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The Politics of Reforming Zambia's Mining Tax Regime

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Summary

Through out the history of copper mining in Zambia, the mining companies have been the major source of revenue to the government. They have done this through the payment of royalties, corporation taxes as well as windfall taxes. The windfall tax which is the most controversial of them all was also being paid during the time of the colonial administration. The reintroduction of this tax has raised controversies because of the development agreements which the Zambian government signed with the various mining companies which have been changed unilaterally. Opposition political parties are trying to take advantage of the governments' unilateral decision. Whether the decision to cancel the development agreements will be reviewed, will become clearer after the Presidential by-election on 30th October 2008.

Introduction

Zambia has relied on mining for its development ever since commercial copper mining started in 1928. Resistance to colonial political rule was also actuated largely through the development of trade unionism in the mining industry. In years of good international copper prices, the copper mines provided more than 80 percent of the countries foreign exchange requirements and more than fifty percent to government revenue. Copper mining however went through a long period of slump starting about 1974 when the copper prices started going down. Despite this, the mining industry still remains a major provider of foreign exchange for the economy. Thus, even though by the late 1980's the privatisation of the copper mines was inevitable, it still met with government resistance as it implied not only loss of control of the country's major resource by the government but also loss of revenue for the country. This as it may, the mines were privatised. This was made possible by making changes to the fiscal regime affecting the mining companies. Through the Mines and Minerals Act of 1995, and the development agreements signed by the new mining companies the mining tax regime affecting the copper mines was altered fundamentally. This approach to economic management was rationalised by the neo-liberal economic approach of the Movement for Multiparty Democracy government. However, five years through the implementation of the development agreements it became clear that the Zambian people were gaining very little from copper mining. As a consequence the government came under considerable pressure from non-governmental organisations, trade unions and the opposition political parties to renegotiate the agreements. The mining companies resisted and are still resisting but the government went ahead and reformed the tax regime affecting them. This paper analyses the politics of reforming the Zambian mining tax regime, arguing that the unpopularity of the MMD government on the Copperbelt and Zambia's urban areas stemming from the losses in revenue from privatisation, will remain a fundamental factor in the economic management of the country not only for the MMD government but for any government that comes into power after the presidency of Levy Mwanawasa. In order to conceptualise the future of the mining industry in Zambia it is important to understand the role of the state in economic management especially in a country like Zambia which is dependent on one major natural resource copper, for its development.

The State and Development

The word 'State' is used in two distinct ways. At times it refers to a set of institutions while at others it refers to an association of people. With the former definition, the 'State' is popularly equated with the government and the phrase state intervention used interchangeably with 'government intervention'. With the later definition, the State is equated with the term country and thus it is possible to speak of African States and African countries (Gore, 1984:3). Both these everyday ways of thinking about the state are used in sociological and political theory. Theorists who refer to the State as 'a system of institutions' consider the central and local governments, the judiciary, the police and the armed forces as institutions that stand outside civil society. These institutions constrain and influence relationships between individuals and groups within that society and are in some way accountable to the members of that society (Miliband 1969). On the other hand there are other theorists who see the State as an association of people linked by a particular form of power relationship which is exercised through the state institutional apparatus (Poulantzas, 1978). As an association of people, the state differs from all other associations because its membership is compulsory upon all those who live within its territorial ambit and that it can in the last resort enforce its obligations upon its subjects (Laski, 1935). The characteristics which define the State as an association of people are then this particular type of power relationship which links members of a State; the territorial demarcation of the limits of that power; and the conditions for membership of the association (Gore, 1984). Thus the individuals and groups who are members of a State are all subject to the laws and decisions of that State. In this understanding, the actions of people and even legal persons who are subjects of a State are constrained by what is defined as legitimate behaviour in that State. And if necessary, conformity to the laws of the State can be ensured through the legitimate use of physical force. This supreme coercive power is what is known as 'sovereignty': it has spatial limits which define the territorial ambit of the State. With all this power, the State has an obligation to direct its power towards organising present and future conditions of life and future relationships amongst the groups of people who form that State. Since all individuals and groups who are members of the State are subject to the laws and decisions of the State it then follows that in pursuing improvements (or development), the laws which have been promulgated by the State should be followed.

To understand the relationships that the State establishes with groups in society it is necessary to supplement the theory of the state with bargaining theory. Bargaining theory was developed by Bruno Continni (1968) in an article entitled 'Time in bargaining negotiations' and Wade and Curry (1971) in another article entitled 'a model for socio-political bargaining'. There have been several other publications in the field since then (see for example Zartman W (1971) and Smith and wells (1975). However it was not until Curry and Rothschild's (1974) work, that bargaining theory was applied in an African context. Bargaining theory was developed based on three fundamental assumptions. That contracts or relationships established are a result of negotiations between negotiating parties and that negotiations are done out of the free choice of the negotiating parties. Neither party is coerced into bargaining by forces outside their own volition. A further assumption was that the negotiating parties especially those representing the State did so in the interest of the members of the state.

However, both the theory of the state and bargaining theory fail as tools to analyse the relationships which the state enters into because of their overly simplified underlying assumptions. In reality the State can be compromised either because it is negotiating in an environment of asymmetric information or simply that its agents can betray it. The State may also be pushed into negotiations by forces outside its control. At other times some groups in society can become a lot more powerful and influential to usurp the independence of the State. Thus, the State may stand compromised by the very relationships it establishes with some groups in society. Some groups may become extremely influential that they can hold the State captive. When this happens policy will favour those groups. Corporations have the power to do this. The result will be weak law enforcement. Secondly, conceptualising the State in this way opens up for differences in the way different groups in society perceive the way the state organises present and future conditions of life for its members. Thus opposition parties for example can play predatory roles forcing the State to make decisions and take action that counters the influences of these parties. Equally, civil society would assume the role of a watch dog on State actions and decisions. This understanding of the state and bargaining theory is applied in this paper. The central idea in the paper is that the state can be held captive by powerful interests in society and that the outcome of the struggles between these interests will determine the policy direction of the state. This understanding is applied to the negotiations for changing the tax regime affecting the country's copper mines.

Mining Tax Regime in Historical Context

Zambia's current mining tax regime is a product of the historical development of the mining industry. After independence in 1964, Zambia embarked on its first negotiations to change the tax regime affecting the mining companies. This was necessitated by the fact that during the colonial era and the early years of the independence period, mineral royalties accrued to the British South African Company. This was because the British South African Company held the mineral rights, (Kaunda, 1969). However, in 1969 the Zambian government through the Matero reforms obtained majority shareholding in the mining companies. Mineral rights also reverted to the state. Time was then opportune for the government to start negotiations for a new mineral tax structure with the mining companies guided by nationalist ideals. The government embarked on changing the tax regime affecting the mines to enable it raise adequate revenues for infrastructure development. The post-independence mineral tax structure had three major components: the royalty tax of 13.5% based on the London Metal Exchange copper price, the export tax of 40% if and when the copper price exceeded US$300 per long ton at the London Metal Exchange and an income or corporation tax of 45% (Curry, 1984:39; O'Faircheallaigh, 1986: 54). While the first two taxes where revenue based, the corporation tax was a profit based tax. Thus the two methods of taxing mineral revenues are historical. O'Faircheallaigh (1986) concludes "this three-fold tax regime produced a total effective tax rate of 74.4%" (O'Faircheallaigh, 1986: 56). After nationalisation, the government changed the tax regime affecting the copper mines since now the government had become the majority shareholder. The new tax structure became effective in 1970. The mineral royalty and the export tax where replaced with the mineral tax of 51% and a corporation tax of 45%. Although these measures raised the much needed revenue for the government, the mining companies argued that such high taxes on production and profit discouraged investments and growth of the industry (Curry, 1984). With high revenues obtained from the mines, the government had no incentive to enter into any agreements until problems in the industry started surfacing. The falling copper prices and the rise in input costs resulted in foreign exchange shortages for the country. It was at that point that the government started negotiations with the copper mining companies. In the budget speech of 1976, the Finance Minister stated that "in order to encourage higher foreign investment in the country, I have decided that investors will be allowed to remit either 15 percent paid-up capital of their companies or 50 per cent of their profit whichever is less" (Curry, 1984:46). While the government made all these changes to the tax regime affecting the mining companies and nationalised the industry, this did not go unchallenged. Although the formation of the opposition party the United Progressive Party (UPP) was motivated principally on the grounds of inadequate representation of the 'Bemba group' in government (Larmer 2007), UPP also represented a different policy path from that of UNIP. In contradistinction to UNIP, the United Progressive Party was a pro-right party and was against nationalisation. It also emphasised benefits from the copper mines going to individuals rather than to the state. This made the party popular not only in Northern Province but also on the Copperbelt. The party did not last long however, because in December 1972 Kaunda declared a one-party state. From 1973, the economy of the country went into a poor state. It continued to decline such that by 1989, there were repeated urban food riots and industrial unrest leading to unpopularity of the ruling party UNIP and Kaunda. In 1990, the Movement for Multiparty Democracy (MMD) was formed, headed by ZCTU leader Frederick Chiluba. They won the elections in 1991 (Bratton and Van de Walle, 1997; Baylies and Szeftel, 1992). For their manifesto the MMD promised to liberalise the economy and privatise state owned enterprises. The ascendancy to power of the MMD ensured a return to neo-liberal approaches to economic management. Therefore, the realities on the ground, the pressure from the donor countries and the international finance institutions and the change in political thinking made the State to rethink the country's development strategy. Because the country's economy has historically hinged on copper mining, the privatisation of the mines was critical to the country's development agenda. It was thought then that privatisation of the copper mines would attract foreign investment into the sector.

The Privatisation Process: Role of Internal and External Actors

Zambia's privatisation programme started in earnest after the enactment of the Privatisation Act in 1992. At the time, 130 enterprises in manufacturing and other types of business where to be sold. For the mining industry, Kienbaum development Services (Gmbh) was contracted to assess the possibilities of privatising the Zambia Consolidated Copper Mines (ZCCM). However it should be made clear that the privatisation of the ZCCM was not only the wish of the Zambian government but rather, there was also pressure from the World Bank and the IMF who made it a condition for Zambia's receipt of donor help. Kienbaum Development Services (GmbH) recommended that ZCCM be unbundled into 5 separate units (Lungu and Silengo, 1997). There were also repeated demands by the World Bank and the International Monetary Fund for Zambia to privatise the copper mines for it to access loans and balance of payments support (Situmbeko and Zulu, 2004). Throughout the process, the Government sought delays for technical and political reasons and the issue became a sticking point in relations with donors, with repeated accusations of bad faith on either side (Fraser and Lungu, 2007). The workers representatives, the Mineworkers Union of Zambia expressed concerns about unbundling ZCCM into smaller companies. They felt that unbundling would leave the least attractive assets with insecure futures, or would leave the Government with significant liabilities on its hands. They preferred to sell the ZCCM assets to one serious investor. In 1996, Zambia qualified to the World Bank's Heavily Indebted Poor Countries (HIPC) initiative. This process for relief of un-payable poor country debt established frequent hurdles (most importantly HIPC decision point and completion point) for the country to clear, each of which involved an assessment of performance by international finance institutions' staff before debt relief was delivered. As each hurdle approached, Zambia came under pressure to push through privatisations that were more controversial. In most cases, the state stalled, tried to appease domestic interests, and then eventually went ahead, choosing debt relief over domestic politics (Fraser and Lungu, 2007). Throughout the privatisation period, the Government was being encouraged by donors to establish an 'investor friendly' policy regime. The privatisation of the copper mines was facilitated by the enactment of the Mines and Minerals Act of 1995. This Act repealed the Mines and Minerals Act of 1972. The latter Act regulated the nationalised industry. The 1995 Act provided for particular incentives for investors in mining. Generally the Act determined the levels of the mineral royalty, the levels of income tax and provided for capital allowances for investment in plant and machinery. It also provided relief from paying customs duties on imported machinery and equipment. The Act however, did not specify the amounts of these forms of relief rather, it permitted the government to enter into 'Development Agreements' with specific companies, under which more incentives than the Act grants could be extended. At the end of the privatisation process, the configuration of Zambian mining was completely changed. From their establishment to 1969, the Mines were in private hands under the control of the Roan Selection Trust (RST) and the Anglo-American Corporation (AAC). From 1969 to 1997, the mines were nationalised. They however were consolidated and operated as ZCCM from 1982. At the end of the privatisation process many players emerged. The development agreements signed with each of these companies outline the terms under which the different mines operate.

The Development Agreements of the Privatisation Era

The original development agreements were negotiated between 1997 and 2000. Despite the Mines and Minerals Act specifying that mineral royalties should be set at 3% for those holding large-scale mining licences, the rate negotiated by most mining companies was 0.6% of the gross revenue of minerals produced. The agreements also allowed companies to carry forward losses for periods of between 15 and 20 years on a 'first-in, first-out' basis. The companies were also granted deductions of 100 percent of capital expenditure in the year in which the expenditure was incurred and were exempted from paying customs and excise duties or any other duty or import taxes levied on machinery and equipment. This exemption was extended to other contracting firms importing machinery for mines development. The agreements also reduced the corporation tax from the original 35 percent to 25 percent. Further, government undertook not to amend any of these tax regimes after the agreement was struck, for as much as between 15 and 20 years. These 'stability periods' are a particularly important provision because until they expire the terms of the Development Agreement are assumed to be legally binding and overrule any existing or future national legislation. Although there is a provision that if at any time during the stability period either party feels that the other is not holding up their side of the bargain they can refer the dispute to an international arbitration process, the legality of the development agreements remains questionable and the whole understanding remains controversial (Lungu, 2008).

Why did the Zambian Government Sign the Development Agreements?

There has been speculation as to why the Zambian government signed the agreements lopsided as they are. Economists have argued that the underlying motivation was to make Zambian mining attractive as an investment destination for foreign direct investment, coming from the background of low copper prices and so loss making mines. Edith Nawakwi, the them finance minister stated in the British Broadcasting Corporation world service radio programme (Taxing Questions Programme two (2007)) that the copper mines were at the time making losses of up to one million dollars a day and that they were heading for a shut down. She states "it was like somebody is pointing a gun to your head". She further states that the government was borrowing in order to pay salaries to ZCCM employees. To turn the mines around the mines required to be recapitalized requiring huge sums of finance which the government could not raise. While this may be true, the Zambian government also came under pressure from the World Bank and the International Monetary Fund to privatize the copper mines. As pointed out earlier this was part of the conditionality set by the two international finance institutions for Zambia to qualify for debt relief. There is however a suggestion that government ministers may have benefited from these secret deals. The case of the sale of Luanshya mine to the Binani Group of companies provides credibility to this thesis. In this case it was very clear that the Binani Group had failed to operate the Luanshya mine but government was reluctant to terminate the agreement and continued paying salaries to RAMCOZ employees even when it was not government's responsibility to do so as the company was privately owned. Whatever the circumstances, the government should bear the blame because after all, the Movement for Multiparty Democracy (MMD) ran on a manifesto that promised to liberalise the economy, privatise state owned enterprises and secure a new democratic political dispensation. Privatisation was a principle government policy of the time.

The outcome from the development agreements has been that the Zambian people have benefited very little from the upturn in the copper prices. This has brought the agreements to question. This is made worse by the fact that there was no consultation with stakeholders or public discussion of the terms of the agreements. The case of Zambia's mining development agreements also confirms that first, the State can be held captive by powerful interest groups in society and secondly, that external influences can exert pressure on the decision making process within a State.

Pressure from Civil Society and Opposition Political Parties

Because of the changed economic conditions civil society and the opposition political parties in Zambia mounted pressure on the government to renegotiate the development agreements. The pressure did not only come from institutions within the country. There was pressure from other international non-governmental organisations such as the Scottish Catholic International Aid Fund (SCIAF), Christian Aid and Action for Southern Africa (ACTSA). The publication of *"For whom the Windfalls: winners and losers in the privatisation of Zambia's copper mines*" and *"undermining development? Copper mining in Zambia*" helped the campaign greatly. Paradoxically even the World Bank came to Zambia's support to renegotiate the development agreements. However, despite the fact that government set up a negotiating team to start the process, this never came to be. The government instead, armed with massive support from the non-governmental organisations and civil society in general decided that it would be a waste of time to engage in the process and instead made a unilateral decision to change the fiscal regime affecting the mining companies. Government took this step to re-establish its authority and also to counter opposition party claims that it had sold Zambia's sovereignty. Even though President Mwanawasa's government was not the one that signed the agreements, the general public simply considered that it was the MMD government which did this and so they were responsible. Further there is a history to this. The government has been in a hurry to deal with its unpopularity on the Copperbelt, Lusaka and most urban centres. It should be recalled that in the November 2006 elections, the Movement for Multiparty Democracy (MMD) lost all the urban seats on the Copperbelt and Lusaka. The MMD has also failed to unseat the opposition in all the by-elections so far held on the Copperbelt especially Michael Sata's Patriotic Front. The Patriotic Front campaigned on grounds of increasing mineral taxes and reducing personal taxes for the mine workers. Through these promises, they won the support of most urban workers who considered the MMD as having sold out the country to multinational corporations and so responsible for their misery. To change this image, the government proposed a change in the fiscal regime by increasing the non-taxable threshold for personal taxes and changing the fiscal regime affecting the mining industry in the 2008 budget in the hope this would improve its tainted image (Lungu 2008). The fiscal regime for the mining companies includes:

- Increasing the corporate tax from the current 25 percent to 30 percent.
- Increasing the mineral royalty tax from the current 0.6 percent to 3 percent
- Introducing a withholding tax on interest, royalties, management fees and payments to affiliates or sub-contactors in the mining sector at 15 percent
- Introducing a variable profit tax of up to 15 percent on taxable income which is above 8 percent of gross income
- Introducing a windfall tax to be triggered at different price levels for different base metals. For copper, the windfall tax will be 25 percent when the copper price is between $2.50 to $3.00 per pound or $2500 to 3000 per tonne; 50 percent when the price is between $3.00 and $3.50 and 75 percent when the price exceeds $3.50
- Capital allowances which are currently at 100 percent will now be 25 percent. Capital expenditures for new projects shall be ring fenced and only become deductible when the projects start production
- The reference price on which these taxes will be based will be the price tenable at the London Metal exchange, Metal Bulletin or any other metal exchange market recognised by the Commissioner General of taxes.

These measures according to the Minister of Finance are expected to bring in an additional $415 million in revenue from the mining industry in 2008. After changing the tax regime but before the taxes became effective, negotiations continued between the mining companies represented by the Chamber of Mines and the Parliamentary committee on estimates. The Chamber of Mines made counter proposals through this committee. The parliamentary committee however eventually agreed with the government position even though they have always held the view that negotiations should eventually take place.

Subtle Resistance from the Mining Companies and Reaction of Civil Society

Despite the government decision to change the tax regime, the mining companies are resisting paying the taxes, especially the windfall tax. By September 2008, only two mining companies had paid the windfall taxes for the quarter ending 30th June 2008 forcing the Secretary to the Treasury Mr. Evans Chibiliti to threaten that those companies that had not paid would be treated as defaulters (Times of Zambia, 10th September 2008). Mr Chibiliti revealed this when he appeared before the Parliamentary Committee on Estimates of the National Assembly. He also revealed that most mining companies had written to the late President Levy Mwanawasa to have the windfall tax reviewed citing the rise in the cost of production and low cash flows as the reasons. This resistance however was expected. From the start, the mining companies had argued that the new measures were going to make mining unsustainable. Through the Chamber of Mines, they counter proposed that while they where agreeable to the royalty rate being raised to 3 percent, this still needed to be graduated from 1 to 3 percent. How this was going to be applied has not been explained. The mining companies also objected to the 25 percent windfall tax in preference for 12.5 percent. They also made it very clear to the parliamentary committee on estimates and revenue that they would only accept the introduction of the windfall tax or the variable tax and not both. They further objected to the reduced capital allowance in preference for the status quo. This they stated would maintain the viability of mining investments and also maintain the ability of the companies to fund further investments (Lungu 2008).

While this debate has continued one of the mining companies First Quantum is said to still consider legal action as a possibility even though this has not happened. Other than the specific case of First Quantum, the Chamber of mines, have always maintained that the development agreements were legal contracts and that the Zambian government could do nothing to alter them until the stability periods expire. This however, is not the case now. Using the massive support it received from civil society, the government went ahead and implemented a new tax regime. There are other developments though. It appears that the mining companies want the negotiations to take place and government is insisting that the only negotiations that can take place or were taking place were on "how the mines were coping with the new tax regime" (Times of Zambia, 10th September 2008). Government has now taken a position having been freed by civil society action. It is also important to state that among those that supported the government's move, the Patriotic Front seams to have changed its position. Michael Sata and his parliamentarians, prominent among them, Guy Scott and Given Lubinda came out very strongly in favour of the government position to renegotiate the agreements for Zambia to get a better deal from mining taxation. Commenting on the threat by mining companies to use legal means to block the government from implementing the new mining fiscal regime, Sata previously said mining companies should get out of the country if they did not want to pay taxes. "This government should be as bold as Dr Kenneth Kaunda. We don't need to nationalise the mines but if they don't want to pay, they must get out of the country. We shall go to Chile and get people who know how to run the mines," Sata said. "We shall back government and fight them and make sure that if they don't pay tax, it will be impossible for them to run the mines." Sata said this was the right time for Zambia to get as much from its mineral wealth especially that copper prices were very high. He said the mining companies were making too much profit and that it would be immoral for them to refuse to pay the taxes "They know that they have contributed enough to the MMD and if they threaten to take legal action, they feel some cowards in government will back down," said Sata. "Why should they refuse when unborn babies are subsidising them? Further, the Patriotic Front vice president Guy Scott, during an extended sitting of the parliamentary committee on estimates when Chamber of Mines council member Jeremy Allen made submissions, threatened that he would personally lead demonstrations on the Copperbelt against mining companies once they take legal action after new taxes take effect in April. "The government heard the voices of people who wanted a fair share of resources. It is now time for the mines to pay taxes like others have been doing," said Scott. "This is the time for the government to make hay while the sun shines when there is still a boom in copper prices on the international market."

As can be recalled the government reaction to change the tax regime was partly a response to the electoral gains made by the patriotic front in the 2006 elections. The patriotic front criticised 'investor friendly' policies of the ruling MMD and the costs to the country of those policies. Surprisingly, in the Post newspaper of March 19, Sata reversed the position of the Patriotic front asking the MMD government to abandon the windfall and variable taxes. Apparently Sata stated that PF was concerned that if mining companies were not allowed to build up enough capital for reinvestment and if the international community perceived Zambia as a country that could not honour its agreements, jobs would be in jeopardy, as expansion plans and new investment projects would be shelved. However, Sata stated that PF was in favour of a royalty tax that was free from manipulation. Asked why he had changed his position when he initially supported government on the new fiscal regime, Sata said government should be more subtle in the manner it handles the matter to avoid the sad experience of Zimbabwe. This came rather as disappointing news for civil society which now considered that the Patriotic front was no longer to be trusted if it shifted positions so easily. Many thought that by the MMD answering the civil society call, the Patriotic Front was left with less material to campaign on and so had to juxtapose positions so that the party could reassure investors that when the Patriotic front comes into power it will protect foreign investor interests. This has been one of the most unpredictable developments in the debate on mining taxes. The Finance Minister Ngandu Magande was surprised by the Patriotic Front's 'u- turns' stating that "It is surprising that Mr Sata today is telling us not to implement the windfall and variable taxes imposed on the mining companies. He was one of the people who supported government when it was earlier announced that a new tax regime would be put in place. There are other neutral voices though. Robert Sichinga an economic consultant has been urging the government to continue engaging the mines as the country implements the new tax regime. He states that this is important as the taxes are being introduced for the first time. "Because we are doing this for the first time, government needs to remain open to negotiations with the mining companies" (Business Pos, 1st April 2008, iii). This view is perhaps also held by the Economics Association of Zambia (EAZ). The position is influenced by the fact that civil society demanded a renegotiation of the development agreements. Government however took a unilateral decision which was contrary to the expectations of many non-governmental organisations. The parliamentary committee on estimates may also be of a similar view since some of the prominent members of the committee belong to the opposition Patriotic Front and the United Party for National Development (UPND). It appears however that government has taken a very strong negotiating position.

Additional Arguments and the Demise of President Mwanawasa

The mining companies are also trying to alert the government of other issues which they think impinge on operations that are relevant to the tax debate and need to be considered in formulating an optimal tax structure for the industry. They have stated that the government should consider the differences in the mining methods. While some mines are deep shaft, others use open cast methods of mining. The argument here is that it is a lot more costly to run a deep shaft mine than an open cast mine. Further, most deep shaft mines have been in operation since the colonial days and so some are being mined below sea level making the operations very costly. The mining companies have also argued that some mines are wetter than others making operations in those mines very costly. The other point of contestation is that some mines are green-fields in that they are just being started from areas of bush while the others are old and difficulty to adapt to the new and modern mining methods. Because of these factors, the mines are proposing that the taxes must be profit based and not revenue based. Profit based taxation does take the cost of production into consideration while revenue based taxation it is argued does not. It however must be appreciated that revenue based taxes are easier to administer than profit based taxes. Currently the Zambia Revenue Authority does not have the expertise to track costs in the mining industry. There are suspicions of over invoicing that can not readily be proven unless and until some critical personnel in the mining industry crossed the floor. However on the basis of these arguments there is a possibility that the government will at some point renegotiate the new tax regime. They are however unlikely to move completely to profit based taxation as long as the price of copper remains as high on the market. What may complicate the debate is President Mwanawasa's demise. He and the Finance Minister Ngandu Magande had taken a very strong position on the matter. It remains to be seen whether Vice President

Lupiya Banda will continue with this policy stance. Mr. Banda however, has promised to continue with Mwanawasa's economic policies. He stated in his national address and quoted by the Times of Zambia of 10th September 2008 that "the hard earned economic strides made under the late President Levy Mwanawasa's administration had been appreciated by the international community. He assured the foreign mining investors in the country that there will be no departure from the current policies" (Times of Zambia 10th September 2008). The Acting President also indicated that the investors on their part had reiterated their commitment to their investment in Zambia. Whether this means that the tax regime affecting the copper mines will continue or not is not yet clear. Even the commitment obtained from the investors is not that clear. What is clear however is that it is difficult for the investors to abandon their investments looking at the current level of the price of copper on the market. Interestingly, the Patriotic Front is also campaigning on maintenance of the status quo. In the campaign advertisement released on 11th September 2008, the Patriotic Front has pledged to respect all legally binding contracts although it has also promised to review the taxation policy to ensure that optimising government revenue does not create a disenabling environment. The advertisement further states that "we have just put to rest our beloved President Dr Levy Patrick Mwanawasa, SC, the most fitting and lasting tribute we can render to him is acceleration of the development of our great country (The Post, 11th September 2008, iii). It is difficult to read a policy direction from these statements. Whether accelerating development means continuing with the decisions made by the late President is yet to be clarified. Further, if Mr. Sata hopes to review taxation policy so that optimising government revenue does not create a disabling environment, he might just imply that renegotiation of the tax regime affecting the mining companies is a possibility under his leadership. But what chances are there that he might win the by-election? This again is not clear. If the Patriotic Front employs the approach of the last general election of only campaigning mostly in the urban areas, they might not succeed. It is Important to note that the Acting President who is also the MMD candidate has already affirmed the fertiliser support programme. This programme was partly responsible for the MMD's popularity in the rural areas. Mr Sata needs to add something other than review of taxes to his campaign which will counter this promise.

Conclusions

Mining taxation has always been a contentious policy debate since the colonial period. However, it is important to mention that mining companies have at certain periods in the development of the country paid royalties, corporation taxes and also windfall taxes. It will be erroneous to think that windfall taxes are being introduced in mining taxation for the first time. During the colonial period the two mining companies; the Anglo American Corporation and the Roan Selection Trust paid mineral royalties of about 13 percent to the British South Africa Company who held mineral rights. They also paid a corporation tax of 45 percent as well as an export tax of 40 percent when the price of copper exceeded $300 per long tonne. Over time, the taxation of the mining companies has been varied depending on the circumstances. During the period of the nationalised mining companies some taxes were relaxed because the mines were state owned. The real debate on mining taxation has just started because of the development agreements that the government signed with the various mining companies. These secret documents gave incentives that have resulted in revenue losses to the government. Civil society discovered these documents and publicised them both locally and internationally through the publication of '*For whom the windfalls*' and the SCIF report '*undermining development*'. The conditions on the ground also helped matters. Zambians started asking themselves why there was so little improvement in their standard of living when the copper price was so high internationally? The discovery that the Zambian government was receiving next to nothing from mineral revenue compelled civil society and some political parties to raise these concerns to government. They spearheaded a public debate which with the help of international non-governmental organisations empowered the Zambian government to take action on the tax regime affecting the copper mines. Before that, the Zambian government was helpless. The development agreements held the state captive. Civil society action liberated the State by forcing it to take a position on mining taxation. The position taken by the Patriotic Front and its members of

Parliament threatened the mining companies' social licence to operate. With civil society support, the government is in a position to bargain, now from a strong position. Having taken a unilateral decision, it was expected that the mining companies would take legal action. This has not happened yet. The mining companies are only waiting for the time when the government will invite them for negotiations. While some companies have paid the taxes, others are still waiting to see if government can open up to negotiation. This time however, government has an upper hand. They have demonstrated to the mining companies that they are able to take decisions. This however does not seam to be the ending. There is a possibility that government will negotiate the levels of the various taxes. The situation will become clearer after October 30th 2008, when a new government comes into power whether headed by Mr Lupiya Banda or Mr Sata. At that point we shall know whether either of them will honour their promises.

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