

**THE CITIZEN ECONOMIC EMPOWERMENT ACT: DOES IT HAVE
THE EFFICACY TO FOSTER THE PARTICIPATION OF TARGETED
CITIZENS IN THE ECONOMY?**

By

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DECLARATION

I, Yambwa Imbula, do hereby solemnly declare that this dissertation represents my own work, which has not been submitted for a degree at this or any other University.

Further, that other people's work has been fully acknowledged to the best of my knowledge.

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ABSTRACT

The main thrust of this research is essentially to look at the efficacy of the Citizen Economic Empowerment Act in fostering the meaningful participation of targeted citizens in the economy and also in reducing income inequalities. This is from the background that despite many previous attempts by the government, proper citizen economic empowerment has been elusive. The CEE Act has been enacted with objective of citizen economic empowerment. The enactment of the CEE Act was in a way positing that that some sections of society were not participating in the economy in positive manner. Hence the enquiry into whether or not the CEE Act has the efficacy to empower targeted citizens economically. It was also interesting to establish whether or not the CEE Act has the efficacy to achieve its intended objective of citizen economic empowerment of targeted citizens.

Empowerment encompasses decentralization of power with regards the fact that real governance should be brought to the door step of every person and that it should involve a multi-stakeholder approach in making and implementing decisions. Empowerment of people requires action from several fronts. It requires investing in education and health. It calls for ensuring an enabling environment is created through ensuring that everyone has access to credit and productive assets thereby leveling the playing field. Last but not the least; it involves creating equal opportunities for both men and women.

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CHAPTER 1

1.0 Introduction

This chapter gives a balanced picture of what constitutes economic empowerment and empowerment generally. It considers the meaning of empowerment in its various forms, the goal of empowerment and the people who are eligible to benefit from empowerment. It was the aims of this paper to consider whether the Citizen Economic Empowerment (CEE) Act has the efficacy to enable targeted citizens to participate meaningfully in the economy and also to reduce income inequalities.

A citizen is a legal resident of country or somebody who has the right to live in a country because he or she was born there or has been legally accepted as a permanent resident.¹ Empowerment refers to making more confident or assertive that is to give somebody a greater sense of confidence or self-esteem.² It is trite that economic empowerment is an economic issue and this research is accordingly going to look at this issue of whether or not the CEE Act has the efficacy to increase meaningful participation of targeted citizens in the economy from an economic and legal perspective. Economic refers to that pertaining to economics or the economy or capable of producing a profit.³ A targeted citizen is a citizen 'who is or has been marginalized or disadvantaged and whose access to economic resources and development capacity has been

¹ Microsoft Encarta Dictionaries 2006

² Ibid

³ Webster's Universal English Dictionary 2006

constrained due to various factors including race, sex, educational background, status and disability.’⁴

1.1 Background

Despite the various programmes and policies undertaken by the government since independence to the effect of empowering citizens economically, much of the Zambian society still remains far from making any meaningful contribution in the economy. Apart from not making any meaningful contribution in the economy, the gap between the haves and the have-nots still continues to be very wide. This had prompted the government to enact the Citizen Economic Empowerment Act with a view of redressing the above situation. The question though was ‘did the Citizen Economic Empowerment Act have efficacy to enable citizens participate effectively in the economy and thereby reduce income inequalities? Did it address the problems and flaws of the past attempts at economic empowerment by the government?

1.2 Problem Statement

The problem as noted above is the lack of participation in the economy by some people due widespread income inequalities caused by lack of access to credit. This research sought to assess whether the Citizen Economic Empowerment Act has the efficacy to address the above problem. It generally assesses what provisions the Citizen Economic Empowerment Act has in place to tackle the lack of participation in the economy by the targeted citizens. The research also looks at whether the lack of participation in the economy by the targeted citizens is exclusively due to

⁴ Citizen Economic Empowerment Act Number 9 of 2006 Section 2

lack of access to credit or indeed establish whether there are just other causes besides the lack of access to credit.

1.3. Rationale

Considering the numerous previous attempts at citizen economic empowerment and the fact that less and less people are able to participate meaningfully in the economy, it was imperative to try and see if the CEE Act had the efficacy to enable more targeted citizens to participate meaningfully in the economy. The CEE Act is a step in the right direction by the government in an attempt to empower certain groups of people in the country. This had led to the thinking that peradventure the CEE Act would proffer a panacea to the longstanding problem of lack of participation in the economy by the targeted citizens. This research was undertaken to try and consider the efficacy of the CEE Act in citizen economic empowerment of targeted citizens. The nature of empowerment was looked at. It was hoped that the research would give an insight into the efficacy of the provisions of Act for citizen economic empowerment of targeted citizens in Zambia. Accordingly recommendations were made to that effect.

1.4. Study Objectives

1.4.1 General Objective

The general objective of this essay was to examine the efficacy of the CEE Act in the citizen economic empowerment of targeted citizens in Zambia. It particularly sought to look at the impacts or effects, if any, that the CEE Act will have in fostering participation of the targeted people in the economy and in reducing income inequalities.

1.4.2 Specific Objectives

1. To outline the people who qualify as targeted citizens under the Act and also consider what empowerment is.
2. To assess the sufficiency or not of the current Act on citizen economic empowerment in the light of previous legislations and policies in Zambia.
3. To look at the historical perspective of the various previous attempts on citizen empowerment in Zambia insofar as legislation and policies are concerned.
4. To identify the flaws of the previous legislation and policies on citizen economic empowerment.
5. To point out the challenges of implementing the CEE Act and suggest ways for its successful implementation.
6. To analyze the provisions of CEE Act and its objectives.

1.5. Methodology

This study was mainly by desk research. It was be based on information from statutes, bills, cases, text books, journal articles, paper presentations, reports by mandated bodies and student obligatory essays. The research was a qualitative one. It involved field investigations as well. It thus consists of both primary and secondary data.

1.6. Outline of Chapters

Chapter one gives a general introduction to the research. It will also define certain key terms in the research such as citizens and empowerment. The chapter will outline the definition, the nature, goal and rationale for the concept of citizen economic empowerment. It will state the

problem that the research seeks to ameliorate as well as the method to be employed in doing so. Chapter two tries to look at the historical perspective of Zambia's economic programs undertaken by the government with a view of empowering citizens economically. In so doing, assess the strength and weaknesses of those policies and legislation. Chapter three tries to look at empowerment through the Citizen Economic Empowerment Act. It will try to analyze the salient provisions of the Act and its objectives.

Chapter four tries to assess the efficacy of the CEE Act in fostering the meaningful participation of targeted citizens in the economy. Chapter five basically consists of conclusions based on what will have been discussed in the preceding chapters. It is in this chapter where it will be established whether or not the CEE Act has the efficacy to promote the participation of targeted citizens in the economy.

1.7. Definition of concepts and terms

Empowerment generally refers to making more confident or assertive that is to give somebody a greater sense of confidence or self-esteem. It entails encouraging people to have confidence in their abilities, thereby enabling people to understand their reality and to take the necessary steps to improve their situation. Empowerment is defined by Citizen Economic Empowerment Act to mean 'an integrated broad based and multi-faceted strategy aimed at substantially increasing meaningful participation of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies in the economy and decrease income inequalities.'⁵

⁵ Citizen Economic Empowerment Act Section 2

Empowerment can also be defined as a ‘process through which, especially the poorer people, are enabled to take more control over their own lives, and secure a better livelihood with ownership of productive assets as one key element’⁶. It also implies providing means for people to be in a position to exercise choices of their own free will⁷.

The Citizen Economic Empowerment Act outlines its goal as to ‘promote the economic empowerment of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies in the economy in order to contribute to sustainable economic growth; remove social customs, statutory provisions or other practices that limit access to any particular gender to skills training that is essential for the effective participation in the economic sector...’⁸

The Fifth National Development Plan (FNDP) with respect to citizen empowerment puts it thus ‘the objective under this reform area is to unlock the growth potential of citizens through business development support and empowerment initiative ... to provide a durable and sustainable foundation for achieving a significant level of citizen participation in business and the economy in general so as to contribute to the attainment of the desired sustainable and balanced economic growth.’⁹

⁶ Haq, Mahbub ul (1998) ‘The Human Development Paradigm’ Haq, Mahbub ul (ed) Reflections on Human Development 2(ed) New York: Oxford University Press

⁷ Ibid

⁸ Citizen Economic Empowerment Act Preamble

⁹ Fifth National Development Plan p.49

As both the Citizen Economic Empowerment Act and the Fifth National Development Plan (FNDP) have indicated above, the government through the economic empowerment programme intends to foster the significant participation of the targeted citizens in the economy.

In terms of eligibility for economic empowerment, there are number of candidates who qualify to benefit from broad based empowerment programs. These include citizen based companies, groups of citizens, cooperatives, citizen empowered companies, and citizen influenced companies and broad based empowerment programmes. A targeted citizen has been defined by the Act as ‘a citizen who is or has been marginalized or disadvantaged and whose access to economic resources and development capacity has been constrained due to various factors including race, sex, educational background, status and disability.’¹⁰

The concept of citizen economic empowerment is basically an attempt to empower certain groups of people in the society by using legal and extra-legal machinery.¹¹ This mainly arises from the realization that some groups of people in society are not making any significant contribution to the economy due to lack of access to economic resources. It principally aims at rectifying the imbalances that exist in power to exploit a country’s economic resources. Citizen economic empowerment laws and policies are closely linked with the economic ideology of a country and are driven by the political ideology. Hence, citizen economic empowerment laws are not purely legal but represent a fusion of the three aspects of legal, economic and political conceptions. Different countries utilize a variety of methods to enable citizens participate in the

¹⁰ Citizen Economic Empowerment Act Section 2

¹¹ See generally Zulu Lungisani (2008) Citizen Economic Empowerment Law in Zambia: Its relevance and Applicability Unpublished Obligatory Essay Lusaka: University of Zambia

economy. Some countries use affirmative action or legislative action while others use a combination of both methods to enable citizens play a role in the economy of that country.

1.8 Conclusion

This chapter has given a balanced picture of what constitutes economic empowerment and empowerment generally. It has considered the meaning of empowerment in its various forms, the goal of empowerment and the people who are eligible to benefit from empowerment. Empowerment also encompasses decentralization of power with regards the fact that real governance should be brought to the door step of every person and that it should involve a multi-stakeholder approach in making and implementing decisions. Empowerment of people requires action from several fronts. It requires investing in education and health. It calls for ensuring an enabling environment is created through ensuring that everyone has access to credit and productive assets thereby leveling the playing field. Last but not the least; it involves creating equal opportunities for both men and women.

CHAPTER 2

2.0 Introduction

This chapter attempts to look at a historical perspective of Zambia's economic programs. It will consider the programs each successive government put in place to ensure citizen economic empowerment. The chapter will examine the policies and legislation behind each economic program aimed at empowering the citizens so as to enable them to participate in the economy meaningfully. It will also try to outline the successes or achievements of those programs and thereby see how those programs fared in achieving their intended objects. The chapter will also outline the flaws and weaknesses of each successive government program. The economic programs to be considered by this chapter range from nationalization, Zambianisation and privatization.

Zambianisation refers to the transfer of means of production and other economic sectors into the hands of Zambians. Nationalization refers to transferring a business, property or industry from private to governmental control or ownership.¹² In other words, that is to convert private property into public or national property. Privatization is the process of transferring productive operations and assets from public sector to the private sector.¹³ Zambianisation and nationalization programs were undertaken by the former president Kaunda's administration. Privatization program in Zambia, as an economic program, was first undertaken by the former president Chiluba's administration.

¹² Microsoft Encarta Dictionaries 2006

¹³ Scott, H.S and Wellons, P.A International Finance: Transactions, Policy and Regulation 2 (ed), (New York: The Foundation Press, 1995) p.1049

Immediately after independence, government started giving loans and knowhow to the citizens believing that Zambian entrepreneurship would be established and built up. However, President Kaunda admitted that this method was painfully slow and ultimately unsuccessful.¹⁴

Since a lukewarm and half hearted approach to empowerment proved futile, it was acknowledged that the time had come for urgent, aggressive and vigorous steps to be taken to empower the citizen.¹⁵ Concrete steps had to be taken to further the participation of local people in the economy. This was achieved through the introduction of the Mulungushi and Matero reforms in 1968 and 1969 respectively. These reforms introduced Zambianisation and nationalisation.

2.0 Zambianisation

Mulungushi reforms introduced a number of measures to empower citizens in the economic sector. Since the economic sector was dominated by foreigners, measures were introduced aimed at putting Zambian businesses into an advantageous position and also shielding them from excessive competition from resident expatriate businesses. The following include some measures that were introduced to enable Zambians participate in the economic sector.

Lending firms were not keen to lend to Zambians due to the fact that most Zambians had no capacity to provide security for loans and were also incapable of repaying loans. Hence, lending firms preferred resident expatriate businesses that had the capacity to provide security for loans

¹⁴ Zambia Economic Revolution: Address by His Excellence the President Kaunda at Mulungushi on 19th April, 1968, p.27

¹⁵ Towards Complete Independence: Address by His Excellence President Kaunda at Matero Hall, Lusaka on 19th April, 1969 p.24

and also were capable of repaying loans. Kaunda announced measures to limit borrowing by resident expatriate businesses.¹⁶ It was directed that banks, building societies, insurance companies, financial institutions and others in the country, before approving loan application for resident expatriate businesses had to ascertain the following: if a company, whether its members or shareholders were Zambians with Zambian passports and national registration cards, secondly if a partnership, whether its partners were Zambians with Zambian passports and national registration cards and lastly if an individual was a Zambian with a Zambian passport and national registration cards.

If the application was from a non Zambian, it had to be referred to the Exchange Control Board. The Exchange Control Board would either approve or refuse application using its own stringent criteria. The criteria included the amount applied for, the type of business, and the size of the investment in the country. It was hoped the excess liquidity would be lent to Zambian businesses.

Specific businesses were given to Zambians without competition to enable them to develop. Certain geographical and business areas were to be the exclusive preserve of Zambians in retail trade.¹⁷ Expatriate businesses were to be restricted to big towns such as Lusaka, Ndola, Livingstone, Kabwe, Kitwe, Mufulira, Chingola, Choma and Mazabuka. All other business areas were to be exclusively for Zambians and resident expatriate businesses in those areas were to be sold to Zambians in retail trade once their licences expired. It was also directed that trading

¹⁶ Zambia Economic Revolution: Address by His Excellence the President Kaunda at Mulungushi on 19th April, 1968, p.28

¹⁷ Towards Complete Independence: Address by His Excellence President Kaunda at Matero Hall, Lusaka on 19th April, 1969 p.24-28

licences in those areas were to be given only to Zambian companies, partnerships and individuals.

Certain businesses were to be the preserve of Zambian businesses only. The following were some of the businesses which were included: firstly road service licences were only to be granted to partnerships or companies with 75% members or shareholders or Zambian individuals.¹⁸

Residents expatriate businesses were to operate only until their licences expired and then sale to Zambians. Secondly, building materials permits were to be given to Zambians where the tasks involved digging trenches, transportation of sand, clay, etc.¹⁹ Thirdly, subcontracts to do small jobs by large companies were to be given to Zambians only and Public Works Department was also to ensure that specified works were to be given to Zambians only.²⁰

Other Zambianisation policies included joint ventures by Zambians and foreigners. Joint ventures in rural areas by non Zambian qualified as Zambian. Wholesale licences to resident expatriate businesses were only allowed in prescribed areas. In the employment Sectors, a non Zambian could only be employed if there was no Zambian who could do the job. There was a strict criterion for giving a work permit or renewing work permit to a non Zambian.

2.2 Nationalization

To fully appreciate the factors which led to the nationalisation of economy in Zambia, it is important to understand the economic situation which prevailed before independence. Prior to

¹⁸ Towards Complete Independence: Address by His Excellence President Kaunda at Matero Hall, Lusaka on 19th April, 1969 p.29

¹⁹ Ibid p.3

²⁰ Ibid p.3

the attainment of independence, industrial activity was characterized by insignificant or rather almost nonexistent participation of the indigenous people. The economic sector was predominantly dominated by the white settlers who served local markets and processed some raw materials for export.

After the attainment of independence in 1964, the government was eager to redress the above situation. And in a bid to do so, the government nationalized all the vital sectors of the economy and it did so in 1968 through the Mulungushi reforms which enabled it to acquire 51% share ownership in transport, utilities, education, health and manufacturing and subsequently the government also acquired 51% shares in the mines through the Matero reforms of 1969.²¹

A number of reasons have been advanced by Muuka²² to explain why the government nationalized the vital sectors of the economy and these reasons include the following. Firstly, the desire to control the economy by the government with a view of commanding the pace and direction of development, and secondly, the government was uneasy with the fact that the economy was dominated by foreigners who were busy externalizing their profits instead of investing in the economy. Thirdly, the government was also determined to dismantle price cartel which were thriving at the expense of the people and finally, the indigenization of the economy by encouraging local investors and the lack of local investors were made up for by the state.

²¹ See generally Bertha Z. Osei-Hwedie, "Development Policy and Economic Change in Zambia: A Re-Assessment," DPMN Bulletin, No.2, Vol.10 (2003)

²² G.Muuka, "Zambia's Industrial Sector: From Privatisation to Nationalisation and Back," in K.K. Mwenda et al (ed), Frontiers of Legal Knowledge: Business and Economic Law in Context (Durham: Carolina Academic Press,2003)

In terms of achievements, both *Zambianisation* and *nationalization* enhanced the participation of *Zambians* in the economic sector. They placed *Zambians* in the mainstream of the economy through putting them in strategic positions. *Indeco* also played a crucial role in the industrialization of the country. Additionally, they also led to the rise of *Zambians* who were capable of managing *parastatals*. They also led to the setting up businesses by *Zambians* in big town where hitherto they were nonexistent.

However, both *nationalisation* and *Zambianisation* had some weaknesses in the sense that there was no specific group of citizens targeted for empowerment hence only economically stable *Zambians* benefitted as they had capital and know-how. Also no deliberate effort was made to prepare citizens for citizen for empowerment. The provision for change of citizenship was a loophole for non *Zambians* in the sense that instead of selling their businesses, they opted to become *Zambian* citizens and hence maintain ownership of their businesses.

Furthermore, *nationalization* proved very costly for *Zambia*. *Zambia* failed to diversify the economy from copper mining. Many reasons, according to *Osei-Hwedie*,²³ could be advanced for the poor economic performance. Firstly, declining world copper prices from as early as 1974 led to a reduction in government spending on development and this was compounded by the fact that no savings were made during the period when copper prices were high. Secondly, massive state involvement paved the way for corruption, bureaucracy and uncertainty which resulted in less private investment and foreign trade initiatives. She also observes that *Indeco* was unsuccessful in creating substantial employment opportunities due to capital intensive machinery

²³ See generally *Bertha Z. Osei-Hwedie*, "Development Policy and Economic Change in *Zambia*: A Re-Assessment," *DPMN Bulletin*, No.2, Vol.10 (2003)

and also as result of catering to small urban market at the expense of the poor majority in rural areas.

2.3 Privatisation

‘Privatization is the process of transferring productive operations and assets from public sector to the private sector. Broadly, defined in this fashion, privatization is more than selling an enterprise to the highest bidder, as it includes contracting out, leasing, private sector financing of infrastructure projects, liquidation, mass privatization,...there is no best approach to privatization; the appropriate privatization path depends on the goals the government is seeking to attain, the individual circumstances facing the enterprise and the economic and political context of the country.’²⁴

Kenneth Kaunda took deliberate steps to empower citizens while privatization was not purely an empowerment measure but it was rather part of an economic reform programme. It was a shift from state controlled economy to a liberal, private controlled economy.

According to Chipwende²⁵, the privatization of parastatals was necessitated by several factors. These include the fact that the objectives of parastatals were often unclear and contradictory. Moreover, there was usually excessive political interference in decisions of the board of directors of parastatal companies. Also, there was excessive rotation of management due to the shortage of competent managers or the lack of incentives to retain the managers. Additionally, the

²⁴ Scott, H.S and Wellons, P.A (1995) International Finance: Transactions, Policy and Regulation 2nd ed, New York: The Foundation Press p.1049

²⁵ Patrick Chipwende, “Privatization in Zambia,” see generally <http://library.fes.de/fulltext/bueros/simbabwe/01056004.htm/E10E15> visited on 24 September 2009

interference by the state in the affairs of parastatals had other drawbacks such as the incompatibility of civil service procedures with commercial operations. This incompatibility led to inefficiencies and heavy losses.

Other factors that necessitated the privatization of parastatal companies according to Chipwende²⁶ included inappropriate investment decisions in parastatals emanating mainly from the lack of economic feasibility studies, the existence of poor reporting systems and weak accounting methods, the poor performance of many non professional board of directors, the insufficient autonomy and inadequate measures for judging performance, the inappropriate price policies and under-capitalization of these companies. Also, the shortage of funds due to large amounts of working capital being tied up in inventories and the employment of workers on political grounds, despite such workers having little or no skill did result in poor performance of many parastatal companies.

In Zambia, according to Mwenda,²⁷ the following were some of the reasons which persuaded the government to embark on privatization of state owned enterprises. To scale down government direct initiative in economic activities and correspondingly its administrative load, to reduce budgetary costs arising from subsidies and capital expenditure. Also, the promotion of competition and improvement of the efficiency of the operations of the enterprises is another reason. Also, to encourage the ownership of shares and to promote the growth of capital markets; in addition, to minimize the involvement of government bureaucracy in enterprise

²⁶ Ibid

²⁷ K.K. Mwenda (2003) "Privatization Law in Zambia," in K.K. Mwenda et al, Frontiers of Legal Knowledge: Business and Economic Law in Context Durham: Carolina Academic Press

operations and to stimulate both local and foreign investment and to derive capital incomes for the treasury were also some reasons for privatization in Zambia.

Chipwende²⁸ notes that privatization has been the cornerstone of broader reform. These reforms include the opening up of economy to allow for domestic firms to compete internationally, improved modern regulatory and legal framework, reduced red tape and de-bureaucratization; government imposed anti-inflationary measures restricting money supply, removal of restrictions on foreign exchange on both capital and current accounts and the ending of price and exchange controls and subsidies.

Chipwende²⁹ further notes that it entailed no political interference, speed and public awareness, allowed direct foreign participation, created investment friendly climate and legislation which was responsive to private sector needs. It also tried to avoid perpetuation of monopolies and created a warehouse of shares to be floated to Zambians.

The Zambia Privatization Agency (ZPA) was the statutory body mandated with the regulation of privatization of parastatals in Zambia.³⁰ The ZPA had attributes such as perpetual succession and the ability to sue and be sued.³¹

In terms of composition, the ZPA comprised of Permanent Secretaries from the Ministries of Commerce and Finance respectively, the Attorney General, representatives from Zambia

²⁸Patrick Chipwende, "Privatization in Zambia" see generally <http://library.fes.de/fulltext/bueros/simbabwe/01056004.htm/E10E15> visited on 24 September 2009

²⁹ Ibid

³⁰ Privatization Act section 3

³¹ Ibid

Congress of Trade Unions, Zambia Chamber of Commerce and Industry, Zambia Institute of Certified Accountants, churches in Zambia, and Bankers Association of Zambia and the Dean of School of Business Studies at the Copperbelt University.³² Any member, apart from the permanent secretaries, was eligible for election as chairperson and vice chairperson.³³

The major functions of the Agency were planning, managing, implementing and controlling the privatization of parastatal companies in Zambia.³⁴ The detailed functions of the Agency were set out and these can be summarized as recommending privatization policy guidelines to cabinet, implementing privatization programme; overseeing its implementation; monitoring the progress of privatization; preparing divestiture sequence plan; recommending the most appropriate method for privatization of state owned enterprises; carrying out valuation of state owned enterprises; setting pre-qualification criteria for potential buyers or investors; ensuring that privatization does not create monopolies; preparation of relevant documents; seeking potential investors; maintaining records and establishment of administrative procedures; and maintaining close liaison with relevant institutions and publicizing activities of privatization.³⁵

Modes of privatization which were undertaken included offering of shares to the public, negotiated or competitive bids for shares through private sale, offer of additional shares,

³² Ibid section 5(1)

³³ Ibid section 5(2)

³⁴ Ibid section 8(1)

³⁵ Ibid section 8(2)

reorganization before partial or complete sale of parastatal, management or employee buyouts, lease and management contracts.³⁶

Citizens were empowered to participate in the economy through ownership of shares. This was possible through citizens acquiring shares in parastatal which offloaded their shares to the public on the stock market. Citizens could acquire shares by submitting competitive or negotiated bids for shares through a private sale. Shares could also be acquired by citizens when an additional offer for shares was made as the government wanted to reduce its shareholding in the parastatal company.

Incentives were given to small investors such as allotments at a discount, share bonuses at the end of the prescribed period for those who held on to their shares; individuals, management and employees of parastatal companies could purchase shares in installments.³⁷

Citizens were privileged to own assets and businesses that were previously owned by parastatal companies. Citizens were entitled to acquire the assets and businesses parastatals when offered for sale by the Agency. Hence, citizens could participate in the running of the economy. Further, individuals could also purchase shares from the Privatisation Trust Fund which was created to hold shares in trust for the Zambian people.³⁸

³⁶ Ibid section 22

³⁷ Ibid section 29

³⁸ Ibid

A management buyout occurs if there is a purchase of a majority of a company's stock by the managers of the company. Leases enabled citizens to utilize property or equipment at a fee for a period of time without necessarily buying it.

In terms of progress to date, about 240 companies and units have been sold and there are approximately about 30 companies and units to go.³⁹ Zambian participation has been about 65% of the units sold. Direct participation has included deferred payments (individual and MBO), deliberate decisions for management buy-outs, public floatations and commitment to float in future, partnerships with foreign companies and non-core assets and consultancies.⁴⁰ Indirect Zambian participation has included supplier opportunities, new jobs, saved jobs, plus spin offs tax income and subsidy savings.⁴¹

According to Chipwende⁴², there was limited professional support available in the ZPA for advising employees on striking a good deal and setting up proper employee share ownership schemes, even prior to privatization. Consequently, there was limited advice to employees made redundant on how to set up their own businesses, and link into the micro-finance and small and medium enterprise support sector, and also the scope for establishing training to create a business literate workforce was limited, if not completely nonexistent. Ultimately, a comprehensive, inter-linked data base was not established to assess the success and impact in the future.

³⁹ Patrick Chipwende, "Privatization in Zambia" see generally <http://library.fes.de/fulltext/bueros/simbabwe/01056004.htm/E10E15> visited on 24 September 2009

⁴⁰ Ibid

⁴¹ Ibid

⁴² Patrick Chipwende, "Privatization in Zambia" see generally <http://library.fes.de/fulltext/bueros/simbabwe/01056004.htm/E10E15> visited on 24 September 2009

Since many facilities mentioned above were not in place, many Zambians suddenly found themselves without jobs and despite all their years of working for state-owned enterprises, they had not built up enough savings to invest in their own businesses.⁴³ They had also, in many cases, not learnt any of the skills needed for this: a basic understanding of bookkeeping or other administrative skills, for example.⁴⁴

2.4 Conclusion

This chapter has shown us a historical perspective of economic programmes that have been undertaken in Zambia by successive governments with a view of enabling citizens to play a major role in the economic sector of the country. Economic programmes that were undertaken before the Citizen Economic Empowerment Act range from Zambianisation, nationalisation and privatization. Nationalisation entails the active involvement of the state in running the economic sector. While Zambianisation involves giving Zambians more opportunities in running the economic sectors through policies deliberately designed to ensure their participation and sometimes even shielding from competition. Privatization is the exact opposite of nationalisation in the sense that it aims at ensuring that role of state in the economic sector is reduced and that the private sector takes active role in the running of the economic sectors.

⁴³ Lowdown Zambia, "For The Benefit of All?" See generally www.lowdown.co.zm/2006/2006-04/benefit.htm visited on 15 July 2009

⁴⁴ Ibid

CHAPTER 3

3.0 Introduction

This chapter considers the Citizen Economic Empowerment Commission and its role in promoting citizen economic empowerment. It will consider the composition of the Commission, and the functions and the proceedings of the Commission. It will also assess the instances where the Commission is allowed to delegate its powers and the requirement for members to disclose interests at meetings. The chapter will also look at the Citizen Economic Empowerment Fund which has been established to support broad based economic empowerment programmes.

3.1 The Citizen Economic Empowerment Commission

The Citizen Economic Empowerment Commission, a statutory body, is the competent authority for the promotion of citizen economic empowerment of targeted citizens in Zambia⁴⁵. As a corporate body, the Citizen Economic Empowerment Commission has attributes such as perpetual succession and the ability to sue and be sued⁴⁶.

The Citizen Economic Empowerment Commission comprises a chairperson, Permanent Secretaries from the Ministries of Commerce and Labour respectively, the Attorney General, Secretary to the Treasury, one person representing the youths and the disabled respectively, two persons representing the private sector and civil society and three person representing the

⁴⁵ Citizen Economic Empowerment Act No. 9 of 2006 section 4

⁴⁶ Ibid section 4

university community, Central Statistical Office and trade unions respectively.⁴⁷ The vice chairperson may be elected by the members from among themselves.⁴⁸

The Director General who is appointed by the Commission is the chief executive officer of the Commission.⁴⁹ The Director General under the general direction of the Commission is responsible for the management and administration of affairs of the Commission, implementation of the Commission's decisions and any other function assigned to him by the Commission or the Act.⁵⁰ The Director General does not have voting rights at meetings of the Commission.⁵¹ The Director General is assisted by staff appointed by the Commission.⁵²

The major function of the Commission is to promote the empowerment of historically marginalized or disadvantaged citizens and whose access to economic resources and development capacity has been inhibited by various factors including race, sex, educational background, status and disadvantage.⁵³ However, section 6(2) of the Citizen Economic Empowerment Act sets out the detailed functions of the Commission.

The functions of the CEEC can be summarized to include advising on changes to legislation, promoting gender equality; encouraging effective participation of targeted citizens; promotion of

⁴⁷ Ibid section 7(1)

⁴⁸ Ibid section 7(2)

⁴⁹ Ibid section 12(1)

⁵⁰ Ibid section 12(2)

⁵¹ Ibid section 12(3)

⁵² Ibid section 12(4)

⁵³ Ibid section 6(1)

employment of both gender; ensuring preferential treatment for targeted citizens; promotion of subcontracting services; mobilization of resources; reviewing of framework for provision of developmental services and development of sector codes of good practices.⁵⁴

Under the CEE Act, the Commission has power to regulate its own procedure subject to the Act.⁵⁵ Also under the CEE Act, seven commissioners can form a quorum at any meeting.⁵⁶ The chairperson presides over meetings or in his absence the vice chairperson should preside and in the absence of both the chairperson and vice chairperson, such person as members present may elect for such purpose at that meeting.⁵⁷ Decisions of the Commission on any matter are made on the basis of majority votes from the commissioners present at the meeting.⁵⁸ In the event of an equality of votes, the person presiding at the meeting has the casting vote in addition to that person's deliberative vote.⁵⁹ The Commission can invite any person it considers desirable to its meetings but that person has no power to vote.⁶⁰ The validity of any proceeding or decision of the Commission cannot be affected by vacancy in membership or any defect in appointment of commissioner or by the reason that a commissioner was not entitled to participate.⁶¹

⁵⁴ Ibid section 6(2)

⁵⁵ Schedule to the Citizen Economic Empowerment Act section 1(1)

⁵⁶ Ibid section 1(2)

⁵⁷ Ibid section 1(3)

⁵⁸ Ibid section 1(4)

⁵⁹ Ibid section 1(4)

⁶⁰ Ibid section 1(5)

⁶¹ Ibid section 1(6)

The Commission has power to establish committees and delegate its functions to such bodies as it deems fit.⁶² The Commission can appoint from among its members or from outside, people to constitute these committees and determine their tenure of offices but the chairperson should be a commissioner.⁶³ Committees may, however, have their own procedural rules on administration which are independent of the Commission's rules.⁶⁴

Members of the Commission and its committees are required by law to disclose their interest in any matter being discussed by the Commission or its committees.⁶⁵ Disclosures are restricted to members present at meetings.⁶⁶ The CEE Act does not say what the position would be if a member is absent or being represented by a proxy and has an interest in the matter being discussed by the Commission or its committees. Should such a member, through the proxy, disclose his interest?

Members of the Commission are also required to disclose whether their immediate families are directly or indirectly interested in private or professional capacities in matters being discussed by the Commission or its committees.⁶⁷ Members with an interest in such matters can only vote and take part in the deliberations relating to the matter if they have been allowed by the Commission or its committees to do so.⁶⁸ Here, disclosure is meant to ensure that the Commission's decisions

⁶² Ibid section 2(1)

⁶³ Ibid section 2(3)

⁶⁴ Ibid section 2(5)

⁶⁵ Ibid section 3(1)

⁶⁶ Ibid section 3(1)

⁶⁷ Ibid section 3(1)

⁶⁸ Ibid section 3(1)

do not reflect private interests of the members or their relatives. Such disclosure is supposed to be made as soon as possible once the meeting commences.⁶⁹ Disclosure of interest by a person is to be recorded in the minutes of the meeting at which it is made.⁷⁰

Failure to disclose an interest in the matter being discussed by a person present at a meeting is a contravention of the Act and is an offence whose punishment is a fine or a prison sentence not exceeding one year.⁷¹

3.2 The Citizen Economic Empowerment Fund

The Citizen Economic Empowerment Act establishes the Citizen Economic Empowerment Fund to support the development of broad based economic empowerment programmes.⁷² The Fund comprises money appropriated by parliament, and money received as loans or fees, and interest from the Commission's investments or from the stock exchange.⁷³

The Commission is mandated to undertake a number of tasks to facilitate the flow of financial resources to broad based economic empowerment programmes.⁷⁴ These activities include the identification of citizens requiring financial assistance, provision of information on sources of finances and promotion of investment; rendering of developmental services on how access financial resources and the setting up of standards for loan administration, use and repayment

⁶⁹ Ibid section 3(1)

⁷⁰ Ibid section 3(2)

⁷¹ Ibid section 3(3)

⁷² Citizen Economic Empowerment Act section 29(1)

⁷³ Ibid section 29(2)

⁷⁴ Ibid section 29(3)

mechanisms to restrain misapplication of financial resources. They also include establishing or finding of venture capital funds for investment promotion and the securing of incentives, from authorities, for financial institutions which provide financial development to broad based economic empowerment programs.

The CEE Act prohibits companies from engaging in fronting. Once it is proved to the satisfaction of the Commission that a company that benefitted from its programmes is involved in fronting, such a company is barred from accessing more money from the Fund or any other incentives stipulated in the Act.⁷⁵ The penalty for fronting by a company is that those funds or incentives it received are withdrawn.⁷⁶ Directors or shareholders convicted of fronting are liable to a fine.⁷⁷ The Citizen Economic Empowerment Act defines fronting as holding out someone as a director in order to hide the true identity of a director.⁷⁸

3.3 Management of the Fund

The Citizen Economic Empowerment Fund is vested in the Commission although it is managed and administered by financial institutions and fund managers.⁷⁹ The Commission determines the criteria for the application and disbursement of resources from the Fund.⁸⁰

⁷⁵ Ibid section 29(5)

⁷⁶ Ibid section 29(6)

⁷⁷ Ibid section 29(7)

⁷⁸ Ibid section 29(8)

⁷⁹ Ibid section 30(1)

⁸⁰ Ibid section 30(2)

Guidelines to accessing empowerment products were published on the 30th June 2008 and they provide accessibility steps and qualifications for accessing resources from the Fund.⁸¹ The following outlines the accessibility steps and qualifications in detail for those intending to secure empowerment resources from the fund:⁸² firstly, the citizens are required to register their business entities at PACRO in accordance with the laws of Zambia; secondly, the citizens are then required to develop a business plan that fully describes their projects that require financing. Thirdly, the citizens are then required to contact the CEEC Provincial Empowerment Coordinators who are stationed at all provincial centers of the country, for advice on how to *submit the project*; *thirdly, the citizens are then required to acquire application forms from any of the partnering banks at their branches across the country.* These include ZANACO, NATSAVE, Finance Bank Zambia Limited, Barclays Bank of Zambia Plc and Standard Chartered Bank Zambia Plc. The application forms can be accessed after paying the following administrative fees :
(a) start up businesses loans up to ZMK50million –administrative fee has been abolished to facilitate access
(b) existing businesses loans up to ZMK50million- applicants pay ZMK20000 for the form
(c) loans between ZMK50 million and ZMK250 million- applicants pay ZMK50000 for the form
(d) loans above ZMK250 million- applicant pay ZMK100000 for the form.
Fourthly, the citizens are then required to attach all the necessary documents, such as copies of their NRC, Certificate of registration of the business with PACRO, Certificate of Registration with the Zambia Revenue Authority.

⁸¹ Ministerial Statement by the Minister of Commerce, Trade and Industry Honourable Felix Mutati MP on the disbursement criteria for the Citizen Economic Empowerment Fund as at November 2008

⁸² Ministerial Statement by the Minister of Commerce, Trade and Industry Honourable Felix Mutati, MP on the Disbursement Update for the Citizen Economic Empowerment Fund as at January 2009

Mutati⁸³ noted that the CEEC has stopped charging for startup application forms for up to ZMK50 million. This ensures that the forms are easily accessible for that segment of applicants in line with the strategy of empowering the lower segments of our society.

3.4 Statement of Income and Expenditure

The Fund is audited every year by auditors appointed by the Commission with the approval of the Auditor General.⁸⁴ The Commission prepares statement of income and expenditure for the Fund for submission to the President.⁸⁵ The Minister of Commerce, Trade and Industry also submits an audited statement of income and expenditure to the National Assembly.⁸⁶

3.5 Conclusion

This chapter considered the Citizen Economic Empowerment Commission and its role in promoting citizen economic empowerment. It considered the composition of the Commission, and the functions and the proceedings of the Commission. It also assessed the instances where the Commission is allowed to delegate its powers and the requirement for members to disclose interests at meetings. The chapter also looked at the Citizen Economic Empowerment Fund which has been established to support broad based economic empowerment programmes. It also considered the criteria for application and disbursement of money from the Fund.

⁸³ Ministerial Statement by the Minister of Commerce, Trade and Industry Honourable Felix Mutati, MP on the Disbursement Update for the Citizen Economic Empowerment Fund as at January 2009

⁸⁴ Citizen Economic Empowerment Act section 31

⁸⁵ Ibid section 32(1)

⁸⁶ Ibid section 32(2)

CHAPTER 4

4.0 Introduction

This chapter will assess the general economic empowerment measures which the Act has put in place to ensure economic empowerment of targeted citizens with a view to assessing whether the Citizen Economic Empowerment Act (CEE Act) is efficacious in fostering the participation of *targeted citizens in the economy*. *Economic measures to be considered include the prohibition of discrimination in employment opportunities, creation of employment equity plans; analysis of employment policies or practices; skills development; sector education and training; preferential procurement; promotion of local and foreign investment; investment opportunities, codes of good practice; regional development; supportive culture and finally the mechanisms for measuring progress.* The chapter will also assess whether the CEE Act is better placed to empower Zambians in the light of previous attempts at empowerment such as *Zambianisation, nationalisation and privatization.*

4.1 Economic Empowerment Measures in the Citizen Economic Empowerment Act

Economic empowerment measures are inclusive of actions designed to ensure broad based economic empowerment of targeted citizens.⁸⁷ Some of the economic empowerment measures to be implemented by state institutions and companies include the following measures. These are ensuring that employment barriers which adversely affect targeted citizens in the employment

⁸⁷ Citizen Economic Empowerment Act section 13(1)

policy or practice are identified and eliminated; a workplace based on respect and dignity of all people through measures designed to further inclusiveness and diversity; ensuring enjoyment of equal opportunities and equitable representation at board and management levels and in the workforce by making reasonable adjustments for targeted citizens, and making sure that measures are taken so that qualified people from targeted citizens in all occupational categories and levels in the workforce are equitably represented and also that targeted citizens in employment are retained and developed and also see to it that appropriate training is carried out.⁸⁸

Firstly, the Act also prohibits direct or indirect discrimination against an employee in any employment policy or practice on the basis of their gender, status or disability.⁸⁹ However, these provisions are not designed to hinder non targeted citizens from employment or advancement in their careers.⁹⁰

Secondly, state institutions and companies are required to prepare and implement employment equity plans to ensure progress and achievement towards employment equity.⁹¹ These employment equity plans shall express the following: these are the achievement of objectives in the plan every year; measures of empowerment to be carried out; the strategies and timetable for achieving the numerical goal of equitable representation of suitably qualified targeted citizens at every category of occupation and level in the workforce where under representation has been

⁸⁸ Ibid section 13(2)

⁸⁹ Ibid section 14(1)

⁹⁰ Ibid section 14(2)

⁹¹ Ibid section 15(1)

identified; a yearly timetable for the achievement of non numerical goals and achievements; the duration of the plan which should not exceed five years or less than one year; monitoring and evaluation procedures; internal dispute resolution procedures with respect to interpretation and implementation; and any other matters prescribed by the Act.⁹²

In addition, with regards the analysis of employment policies and practices, state institutions and companies are required to submit to the Commission information relating to employment policies and practices and the working environment with a view of enabling the Commission to identify employment barriers which have or are likely to affect targeted citizens adversely.⁹³

Furthermore, Teveta is required by the CEE Act to liaise and keep the Commission informed on the progress it is making with regards the training of targeted citizens so as to make it possible for them to participate in the value chain or the achievement of broad based economic empowerment.⁹⁴ Apart from being in close liaison with the Commission, TEVETA is also required to submit reports in prescribed form on the progress it is making in training targeted citizens with a view of enabling them to participate in the value chain or broad based economic empowerment achievement.⁹⁵ Value chain according to the Act ‘means any sector of the economy that may have an impact on the empowerment of targeted citizens and includes the specific value additions at all levels of a process in the different sectors of industry.’⁹⁶

⁹² Ibid section 15(2)

⁹³ Ibid section 16(1)

⁹⁴ Ibid section 17(1)

⁹⁵ Ibid section 17(2)

⁹⁶ Ibid section 2

Moreover, Teveta in association with the Commission is required to develop for any sector of the economy a discrete plan to the effect of promoting education and skills development.⁹⁷ Such sector plans are to be within the national skills and vocational policy and strategy and hence such plans are required to set up learner ships, and workplace skills training programme provision and monitoring of education and skills training.⁹⁸ TEVETA is under an obligation to give advice and consultancy to state institutions or companies that will launch skills training and learnerships at their workplace.⁹⁹ TEVETA is obliged to advise the Commission with regards the progress on the implementation of the sector plans developed.¹⁰⁰ Learnership ‘includes mentorship, structural learning and practical work experience of specified nature and duration.’¹⁰¹

In the same vein, the Commission, on the advice of the Tender Board, is mandated to set up thresholds which are to be laid down by the Minister of Finance for the participation of targeted citizens through tenders at district, provincial and national levels for the procurement of goods and services for state institutions.¹⁰² The Commission, upon the advice of the Tender Board, is required to come up with policy guidelines to the effect of ensuring that targeted citizens are given preference when it comes to accessing and being awarded tenders for procuring services and goods for state institutions.¹⁰³

⁹⁷ *Ibid* section 18(1)

⁹⁸ *Ibid* section 18(2)

⁹⁹ *Ibid* section 18(3)

¹⁰⁰ *Ibid* section 18(4)

¹⁰¹ *Ibid* section 2

¹⁰² *Ibid* section 19(1)

¹⁰³ *Ibid* section 19(2)

Additionally, the Commission in connection and after consultations with the institutions of the state in charge of investment, trade development, tariffs imposition and rebates, pensions, securities and finance shall advance and assist to ensure an increased flow of local and foreign investment by fostering the creation of an enabling microeconomic and macroeconomic environment through the following measures. These measures include an economic environment that does not hinder inflow of local as well as foreign investment, encourages savings culture amongst citizens, makes sure that mandatory contributions to pensions and other funds are made and sees to it that timely and priority payments are made especially to targeted citizens.¹⁰⁴

In the same vein, the Minister of Commerce, Trade and Industry is mandated to reserve some areas of commerce, trade and industry prescribed by the President for targeted citizen.¹⁰⁵ Some areas prescribed by the Act include the granting of concessionary licences to businesses dealing with technological developments, applying criteria when giving concession or licence to a person to operate an asset or enterprise on its behalf, and companies implementing broad based economic empowerment programmes to be given priority when giving concessions or licences or incentives.

Moreover, state institutions responsible for sectors that impact on economic development are to be encouraged so that development in regional areas is scaled up, programmes providing for establishment of cooperatives and community based projects in regional areas are developed, incentives for financial and other institutions operating in regional areas are introduced; private investors willing to invest in viable projects in regional areas in partnership with local

¹⁰⁴ Ibid section 20

¹⁰⁵ Ibid section 21(1)

communities are provided with matching grant funds and the introduction of awards to companies supporting broad based economic empowerment in regional areas.¹⁰⁶ A regional area ‘means any area in Zambia that is economically depressed.’

Further, the promotion of a supportive culture, by the Commission, that permeates all institutions through leaders in all sectors of the economy ensuring that targeted citizens are given priority when payment, for services rendered or goods supplied, is made; ensuring incentives are granted to companies that introduce supportive culture programmes and timely repayment of loans.¹⁰⁷

The Commission is required to issue, by notice in the gazette, codes of good practice on broad based economic empowerment programmes in line with the promotion of purposes of the Act.

Lastly, mechanisms which shall be used by the Commission in measuring progress made in achieving broad based economic programs include ensuring that the codes of good practice are published in electronic and print media; developing a scorecard for measuring, evaluating and ensuring compliance with Act and receiving regular returns of relevant information from those involved in economic empowerment programmes.

4.2 The Citizen Economic Empowerment Act and Nationalisation, Zambianisation and Privatization

Our aim is to find out whether the CEE Act is better placed to tackle citizen economic empowerment in the light of previous attempts by the government to do so. It will be assessed whether the CEE Act has put in place mechanisms which will tackle the weaknesses which made

¹⁰⁶ Ibid section 22

¹⁰⁷ Ibid section 23

previous empowerment attempts unsuccessful. This will be done by looking at the perceived weaknesses of Zambianisation, nationalisation and privatization with respect to citizen economic empowerment.

Under Zambianisation, nationalisation and privatization programmes, there was no specific group of citizens targeted for empowerment hence only economically stable Zambians benefitted as they had capital and know-how. The bulk of legislation and policies relating to citizen economic empowerment before the CEE Act did not single out a specific group of citizens for empowerment. These statutes and policies approached empowerment of citizens from a general perspective. It is important to note that privatization was not purely an empowerment measure but it was rather part of an economic reform programme. It was simply a shift from state controlled economy to a liberal and private controlled economy.

The CEE Act singles out a specific group of citizens for empowerment. These citizens who have been singled out for citizen economic empowerment include women, youths and physically challenged. The CEE Act was principally aimed at uplifting the status of citizens who had suffered marginalization and disadvantage with no access to economic resources or opportunities. It was meant to level the playing field and raise the citizens to a position where they could effectively participate in the national economy. It was meant to ensure that they had a stake in the economy.

Also no deliberate effort was made to prepare citizens for citizen economic empowerment under earlier attempts at empowerment before the CEE Act. According to Mutati, 'the CEEC is in the process of re enhancing its awareness raising efforts to ensure that our citizens are more enlightened about empowerment programmes. The CEEC shall work very closely with key

stakeholders such as NGOs and the media in information dissemination at rural level. Radio programmes to be transmitted in local languages will be developed and aired on ZNBC radio and on community radio stations. Additionally the CEEC has been embarking on provincial tours which commenced in December 2008, to sensitise the citizens in districts on empowerment programmes. This is an on-going activity for the CEEC and is working well judging by the number of applications that are being received for consideration across the country.’¹⁰⁸

Under nationalisation and Zambianisation programmes, there was massive state involvement paved the way for corruption, bureaucracy and uncertainty which resulted in less private investment and foreign trade initiatives. As former president Kaunda observed that ‘turning our backs on private enterprise inherited from the past, and we are resolutely facing a future of our own choice with confidence and a future in which the people of Zambia will eventually directly own all means of production and distribution.’¹⁰⁹

Chipwende¹¹⁰ notes that under privatization the scope for establishing training to create a business literate workforce was limited, if not completely nonexistent. During privatization many Zambians suddenly found themselves without jobs and despite all their years of working for state-owned enterprises.¹¹¹ They had also, in many cases, not learnt any of the skills needed for

¹⁰⁸ Ministerial Statement by the Minister of Commerce, Trade and Industry Honourable Felix Mutati, MP on the Disbursement Update for the Citizen Economic Empowerment Fund as at January 2009

¹⁰⁹ Humanism in Zambia and a Guide to its Implementation Part 2 p.87

¹¹⁰ Patrick Chipwende, “Privatization in Zambia” see generally <http://library.fes.de/fulltext/bueros/simbabwe/01056004.htm/E10E15> visited on 24 September 2009

¹¹¹ Lowdown Zambia, “For The Benefit of All?” See generally www.lowdown.co.zm/2006/2006-04/benefit.htm visited on 15 July 2009

running their own businesses such as a basic understanding of bookkeeping and other administrative skills.¹¹²

But under the CEE Act, the aspect of sector education and training is adequately covered. TEVETA is mandated by the CEE Act to train targeted citizens so as to enable them participate in value chain and achieve broad based empowerment programmes. TEVETA is also mandated to develop sector plans for any sector of the economy. These plans must include learnerships, workplace skills training and their monitoring. TEVETA is also expected to give advice to institutions and companies intending to set up skills training programme.

Under *Zambianisation*, there was reservation of certain economic sectors to *Zambians* in the sense that certain businesses were to be the preserve of *Zambian* businesses only. The following were some of the economic sectors which were included: firstly road service licences were only to be granted to partnerships or companies with 75% members or shareholders or *Zambian* individuals. Residents expatriate businesses were to operate only until their licences expired and then sale to *Zambians*. Secondly, building materials permits were to be given to *Zambians* where the tasks involved digging, transportation of sand, clay, etc. Thirdly, subcontracts to do small jobs by large companies were to be given to *Zambians* only and Public Works Department was also to ensure that specified works were to be given to *Zambians* only.

The Citizen Economic Empowerment Act also empowers the Minister of Commerce, Trade and Industry to reserve some specific areas of commerce for targeted citizens. The following are some areas prescribed by the Act and these include businesses dealing with technological

¹¹² Ibid

developments, a person operating an asset or enterprise on behalf of a state institution and companies. A state institution is required to apply criteria prescribed by the President when giving a licence or a concession to any person to operate an asset or enterprise on its behalf.

Also foreign investors intending to engage in specific businesses, prescribed by the President, are to be given licences only on the basis of joint ventures and partnerships with citizens and citizen companies. Targeted citizens and companies are to be given concessionary licences for businesses, prescribed by the President, dealing with technological developments. Companies implementing broad based empowerment programmes are to be given priority when giving concessions, licences and incentives.

Other Zambianisation policies included joint ventures by Zambians and foreigners. These joint ventures, according to Klaas,¹¹³ were usually between a parastatal and foreign partners. He further states that the foreign partners usually took out a minority shareholding and provided technical and/or managerial expertise. Joint ventures in rural areas by non Zambians qualified as Zambian.

Under Zambianisation and nationalisation policies, rural development was a priority. It was acknowledged by former president Kaunda that development had been a privilege of provinces along the line of rail and that this view was no longer acceptable to the government.¹¹⁴ He also added that it was time to create genuine and balanced regional development by spreading

¹¹³ Klaas, W and et al (1984) Beyond Political Independence: Zambia's Development Predicament in the 1980s. Berlin: Mouton Publishers p.14

¹¹⁴ Zambia Towards Complete Independence: Address by His Excellence President Kaunda at Matero Hall, Lusaka, April 1969 p.13

economic activity and giving considerable weight to the development of underdeveloped areas within the country

The CEE Act also requires state institutions responsible for sectors that impact on economic development in regional areas are to be encouraged so that development is scaled up. It also encourages the development of programmes providing for the establishment of cooperatives and community based projects in regional areas. It also supports the introduction of incentives for financial and other institutions operating in regional areas. Private investors willing to invest in viable projects in regional areas in partnership with local communities are provided with matching grant funds; and encourage the introduction of awards to companies supporting broad based economic empowerment in regional areas.¹¹⁵ A regional area ‘means any area in Zambia that is economically depressed.’

Under Zambianisation with respect to the employment sector, the policy was that a non Zambian could only be employed if there was no Zambian who could do the job. There was a strict criterion for giving a work permit or renewing work permit to a non Zambian.

The CEE Act prohibits direct or indirect discrimination against an employee in any employment policy or practice on the basis of their gender, status or disability.¹¹⁶ However, these provisions are not designed to hinder non targeted citizens from employment or advancement in their

¹¹⁵ Citizen Economic Empowerment Act section 22

¹¹⁶ Ibid section 14(1)

careers.¹¹⁷ State institutions and companies are required to prepare and implement employment equity plans to ensure progress and achievement towards employment equity.¹¹⁸

These employment equity plans shall express the following: the achievement of objectives in the plan every year; measures of empowerment to be carried out; the strategies and timetable for achieving the numerical goal of equitable representation of suitably qualified targeted citizens at every category of occupation and level in the workforce where under representation has been identified; a yearly timetable for the achievement of non numerical goals and achievements; the duration of the plan which should not exceed five years or less than one year; monitoring and evaluation procedures; internal dispute resolution procedures with respect to interpretation and implementation; and any other matters prescribed by the Act.¹¹⁹

Under the privatization programme, according to Chipwende,¹²⁰ there was limited professional advice for people who lost their jobs or employees who were made redundant to link into the micro-finance and small and medium enterprise support sector. Unlike the situation which prevailed during privatization with regard link into micro-finance and small and medium enterprise support sector, the CEEC is much more active. Its activities include the identification of citizens requiring financial assistance, provision of information on sources of finances and promotion of investment; rendering of developmental services on how access financial resources and the setting up of standards for loan administration, use and repayment mechanisms to

¹¹⁷ Ibid section 14(2)

¹¹⁸ Ibid section 15(1)

¹¹⁹ Ibid section 15(2)

¹²⁰ Supra

restrain misapplication of financial resources. They also include establishing or finding of venture capital funds for investment promotion and the securing of incentives, from authorities, for financial institutions which provide financial development to broad based economic empowerment programs.

Under privatization, a comprehensive, inter-linked data base was not established to assess the success and impact of the programme in the future according to Chipwende.¹²¹ The CEE Act provides mechanisms which can be used by the Commission to measure progress made in achieving broad based economic programs which include ensuring that the codes of good practice are published in electronic and print media; developing a scorecard for measuring, evaluating and ensuring compliance with Act and receiving regular returns of relevant information from those involved in economic empowerment programmes. The Commission is required to issue a strategy for broad based economic empowerment and may change or replace that strategy. That strategy must provide for an integrated, coordinated and uniform approach; guidelines for financing; a system for state institutions and companies to prepare broad based economic empowerment plans and to report on compliance with those plans and publish penalties for non compliance.

The CEE Act further mandates the Commission, on the advice of the Tender Board, is to set up thresholds which are to be laid down by the Minister of Finance for the participation of targeted citizens through tenders at district, provincial and national levels for the procurement of goods

¹²¹ Patrick Chipwende, "Privatisation in Zambia" see generally <http://library.fes.de/fulltext/bueros/simbabwe/01056004.htm/E10E15> visited on 24 August 2009

and services for state institutions.¹²² The Commission, upon the advice of the Tender Board, is required to come up with policy guidelines to the effect of ensuring that targeted citizens are given preference when it comes to accessing and being awarded tenders for procuring services and goods for state institutions.¹²³ The Commission is required to promote a supportive culture that permeates all institutions through leaders in all sectors of the economy ensuring that targeted citizens are given priority when payment, for services rendered or goods supplied, is made; ensuring incentives are granted to companies that introduce supportive culture programmes and timely repayment of loans.¹²⁴

4.3 Conclusion

This chapter has shown that the CEE Act is efficacious for fostering the participation of targeted citizens in the economy through various empowerment measures it provides. Economic measures that have been considered included the prohibition of discrimination in employment opportunities, creation of employment equity plans; analysis of employment policies or practices; skills development; sector education and training; preferential procurement; promotion of local and foreign investment; investment opportunities, codes of good practice; regional development; supportive culture and the mechanisms for measuring progress. It has also shown that CEE Act is better placed to tackle citizen economic empowerment than earlier attempts at empowerment such as nationalisation, Zambianisation and privatization.

¹²² Citizen Economic Empowerment Act section 19(1)

¹²³ Ibid section 19(2)

¹²⁴ Ibid section 23

CHAPTER 5

5.0 General Conclusion

This paper has given a balanced picture of what constitutes economic empowerment and empowerment generally. It has considered the meaning of empowerment in its various forms, the goal of empowerment and the people who are eligible to benefit from empowerment. Empowerment encompasses decentralization of power with regards the fact that real governance should be brought to the door step of every person and that it should involve a multi-stakeholder approach in making and implementing decisions. Empowerment of people requires action from several fronts. It requires investing in education and health. It further calls for ensuring that an enabling environment is created through ensuring that everyone has access to credit and productive assets thereby leveling the playing field.

It has shown us a historical perspective of economic programmes that have been undertaken in Zambia by successive governments with a view of enabling citizens to play a major role in the economic sector of the country. Economic programmes that were undertaken before the Citizen Economic Empowerment Act range from Zambianisation, nationalisation and privatization. Nationalisation entails the active involvement of the state in running the economic sector. While Zambianisation involves giving Zambians more opportunities in running the economic sectors through policies deliberately designed to ensure their participation and sometimes even shielding from competition. Privatization is the exact opposite of nationalisation in the sense that it aims at ensuring that role of state in the economic sector is reduced and that the private sector takes active role in the running of the economic sectors.

The paper also tried to outline the successes or achievements of these programs and thereby see how those programs fared in achieving their intended objects. Some of the successes of privatization in terms of economic empowerment of citizens include ownership of shares, ownership of businesses and assets and management buyouts, leases and management contracts. Both *Zambianisation* and nationalization enhanced the participation of Zambians in the economic sector. They placed Zambians in the mainstream of the economy through putting them in strategic positions. Additionally, they also led to the rise of Zambians who were capable of managing parastatals. They also led to the setting up businesses by Zambians in big town where hitherto they were nonexistent.

The paper also outlined the flaws and weaknesses of each of these successive government programmes. Under *Zambianisation* and nationalisation programmes, there was no specific group of citizens targeted for empowerment hence only economically stable Zambians benefitted as they had capital and know-how. Also no deliberate effort was made to prepare citizens for economic empowerment. The provision for change of citizenship was a loophole for non Zambians in the sense that instead of selling their businesses, they opted to become Zambian citizens and hence maintain ownership of their businesses.

The Citizen Economic Empowerment Commission and its role in promoting citizen economic empowerment have also been considered. The paper also considered the composition of the Commission, and the functions and the proceedings of the Commission. It also assessed the instances where the Commission is allowed to delegate its powers and the requirement for members to disclose interests at meetings. The paper also looked at the Citizen Economic

Empowerment Fund which has been established to support broad based economic empowerment programmes.

This paper has shown that the CEE Act is efficacious for fostering the participation of targeted citizens in the economy through various empowerment measures it provides. Economic measures that have been considered included the prohibition of discrimination in employment opportunities, creation of employment equity plans; analysis of employment policies or practices; skills development; sector education and training; preferential procurement; promotion of local and foreign investment; investment opportunities, codes of good practice; regional development; supportive culture and the mechanisms for measuring progress. These above measures have shown that CEE Act is better placed to tackle citizen economic empowerment than earlier attempts at economic empowerment such as nationalisation, *Zambianisation* and privatization.

Ultimately, the CEE Act can be said to be efficacious in fostering the participation of targeted citizens in the economy as it singles out specific groups of citizens for economic empowerment such as women, youths and physically challenged and other citizens who had suffered marginalization and disadvantage. The CEE Act also encourages development of sector plans for education and training through learnerships and work skills training for targeted citizens to enable them acquire skills and experience. Furthermore, the Act also empowers the Minister of Commerce, Trade and Industry to reserve some economic sectors for targeted citizens. The CEE Act prohibits discrimination against targeted citizens in employment opportunities. In addition, the CEE Act empowers the CEEC to identify targeted citizens and also provide them with information on sources of income. The CEE Act further requires that preferential treatment

should be given to targeted citizens when giving tenders for procurement of goods and services for state institutions.

5.1 Recommendations

The first recommendation regards section 6(5) of the Citizen Economic Empowerment Act¹²⁵ which provides that “the Commission shall develop and recommend to the President criteria to determine the means of targeted citizens so as to distinguish those citizens that have the capacity to sustain themselves and the President shall prescribe those criteria.” The Act places an obligation on the Commission to develop the criteria for testing the means of targeted citizens so as to distinguish those that can sustain themselves from those that cannot. This criterion is then recommended to the President who can either accept or reject it.

The section does not state anything about the Commission working in collaboration with other stakeholders who are responsible for and involved in affairs of targeted citizens. It is recommended that the Act should categorically specify that the process of developing guidelines or criteria for testing means of targeted citizens should involve a consultative process with representative of all marginalized groups and that once in place the guidelines should be reviewed periodically. It is further recommended that the criteria for testing the means of targeted citizens, instead of being recommended to the President, should be made to a committee comprising representatives from organizations that look into the affairs of marginalized people.

The second recommendation relates to section 2 which provides that “notwithstanding any other law, this Act shall apply to all sectors of the economy, including the value chain, and to- (a) all

¹²⁵ Citizen Economic Empowerment Act No.9 of 2006

state institutions; and (b) any employer that employs at least twenty five people; in so far as broad based economic empowerment is concerned, as provided in this Act.”¹²⁶ The Act applies to all state institutions and companies that employ at least twenty five people. This obviously means that the Act does not apply to employers with a workforce of less than twenty five people. This raises a problem with regards mushrooming numbers of small enterprises with smaller numbers of employees but higher financial turnover as the Commission does not have jurisdiction over them so as to empower the people dealing with them or are employed by them. Therefore, it is recommended that the threshold for the number of employees should be reduced from the stated minimum of twenty five people to at least a minimum of twelve people. The Act should therefore apply to an employer who employs at twelve people.

The third recommendation concerns section 14 which provides that “subject to section thirteen, a person or company shall not discriminate, directly or indirectly, against an employee in any employment policy or practice due to the employee’s status, disability or gender.”¹²⁷ This provision prohibits a person or a company from discriminating, whether directly or indirectly, against an employee in any employment policy or practice due to that employee’s status, disability or gender.

However, the provision lacks enforceability as it carries no form of penal sanction against any person or group of persons perpetrating such discrimination. It is submitted that the provision should be amended to provide for a minimal fine against the perpetrators and compensation. It is recommended the penal sanction must include a reformatory sanction for the perpetrator of the

¹²⁶ Ibid

¹²⁷ Ibid

discriminatory act to perform community service and the choice of sanction would be commensurate with the degree of discrimination or wrongful act.

Moreover, someone observes that ‘...until and unless we do something about the education of our citizens, they will never be empowered, no matter what laws we put in place, no matter what finance we give them, no matter what incentives we give them. And when we have educated our citizens, we need to ensure that we have an environment which is conducive to the conduct of business, an environment which encourages people to set up their own businesses, where they can run their businesses profitably, where they are not seen as a cash cow by the local council ... We also need to ensure that our labour laws encourage people to employ their fellow citizens, so that these people also have the chance to build up the capital and expertise that they need to start their own business, And we need to ensure that we have the infrastructure that is needed for these businesses, roads, communications etc. ...ensure these things are in place and when they are, empowerment of Zambian citizens will follow naturally.’¹²⁸

The above quotation brings out some very pertinent issues which have to be considered very seriously before citizen economic empowerment can become a reality. Some of these issues include the education of these citizens who have been earmarked for empowerment; it is a well known fact that most of the marginalized or disadvantaged persons do not have the necessary skills for running a successful business such as basic bookkeeping and administration which are very essential. Education and training are fundamental tools for empowerment. This is because through these tools the poor and the disadvantaged are availed with means of increasing their productivity and income earning power. Education not only enhances bargaining power but also

¹²⁸ Lowdown Zambia, “For The Benefit of All?” See generally www.lowdown.co.zm/2006/2006-04/benefit.htm

fosters assertiveness and self confidence. It also improves access to and use of economic resources. Education must be tailored to enable people develop skills and capacities which increase their control over decisions, resources and structures affecting their lives.

Furthermore, a favourable business environment is a must. This is important because it encourages people to set up their own businesses and run their businesses profitably. In the same vein, the aspect of having good labour laws cannot be overemphasized since the employment of local people affords them an opportunity to acquire the much needed capital and expertise which are essential for running a successful business. It is only when the targeted workforce acquires such essential expertise that we can expect a significant shift in the type of goods and services that the economy can produce. Moreover, the issue of infrastructure cannot be overlooked as it is very vital for business since infrastructure is indispensable in the production of goods and services. Developed infrastructure is the foundation for our modern and growing economy. Hence, continued developed and expansion of these infrastructures will support and facilitate rapid economic and social growth which will ultimately lead to economic empowerment of targeted citizens.

The reason why it is very vital to consider the issues outlined above is that ‘business takes place within an economic structure. How the economy operates dictates how the business in general functions and how individual business organizations work.’¹²⁹

¹²⁹ Business Management Study Manuals: Introduction to Business see generally www.abekuk.com

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