Holding Company and Mulonga Water and Sewerage Company) and has rendered

the sustainability of these utilities questionable. This poses a risk to KCM as employees and their families are dependent upon such services.¹⁶⁴

Recommendations within the *Guidelines* on employment conditions and industrial relations are situated within the context of prevailing national laws and regulations.¹⁶⁵ However, the supplementary nature of the recommendations applies. Under both the original and revised *Guidelines* enterprises are required to '[o]bserve standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country'.¹⁶⁶ A similar formulation is used in the ILO Tripartite Declaration which explicitly recognises that this requirement also applies to work-related benefits.¹⁶⁷ Specific attention is paid to employment conditions in developing countries where enterprises should provide 'the best possible wages, benefits and conditions of work, within the framework of government policies'.¹⁶⁸ While the economic position of the enterprise is to be taken into consideration, employment conditions should be 'at least adequate to satisfy basic needs of the workers and their families'.¹⁶⁹ Recalling the complementarity of international human rights instruments, to the *Guidelines*, article 7 of the International Covenant on Economic, Social and Cultural Rights requires the payment of fair wages which, as a minimum, provide workers with a decent living for themselves and their families.¹⁷⁰ If wages do not rise to compensate miners for the loss of in-kind social benefits, then employees will suffer a significant deterioration in their standard of living thereby infringing article 7 and article 11 of the Covenant. In this regard, it is pertinent to recall article 11 of the ILO Social Policy Convention which requires that where, *inter alia*, housing, essential supplies and services form part of remuneration 'all practicable steps shall be taken by the competent authority to ensure that they are adequate and their cash value properly assessed'.¹⁷¹ There is no evidence to suggest that such an assessment is being made in respect of the remuneration paid to miners who will be affected by the withdrawal of service provision under the terms of the sale. The MUZ, while approving of the sale of houses to miners under privatisation, has highlighted the changed situation for householders who previously enjoyed low rates, rents and maintenance charges. The Union has called on the new investors to maintain the value of housing or to provide suitable compensation for loss of benefits.¹⁷² MUZ branch officials at Nampundwe have made a direct appeal to Parliament for assistance to pay for telecommunications facilities, municipal services and township security in the aftermath of privatisation.¹⁷³

Overall, it is only when the ending of company responsibility for social service provision is considered in combination with the extraordinary level of tax concessions afforded to the mining sector that the implications for the realisation of economic and social rights on the Copperbelt begin to crystallise. Firstly, and most obviously, the withdrawal of company responsibility and support for social services in towns across the Copperbelt will precipitate a crisis in provision. Notwithstanding the fact that no adequate preparations have been made for the take-over of such services, the Government at central and local level is the obvious candidate to take over this burden. Secondly, however, it is at precisely this juncture when greater financial resources are required that the Government's revenue base is further undermined by the very tax concessions demanded by private mining houses. The wider context is one of austerity insisted upon by the World Bank and IMF with the consequent decimation of public expenditure. Thirdly, the Government, incapacitated in the face of this situation, has sought to shift the cost of social provision to employees and an already impoverished wider public on the Copperbelt by adopting a strategy under which services will be operated by private providers on the basis of cost recovery. The negative repercussions on the social rights of the poor of moving to a commercial system have not been given due consideration.

2) *Social services: education and health*

In respect of other social assets - including education and health services - Anglo asserts that it has taken on significant social responsibilities.¹⁷⁴ Hospitals and clinics are to provide medical services to the company's employees and their dependants. Anglo is to run schools to provide primary education. The beneficiaries are the children of employees.¹⁷⁵ Yet a number of health and educational facilities associated with the former ZCCM Divisions purchased by Anglo have been sold, although who has bought them is unclear. Health centres, hospitals, schools and colleges are listed by the Attorney General as having been sold without the scrutiny of his office, as required by law. The list includes: Nchanga Health Care, Nchanga Township Health Care Clinics I & II, Nchanga Lulamba Clinic; and ZCCM Nchanga Primary, ZCCM Konkola Primary, Kitwe Trade School (including hostels), Nchanga Trade School.

Clarification

- Which health and educational facilities has KCM purchased?
- The company is requested to provide a list of health and education facilities associated with the former ZCCM Operating Divisions at Konkola, Nchanga and Nampundwe.

Furthermore, while ZCCM hospitals, clinics and schools were formerly open to the public, Anglo is careful to specify that the facilities now cater primarily for its own workforce and dependants. The model development agreement, as drawn up by Clifford Chance/Rothschilds and accepted by a number of buyers, do at least provide for continued access to medical and education services by persons in the wider community eligible to use them under existing Private Social Services Access Agreements.¹⁷⁶ The level of service is to be appropriate to the number of patients/children and offer at least the same standard of care or education as before.¹⁷⁷ Charges to miners are to be no greater than those levied by ZCCM, taking into account inflation, while others are charged in accordance with the Private Social Services Access Agreement.¹⁷⁸ Almost identical provision is made in respect of the use of recreational facilities.¹⁷⁹ In its recent social and environmental assessment, KCM, while purporting to support the view that the public should be able to continue to obtain quality health care once provided by ZCCM, at the same time states that:

‘Implementation of the KCM Health Services policy, whereby surplus medical capacity at the KCM hospitals is made available to non-employees on a fee-paying basis, will continue. This fee will be evaluated and adjusted from time to time, taking account of the need for cost recovery and affordability.’¹⁸⁰

It should be emphasised that ‘surplus medical capacity’ will therefore be available to those who can afford it; yet high levels of poverty on the Copperbelt preclude the vast majority of the population from accessing healthcare. Furthermore, while KCM will continue to operate the Konkola and Nchanga Hospitals and the Nampundwe Clinic in this way, the company concedes that the future of the ex-ZCCM hospital at Nchanga North is uncertain.¹⁸¹ At vesting, KCM rejected responsibility for running this hospital and it was transferred to the Government. However, because of an acute lack of resources, the company has continued to support the facility in order to serve its workforce. After July 2001, KCM staff will no longer need to use the Nchanga North facilities and the company intends to withdraw its staff from the hospital and to cease financing the service.¹⁸² While it is recognised that this will have serious implications for the viability the hospital and the health of non-employees in Chingola, the company fails to make proposals which would help to secure its continued operation as a Government facility.

The arrangement by which KCM manages and the Nkana smelter to process ore from its Zambian mines, whilst not owning SmelterCo, is used by the company as a convenient pretext for rejecting social responsibility in the surrounding area. It is stated quite categorically in the company’s social assessment that KCM, ‘as a result is not directly involved in the management of social issues – e.g. service provision, healthcare or education – in Kitwe.’¹⁸³

Clarification

It is incumbent upon Anglo to clarify:

- The degree to which its health and educational facilities are open to the wider community?
- Whether they are run on a fee-paying basis, and, if so, whether the fees are affordable? Are patients or children from the wider community charged higher fees than mineworker’s dependants for health care and schooling?
- Are the company’s responsibilities for the running of schools, health care services and recreational facilities specified in the development agreement? To what degree are the clauses relating to this provision binding?
- Are any time-frames specified in respect of the companies obligations to provide these services?
- Is there an option under the KCM development agreement for the company to transfer the ownership or management of social facilities to private companies which may run them on a commercial basis?

The Covenant requires steps to be taken to assure for all medical service and attention in the event of sickness.¹⁸⁴ Any diminishment of public access to mine medical facilities is therefore retrogressive and a violation of the right to health and the stipulation to respect human rights under the revised *Guidelines*. If company employees, as well as the public, are expected to meet the cost of increased fees, then their ability to do so will depend upon whether or not they are paid a fair market wage. In this respect, it should be reiterated that the ILO Social Policy (Basic Aims and Standards) Convention requires that the cash value of services as part of remuneration is properly assessed.¹⁸⁵

There have been positive developments in respect of Anglo/KCM’s response to two serious diseases, HIV/AIDS and malaria. It is in a company’s best interest to maintain the health of its workers, especially in a country such as Zambia where HIV/AIDS and other causes of ill-health, including malaria, have decimated the most economic active part of the population. When this interest accords with the protection of the right to health, this is to be welcomed. An anti-malarial spraying initiative, supported by the company in conjunction with the Zambian government’s national malaria control programme and the World Health Organisation, has benefited 36,500 households in Chingola and Chililabombwe.¹⁸⁶ Anglo cites a resultant 38% reduction in malaria cases. As the dominant employer in both communities, the KCM has recognised its significant obligations to the surrounding community. It has not, however, undertaken a parallel spraying

programme in Kitwe where it operates the Nkana smelter, although it suggests that it is willing to do so in conjunction with other large employers, including MCM and CEC.¹⁸⁷ Given the prevalence of the disease, urgent action is necessary:

‘The incidence of malaria in the district in 1999 stood at a figure of 168 in every 1000 of the population, while the number of fatalities for the same year stood at 7 in every 100 (District Action Plan, Jan-Dec 2000, DHMT, Kitwe). For an estimated population of 480,000 this translates into 81,000 cases of malaria of which 5,700 proved fatal (7%).’¹⁸⁸

Anglo American's HIV/AIDS response, detailed in its SHE Report 2000, encompasses the implementation of prevalence surveys, local prevention campaigns, voluntary counseling and testing, and a care programme for infected or affected by HIV/AIDS.¹⁸⁹ KCM, with the co-operation of the MUZ and the Health Ministry's HIV/AIDS Secretariat, has initiated an HIV prevalence study under which it has conducted a survey of 9,000 workers.¹⁹⁰ It is assumed that the KCM will implement a full HIV/AIDS management programme in accordance with corporate guidelines: the company is requested to provide further details.

e. Employment, training and co-operation with local business

i. Training

The one publicly available development agreement requires the new mine owner to comply with the existing ZCCM Training and Human Resources Management Programme until it submits a new programme within the year.¹⁹¹ This arrangement is broadly in line with the *Guidelines* which recommend that enterprises should 'to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels...' and with the parallel recommendation under the ILO Tripartite Declaration that 'enterprises should ensure that relevant training is provided for all levels of their employees in the host country, as appropriate, to meet the needs of the enterprise'.¹⁹² In the Covenant itself, it is stipulated that the steps taken to achieve the full realisation of the right to work shall include technical and vocational guidance and training programmes.¹⁹³ However, it is explicitly stated in the development agreement that the committee has no powers to bind the company.¹⁹⁴ It reviews quarterly reports provided by the owners on problems encountered, positions filled and the number of local people employed.¹⁹⁵ The training programme is itself subject to modification by the company if it is unable to comply with the original because of 'circumstances or events beyond its control'.¹⁹⁶ The Government shall not unreasonably withhold consent for such alteration.¹⁹⁷ Furthermore, all of the training measures to be implemented - modular courses to improve the technical and management skills of non-graduates, tests to identify suitable candidates for further training, training in the use of new equipment, management programmes for Zambian professionals to minimise expatriate employment - are aimed at improving the skills of existing employees. No measures are specified in respect of retraining or preparing those to be made redundant for future employment.

It is unclear whether or not Anglo/KCM has entered into the same training and human resource development commitments, although it is understood that KCM is required under the terms of its development agreement to prepare a Human Resources Development Programme within 12 months.¹⁹⁸ However, the Auditor General has confirmed the sale of a number of former ZCCM training facilities including Kitwe and Nchanga Trade Schools.¹⁹⁹ Furthermore, the recently commissioned ZCCM Environmental Impact Assessment, while confirming that KCM is to sponsor 20 undergraduates, describes this as 'a very insignificant number of scholarships' when compared to previous ZCCM provision.²⁰⁰

Clarification

- Has the company prepared a Human Resources Development Programme within 12 months, as is understood to be required under the development agreement?
- If the company has opted to develop its own training programme, has it adopted any pre-existing ZCCM training programme to cover the intervening period?
- Under what circumstances can the company suspend or end its training programme?
- What provision has been made for the retraining of those who are made redundant?

ii. Local business development

One of the much vaunted aspects of privatisation is the multiplier effects generated in the local economy of the Copperbelt *per se*, and in Zambia more generally, as the new proprietors invest in the business. Under the revised *Guidelines*, companies should '[e]ncourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice' while the original text offers an essentially similar formulation.²⁰¹ The ILO Declaration of Principles entreats multinationals 'wherever practicable' to consider the conclusion of contracts with national enterprises and the use of local raw materials.²⁰²

It is understood that KCM is required under the terms of its development agreement to prepare a Local Business Development Programme within 12 months.²⁰³ This has been confirmed by the Permanent Secretary of the Ministry of Commerce, Trade and Industry.²⁰⁴ This appears to be in line with the action required of other successor companies designed to encourage the establishment of businesses within Zambia to supply the company.²⁰⁵ Development agreements require companies to supply sufficient experienced staff to assist with implementation of the programme and to review its progress with a view to making modifications which reflect changing circumstances.²⁰⁶ Despite some welcome provision for local business development under such development agreements, the actual obligations on the mining companies concerned are qualified. Hence a company agrees to utilise local businesses for servicing its operations, but is only required to do so 'wherever feasible and appropriate.'²⁰⁷ A company may fundamentally amend or alter the local business development programme if it is unable to comply with its provisions due to 'circumstances or events beyond its control.'²⁰⁸ Furthermore, although local procurement is encouraged in the terms of specific development agreements, the bottom-line is that Zambian businesses must be competitive to be awarded contracts.²⁰⁹

The exact legal obligations in respect of procurement and business development under the KCM agreement are unknown as the document remains confidential. The Permanent Secretary of the Ministry of Commerce, Trade and Industry admitted to the Parliamentary Committee on Economic Affairs and Labour that even he was ignorant about the provisions for local business development in the agreements entered into with new mining investors.²¹⁰ Other organisations with a vital interest, including ZACCI which is represented on the ZPA board, have confirmed that they too are not privy to such details.²¹¹ Eighteen months after its ZCCM purchases, Anglo American has announced that an International Finance Corporation (IFC) funded study has recently been completed on establishing a local business development fund for KCM. The report is currently under discussion. The company is also working with the World Bank sponsored Business Partners for Development to help to promote the use of resources for non-mining related business ventures.²¹²

KCM claims to have generated some twenty companies at the micro-level and has placed contracts worth £150,000 with them.²¹³ Such procurement, although important and commendable, represents less than 0.1% of the \$220 million KCM spent on procurement in the first twelve months of ownership. A distinction must, of course, be drawn between procurement from micro-level and that from larger companies: Anglo/KCM maintains that most procurement is locally sourced. Further details are required, especially in the light of the conclusions of a number of commentators.

ZAM is of the view that the duty concessions to Anglo for imported consumables are the major impediment to local growth as they give foreign suppliers a comparative advantage and thereby render domestic participation in the supply of the mines unnecessarily difficult.²¹⁴ A related concern is that the successor mines would engage new suppliers rather than wait for old suppliers, owed money by ZCCM, to source capital to fulfil orders.²¹⁵ The EAZ has reached a similarly pessimistic conclusion:

'Within the short to medium term, the linkages of the privatised mining sector to other economic sectors would not be felt significantly as most of these firms would tend to opt to procure their inputs and other supplies from outside the country.'²¹⁶

Clarification

- The company is asked to provide:
- a list of the twenty local companies, including ownership details, which it states have been established as a result of its rehabilitation of the mines;
- a copy of the IFC study on local business development - how much money will Anglo/KCM contribute to the project?
- full extracts from the development and sales agreements detailing the extent of provision for local business development;
- further details of its role in the Business partners for Development programme: how much finance has been sourced for local Zambian businesses? How many Zambian businesses have been funded? Which Zambian businesses have been funded?
- Has the company prepared a Local Business Development Programme within 12 months, as is understood to be required under the development agreement? Is the initiative with IFC part of or separate to this Programme?
- How much of the \$220 million which KCM has spent on procurement in the first twelve months has actually been spent with local businesses in Zambia?
- Why, if most of KCM's procurement has been in Zambia, did it seek exemptions from import duty in primary legislation?

f. Environmental deregulation and health and safety at work

There are two aspects to a consideration of Anglo's conduct in respect of environmental deregulation. Firstly, the degree to which the company has profited from an initial round of negotiations under which environmental regulations were relaxed across the mining sector as a whole. Secondly, Anglo/KCM has subsequently secured additional environmental exemptions over and above those granted to most of its competitors.

Environmental recommendations under both the original and revised *Guidelines* are addressed to enterprises in the context of domestic regulation.²¹⁷ At the same time, the fact that 'multinational and domestic enterprises are subject to the same expectations in respect of their conduct' and must 'take due account of the need to protect the environment and avoid creating environmentally related health problems' lends weight to the argument that exempting the new owners of existing mines from the full force of domestic environmental regulation amounts to preferential treatment which, moreover, threatens the rights of others.²¹⁸ Furthermore, adherence by multinational mining companies to the recommendation under the original *Guidelines* that they should '[t]ake appropriate measures in their operations to minimise the risk of accidents and damage to health and the environment, and to co-operate in mitigating adverse effects, in particular...by introducing a system of environmental protection at the level of the enterprise as a whole' would help end the situation whereby the same company applies diminished standards of protection in the developing world compared to those used in the developed world.²¹⁹ Under the revised *Guidelines* - which apply to Anglo/KCM's conduct by virtue of both their applicability to current environmental management and the continued effect of prior exemptions - it is explicitly recognised that enterprises should consider 'relevant international agreements, principles, objectives and standards'. Moreover, '[t]he *Guidelines* also encourage enterprises to work to raise the level of environmental performance in all parts of their operations, even where this may not be formally required by existing practice in the countries in which they operate.'²²⁰

The situation in Zambia is one in which the corpus of environmental legislation and regulation *reflects* rather than sets the parameters under which powerful corporate players, including Anglo American, operate. Once again, exemptions first agreed in negotiations are subsequently incorporated in primary legislation through amendments and supplementary instruments. In this context, the provision prohibiting undue company interference is of vital importance:

[E]nterprises should: Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety...issues.²²¹

i. *The initial round of environmental deregulation*

The Zambian Government introduced a comprehensive Environmental Act in 1990 and established the Environmental Council of Zambia (ECZ) to oversee its implementation. Yet environmental protection in respect of mining in Zambia has been rendered problematic because, firstly, mining activities are governed by a distinct, and less rigorous instrument - Statutory Instrument No. 29 - under the Mines and Minerals Act;²²² and, secondly, because clauses within the development agreements delay compliance with existing regulations. The Rothschilds report and associated 'model'

development agreements must have been subject to the approval of Anglo American by virtue of its position on the ZCCM board and it can only be assumed that the company therefore exercised a degree of influence over the proposals for environmental deregulation. While even the model development agreements offer diminished protection, Anglo/KCM has negotiated additional exemptions: please refer to the next subsection.

The recently commissioned ZCCM-IH Environmental Assessment confirms that the Environmental Protection and Pollution Control Act (1990) and its associated statutory instruments have been 'overprinted' by legislation specific to the mining sector and that the role of the ECZ is reduced to an advisory or consultative capacity under the Mines and Minerals Act.²²³ The same report corroborates that the degree to which environmental responsibilities are taken over by the new proprietors or else remain with ZCCM-IH is specified in the mines Transaction Documents, Development Agreements, and, where applicable, in Environmental Liability Agreements and Environmental Deed Agreements.²²⁴

Under development agreements negotiated with the initial buyers, environmental protection is significantly compromised. A company is explicitly excepted from liability for fines or penalties or third party claims made in respect of the past activities of ZCCM *vis-à-vis* the environment.²²⁵ At the same time, the new proprietor, is required to comply with environmental and safety laws and regulations, together with the provisions of an Environmental Management Plan (EMP) and associated Environmental Clean Up Obligations.²²⁶ Both the EMPs and costed remediation plans are required under the Mines and Minerals Act (1995) and the Mines and Minerals (Environmental) Regulation (1997).²²⁷ While a number of the new proprietors have adopted EMPs drawn up by ZCCM, others, including KCM, have chosen to prepare their own.²²⁸ However, subject only to compliance with the Environmental Management Plan and Clean Up Obligations, the Government confirms that, during an extended 'stability period', it will not take any action against a company under, or in enforcing, any applicable existing or new environmental laws or regulations which are intended to secure early compliance with these obligations; or to require the company to clean up pre-existing pollutants not part of the clean up obligations; or impose a fine or penalties for non-compliance with environmental laws or new environmental laws when the existing Environmental Plan provides a remedy in accordance with a specified timetable.²²⁹ Moreover, fines or penalties in excess of those applying on the date of the Agreement cannot be imposed.²³⁰ Should the company fail to comply with these minimal obligations, a notice must be issued by the Government after which it has a further three months to remedy the breach.²³¹ The company has power to dispute this decision of non-compliance and have the matter referred to a nominated Sole Expert.²³² Hence the Environmental Council of Zambia, as the body entrusted with implementing the Environmental Act (1990) in Zambia, is bypassed.

ii. Additional environmental deregulation as part of the Anglo/KCM purchase

Anglo American has succeeded in securing a further relaxation of environmental regulation. Firstly, whereas for all other new proprietors, the environmental stability period runs for fifteen years, with end dates between 2012 - 2015, KCM has secured an extended window of twenty years running to 2020.²³³ The ZCCM-IH Environmental Assessment attests to the fact that the Government has 'restricted authority to enforce environmental laws, will not impose fines or penalties, and will not make changes to Zambian mining-environmental legislation during this period.'²³⁴ Secondly, it has been the prime mover behind further statutory deregulation.

Due to prior industry-wide deregulation, provisions in the Environmental Protection and Pollution Control Act and associated Environmental Protection and Pollution Control Regulations are superseded by the Mining and Minerals (Environmental) Regulations, Statutory Instrument No. 29 of 1997, and therefore do not apply to Anglo/KCM's operations. However, as a result of provisions within the development agreement for KCM - confirmed in a new statutory instrument sought by the company - certain environmental regulations arising from the Mines and Minerals Act are also superseded. The bottom line is this: for a two-year derogation period, KCM will not be required to comply with environmental legislation; after this period, it will be required to comply with its own Environmental Management Plan and, by virtue of 'site-specific environmental standards', will not necessarily be required to adhere to underlying environmental legislation. The development agreement is not in the public domain, but some of the relevant environmental provisions have been reproduced:²³⁵

'By virtue of the Development Agreement and pursuant to Statutory Instrument No 19 of 2000 (the Mines and Minerals (Environmental) (Exemption) Order, 1999), KCM has been granted a temporary derogation from the standards set out in legislation provided that KCM is not in breach of its applicable environmental plan. During this period, GRZ will not take any action to secure KCM's compliance with environmental laws earlier or to a greater extent than agreed in KCM's environmental plans or impose fines or other penalties upon KCM. Once KCM has brought its operations into compliance with legislative standards then general legislation will apply, stabilised under the Development Agreement to apply in the form in force on 31 March 2000. During the Stability Period, GRZ has undertaken not to effect changes to the environmental laws which:

- Prevent KCM from complying with its environmental plans;
- Materially affect the maintenance or operation of the Environmental Protection Fund; or
- Impose requirements that are more onerous than those specified in the environmental plans.'

According to the KCM environmental assessment, it is further specified in the development agreement that:²³⁶

In terms of the vesting contracts KCM was required to determine [sic] within 24 months the full extent to which the facilities are non-compliant with Zambian legislation and WBG policies. During this period, justifiable site-specific environmental and social standards needed to be negotiated and agreed with IFC and GRZ, where necessary. The results of the investigation and negotiations and the mitigation measures necessary to achieve the agreed standards are contained in the EMPs and SMPs contained in this Environmental Assessment.

The 2000 Mines and Minerals (Amendment) Order - the final title for Statutory Instrument No. 19 - frames in law agreements reached with KCM in the sale documents. It is specified that liabilities relating to defunct facilities - closed tailings paddocks, waste dumps, unused plant or infrastructure - remain the responsibility of GRZ/ZCCM-IH.²³⁷ However, not only must historic and future environmental liabilities arising from ZCCM operations prior to their sale be assumed by GRZ/ZCCM-IH, but the new owners are also indemnified against ongoing environmental liabilities arising from the future operation of purchased assets *after* their acquisition, as long as they are in compliance with the required Environmental Management Plans.²³⁸ Anglo/KCM's option to develop its own EMP is significant in the light of this provision.

When KCM took over the mines in March 2000, the approved environmental studies were in the form of an Interim Environmental Management Plan (IEMP) and an Interim Social Management Plan (ISMP). Under the vesting agreement, KCM was only authorised to operate under the IEMP and ISMP for a 24-month period and was obliged to prepare a full Environmental Management Plan (EMP) and a Social Management Plan (SMP) by 31 December 2001.²³⁹ The company was required to determine the full extent to which the facilities were non-compliant with Zambian legislation and World Bank policies. During this phase, 'justifiable, site-specific environmental and social standards' were to be negotiated and agreed with IFC and GRZ where necessary.²⁴⁰ The recently completed EMP/SMP reflects the results of these investigations and negotiations over the mitigation measures considered necessary.

Ultimately, protection of the environment in Zambia depends upon the concrete measures to be taken under the EMP: the adoption of an inadequate plan would achieve nothing. The company has three years in which to achieve compliance with the standards specified in the EMP, which is to be monitored by ZCCM-IH in conjunction with Ministry of Mines and Minerals Development.²⁴¹ Again, the Environmental Council of Zambia is sidelined.

The EMP, which has only just been released, requires further scrutiny to fully determine its strengths and weaknesses. However, it is apparent that the end result of deregulation and derogation is a situation in which the company is able to exercise considerable control in determining the standards against which its environmental performance is measured and the degree to which it pollutes. It is beyond the scope of this report to review all the environmental standards used in the KCM environmental assessment and EMP. However, two examples illustrate the degree of latitude.

The first relates to sulphur emissions which are highly detrimental to human health, as well as damaging to vegetable gardens and buildings in the townships located in the vicinity of SmelterCo. As has been previously noted, SmelterCo is owned by ZCCM-IH but managed by KCM.²⁴² It is apparent from KCM's own environmental assessment that SmelterCo is an integral part of its mining operations in Zambia.²⁴³ The facilities are essential for processing ore from the Konkola and Nchanga mines. Even though it has not, to date, exercised its option to purchase SmelterCo, it is KCM which is obliged to operate the facilities in accordance with the EMP it has produced.²⁴⁴

At vesting, KCM acknowledges that daily maxima for sulphur emissions in excess of 10,000 µg/m³ were recorded in monitoring stations around the SmelterCo site. Toxicological data collected worldwide suggest that human fatalities can arise from short-term exposure to atmospheric SO₂ levels in excess of 1000 µg/m³.²⁴⁵

In its management of SmelterCo, KCM has an initial two year period when it is exempted from having to comply with the Zambian standards and permit requirements on air quality. After this period, both the legislated Zambian air quality standards and the latest World Bank guidelines contained in its Pollution Prevention and Abatement Handbook (1998) specify a daily average ambient sulphur dioxide (SO₂) limit of 125 µg/m³.²⁴⁶ These limits are characterised by KCM as stringent and the company therefore exercises its right to derogate from the legislation by setting much higher limits in its EMP. However, the reassurance is offered that:

KCM and SmelterCo are committed to meeting GRZ and WBG requirements for their facilities with[in] 3 years of vesting (i.e. by 31 March 2003). The only exceptions are achievement of the site-specific guideline value for SO₂ ambient air quality and stack particulate concentrations at SmelterCo where full compliance will only be achieved by March 2006.²⁴⁷

However, close scrutiny of the EMP reveals that the standard to be achieved by 2006 is an ambient air quality limit of 500 µg/m³ for a daily averaging period.²⁴⁸ While the environmental assessment attests to the fact that KCM's EMP for SmelterCo is in compliance with *pre*-1998 World Bank guidelines, it is four times the *current* Bank limits. In other words, even by 2006, the KCM managed operations at SmelterCo will fall far short of domestic and World Bank limits on air quality. Indeed, the company concedes that, even after 10 years, SO₂ emissions from SmelterCo will 'will still exceed the relevant air quality guidelines.'²⁴⁹

The second example relates to water quality. The KCM environmental assessment confirms that the legislated Zambian effluent standard prescribes, respectively, limits of 1.5 mg/l and 100 mg/l for copper and suspended solids.²⁵⁰ This contrasts with more stringent limits of 0.5 mg/l for copper and 50 mg/l for suspended solids in IFC/World Bank guidelines. It is acknowledged that 'these two parameters are typically the most problematic at the current operations.' Whereas, in respect of air quality, the company uses its powers of derogation to avoid stringent domestic limits by using obsolete World Bank standards, in relation to water quality it adopts legislated Zambian effluent standards precisely because these are lower than existing World Bank guidelines.

It must be recalled that Anglo American, as a significant minority shareholder represented on the ZCCM board through its ZCI-appointed directors, must bear a degree of responsibility for past failures of environmental management, irrespective of whether or not its stake had an effective value. It is the World Bank which is providing funding for mitigation measures designed to address some of the liabilities passed over to GRZ/ZCCM-IH. Yet already it has been estimated by the consultants carrying out the Environmental Assessment for the Copperbelt Environment Project that the level of funding - \$59 million - is inadequate even in respect of the environmental cleanup required:²⁵¹ 'ZCCM-IH liabilities may, on the basis of existing remediation cost estimates, potentially exceed the EMF [Environment Mitigation Fund] budget by a factor of 4.'²⁵² To adequately address the wider social problems identified would require many times this level of investment.

A final issue of environmental concern relates to management systems. The revised *Guidelines* advocate that enterprises should '[e]stablish and maintain a system of environmental management appropriate to the enterprise...'.²⁵³ The text of the Environment Chapter reflects standards contained in such instruments as the ISO Standard on Environmental Management Systems, the importance of which is recognised as an important part of sustainable development, and is increasingly being seen as both a business responsibility and a business *opportunity*.²⁵⁴ It is specified in the Commentary on the Environment that '[a]n environmental management system provides the internal framework necessary to control an enterprise's environmental impacts and to integrate environmental considerations into business operations.'²⁵⁵ There is complementarity with Anglo American's own SHE initiative. However, it is pertinent to note that while Anglo has set a target date of 2003 for the implementation of management systems consistent with ISO14001 in five of its base metal operations which are not currently certified, KCM is not included in the list.²⁵⁶ It is confirmed in the KCM environmental assessment that it will be five years before the company intends to become ISO 14001 registered.²⁵⁷

iii. Health and safety at work

There are concerns over KCM's safety record and the compatibility of this with the OECD recommendation that companies should '[T]ake adequate steps to ensure occupational health and safety in their operations.'²⁵⁸

There have been a series of fatal accidents at KCM. A major slope failure on 8 April 2001 in the South face of the Nchanga Open Pit killed 10 miners who were buried in the slide. Observers report that one whole section of the vast open-cast mine near the town of Chingola collapsed from top to bottom. The company concedes that the accident had a severe impact on production at KCM, an effect which is expected to persist for some time.²⁵⁹ A statutory investigation by Zambia's Mines Safety Department (MSD) is in progress while KCM has commissioned a separate independent report. Anglo American has declined to share findings from this latter report with Oxfam. This is of great concern in view of the severe capacity restraints on the MSD which are likely to prevent it from undertaking a comprehensive investigation of the accident. Two other miners have been killed in unrelated incidents at KCM.

Clarification

- Does Anglo propose to publicly disclose both the MSD and consultants reports into the April 2001 accident at Nchanga?
- KCM is requested to provide information on the precautionary steps - apart from visual inspections - it took to monitor the state of the slope. Were sensors fitted to help predict slides, thereby allowing more time to take preventive action to protect the workforce?

g. Disclosure and accountability

Serious questions of public access to information and accountability are raised by the 'corporate veil' of confidentiality. The public in general, and affected parties in particular, have been denied access to information over the privatisation of ZCCM stemming, in the first instance, from the Rothschilds report and plan. This has curtailed not only meaningful debate about the process as envisaged, but has also prevented local councils and workers' representatives from making their own preparations in advance of the sale. Subsequently, binding development and sales agreements have been negotiated between the Government/ZCCM and the buyer. While under negotiation, such agreements are regarded as commercially sensitive. The result is that no information, even in relatively broad terms, is available in the public domain at that time. Yet, even when terms have been agreed, these documents are still withheld from public scrutiny.

The importance of information disclosure to the general public is recognised within the both the original and revised *Guidelines*. The purpose is to encourage greater transparency and understanding.²⁶⁰ Where national law requiring disclosure is minimal, supplementary information in accordance with the *Guidelines* should be published.²⁶¹ Parallel requirements are recognised in the ILO Declaration of Principles.²⁶² Principle IV of the OECD Principles of Corporate Governance states that '[t]he corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.'²⁶³

Disclosure provisions in the Principles are now reproduced as the first set of disclosure recommendations under the revised *Guidelines*. Accordingly, disclosure should include, but not be limited to, material information on, *inter alia*, company objectives, material issues regarding employees and other stakeholders, governance structures and policies.²⁶⁴ The *Guidelines* should be construed in relation to the annotations in the Principles.²⁶⁵ Under the rubric of company objectives, 'companies are encouraged to disclose policies relating to business ethics, the environment and other public policy commitments.'²⁶⁶ Only on the basis of disclosure can concerned parties '...better evaluate the relationship between companies and the communities in which they operate and the steps that companies have taken to implement their objectives.'²⁶⁷ Moreover, under the rubric of material issues regarding employees and other stakeholders, '[c]ompanies are encouraged to provide information on key issues relevant to employees and other stakeholders that may materially affect the performance of the company. Disclosure may include management/employee relations, and relations with other stakeholders such as creditors, suppliers, and local communities.'²⁶⁸

The importance of disclosure of a second type - communication with the public and with other parties directly affected by the firm's activities, especially on environmental and social issues - is recognised.²⁶⁹ Enterprises are encouraged to communicate additional information on social, ethical and environmental policies and codes of conduct and to indicate their performance in relation to these standards.²⁷⁰

Information contained within the development agreements relating to the sale of ZCCM has a profound importance beyond the purely commercial sphere. Clauses relating to employment and redundancy, information on post-privatisation working conditions, clarification of the arrangements to be put in place to manage social assets, and details of the measures required to protect the local environment, all represent a vital knowledge base for workers and local communities. The development agreements contain further information on training requirements and local business plans. People are entitled to know the extent to which clauses on employment levels and social provision are binding or whether companies have negotiated exemptions from the tightening of environmental regulation. It is therefore imperative that, minimally, pertinent parts of such agreements are made available in the public domain. Contrary to provisions in both the original and revised *Guidelines* which require enterprises to provide information and notice for meaningful consultation and mitigation in the event of redundancies, the MUZ has not been consulted over the drawing up of crucial development agreements, including the documents relating to the KCM purchase.²⁷¹ In common with other such agreements, it is assumed that these contain provisions relating to both redundancies and conditions of employment. The MUZ has strongly criticised the withholding of development agreements which prevents it from monitoring the compliance of employers.²⁷²

During a meeting with Oxfam GB and the local Zambian NGO Citizens for a Better Environment, held at Anglo American plc's London office on 9 May 2001, the company agreed to provide relevant parts of the KCM development agreement. Since that time, conditions have been attached to its release, i.e., agreement by the Zambian Government. Anglo/KCM maintains that it is willing to release extracts of the documents relating to social aspects of the sale, but is prevented from doing so by the Government. This situation is unsatisfactory, and the company is called upon to renew its efforts to persuade the Government to alter its position. After all, the usual reason cited for the nondisclosure of such documents relates to commercial confidentiality. If the company concerned has no objection on these grounds, then surely it can impress this upon the other party to the agreement?

The IFC is an equity investor in KCM and therefore the private sector partners - that is, Anglo/ZCI - are required to abide by policies on disclosure. The IFC has produced a Good Practice Manual, the primary function of which is 'to provide good practice guidance to private sector project sponsors on disclosing information and consulting with the public, with the aim of building not only financially successful projects, but environmentally and socially responsible ones as well.'²⁷³ IFC's four management principles addressed to companies require the early disclosure of information, its use to allow public consultation, the provision of information which is meaningful, and the adoption of measures to ensure that it is made accessible to all.²⁷⁴ The manual provides guidance on the required format and sequence to be followed in public consultation and disclosure. The Konkola Copper Mines project is classified by IFC as a Category A project. IFC's Operational Policy on Environmental Assessment (OP 4.01) requires a full environmental impact assessment and public consultation and information disclosure for such projects. The project sponsor - in this case Anglo/ZCI - must give public notification and make the draft environmental assessment report available at a public place readily accessible to project stakeholders as early as possible and no later than 60 days prior to the date proposed for consideration of the project by IFC's Board of Directors.²⁷⁵ There is also a requirement that a non-technical EA report summary in the local language should be proactively disseminated to local stakeholders .

There have been significant failures in Anglo/KCM's record on disclosure. According to the IFC, the Interim Environmental and Social Management Plans were released locally and to the World Bank Infoshop in Washington on 24 November 1999.²⁷⁶ However, reports from the Copperbelt have highlighted the inadequacy of disclosure measures. In June 2000, an Oxfam consultant visited Konkola. She was given a copy of the Resettlement Action Plan, but only allowed to consult the Interim Environmental Management Plan at KCM's headquarters. A KCM official refused to send copies of the reports to the Oxfam Kitwe office. In August 2000, the Kitwe office of Oxfam discovered that land had been excised from the mining area to exclude squatter settlements and thereby avoid the problem of resettlement. Neither the squatter communities nor the local councils had been informed by Anglo, ZCCM or GRZ of this development. KCM refused Oxfam's request to show them the redrawn mine boundaries. A draft of the final EMP/SMP was initially made available for consultation only in local council officers, and then only for a period of seven days between 14 - 21 June, 2001. This deprived local community groups of the opportunity of scrutinising the proposals. Anglo/KCM's contention that this consultation was organised by the Environmental Council of Zambia in no way absolves it of its own responsibilities: on the contrary, attention is focused on its failure to meet its own obligations on disclosure.

Juxtaposed to this conduct, in the Commentary to the revised *Guidelines* on disclosure: 'Enterprises are encouraged to provide easy and economical access to published information....Enterprises may take special steps to make information available to communities that do not have access to printed media (e.g. poorer communities that are directly affected by the enterprise's activities).'²⁷⁷ It is recognised in the OECD's Corporate Principles that channels for disseminating information should provide for fair, timely and cost-efficient access to relevant information by users.²⁷⁸

In May 2001, NGOs on the Copperbelt and Oxfam strongly protested about the company's failure to make suitable arrangements for the disclosure of the EMP and to allow a reasonable period of time for people to comment. On 1 August 2001, the Final Environmental and Social Management Plans were placed on display for sixty days at the World Bank offices in Washington.²⁷⁹ According to Anglo, they are available in Zambia at the World Bank offices in Lusaka, at KCM, and at local council offices in Chililabombwe, Chingola, Kitwe and Nampundwe. However, a constructive dialogue based on these documents is forestalled if, when they are released to scrutiny, they are already a *fait accompli*. Furthermore, not even the executive summaries of the documents will be made available in local languages, despite IFC requirements. Moreover, Rights and Accountability in Development was not invited to participate in a tripartite meeting between the Government, company representatives and local NGOs to discuss issues of concern, despite the fact that the meeting was convened as a result of a joint submission to which it was a major contributor.²⁸⁰

Notes

- ¹ *Original Guidelines*, General Policies, paras. 1 and 2.
- ² *Revised Guidelines*, Preface, para. 5.
- ³ *Revised Guidelines*, Preface, para. 10.
- ⁴ *Revised Guidelines*, Preface, para. 6.
- ⁵ *Revised Guidelines*, Commentary on General Policies, para. 3.
- ⁶ *Idem*.
- ⁷ The consultants recognised the necessity to ensure the approach adopted was suited to an environment in which 'the central Government may not have the capacity to support major redevelopment on its own' and was designed to 'allow government to avoid the immediate responsibility of providing services from a revenue base which is already overburdened.' See Kienbaum Development Services GmbH, 'Strategic Options for the Privatisation of Zambia Consolidated Copper Mines,' *Interim Report II*, 15 December 1993, p.90.
- ⁸ Kienbaum proposed, in the short-term, to negotiate with potential buyers to rehabilitate infrastructure and take over the running of social services for an agreed period and to compensate them for doing so through a system of tax credits or offsets against local council rates. From a commercial perspective, improved infrastructure was necessary in any case to rehabilitate the mines: tax credits made this expense less onerous. From the Government's perspective, the loss in receipts from the mines would be more than offset by forestalling the need to increase local authority funding (*Kienbaum Report*, p.91). In the longer-term, the recommendation was for effective application of the new rates system of 1993 to existing and former ZCCM properties so that company payments 'in-kind' could be gradually wound-down and replaced by quantifiable cash payments. Over time, the level of offsets would discourage company involvement in municipal service provision and disentangle private sector and local government obligations (*ibid.*, pp.91- 92).
- ⁹ Kienbaum envisaged that schools and hospitals would ultimately be hived-off from the mines and run on a commercial basis. While schools and hospitals lend themselves to independent operation, the report envisaged that complex legal issues surrounding their status needed time to be resolved. It therefore recommended that the new owners continue to run such facilities until these could be rationalised and contracted-out or sold to specialist private-sector providers (*Kienbaum Report*, p.91). In the interim, it was proposed that the new mining companies cater for the educational and medical needs of their workforce by providing tax efficient 'non-cash' benefits as part of an employee's salary. The public would be expected to pay a realistic charge (*ibid.*, p.92). However, while the consultants suggested that companies should be free to offer services on a fee paying basis, they conceded that 'given the social problems which already exist in the Copperbelt in terms of unemployment, the generally low living standards and the existing interdependence between the public and private sector it might also be necessary for the "new" ZCCM to offer services at a subsidised rate to low income or unemployed members of the public.' (*Ibid.*, p.90). The level of tax credit received would be proportional to the level of subsidy.
- ¹⁰ *Kienbaum Report*, p.92.
- ¹¹ On the principle of sustainable development, see the *Revised Guidelines*, Preface, para. 5; II. General Policies, para.1; V. Environment, introductory paragraph. Sustainable development is the central feature of *Anglo's Policy on Safety, Health and the Environment*: 'In the spirit of Sir Ernest Oppenheimer's statement, we are committed to the principles of sustainable development - which we take to mean "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"* - because we believe it is fundamental to our long-term success.' [*"Our Common Future", Brundtland Report 1987]
- ¹² Anglo American plc, letter to Oxfam, 6 August 2001.
- ¹³ World Bank Operations Evaluation Department, *Performance Audit Report: First and Second Privatization and Industrial Reform Credits and Economic and Social Adjustment Credit* [hereafter, '*PIRC & ESAC PAR*'] (Washington D.C.: World Bank, 1998), para. 3.9.
- ¹⁴ '[T]he company is better managed as a single unit under one group of shareholders...to break ZCCM into five pieces...will be long, difficult and expensive.' (Mr. Jack Holmes, senior Anglo/ZCI B director of ZCCM, cited in 'ZCCM - the future lies in unbundling', *Times of Zambia*, 26 September, 1994).
- ¹⁵ Theo Bull, 'ZCCM - the future lies in unbundling', *op. cit.*
- ¹⁶ World Bank Operations Evaluation Department, *PIRC & ESAC PAR*, para. 2.27, esp. pp. 29-30.
- ¹⁷ *Parliamentary Report*, Observations and recommendations, para. 4, p.110.
- ¹⁸ *ERIP ICR*, *op. cit.*, para. 30.
- ¹⁹ *Parliamentary Report*, p.38.
- ²⁰ Statement from ZCI on privatisation of ZCCM. ZCI proposes the arrangements outlined be recorded in the form of a legally binding agreement. A copy of the statement can be found appended to the Ministry of Finance press release, 'Sale and Purchase Agreement signed on ZCCM's Konkola North Mining Prospect,' February 1997.
- ²¹ The ZCI appointed directors would also abstain from voting on any motion involving an offer or tender for any part of ZCCM by ZCI, Anglo American or subsidiary or associate companies.
- ²² Attachment 6 to the Rothchild's Report on the Privatisation of ZCCM, reproduced as exhibit AM1 to the affidavit of Abel Mkandawire (ZPA chairman), 10 September 1997, *First Quantum Mineral Limited vs. Zambia Privatisation Agency, Zambia Consolidated Copper Mines Limited, and Binani Industries Limited*, The High Court for Zambia, case 1997/HP/2065.
- ²³ *Revised Guidelines*, General Policies, para. 5.
- ²⁴ Oxford Analytica, 'Zambia: copper consequences,' briefing of 21 September 1998.
- ²⁵ 'Selling the family copper,' *The Economist*, 6 November 1999, p.86.
- ²⁶ 'Going it alone - at last and at what cost!' *Mining Magazine*, vol. 184, no. 1, January 2000.
- ²⁷ *Original Guidelines*, Competition, para. 1.
- ²⁸ The original consortium comprised ZCI/Anglo American (with a 40 per cent stake in the consortium), Gencor of South Africa (30 per cent) and Falconbridge of Canada (30 per cent). Falconbridge itself was a replacement for the Western Mining Corporation of Australia. However, Gencor pulled out of the deal on 21 May 1997, followed by Falconbridge on 25 March 1998. In 1999, Anglo and the Chilean mining company Codelco were engaged in talks over the joint development of Konkola, but these did not result in a partnership agreement.
- ²⁹ See *ZCCM Annual Report 1996*, Chairman's Statement (appended), p.2. A memorandum of understanding was signed between the Government and Anglo American on 11 February 1997.
- ³⁰ *Original Guidelines*, Competition, para. 3.
- ³¹ *Original Guidelines*, Competition, respectively introductory paragraph and the final subclause of para. 3.
- ³² *Original Guidelines*, Competition, para. 1.
- ³³ Serious market manipulation by Sumitomo's chief copper trader and others came to light in June 1996. Copper prices plummeted amid uncertainty over the extent of the scandal. An international investigation was launched by the UK's Securities and Investments Board into the London Metals Exchange's effectiveness of regulation. See N. Anyaduke, *Copper: a new material for the millennium* (London: Financial Times Energy, 1999), p.1 and pp.20 ff.
- ³⁴ The Government subsequently accused the major mining companies involved as banding together in the Kafue Consortium to form a buyer's

monopoly in order to force the sale of Nkana/Nchanga for a knockdown price. The eventual tax exemptions demanded by the Consortium in respect of mineral royalty, excise duty on electricity and import duties on fuel, all in addition to the existing package of concessions common to all development agreements, were deemed unacceptable. The Government, in turn, has been criticised for passing up the 'dream ticket' comprising four major players with the expertise to turn prospects for the bulk of ZCCM's operations around. Within the mining industry, the view is that to develop reserves of base metals such as copper increasingly requires the co-operation of more than one company. The accusation against the Government has been one of a failure to act decisively to clinch the best deal in June 1997 because of its preoccupation with the cash component of the overall package when its priority should have been to stem the haemorrhage of losses incurred by ZCCM and secure its future.

³⁵ See, for example, 'Selling the family copper,' *The Economist*, op. cit., p.86. For the views of ZAM and ZACCI, see *Parliamentary Report*, pp. 46 and 49 respectively.

³⁶ *Parliamentary Report*, p.51.

³⁷ *ERIP ICR*, para. 12. The Bank made the adoption of the Rothschilds privatisation plan a specific Bank condition for the second tranche release of funds under the ERIP Credit (FY95). (See *idem*, para.11). The legal covenant under Schedule 3,7 of the ERIP requires the Government to '[a]dopt and furnish IDA a satisfactory plan to privatize ZCCM.' Second tranche release of the Bank's follow-on ESAC II (FY 96) was similarly made conditional on satisfactory progress in implementing the ZCCM privatisation action plan. (*President's Report and Recommendation on a proposed credit to the Republic of Zambia for a Second Economic and Social Adjustment Credit* [hereafter, '*ESAC II R&R*'] (Washington D.C.: World Bank, 1996), para. 39; also para. 57(e)).

³⁸ *President's Report and Recommendation on a proposed credit to the Republic of Zambia for a Public Sector Reform and Export Promotion Credit* [hereafter, '*PSREPC R&R*'] (Washington D.C.: World Bank, 1999), para. 36; see also para. 5: 'In 1998, multilateral balance of payments support was also held up due to the delays in privatising ZCCM.'

³⁹ K341 billion were transferred. See International Monetary Fund, 'Zambia - Selected Issues and Statistical Appendix,' *Staff Country Report No. 99/43* (Washington D.C.: International Monetary Fund, 1999), Statistical Appendix, table 13. To convert into US\$, the prevailing exchange rate of \$1 = K1862 has been used.

⁴⁰ The purchase price at the time was \$90 million cash with \$300 million as investment commitments to rehabilitate Nkana, Nchanga and the existing Konkola mine.

⁴¹ *PSREPC R&R*, op. cit., para. 2.

⁴² The first tranche release was for \$65 million; however, the payment of an interim \$40 million 'floating tranche' was dependent on the fulfilment of conditions relating to public sector reform while the second tranche release of the balance of \$65 million was the subject of a number of covenanted agreements. In this respect, conditionality on the completion of privatisation was explicit: 'The transfer to the new owners of ownership and control of the remaining core ZCCM assets for which MOUs and/or ales agreements have been reached and decisions concerning the future status of any major ZCCM assets that are unsold will also be conditions for the release of the Second Tranche.' (*PSREPC R&R*, para. 39; also para. 55(c)). It is understood that similar conditionality applied to the release of bilateral funds from certain donors. For example, German support of DM20 million was understood to be conditional on the prompt and timely privatisation of ZCCM and support from the UK, worth an extra £54 million, was similarly dependent upon the Zambian Government reaching agreement over a renewed IMF/Bank adjustment program.

⁴³ 'IMF Approves ESAF Loan for Zambia,' IMF Press Release 99/10, 26 March. It is noted: 'The damaging impact on Zambia's economy from delays faced in the privatization of the ZCCM have [sic] amply demonstrated the need for a rapid completion of this process.'

⁴⁴ See Government of Zambia, Letter of Intent to the IMF 10 March 1999, Table 2: Prior Actions, Structural Performance Criteria, and Benchmarks During the First Annual Arrangement Under the Enhanced Structural Adjustment Facility, January 1, 1999 - December 31, 1999. See also annexed Government of Zambia, 'Memorandum of Economic and Financial Policies,' para. 34.

⁴⁵ 'IMF Concludes Article IV Consultation with Zambia,' *Public Information Document No. 99/30*, 29 April 1999.

⁴⁶ Statement to Parliament, Dr. Syamukayumbu Syamujaye, Minister of Mines and Mineral Development, 27 January 2000.

⁴⁷ Anglo American plc, letter to Oxfam, 6 August 2001.

⁴⁸ *Parliamentary Report*, p.58.

⁴⁹ *Parliamentary Report*, p.64.

⁵⁰ *Parliamentary Report*, p.102.

⁵¹ Previous estimates costed the full implementation of KDMP as originally planned at between \$700 - 800 million.

⁵² 'Going it alone - at last and at what cost!' *Mining Magazine*, vol. 184, no. 1, January 2000.

⁵³ *Parliamentary Report*, p.49.

⁵⁴ *Parliamentary Report*, p.50.

⁵⁵ *Idem*.

⁵⁶ 'Selling the family copper,' op. cit., p.86.

⁵⁷ Objectives taken from the Rothschilds Report, as stated by the Chairman of the ZPA. See *Parliamentary Report*, p.24.

⁵⁸ *ZCCM Annual Report 1996*, Chairman's Statement (appended).

⁵⁹ *Original Guidelines*, Competition, para. 3.

⁶⁰ *Parliamentary Report*, p.37.

⁶¹ *Parliamentary Report*, p.103.

⁶² In the initial bidding process concluded in February 1997, no offers were made to purchase the Nampundwe Pyrite Mine outright; however, the Kafue Consortium offered to manage the mine for three years on a contract basis. This offer was withdrawn when the overarching sale to the Consortium of Nkana/Nchanga collapsed.

⁶³ The Government had already been approached by Reunion Mining, a UK-listed African mining company, with a view to purchasing Mufulira on condition that the smelter and refinery were part of the sale.

⁶⁴ In early November 1998, Reunion Mining announced that it had signed a memorandum of understanding with the mine's existing management with a view to tabling a combined bid. The sale was to have been completed by the end of March 1999.

⁶⁵ The take-over of Reunion is confirmed by the Attorney General. See *Parliamentary Report*, p.75.

⁶⁶ Originally it was agreed that if Nkana was not sold by January 2000, Anglo would take over the running of the mine on a management contract and retain first refusal over its eventual sale. However, this arrangement was made irrelevant by the sale of Nkana to First Quantum/Glencore.

⁶⁷ *Parliamentary Report*, p.100. KCM operates the facility on behalf of Anglo Operations Limited. The latter is denoted as a whole owned subsidiary in Anglo American plc's 2000 Annual Report.

⁶⁸ *Idem*.

⁶⁹ *Parliamentary Report*, p.48.

⁷⁰ ZCCM Investment Holdings plc, Environmental Assessment of Copperbelt Environment Project [hereafter '*CEP EA*'], May 2001, para. 4.6.

⁷¹ *CEP EA*, para. 5.3.3.2. The same applies to MCM. See *Parliamentary Report*, p.100.

⁷² *CEP EA*, para. 5.3.3.2.

⁷³ MCM was granted the same reduction in company income tax and mineral royalty tax and duty exemptions on consumables, albeit up to a lower ceiling. See *Parliamentary Report*, p.99.

⁷⁴ Lusaka Central MP Dipak Patel (Independent).

⁷⁵ 'Zica nods concessions,' *Times of Zambia*, 16 February 2000

- ⁷⁶ *Parliamentary Report*, p.47.
- ⁷⁷ *Parliamentary Report*, para. 21, p. 113.
- ⁷⁸ Government of Zambia & Roan Antelope Mining Corporation of Zambia plc, Development Agreement between the Government of Zambia and Roan Antelope Mining Corporation of Zambia plc [hereafter '*RAMCZ Development Agreement*'], 14 October 1997, clause 15.3.
- ⁷⁹ *Ibid.*, clause 15.4.
- ⁸⁰ *Parliamentary Report*, p.35.
- ⁸¹ *Original Guidelines*, Competition, para. 1.
- ⁸² ILO Tripartite Declaration of Principles, para. 10; *Original Guidelines*, General Policies, para. 1.
- ⁸³ ILO Tripartite Declaration of Principles, para. 10; *Original Guidelines*, General Policies, para. 2. The main situation envisaged under the *Guidelines* in which enterprises are required to consider Government policy objectives and priorities with regard to economic and social progress is the cutting back or closure of operations. The right of the enterprise to reach decisions is upheld, although 'a prudent company should seek clarification of government policies through advance consultations with the government concerned.' (*The OECD Guidelines for Multinational Enterprises*, GD(97)40, op. cit., Chapter IV. Commentary on the Guidelines, p. 23). Notwithstanding the exemplar of closure or rationalisation, any decision with far-reaching social and economic impact - as in the case of social provision on the Copperbelt - gives rise to the same requirements.
- ⁸⁴ Copenhagen Declaration on Social Development, Commitment 9(e).
- ⁸⁵ See, respectively, Privatisation Act (1992), section 30; Investment Act, Part IV, 'General Incentives,' and Part V, 'Special Incentives'.
- ⁸⁶ Incentives and deductions for mining companies are stipulated under Part VI of the fifth schedule of Income Tax Act. See also Part XII, Investment Incentives, under the Mines and Minerals Act.
- ⁸⁷ In respect of Luanshya, see *RAMCZ Development Agreement*, Schedule 8, provision (1)(iii). In addition, all mines and facilities owned by a company are now considered a single entity for the purpose of allowable deductions so that 100 per cent of losses can be offset (Schedule 8, provision (6)). A previous restriction limiting the offset to 20 per cent of losses for those mines with a common owner, but which were not adjacent, was thereby removed. This was confirmed in the 1998 budget.
- ⁸⁸ In the *RAMCZ Development Agreement* for Luanshya, an undertaking is made by the Government not to increase mining royalties above 2 per cent (clause 15.2; also Schedule 8, provision (3)(i)). This represents a reduction of one percentage point in over the prior rate. The rate of Mineral Royalty Tax is confirmed at 2 per cent by value, minus transport and processing costs (Schedule 8, provision (2)(i) - (ii)). Furthermore, royalty payments are themselves deductible against liability for income tax for the fifteen year stability period (Schedule 8, provision (2)(iii)). In addition, when the cash operating margin - that is, company revenue minus operating costs - is less than zero, the payment of royalty tax can be deferred at the Government's discretion (Schedule 8, provision (2)(iv) - (v)).
- ⁸⁹ See *RAMCZ Development Agreement* 15.1(a); also Schedule 8, provision (5).
- ⁹⁰ On the write-off of capital expenditure, see *RAMCZ Development Agreement*, Schedule 8, para. (1)(v).
- ⁹¹ *Budget Address 1998*, para. 116.
- ⁹² Cf. Schedule 8 to the *RAMCZ Development Agreement*, which includes a cap on the IDF which can be charged to the company for certain non-exempt goods. In the event that the Import Declaration Fee is reintroduced, the Development Agreement fixes the maximum Import Declaration Fee (IDF) at 5 per cent by value of goods imported, save where these goods comprise capital expenditure and are already exempt under the Third Schedule of the Mines and Minerals Act (Schedule 8, provision (3)(ii)).
- ⁹³ 'In addition, we will refrain from introducing any tax reductions, new exemptions, rebates, or any other preferential tax treatment in 1999, except for the suspension of import duties on agricultural machinery and equipment, and the specific tax concessions that were made in the context of the privatization of the ZCCM.' (Government of Zambia, 'Memorandum of Economic and Financial Policies,' op. cit., para. 16). See also Government of Zambia, Letter of Intent to the IMF, 10 March 1999, op. cit., Table 2.
- ⁹⁴ 'IMF Concludes Article IV Consultation with Zambia,' op. cit..
- ⁹⁵ *Revised Guidelines*, II. General Policies, para. 5.
- ⁹⁶ Dr. Katele Kalumba, Minister of Finance, *Budget Address*, 28 January 2000, especially para. 107. See also the following commentaries: 'Kalumba presents a K124 bn deficit budget,' *The Post*, 31 January 2000; 'K423 bn set aside to settle ZCCM debt,' *Times of Zambia*, 29 January 2000; 'As police get large chunk...', *Times of Zambia*, 29 January 2000; 'Zambia reduces tax for its mine buyers,' *Business Day*, 31 January 2000.
- ⁹⁷ 'Finally, we have a deal!' *Times of Zambia*, 23 January 1999.
- ⁹⁸ See the *RAMCZ Development Agreement*, Schedule 8, provision (1)(ii). Company income tax is thereby fixed at a maximum of 35 per cent or 30 per cent if Roan Antelope were to obtain a full listing on the Lusaka Stock Exchange.
- ⁹⁹ KDMP will enjoy a lower power tariff of 2.7 cents per kilowatt-hour, while the rate to other mines is 3.3 cents/kWh. See 'Finally, we have a deal!' *Times of Zambia*, 23 January 1999.
- ¹⁰⁰ Konkola is the wettest mine in the world. The cost of running pumps to remove underground water accounts for 30 per cent of operational costs in comparison to an average industry cost of 9 per cent.
- ¹⁰¹ *Parliamentary Report*, p.78.
- ¹⁰² In respect of the *RAMCZ Development Agreement*, import duties on most goods and materials is charged, although limits were set for the stability period of fifteen years. The import duty is not to be raised above five per cent on goods and materials required for approved and normal operations (clause 15.2(a)(i)). At the time of the Agreement - and the same still applies - machinery or equipment imported into Zambia for use in the mining sectors was exempt from duty. The duty used to be 20 per cent. In the case of other goods and materials outside of the approved and normal operations, the limit is set at the 20 per cent threshold (clause 15.2(a)(ii)).
- ¹⁰³ See 'K423 bn set aside to settle ZCCM debt,' *Times of Zambia*, 29 January 2000.
- ¹⁰⁴ The Income Tax (Amendment) Bill which, inter alia, 'seeks to give Anglo-American Corporation (AAC) exclusive long-term and wide-ranging tax incentives,' passed its second reading in Parliament on 16 February 2000. (See 'Income Tax Bill passes second reading,' *Times of Zambia*, 16 February 2000). Statutory Instrument No. 18 of 2000 Mines and Minerals (Royalty) (Remission) Order legislates for reduced mineral royalty tax.
- ¹⁰⁵ *Parliamentary Report*, p.69.
- ¹⁰⁶ *Parliamentary Report*, p.42.
- ¹⁰⁷ *Parliamentary Report*, p.43.
- ¹⁰⁸ *Parliamentary Report*, p.48.
- ¹⁰⁹ *Idem.*
- ¹¹⁰ *Parliamentary Report*, p.50.
- ¹¹¹ *Idem.*
- ¹¹² *Parliamentary Report*, p.82.
- ¹¹³ *Parliamentary Report*, pp. 63 - 64.
- ¹¹⁴ *Parliamentary Report*, p.65.
- ¹¹⁵ See ZPA (undated), 'How far have Zambians participated in the privatisation programme? - Questions and Answers,' question 8.
- ¹¹⁶ *RAMCZ Development Agreement*, clause 11.1.
- ¹¹⁷ *Ibid.*, clauses 11.2 and 11.4.
- ¹¹⁸ In conjunction with balance of payment support, the other major source of foreign exchange in Zambia has traditionally come through ZCCM which sells currency to the Bank of Zambia and the commercial banks. The decline in ZCCM's revenue from copper and cobalt had already resulted

in shortages of foreign exchange. With the privatisation of ZCCM, the new owners are not required to supply foreign exchange. Hence the warning of Independent MP Robert Sichinga: 'This country and the Bank of Zambia will be starved of foreign exchange and it will not be possible to sustain the imports that are coming through.' (Quoted in 'ZCCM sale smells corruption, charges Sesheke AZ MP,' *The Post*, 3 December 1997).

¹¹⁹Edwin Musaika, 'How Zambia fared during the lean first quarter,' *Times of Zambia*, 25 May 1998.

¹²⁰*Parliamentary Report*, p.82.

¹²¹*Parliamentary Report*, p.45.

¹²²See 'Zambian controls should not affect Anglo', *Business Day*, 21 December 2000; 'Zambia warns foreign investors to stop transferring earnings,' *Business Day*, 15 January 2001; also 'Anglo dives in at the deep end of the Copperbelt,' *Business Day*, February 2001.

¹²³Special Rapporteur on Economic, Social and Cultural Rights, Mr. Danilo Türk, Second report on the realization of economic, social and cultural rights, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 43rd Session, E/CN.4/Sub.2/1991/17, 1991.

¹²⁴International Covenant on Economic, Social and Cultural Rights [hereafter, '*ICESCR*'], article 11.

¹²⁵*ICESCR*, article 12.

¹²⁶*ICESCR*, article 13.

¹²⁷*OECD Principles of Corporate Governance*, SG/CG(99)5, op. cit., Annotations to the OECD Principles of Corporate Governance, III. The role of stakeholders in corporate governance.

¹²⁸*Ibid.*, Annotations to the OECD Principles of Corporate Governance, III.A.

¹²⁹ILO Social Policy (Basic Aims and Standards) Convention, respectively Articles 2 and 3(1).

¹³⁰ILO Tripartite Declaration of Principles, para. 34. See also the ILO Social Policy (Basic Aims and Standards) Convention, article 11(7).

¹³¹The two main consortium members - Midlands Power International and the National Grid Company, both incorporated in the UK - failed to respond to a request to release further information.

¹³²See summary details of the sale, as given by the chairman of the GRZ/ZCCM Privatisation Negotiating Team, *Parliamentary Report*, p.95.

¹³³*Parliamentary Report*, pp.27 - 28.

¹³⁴*Parliamentary Report*, p.30.

¹³⁵The intention is to upgrade the hospital at a cost of \$500,000.

¹³⁶*CEP EA*, p.1.

¹³⁷*CEP EA*, 8.5.2.3.

¹³⁸*CEP EA*, 6.7.2.

¹³⁹*CEP EA*, 6.7.2.

¹⁴⁰*CEP EA*, 6.7.2.

¹⁴¹*CEP EA*, 6.7.2.

¹⁴²Municipal sewage plants are located at Konkola, Nchanga, Chambishi and Luanshya (*CEP EA*, table 7.7). Municipal solid waste dumps are at Nchanga, Mufulira, Luanshya and Konkola (*CEP EA*, table 7.8). See also *idem*, paras. 9.10 and 9.11.

¹⁴³*CEP EA*, 6.7.2.

¹⁴⁴*CEP EA*, 6.7.2.

¹⁴⁵*CEP EA*, 8.5.1.

¹⁴⁶*Public Information Document: Zambia Mine Township Services Project* (Washington D.C.: The InfoShop, World Bank, 1999). [An updated PID was issued on 9 February 2000].

¹⁴⁷See testimony of the Permanent Secretary to the Ministry of Mines and Minerals Development, *Parliamentary Report*, p.66; testimony of the Secretary to the Treasury, *ibid.*, p.56.

¹⁴⁸Anglo American plc, letter to the UN Committee on Economic, Social and Cultural Rights, 25 June 2001.

¹⁴⁹*ICESCR*, article 12 (2)(b) & (c).

¹⁵⁰*RAMCZ Development Agreement*, clause 9.1.

¹⁵¹A full list of social assets is given in Schedule 4 to the *RAMCZ Development Agreement*.

¹⁵²*RAMCZ Development Agreement*, clause 9.1.

¹⁵³*RAMCZ Development Agreement*, 9.5(b)(ii).

¹⁵⁴*RAMCZ Development Agreement*, 9.5(c).

¹⁵⁵*RAMCZ Development Agreement*, 9.5(d).

¹⁵⁶*Public Information Document: Zambia Mine Township Services Project*, op. cit., 'Objectives,' para. 2.

¹⁵⁷*Ibid.*, para. 1(b).

¹⁵⁸*Ibid.*, para. 1(b).

¹⁵⁹*Ibid.*, para. 1(c).

¹⁶⁰The new owners are only bound to maintain municipal services and infrastructure for two years at the most. (*RAMCZ Development Agreement*, clause 9.5). Houses formerly serviced by ZCCM are to be adopted 'as soon as reasonably practicable and in any event within 24 months' by the local council. (Clause 9.5(a)(iii)). In respect of the running of schools and hospitals, no time-frame is stipulated. While the company may make a decision to keep running these facilities itself, it is not bound to do so and is indeed permitted to contract out the management of these facilities. (Clause 9.6.) This may ultimately result in increased user fees, pricing services beyond the means of all but the highest paid. There is an overriding clause protecting the company from Government action if it is unable to comply with the provisions concerning social facilities and services 'for any reason whatsoever', provided that certain conditions are met. (Clause 9.7). The company either sets out a timetable for rectifying its non-compliance and compensates employees and the counterparty to the Public Services Access Agreement (i.e., the local council) for loss of service or else it withdraws from provision provided that it pays agreed compensation to the local council in question, increases general levels of pay or other employee benefits (although further details as to the nature and level are not specified), and reaches prior agreement with the union and council. (Clause 9.7, respectively subclauses (i)(a) - (c)). The acceptability or otherwise of a proposed change to social provision by the company is considered in a joint committee 'comprising equal numbers of representatives of the Parties.' (Clause 9.9). The impression created is that all those affected meet to discuss the proposed change; however, the strict definition of 'Parties' under the Development Agreement refers solely to the signatories, that is the Government of Zambia and RAMCZ. (Clause 1.1, 'Definitions and Interpretations,' p.6). Hence unions or employees or a local council or others affected by decisions of the company have no automatic right under the Agreement to sit on the joint committee, although it is supposed that they might be invited to do so.

¹⁶¹KCM plc, *Environmental Assessment*, Volume 3.2: Nchanga Mine – Social Management Plan Part A – Social Assessment, section 2.4.6.

¹⁶²KCM plc, *Environmental Assessment*, Volume 1 – Overview and corporate management plans, section 5.1.3.3.

¹⁶³KCM plc, *Environmental Assessment*, Volume 1 – Overview and corporate management plans, section 5.1.3.3.

¹⁶⁴KCM plc, *Environmental Assessment*, Executive Summary, p. 27.

¹⁶⁵The qualifying clause reads 'Enterprises should, within the framework of law, regulations and prevailing labour relations and employment practices, in each of the countries in which they operate...' (*Original Guidelines*, Employment and Industrial Relations, introductory paragraph; the same Chapter and clause under the *Revised Guidelines*). In respect of industrial relations, the ILO Tripartite Declaration of Principles, para. 40, refers to the observance of industrial relations 'not less favourable than those observed by comparable employers in the country concerned.'

- ¹⁶⁶*Original Guidelines*, Employment and Industrial Relations, para. 4; *Revised Guidelines*, same Chapter, para. 4(a).
- ¹⁶⁷ILO Tripartite Declaration of Principles, para. 33.
- ¹⁶⁸ILO Tripartite Declaration of Principles, para. 34.
- ¹⁶⁹*Idem*.
- ¹⁷⁰ICESCR, article 7(a)(ii).
- ¹⁷¹ILO Social Policy Convention (No. 117), article 11(7).
- ¹⁷²*Parliamentary Report*, p.39.
- ¹⁷³Briefing by the MUZ, Nampundwe Branch Officials, *Parliamentary Report*, p. 108.
- ¹⁷⁴Anglo American plc, letter to the UN Committee on Economic, Social and Cultural Rights, 25 June 2001.
- ¹⁷⁵*Idem*.
- ¹⁷⁶RAMCZ Development Agreement, clause 9.2(a) on health; clause 9.3(b) on education.
- ¹⁷⁷*Ibid.*, clause 9.2(b)(ii) and (c) on health; clause 9.3(c)(ii) and (d) on education.
- ¹⁷⁸*Ibid.*, clause 9.2(d) on health; clause 9.3(e) on education.
- ¹⁷⁹Respectively, *ibid.*, clause 9.4.
- ¹⁸⁰KCM plc, *Environmental Assessment*, Executive Summary, p.56.
- ¹⁸¹KCM plc, *Environmental Assessment*, Volume 3.2: Nchanga Mine – Social Management Plan Part A – Social Assessment, Appendix A – Livelihoods Analysis Local Environment, p. A-1-25.
- ¹⁸²KCM plc, *Environmental Assessment*, Volume 3.2: Nchanga Mine – Social Management Plan Part A – Social Assessment, section 2.3.6.
- ¹⁸³KCM plc, *Environmental Assessment*, Executive Summary, p.38.
- ¹⁸⁴ICESCR, article 12 (2)(d).
- ¹⁸⁵Article 11(7), ILO Social Policy (Basic Aims and Standards) Convention (No. 117), 1962.
- ¹⁸⁶*SHE Report 2000*, p.22.
- ¹⁸⁷Anglo American plc, letter to Oxfam, 6 August 2001.
- ¹⁸⁸KCM plc, *Environmental Assessment*, Volume 5.2 - SmelterCo – Social Management Plan Part A – Social Assessment, section 2.7.1.
- ¹⁸⁹*SHE Report 2000*, pp.20 ff
- ¹⁹⁰*SHE Report 2000*, p.22
- ¹⁹¹RAMCZ Development Agreement, clause 6.1; also Schedule 6, ‘Training and Human Resources Management programme’.
- ¹⁹²*Revised Guidelines*, IV. Employment and Industrial Relations, para. 5; also II. General Policies, para. 4; *Original Guidelines*, Employment and Industrial Relations, para. 5: Enterprises should ‘to the greatest extent practicable, utilise, train and prepare for upgrading members of the local labour force...’. See also ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 30.
- ¹⁹³ICESCR, article 6(2).
- ¹⁹⁴RAMCZ Development Agreement, clause 23.1(a).
- ¹⁹⁵*Ibid.*, clause 23.1(b).
- ¹⁹⁶*Ibid.*, clause 6.2. More generally, should a dispute arise, and following unsuccessful talks, the matter is referred to a nominated sole expert for determination (clauses 6.4 and 6.5).
- ¹⁹⁷*Ibid.*
- ¹⁹⁸*Parliamentary Report*, p.98.
- ¹⁹⁹*Parliamentary Report*, p.76.
- ²⁰⁰CEP EA, para. 6.72.
- ²⁰¹*Revised Guidelines*, General Policies, para. 3; *Original Guidelines*, General Policies, para. 4: Enterprises should ‘[f]avour close co-operation with the local community and business interests’.
- ²⁰²Respectively, ILO Tripartite Declaration of Principles, para. 20; and *Original Guidelines*, General Policies, para. 4.
- ²⁰³*Parliamentary Report*, p.98; also *SHE Report 2000*, p.42.
- ²⁰⁴*Parliamentary Report*, p.78.
- ²⁰⁵RAMCZ Development Agreement, clause 5.1(a). The Local Business Development Plan, written in general terms and just one page in length, is attached as Schedule 2 to the Agreement. In Schedule 2, the company states that it will provide a more detailed plan within the year, although it is unclear whether this constitutes a binding commitment.
- ²⁰⁶RAMCZ Development Agreement, clause 5.1(c) and (b) respectively. A committee, comprising one member each from Roan Antelope, the Ministry of Mines and Minerals Development, the local council and chaired by a representative from the Ministry of Commerce, Trade and Industry, is formed to monitor the supply of goods and services by reviewing quarterly reports which the company provides (*Ibid.*, clause 23.2).
- ²⁰⁷RAMCZ Development Agreement, Schedule 2.
- ²⁰⁸*Ibid.*, clause 5.2(a). The Government either accepts these alterations or the matter is referred to a Sole Expert for determination (*Ibid.*, clauses 5.3 and 5.4 respectively).
- ²⁰⁹The company agrees to identify and register local businesses which are capable of supplying materials, equipment and services (RAMCZ Development Agreement, clause 4.1). Such prequalified business must be afforded the opportunity to tender and the Roan Antelope shall not discriminate against them provided that they are competitive in terms of price, quality, delivery etc. (*Idem*, clause 4.2).
- ²¹⁰*Parliamentary Report*, p.82. See also the Observations and Recommendations of the Committee, para.6, p.110.
- ²¹¹*Parliamentary Report*, p.49.
- ²¹²*She Report 2000*, p.42.
- ²¹³Anglo American plc, letter to Oxfam, 6 August 2001.
- ²¹⁴*Parliamentary Report*, p.50.
- ²¹⁵*Ibid.*, p.51.
- ²¹⁶*Parliamentary Report*, pp.43 - 44.
- ²¹⁷The relevant subclause reads ‘within the framework of laws, regulations and administrative practices in the countries in which they operate’. See *Original Guidelines*, Environmental Protection, introductory paragraph; and the same Chapter in the *Revised Guidelines*.
- ²¹⁸*Original Guidelines*, Environment, introductory paragraph. See also *idem*, preface, para. 9. ‘This chapter does not single out multinational enterprises for special attention. On the contrary, a key feature of the *Guidelines* is their non-discriminatory nature. The *Guidelines* do not imply differences in the treatment or behaviour of multinational and domestic enterprises or that particular enterprises should adhere to higher standards - both groups of enterprises are subject to the same expectations with respect to their conduct whenever the *Guidelines* are relevant to both.’ (*The OECD Guidelines for Multinational Enterprises*, GD(97)40, op. cit., Chapter IV. Commentary on the Guidelines, p. 36).
- ²¹⁹*Original Guidelines*, para. 8(3)(b). The use of environmental auditing is specifically mentioned in this context.
- ²²⁰*Revised Guidelines*, Commentary on the Environment, para. 40.
- ²²¹*Revised Guidelines*, General Policies, para. 5.
- ²²²Mines and Minerals (Environment) Regulations, 1997.
- ²²³CEP EA, para. 5.3.3.1.
- ²²⁴CEP EA, para. 4.2

- ²²⁵RAMCZ Development Agreement, clause 12.13.
- ²²⁶For example, see *ibid.*, clauses 12.1 and 12.2. The Environmental Clean Up Obligations are outlined in a schedule attached to the Agreement.
- ²²⁷CEP EA, para. 4.2.
- ²²⁸ The ZCCM EMPs form part of the Environmental Impact Statements commissioned by ZCCM for each operating division prior to privatisation. Cyprus Amax (now under Phelps Dodge) at Kansanshi, Metorex at Chibuluma, and RAMCZ at Luanshya (now in receivership) have adopted EMPs drawn up by ZCCM. MCM, Chambishi Metals, and NFC Africa have all negotiated options to draw up their own EMPs. See CEP EA, 9.15.2.
- ²²⁹RAMCZ Development Agreement, clause 12.3(a) - (c).
- ²³⁰*Ibid.*, clause 12.3(d). Fines may only increase in line with inflation.
- ²³¹*Ibid.*, clause 12.4.
- ²³²*Ibid.*, clause 12.5; see also 12.4.
- ²³³CEP EA, tables 2.1 and 4.2; also para. 4.5.
- ²³⁴CEP EA, para. 4.5
- ²³⁵Cited in KCM plc, *Environmental Assessment*, Volume 5.1 – SmelterCo Smelter and Refinery Complex Part A – Environmental Assessment, p. 4.2 - 4.3; also *Environmental Assessment*, Executive Summary, section 7.1
- ²³⁶*Environmental Assessment*, Executive Summary, section 7.1.
- ²³⁷CEP EA, para. 4.2.
- ²³⁸CEP EA, paras. 4.2 and 5.3.3.2; also *Parliamentary Report*, pp. 97 - 98.
- ²³⁹KCM, to avoid delays in seeking shareholder approval for its KDMP development, produced the plans ahead of this contractual requirement.
- ²⁴⁰KCM plc, *Environmental Assessment*, Executive Summary, p. 47.
- ²⁴¹KCM plc, *Environmental Assessment*, Executive Summary, p. 47. See also CEP EA, para. 9.15.1; and CEP EA, para. 4.2.
- ²⁴²Hence responsibility for environmental liabilities remains with ZCCM-IH.
- ²⁴³KCM plc, *Environmental Assessment*, Volume 5.1 – SmelterCo Smelter and Refinery Complex, Executive Summary, p.i.
- ²⁴⁴The central role played by KCM in the both the utilisation and management of SmelterCo is apparent: 'The SmelterCo environmental management structure has been formed to implement the environmental commitments of SmelterCo. Although this structure is internal to SmelterCo it has strong links to KCM, who has the overall management responsibility.' [KCM plc, *Environmental Assessment*, Volume 5.1 – SmelterCo Smelter and Refinery Complex, Part A – Environmental Assessment, section 2.1]. The Environmental Co-ordinator at SmelterCo reports directly to the KCM Environmental Manager.
- ²⁴⁵CEP EA, para. 8, p.v.
- ²⁴⁶KCM plc, *Environmental Assessment*, Volume 5.1 – SmelterCo Smelter and Refinery Complex Part A – Environmental Assessment, p. 4.5.
- ²⁴⁷KCM plc, *Environmental Assessment*, Executive Summary, p. 47.
- ²⁴⁸KCM plc, *Environmental Assessment*, Executive Summary, p. 37.
- ²⁴⁹KCM plc, *Environmental Assessment*, Volume 5.1 – SmelterCo Smelter and Refinery Complex Part A – Environmental Assessment, section 6.7.11.1.
- ²⁵⁰KCM plc, *Environmental Assessment*, Volume 5.1 – SmelterCo Smelter and Refinery Complex Part A – Environmental Assessment, p. 4.7.
- ²⁵¹IDA funding is for \$55 million.
- ²⁵²CEP EA, para. 13.8(2), p.166.
- ²⁵³*Revised Guidelines*, V. Environment, para. 1.
- ²⁵⁴*Revised Guidelines*, Commentary on the Environment, paras. 30 - 31.
- ²⁵⁵*Revised Guidelines*, Commentary on the Environment, paras. 31.
- ²⁵⁶*SHE Report 2000*, p.45.
- ²⁵⁷KCM plc, *Environmental Assessment*, Executive Summary, p. 39.
- ²⁵⁸*Revised Guidelines*, IV. Employment and Industrial Relations, para. 4(b).
- ²⁵⁹Zambia Copper Investments Limited, Consolidated Statement of Earnings for the six months to June 30, 2001, *Press Release*, 24 August 2001.
- ²⁶⁰The OECD Guidelines for Multinational Enterprises, GD(97)40, op. cit., Chapter IV. Commentary on the Guidelines, p. 25: 'The purpose of this chapter [on disclosure] is to encourage greater transparency of the enterprise as a whole through the publication of a body of information sufficient to improve public understanding. This can alleviate concerns arising from the complexity of multinational enterprises and the difficulties in clearly perceiving their diverse structures, operations and policies.' See the parallel observations made in the Commentary on Disclosure under the *Revised Guidelines*, para. 12.
- ²⁶¹In the *Original Guidelines*, a clause within the introductory paragraph on disclosure reads 'as a supplement, in so far as necessary for this purpose, to information to be disclosed under the national law of the individual countries in which they operate.' See also the parallel interpretation made in the Commentary on Disclosure, para. 12, under the *Revised Guidelines*.
- ²⁶²ILO Tripartite Declaration of Principles, para. 54.
- ²⁶³Principle IV. Disclosure and Transparency, OECD Principles of Corporate Governance.
- ²⁶⁴*Revised Guidelines*, III. Disclosure, para. 4(b), (f) and (g), reproducing Principle IV. A. (2), (6) and (7), OECD Principles of Corporate Governance.
- ²⁶⁵*Revised Guidelines*, Commentary on Disclosure, para. 13.
- ²⁶⁶OECD Principles of Corporate Governance, SG/CG(99)5, op. cit., Annotations to the OECD Principles of Corporate Governance, IV. A.(2).
- ²⁶⁷*Idem*.
- ²⁶⁸OECD Principles of Corporate Governance, SG/CG(99)5, op. cit., Annotations to the OECD Principles of Corporate Governance, IV. A.(6).
- ²⁶⁹*Revised Guidelines*, Commentary on Disclosure, para. 14.
- ²⁷⁰*Revised Guidelines*, III. Disclosure, para. 5(a).
- ²⁷¹*Original Guidelines*, Employment and Industrial Relations, para. 6; *Revised Guidelines*, *idem*.
- ²⁷²*Parliamentary Report*, p.38.
- ²⁷³IFC Good Practice Manual, Section A: Introduction, p.2.
- ²⁷⁴*Ibid.*, Section B, p.14.
- ²⁷⁵IFC Good Practice Manual, Guidance note 6: Consultation and disclosure on the draft EA report, Section C, p.40.
- ²⁷⁶IFC Environment Impact Assessment Summary, 6 August 2001.
- ²⁷⁷*Revised Guidelines*, Commentary on Disclosure, para. 17.
- ²⁷⁸Principle IV. D. OECD Principles of Corporate Governance.
- ²⁷⁹IFC Environment Impact Assessment Summary, 6 August 2001.
- ²⁸⁰*Zambia: Deregulation and the denial of human rights*, Submission to the Committee on Economic, Social and Cultural Rights, op. cit..