

Undermining development? Copper mining in Zambia

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Contents

Introduction

Chapter 1: Development agreements – secret deals for corporate profit and protection

- Context: signing of the development agreements 8
- Financial benefits from the development agreements 8
- How renegotiating the development agreements will benefit mining companies 11

Chapter 2: The experience of Konkola Copper Mines' (KCM) workforce

- Context: employment in Zambia and the role of the regulatory authorities 13
- Terms and conditions for permanent KCM employees 14
- Putting profit above people: terms and conditions for sub-contracted workers 14

Chapter 3: The environmental impacts of KCM operations

- Context: the Environmental Council of Zambia 19
- KCM and water pollution 21
- KCM and air pollution 22

Conclusion 25

Recommendations 27

Acronyms and abbreviations 31

References 32

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Introduction¹

Background to Zambia and copper mining

Copper mining is the lifeblood of the Zambian economy, generating three-quarters of the country's foreign exchange earnings.² Copper is equally important to western and newly industrialising countries such as China, where it is used for electrical wiring, phone and internet lines, computers and cars.³ Increased demand for these goods in countries such as China has resulted in a boom in international copper prices reminiscent of the late 1960s and 1970s, when Zambia was a middle-income country, with one of the highest gross domestic products (GDPs) in Africa.⁴ With its large reserves of high-quality copper, Zambia should be benefiting handsomely from the current boom.

Yet levels of poverty in Zambia are extremely high; it is the ninth poorest country in the world, according to the United Nation's Human Development Index,⁵ one in five people are living with HIV;⁶ one in three children do not attend primary school⁷ and 68 per cent of the population live on less than US\$1 a day.⁸ Average life expectancy is 37 years⁹ and, today, someone born in Zambia has less chance of living to 30 than someone born in England in 1840.¹⁰

The agencies that have written this report – the Scottish Catholic International Aid Fund (SCIAF), Christian Aid, and Action for Southern Africa (ACTSA) – are concerned that Zambian citizens and the Zambian economy are not benefiting to the extent that they should from the country's copper reserves. The three chapters provide evidence in support of this.

- **Chapter 1** summarises evidence from various sources that the government is not receiving a fair share of revenue from copper mining contracts entered into under pressure from the International Monetary Fund (IMF) and World Bank.
- **Chapter 2** highlights the experiences of employees working for Zambia's largest copper mining company – Konkola Copper Mines (KCM) – in particular those employed through contract firms. Many contract workers told us that, while they are grateful for the employment opportunities created by the mining companies, they have to endure poor wages, terms and conditions.
- **Chapter 3** highlights concerns that members of local communities have about the environmental impact of KCM operations, and how this is affecting them.

In short, this report argues that Zambian society is deriving few of the advantages of copper mining while suffering many of the disadvantages.

Renegotiation – a historic first for Zambia

Changes, however, are afoot, as the Zambian government is currently negotiating with mining companies to amend financial clauses in the development agreements. As Father Misheck Kaunda, Ndola coordinator for the Catholic Commission for Justice, Development and Peace (CCJDP) noted, this is in no small part due to pressure from civil society. According to Father Misheck, NGOs – including CCJDP and Citizens for a Better Environment (CBE), trade unions and Zambian academics – have ‘made the government wake up to the fact that there has not been much benefit to Zambia from high copper prices’.¹¹

Renegotiation is an important step in the right direction. If Zambia is to start deriving the benefits it should expect from copper mining, we believe the contracts need to do more to reflect Zambian interests, while allowing for corporate profit and protection. Finance Minister Ng’andu Magande has indicated that negotiations will start in October 2007 and should be finished ‘perhaps within’ three months.¹² The renegotiation exercise looks extremely promising, especially as KCM has indicated that it is open to negotiation. KCM’s director of operations, C P Baid, has been quoted as saying that ‘for as long as [the] government’s plan is to renegotiate development agreements for purposes of boosting the economy, we have no problems with that’.¹³ The test will be how this is translated into practice at the renegotiation table.

During this crucial period, pressure must be brought to bear on all parties to the negotiations – from the Zambian government to the mining companies – to ensure that the renegotiation is as successful as possible, and that any funds generated by the renegotiation process are used transparently to the benefit of the Zambian population. This report, together with the follow-up campaign actions, aims to contribute significantly to this process.

However, this is not the only purpose of the report: we also seek to show that renegotiation is not a ‘magic bullet’. Indeed, even if renegotiation is ‘successful’, concerted action will be needed in other areas over the coming months and years to ensure that the benefits of mining to Zambia are maximised.

The report aims to illustrate these general arguments by drawing on existing work on these issues – in particular *For Whom the Windfalls*,¹⁴ a report commissioned by Civil Society Trade Network Zambia (CSTNZ), CCJDP and Christian Aid, and summarised in Christian Aid’s *A Rich Seam*.¹⁵ *For Whom the Windfalls* looked at the multiple aspects of copper mining and provides an overview of the operations of the key copper mining companies in Zambia such as KCM, Mopani Copper Mines (MCM) and Chambishi Mining. The research for this report uncovered the contracts between the Zambian government and mining companies, and these were consequently published on an independent website – a historic first for Zambia.¹⁶ Our report builds on this work, focusing on KCM, a company operating on the Zambian Copperbelt, of which UK company Vedanta Resources is the majority shareholder.

Konkola Copper Mines: a case study

We chose KCM in part because of its sheer size. KCM's parent company Vedanta's revenue in financial year 2006/07 was US\$6.5 billion – almost matching Zambia's entire gross national income of US\$7.4 billion in 2006.¹⁷ According to KCM's corporate social responsibility literature, it accounts for one-sixth of Zambia's GDP and one-third of total exports.¹⁸

Secondly, KCM's ownership was, and continues to be, dominated by UK companies – initially Anglo American (whose subsidiary owned 65 per cent of shares from 2000-2002) and subsequently Vedanta Resources, which became the main shareholder in 2004. The company now owns 51 per cent of shares and is in negotiation with the other private shareholder – a Bermuda-based company called Zambia Copper Investments – to increase its ownership to 79 per cent.¹⁹ The remainder of shares are held by Zambia Consolidated Copper Mines Investment Holdings (ZCCM-IH). Vedanta is listed on the London Stock Exchange, has its head office in the UK²⁰ and has several UK investors, many of which are household names.

Box 1: From the Zambian Copperbelt to Dundee – how UK investment houses profit from Zambian copper mining

As at August 2007, UK investors in Vedanta Resources included various London-based firms such as Barclays Bank and several prominent Scottish investors including Standard Life, Halifax/Bank of Scotland (HBOS) and Dundee-based Alliance Trust. Many of these are household names with which our supporters and campaigners may have connections through their bank accounts, pensions and savings.

Such investors play a vital role in any company's activities and wield considerable influence over management. For example, fund managers tend to meet regularly with the senior executives of the companies in which they invest. In other words, the companies named above have an unrivalled opportunity to use their influence to bring the issues in this report to Vedanta's attention and to push for change.

In general terms investment managers represent, and are responsible to, their customers – who, it should not be forgotten, are the actual owners of such shareholdings. We believe that many savers would like the influence they have as investors to be used to improve corporate behaviour, especially where companies' practices leave much to be desired. Many investors are now persuaded of the benefits of exemplary corporate social responsibility practices, and investment management companies often claim to be 'socially responsible investors'. But there can be a distinct lack of information about just how meaningful these policies are and the difference they make. Investment management companies should also provide more information and greater transparency about their 'socially responsible' investment programmes so that consumers can make better-informed choices.

We have decided to focus on KCM under Vedanta ownership – not only for what it reveals about the lack of benefit to Zambians from copper mining, but also for what it reveals about the positions taken by the UK government and UK-based investors on corporate social responsibility.

The position of the UK government and the European Commission (EC)²¹ suggests that companies are inherently trustworthy – according to Gordon Brown: 'The correct, modern model of regulation...is based on trust in the

responsible company.²² If regulation is required, it can be provided by host countries. This obviates the need for additional regulation by other actors; indeed the UK government's Department for International Development (DFID)'s 2006 white paper, *Eliminating World Poverty: Making Governance Work for the Poor*, implicitly rejects a strong regulatory approach at home government or international level, noting that 'the best solution [for unscrupulous company behaviour] is for the government of the country where such activity has taken place to have effective domestic legislation and regulation to stop it.' The white paper goes on to recognise that this is not always possible, but instead of promoting a regulatory approach to the problem, it recommends 'codes of practice...[to] encourage companies to work legitimately in developing countries'.²³

In 2006, the UK government introduced the Companies Act, which gives company directors a legal responsibility, not simply to maximise profit but also to 'have regard...[to] the impact of the company's operations on the community and the environment',²⁴ and makes it mandatory for large companies to report on said impacts. Although the government's position is shifting somewhat, in essence it remains unchanged. The evidence gathered in this report questions and challenges this reliance on self-policing and host-country regulation. Human rights are not negotiable, and as such their protection and promotion should not be optional.

The Zambian government clearly has an important role to play. It has a duty to safeguard the human rights of its population through the effective use of public funds generated from mining companies and other sources, and by ensuring effective corporate regulation. However, this report cites a variety of evidence which suggests that the Zambian government does not always have the ability to ensure effective regulation, as it can face challenges in designing and implementing national legislation.²⁵

This report argues for effective regulation by the UK government at the national level, and an effective international regulatory framework for multinational companies to ensure that all corporations are bound by certain minimum standards, regardless of where they are headquartered and where they operate. Some progress has already been made in this area – through, for example, the Organisation for Economic Cooperation and Development (OECD)'s *Guidelines for Multinational Enterprises* and the UN's norms on transnational corporations and human rights.²⁶ However, these standards and their implementation need to be improved.

It is crucial that the UK government heeds this call to action now. The UN has appointed a special representative on business and human rights to investigate corporate social responsibility and accountability worldwide, and to make recommendations for improving the current situation by June 2008. It is vital that this opportunity, and others that present themselves over the coming years and months,²⁷ are not lost. With every day that passes, communities and workers in developing countries are suffering unnecessarily at the hands of multinationals. But it does not have to be this way. Although multinationals can fail to protect communities, ensure their workers receive a living wage, or

pay a fair share of their profits in taxes, they are capable of bringing benefits to developing countries.

Chapter 1

Development agreements – secret deals for corporate profit and protection?

Context: signing development agreements

Zambia has a long history of reliance on copper, and gains a strong sense of national identity from copper mining – so much so that the area around the mines is referred to as the Copperbelt and the mining sector has been called both ‘the mother of Zambia’ and its ‘economic lifeblood’. This perception has been fuelled by the fact that, from 1969 onwards, the copper mining sector was controlled by the Zambian government, predominantly through a state-owned enterprise called Zambia Consolidated Copper Mines (ZCCM).

However, in the early 1990s the government started discussing the possibility of privatising copper mining, largely – but not exclusively – due to pressure from the IMF and World Bank. Privatisation of ZCCM was a condition repeatedly attached to several loans from both these institutions and was a pre-condition for Zambia to qualify for debt relief through the highly indebted poor countries (HIPC) initiative.²⁸ In 1999, with the Zambian government still reluctant to privatise ZCCM, ‘major donors withheld some \$530 million in aid until the government conceded.’²⁹ ZCCM’s assets were split into seven sections and sold to various investors, though the company was able to retain shares in some of the units – including in KCM – through the creation of a holding company called ZCCM-Investment Holdings (ZCCM-IH).³⁰

According to the then finance minister Edith Nawakwi, the government was put under enormous pressure:

‘We were told by advisers, who included the International Monetary Fund and the World Bank, that not in my lifetime would the price of copper change. They put production models on the table and told us that there [was] no copper in Nchanga mine, Mufulira was supposed to have five years’ life left and all the production models that could be employed were showing that, for the next 20 years, Zambian copper would not make a profit. [Conversely, if we privatised] we would be able to access debt relief, and this was a huge carrot in front of us – like waving medicine in front of a dying woman. We had no option [but to go ahead].’³¹

Financial benefits from the development agreements

One of the arguments in favour of privatisation was that it would save the government money by relieving them from propping up an enterprise losing up to US\$1 million a day.³² It would also generate resources: increased investments by the new owners would generate significant profits that would be channelled back to the government through taxation and dividends.

Although this has happened to some extent,³³ evidence from a variety of reports suggests that the amount of revenue transferred to the Zambian government by the new mining companies is relatively small when compared to the revenues transferred to governments in other resource-rich countries. For example, according to Christian Aid's *Rich Seam* report, Botswana's largest diamond mining company Debswana pays at least 70 per cent of its profits to the national government through revenue transfers of different sorts, including dividends.³⁴

This kind of company-by-company analysis is extremely difficult to do in Zambia. We asked KCM for a copy of their annual report, but did not receive one. We also asked Vedanta and KCM to comment on the report and on the figures cited below but, at the time of writing, they had not given us the relevant information. Vedanta's annual report does not detail the amount of net profit that KCM makes in various financial years, or how much was paid to the Zambian government in various forms of revenue transfer.³⁵

Given the lack of information available, the figures cited below are approximate. We firmly believe that Zambia was placed under considerable pressure, which weakened its bargaining position, leaving it unable to replicate models that had been successfully applied elsewhere – in Botswana, for example, as mentioned above. As a result, various mining companies locked the government into 15-20 year contracts that, in our opinion, allow the exploitation of its key natural resource on unfavourable terms.

Mineral royalties provide a case in point. Given the high quality of Zambia's copper deposits,³⁶ the high rate of extraction, and the country's dependence on copper, the Zambian government should be able to charge a relatively high rate of mineral royalty. An IMF paper states that the 'common range' for royalty rates in developing countries is 5-10 per cent, with some royalties as high as 30 per cent.³⁷ Zambia's Mines and Minerals Act specifies a royalty rate of just 3 per cent of the netback value of minerals produced.³⁸ However, many mining companies (including KCM under Anglo American's leadership) managed to negotiate a different rate than that specified in the Act. Indeed, KCM pay just 0.6 per cent of the gross revenue of minerals produced. However OECD guidelines, standards for company behaviour signed up to by OECD member governments, expressly state that 'enterprises should refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to...taxation, financial incentives or other issues.'

Although we have not been given access to hard documents, this royalty rate would translate into payments by KCM to the Zambian government of less than US\$6.1 million in financial year 2006/07, despite the company extracting ore that generated revenues in excess of US\$1 billion.³⁹

It is not clear, however, that the mining companies have paid even these low rates of royalties. In the absence of the relevant data, we estimate that KCM under Vedanta⁴⁰ and MCM⁴¹ should together have paid approximately US\$3.8

million in mineral royalties during financial year 2004/05,⁴² but Ministry of Finance statistics, as reported by industry journal *MineWeb*, indicate that mining companies as a whole paid only US\$1.57 million during this period.⁴³

Another example of the effects of the Zambian government's weak negotiating position is the rate of corporate income tax. While KCM's corporate income tax rate is set at 25 per cent, there are several exemptions and allowances – for example, an extended carry-over loss period – which can lead to the headline rate not being paid in practice. While it is standard practice to allow losses to be carried over and offset against future profits, the net effect of this and other tax exemptions, according to the World Bank's International Finance Corporation,⁴⁴ is that mining companies in Zambia can legally enjoy a marginal effective tax rate of 0 per cent.

The practice of 'price participation' is further evidence of the government's weak negotiating position. Price participation constitutes a separate contract in its own right. We have been unable to obtain a copy of the contract, but a ZCCM official told us that, if the price of copper at the London Metal Exchange (LME) exceeds a specific benchmark (US\$2,700-2,800 per tonne), then the government, via ZCCM-IH, starts to claim back a certain percentage (in KCM's case, 25 per cent) of the difference between the benchmark price and the current price. According to the same official, ZCCM-IH rarely receives the full percentage as 'there are conditionalities [attached]', and a cap on the amount that ZCCM can receive from KCM in any one year (roughly US\$16-19 million).⁴⁵ The Zambia Privatisation Agency also notes that there is a cap of US\$125 million on how much ZCCM can receive 'over the life of the operations'.⁴⁶ Clauses such as these have led an official from the Ministry of Justice to state that 'the principle of price participation is very good [and]...on paper they [the clauses] look fine...[but] the amount the government got was pathetic'.⁴⁷ If this is the case, it would be appropriate for Zambian civil society to have access to the price participation document so that they can assess the validity of these statements.

In our view, the net result of these clauses is that the Zambian government is unable to derive what would normally be considered its rightful or normal rewards from the extraction of the country's key natural resource. Estimates in a KCM presentation to investors suggest that employees' contributions through 'pay as you earn' (PAYE) account for nearly half of KCM's tax contributions to the government.⁴⁸ Meanwhile, KCM's reported net profits in financial year 2006/07 were US\$301 million.⁴⁹ This information is not listed in Vedanta's annual report and, at the time of writing, KCM had not replied to our request for this information. However, if the other reports are accurate, KCM's net profit is more than the Zambian government spent in 2006 on healthcare and social protection combined.⁵⁰

One would expect the Zambian government/ZCCM to benefit from these profits through its shareholding in KCM. However, sources suggest that KCM has distributed only four per cent of its net profit to shareholders in the form of dividends for financial year 2007⁵¹ – far below the FTSE 100 average of 37 per cent.⁵²

It is up to each company to decide its own dividend policy, and retaining a large portion of earnings to reinvest in the company can be beneficial to shareholders in the long run. However, an official from ZCCM notes that there is a balance to be struck between investing in possible future profits on the one hand, and present-day needs on the other: 'It's good to reinvest, but it should not be just total reinvestment. We have a growing population which needs social services, education, healthcare so we need more money for these areas.'⁵³

The high percentage of profits retained by KCM impacts negatively on the amount the Zambian government is currently receiving in dividends. Press reports suggest that ZCCM received nothing in dividends from KCM between 2003 and 2005,⁵⁴ and to date has only received US\$2.3 million for 2006 and 2007.⁵⁵ However, the Zambian government urgently needs funds to finance its five-year national development plan, which is currently facing a US\$729 million shortfall.⁵⁶ Increased dividends – and increased revenue transfers from the copper mining sector more generally – could be one way of filling this gap without the Zambian government having to resort to increased borrowing or reliance on aid. An official in the Ministry of Justice notes: 'Surely this [renegotiation] is one way the government can become self-sufficient...[and] get enough to...put into its own local programmes without having to go and borrow money again. If it...allows the government to stand in its own two feet, it's positive.'⁵⁷

The onus is not only on mining companies to renegotiate the financial clauses in their contracts and provide details of payments made to government, but on the Zambian government to ensure that any additional revenue transferred is indeed 'positive'. The government has a clear responsibility to ensure that any increased revenues generated by the renegotiation process are used to the benefit of the Zambian people and to ensure that it has a sufficiently robust financial management system with adequate checks and balances.

If conducted in this manner, renegotiation could bring tangible benefits to the Zambian people. It could also benefit the mining companies, as we will show in the following section.

How renegotiating the development agreements will benefit mining companies

While increased transfer from companies to the government could bring massive benefits to the Zambian people, it would do little damage to the companies themselves.

According to *For Whom the Windfalls*, feasibility studies from some of the mining companies assumed prices which were less than US\$2,204 per tonne,⁵⁸ while US\$2,700 per tonne seemed to be considered high, judging by the threshold for price participation. Nevertheless, current prices can be as high as US\$7,819 per tonne.⁵⁹ The indications are that mining companies are therefore experiencing what the permanent secretary of the Ministry of Mines

refers to as 'windfall gains'⁶⁰ – unpredicted gains from an unexpectedly high copper price.

We believe it is only fair that the Zambian government and people share in these gains. As the evidence cited in this chapter suggests, the mechanisms intended to capture some of this value for the public purse – such as price participation and corporate income tax – are not working at the very time they are needed. Action to rectify this would not be unprecedented. Indeed, the UK government took action along similar lines in 2005, when the doubling of the oil price meant that companies operating in the North Sea were averaging a 40 per cent return on capital, compared with the more usual rate of around 13 per cent. In an effort to generate more government revenue, the then Chancellor Gordon Brown increased the supplementary North Sea charge from 10 to 20 per cent.⁶¹

We firmly believe that increasing revenue transfers through an open, transparent, accountable process of renegotiation could also bring several benefits to the mining companies. Increased take from the mining sector would enable the government to spend more, not only on the types of social services outlined above, but also on infrastructure development, such as road paving and maintenance, or electricity generation. As an official from the Ministry of Justice noted: 'It's a round robin...if you're giving a little more to government, the government has the money to put into the infrastructure... You have to look at the broader picture.'⁶²

Renegotiation could also go some way towards improving mining companies' relationships with local communities. *For Whom the Windfalls* notes that there is currently a palpable level of resentment towards mining companies in Copperbelt communities, and that much of this resentment is fuelled by the contrast between the extreme poverty of such communities and the huge profits mining companies are perceived to be making.⁶³ Given that companies function best in a supportive working environment, it is in the mining companies' interests to take action to correct this view. Meaningful renegotiation of the development agreements could go a long way towards reversing the mistrust and bad feeling created by an opaque privatisation process.

Chapter 2

The experience of KCM's workforce

Context: employment in Zambia and the role of the regulatory authorities

In a country with high unemployment and few social security benefits, many are grateful for the employment that mining creates. The mines are key employers on the Copperbelt, employing about 75% of the total workforce in the district⁶⁴ and providing a much-needed source of family income in an area where few women are in formal employment. KCM is the second largest employer in Zambia after the government, employing roughly 14,000 people – 10,000 directly and 4,000 through sub-contracted firms.⁶⁵ Some evidence suggests that there be as many as 9,575 contract workers.⁶⁶

The distinction between direct KCM employees and contract labour is an important one, with the latter appearing to fare considerably worse than the former. Zambian Archbishop Mpundu has stated that, 'though we are happy to see greater employment possibility, this should not be at the expense of the Zambian workers'.⁶⁷

However, interviews conducted with trade union officials and evidence from *For Whom the Windfalls* suggest that the regulatory authorities with primary responsibility for protecting workers – the Ministry of Mines Safety Department and the Department for Labour Affairs – are unable to adequately regulate to protect mine workers, especially casual employees. In some instances this is due to gaps in the regulatory framework – for example:

- minimum wage legislation does not adequately reflect the cost of covering an average household's basic needs.
- Zambia's laws on unionisation – which specify that unions must identify a 'shadow committee' of employees before they can gain recognition – make unionisation more problematic and can expose employees to the risk of losing their jobs.⁶⁸
-
- the Mines Safety and Explosives Regulations, updated in 1996, have never been implemented due to a shortage of legal draftsmen.⁶⁹

There are also gaps in monitoring and implementation – for example, the Mines Safety Department 'is woefully under-funded and performs an almost exclusively reactive function, inspecting the site of accidents after the event'.⁷⁰ Similarly, Joyce Nonde, president of the Federation of Free Trade Unions Zambia notes that 'it is difficult to enforce the minimum wage; the Ministry of Labour doesn't have the capacity and will rarely go round to inspect. We have inspectors, but they have few tools or vehicles...[and] this situation risks putting casual workers at the mercy of the employer'.⁷¹

Terms and conditions for permanent KCM employees⁷²

Group interviews were conducted by the author with KCM employees and contract workers on the condition that we do not attribute specific comments to specific interviewees. Trade union officials were also interviewed.

KCM offers direct employees some attractive terms, conditions and bonuses. It recognises both of Zambia's mining unions – the Mineworkers' Union of Zambia (MUZ) and the National Union of Mining and Allied Workers (NUMAW). Permanent employees also receive a wage which is, on paper, enough to provide for their basic, everyday needs. Wages at KCM are considered by some to be the best of all the mining companies in Zambia,⁷³ for which the company deserves credit.

Workers receive a number of additional bonuses, such as a subsistence allowance of K410,000 (£51) a month, a lunch allowance and free medical care for themselves and their dependants. KCM employees have an overtime and night shift allowance, with additional salary supplements if they work underground or in the 'hot metal' section. The company also operates a contributory pension and a severance package for permanent employees.⁷⁴

Other mining companies in Zambia which have not already done so should follow KCM's lead on these issues, but ultimately all companies – including KCM – need to redouble their efforts to adequately care for their workforce. Despite the progress, some workers say they feel unable to provide adequately for their families, and many workers and their representatives feel there is room for improvement in the remuneration they receive.

The Jesuit Centre for Theological Reflection (JCTR), a Zambian organisation, has calculated that the average household of six living in the Copperbelt needs K1.2 million (£151) a month to cover the basic necessities of life: staple food, soap, water and sanitation and housing (the 'basic needs basket').⁷⁵ But even after the 20 per cent wage increase negotiated by MUZ and NUMAW and effective from July 2007, the lowest paid KCM employees are receiving only slightly more than this amount (£168-184), even after their subsistence allowance is taken into account.⁷⁶ This £20-30 over the cost of basic needs has to cover outgoings such as education (eg school uniform), transport and basic healthcare, among others. These are costs which JCTR does not include in their basic needs calculations, despite being expenses that many in developed countries would consider to be basic necessities.

Some workers are worried not just about the level of wages they receive at the moment, but about the benefits they will receive on retirement. Permanent KCM employees are part of a contributory pension scheme, paying in five per cent of their monthly basic salary, while KCM contributes 11 per cent. They also receive a lump sum severance package on retirement.⁷⁷

Although this sounds attractive, some workers and their representatives tell us that the scheme has several problems. It can be difficult for employees to put a portion of their monthly pay aside when they are struggling to meet their

everyday needs. Retirees are often faced with increased medical costs as their free medical care ceases five years after retirement. A current KCM employee says that, when he retires, he will 'have to find another job or else I won't survive.'⁷⁸

To their credit, KCM have increased the severance package from one month for each year worked to two months for each year worked. However, the percentage of contributory pension payments have remained unchanged since the days of ZCCM - despite the fact that ZCCM was making losses of up to US\$1 million a day,⁷⁹ whereas KCM is now making more than US\$800,000 net profit a day.⁸⁰

Box 2: In their own words: KCM and Vedanta on their employment record

KCM/Vedanta's literature on corporate and social responsibility makes clear that 'Vedanta sees no conflict between the interests of the Company and the interests of its employees, and indeed of the community as a whole', and notes that Vedanta 'was also attracted by the opportunity to make a crucial contribution to the Zambian economy, as well as to contribute financially and socially to the well-being of many thousands of people with whom KCM interacts.'⁸¹ More specifically:

On health and safety

KCM's website notes that the company is a member of the British Safety Council (BSC). It is audited by the British Standards Institute and BSC, and OHSAS 18001 Certification was due to start in 2005. Moreover, the company emphasises workers' empowerment and its motto is: 'If it's not safe, don't do it.'⁸²

On investing in the workforce

KCM's corporate and social responsibility literature also notes the following:

- 'The Konkola Deep Mining Project... is expected to provide 6,000 jobs when complete, with an additional 1,000 needed immediately for shaft sinking.'
- 'KCM undertook a countrywide recruitment of 600 school leavers, 300 artisans and 100 professionals for skills development and capacity building.' Moreover, the resident director, Deb Bandyopadhyay, noted that KCM is 'training more Zambian senior managers, have identified 40-50 more "young business leaders" who they are fast-tracking on a management training scheme, and is the only company that has taken Zambians out of the country to work on its other international programmes, to gain international experience'.⁸³
- KCM has also 'undertaken to strengthen capacities of local community through local business development. This year alone KCM has awarded 70 per cent of service and commodity contracts to local suppliers'.

On contractors

KCM has a code of conduct for contractors engaged in KCM business.⁸⁴ Among other clauses, the code states that 'KCM is committed to a policy of fair dealing and integrity in the conduct of its business...the Company expects all employees to share its commitment to high moral ethical and legal standards.' It further notes that 'employees must comply with all applicable laws and regulations, which relate to their activities for and on behalf of the Company. The Company will not condone any violation of the law or unethical business dealing by any employee.'

On investing in the local community

- KCM owns and operates two schools in Chililabombwe and Chingola, providing basic primary school education to more than 1,000 children (not all of mine employees).

- KCM owns and operates two hospitals (Konkola and Nchanga South) and seven clinics in Chililabombwe and Chingola, providing free healthcare to KCM employees and their dependants. Services are also accessible to non-employees on a cost-recovery basis.
- KCM's Roll Back Malaria Control programme has been recommended as a model for malaria eradication in Zambia. The company also runs an HIV and AIDS programme that provides for education, voluntary testing and counselling of employees.⁸⁵

Putting profit above people: the experiences of some sub-contracted workers

'[Sub-contracted workers]) are [employed in] very inhumane conditions. These conditions are basically intended to maximise profit by putting capital above labour.' Rayford Mbulu, president of the MUZ.⁸⁶

Our evidence suggests that people working for some firms subcontracted by KCM have worse terms and conditions than their counterparts who work directly for KCM. According to the MUZ,⁸⁷ the average monthly wage for contract workers is roughly K500,000 (£63) a month: an amount that is in keeping with the minimum wage, but significantly less than the basic needs basket. However, interviewees employed by various subcontracting firms in a variety of positions – including machine operator and scraper driver – indicated that wages are often significantly lower than this.

Interviewees told us they are paid a certain amount per hour, depending on the type of job they do. Although the hourly rate varies, even the highest-paid skilled workers are paid less than 50 pence an hour.⁸⁸ Workers are meant to be paid monthly, but interviewees described several anomalies in the way their pay is calculated, which limit the amount they receive on pay day:

- They are not always paid for the overtime they do. Employees working for contracting firms at Nchanga told us: 'We work more than eight hours – sometimes up to 12 hours – and we are not paid overtime. Sometimes they calculate the hours and give us time off in lieu; sometimes they will just give us a packed lunch; but not money.'
- They often have to work seven day weeks and are rarely able to take off the days they accrue. Their experience is that if the work is behind schedule, they are not allowed to take them.⁸⁹
- While they do not get paid extra for working longer hours, money is deducted if they work fewer hours. Interviewees claimed that: 'If you miss days, they have it [the time] taken out of your wage, even if it is because you are sick.'

All these factors can curtail the monthly wage employees take home. The consensus from the workers interviewed was that the maximum amount a skilled worker can take home each month is K300,000 (£37); unskilled labourers get paid a lot less. In addition, sub-contracted workers claim they do not receive many of the allowances that KCM employees accrue.

Moreover, some contract workers said they do not receive a company pension and are not automatically entitled to free medical care, as it depends on their contracting firms being willing to reimburse KCM for the use of their medical facilities.⁹⁰ Thus contract workers are caught between a rock and a hard place – they are not provided with pensions or automatic free medical care, yet they are unable to save to cover for illness, unemployment or old age.

Box 3: Zambia's labour laws in detail: Minimum Wages and Conditions of Employment Act, Cap 276⁹¹

The Minimum Wages and Conditions of Employment Act applies to all employees – including casual workers. There are a few exceptions, such as government employees, unionised employees and those with a specific employment contract attested by the Ministry of Labour.

The Act guarantees eligible employees the following benefits:

- a set amount of transport, lunch and housing allowances
- the equivalent of a minimum wage (monthly pay, with allowances, should total K499,440-735,000 (£56-93) per month, depending on the job)
- overtime: employees working in excess of 48 hours per week must receive 1.5 times their hourly rate for each hour⁹¹ worked of overtime
- two days' paid holiday each month.

The Act also specifies that the employer must provide protective clothing for dangerous work.

Contract workers told us they have very limited job security – some indicated that they have signed no papers and have no guarantee of their job from one month to the next.⁹³ Moreover, despite the efforts that KCM has made on health and safety (see Box 2), some contract workers told us their firms had given them insufficient equipment. For example, underground workers said they are meant to have two pairs of disposable gloves a week but are given only one pair a month; and they often have to buy protective clothing from their own meagre wages.

The unions share this concern about the safety of contractors. NUMAW general secretary Albert Mando told us that contracting firms 'do not put much interest on [contract workers'] safety; they want to do the job, take the money and forget about the safety of their workers'.⁹⁴ Officials from the Mines Safety Department have also said that the use of contractors is their biggest worry.⁹⁵

According to *For Whom the Windfalls*, support-compliance regulations designed to minimise the risk of rock falls require that miners should not be asked to work in an unsupported roof-span of more than two metres. However, mines safety inspectors report that contractors 'are paid by the metre, so they go mad developing and they leave people exposed without support in the roof sheets... You go there and you find someone is just scratching their heads – and they say, "Sorry, I was under pressure".⁹⁶

If our evidence is correct, terms and conditions for contract workers must change. A number of institutions have a role to play in this regard – and responsibility lies not just with the Department for Labour Affairs or individual

contracting firms, but also with KCM and other mining companies. The testimony of workers suggests that existing arrangements do not offer adequate protection and that their terms and conditions leave room for improvement. We believe that companies at the top of the contracting chain have a duty of care to their contract workers, particularly in situations where their rights are not otherwise protected.

Improving the conditions of workers is not just a moral responsibility; it also makes good business sense for mining companies. As a KCM employee notes: 'If KCM can pay enough money to their workers, they can produce double what than they produced in previous years... [At the moment] most of the people...are complaining, and when they are complaining, they are not doing with their whole effort... [But] if KCM could improve their salaries, I am sure we would be one of the highest producers of copper.'⁹⁷

Indeed, MCM – Zambia's second largest copper producer – has started to recognise these arguments and now demands that contracted workers receive 85 per cent of the average MCM wage.⁹⁸ If KCM wants to retain its competitive advantage, we suggest it would do well to follow suit.

Box 4: Life as a contract worker for KCM

This is an extract from an anonymous letter passed to the author after meetings with a cross-section of community members at Chingola and Chililabombwe who are affected by and interested in KCM operations.

'I am a security guard for a security firm contracted to KCM. I am paid K200,000 (£25) at the end of the working month after working 12 hours per day every day – that is Monday to Sunday, [with] no resting day. These working hours are abnormal and the working conditions Draconian. We are not paid overtime and if you are working night shifts there is no shift differential for you. Sometimes because of fatigue we end up missing from work but once this happens, for each day missed from work, five days are forfeited.

When we fall sick there is a small private clinic owned by a small family... to which we are expected to report. Fees are extremely high [and] when payday comes, we shed tears, because the range of the treatment cost is K40,000 to K80,000 (£5-10) for simple drugs for malaria and the like, [let alone] expensive processes like X-rays.

I have three children but currently only the eldest is in school. She is supposed to sit her grade 9 exams this year, however, because of the hardships we are experiencing, I doubt whether she will be able to. We know education is very important but can't afford to send [the others] to school. It is just beyond our reach as parents.'

Chapter 3

The environmental impacts of KCM operations

KCM's website states that the company is 'committed to the principles of sustainable development – which it takes to mean “development that meets the need of the present without compromising the ability of future generations to meet their own needs” because it believes it is fundamental to its long-term success.⁹⁹ Specific measures undertaken include:

- recycling water to reduce fresh water intake
- increasing sulphur dioxide capture target to 75 per cent
- reducing total suspended solids levels in mine water and effluent
- programmes to reduce the consumption of indigenous timber.¹⁰⁰

While we welcome these measures, this chapter presents evidence gathered from local communities that suggests that KCM and the Environmental Council of Zambia (ECZ) need to do more to protect the surrounding environment and the health of communities who live there.

Context: the Environmental Council of Zambia

The copper mining process is intrinsically polluting – for example, figures from copper mining company First Quantum (which part-owns MCM) show that each tonne of ore produced creates nearly two tonnes of waste.¹⁰¹ Such pollution is nothing new; it has been going on since the days of ZCCM and certainly did not start with the arrival of the new investors.

In theory, the Zambian government, through ECZ, is supposed to protect its citizens from harmful levels of waste materials, but evidence suggests that this does not always happen in practice. As such, ECZ is a good example of where a host country government is unable to regulate multinational companies on its territory.

ECZ faces two main challenges in regulating powerful multinational corporations such as Vedanta: the weak regulatory framework in place and the minimal legal constraints that apply to mining companies; and its own limited capacity to monitor and enforce even these weak regulations.

While Zambia has taken positive steps towards establishing national environmental law and regulations, these do not necessarily apply to mining companies like KCM. Instead, these companies are bound by the provisions of the Environmental Management Plan (EMP) that they drew up in conjunction with the government; where standards differ in the EMP and pre-existing national laws, the EMP takes precedence.¹⁰² This means that many mining companies are effectively operating outside the normal laws of the

land. These exemptions from Zambian environmental laws were negotiated as part of the development agreement signed between the government and KCM. Moreover, as leading Zambian academic professor John Lungu notes: 'In the event that KCM is non-compliant to the Environmental Plan, [the] government can only notify KCM in writing, specifying the facts and giving KCM time to remedy such non-compliance.'¹⁰³

While certain standards in the EMP are lower than those required in domestic regulations, KCM's development agreement also forbids the government to change environmental standards to make them 'more onerous than those specified in the Environmental Plan or statutory instruments'.¹⁰⁴ So even if new evidence comes to light which leads to more stringent international guidelines on, say, air and water quality, the government would not be able to apply these new guidelines to the major mining companies in Zambia. This is clearly in breach of OECD guidelines, which state that 'enterprises 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'.¹⁰⁵ The guidelines also require companies to 'raise the level of environmental performance in all parts of their operations, even where this may not be formally required'.¹⁰⁶

Evidence suggests that ECZ faces difficulties in monitoring and enforcing the laws that apply to mining companies and KCM for several reasons, which we discuss below.

- The World Bank-funded Copperbelt Environmental Project (CEP) notes that 'the capacity of ECZ...to implement environmental regulations in the mining sector is very weak. As a result...identification and monitoring of environmental risks resulting from mining activities is often inadequate.'¹⁰⁷ Much reporting takes the form of self-monitoring – for example, companies submit their own assessment of their levels of sulphur dioxide emissions. However, the ECZ may not always have the staff, staff time or necessary equipment to double-check these assessments.¹⁰⁸
- CEP also says that 'existing regulations are seldom enforced' and, even when they are, 'the regulatory dispositions for the mining sector is currently so weak that they do not deter polluters'.¹⁰⁹ An ECZ official also told us that the on-the-spot fines the department issues are only K140,000 (£17) – an amount so small that 'even I would be able to pay them'.¹¹⁰
- Political considerations can also come into play. The act which established ECZ states that: 'The Minister may give to the Council such general or specific directions with respect to the discharge of its functions as he may consider necessary and the Council shall give effect to those directions.'¹¹¹ In other words, ECZ is not fully independent: its decisions and recommendations can be over-ruled by the Minister of Tourism, Environment and Natural Resources.

Evidence suggests that ECZ is unable to adequately regulate the behaviour of multinational companies. However, we present evidence in the following section that relying on company self-regulation is also insufficient.

KCM and water pollution

Many communities in Zambia, including several in the Copperbelt, lack access to regular piped, purified water and often depend on rivers and other natural water sources for their household and agricultural needs.

However, the copper production process can pose a threat to these water sources, as the process of separating out copper ore leaves behind an acidic liquid which contains small particles of unused rock (silt or sediment). High levels of silt and sediment can cause problems for local communities, if allowed to build up over time.

Officials from the Ministry of Agriculture and Co-operatives claim that farmers living near KCM's Nchanga plant¹¹² have 'suffered crop losses due to sediments and silt. ...which (is) flooding farmers' fields (so that) farmers can no longer use, (them).' This has prevented farmers from growing basic food stuffs such as cabbage, tomato and maize for their own consumption or for selling in local markets. According to the ministry, this has cost local farmers a total of K100,300,000 (£12,641) in lost income during 2005 alone.¹¹³

Such routine discharge is not the only problem caused by mining operations. On 6 November 2006, one of KCM's pipelines released significant quantities of acidic liquid into several rivers, including the Kafue – one of Zambia's largest rivers.

ECZ's official report into the incident found that KCM 'significantly polluted Chingola and Mushishima streams, as well as the Kafue River, causing serious effects on human life and the environment'.¹¹⁴ Communities such as the isolated Hippo Pool village drank water from the river and suffered a series of unpleasant, short-term side effects such as diarrhoea and stomach pains. They may also face a range of long-term side effects. Newspaper reports at the time indicated that the liquid contained 1,000 per cent more copper, 77,000 per cent more manganese and 10,000 per cent more cobalt than recommended levels.¹¹⁵ These chemicals can cause lung and heart problems, respiratory disease and liver and kidney damage.

If levels did exceed recommended limits, KCM should clarify which minerals and chemicals were released by the pipe and in what quantities. One Copperbelt resident explained: 'Our digestive systems do not have the ability to break things like copper and cobalt down. Once it is in your system it will keep on building up. You might not see it now but 10, 15, 20 years later you will see the effects.'¹¹⁶

KCM environmental manager, Yotam Phiri insists that the event was 'an accident'.¹¹⁷ However, the official ECZ inquiry found that 'KCM management was grossly negligent' and an ECZ spokesperson called the incident 'a clear

indication of poor corporate social responsibility by KCM management in their environmental management.¹¹⁸ Despite ECZ's recommendation that KCM 'be prosecuted for polluting the environment contrary to the provisions of the Environmental Protection and Pollution Control Act [EPPCA]', to the best of our knowledge the company has not been prosecuted.¹¹⁹ It is unclear whether this is due to insufficient capacity or will on the part of the Zambian government, or because there was no case to bring.

Box 5: In their own words: KCM and the pollution of the River Kafue

Vedanta's annual report outlines the incident, and the measures that KCM has undertaken,¹²⁰ noting that 'KCM experienced a discharge of acidic effluents from its Nchanga operations on 5 November 2006. Immediate corrective action was taken and normal operations restored within a few days.' The report notes that preventive measures taken included:

- commissioning non-destructive testing of the Muntimpa pipeline; dredging the Chingola stream and pollution control dam
- installing new pipes where the weaknesses were identified
- installing and commissioning an additional double stage pump station at the pollution control dam with a dedicated high-density polyethylene pipeline, to guard against future spillage to the Kafue river
- installing a new nine-kilometre pipeline
- keeping all catchment ponds within the Tailings Leach Plant empty at all times, to provide buffer capacity for any spill.

The report further notes that KCM spent US\$6.135 million on remedial measures, including de-silting work and renewal of the Muntimpa pipeline and installing the new pump station at the pollution control dam.

Despite the measures outlined in Box 5, some villagers affected by the pollution say the company has not done enough. As required, KCM has sunk boreholes for the worst affected communities, but Zambian advocacy group CBE informed us that that this was after a delay of three months.¹²¹ Residents from Hippo Pool told us that: 'The company sank three boreholes very near our village and two more further along. [However], the boreholes are crowded; there are long queues which take three hours or more and we can't use water from the boreholes...to water our crops... as there is not enough. We are entirely dependent on the rainy season to water our crops. [This is a problem as] there are 100 households in our village and we are all farmers.'¹²²

KCM and air pollution

It is not only water pollution that can cause problems for local communities – air pollution (specifically sulphur dioxide, a side effect of the copper-smelting process) is also of concern. It is true that high sulphur dioxide levels were a problem in the Copperbelt long before Vedanta's arrival. However, various concerns persist around Vedanta's Nkana and Chingola/Nchanga operations.

High sulphur dioxide levels can cause breathing difficulties and chronic respiratory illness. They can also reduce lung functions and worsen cardiovascular disease. When mixed with water, sulphur dioxide can produce acid rain, changing the soil chemistry and reducing the photosynthesis process in plants. This in turn causes problems for the local farming

communities – both in terms of growing food and securing a livelihood. As Peter Sinkimba, executive director of CBE noted: ‘The only crops that survive are mangos, avocados and cactus. With low salaries, people can't buy food. But they can't grow their own vegetables either.’¹²³

The Zambian government has a responsibility to protect its citizens from harmful levels of sulphur dioxide emissions. However, an ECZ representative told us: ‘The design of air regulations [in the EMP] did not go by the stringent approach because at the time no mining company could meet them. So we agreed on a phased approach – an agreement based on actual emission levels [at the time the EMP was drawn up]. Over a certain length of time we expect them to bring [SO₂ emissions] down to a certain [acceptable] level.’¹²⁴ If this is true, the government's approach to regulation seems to put the cart before the horse, taking as its starting point not the level of emissions acceptable for public health but the level acceptable to mining companies.

As a result, although Zambia's Environmental Protection and Pollution Control Act states that companies cannot discharge in excess of 125 micrograms per cubic metre of sulphur dioxide on average over a 24-hour period,¹²⁵ an addendum to the EMP, published two years later, allowed the Nkana smelter to emit 500 micrograms per cubic metre on average over a 24-hour period from 2005 onwards.¹²⁶

From this evidence, it would appear that the level of emissions is in violation of Zambia's own environmental pollution laws and 25 times more than the level recommended by the World Health Organisation (WHO). WHO Guidelines, revised in 2005, advise emissions of 20 micrograms per cubic metre averaged over a 24-hour period, with 125 micrograms per cubic metre over the same period as an interim measure.¹²⁷ Thus the level of emissions that KCM is legally allowed to emit risks seriously damaging the health of the local population. Whether KCM is actually emitting 500 micrograms per cubic metre is unclear, but the point is that they have the regulatory freedom to do so.

The lack of publicly available data means that we are unable to calculate, even roughly, how much sulphur dioxide the Nkana smelter is emitting at present. We understand that KCM is meant to include this information in its annual statutory reports to the ECZ, but these were not available at the Council's offices in Ndola. Vedanta's annual report states that ‘some of our activities generate airborne emissions such as sulphur dioxide...We have taken adequate control measures to reduce such emission to within permissible regulatory standards and have complied with the same.’¹²⁸ However, the report provides no detail of the levels of sulphur dioxide emitted by the smelter.

According to a 2001 report on corporate social responsibility in Zambia, KCM stated that, while under Anglo American ownership, ‘emissions after year 10 (ie 2011) will still exceed the relevant air quality guidelines.’¹²⁹ A variety of factors – for example, KCM is under new ownership and the Nkana smelter now has the technology to capture sulphur dioxide – may mean that sulphur

dioxide emissions have, after all, been reduced to a safe level. Indeed, a report commissioned by DFID concluded that ‘there were adequate environmental and social management systems in place’.¹³⁰

For the sake of families living near the smelter, it is important that this question mark over sulphur dioxide emissions is cleared up once and for all. It is crucial that KCM provides details of how much sulphur dioxide is captured and converted at Nkana, and clarifies the levels of sulphur dioxide the smelter emits into the atmosphere.

There is also a need for clarification of DFID’s role, as money from its aid budget has helped to fund the upgrading and refurbishment of the smelter. According to *Mining Magazine*, the smelter was owned by state company ZCCM between 2000 and 2002, and merely managed by Anglo American/KCM.¹³¹ During this period, the Zambian government received a grant of US\$81 million from DFID to ‘finance a loan from the Zambian government to ZCCM... on commercial terms to manage the refurbishment of the Nkana smelter.’¹³²

This information raises several issues outside the remit of this report – for example, the factors that influence DFID’s resource allocation policies, and the availability of information (CBE has struggled for several years to gain further information on this subject).

Recognising the problems surrounding high sulphur dioxide emissions, KCM has proposed to build an innovative new smelter at their Nchanga site which will capture at least 95 per cent of all sulphur dioxide emitted.¹³³ While this is a welcome development, local communities have raised two issues of concern. The first is that it is not the percentage of emissions that matter, but the total amount of sulphur dioxide that is emitted. The second is based around possible irregularities in the approval process, detailed in Box 6.¹³⁴

Box 6: the approval process for the Nchanga smelter

Zambian regulations state that, before starting work on new projects, ‘an environmental impact assessment (EIA) must be carried out’ to ‘ensure that all interested and affected parties participate in the decision-making process.’¹³⁵ On the basis of the EIA, ECZ issues an ‘authorising decision letter’, and only then can building work start.

However, despite the fact that KCM submitted their EIA to ECZ in April 2006, the document itself notes that ‘the construction of the smelter complex is scheduled to start in February 2006’. KCM has also admitted that building work was ongoing at this time, although they claim it was on another project.¹³⁶ Moreover, the covering letter accompanying the EIA refers to ECZ advice of 13 February 2006, implying that ECZ held discussions with KCM on the issue in February. This issue remains unclear, however, as the correspondence is not publicly available. It is therefore necessary for the ECZ to clarify whether the EIA actually informed the construction of the smelter complex in any way.

The evidence presented in this section suggests that it is not sufficient to rely on companies to self-regulate their impact on the environment and local communities. It also reinforces our findings from the other two chapters – that it is not sufficient to rely on Zambian regulatory bodies to fulfil this role either.

Conclusion

This report has used KCM as a case study to argue that Zambia is not being sufficiently rewarded for the extraction of its key natural asset in a variety of areas: government revenue, employment benefits and community rights. The activities of mining companies such as KCM can, on occasion, cause considerable difficulties to the Zambian population – in particular those who are employed by the mines or live in their vicinity and the Zambian government seems unable to minimise such negative effects of copper mining.

We believe, therefore, that a transparent, participatory renegotiation of the financial clauses in the development agreements would be an important and welcome development – but would not be a complete solution. Copper mining has multiple impacts and there is a need for action on several fronts to ensure that Zambia is able to maximise the benefits and minimise the costs of mining.

This report finds that relying on voluntary company initiatives or Zambian government regulation does not solve the problem. We recognise that the Zambian government is working hard to overcome its capacity constraints, but believe it still faces difficulties in creating and enforcing legislation. And while resolving these issues will be worthwhile, it will be a costly and lengthy process.

KCM, Vedanta and the Zambian government each have an important role to play, but their efforts alone will not safeguard the rights of the Zambian people. We believe that the home governments of multinational corporations (in KCM/Vedanta's case, the UK government) need to take action, as does the international community as a whole. In the words of former Zambian finance minister and opposition MP Edith Nawakwi: 'The international community as a whole must rise up to the challenge and assist us. You cannot live in opulence while others live in poverty. Truly we Zambians deserve more. We are not asking for a revolution, we are simply asking for a fair share.'¹³⁷

It is also crucial that companies and governments feel the pressure from Zambian and UK civil society – and especially from the UK public, who not only elect the UK and Scottish governments but are also consumers of copper in various forms. Their actions can play a key role in influencing the behaviour of corporations such as Vedanta. To quote Edith Nawakwi MP again:

'Why is it that these international multinational companies pay little attention to the welfare of workers in the mines? Because they think that [consumers] won't be bothered where [their copper] has come from. I look forward to a day when the people buying copper say "let's see how the people of Zambia are living on the Copperbelt".'¹³⁸

Bishop Shadrack Mumba, chairman of Chingola Former Mine Employees Association, agrees. He says it is crucial for people here in the UK to

demonstrate that they are concerned about these issues, adding that UK campaigners have a key role to play in ensuring that the voices of Zambian citizens are heard at the highest levels of Vedanta and KCM. He explains that he and his congregation 'have done everything we can, but we are still voiceless. Please help us and take up our issue.'¹³⁹

If you would like to take action to help bring about the recommendations that follow, please join our e-campaign and look out for further actions at our websites; www.sciaf.org.uk; www.christianaid.org.uk; and www.actsa.org .

Recommendations

KCM (and other mining companies) should:

1. Approach the renegotiation exercise, not as an opportunity to pursue their own interests, but rather to revise the government's share of revenue upwards for the long-term benefit of both parties. In particular, KCM should agree to:

- pay 30 per cent of profits in income tax (up from 25 per cent)
- pay mineral royalties of at least three per cent of the gross value for base metals (up from 0.6 per cent)
- introduce withholding tax on dividends, interest, royalties, management fees and payments to affiliates at the standard Zambian rate of 15 per cent
- pay the Zambian government a larger share of the difference between the actual copper price and the trigger copper price in the price participation scheme
- pay value added tax at local business rates.

2. Make the following information publicly available:

- all parts of the development agreements – for example, annexes such as the resettlement action plan and the KCM sale and purchase agreement
- documents related to the development agreements – for example, copper and cobalt price participation, the KCM sale and purchase agreement
- all documents mandated by the development agreements – for example, quarterly reports to the procurement committee, reports to the Zambia Revenue Authority.
- transfers to the Zambian government via mineral royalties, corporate income tax, price participation, dividends and other sources
- KCM's dividend policy
- profit and loss statement and annual report
- explain the anomalies identified in this report (discrepancy in mineral royalty figures and high rate of retained earnings).

3. Working in close consultation with unions, and mindful of JCTR's basic needs basket, ensure that all workers (both direct and indirect KCM employees) receive a net wage that covers their families' basic needs as well as 'additional' expenses such as healthcare and education, and enables them to save money. As part of this, KCM should ensure that:

- the amount of money paid to contracting firms allows them to pay their workers said amount and to provide adequate safety equipment
- overtime for contract workers is not mandatory and that they are paid for the additional hours they work
- the deadlines given to contracting firms do not necessitate involuntary overtime by employees
- they monitor contract firms to ensure they are abiding by these conditions and compliance with Zambian labour laws
- contractors receive an amount that enables them to enter into an agreement with KCM for contract workers to use the mine's medical facilities free of charge
- all employees directly employed by KCM receive a living pension (and that the wages received by contract employees allow them to put money aside for retirement).

4. Improve their environmental standards – whether or not this is formally required by the ECZ – in keeping with OECD guidelines, and ensure that details of pollutant levels are publicly available. In particular, KCM should:

- improve effluent management and treatment where required, both in terms of managing sediment build up and neutralising acidic liquids
- ensure sulphur dioxide emissions from Nkana and other smelters are in line with WHO guidelines
- ensure that sulphur emissions from Zambian smelters and levels of pollutants found in waste water that is released back in the natural environment are included in KCM and Vedanta's annual reports
- compensate communities for any damage caused by KCM operations.

Investors and investment management companies should:

Use their substantial influence to persuade Vedanta of the benefits that these changes would bring – both to the people of Zambia and, in many respects, to the companies themselves. Investment management companies should also provide more information and greater transparency about their 'socially responsible' investment programmes so that consumers can make better-informed choices.

In support of the demands made by members of Zambian civil society, we believe that the Zambian government should:¹⁴⁰

1. 'Revisit the development agreements from the perspective of the Zambian people rather than that of the companies'. The government should do its utmost to ensure that the renegotiation exercise results in significantly increased revenue and ensure that key civil society stakeholders – including trade unions, faith-based groups and non-governmental organisations – are able to access and feed into the negotiating process.
2. End the culture of secrecy that surrounds the mining industry, publishing all of the development agreements as well as companies' annual reports.
3. Ensure that any increased revenue resulting from the renegotiation process is used to benefit the Zambian people 'in such a way that value for money is maximized and wastage minimized'. In order to facilitate this, the government must 'make the budgetary process more transparent and inclusive, especially at the provincial and district levels', 'formalise civil society engagement in the national budget process' and ensure that it has a sufficiently robust financial management system with adequate 'oversight controls' in place.¹⁴¹
4. 'Urgently reform labour legislation to overcome the culture of casualisation and poverty wages.'
5. 'Develop the political will and institutional capacity to effectively enforce existing labour, safety and environmental legislation;' update national pollution laws in line with the latest WHO guidelines; and ensure that companies agree to include these standards in their environmental management plans as part of the ongoing renegotiation process.

The UK government should:

1. Tighten up the national regulatory framework applying to UK companies by:
 - a) improving the Companies Act through:
 - strengthening reporting requirements by introducing comprehensive mandatory reporting standards¹⁴² and stronger independent audit requirements¹⁴³
 - strengthening directors' duties so that they have a responsibility to take action to minimise the negative effects of company operations
 - establishing an independent review to examine the reasons why UK companies are often not prosecuted for abuses committed overseas, and making recommendations to rectify this
 - extending the scope of the Companies Act to include companies listed on the Alternative Investment Market and private companies.

- denying export credits and investment guarantees to those companies that do not meet internationally accepted standards, such as the OECD guidelines and the Extractive Industries Transparency Initiative; pushing its OECD partners to do the same.
 - working with the LME to explore how basic human rights standards could be applied to its member firms.
2. Work at the international level to ensure that all companies, no matter where they are headquartered, are bound by a mandatory human rights framework and an international accounting and transparency standard that obliges them to publish the contracts entered into, the scale of economic activity, profits and taxes paid at the national level. The framework must also have an effective ombudsperson or dispute settlement mechanism to ensure effective sanctions in severe cases of non-compliance. As intermediary steps towards this long-term aim, the UK government should:
- a) use its influence within the EC to ensure that they implement the recommendations contained in the European Parliament's report on corporate social responsibility¹⁴⁴ and expand the scope of the EC's Corporate Governance Action Plan so that it deals with the social and environmental impacts of businesses
 - b) push for a strong, progressive outcome of the review currently being conducted by the UN secretary-general's special representative on business and human rights; in particular, to clarify the responsibility of home-country governments to effectively ensure that multinational companies are called to account for human rights abuses, and to push for an independent international ombudsperson who would allow affected communities to claim justice.

Acronyms and abbreviations

ACTSA	Action for Southern Africa
AIM	Alternative Investments Market
BSC	British Safety Council
CBE	Citizens for a Better Environment
CEP	Copperbelt Environmental Project
CCJDP	Catholic Commission for Justice, Development and Peace
CSTNZ	Civil Society Trade Network Zambia
DFID	Department for International Development (UK)
EC	European Commission
ECZ	Environmental Council of Zambia
EIA	environmental impact assessment
EMP	environmental management plan
EPPCA	environmental protection and pollution control act
GDP	gross domestic product
HBOS	Halifax/Bank of Scotland
HIPC	highly indebted poor country
IMF	International Monetary Fund
JCTR	Jesuit Centre for Theological Reflection
KCM	Konkola Copper Mines
LME	London Metal Exchange
MCM	Mopani Copper Mines
MUZ	Mineworkers' Union of Zambia
NUMAW	National Union of Mining and Allied Workers
OECD	Organisation for Economic Cooperation and Development
OHSAS	Occupational Health and Safety Advisory Service
PAYE	pay as you earn
SCIAF	Scottish Catholic International Aid Fund
UN	United Nations
WHO	World Health Organisation
ZCCM	Zambia Consolidated Copper Mines
ZCCM-IH	Zambia Consolidated Copper Mines-Investment Holdings
ZCI	Zambia Copper Investments

References

- ¹ The report was written and researched by SCIAF policy analyst, Abi Dymond, with contributions from Kato Lambrechts at Christian Aid and Simon Chase at ACTSA. The author would like to thank all the people who gave up their time to help organise the research – in particular Collins Mwansa, Ella Hamudulu and staff at CCJDP, CBE, MUZ and NUMAW – as well as all the interviewees. Thanks also to Alastair Fraser, John Lungu and many others who kindly gave their comments on the draft version of the report.
- ² Republic of Zambia, *The Monthly Central Statistical Office*, Volume 52 (July 2007), p 6.
- ³ Further information on the uses of copper is available from the International Copper Study Group at www.icsg.org
- ⁴ A Fraser and J Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006, p 7; available at www.minewatchzambia.com
- ⁵ UN Human Development Index, 2006; JCTR, *Letter to Michael Sheenan/Donegal International*, 2007.
- ⁶ A Fraser and J Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006.
- ⁷ Oxfam, *Vulture fund must not take cash from Zambia, say campaigners*, 2007.
- ⁸ JCTR, *Letter to Michael Sheenan/Donegal International*, 2007.
- ⁹ UNDP, *Human Development Report*, 2006.
- ¹⁰ UNDP, *Human Development Report*, 2005.
- ¹¹ Author's interview with Father Mischek, Ndola, 23 July 2007.
- ¹² 'Zambia defers customs duties for foreign miners', *Reuters* (Monday 20 August 2007) <http://africa.reuters.com/business/news/usnBAN041120.html>
- ¹³ 'Zambia's largest mine ready for tax renegotiation', *People's Daily Online* (27 May 2007) http://english.people.com.cn/200705/27/eng20070527_378280.html
- ¹⁴ A Fraser and J Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006.
- ¹⁵ Christian Aid *A Rich Seam: Who Benefits from Rising Commodity Prices*, 2006.
- ¹⁶ available at www.minewatchzambia.com
- ¹⁷ Statistics on Zambia's GNI in 2006 from World Bank, *Total GNI 2006*, Atlas Method, 2007 (<http://siteresources.worldbank.org/DATASTATISTICS/Resources/GNI.pdf>); Vedanta's revenue from Vedanta, *Annual Report*, 2007, p 6.
- ¹⁸ 'CSR: is KCM living up to the challenge?' *The Business Post* (3 January 2006), www.kcm.co.zm/latest_news_full.php?id=3
- ¹⁹ KCM share structure as detailed on www.kcm.co.zm/shareholding.php – KCM [or Vedanta?] is currently in negotiations with ZCI to exercise its call option on their shares. This would increase Vedanta's ownership to 79.4 per cent. See ZCI, *Further Cautionary Announcement*, July 17 2007. www.zci.lu/16%20July%202007%20FURTHER%20CAUTIONARYv2%20_RMB%20clean.pdf
- ²⁰ Vedanta, *Annual Report*, 2007, pp 2 and 134.
- ²¹ In his closing remarks at the CSR forum review meeting on 7 December 2006, Vice-President Verheugen, commissioner for enterprise and industry, said that the EC's policy 'is based on...fostering an uptake of CSR [corporate social responsibility] by the businesses on a voluntary basis.' He continued to say that 'in all democracies in the world companies have to comply with a system to regulate individual activity...[which] is not negotiable and it is certainly not voluntary.' Therefore the EC was 'ruling out a regulatory approach at European level.'
- ²² Gordon Brown as quoted in: CORE and Save the Children, *Why Corporate Social Responsibility is Failing Children*, 2007, p 1.
- ²³ DFID, *Eliminating World Poverty: Making Governance Work for the Poor*, 2006, p 34.
- ²⁴ UK government, *The Companies Act 2006 Part 10, Chapter 2*, 172, 1d.
- ²⁵ For example, the Mines Safety and Explosives Regulations, updated in 1996, have never been implemented due to a lack of draftsmen. And while national environmental laws have been put in place, some of them do not apply to mining companies, as they are over-ridden by the development agreements.
- ²⁶ United Nations, (2003) *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*
- ²⁷ For example, the EU Action Plan; the review of voluntary reporting standards under the Companies Act 2009; OECD Guidelines for Multinational Enterprises; the annual meeting of

the National Contact Points in June 2008, and others.

²⁸ A Fraser and J Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006 p 9.

²⁹ Oxford Analytica, *Exploration of the Impact of Privatisation: Overview and Case Studies: A study prepared for EC/DFID*, 2002.

³⁰ A Fraser and J Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006.

³¹ Author's interview with Edith Nawakwi, 26 July 2007.

³² *Ibid.*

³³ Christian Aid, *A Rich Seam: Who Benefits from Rising Commodity Prices?* 2006, p 23.

³⁴ *Ibid.*, p 9.

³⁵ Vedanta, *Annual Report*, 2007 includes Zambian operating profit and states that Vedanta paid US\$2.1 million in 'foreign tax' to the Zambian government, but does not disaggregate this or explain whether it includes mineral royalties, p 86.

³⁶ First Quantum *2005 Annual Report*, 2005, p 12. The Zambian Copperbelt contains some of the best copper deposits in the world, and the KCM-owned Nchanga mine is one of the richest sites in the Copperbelt, with ore containing 4 per cent copper.

³⁷ As cited in Christian Aid, *A Rich Seam: Who Benefits from Rising Commodity Prices*, 2006, p 6.

³⁸ A Fraser and J Lungu, *For whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006, p 11.

³⁹ Figures from Vedanta *Annual Report*, 2007, pp 17, 9. Precise figures are US\$6,095,400 and US\$1,015 million.

⁴⁰ Vedanta took over KCM in November 2004. Vedanta, *Vedanta annual report 2005* states that, from takeover until the end of the financial year, KCM produced 67,547 tonnes of copper (p2) with a LME price of US\$2,999 per tonne (p 26) This makes a total of US\$202.5 million, implying royalty payments of US\$1.2 million.

⁴¹ We have calculated MCM figures based on the LME price per lb of US\$1.23 for the first half of the 2004 calendar year, although the price subsequently increased to US\$1.31 (First Quantum, *2004 Annual Report*, p 30). There are 2,204 lbs in a tonne, which gives a price per tonne of US\$2,710.92. According to MCM's 2004 annual report (p 25), the company produced approximately 160,000 tonnes of copper in 2004, with an approximate revenue of US\$433.7 million. Royalty payments at a rate of 0.6 per cent should have been US\$2.6 million. In calendar year 2005, MCM produced 123,000 tonnes of copper (First Quantum, *2005 Annual Report*, p 27) with an average realised LME copper price of US\$1.66/lb (p 31) or US\$3,658.64 per tonne – a total revenue of US\$450 million and a mineral royalty payment of US\$2.7 million.

⁴² If we add US\$1.2 million from Vedanta's payments (see note 40) to US\$2.6 million (taking the lower of the figures from First Quantum – see note 41), we get roughly US\$3.8 million.

⁴³ Ronald Mwila, 'Second thoughts on Zambian mine development agreement renegotiation?' *Mine Web* (11 June 2007).

www.mineweb.net/mineweb/view/mineweb/en/page66?oid=22052&sn=Detail

⁴⁴ Foreign Investment Advisory Service / International Finance Corporation
And The World Bank *Zambia: A Sectoral Study of the Effective Tax Burden*, 2004, p39 .

⁴⁵ Author's interview with a ZCCM official, 24 July 2007.

⁴⁶ Zambia Privatisation Agency, *Privatisation Transaction Summary Sheets 1992-2005*, 2005.

⁴⁷ Author's interview with an official from the Ministry of Justice, Lusaka, 31 July 2007.

⁴⁸ KCM, a presentation for investors on Vedanta and KCM, 2007; available at [www.pbintel.com/ZIF%20presentations/Zambian%20Investment%20Forum%202007%20\(Final\).pdf](http://www.pbintel.com/ZIF%20presentations/Zambian%20Investment%20Forum%202007%20(Final).pdf) – the presentation states that PAYE totalled up to US\$35 million out of a total of US\$75-80 million. No figures were given for income tax as 'KCM will pay income tax once carry-forward losses are exhausted.'

⁴⁹ Zambia Copper Investments (2007) *Annual Report*, 2007 p 1 and 'KCM Records \$301 million net profits', *The Post*, 19 July 2007;

⁵⁰ The Hon N Magande, MP, Minister of Finance and National Planning, said in the budget speech he delivered to the National Assembly on 9 February 2007 that Zambia spent K1,098 billion on health in 2006 and K45 billion on social protection – a total of K1,143 billion or roughly US\$298 million (using an exchange rate of US\$=K 3,830).

⁵¹ 'KCM Records \$301 million net profits', *The Post* (19 July 2007) – this article notes that KCM have made an interim dividend of US\$5.7 million, with a final instalment of the same amount expected to follow – a total dividend of US\$11.4 million. This is confirmed in ZCI's 2007 annual report, which states on page 1 that 'KCM declared an inaugural interim dividend during the 2006/2007 financial year of USD5.74 million, of which ZCI received USD1.6 million in November 2006. Indications are that KCM will shortly confirm the declaration of a final dividend in the same amount.' This results in retained earnings of US\$289 million or 96 per cent. However, this cannot be verified as Vedanta's report contains only a consolidated dividend policy.

⁵² Calculations based on figures from the *Financial Times*, 5 October, 2007.

⁵³ Author's interview with a ZCCM official, 27 July 2007.

⁵⁴ Report by the auditor-general, Anna Chifungula, quoted in 'Several Zambian mining joint ventures fail to declare dividends', *English People's Daily Online* (6 June 2007); http://english.people.com.cn/200706/16/eng20070616_384986.html

⁵⁵ Testimony [of Mines and Minerals Development Permanent Secretary, Leonard Nkhata, and ZCCM-IH chief executive officer Joseph Chikolwa] to the Parliamentary Public Accounts Committee, quoted in 'Zambia: Mines Investors 'Cheating' on Dividends – Committee', *Times of Zambia* (21 August 2007). See <http://allafrica.com/stories/200708210535.html>

⁵⁶ Hon N Magande Magande, MP, Minister of Finance and National Planning, *Budget Address to the National Assembly*, 9 February 2007, clause 47. The shortfall is recorded as K2,982 billion, which is roughly US\$729 million.

⁵⁷ Author's interview with an official from the Ministry of Justice, Lusaka, 31 July 2007.

⁵⁸ Private Secretary at the Ministry of Mines quoted in A Fraser and J Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006, p 64.

⁵⁹ LME prices for cash seller and settlement range between US\$7,819 and US\$6,785 (20 September 2007).

⁶⁰ A Fraser and J Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006.

⁶¹ G Brown, *Pre-Budget Report Statement to the House of Commons delivered by the Rt Hon Gordon Brown MP, Chancellor of the Exchequer*, 5 December 2005

www.hm-treasury.gov.uk/pre_budget_report/prebud_pbr05/prebud_pbr05_speech.cfm

⁶² Author's interview with an official from Ministry of Justice, Lusaka, 31 July 2007.

⁶³ A Fraser and J Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006, p 2.

⁶⁴ KCM, *EIA for the new smelter complex at Nchanga*, April 2006, p 45.

⁶⁵ Alastair Fraser's interview with Deb Bandyopadhyay, resident director of KCM Chingola, 18 October 2006.

⁶⁶ J Lungu, *Is Konkola Copper Mines (KCM) Keeping to their side of the deal*, Christian Aid, 2007 (unpublished).

⁶⁷ M Kalaluka 'Catholic church urges government to protect workers' *The Post* (Friday 20 July 2007).

⁶⁸ A Fraser and J Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006, p 24.

⁶⁹ *Ibid*, p 26.

⁷⁰ *Ibid*, p 26.

⁷¹ Author's interview with Joyce Nonde, 20 July, 2007.

⁷² The information from this section, unless otherwise attributed, is from group interviews the author conducted with KCM employees, contract workers and trade union officials. [date of interviews? also check they were all group interviews]

⁷³ Alastair Fraser and John Lungu interview with an MCM representative, 21st October 2006.

⁷⁴ Author's interviews with Albert Mando, general secretary of NUMAW, 24 July 2007 and Rayford Mbulu, president of MUZ, 1 August 2007. Further details taken from agreements signed between KCM, MUZ and NUMAW – in particular the 'collective agreement' for 2007/08.

⁷⁵ JCTR, *JCTR Basic Needs Basket*, Kitwe, July 2007.

⁷⁶ Rates of pay are taken from the 2007/08 collective agreement signed by KCM, NUMAW and MUZ. Magande's budget speech notes that PAYE stands at 30 per cent and, if we assume that benefits aren't taxed, the take-home pay would be K1.46 million – K1,050,000

net basic pay, plus K410,000 subsistence allowance, minus 30 per cent, or K450 000. If benefits are taxed, net take home pay would be K1,339,868. Calculations in sterling are based on the exchange rate of 20 August 2007 (£1=K7,934).

⁷⁷ This package is 28 months' pay, plus two months' pay for each year worked. However, KCM does not have to pay all of the severance package – benefits accrued up to 2000 re the responsibility of the Zambian government.

⁷⁸ Author's interview with a KCM worker, 24 July 2006

⁷⁹ Author's interview with Edith Nawakwi, 26 July 2007.

⁸⁰ This calculation is based on the figure of US\$301 million net profit as quoted in note 53 – when divided by 365, the result is US\$824,657 profit per day.

⁸¹ 'CSR: is KCM living up to the challenge?' *The Business Post* (3 January 2006), www.kcm.co.zm/latest_news_full.php?id=3

⁸² See www.kcm.co.zm/sheq.php and www.kcm.co.zm/safety.php for more details.

⁸³ Interview conducted by [A Fraser and J Lungu?] as research for *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006.

⁸⁴ See www.kcm.co.zm/code_of_ethics.php for more details.

⁸⁵ www.kcm.co.zm/community_support.php

⁸⁶ Author's interview with Rayford Mbulu, MUZ president, 1 August 2007.

⁸⁷ *Ibid.*

⁸⁸ Group interview with anonymous employees working for KCM via contracting firms, Chingola, 1 August, 2007. The lowest paid worker will receive K800-1,000 (10-12p) an hour; more skilled workers will be paid K2,000-2,500 (25-32p) an hour.

⁸⁹ *Ibid.* Interviewees told us: 'They say they will give us leave days or money in compensation [payment in lieu] when the job is done,' but this doesn't happen; 'We are not given money and if you want a holiday, you have to stop coming to work [and forgo wages].'

⁹⁰ *Ibid.* This information was confirmed by author's interviews with Albert Mando, general secretary of NUMAW, 24 July 2007 and with the MUZ, [date?].

⁹¹ Information from JCTR, Summary of the Minimum Wages and Conditions of Employment (General) Order, 2006.

⁹² Environmental Council of Zambia, ECZ (2006) *Report on Investigation of the Pollution of the River Kafue, Mushishima and Chingola Streams by the Tailings Leach Plant of Konkola Copper Mines at the Nchanga Integrated Business Unit*

⁹³ Author's interview with contract workers, 1st August 2007 – interviewees told us that the closest thing they have is a security pass, which is issued on a monthly basis.

⁹⁴ Author's interview with Albert Mando, NUMAW, 24 July 2007.

⁹⁵ A Fraser and J Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006, p 24.

⁹⁶ *Ibid.*, p 24.

⁹⁷ Author's interview with anonymous KCM worker employed at Nkana, [date?], facilitated by NUMAW.

⁹⁸ A Fraser and J Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006, p 25.

⁹⁹ www.kcm.co.zm/sheq.php

¹⁰⁰ www.kcm.co.zm/environment.php

¹⁰¹ First Quantum, *Annual Report 2004*, p 17.

¹⁰² For example, the Zambia Privatisation Agency *Privatisation Transaction Summary Sheets 1992-2005*, notes that 'the company, [in this case KCM, is]...indemnified from ongoing environmental liabilities while in compliance with its environmental management plans.' See also Clause 12.2 and 12.3.1 of the KCM development agreement.

¹⁰³ J Lungu, *Is Konkola Copper Mines (KCM) Keeping to their Side of the Deal?* Christian Aid, 2007 (unpublished).

¹⁰⁴ KCM development agreement, Clause 12.3.4.

¹⁰⁵ OECD Guidelines, Part 1, Section 2, Clause 5.

¹⁰⁶ *Ibid.*, Part 3, Clause 27.

¹⁰⁷ www.necz.org.zm/cep/rationale.html

¹⁰⁸ Indeed, the CEP lists as a key objective to 'procure on-site monitoring equipment for water quality, air quality and soil contamination,' which implies that said equipment is not in place – see www.necz.org.zm/cep/sub-component-3.html

- ¹⁰⁹ ECZ, (2006) *Rationale of the Regulatory Framework for Environmental Management in the Mining Sector*, [date?] – available online at www.necz.org.zm/cep/rationale.html
- ¹¹⁰ Author's interview with anonymous ECZ official, 23 July 2007.
- ¹¹¹ Environmental Protection and Pollution Control Act, Part II, Clause 6, Sub-section 4 does not specify who the minister is, but the ECZ website confirms that the minister who – among other things – appoints the ECZ chairman, is the Minister of Tourism, Environment and Natural Resources. See www.necz.org.zm/about-ecz.html
- ¹¹² Specifically 'in the westerly part of the point where the slurry discharge from the Pollution Control Dam enters the Mushishima stream.' [where is this quoted from?]
- ¹¹³ Letter from Phillip Simbule (district agricultural coordinator, Chingola district) to the senior legal council, KCM, 17 January 2007 (reference no15/DACOCN/3/28/1 [is this necessary?]).
- ¹¹⁴ Environmental Council of Zambia, ECZ (2006) *Report on Investigation of the Pollution of the River Kafue, Mushishima and Chingola Streams by the Tailings Leach Plant of Konkola Copper Mines at the Nchanga Integrated Business Unit*
- ¹¹⁵ Quoted in A Fraser and J Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006.
- ¹¹⁶ Balaam Mwila, at a meeting, facilitated by CCJDP, with members of the Chingola community interested in and affected by KCM, Chingola, 25 July 2007.
- ¹¹⁷ Interview conducted by John Lungu, August 2007.
- ¹¹⁸ A Fraser and J Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006, p 38.
- ¹¹⁹ For example, an official from the council told SCIAF that ECZ took the soft option: 'We have a lot of options; within the Environmental Protection Act there are provisions for prosecution...[but on this occasion] we opted to work with them, [temporarily] closing down the operations [and] indicating a number of conditions [ie remedial actions] to make sure that it doesn't happen again'. Various informed academics, such as John Lungu, MPs, such as Guy Scott and NGOs such as CBE have also heard that no prosecution has been brought.
- ¹²⁰ Vedanta, *Annual Report*, 2007, p 35.
- ¹²¹ The incident occurred on 6 November. CBE threatened to commence legal proceedings on 6 February 2007 if KCM did not sink boreholes within the next seven days.
- ¹²² Group interview with Hippo Pool community members facilitated by CBE, 25 July 2006.
- ¹²³ A Fraser and J Lungu, *For Whom the Windfalls? Winners and Losers in the Privatisation of Zambia's Copper Mines*, 2006, p 33.
- ¹²⁴ Author's interview with anonymous ECZ official, 23 July 2007.
- ¹²⁵ P Feeney, *The Limitations of Corporate Social Responsibility on Zambia's Copperbelt*, Oxfam, 2001, p 4.
- ¹²⁶ KCM, *Addendum to the Final Environmental Management Plan for SmelterCo*, 2002, p 2.
- ¹²⁷ WHO Europe, *Air Quality Guidelines: Global Update 2005*, p 415; www.euro.who.int/Document/E90038.pdf
- ¹²⁸ Vedanta, *Annual Report*, 2007, p 35.
- ¹²⁹ KCM *Environmental Assessment* Vol 5.1, 6.7.11, as quoted in P Feeney, *The Limitations of Corporate Social Responsibility on Zambia's Copperbelt*, 2001.
- ¹³⁰ DFID response to Freedom of Information Request F2007 filed by ACTSA on September 3rd, 2007.
- ¹³¹ J Chadwick, 'Mopani Copper: John Chadwick reports on the tremendous mining potential of Nkana and Mfulira Metallurgical Gems', *Mining Magazine* (1 February 2002).
- ¹³² DFID response to Freedom of Information Request F2007 filed by ACTSA on 3 September, 2007
- ¹³³ KCM, *EIA for the new smelter complex at Nchanga*, 2006, p 5.
- ¹³⁴ Ibid, concerns raised in the minutes of the community consultation meeting.
- ¹³⁵ ECZ, 'Environmental impact assessment process in Zambia', *The Enviro-Line*, Issue 27 (2006), p 3.
- ¹³⁶ KCM, *EIA for the new smelter complex in Nchanga*, 2006 – KCM official's response to question asked during community consultation.
- ¹³⁷ Author's interview with Edith Nawakwi, 26 July 2007.
- ¹³⁸ Ibid.
- ¹³⁹ Meeting at Chingola facilitated by CCJDP, 25 July 2007.

¹⁴⁰ All demands in this section are taken from CCDJP, CSTNZ, JCTRZ, MUZ, NGOCC, DECOP, *Copper mining in Zambia to benefit the Zambian people and local communities*, a joint civil society statement, 2007.

¹⁴¹ Quotes in point 3 are taken from JCTR, Civil Society for Poverty Reduction (CSPR) and CCJDP, *Budget Workshop for Members of Parliament: 'Towards a development-orientated budget'*, 2007: Civil society remarks presented by Emmanuel Mali of CCJDP at the Mulungushi Conference Centre, 24 February 2007. Available at www.jctr.org.zm/downloads/budgetmali07.pdf

¹⁴² For example, using global reporting initiative guidelines.

¹⁴³ Making it mandatory to have an external auditor that, among other duties, checks that the information companies give corresponds with available evidence

¹⁴⁴ European Parliament, (2007) *Corporate Social Responsibility: A new partnership*, The report's recommendations include:

- publishing environmental and social reports alongside financial ones
- extending the duty of directors not just to maximise profit for their shareholders but to 'minimise harmful social and environmental impacts of their companies activities'
- for the EC to 'implement a mechanism by which victims, including third country nationals, can seek redress against European companies in the national courts of the Member States.'

Cover photo: Mine workers at NFC Africa Mining shaft at Chimbishi. Since the sale of the mine by the government in 1997, the mine shafts were left to flood and the infrastructure of the plant was left to rot. A Chinese company has since come in and reinvested in the mines providing 1800 jobs for local miners who work 8 hour shifts, as the mines operate 24 hours a day. Christian Aid / David Rose