THE LIMITED VIABILITY OF STATEOWNED COMPANIES AND STATUTORY BODIES IN A FREE MARKET ECONOMY: THE ZAMBIAN CASE

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SIGN

A dissertation submitted to the faculty of law of the University of Zambia in partial fulfillment of the requirements for the award of the Degree of Bachelor in Laws (LL.B)

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I recommend that the obligatory essay prepared under my supervision by **CHONGO MUSONDA** entitled:

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Supervisor

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DEDICATION

To my Mother.

For always being there for me in all the endeavours of my life, during my trials and tribulations. You inspired and motivated me to reach greater heights of success in both academic and social spheres of life. Dear Mama, your presence and close guidance to this righteous and ever fulfilling path will forever be cherished.

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"The fear of the Lord is the beginning of wisdom and knowledge of the Holy one is understanding". Proverbs 9:10

INTRODUCTION

Zambia, a Country in South-Central Africa has undergone massive policy changes both in the political and economic spheres. In the political arena, the Country, prior to independence, was then known as Northern Rhodesia, a British protectorate under the British South African Company (BSA), it was colonized by the British Government from 1924 to 1964 when it became a sovereign and independent state called Zambia. The Zambian Independence Constitution, provided for a multi-party system of government, with the United National Independence Party (UNIP) as the ruling party. However, after nine years of independence, the then President of Zambia Dr Kenneth Kaunda decided that Zambia was going to be governed under a one-party system of government, The one-party system of government lasted up to 1991 when multi-party politics was re-introduced. Thus the UNIP government led by Dr Kaunda was in power from October 1964 to October 1991 when the Movement for Multi-party Democracy (M.M.D) led by Mr Fredrick Chiluba came to power through a landslide victory in the first multi-party elections after seventeen years of one-party rule. This profound change in the political direction of the Country, was as a result of the collapse of Communism in Eastern Europe and the Soviet Union (U.S.S.R), and also as a response to calls by the people to change the one-party system of government as it was proving to be a liability on the Economic and political well-being of the Country.

Therefore, in relation to the Economic sphere, it is imperative to initiate research from the time the Country was under Colonial rule and assess how it developed its Economic policies to reflect the prevailing situation. During the period Zambia was under colonial rule from 1924 to 1964 the mining sector was the single largest employer among all the Zambian industries and the country's chief earner of foreign exchange. At independence, Zambia was among the few African countries with a strong economic base, with a GDP per Capita that was among the healthiest in Africa and just below half that of South Africa, and a copper mining industry large even by world standards, the forecast was for rapid growth and development[1]. However, the UNIP government embarked on socialist oriented policies, providing free education, free medical care, among other facilities, thereby diverting the income from mining into providing social welfare instead of focusing on the most needed development of manufacturing industries, agriculture and other related infrastructure for sustainable development.

Total dependence on mining brought about serious problems as the prices of copper slumped due to a worldwide depression brought about by the sudden increase in the price of crude petroleum products and the collapse of commodity prices like, copper, on the world market. It is commonly accepted that the weaknesses of the economy, which leveled off in 1972 and then began to decline, cannot be solely ascribed to falling copper prices, though this had been indeed a major factor. This was shown by the fact that even by 1974, before the collapse of copper prices, foreign exchange was becoming a serious constraint on development. The problem seemed to lie deep within the system itself and had its basis in the ambiguities and lack of direction in national development goals and the structural developments this had caused. For instance, the UNIP government continued on socialist principles and the result was a devastating economic stagnation, run-down infrastructure and a general failure to maintain the industrial sector.

The situation continued to deteriorate until 1991 when the M.M.D government took over the reigns of power and introduced drastic economic policy changes. Thus, when the M.M.D took over control of the government through a landslide electoral victory in the 1991 in the presidential and parliamentary elections, the M.M.D leadership stated that the new government was going to seek to undertake "an unbreakable integrated package" of economic reforms[2]. Their motive, basically was on creating a "free market economy" where private businessmen were able to engage in trade in Zambia and in so doing the M.M.D government decided to privatize state owned enterprises in order for the burden placed on the state to be removed and so that the companies could be run more efficiently and profitably to meet the present day demands. The process of privatization has been an ongoing and an Act of Parliament the Privatisation Act CAP 318 was passed as a yardstick for the privatization process in Zambia.

It has already been stated that Zambia's economic policies changed in 1991 when the M.M.D came into power, which initiated free market oriented economic reforms, which among other things encouraged private entrepreneurship and limited state control or participation in the nations economic activities, therefore, in order to achieve these free market ideals the state has had to relinquish control of its assets in major sectors of the economy through the process of privatization of state owned companies[3]. Therefore, the research will shade light on why, the viability of state owned companies and statutory bodies has somewhat become limited in the midst of free market economic policies adopted and implemented by the government.

Chapter one discusses the basic tenets of a free market economy, and tries to draw a distinction between the public and private sectors of an economy. Further, the basic characteristics of both state owned companies and statutory bodies or corporations are outlined herein.

Chapter two addresses the historical background of state-owned companies and statutory bodies, the factors leading to the introduction of these business entities in Zambia and the size of the parastatal sector in Zambia.

Chapter three highlights the shortcomings of Zambia's parastatal sector and the methods of state control of these entities, with particular reference to political interference in the operations of these business concerns.

Chapter four examines Zambia's privatization programme, the factors leading to the privatization of state owned enterprises and the limiting of state participation in economic activities. It also discusses the impact of the privatization programme on the Zambian economy critically.

Chapter five among other things, draws the conclusions and recommendations and attempts to provide answers to some of the pertinent issues raised in the study.

FOOTNOTES

1. Turok B, The Penalties of Zambia's mixed economy

2. M.M.D Manifesto, Article 4 paragraph 2

3. ZACCI Annual Report (1993)

CHAPTER ONE

1. A Free Market Economy

Under the System of Economic organization that the eighteenth century French Economists named Laissez Faire the government will prevent crime, enforce contracts, and build roads and other types of public works, but it would not set prices and would interfere as little as possible with the operation of free markets. Therefore, a free market or laissez faire, economic model refers to a programme of minimal interference with the workings of the market system, the term means that people should be left alone in carrying out their economic affairs[1]. A classic example is the United States economy.

In a free market system, the price mechanism decides what to provide via what is called the "law of supply and demand", where there is a shortage, that is where quantity demanded exceeds quantity supplied, the market mechanism pushes the price up thereby encouraging more production and less consumption of the commodity in short supply. Where there is a surplus that is, where quantity supplied exceeds quantity demanded, the same mechanism works in reverse, the price falls, which discourages production and stimulates consumption.

The Free Market Economy is contrasted with the centrally planned economy in which all economic organization and planning is carried and operated by the

State. In a centrally planned economy like that of the former Soviet Union State planning takes over the inter-play between the market forces of supply and demand and the State owns the means of production.

1.2 The distinction between the public and private sectors of an Economy: A Zambian Case Study

By the term "public sector" we mean that part of the national economy for which the government has some direct responsibility, it includes both central and local government, public corporations and other public enterprise activities. Economists are interested in the behaviour of the public sector because the government's decisions affect individuals and institutions in many different ways. The most important decisions are concerned with public spending, taxation and various rules and regulations that have an influence of social welfare[2].

The term "private sector" refers to that part of the national economy for which the government has no direct responsibility and its operation is in the hands of private individuals and corporations.

A fundamental point that must be made at the outset is that the public and private sectors in an economy constantly interact. This process of interaction tends to increase with imperfections in the market mechanism as public action is frequently called for to compensate for market failure. In a national economy, the market mechanism cannot perform all those functions required to attain an efficient and equitable allocation of resources[3].

In Zambia, however, the interaction between the public and private sector has been very confusing though quite distinctive. In the Zambian case, despite its size and scope, the State sector which formerly included parastatals had not established a commanding position so that the government might effectively determine what should happen in the economy. State social goals were pursued spasmodically as though were insufficient power to press forward vigorously. There was also evidence of periodic failures of political will resulting in ambivalent public ownership of the means of production, the influence of private interests both local and foreign remained substantial, seeming to block tendencies to a centrally-planned economy.

Clearly, in the Zambian case, public ownership was not socialism. Instead there was a form of State capitalism in which interests and policies frequently collided to the detriment of the smooth running of the system Van Arkadie's Conception of frustrated State sector development in a dependent economy seems dapt in relation to Zambia[4].

However, the foregoing is likely to be reversed with the privatization of the parastatals, the government's arm in the economy, the reduction in the size and scope of the public sector will provide a stimulus for growth in the private sector and this will enhance the smooth running of the system leading to sustainable economic growth.

1.3 **Definitions and basic features of state-owned Companies and Statutory Corporations**

In order to appreciate the topic on the limited viability of State-owned Companies and Statutory bodies in a free market economy, the Zambian case, it is necessary to start by defining what these entities are and their basic features.

In Zambia State-owned enterprises and Statutory Corporations were collectively referred to as "parastatal organizations", and a parastatal is said to mean any organization or corporation in which the state owns a considerable measure of its operations[5]. This definition is perhaps a bit restrictive as it confines itself to the inherent government control of public corporations. A more elaborate definition was that given by the Mwanakatwe Commission that a parastatal organization is "an organization which is not an integral part of government but an institution, organization or agency which is wholly or mainly financed or owned or controlled by the government. The criterion of such public enterprise would be ownership by the government of 51% or more of the capital shares, or other forms of governmental participation or effective influence in all the main aspects of management of the enterprise"[6].

The Zambian government employed three methods of creating parastatals:

i. It formed State-owned Companies,

ii. It acquired majority shares in existing privately owned companies, and

iii. Statutory Corporations were created pursuant to the passage of an Act of Parliament.

Thus, State-owned Companies were usually created by executive action and incorporated under the Companies Act like any private company. A State-owned company is a Company in which the State has an equity participation of 51% or more, or it may be one in which the State acquires majority shares and the ownership control derived from the accompanying voting rights and seats on the relevant board of directors, in an existing private company.

On the other hand, a statutory body is Ipso facto established by an Act of Parliament as a separate entity to perform certain specific functions. By the expression "Statutory Corporation or body" is meant the type of body set up for the organization of other public enterprise to be run directly by a government department, but for a corporate subject to a measure of ministerial control[7]. The corporations set up for this purpose have been classified into;

i. "Commercial Corporations" designed to run an industry or public utility according to commercial principles although subject to a measure of ministerial control, and

ii. "Social Service Corporations" designed to carryout a particular social service on behalf of the government.

An Official Zambian study had identified three types of parastatal agency: the "Commercial " type which was incorporated like an other limited company under the Companies Act to pursue a Commercial undertaking; the "Semi-Commercial" created by legislative statute to provide a public service on a businesslike basis; and the "Non-Commercial" type, also established by legislative statute to carry out various public functions, although not necessarily with the expectation of regular economic viability[8].

FOOTNOTES

1 P KNAN, An introduction to modern Economics (1991) P 420

2. J. FENWICK, Classical Economic Theory (19984) P 171

3. Ibid P 280

4. B Van ARKADIE, "Development of the State Sector and Economic Independence D Ghai" (Ed)

5. J.H. CHILESHE, Third World Countries and Development: Zambia 1987 P 125

6. IMMANCE, The Relationship Between Central Government and Parastatals in Zambia PA/210/71/67 P1

7. J.M. MWANAKATWE, End of Kaunda Era. Multimedia (Z) (1994) P 62

8. Report of the Committee appointed to review the Emoluments and Conditions of Service of Statutory Boards and Corporations and State-owned enterprises (Lusaka, 1970) P 5

CHAPTER TWO

2.1 The Historical background of State-owned Companies and Statutory Corporations in Zambia

To fully understand the historical background of State-owned enterprises and statutory bodies in Zambia, it is of paramount importance to look at the rationale behind the creation of these business entities. This analysis of the raison detre behind the creation of parastatals is useful to the extent that it gives an insight into the structure of ownership and control of the economy, which the post-independence government sought to change.

The reasons why the government created parastatals instead of allowing private enterprises are: one of the main ones is that in the newly independent States, there existed the inherited colonial economic structures whose basis was the Laissez-faire economic model, in which the role of the government was limited to the provision of an enabling environment for private investment, and the sole aim of the private entrepreneurs being the maximization of profits, without regard to the economic and social development of the territory. Consequently the creation of parastatals represented a defence against the perceived dangers of foreign economic domination.

The dependency syndrome in the newly independent States was so much that colonial policies were seen to have continued to be perpetrated in the economics.

Each sector of the domestic economy was seen to have a strong tie to a metropolitan economy. The dependency was such that it was easier for foreign economies to maintain the international division of labour which consigned the newly independent states in Africa to primary production and thus retarded industrial development in these territories in particular and Africa in general. For example, in Zambia where good demand for copper stood, the Country concentrated so much on copper exports and consequently, forgot on its agenda the other necessary aspects of developing its agriculture and manufacturing industries. This in turn meant Zambia exporting more copper but importing even the small foodstuffs and other commodities that could be cheaply grown and manufactured locally[1].

This was a common feature of African economics, so to remedy the situation governments had to come in with the authority bestowed to them to prescribe a would be 'panacea'. Suddenly, the post independence regimes found themselves obliged to initiate rapid economic and social change and to undergo a process of economic development, which was to be integrated locally; one which would not be obeying forces of attraction other than an internal order, this situation explains the magnitude of the nationalist reaction. Thus, the post-independence governments took to the parastatal sector as one way of asserting firm economic arms of the State. This also explains why political independence once acquired, many African governments' emphasis was laid on the quest for economic independence, without which, as one socialist observes, "political independence would be empty of all content[2].

It will thus be appreciated that one of the goals for the newly independent States was to assert their economic independence, this assertion of economic independence implied that the independent States had to create economic structures that could inhibit the infiltration of external forces which robbed the local infant industries of the much converted local market, moreover, the new governments thought they were being deprived of their administrative powers as they did not control the economic destiny of their countries. Therefore, in order to reverse this situation, the post-independence governments adopted policies which could see to it that almost all the cardinal limbs of the economy were under the direct control of the indigenous ruling government, and this was achieved through the creation of the parastatal sector either by nationalizing the existing private corporations or by creating new ones which adopted a monopolistic way of conducting business. With this scenario of government intervention it was idealized that a government could have a say or hand in the supervision of the country's economic life. To illustrate this point, the then President of Senegal Mamadoo Dia wrote that "whether camflouged imperialism accepts it or not, the era of resignation is ended for the peoples and nations of the third world. They no longer consent to others thinking and deciding for them. They wish henceforth to think for themselves and decide on their own account"[3].

Thus, the apprehension shown by the newly independent States was that as long as they remained passive observers in the economic lives of their States, the development they so much "prophesized" would be a subject of the wild wind to which they could not have control. So vesting of the most strategic enterprises in the hands of the State or its citizens who would not externalize the proceeds of their businesses but cultivate it in the economic development of the state was considered as the best way to proceed. It was also felt that external economic forces would be kept at bay by the nationalization process and the pegging of prohibitive tariffs on imports which would keep foreign businesses comparatively at a disadvantage to that of the locals, with all these measures put in place it was hoped that economic independence would be achieved.

Another reason for the creation of the parastatal sector apart from that of asserting economic independence, was that, the doctrines of Laissez Faire were said to be best suited for countries that had already created a steady economic base that is, those that had reached a stage where they could, with the resources available, produce goods efficiently, and with the employment of technology available could produce goods and services at a minimum cost, and it is at this stage of development, that a State can effectively be expected to participate in multi-national trade. This line of thought was echoed by a German socialist Friedrich Lisk, who conceded that "free trade was best from a cosmopolitan standpoint, but argued that a nation could not afford to heed to allocative arguments until it had developed its national industries. Only then, he argued, "could a country get its rightful gains from international trade"?[4] Lisk's arguments not only won the day but survived to bed evil economic policies in the less developed countries .

A further reason for the creation of public corporations is to entrust an activity to an autonomous body thereby reducing the scope of direct political control[5]. History has shown that where a commercial institution is left to be run by politicians, the most likely qualification for appointment to top management level would be allegiance to the government in power and not on merit. There would also be rampant transfers from the civil service to posts in the parastatal organizations if the management powers in the organizations were to be left in the hands of the politicians. The obvious implications of appointments on the basis of allegiance and transfers from the civil service to the parastatals may be that the personnel that may be appointed may lack the technical "know how" of running business ventures. Thereby making the running of these public institutions more susceptible to failure than success. These problems are not to be expected where there is a body entrusted with the running of the affairs of the corporation which is independent in the formulation of policies of the corporation. Thus, the creation of parastatal bodies is important; so as to separate them from government day-to-day supervisions.

Another reason behind the introduction of the parastatals was what was termed as Import Substitution. This was a popular approach to development[6]. This was due perhaps to the decline in the demand and earnings for primary products which led to a fall in foreign exchange earnings. Import Substitution came first as it was argued in the process of foreign trade, the underdeveloped countries had already established markets and so by Import Substitution, the country could, by supplying the local markets with local products save foreign exchange and promote local industrialization with this reasoning it was to follow that the only institutions that could effectively implement the programme of Import Substitution were government departments, or the parastatal sector which could be created with a specific programme of action, but would execute the duties with minimal government control. It was argued that import substitution would help in the industrialization and diversification processes in the third World economies.

Therefore, in a nutshell the major objectives behind the creation of the parastatals were mainly; to represent a defence against foreign economic domination; promotion of self-reliance in strategic areas of the economy; reducing regional disparities in development; prevention of concentration of economic powers in the hands of a few individuals, or parastatals may be viewed as a means of emulating the mode of development undertaken by the developed countries to achieve social and economic development in the early years of their structural transformation. On the basis of the foregoing we may, thus, aptly conclude that parastatals were and are justified to some extent.

The growth and development of the parastatal sector in Zambia had its origins in former President Kenneth Kaunda's economic reforms, which he introduced in earnest during the 1968-70 period[7]. However, in order to appreciate the significance of the parastatal sector in Zambia before 1991, it is of paramount importance to have a brief analysis of the countries economic history. At independence Zambia's economy was highly skewed with the dominant copper mining enclave being supported by a fairly small industrial and service industry on the Copperbelt. The sector as a whole was not integrated with the rest of the economy in any productive way. Instead, the mining industry and the rest of the modern economy, was geared to the economics of South Africa and Southern Rhodesia, which treated Zambia as a labour reserve. The new government found that there was very little to build upon in non-mining related industry, for instance, domestic production supplied less than one third of the local market for manufactured goods while total manufacturing accounted for only six per cent of the G.D.P[8].

Thus before independence, although the mining industry continued to develop, such development was not matched with other sectors of the economy. Commercial and manufacturing activities were negligible and this was attributed to two main factors. Firstly, the non-availability of capital for investment and the lack of a wide local market. As the bulk of the economy was vested in the hands of privately owned mining industries whose shareholders steadfastly refused to employ their profits towards the development of other ventures, non-mining development remained insignificant. This trend is evidenced in Lord Robin's statement when he observed that, "we shall continue to seek profitable outlets, but have resisted and continue to resist suggestions that it would benefit the country or its people to invest in failures and squander capital for propaganda purposes"[9].

This was typical of the philosophy of capitalism under which the mining companies operated. The duty of the managers was seen primarily as that of maximizing returns to the shareholders. Social responsibilities of the companies was of secondary concern to the managers[10].

It was this deplorable state of affairs which resulted in the formation of the Northern Rhodesia Industrial Development Corporation (hereinafter referred to as INDECO in April 1960. It was formed under the companies ordinance as a public company with all the attributes associated with companies and although it was funded by the government, it was to be run on commercial lines from the outset. INDECO was intended to serve as the government's principle instrument for industrialization. It initiated investigations into the possibility of establishing industries in Northern Rhodesia. It provided capital for industry by making loans or guaranteeing them and, in special cases forming companies in which it took majority holdings until private enterprises to take over were found, and it provided management and technical assistance to existing industries, which lacked the necessary expertise[11].

It should be pointed out that the policy of INDECO, as that of the government was not to set up in business. Thus, although the colonial government engaged in commercial activity through INDECO, it was to have been a mere prelude to eventual divesture to the private sector. The reaction of independent Zambia, however, put things in a different perspective. In 1965, government policy was critically reviewed "and it was decided to articulate certain aspects of the policy. In view of this, the functions of INDECO were redefined and became as follows:

i. To be the holding, financing and management institution for Government's investments and interests in industry

ii. To be a financial institution specifically charged with the function of the promotion of Zambian entrepreneurship in both industry and commerce.

iii. To be a financial institution charged with the responsibility for the issue of loans to private enterprises on normal commercial terms.

iv. To have the responsibility for the appraisal of industrial projects, which the government wishes to promote, either itself or in partnership with private enterprise[12].

Although this meant that Government was now to participate substantially in the country's commerce, the main role of parastatals was a direct result of the national philosophy of Humanism adopted at the National Council meeting of the United National Independence Party (UNIP) held on 8th April 1967. The philosophy, a brain-child of former President Kenneth Kaunda, advocated for equal distribution of the nations wealth so as to restore "the equality of man".

2.2 The factors leading to the introduction of parastatals in Zambia

The philosophy of Humanism placed emphasis on the equality of all men, it put man at the center of all activity, it differed from both capitalism and communism, in that, it condemned exploitation of man by man, it indeed took necessary measures to prevent human exploitation, it abhors attempts by individuals to amass wealth and capitalistic tendencies of selfishness. On the other hand, it differed from communism which regards man merely as a cog in the state machinery.

The Government realized that management of the means of production was not sufficient to control the economy and guarantee the success of humanism. The government had ceased the opportunity to take hold of the economic infrastructure and reshape the parastatals to reflect the government's desire for greater control over the economy. It was also helpful in providing the institutions through which the government could begin to increase the scope of social welfare provisions; increase employment and reorient economic activity in various ways[13]. Indeed, the then President, Kenneth Kaunda had summed it up "that we must experiment with the best methods we can think of spreading wealth to all our people in as short a time as possible"[14]. This statement by the President was to be construed as being the probable (and not certain) means of achieving the goals of the Government. In other words, the experimental policies could and could not bear the expected results depending on the interplay of such factors as the means of production, the efficiency with which the technology employed yields produce social needs of the people and above all, the administrative instruments involved in the organization of the means of production.

Thus, the then increasing State intervention seemed not to have caused any alarm in its early stages possibly because it was widely accepted that much needed to be done to make up for the gross colonial neglect and partly because State intervention was an accepted phenomenon at the time. It had also been contended at the time that in any case the private sector was too small to provide the funding needed for the kind of economic growth proposed. The other factor behind Government intervention was the evident incompatibility of interests between the balanced development it envisaged and the sectoral structure of private industry[15]. The multi-nationals had shown little interest in diversifying into other industries apart from copper mining.

The then President of Zambia, Dr Kaunda had on many occasions stressed that the State was to play a key role in the economic and social progression of the humanist society and this was categorically illustrated in the economic reforms introduced by President Kaunda in three phases. Dr Kaunda in a speech on the 16th of April 1968 at Mulungushi complained that there had been excessive expatriation of profits made in the economic boom after independence. As a result there was gross neglect and under capitalization, excessive local borrowing, massive increase in foreign expenditure on invisible, transfer pricing etc. He, therefore, proposed new reforms which would direct available capital to development and ensure that Zambians "individually and comparatively share in the commercial and industrial life of the country". He stressed that the new measure of State intervention were necessary because Zambians lacked the capital and skills to be economically active on their own. Only the Government of the people can participate on their behalf and ensure that the State has control over the vital resources of the country and also provide avenues for the acquisition of skills pertaining to economic development and participation.

Thus in the Mulungushi reforms, "the Government asked twenty-six privately owned companies to offer fifty-one per cent of their equity to the state. Most of these companies were accused of lack of interest in the welfare of Zambia by making excessive profits, which they repatriated to other countries to the detriment of Zambia; and of organizing price-rings to create a false monopoly situation. Some of them were also accused of maintaining trade relationships with Rhodesia, contrary to the declared policy of Zambia. Of the twenty-six companies named at Mulungushi only one (Mwaiseni Stores Limited) was an indigenous company, the rest were foreign-owned"[16].

Companies taken over in the Mulungushi reforms were those involved in the production and distribution of goods throughout the country. This was the time that the national production only accounted for about a third of the local market for manufactured goods and, total manufacturing accounted for only six per cent

(6%0 of the gross domestic product. The real hold on the Zambian economy leaned on the mining industries. Inspite of the small margin that manufacturing companies contributed to the G.D.P. It was felt under this set of reforms that acquisition of majority controlling shares in the enterprises was a necessity; as it broke the monopoly of foreign enterprises, in the limited processing of primary products, in the production of consumer goods requiring low-level technology such textile, footwear, furniture etc. The Government's objective were clear-to reserve certain portions of business for Zambians by wiping out any foreign competition so that Zambian entrepreneurs would be guaranteed success.

While the Mulungushi reforms might have raised many eyebrows, it was the subsequent Matero reforms which caused a major uproar, this set of reforms were designed to enable Government to take over fifty-one per cent (51%) shares in the foreign owned mining sector. Therefore, on August 11, 1969 the State acquired 51% controlling interest in the giant mining companies, Anglo-American Corporation and Roan Selection trust which were the main pillars of the economy.

The other major step in the reform process was taken on the 10th of November 1970 when the former President Kenneth Kaunda stated that Zambia was determined to "remove foreign domination of our economy by acquiring control of the major means of production and services while at the same time establishing a form foundation for genuine Zambian business"[17]. Substantially the effect of the 1970 economic reforms was to give the state some controlling interests in the big financial institutions, for example the state acquired a minimum 51% in insurance companies, building societies and other various large companies. The state, however, was already operating in these areas, albeit in a small way, through the Zambia National Commercial Bank, Zambia State Insurance Corporation and the Zambia national building Society. These reforms created state monopolies in both the insurance and building society sector, privately owned companies were ordered to stop operations rather than taken-over as previously. Privately owned banks were merged with either Barclays or Standard Bank in which the state was to take 51% shares.

In a nutshell, the effect of the three sets of economic reforms extending from 1968 to 1970 was to give the state a participating and controlling interest in most foreign owned businesses and industry, leaving economic space for Zambian entrepreneurs in the small and medium sized undertakings. The Government's objective as represented in the takeover of these companies was that, with the instrument of public bodies, the state could easily influence the economic life of the state, thus improve the standards of living of the people through the financing of economic ventures which would inter alia, create employment and reduce regional disparities in development.

Therefore, to sum up, it maybe stated that the factors behind the creation of state-owned companies and statutory bodies was, the gaining of economic independence, diversification of the economy and the reduction of economic disparities in development.

2.3 <u>The growth and size of the parastatal sector in Zambia</u>

The effect of all these measures taken by the Zambian Government was to create a mixed economy with a strong state presence which retained substantial capitalist elements and accepted individual profit-making to be legitimate, though within prescribed limits. The terms of the measures taken in the early 70's were particularly important. Having stated that the programme of reforms was complete, President Kaunda added, "The party and Government has given Zambians the widest possible opportunity to grow in stature and to expand their area of participation in the growth of the Zambian economy, in the improvement of the social and economic welfare of the people. To many enterprising Zambians now the sky is the limit in terms of improving their positions"[18].

Thus, by 1975, there were some seventy-state-owned companies and statutory bodies involved in a wide range of activities and operating independently of civil service controls. The parastatal sector continued to grow rapidly in the 1970's and 1980's, for instance from 1965 to 1967. INDECO's total assets increased seven-fold. By 1971 the Zambia Industrial and Mining Corporation (ZIMCO) the major parastatal corporation, had total assets of 713 million kwacha of which the copper mines constituted 75 per cent, this can be compared with the state controlled assets at independence of 234 million kwacha. Total controlled assets in 1971 were roughly 7,009 million kwacha, by 1975 ZIMCO assets alone stood at 1,468 million kwacha and total assets under Government control were almost 2,000 million kwacha.

The creation of parastatals was seen as one of the most important achievements by the Zambian Government. Large investments were made in power, transport and roads. The parastatals were seen as engines for development creating an infrastructure which would lay the basis for growth and development on a wide front. This would lead to steadily expanding employment opportunities, during the decade after 1965 the expansion in manufacturing was indeed remarkable as total output rose from K48 million to K128 million, power generated increased from 1,869 kwh in 1965 to 8,563 kwh in 1976[19]. The parastatal sector became so preponderant in the economy as a whole and as at 15th August 1977 the parastatals numbered well over a hundred enterprises providing employment for almost 150,000 workers, which was about a third of the work force in the formal sector. They were involved in mining, energy, transport, tourism, finance, agriculture, service industries, commercial enterprises, trade, industry and construction. Total assets were estimated to be K3,500 million while Indeco alone-declared net assets of K358 million in 1978.

The parastatal sector continued to grow rapidly in the 1970's and 1980's. By the end of June 1991, the number of parastatals was about 150. By that time, indeed in the language of William Tordoff and Robert Molteno, these state-owned companies and statutory bodies had extended "the long arm of the state into the most vital areas of Zambia economic and political life"[20]. A large number of these state-owned companies were subsidiaries of ZIMCO which had been listed in the fortune magazine for many years as among the world's 500 largest corporations. It was formed to hold nationalized assets after the economic reforms of the late 60's and early 70's.

FOOTNOTES

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2. S.A. De Smith, Foundations of Constitutional and Administrative Law 4th Edition 1973 P 228
3. Mamadou Dia, African Nations and World Solidarity
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6. C. Ake, A Political Economy of Africa 1981, Longman P 145
7. Mwanakatwe J.M, End of Kaunda Era, Multimedia P 126
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9. J M Molehill, Parastatal Companies and the Law in Zambia 1980
10. Ibid P 46-47
11. INDECO, Chairman's Statement, In Annual Report 1963
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13. S Johns, Parastatal bodies in Zambia, 1971 Welt forum

14. Ibid P 60

15. K Kaunda Zambia's guideline for the next decade 1968

16. Zambia towards Economic Independence, by K Kaunda 1968

17. Ibid

18. Twok. B The penalties of Zambia's mixed Economy 1975 P 75

19. J Mwanakatwe, End of Kaunda Era Multimedia 1994 P 128

CHAPTER THREE

3.0 Methods of State Control and Management Parastatal Organisations

Thus, with the creation of the parastatal sector, the Government was now fully entrenched in the Zambian economy and all control lay in its hands. In the running of the affairs of the parastatals, the Boards of organizations comprised Ministers, Permanent Secretaries and other civil servants, who all exercised some form of management control in these organizations. The parastatal Chiefs were appointed and dismissed by the President and their financial affairs were supervised by Parliament. The Ministers and their Permanent Secretaries were Chairmen and Vice-Chairmen on the Board of Directors of the holding companies like INDECO, whilst the civil servants below them in the ministries were directors of subsidiary companies. This arrangement in the management and operation of the parastatal complex came about as a result of former President Kaunda's philosophy of Humanism and an aim to get Government to attain complete control over the acquired sectors.

Therefore, for the purposes of control the Minister may be said to have represented the Government which was the custodian of public interest in parastatals, and the reasons for allocating Ministers to lead parastatal boards was aptly stated by the former President Kaunda when he said, "I did so because of the urgent necessity then, to make parastatals an organic part of the body politic. The process of the re-education or de-colonisation of these organizations is now complete and all their Chief Executives now appreciate that they are an extension of the party and its Government in the business sector"[1]. The Minister played an important role in the control of parastatal boards, the Minister appointed the members of the boards and he/she also appointed the Chairman of the board from one of the members although this gives the impression that the Chairman is a person other than the Minister. In practice the Minister is the Chairman of the boards and as such performs all the functions of the Chairman of the board under the Acts, and these practices had been in operation since the early 1970's.

However, no amendments had been made to the Acts to reflect these changes in practice, neither had the legality of these practices been challenged. The practice of the Minister being Chairman of the boards put him/her in a strategic position to determine whether the boards powers were being exercised in accordance with the Government or in accordance with his own directives to the boards as the Minister responsible for the supervisor of the parastatals concerned. The control of the Minister over the boards was further extended by his power to dismiss the members of the boards before the expiration of their period of office.

As regards the manner of exercise of functions and powers of the boards, the Acts of Parliament creating these bodies were sometimes not precise enough and thus tended to give general directives and powers. As Himoonga[2] notes, some Acts merely provided that, the board shall in the exercise of its powers and performance of its duties, be subject: to written directions, both general and specific of the Minister. This imprecise phrasing of the Acts seemed to suggest that ministerial directives were unlimited in character and scope. It appeared therefore to be up to the Minister to give whatever directives he thought fit for the exercise of the boards powers and performance of their duties. It might, however, be argued that the Acts were deliberately imprecise in order to give room to the Minister who was the Government representative to give directives to the boards according to Government policy from time to time, this indeed created room for initiative and adaptation of parastatals to changing conditions affecting their operations.

The Acts also provided that the boards may establish Executive Committees to whom they may delegate their functions and powers under the Acts. The members of the committees were appointed by the boards with the approval or consent of the Minister and the Chairman of the board was also the Chairman of the Executive Committee of the Board[3], however, since the Minister was in practice the Chairman of the boards, he was also the Chairman of the Executive Committee. Thus, the Minister had direct control over the Executive Committees through his power to approve the membership of these committees and through his Chairmanship of the Committees.

In some instances the Acts creating these parastatals vested the appointment of General Managers of these organizations in the Board of Directors, but the President would still be heard making appointments for example Section 16 of the Dairy Produce Board Act[4], vested the appointment of the General manager in the board with the approval of the Minister. However, in practice the appointment of the General Manager was made by the President and it was a usual practice that whenever the Head of State held a Press Conference top posts in parastatals were usually shaken. The essence of Presidential appointments for our particular study is that, the practice tended to remove the management powers from the Board of Directors to the President in the sense that the appointed parastatal Chiefs were supposed to exercise their powers and perform their duties in accordance with the interests of the President and not those of the board or company. This went on to weaken the system of management enshrined in the Acts of Parliament and in the case of those state enterprises registered under the companies Act, the Articles of Association were greatly abrogated. Moreover, such a situation led to varying and sometimes conflicting objectives in parastatals, thus the board may have been of the view that profits maximization is the main objective of the company, while a General Manager appointed by the President may insist on social factors as being the goals of the company. A homely example here is the Livingstone Motor Assembly. In 1980, the company used to make a substantial loss of K1000 on each car assembled with the labour force of the company it had the capacity of assembling five hundred cars per day, but it was only producing five cares per day[5]. It is worth mentioning here that despite producing below capacity, the company still maintained the same labour force. This, therefore, implied that the companies profit making objectives were defeated by or subordinate to the social and political objectives of job creation, which led to the company's cumulative losses and eventual close-down.

The endless criticism of the parastatals ultimately led to a major change of policy. The Zambia Industrial and Mining Corporation (ZIMCO) which had been formed in 1970 under the companies Act to become the "Master" holding company all of Government's acquired shares (taking over INDECO's role) was restructured. In a surprise announcement in Parliament on 18th December 1978, former President Kaunda declared as follows: "I will appoint the ZIMCO board which will be chaired by the Prime Minister. It will be made responsible for the appointment of all Managing Directors, General Managers or Chief Executives of subsidiary corporations. The ZIMCO board will also appoint the Governments members of the boards of directors of its subsidiaries"[6]. The President also announced that he would appoint the Executive head of ZIMCO and the party would be represented at deputy Chairman level by the Chairman of the party's economic and finance sub-committee of the central committee. ZIMCO would retain two relatively autonomous sub-holding companies, INDECO and NIEC the manufacturing division and import and export division respectively, but that all the other group-holding companies would be abolished and that all subsidiaries would become directly responsible to the ZIMCO board.

The main objective of the restructuring was to give enterprises greater autonomy in their day-to-day working and to deprive Ministers of their former role. Ministers were effectively removed from the whole parastatal complex which became virtually independent of the Ministry structures and Government departments, ZIMCO headquarters was given full executive powers over all the subordinate bodies which embraced about one hundred and seventeen companies. The four top officials of ZIMCO replaced the Ministers and Permanent Secretaries as Chairmen of the principle subsidiaries and they had responsibility for their performance. The board of ZIMCO was wholly reconstituted of persons who were not involved in the subsidiary levels and therefore not answerable to them. The hope was that this would lead to a more objective assessment of performance than formerly when Ministries tended to defend their own companies at ZIMCO board meetings and Parliament. It was suggested that they found it difficult to combine their roles as Cabinet Ministers and head of a ministry, as ZIMCO Company. Another important development was the incorporation into ZIMCO of several statutory boards: Zambia Airway Corporation, Rural Development Corporation, and Posts and Telecommunications Corporation. In the words of the President they had become an undue burden on the tax payer and can be rendered self-supporting and profitable"[7].

3.1 **The shortcomings of the Zambian Parastatal Sector**

After the Zambian economy struck great heights, its rapid growth rate dropped to very low levels. "The initial decline in the economy, was by and large, been blamed on the poor performance of the parastatal sector more or so being the backbone of the country's economy. This poor performance had been attributed to the acute inefficiency, which characterized a majority of these parastatal companies accounting for the numerous failures or insolvency's in the parastatal sector"[8]. Insolvency is as a result of failure by a person whether an individual, a partnership or a legal person such as a company, to pay the bills of debts as they fall due.

Some of the causes of insolvency or corporate failure in the Zambian parastatal sector included, inter alia continued reports of inefficiency, mismanagement and corruption, for instance the report of the commission on parastatal bodies (The Kayope Commission) revealed catastrophic failures in major parastatals and widespread misappropriation of funds. But there were also structural problems which were perhaps more fundamental. The parastatals were grossly undercapitalized and the shortage of raw materials and spare parts due to lack of foreign exchange had cut production in some cases to a bare twenty per cent of capacity[9]. Moreover, despite rescue operations within ZIMCO in the form of internal provision of loans from one company to another, it was likely that some company's had to go to the wall unless substantial emergency aid was forthcoming.

Even then it was difficult for the parastatals to absorb new capital because of lack of managerial, professional and skilled manpower, man firms also had a low efficiency of capital, with unit production costs rising against higher import costs, yet capital intensity had been encouraged by low duties on capital goods, by investment credits and bid depreciation allowances. It was favoured by those parastatals with multinational links since their parent companies wanted to sell their capital goods which were often made up of advanced technology, thus in a country where brick making was commonplace at low levels of technology, two large automated brick factories were built, all of which closed down at an enormous loss of invested capital. Capital intensity substitutes machines for labour, thereby cutting down on employment and it facilitates the retention of control of management in expatriate hands, allows major financial leakages abroad, and leaves the manipulative control of technology as an additionally important lever for foreign control.

The effect of these policies had been to create a relatively high cost economy, greatly exacerbated by the increased costs of transport for imports ad exports and most importantly, even where the Government was dominant on the board of a capital intensive parastatal, lack of experience in the industry left decision-making in the hands of foreign corporations which were called to run them and such companies could not be the basis for socialist policies nor could they be seen as acting in the interests of the country itself[10].

As institutions, parastatals exhibited many of the characteristics of state corporations in developed capitalist countries. There was a high degree of caution in production and planning due to the civil service mentality of the managers who had much responsibility but little concrete accountability to any central body as a result, they "just kept things going". The situation was compounded by seemingly frequent interference at the political level though this did not amount to state direction. The party exercised a mainly supervisory presence which included the appointment of officials and complaints were often heard that the frequent reshuffling of heads of corporations seriously undermined the efficiency and self-confidence of the managers, but the basic management decisions remained within the province of managers whose profit orientation may have conflicted with overall Government policy in industry and more all so with the social goals espoused by the Government. The conflict is brought out in this statement by a parastatal Chairman who stated that ZIMCO companies, "are expected to show greater consideration for social benefit than normally apply to privately-owned companies. They are nevertheless business-like manner, become even more efficient and profitable, and stand on their own in a ruthlessly competitive economy"[11].

It was noted earlier that the Minister before the restructuring of ZIMCO was the Chairman of the boards and that his Permanent Secretary was the Vice-Chairman, there were several problems associated with this practice, which led to corporate failure in the parastatals. Firstly, the Minister assumed two completely incompatible roles of a sovereign on one hand and a subject on the other. As Minister responsible for the boards he was expected to sanction or countermand decisions reached by the boards in performance of their duties, but these decisions of the boards were on the other hand taken under his own Chairmanship, thus, the objectivity with which the Minister could play these contradictory roles to the effective operation of the boards was obviously open to question.

Secondly, the fact that the Minister was an active member of the board made the operations of the boards susceptible to pressure from politicians at Cabinet Office and State House, for example, the Minister was under the direct control of the President who appointed and dismissed him from Office. If, therefore, the President wished any particular action taken or abandoned by the boards to the detriment or otherwise of the boards he could pressurize the boards to take or abandon the action in question by simply threatening to dismiss the Minister and Permanent Secretary in the event of the boards refusing to implement his directives. Thus, the position of the Minister as a member of the boards in practice opened a channel through which political pressure could be exerted on the boards[12].

Finally, the Zambian Government by virtue of being the principle shareholders had the derived powers of appointing and setting of the rules for the appointment of Corporate Executives, thus, as a result of these derivative powers of the Government civil servants were transferred from the civil service to top posts in state enterprises, a direct consequence of this was that the people who may have been so transferred may not have had the technical know-how of running commercial ventures thereby making parastatals more susceptible to failure than success. Former President Kaunda is quoted in this regard conceding that

Government had itself to blame for giving certain jobs to unqualified persons[13]. This underscores the seriousness of maladministration in parastatal companies.

Quite apart from manpower transfers from the civil service to state enterprises, the frequent reshuffles also contributed to the poor performance of parastatal companies because an individual Executive hardly had time to settle in the new job before he was moved to another. Indeed these apprehensions are echoed by a former Minister and Chairman of the Cold Storage Corporation Board who illustrated the problems of adaptation by Ministers due to constant reshuffles in both their political positions and as members of boards of state-owned companies. He said, "the effective date of my takeover was day before the completion of activities covered in this report which puts me in a very invidious position when writing the forward of this annual report". The fears of the former Minister were practically true not until one has had time to fully address himself to the practicalities of a given concern can he be in a position to deal with its matters competently. This, therefore, meant that the reshuffling of officers and transferring of parastatal Chiefs from the civil service to state corporations watered down the management efficiency of these institutions, and ultimately may have led to the failure in attaining the objectives of these companies because the managers were either, "too new" in the companies or they did not have the called for skills.

The Government did however, try to achieve its goals of, providing employment to people living in rural areas, reducing regional disparities in economic development and to make profits from its businesses through public institutions, and this took the form of investing and creating state enterprises in its priority areas of policy. Thus, the state could insist that the investible funds available in a parastatal be invested in accordance with the social and economic interests of the state, this was to some extent justified as any shareholder should have his interests represented in the company, however, the usual practice in companies is that the corporate autonomy of the company should be respected and as such, investment decisions should be left to the board of directors the only requirement being that they should be compatible with the overall company directives. In the case of parastatals the story was different and thus, it was usual to see the Government direct investment in a corporation like INDECO, which were detrimental to its commercial objectives[14].

In a nutshell, a conclusion may be drawn that there were a few successes recorded in the parastatals, though the failures were more pronounced making the general performance of the whole parastatal complex a colossal failure and this as already stated was due to; conflict between commercial and political/social objectives, poor capitalization of the companies, management shortcomings e.g. political appointees and frequent changes, imprudent business judgments, lack of accountability and poor supervision and monitoring systems. Thus, it has been argued that these are some of the problems that characterized the ZIMCO parastatal complex leading to alarming insolvency levels and ultimately to corporate failure.

FOOTNOTES

1. President Kaunda's Speech at UNIP Conference, September 11, 1978
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3. Ibid P 214
4. Dpcit P 215
5. Interview with a former Inspector 23rd January 2001
6. Muna Ndulo Ed Law in Zambia 1984 P 237
7. Ibid P 237
8. Government Paper (parastatal and industrial reform programme)
9. Ben Twok, Penalties of Zambia's Mixed Economy P 76
10. Ibid P 77
11. Dpcit P 79
12. Muna Ndulo Ed Law in Zambia, 1984 P 216
13. Mr Kunda's forward in the Cold Storage Board Annual Report 1973
14. Naidoo, A second Geography of Zambia 1990 Longman P 57

CHAPTER FOUR

The impact of the privatization programme on the Zambian economy.

The factors leading to the limitation of State participation in economic activities and consequently the privatization of State enterprises have been clearly explained in Chapter Three, and these factors may be summed up as being, State participation in business through the instrument of parastatals or public corporations had proven to be a total failure. Therefore, the State had no option but to divest its interests in the business sector, through the process of privatization. The privatization Act which is the main legal regime governing the privatization process in Zambia defines privatization as: "The transfer to the private sector of part or the whole of the equity or other interest held by the government, directly or indirectly in a State enterprise, wholly or partly owned by the Government"[1].

The UNIP Government took a major step in reforming the parastatal sector with the articulation of a policy on privatization. This idea was discussed at the 5th National Council of UNIP held from 14th to 17th March 1990. This led to the formation of a "Task Force on privatization" in September 1990. The main objective of the Task Force was to examine and recommend modalities for implementing the policy of privatization[2]. Political events rendered the programme of privatization to be halted as the country was going through an election process.

After the political euphoria had died down, attention once again shifted back to the economy and the M.M.D. Government, which assumed power following the elections of 1991 sought to continue from where the previous Government armed with a policy of total economic liberalization, made a meaningful step in this direction by creating the legal framework upon which the whole program was to proceed, and by which institutions concerned with the privatization process were to be supported. Such legal framework was the enactment of the privatization Act No. 21 of 1992, establishing the Zambia Privatization Agency (ZPA). It is in accordance with the rules laid down in this Act that the process of privatization in Zambia is to be carried out.

The M.M.D. Government rode to power on a wave for political change that washed over the Zambian population. It is often said that the election of the M.M.D. was not so much a preference for policies but merely a desire to oust a UNIP Government, which had ruled the country for over a quarter of a century. The choice had been simple: election of Chiluba and his promises for a new and better life, or re-election of Kaunda and his old and tried methods.

More relevant to our topic, the choice is perhaps better expressed as between capitalization and socialism. The consequential loss of socialism was significant as it conformed with the collapse of socialist regimes the world over. The Soviet Union and East Germany being the most notorious examples. It is relevant at this point to diverse and give a brief background to socialism in

Zambia. It was argued that in order to develop, Governments needed to control the commanding heights of the economy. The socialists predicted that public enterprises would generate surpluses, which Government would invest in areas of high priority, which would consequently lead to rapid development of the economy.

With all its idealistic aims, why then, did the public sector perform so poorly? Public enterprises were merely a reflection of the interests of politicians and had nothing to do with the wishes of the local population. Managerial positions were awarded to loyal supporters of the ruling party and jobs were given to party members. The Zambian parastatal was merely given to manifestation of the party and its heads who towed the party line. Two basic shortcomings of the public sector were evident: most of the public enterprises were liabilities rather than assets and most of them operated at low levels of efficiency. It was noticed that the only parastatals that operated profitably, were doing so by exploiting a monopolistic position or Government policy, which allowed even inefficiency enterprises to make profits.

This poor performance by parastatals forced the Government to increase already existing subsides, which strained the already strained budget, which resulted in further inflation, more devaluation of the kwacha, and a general collapse of the already declining Zambian economy. The UNIP Government was caught in a vicious cycle by which it could neither afford to get out of the parastatal sector, as this would result in loss of jobs, nor could it afford the expensive subsides which brought devaluation, inflation and other consequential evils that also resulted in the unpopularity which UNIP could ill-afford.

It was this unfortunate trend that the M.M.D. was determined to break by introducing the privatization programme, and this was clearly spelt out in the constitution and the manifesto of the party and it stated as follows:

"(c) to work towards a meaningful programme of liberalization of commerce and industry in order to boost the national economy, encourage individual initiative and to raise the standard and the quality of life of the people of Zambia"[3].

"The M.M.D. is committed to privatization in order to optimize resource utilization, enhance the profitability and productivity of the public sector and assist in the reduction of the Government deficit, to facilitate privatization, M.M.D. will as a matter of urgency establish a stock market. The current economic role of the Government as a central participant in business undertakings shall cease. Free market and not nationalization will become the foundation stone upon which the economy under an M.M.D. Government shall operate"[3].

The M.M.D. began to fulfill its promise by introducing a large-scale campaign to publicize the need for privatization, the President and members of the Government had continuously stressed the importance of privatization in the Zambian economy. In his statement on the occasion of the 29th Anniversary of the Organisation of African Unity, President Chiluba stated as follows: "The restoration of individual rights and respect for human rights are the greater part of today's democratic agenda together with new economic policies that will enhance private investment, local and foreign liberalized system of economic production that should see Africa transform itself from the present misery that characterizes most of the continent to a fair human decent level of standard of living"[4].

That the M.M.D. Government's fundamental intention has been to minimize State intervention and promote private and individual enterprise cannot be disputed and this has been done through the privatization of State owned enterprises. However, it is the economic policies and measures, which will ultimately determine the successes and failures of the programme.

In order to develop the policies for the privatization programme, the Zambian Government conducted a series of seminars on the topic. These meetings were held both on a national basis and with various interest groups from the various discussions the Government settled on the following objectives:

The first and most important objective of the privatization program was to reduce Government intervention in business in order to maximize efficiency. State ownership has proved ineffective, inefficient, and costly in terms of subsides and administration[5].

The second was to promote wide share ownership and the growth of capital markets. This objective is subsidiary to, and may even conflict with, the primary objective, because corporate governance is not necessarily achieved by having diverse share ownership. Nonetheless, the economy will not expand without capital market development.

Participation could provide an opportunity to promote capital market growth by careful selection of the methods of sale of individual State owned enterprises. Judicious selection of enterprises for full or partial floatation could spread the benefits of privatization across a larger section of the Zambian population, increasing both the acceptability of and options of their economy, and the real need for new investment and technology which mostly outside private investors could provide.

The third and fourth objectives were to stimulate local and foreign investment and to promote new capital investment. As investment is critical to the survival of the enterprises and to the development of markets, these objectives addressed the need to improve the efficiency of the enterprises, through both better internal operations and opening the markets to Greenfield Investments for increased competition.

The final objective was to derive income for the treasury from sales of the parastatal enterprises, so that the government could address some of the issues and costs of structural change. The government's capacity then to earn revenue was limited because the tax base was very small. Generally, all infrastructure development in Zambia was conducted by donors,[6] and the government organized that this was both undesirable and unsustainable. Privatization was seen as an opportunity to raise capital for use on infrastructure and social development. However, the objective of raising revenue from parastatal sales may only be met in so far as it does not compete with other more important and deserving aims of the program.

Once the government had clarified its objectives in pursuing privatization, the decision was made to define clearly the privatization policies, procedures and practices through legislation. In Africa, where the potential commitment to economic processes can be erratic, it was important to ensure that the process was reliant neither upon personalities nor political whims, but on a clear set of rules and regulations, which reflected the policies of the government[7].

One of the strongest features of the Zambian program is its flexibility in the rules and regulations to cater for a diverse portfolio of enterprises, and this was designed into the legal framework. The portfolio of SOE's includes several enterprises in different industries, of different requirements from privatization. The programme, therefore, had to be designed so that the regulations governing the process could be applied to all enterprises. The privatization Act sets out the structure for privatization and designates the key players, rather than attempting to attach specific parameters to the objectives. Instead the objectives are defined in broad policy statements.

Ahead of delving into the procedure for privatization, it is important to note that the Act establishes the Zambia Privatization Agency (ZPA)[8]. This is an autonomous body, independent of the political process, government bureaucracy and the parastatal sector, it comprises eleven members who are mostly drawn from the private sector. There are three government representatives: the Permanent Secretary of the Ministry of Commerce, Trade and Industry, the Permanent Secretary of the Ministry of Finance and Economic Development and the Attorney General. The private sector has nominated representatives of the following organizations: The Zambia Institute of Chartered Accountants, the Zambia Confederation of Trade Unions, the Zambia Federation of Employees, the Bankers Association of Zambia, the Law Association of Zambia, the Zambia National Farmers Union, the Churches and finally the Dean of the School of Business of the Copperbelt University.

The ZPA is empowered to plan, manage, implement and control the privatization process. In doing so, the Agency could, at its discretion recommend for adoption of the following modes of privatization[9]:

- Public offer of shares on the Stock Exchange
- Private sale via negotiated or competitive bids
- Dilution of Government shareholding
- Sale of assets and business of SOE's
- Management/Employee buyouts
- Lease and Management agreements
- Re-organisation of SOE prior to sale – wholly or partially
- Any other mode as may deemed appropriate by the Agency.

From the above list, it appears that there are virtually unlimited methods of sale open to the government.

Although privatization transactions are economic by nature and therefore, require the expertise of business professionals. There are also political agendas that must be addressed in the process. The government's decision to involve the private sector was driven by popular opinion. Zambians have been historically suspicious of the government and the parastatal sector. They expressed the concern that the privatization process would not be conducted in a transparent manner that minimized political interference. Zambians also wished to ensure that the selection of bidders would be based on an open competitive didding. The public advocated that the State's involvement in the implementation of the programme would be limited. The government, therefore, decided that the private sector should be involved in the decision making process[10]and this is the most important feature of the success of the Zambian privatization programme.

There was clearly a need for the Government to have some input in the process. In the original design of the programme (under the UNIP Government), the responsibility for privatization was given to ZIMCO. After a change in political power, the President assigned the responsibility for privatization to the Ministry of Commerce, Trade and Industry[11]. The key decision points in the process were identified and the responsibility allocated according to the governments ability to delegate its authority. The criterion was that a statutory body, set up to implement the privatization programme, would take decisions of a political nature. The political decision points were identified as:

- **The parastatal to be privatized**: the parastatals were organized in a Divesture Sequence Plan (DSP) that is approved by Cabinet. It is vital to note that under our concept of privatization, the programme can only proceed on the basis of a DSP. Divesture according to the Act is defined as "the disposing of the whole or part of the assets and shares of a State owned enterprise"[12]. It follows from here that the DSP means a list of State owned enterprises as approved by Cabinet, categorized according to the sequence in which the whole or part of the shares will be disposed of over the period of the privatization programme.

Clearly the decision-making authority must be the government as the government is the owner of the SOE's and must, therefore, make the decision either to sell or not to sell. The DSP divided the enterprises rather than seeking the approval on an individual basis. In general, the seeking approval by Cabinet immediately prior to commencing the preparation for divesture for each trence. A misunderstanding that elicited criticism from investors was that the DSP was not flexible. What was not understood was that the DSP could be changed, through a Cabinet decision, so that individual enterprises could be brought forward for privatization or deferred. In addition the enterprises did not strictly have to follow the trenches. Cabinet, however, did not take pro-active decisions but reacted to requests for approval from ZPA and did not understand the decision on the selection of the enterprises and the timing for the privatization of those enterprises is essentially the prerogative of the government. There was, therefore, some unwarranted criticism from the government that certain enterprises should have been included in the early trenches[13]. The method of sale: The method of sale is dependant on a range of factors specific to each enterprise e.g the legal status of each enterprise, the way in which enterprises were nationalized, and the ownership structure (both desired and current). Experience has shown worldwide that privatization has spawned a considerable number of innovative selling techniques. However, most of the countries have inextricably linked the privatization of State assets to public share issues through a formal stock exchange. This is particularly the case in Jamaica and Malaysia where the National Commercial Bank (NCB) and the Malaysia Airline System (MAS) sales respectively were central to establishing the credibility of the privatization programme[14].

The approach to designing the method of sale has to be enterprise specific which is the key to meeting the conflicting objectives of any privatization programme. For this reason, the government must be responsible for the decision on how the enterprise should be privatized. Here, the government has the opportunity to design the ownership structure, e.g. to give certain bidders or certain classes of bidders a preferred right, to acquire a "golden share," to limit bids to nationals, to require that enterprises are divided in the interests of creating competition, or to maintain a government share. In practice informed decisions must be taken which will ensure that the improved efficiency of the enterprises operations. In some instances, economic judgment may be sacrificed for political advantage, and a good example of this was the governments decision to select thirty enterprises for preferred bids by Management and Employee Buyout terms (MEBO) in order to promote Zambian participation. Business professionals who believed that the enterprises could be sold, for cash, to more effective managers, criticized this decision. The government recognized this and required that the MEBO bids satisfied the criteria for selection of bidders in that they had to prove sufficient capital and managerial expertise[15].

- **Selection of bidder**: In all cases, the responsible investors are sought who will fulfill most of the requisite criteria such as managerial expertise, appropriate technology, capital, job creation, and assess to markets. Where there are no legal restrictions, competitive bids are the easiest ways to select bidders in a transparent and fair way using standard evaluation criteria.
- **Price and Valuation**: The price of the enterprise must be based on market value, defined as the price between a willing buyer and a willing seller, both acting in their own self-interest. The price decision is based on technical data such as the business and asset valuations of the enterprise, the enterprise's capital requirements, and the trade off between price and ownership structure. As an example, a wide public offering may not be as lucrative as private placement but may serve other objectives such as Zambian participation.

As the final outcome of the privatization process was to render the State holding company, ZIMCO, super flows, ZIMCO was not included in the decision making process. Their input was limited to supporting the process by providing information and documentation. However, this created serious problems as ZIMCO lobbied effectively in government circles, and caused severe delays in implementation of the programme.

While other methods of sale have been numerically dormant, the single most common method of sale has involved the direct sale of the enterprise (or part of it) to a domestic or foreign purchaser, or to a joint venture consortium of both. In general, the purchasers have been either third parties, or (in the case of a sale of government equity in joint ventures) the existing incumbent shareholder. As stated above the ZPA, in the course of implementing any of the above-mentioned modes of production can either allot or transfer shares of a State owned enterprise. Being an autonomous body of the government for the purpose of planning, managing, implementing and controlling the privatization of State owned enterprises. ZPA has a number of statutory duties to perform. Included here are[16]:

(a) Recommending privatization policy guidelines to Cabinet

(b) Implementing the privatization programme according to the policy guidelines issued by Cabinet.

(c) Overseeing all aspects of the implementation of the privatization programme.

(d) Monitoring progress of the privatization programme

(e) Preparing the long term divesture sequence plan and submitting such plan to the Cabinet for approval.

(f) Recommending to the Cabinet the most appropriate method of sale for each state-owned enterprise to be privatized.

(g) Carry out or cause to be carried out a valuation of a State owned enterprise that is to be privatized.

(h) Setting prequalification criteria for the selection of potential buyers or investors of a state-owned enterprise.

In order to effectively perform the above named duties, ZPA has wide powers under the Act, a majority of which can be exercised at its own discretion. Chief among these powers include the following:

- Allotment of shares of a SOE.
- Offering publicly shares of SOE
- Offering additional shares so as to dilute government share-holding in a State-owned enterprise
- Selling assets and business of a SOE
- Reorganising a SOE before its sale
- Leasing management contracts for SOE
- Selling a SOE to management or employees of such SOE
- Converting, before privatization, a SOE originally incorporated as a private company, to a public company.
- Placing a SOE under receivership

It is important to appreciate that these powers are statutory in nature and can only be exercised by ZPA, which is autonomous in nature and carries out its functions on behalf of the government. It is important to note that ZPA owes its obligations and duties to no one else but the government in their performance.

4.1 The impact of the privatization programme on the Zambian economy

On the face of it, privatization has either created jobs through investment or else has resulted in further job losses as inefficient businesses and over-mannered former SOE's either closed or underwent cuts in the size of the work force. There is a third way to this view. Some would argue that, given the State of Zambian industry, privatization should not be viewed in terms of how many jobs will be lost, nor how many jobs will be saved.

The immediate effects of liberalization and privatization have been the cause of significant job losses. The harsh economic logic of opening the economy up to the private sector, which must be competitive if it is to make profits, has seen many former, uncompetitive SOE going into liquidation or shedding off excess labour to make them more efficient and attractive to buyers. The State had, in effect, already undertaken much of the difficult task of retrenching a sizeable proportion of the work force in the run up to privatization proper. However, it was unlikely redundancies would end with privatization as many of the new owners would want to cut their workforce in order to increase productivity[17].

The ZPA listed eleven companies as having been liquidated under the privatization programme. In addition as of December 1997, twenty-eight (28) companies were listed by the ZPA as either under liquidation or in the process of being would up after the sale of their assets[18]. Those in this latter group include enterprises such as National Daily Produce Board, National Home Stores, the National Hotels Development Limited, Zambia Cold Storage Corporation, and others, which were broken up into asset units before being privatized[19].

The extent of job losses was considerably high. As a result of the UNIP initiated fourth national development plan, formal sector employment stood at a record high in 1992. Government policy on employment changed drastically under M.M.D. It maintained that high levels of employment especially in parastatals and the civil service, were being effectively supported and subsidized by money, which the government did not have. In the past, the solution was to borrow the necessary cash, but the resulting debts could not be repaid. For this reason, inter alia, the M.D.D. government embarked on a restructuring exercise of the economy and in order to achieve this end, the government sought to stem the drain on its resources by selling of the parastatals and putting in place the public sector reform programme in order to cut government expenditure on administration, primarily by reducing over manning in the civil service and ultimately the outcome of these policies was the inevitable large scale loss of jobs[20].

Of these job losses, many were in the parastatal sector from September 1993 to June 1995, employment in SOE's fell by 40,900 as a result of liquidations and preparations for privatization[21]. Although some of this fall in public sector employment may have been accounted for by increases in private sector employment as companies were privatized and changed ownership, there was still a significant shortfall. Over the same period, private sector employment went up by 11,400. This means that 29,500 jobs were lost in this transaction period[22]. The only conclusion that can be drawn from this is that most of these people had to look for new employment in the informal sector if they were to survive. The period, thereafter showed that there was a further 6,184 redundancies across both state and privately owned industry.

Tough reforms, combined with the dilapidated state of the productive sectors, have contributed to the stagnation of an already dire employment situation. Only 10% of the labour force have jobs. Faced also with rapidly increasing consumer prices and drastically reduced subsidies, most people have fallen below the poverty datum line. In spite of macroeconomic arguments about creating the right conditions for growth, there is uncertainty about how employment has caused a descent into poverty for the majority of the Zambian population. In fact 85% of the Zambian population live below the poverty datum line[23].

Another source of concern in the Zambian economy has been the collapse of industries in the manufacturing sector. Due to lack of duty and other restrictions on imported goods, the Zambian manufacturing industry has totally and completely collapsed, although this has been justified by the lack of competition from Zambian manufacturers, it is obviously detrimental to the economy. This point raises the issue of the speed of the privatization programme in relation to both the mental and technical attitudes prevailing in the country. The question to be asked is, was the Zambian government adequately prepared for privatization? I think not. A policy of incremental privatization should have been adopted, this means that the programme should have been one involving gradual divesture, so as to give the local [24] manufacturing industry time to adjust as its collapse frustrates the purpose of the progamme.

However, one report on the progress of privatization in Sub-Saharan concludes that the response to and the results of privatization have been mixed. But the report shows that Zambia has been some how a success story "Zambia has been the most successful privatization programme and the experience there offers many examples of best practice[25]." Among the success stories of privatization is the case of the sale of the Dairy Produce Board (D.P.B.) (Z) Limited, which changed to BONNITA (Z) Limited after it was hotly contested for by many organizations both international and local. This story reflects generally on the mode of privatization and the successful takeover of the company by the new owners, BONNITA Africa holding 66.5% of shares, while dairy farmers supply milk hold 28.5%. The D.P.B. officially changed hands to BONNITA (Z) Limited on 1st may 1996.

As regards the positive impact of privatization on the Zambian economy, it is perhaps imperative to state that: for privatization to be a good policy in economic terms, the necessary condition is that it should result in a marked improvement in the efficiency of the privatized enterprises. The rationale behind this lies on several assertions. Firstly, that privatization will help to reduce the borrowing requirements of the public sector as government subsidies will no longer be required to support it. Secondly, the increase in efficiency will help to restrain inflation. Lastly prices will be more realistic as they will be determined by competitive market forces[26].

It should, however, be pointed out that privatization per se is not a solution to problems of government finance. Public spending and taxes need to be reduced along with privatization.

From the start of the privatization process, devaluation and inflation had been reported as being at a minimum interest rates had shown a marked decrease, though all this cannot be credited solely to the privatization programme. The constant supply of foreign exchange from the donor community was the most important factor in stabilizing the local currency. Donor aid was also a crucial factor in the Balance of payments situation as several loans have been written of and aid has been given to assist in some of the payments.

FOOTNOTES

1. Privatisation Act, Section 2
2. E C Kaunga: Privatisation, the Zambian experience, NIPAM Centre, Zimbabwe 1994

   The M.M.D. Constitution Chapter 1 Article 2
3. The M.M.D. Manifesto at P 4
4. Democracy in Zambia key speeches of President Chiluba edited by Donald Chanda 1991-2 P 41-42
5. Companies Act No. 26 of 1994 Section 64
6. Zambia Law Journal Vol. 30 Tax Fraud and Evasion in Zambia P 149
7. Dpcit P 6
8. Ibid
9. Privatisation Act Section 3
10. Ibid Section 22
11. Kinley L Privatisation in Africa P 7
12. Ibid P 12
13. Dpcit P 13
14. Kikeri S. Privatisation, The Lessons of Experience P 32 (1992)
15. Privatisation Act Section P 19
15. Kikeri S. Privatisation P 45
16. Privatisation Act Section 8
17. Kikeri Setal (1992) Privatisation P 153

18. OXFAM Report Fact Sheet 4a

19. OXFAM Report Fact Sheet 4a

20. Ibid

21. LUSE Report on market sales of companies

22. Ibid

23. Prospects for sustainable development in Zambia (1996) P 49

24. Ibid P 420

25. World Bank Report on Privatisation in Africa (1995) P 321

26. Kinley L. Privatisation in Africa P 49

CHAPTER FIVE

Recommendations and Conclusion

This chapter has two main objectives. Firstly, to restate all important observations made in the preceding chapters, and secondly, to put forth the problems found in the Zambian privatization program and suggest recommendations to enable a smoother operation.

For privatization to be a good policy in economic terms, the necessary condition is that it should result in a marked improvement in the efficiency of the privatized enterprises. The rationale behind this proposition lies on several assertions. Firstly, privatization helps to reduce the borrowing requirements of the public sector as government subsidies are no longer required to support it. Secondly, the increase in efficiency helps the restrain inflation. Lastly, prices are more realistic as they are determined by competitive market forces. It should be noted that privatization per se is not a solution to the problems of government finance. Public spending and increasing taxes need to be reduced along with privatization.

Consequently, certain priorities need to be identified in the privatization programme. Firstly, it is important to ensure that a degree of competition is introduced in the economy. Secondly, priority should be given to policies that break up monopolies. Thirdly, a viable privatization program should aim for technological change.

The Zambian programme has, fortunately, guaranteed the above priorities. Though the increase in efficiency of some privatized industries is yet to be seen.

However, there have been some problems in the process of privatization. Firstly, there is need for more transparency in the operations of the Zambia Privatisation Agency (Z.P.A.). Although the agency releases sale prices after negotiations are complete market value is not given to the public to use as a measure for comparison of the selling price. Furthermore, the agency does not have a public account through which its spending can be monitored by interested parties.

Another cause for worry has been the collapse of the manufacturing industry in Zambia. Due to the lack of high duties and other restrictions on imported goods, the manufacturing industry has completely collapsed. Although this has been justified as they are not competitive, it is obviously detrimental to the economy. This raises the issue of the speed of the privatization programme in relation to both the mental and technical attitudes prevailing in the country. The question to be asked is, is Zambia ready for privatization of all major industries? I think not.

There are two reasons for my assumption. First, is the effect of privatization on the local industry. Second, is the lack of suitable capital markets within the country. The danger of a predominantly foreign owned economy is always eminent in such a situation and there is little chance of the indigenous middle class acquiring shares in privatized parastatals as they lack the necessary finances.

Certain steps need to be taken to improve the present state of affairs. For instance, the Z.P.A. needs to take steps to ensure transparency and this can be done through detailed accounts of its daily financial expenditures being made readily available for public inspection.

Furthermore, a policy of incremental privatization should have been adopted. This means that the privatization programme should be one involving gradual divesture, so as to give the local manufacturing industry time to adjust as their collapse frustrates the purpose of the programme.

Lastly, capital markets need to be established. Capital in the form of loans or lenient deferred payments should have been made available to the middle class so that the programme could have a broader base and make the programme more meaningful.

In conclusion, the content of this paper has been concerned with the justifiability and performance of parastatals in the light of their objectives. It has been established that parastatals were one of the instruments that the now developed world used in their early stages of development. It was established that state corporations if properly managed are a good mechanism for settling down the economy of a newly independent state and they also helped create a good defence against foreign economic domination, which a purely capitalized system could not do.

For Zambia there were good objectives justified at both the national and international levels for the introduction of parastatals. However, the state failed to fully implement its objectives in parastatals due to poor management, excessive government interference in the day-to-day operations of state owned companies, through political appointees etc. Thus the system was made to fail to attain its goals.

Therefore, if what had led to the failures in the parastatal sector was the poor management and not the objectives, then the state should have devoted its time and resources on restructuring the management and administration of the sector and not privatizing the whole enterprise together with its relevant and essential elements.

On the issue of government interference as having been one of the causes of failure in the parastatal sector, new legal and administration measures should have been worked out to help create corporate autonomy in parastatals in accordance with the principles and practice in companies.

However, for those parastatals in which the state did not hope to achieve its goals or even if they were achieved they would be very little benefit these should have been privatized not the whole parastatal complex.

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STATUTES

Cap 340	-	Dairy Produce (Marketing Levy Act
Cap 388	-	Cold Storage Board (Establishment) Act
Cap 686	-	Companies Act
Cap 689	-	Cooperatives Act

The Privatisation Act