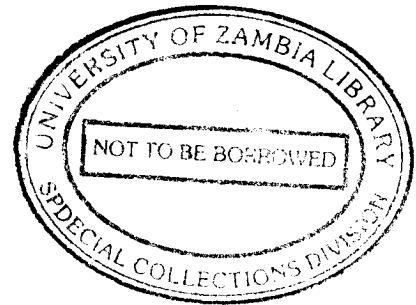


LIBERALISATION: HAS IT BROUGHT ABOUT ECONOMIC
FREEDOM

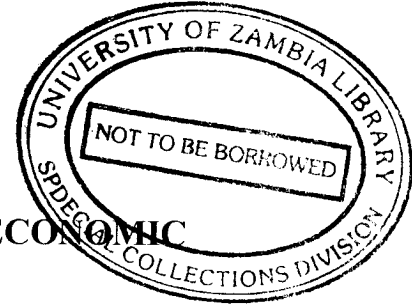


BY

MARY GOMA

UNZA

2006



**LIBERALISATION: HAS IT BROUGHT ABOUT ECONOMIC
FREEDOM**

BY

MARY GOMA

Being an Obligatory Essay submitted in the partial fulfillment of the examination requirements for an award of the degree of Bachelor of Laws (LLB) of the University of Zambia.

**School of Law,
University of Zambia,
LUSAKA.**

2006

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I recommend that the Obligatory Essay prepared under my supervision

By

MARY GOMA

Entitled

**LIBERALISATION: HAS IT BROUGHT ABOUT ECONOMIC
FREEDOM.**

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements pertaining to the format as laid down in the regulations governing Obligatory Essays.

Date...18...01...07.....

Supervisor..........

Kanja Mpundu George (Mr)

DEDICATION

This paper is a dedication to my one and only pillar in the so many challenges I face in life. Dad, though you are not here with us, I do all **I** can as though you were around. Life has been a difficult journey without you, but I know that you shall forever hold the family and we shall do great things as though you were around. I know you could have been very proud of me as your first daughter to have graduated from the university and in this great career I have chosen. You were so sure of my strengths, I greatly miss you. May Your Soul Rest In Peace. Mum, you do all you can to make it possible that we continue working hard in school. Your resources are limited but your prayers are not and we have seen the fruits. I dedicate this to you with all my love.

THIS ONE IS TO YOU BOTH FROM YOUR DAUGHTER....

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I wish to express my sincere gratitude to Mwape K. Chikumbi for the unwavering and sustained support and selfless commitment that he has given me throughout my studies at UNZA. He has offered support to me that only selfless love can afford and made my four year long studies at UNZA seem so short and very possible to attain. This is the fruit of our commitment. I am indebted to you.

I also wish to acknowledge a number of people who have made my work easier to accomplish. First and foremost, I would like to thank my almighty lord for making my dreams come true. Through HIM all things are possible. I confess everything is possible and that you still have greater plans for me. I shall forever glorify your name. Amen. *“The fear of lord is the beginning of wisdom and knowledge of the Holy one is understanding.”* **Proverbs 9: 10**

Special thanks go to my family; to my brothers and sisters, Phil... you are such an inspiration bro, you opened the doors for us all and I thank you; Rhoda...you are a great sister and full of confidence in me, yet ever scared that I would go wrong; Sam, you are a very hard working bro and full of vision to take care of all of us, thank you for helping me get to where I am right now; Lucy, keep those moods down and know that you are in the right track, keep up the spirit; Dilla, you have started your journey, be confident and you shall get there; Faides, you are still young, know that everything is possible when you put your mind to it. Follow the lead; Nkude, we have shown you the way, follow, don't miss it; John, the sky is the limit for you; and baby Taonga, speak less my boy, we love you. To you all, am proud and happy to be a family, thank God for that. You made me go through my studies with a lot of courage. Thank you so much for the love and support.

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ACRONYMS AND ABBREVIATIONS

GATT	General Agreement on Tarriffs and Trade
GDP	Gross Domestic Product
HIPC	Highly Indebted Poor Countries
JCTR	Jesuit Centre for Theological Reflection
ICESCR	International Convention of Economics, Social & Cultural Rights
IMF	International Monetary Fund
INDECO	Industrial Development Corporation
LAZ	Law Association of Zambia
MMD	Movement for Multiparty Democracy
SAP	Structural Adjustment Programme
SOEs	State Owned Enterprises
TRIPS	Trade Related Aspects of Intellectual Property Rights
UBZ	United Bus of Zambia
UDHR	Universal Declaration of Human Rights
UNIP	United Nations Independence Party
U.S	United States
UNZA	University of Zambia
WTO	World Trade Organisation
ZAM	Zambia Association of Manufacturers
ZANACO	Zambia National Commercial Bank
ZNUT	Zambia National Union of Teachers
ZCCM	Zambia Consolidated Copper Mines
ZCTU	Zambia Congress of Trade Union
ZESCO	Zambia Electricity Supply Corporation
ZFAWIB	Zambia Federation of Association of Women in Business
ZIC	Zambia Investment Centre
ZIMCO	Zambia Industrial and Mining Corporation
ZNBC	Zambia National Broadcasting Corporation
ZPA	Zambia Privatisation Agency

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INTRODUCTION

Zambia is a country situated in central Africa with a population of about eleven million people. It gained her political independence in 1964. For almost three decades, it has had several economic reforms, but mainly dominated by the controlled economy. This has been seen to be inefficient and therefore, not a good model of economic sustenance. With the economic crisis that Zambia had found herself in, a shift from the controlled economy to a free economy was accelerated in 1991 by the new government. This saw a new era of economic reforms known as the liberalisation process. This saw the privatisation of parastatals and the structural adjustment programmes which reverberated most legislation in the quest for a more viable and favourable environment for investment. The state was geared to turn her social-political and economical meliu right around. It wanted to shape the country in the direction of prosperity.

The government initiated the free market oriented economic reforms which among other things encouraged private entrepreneurship and limited state control or participation in the nation's economic activities, therefore, in order to achieve these free market ideals, the state had to relinquish control of its assets in major sectors of the economy through the privatisation process of the state owned companies.

But the economic experience of the past fifteen years has clearly indicated that there is need for Zambia to review its economic order in the quest for economic independence.

The central theme of liberalisation is to translate the economy into both economic expansion as well as economic independence. The changing political economy in

Zambia has influenced the development of legislation and policy on liberalising the economy. The question to ponder on is whether the legislation and policies on liberalisation have brought about economic growth and economically empowered its people to foster for economic development, henceforth, economic independence for sustainable development.

Economic liberalisation has widened the gap in opportunities between the rich and the poor, and between and within countries. Resources are being taken away from the country whose companies have been privatised like the mines, where our precious minerals are being processed from abroad and then being brought back to us to buy at exorbitant prices. This has led to marginal rates of growth of those states which strip our resources, leaving our country and its local population where the resources are taken from sinking deep in poverty. Studies have shown that whilst liberalisation policies are likely to be beneficial in most circumstances, for developing countries, it involves more than the opening of markets. It is not a sufficient condition for economic growth, but sound macro-economic policies, institutional and social stability.

It is the aim of this dissertation to carefully study the liberalisation process and to evaluate whether it has brought about economic freedom. The paper will achieve this through analysing the privatisation process and the investment laws in the country.

Chapter one of the dissertation gives a historical background of the economic policies in Zambia, defines what liberalisation is and states the standards appropriate for such an undertaking. Chapter two analyses the Privatisation Act and

the Investment Act. This aims at showing the efficacy of the laws in the attainment of economic freedom.

Chapter three discusses the impact of the liberalisation process and defines economic freedom. It also shows to what extent the Zambian Constitution respects the social-economic rights of its citizens. Chapter four gives best examples of the liberalisation programmes of some countries. The dissertation concludes with Chapter five, which gives a summary and recommendations both to the government and policy makers.

CHAPTER ONE

1.0 INTRODUCTION

Zambia's political independence in 1964 was not accompanied by economic independence. It adopted a liberalised economy that was largely controlled by the Europeans and Asian settlers. The Zambian government then saw the need for greater participation in the management of the country's economic sector. This was largely precipitated by repatriation of large portions of profits by foreign enterprises¹. They ploughed back as little as possible into their businesses without due consideration for reinvestment, thereby, reducing the country's financial resources. Another factor was the limited participation of the indigenous Zambians. The Zambian government then took over control shareholding in the copper mining companies and other important manufacturing and trading companies, which were controlled by private foreign investors prior to the take-over.² The government then embarked on creating an atmosphere which enabled Zambians to participate in the commercial and industrial life of the country, thereby liberating the country's economy.³

However, maintenance of these enterprises proved difficult. This led to continuous borrowing of money from the international financial markets in an effort to revamp these industries. Apart from this, the economy was affected by the 1970's oil crisis and the slump of copper prices on the international market (which was the country's main economic strong hold). This worsened the debt crisis being experienced in the country. This led to great need of debt relief which could only be obtained through the multilateral funding agencies, that is, the International Monetary Fund and the World Bank.⁴ These placed conditions on governments seeking financial assistance from them to adopt and implement programmes tailored by them such as the structural adjustment programme and the stabilisation programme which called for liberalising of the economy⁵

¹ Kaunda, K., (1968). *Zambia Towards Economic Independence*, p 1

² *Ibid.*, p.52

³ *Ibid.*, included the Mulungushi, Matero, and Economic Reforms(1968,1969,1970 respectively.)

⁴ Mwenda, K.K. (1995). *A Critical Review of Foreign Investment in Zambia: Direct Investment*, p.3

⁵ *Ibid*

In 1992, the new Zambian government implemented policies and enacted laws that would provide for a free market economy in line with the IMF and the World Bank for debt relief and in a bid to call for more investment, as at the time, the economy had significantly declined. These included the Privatisation Act 1992, the Investment Act 1993, the Securities Act 1993, and the Mines and Minerals Act 1995.

It is the aim of this work to critically look at the liberalisation programme and assess whether it has been the answer to Zambia's economic growth and whether it has brought about the much needed economic independence for the growth of the economy. This will be done by analyzing some legislation passed specifically the Privatisation Act of 1992 and the Investment Act of 1993.

WHAT IS LIBERALISATION

The liberalisation of the economy entails the creation of market forces, that is, individuals have the freedom to conduct their business with minimum restrictions,⁶ thereby, creating a free market economy.

The major aim of liberalising the economy is to encourage greater private sector involvement in the economy. This can only be achieved if the country embarks on or facilitates a privatisation programme. This should result in the creation of a vibrant economy in which the private sector is allowed to flourish with the minimum of restrictions.

The Zambian government embarked on a policy of liberalising the economy and it set out to remove impediments such as Exchange Control Regulations and Price Controls.

The Zambian government found it imperative to re-introduce economic reforms and restructuring programmes that would create a free market economy.⁷ These include promotion and encouragement of private sector initiative; privatisation of parastatal companies; the encouragement of wide ownership of shares and the removal of

⁶ New Economic Recovery Programme, 1992-94, paras. 39-40

⁷ A free market existed in Zambia after independence before the advent of the economic reforms (Mulungushi Reforms 1968 and Matero Reforms 1969)

restrictions on shareholding levels and foreign ownership; the establishment of a stock exchange market; and the promotion of local and foreign investment; and removal of all exchange controls to enable free movement of funds out of the country. These fiscal investment policies have been put in place to support the development of a dynamic and competitive private sector in Zambia.

The Zambian government had to enact laws that suited the liberalisation ideology. The policies put forward were to deregulate and encouragement of private enterprises operating via a market-led system. This shift was based on the perception that a high degree of government regulation and centralisation of decision making at the microeconomic level may reduce economic efficiency, growth and structural adjustment. The government had to liberalise by phasing out state trading, reform of company legislation and the liberalisation of licencing regulations. They had to create an enabling and predictable environment in which the private sector could make efficient investment decisions. The aim was to attract investment to boost the growth of the industrial sector. The government was to refrain from direct control over the activities of the industries other than of monitoring and guidance.

Also the creation of a one-stop support facility investment center by the government was one of the measures taken to woo investors into investing in the country. Furthermore, government grants tax rebates to particular investors.

An enabling environment for the liberalisation programme also encompasses the political, economic, social-cultural and technological factors. For instance, the sentiments given by opposition leaders that when they get into office, they will chase all investors,⁸ sends a wrong signal to investors as they fear that such leaders would end up enacting laws which would suit their political whims. The environment is supposed to be secure, stable and predictable.

⁸ Zambian opposition leader for Patriotic Front Micheal Sata on Radio Phoenix Face The Media Discussion

1.2 HISTORICAL BACKGROUND OF ECONOMIC POLICIES AGAINST WHICH LIBERALISATION WAS EMBARKED IN ZAMBIA.

In order to give an intelligible picture of the liberalisation programme in Zambia, it will be necessary to give a brief historical background of the economy from independence, to date.

NATIONALISATION OF THE ZAMBIAN ECONOMY

Upon attainment of independence, the Zambian government found itself in a dilemma. All the major means of production and services were owned and controlled by foreigners. In an effort to enhance national development and to attain economic independence, the government decided to embark on a nationalisation process.

International law defines nationalisation as:

*“The process by which property, rights, and interests in property are transferred from private to public ownership by agents of the state acting on the authority of a legislative or executive measure. After transfer, the property remains in the ownership of and is exploited by the state or body created by the state.”*⁹

Zambia had no statutory definition of the term and hence relied on this general definition of nationalisation. International law has also specified certain conditions that have to be fulfilled in order to make nationalisation process valid.

In the leading case of United States Mixed Claims Commission Case¹⁰ (or the Upton Case), the tribunal held that:

“The right of the state under the stress of necessity to appropriate private property for public purpose is unquestionable but always with corresponding obligation to make just compensation to the owner thereof.”

Zambia being part of the international community sought to abide by this principle in that the state decided that compensation was to be adequate and payable promptly upon nationalisation. However, Section 18 of the Constitution was amended, and the

⁹ White, G.H., (1961). Nationalisation of Foreign Property, p.41

¹⁰ United States-Venezuela-Mixed Claims Commission (1903), p.174

power to determine compensation was moved from the courts to the national assembly, which was the final authority. Further, the requirement for the government to show that acquisition had been effected in the national (public) interest was removed¹¹.

THE ECONOMIC REFORMS AND CREATION OF PARASTATALS

In order for the government to control the economy effectively, parastatals were set up. These were formed under the Companies Act.¹² Parastatals are public enterprises which are meant to be regulated in the same manner as privately owned companies.

Basically, the formation of the parastatals was in two phases. In the first phase, the parastatal companies were created as a result of government's efforts to diversify the colonial legacy of a mono-economy based on mining. This was to be achieved through establishment of state enterprises in the non-mining sectors.

The second phase was after 1968, and it was based on the government's policy to acquire 51 percent shares in the major private enterprises operating in Zambia, including the mining companies.

Parastatals actually had their beginnings in the colonial period in 1960, with the formation of INDECO (Northern Rhodesia Industrial Development Corporation Limited). INDECO was created under the Companies Ordinance as a public company and it was to operate in a commercial manner, free from bureaucratic control¹³. However, parastatals only became viable after independence when the government adopted a policy of entrenching itself permanently in business. Most parastatal companies were formed by the government acquiring majority shares in already privately-owned companies. INDECO formed most of these companies as its subsidiaries and it held all the shares so acquired on behalf of the government. Between 1968 and 1970, the second phase in the development of the parastatals commenced with the pronouncement of economic reforms. The aim of these reforms was to extend the government's active participation to all sectors of the economy.

¹¹ Constitutional Amendment Act, No.5 of 1969

¹² Chapter 686 of the Laws of Zambia

¹³ Mulwila, J.M., (1980). Parastatal Companies and the Law in Zambia (Ph.D. Thesis), p.44

The state was to acquire 51 percent shares in all the major private companies operating in Zambia¹⁴.

THE MULUNGUSHI ECONOMIC REFORMS

The Mulungushi Economic Reforms¹⁵ were presented on 19th April, 1968, and their aims were to promote entrepreneurship and to extend state participation in the economy. The first objective was to be achieved by phasing out non-Zambian traders from certain areas to create a vacuum for Zambians. For example, retail trading outside the main city centers was confined to Zambian citizens only. Other areas included the small and medium sized government building contracts, rural transport contracting and small quarrying.

However, the most important aspect of the Mulungushi Reforms was the extension of state participation in the economy. Twenty-six privately owned companies were asked to offer 51 percent of their equity, that is, the share-holding of their companies to the state. Most of these were accused of lack of interest in the welfare of Zambians, creating false monopolies and maintaining trade relations with the then Rhodesia, which was against government policy. INDECO handled the negotiations for the government take-over. Although twenty-six companies were listed for immediate take-over, eventually all major industries were to be nationalized. The mining companies, although excluded from this list, expressed willingness to offer their equity to government, but the latter declined the offer.

THE MATERO ECONOMIC REFORMS

Under the Matero Reforms,¹⁶ the government stated its intention to take over 51 percent shares in the existing and future operating mining companies through INDECO. No other companies were asked to offer their equity to the state but large industries were advised to form partnership with INDECO.

The main purpose of these reforms was to enable the state gain control of the country's dominant means of wealth, and thereby, spread development.

¹⁴ Ibid., p.61

¹⁵ Towards Economic Independence, Address to UNIP National Council, 19th April, 1968

¹⁶ Towards Complete Independence, Address to UNIP National Council, 11th August, 1969

THE ECONOMIC REFORMS OF 1970

In the 1970 Economic Reforms¹⁷, the state set out to participate in the financial sector, comprising mainly banks, insurance companies and building societies were to cease operating by certain dates.

The reforms also proposed that all banks, with the exception of the Zambia National Commercial Bank (in which the government already had majority shares), should merge with either Barclays Bank or Standard Bank and the government was to take over 51 percent shares in the form of additional capital.

In the deliberate ploy to encourage re-investment in the country, Exchange Control Regulations were introduced. These regulations were primarily targeted at those who were receiving compensation under the nationalisation process. It was now no longer possible to remit monies so gained without exchange control permission. During this period, INDECO became a wholly owned subsidiary of ZIMCO (Zambia Industrial and Mining Corporations Limited) which was formed to replace INDECO as the government's holding company¹⁸.

The reason why the government created parastatals instead of allowing private enterprises were: one of the main one was 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 colonial policies were seen to have continued to be perpetrated in the economy. Each sector of the economy was seen to have a strong tie to a metropolitan economy. This retarded industrial development. For instance, 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

¹⁷ This Completes Economic Reforms: "Now Zambia is Ours" Address to UNIP National Council, 10th November, 1970.

¹⁸ M ulwila, J.M., (1980). Parastatal Companies and the Law in Zambia (Ph.D. Thesis). p.44

exporting more copper but importing even the small foodstuffs and other commodities that could be cheaply grown and manufactured locally¹⁹.

To remedy the situation, the government had to come in with the authority bestowed in her to prescribe a would be 'panacea'. Suddenly, they 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 of which would not be obeying forces of attraction other than an internal order. This situation explains the magnitude of the nationalist reaction. Thus the government took to the parastatal sector as one way of asserting firm economic arms of the state. This also explains why political independence once acquired, for many African governments emphasis is laid on the quest for 'economic independence', without which, as one socialist observes, 'political independence' would be empty of all content²⁰.

It will therefore, be appreciated that one of the goals for the economic reforms was to assert economic independence. This assertion of economic independence implied that the state had to create economic structures that could inhibit the infiltration of external forces which robbed the local industries of the much converted local markets. Moreover, the new government thought they were being deprived of their administrative powers as they did not control the economic destiny of the country. Therefore, in order to reverse the situation, the government 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 nationalising the existing private corporation, 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. As was

¹⁹Chileshe, J.H., (1987). Third World Countries and Development in Zambia., p.125

²⁰De Smith, S.A., (1973) Foundations of Constitutional and Administrative Law (4th Ed) ., p.228

stated by the then president of Senegal, Mamadoo Dia, that “*whether camouflaged 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.*”²¹”

Therefore, the vesting of the most strategic enterprises in the hands of the state or its citizens who would not externalize the proceeds of their business 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 nationalisation process and the pegging of prohibitive tariffs on imports which would keep foreign business 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 economic independence was the doctrine of *lasses-fare*, which was said to be best suited for countries that had already created a steady economic base, that is, stage of development and expected to effectively participate in multinational 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.*”²²”Lisk’s arguments not only won the day but survived to bedevil economic policies in the less developed countries.

A further reason for the creation of public corporations was to entrust an activity to an autonomous body thereby reducing the scope of direct political control. 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 the policies

²¹Mamadou Dia, African Nations and World Solidarity.

²²Peter, B.K.,(1971). International Economics (3rd Ed), p.228

of a corporation. Thus, the creation of parastatal bodies is important; so as to separate them from government's day-to-day supervisions.

Another reason was what was termed as Import Substitution. This was a popular approach to development²³. The country could by Import Substitution, supply the local market with local products save foreign exchange and promote local industrialisation. 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 specific programme of action, but would execute the duties with minimal government control. It was argued that import substitution would help in the industrialisation and diversification process of the countries economy.

It can therefore, be said that the main objectives of parastatals were: 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 they can be viewed as a means of emulating the mode of development undertaken by the developing countries to achieve social and economic development in their early structural transformation. Therefore, to sum up, it may be 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. On the basis of the foregoing, we may therefore, aptly conclude that parastatals were and are justifiable.

THE PROBLEMS OF PARASTATALS

With the establishment of parastatals, the Zambian government began to slowly face problems. It soon recognized the fact that it had neither the administrative capacity nor the economic resources to ensure that parastatals operated efficiently and effectively. Most parastatals were at less than 50 percent capacity and they needed

²³Ake, C., (1981). A Political Economy of Africa, p.145

significant capital re-investment to rehabilitate and expand their business operations so that an adequate level of profitability was maintained. Further, parastatals lacked incentives for good performance; they were often bound by bureaucratic procedures and controls, and were subjected to patronage and government interference.²⁴

These problems were not unique to Zambia²⁵. In Kenya for instance, the Institute of Economic Affairs (I.E.A.) cited the following reasons as the downfall of Kenyan parastatals;

- mismanagement and political interference in Kenya's state-owned enterprises, which in turn led to chronic budget deficits;
- frequent appointments of people into key positions who lacked experience, personal integrity, and the technical and business skills required to manage public firms.
- many parastatals were unable to repay debts and the government had to bail them out.

In May 1990, the then president²⁶ of Zambia made an announcement to the effect that Zambia would embark on a privatisation programme. A task force on the Restructuring of the Parastatal Sector was set up and in December 1990 it made recommendations on the objectives and policy on privatisation in Zambia²⁷.

The privatisation programme officially commenced in March 1991 with the inauguration of the Steering Committee on Privatisation. This committee was given the task of designing, implementing and monitoring the privatization programme. It was given the mandate to privatize the ZIMCO companies except for the Zambia Consolidated Copper Mines (ZCCM) Limited and its subsidiaries.

A Technical Committee on Privatisation was also set up to be the working unit through which privatization could be achieved. Political events however, disrupted this programme as general elections were to be held in October 1991. It was

²⁴Ndulo, M., (1984). *Law In Zambia*. P.234

²⁵ Ministry of Commerce Trade and Industry; *Privatisation in Zambia Strategy Design*, (1991), p. 52

²⁶ Kaunda, K., Fifth Extra-Ordinary Session to the United Nations Independence Party National Council

²⁷ *Ibid.*,

considered prudent to await specific government directives before proceeding with the programme.

THE PRIVATISATION PROGRAMME IN THE THIRD REPUBLIC

The new government in December 1991 vested the responsibility of the Privatisation Programme in the Ministry of Commerce, Trade and Industry. Under the previous government, the programme fell under the ambit of ZIMCO²⁸.

The Ministry recommended that clear policy guidelines should be set out and debated in Parliament so that there could be a legal mandate for privatisation in Zambia. Hence, the government suspended the sale of parastatals. The objectives of the privatisation programme were presented to parliament as follows²⁹:

- to scale down the government's direct initiative in economic activities and correspondingly its administrative load;
- to reduce government budgetary costs arising from subsidies from subsidies and capital expenditure;
- to promote competition and improve the efficiency of enterprise operations;
- to encourage wide ownership of shares;
- to minimize the involvement of government bureaucracy in enterprise operations;
- to promote capital investment;
- to derive capital incomes for the Treasury.

The government further advanced the following reasons for wanting to undertake a privatisation programme³⁰:

- The parastatal sector was not operating to capacity;
- Since nationalisation, the quality of goods and services had steadily deteriorated;
- Most parastatals were operating at less than 50 percent capacity;

²⁸ Address By The President, Mr. F.T.J. Chiluba, at a meeting with the Representatives of Donor Countries At State Houses, on 5th December, 1991

²⁹ parliamentary Debates, 16th June-9th July, 1992, p.105

³⁰ Ibid., p.106

- The government had neither the administrative nor financial ability to improve this situation;
- According to World Bank reports, the parastatals had cost the government US \$ S455 million in hidden subsidies (for instance, to enable Zambia Airways pay landing fees to I.A.T.A.), between 1985 and 1989 as compared to dividends of only US\$ 22 million paid to government³¹;
- Parastatals suffer from price regulations, and subsidies mask inefficiencies;
- Parastatals are clearly overstaffed and poorly managed;
- Privatisation results in the efficient mobilisation of resources;
- Privatisation promotes competition, leading to higher levels of investment and greater efficiency in the economy;
- Privatisation limits political interference in decision-making, which enables private shareholders to impose the financial discipline of private capital markets;
- The state is a poor entrepreneur in that it does not investigate whether its investments in public enterprise could be making higher returns elsewhere.

The Zambian government hence put into place guidelines governing the implementation of the privatisation programme, thereby, liberalising the economy. The Privatisation Act³² was enacted and it outlined the procedure and policies governing the privatisation programme in Zambia. The government also enacted investment laws so as to create an enabling environment to promote and facilitate new investment.

³¹ Ibid., p.106

³² Chapter 386 of the Laws of Zambia

CHAPTER TWO

2.1 THE PRIVATISATION ACT

INTRODUCTION

For privatisation 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 privatised enterprises. The rationale behind this lies on several assertions. Firstly, that privatisation will help reduce the borrowing requirements of the public sector, as the 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 competitive market forces will determine them³³. This then results in a more active and more effective citizens. This results in economic growth.

The MMD economic thrust was moulded around private initiative, promoting market forces to allocate resources efficiently and minimizing government exposure in the economy. Its policy was of total economic liberalisation and made a meaningful step by creating the legal framework upon which the whole programme was to proceed, and by which institutions concerned with the privatisation process were to be supported.

It is the work of this dissertation to show whether the legal framework through the Privatisation Act and the Investment Act have helped in the attainment of economic freedom.

The term privatisation may be defined as the transfer of return to the private sector or management of activities previously undertaken by the state or by municipal or other public authority. The Act defines it as, *the transferring 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 owned enterprise wholly or partly owned by the government.*³⁴ The process of privatisation is achieved by the divestiture of an existing state owned enterprise in the

³³ Kinley, L. Privatisation in Africa., p.49

³⁴ Section 2 of the Privatisation Act, Chapter 386 of the Laws of Zambia

form and condition in which it can be sold. Divestiture means “*disposing of the whole or part of the assets and shares of a state owned enterprise*”³⁵

OPERATION

The Zambia Privatisation Agency (ZPA) was established to carry out the mandate of privatisation. It is empowered to plan, manage, implement and control the privatisation of parastatals in Zambia. It comprises of eleven members who are mostly drawn from the private sector. There are three government representatives- Permanent Secretary of the Ministry of Commerce, Trade and Industry, the Permanent Secretary of the Ministry of Finance and National Planning and the Attorney General. The private sector has nominated representatives from the following organisations: Zambia Institute of Chartered Accountants, Zambia Congress and Trade Union, Zambia Federation of Employers, Banker’s Association of Zambia, Law Association of Zambia, Zambia National Farmers Union, Churches, and finally the Dean of School of Business of the Copperbelt University³⁶.

Though the Agency is an independent body, it lacks resources to effectively carry out its duties. The ZPA has and is largely dependent on the donor community for its funding. This is, financial and personnel for it to successfully conduct its duties. In the facilitation of privatisation of parastatals, the Agency must have fixed accessible and adequate funds that will enable the Agency to carry out its functions which include planning and management of privatisation process. This is not fixed because donations are seldom given and usually within the discretion of the donor.

An Agency must consist of personnel that are well vest in the technical know-how that accompanies privatisation. This includes technical, financial, legal and industrial knowledge associated with the privatisation. Further, the Agency must have sufficient power for effective and timely decision making. This authority should be set in the enabling legislation which includes decrees, ministerial regulations and statutes. Lack of

³⁵ Ibid.

³⁶ Section 5 of the Privatisation Act, Chapter 386 of the Laws of Zambia.

specific provision by the Act leaves decision making at the discretion of the Agency and this has led to unsatisfactory results. Privatization is a serious matter to any country, thereby, need for serious attention to handle it diligently. The fact that the transition was the first from the time of independence, there was need for the people well vest in the field to study the programme and to handle the transition. There was also need for finances to be readily available for the programme.

An Agency must be relatively independent in order to implement the enabling legislation in a manner that best serves the industry and objectives. The ZPA from the time of its inception to date has had insufficient manpower. This can be noted by the problems that the agency faced in 1992 when there were too many bidders against a limited number of negotiators from ZPA³⁷. As regards skilled personnel, the Act does not provide for the qualifications that each appointee to the Agency should have. It merely provides for appointment of representatives from various organisations. This has raised a lot of questions from the public as regards the people entrusted to run the privatisation of the country, hence a lot of suspicion that they carried on the programme not in the best interest of the country. The Act does not provide for the specific qualifications that members of the negotiating team should have.

The Privatisation Act provides that the functions of ZPA include ensuring that monopolies are not created in the process of privatisation and monitoring the process of the privatisation programme in Zambia.³⁸ In carrying out the privatisation process, the Agency must ensure that no monopolies are created. It is submitted that the privatisation process in Zambia has been merely the transfer of companies from the government hands to private hands. The existence of monopolies that occurred before the inception of the privatisation programme have been maintained. For instance, upon privatisation of Zambia breweries, it was split into two companies, that is, Zambia Breweries Lusaka and Northern Breweries Ndola. Due to competition between the two companies, they decided to merge thereby undermining the prevention of monopolies. Another example is

³⁷ ZPA progress report from 4th July -31st December, 1992, p.4

³⁸ Section 8(2) CAP 380

Chilanga Cement plc limited which has a monopoly in the production of cement in Zambia.

With respect to monitoring the process of privatisation programme, the question is, to what extent should the programme be monitored? Shall it end after privatisation? The Act is silent on this aspect. The Agency must be able to monitor the performance of an enterprise after its divestiture into private hands. This is to ensure that the companies operate in accordance with and in observance of the laws incidental to the privatisation process. This could include compliance with the provisions of the Companies Act 1994.³⁹

Further, the privatised company must not hamper the local industry. The Privatisation Act has not provided for the protection of the local industry and the jobs of the workers for the privatised parastatals. Further, due to the hurried enactment of the legislation on privatisation, the need for ZPA to coordinate with other regulators such as government agencies dealing with the regulation of imported goods in the prevention of unfair trading practices by the entrepreneurs of privatised companies was not provided for. This submission is based on the tendency of privatised companies continued importation of goods obtained in Zambia from abroad. One such example is Zambia Breweries, which used to buy maize grain for brewing the beer from Zambia National Milling Company but upon privatisation, it began importing from South Africa at the expense of the local industry. Shoprite is another company that has continued to import agricultural produce from South Africa. The same goes for Arcades Spur Shopping Mall. Such practices have culminated into the continued unfair trading practices. Locals are impoverished through regulations of their agriculture industry by importing everything from tomato to fresh milk. This has resulted due to the agency in complying with the International Monitoring Fund conditionalities as earlier noted. There was no foresight of possible effects of privatisation, and the protection from such effects thereof on the Zambian part.

The failure to monitor performance of privatised companies has also led to the collapse of a number of companies after privatisation. The aim of the government was to privatise

³⁹ Chapter 388 of the Laws of Zambia

the companies in the shortest time possible without taking into consideration the ability of the potential buyer in running of a company scheduled for privatisation. These indicate the weaknesses of the Act as it was supposed to have provided for such shortcomings so that appropriate measures could have been provided for. For instance, for government interference so that the privatised company does not go completely under before it can be gotten back for other investors to take it up because if left, the cost will even be more less and valueless. The Act could have made a provision for such entities to be gotten back by the government.

Government's role in the privatised strategic companies is only through the acquiring of a golden share. This accords the government special rights to intervene in the operations of a company which intervention is caused by specific actions undertaken by the company.⁴⁰ The Act enables the Minister of Finance, on the advice of the National Assembly to retain such a share in a state owned enterprise on national interest. For instance, the Zambian government has retained shares in the privatised mines in order to safeguard government interest with regard to changes of control, sale of material assets and broad representation. It is also meant to ensure that privatised companies comply with government policies. This provision operates as a check on the private entrepreneurs by the government.

It is observed that the government has abused the said provision. For instance, in the privatisation of the mines, the negotiating team was not formed in accordance with the Privatisation Act of 1992. The committee instituted by the government to privatise the mines was not a legal entity. A politically appointed committee sidelined the functions and authority of ZPA. Such interference negates the autonomy of ZPA.

On the methods of privatisation, the Act provides for various techniques. However, it does not clearly define or explain what each method involves. For the privatisation to yield success, the law should clearly state the procedure in each technique. Potential investors who are ignorant as regards the methods may find it difficult to understand what is involved under each mode. ZPA employs different types of methods. These include; public offering of shares, private sale of shares through negotiated or competitive bids,

⁴⁰ Section 2 of the Privatisation Act, Chapter 386 of the Laws of Zambia

sale of the assets and business of the state owned enterprises and management or employee buy outs by management or employees in the state owned enterprise⁴¹.

On the method of purchasing of shares, the intention to bid for purchase of shares by a minister is based on the condition of public disclosure. However, the Act is silent on the legal consequences of non-disclosure. It is submitted that the inability to impose sanctions or penalties upon non-disclosure undermines the strict adherence to the said provision. Section 38 of the Privatisation Act deals with the publication of information and states that it shall be by notice in the Gazette. This is not good enough considering the sensitive and attention the divestiture in Zambia. This raises a lot of questions to the Zambians on the transparency of the privatisation programme and the adequacy of the Privatisation Act.

On the part of the employees of the parastatals to be privatised, the Act did not make any provisions as regards their welfare after privatisation, thereby ignoring the plight of the employees. As privatisation involves change of ownership and therefore entailing the requirement for a new contract, labour laws must be able to provide for the post divestiture situation of state owned enterprise employees. However, the labour laws do not directly make provision for the effects of privatisation. Even though the law gives the state owned enterprises an opportunity to choose whether or not to continue with the company after privatisation, most employees are usually in a desperate position to stay on. The inability of the labour laws to protect employees from the effects of privatisation, such as numerous job losses and a reduction in the conditions of service for remaining employees has invited a number of court cases against the ZPA or the privatised company.

In the case of **National Milling Company V Grace Simataa and three Others**⁴², the appellant upon privatisation notified the workers that it had moved away from the ZIMCO conditions and would have and use its own. Before privatisation, ZIMCO as a parent company had laid down conditions with regards to redundancy packages. These

⁴¹ section 8(2) (e) Privatisation Act, Chapter 386 of the Laws of Zambia

⁴² Supreme Court of Zambia Appeal No. 122 of 1999

conditions had to be implemented by subsidiary companies which included National Milling Company Limited. After privatisation, the respondents were declared redundant and the redundancy package offered to them was in accordance with the statutory instrument no. 99 of 1994, contrary to the initial package offered by ZIMCO. They were inferior to the ZIMCO revised package. The respondent sued the appellants. The learned trial judge agreed with the workers finding that the appellant had changed the conditions of service for worse and without the consent of the affected employees. The Supreme Court upheld the decision of the High Court.

In the privatisation of National Milling Company Limited, there was no protection for Zambian managers when the new owners cleaned them out. Despite the qualifications of the Zambian managers, the new owners brought in expatriates whose qualifications were not questioned. Even though immigration department regulates the number of expatriates that may be allowed in accordance with the individual sale agreements, the immigration's role has not been effective. This can be attributed to corrupt practices. This has led to the loss of jobs by a number of well qualified employees and resulted in another problem of brain drain in the country.

Even the United States of America, the leaders of free market world, has adopted restrictions that protect the local industry. For instance, in 1998, the U.S congress approved legislation raising the number to visas to highly skilled technical worker from 65,500 to 115,000. No matter what investment one takes to the U.S, an investor is not able to import into that country any number of workers. They protect their own jobs. For Zambians, privatisation has left a lot jobless, therefore, culminating all sorts of vices that go with high levels of unemployment.

Development is a multi-dimensional process and it does not only entail closing the gap (economic growth), but also calls for a sustained commitment to uplifting the general social, cultural and political standards of a people.

Privatisation is an obvious vehicle of attracting foreign investment in Zambia taking into consideration the fact that the average income of a Zambian cannot allow him or her to

save enough money so as to purchase shares in a company. Thus the demand will be high given the limited local capacity to buy state enterprises or even shares. Section 30 provides: that foreign investors shall be entitled to incentives under the Investment Act, if such an investor has acquired shares in a State Owned Enterprise (SOE) where;

- a) Expertise is needed to upgrade efficiency of the State Owned Enterprise
- b) Participation is necessary to promote the export market
- c) The measure of business requires global linkages and international exposure; or
- d) Capital investment or foreign technology is required to expand the capacity of the

business operations.⁴³

A foreign investor has been defined as a person who brings into Zambia foreign exchange for the purchase or sales in a state owned enterprise or for additional investment in a state owned enterprise.⁴⁴

The reasons for encouraging foreign investors in the privatisation process is because most Zambians lack the financial base where they can borrow money to invest in large enterprises, hence foreign capital becomes critical and important. Most investors would rather acquire SOE rather than establishing an enterprise, as the cost of infrastructure will be minimal.

In Zambia however, privatisation has primarily being undertaken to meet the conditionality of requirements of securing loans rather than ensuring profitability of the firms being sold, therefore, leading to the bad state of development the country is in today. Leaving the citizens less participatory in the economic affairs of the country, hence no economic freedom. The policies have to a great extent been influenced by the donor community instead of domestically formulated development concerns. This has led to a number of companies being sold at give away prices.

Privatisation should be geared to result in the economic empowerment of Zambians, not merely transferring state monopoly into foreign monopoly. Indigenisation could have been the main goal in order for the country as a whole to benefit from the undertaking.

⁴³ The Investment Act, Chapter 385 of the Laws of Zambia.

⁴⁴ Ibid, Section 2

This has not been the case in Zambia as the IMF and the World Bank have played a major role in dictating what companies should be privatised. For instance, when the IMF country representative Dr. Mark Elleyne gave threats that Zambia would not get the US \$1 billion debt relief under the HIPC, if ZANACO bank was not privatised.

It can therefore be deduced that the privatisation system has not done much for the country as it was primarily aimed at settling the huge debt that the country had accumulated. This can be seen even from the legal framework as it did not provide for the citizens growth but aimed at pleasing the foreign investor. Everything was done in a hurry and with just one objective, which was debt cancellation. What happens next, will we get our industries back?

2.2 THE ZAMBIA INVESTMENT ACT

In discussing how the laws countenance liberalisation in order to attain economic growth and independence, we shall confine ourselves to certain salient features of the Act.

Investment laws relate to invest in Zambia. It states in its preamble, “*an Act to revise the law relating to Investment in Zambia so as to provide a comprehensive legal framework for investment in Zambia.*”⁴⁵ It provides for the continued existence of the Investment Centre from the repealed Act of 1991.⁴⁶

The Investment Centre coordinates government policies on and facilitates investment in Zambia so as to provide a “one-stop” support facility to investors.⁴⁷ Some of the functions of the centre include⁴⁸: *promotion of investment in Zambia; registering investors; monitoring the performance of enterprises approved by it and enforcing compliance with the terms and conditions of investment certificates approved under the Act; to establish and maintain institutional liaison arrangements; provide consultancy*

⁴⁵ Investment Act Chapter 385 of the Laws of Zambia

⁴⁶ Ibid

⁴⁷ Ibid., Section 5 (1)

⁴⁸ Ibid., Section 5(2)

services to investors; and to undertake economic and sector studies including market surveys, with a view to identifying investment opportunities.

Part Three of the Act provides for the procedures for Investment in Zambia. It provides that any person investing in a business enterprise may apply for an Investment Certificate provided that in respect of certain industries specified in the second schedule of the Act *“the Investment Board shall not issue an investment certificate to an investor until the investor obtains the necessary licenses, authorisations or permits from the relevant ministry or body”*⁴⁹

It is important to observe that an investor can apply for an investment certificate in any industry except industries specified in the second schedule which include: ammunitions, military vehicles and equipment, aircraft, explosives and any other military hardware, any industry manufacturing poisons, narcotics, dangerous drugs and toxic hazards and carcinogenic materials, any industry producing currency, coins, and security documents.

The Zambia Investment Act needs to close certain sectors of the economy to foreign investors and reserve them for Zambians or local investors only. The importance of restricting certain sectors of investment to local investors lies in the fact that it helps to stimulate investment locally as the profits that are made are not repatriated but are used for savings thus creating a base for other local investors to borrow money from the banks.⁵⁰ This also economically empowers the citizens to effectively participate in the country’s economic growth.

However, foreign investors must be attracted to large scale, strategic or targeted investment such as the konkola copper mines which needs equipment for mining. Therefore, the Act should define permitted investment in such a way as to allow only those kinds of projects which have real potential for making the desired contribution to the economy such as in mining, manufacturing and tourism sectors. It can also promote export-oriented products in order to earn the much needed foreign exchange as opposed to import substitution.

⁴⁹ Mwenda, K.K., (2001). *Contemporary Issues in Corporate Finance and Investment.*, P.5

⁵⁰ Chikonde, N. P: *The adequacy of Investment Laws in Promoting Investment in Zambia.* Obligatory Essay, August, 2001, p.40

Part Four of the Act provides for General Incentives, which apply to any investor investing in a business enterprise under the Act. An investor shall be taxed on that portion of income which is determined by the commissioner as originating from the export of non-traditional products at the rate of fifteen percent. Also, on income received from a rural enterprise for each of the five charge years for which such business enterprise is called on, reduced by such amount as is equal to one seventh of that tax which would otherwise be so chargeable on such income⁵¹.

Section 29 as amended in 1996 lists the incentives of a small scale entrepreneur or a village enterprise registered under the Small Industries Development Act.

However, Statutory Instrument No. 5 of 1996, which amended the 1993 Act, removed special incentives, but those who were entitled to these incentives and got them before the amendment still enjoy the incentives which were offered in the 1993 Act⁵².

Section 36 provides for the transfer of funds. It states, notwithstanding the provisions of any written law relating to externalisation of funds, a foreign investor who has registered foreign capital with the Bank of Zambia shall be entitled in respect of a business enterprise to which the Investment Certificate relates, to transfer out of Zambia in foreign currency and after payment of the relevant taxes.

It has been argued that the Investment Act does not represent a comprehensive legal framework for investment law in Zambia. This is because there are certain aspects of investment that the Act does not cater for. For instance, the Mines and Minerals Act solely govern investment with regard to mining of minerals. In its preamble it states “*an Act to make provision with respect to prospecting for and mining minerals... to provide for matters connected with or incidental to the foregoing.*”⁵³ Section 4 provides, “*subject to the other provisions of this Act, rights of prospecting for, mining and disposing of, minerals may be acquired and held under and in accordance with this Act.*”⁵⁴ section 5 states, “*a person shall not prospect for minerals or carry on mining operations except*

⁵¹ Ibid, Section 20,21

⁵² Ibid, Section 31(1)

⁵³ Mines and Minerals Act Chapter 213 of the Laws of Zambia

⁵⁴ Ibid

under the authority of a mining right granted under this Act."⁵⁵ The investment Act as amended in 1998 by Statutory Instrument No. 10 provides that any investment in mining shall attract income tax deductions provided for under the Mines and Minerals Act. Therefore, investment in the mining of copper, lead, zinc, or cobalt is outside the ambit of the Investment Act. Yet it is an Act strictly enacted to oversee all invests in Zambia.

Furthermore, the Investment Act governs direct foreign investment and it does not make provision for portfolio investment. This is governed by the Securities Act⁵⁶ through the Lusaka Stock Exchange Commission. This goes further to show that the Investment Act is not complete, not comprehensive to handle invests in Zambia.

Moreover, it is not mandatory for any person investing in Zambia to obtain an investment certificate. In fact it is optional. The effect of this is that there are so many investors without Investing Certificates. This actually makes it difficult to tell how much investment is coming into the country and how much is beneficial to the country. This has resulted in the failure by the Investment Centre to monitor all the investors Zambia, as it can only monitor those investors with Investment Certificates. This has led to a number of abuses of other related laws like the labour laws. Also, the ZIC does not give a true reflection of investment in Zambia.

One of the functions of the centre is to monitor the performance of the enterprises approved by it and enforce compliance with the terms and conditions of the investment certificates approved by it, under Section 5 (2) (b). In practice, this is not the case; most of these investment projects are not monitored. For instance, as at December 2005, more than 2000 investors acquired valid licences from the Investment Centre. The centre only managed to monitor about 840 investors. The main problem has been attributed to poor funding by the government to enable it carry out its functions effectively. The centre is not financially independent as it depends on others to carry out its legal duties. This makes it very easy for investors not to comply with the conditions and terms set fourth in the investment certificates. This has also led to investor's diverting from their original

⁵⁵ Ibid

⁵⁶ 1993, Chapter 384 Laws of Zambia

businesses to illegal businesses as evidenced by an increase in money laundering cases. This is also reflected from the number of licences revoked by the Investment Centre from the few investors that it had monitored. The centre has since revoked 60 projects from 1993 to 2005.⁵⁷

The Investment Centre has not been given the mandate to register each and every investor who comes in the country. This has made the Investment Centre lose its whole purpose. This has resulted in the Investment Centre's failure to give the correct reflection of what is happening on the ground. There are a lot of investors in the country who are conducting their businesses without registering, as it is not mandatory to do so. As no law is guiding such investors, business is conducted in whatever way, and this has led to ill treatment of the Zambians who work for them. This trend has also attracted brief-case investors who do not remit any revenue to the government but conduct their profitable businesses on the Zambian market.⁵⁸ The government is therefore, losing a lot of revenue.

Besides, the Act offers general incentives to investors and these are also found in the Income Tax Act under Section 33 and Section 34 A. Section 18 of the Investment Act provides that the general incentives shall apply to any investor investing in a business enterprise under the Act. This when construed actually entails that the Act does acknowledge the fact that an investor can be investing in Zambia without seeking protection from the Act.

Therefore, even if a person has not obtained an Investment Certificate, they still enjoy these incentives without having to pay large sums of money for registering with the Investment Centre. This has resulted in the loss of the much needed revenue and resources as the unregistered investors are conducting their businesses freely. This has also been attributed to lack of government's policy to have some regulatory controls of the economic affairs for the benefit of the country in general.

⁵⁷ Current statistics from the Investment Centre.

⁵⁸ Chibamba Kanyama's discussion on the effectiveness of tax collection in Zambia, public forum, August, 2006

The Investment Act does not regulate transfer of technology to Zambia. It merely makes provisions for the centre to keep records of all technology transfer agreements relating to investments under Section 5(2) (e). Their function should be regulating the technology being transferred to Zambia and the appropriateness of such technology. Such technology should be seen in the light of implementing the Zambian socio-economic plans and needs. For instance, Zambia needs a labour intensive technology because of the abundance of cheap labour in the domestic labour market. Capital- intensive technology would create unemployment while constraining free market forces and competition by creating oligopolistic tendencies in the market. The need to have regulation of technology transfer can not be over-emphasized.

As the Act helps investors to obtain a work permit of up to five expatriate employees, experience has shown that a number of investors just come here to stay using an investment certificate instead of investing. The Act does not also specify the number of shareholders entitled to come and live in Zambia. It is basically silent on the issue. Instead, the requirement is given under the Lands Act.⁵⁹ This is a clear indication of the incomprehensiveness of the Investment Act.

Furthermore, there is need to harmonise the laws with regard to investment in Zambia. Section 36 provides for the transfer of funds. An investor could repatriate all the profits after paying taxes. However, the Bank of Zambia introduced some foreign regulations and guidelines thereby limiting the amounts of profits that can be repatriated. These include:

- All exports to be receipted locally and at least 75 percent of this amount should be deposited with local banks immediately upon receipt but in any case not exceeding 180 days from the date of exporting. Also remittance, other than dividends, by business entitles to be made against invoices consistence with the bills of entry collected by ZRA.
- All external payments above US \$ 5,000 to be channeled through commercial banks. All domestic transactions to be charged and settled in Kwacha except for licensed tourist

⁵⁹ Lands Act No. 29, 1995 under Section 3 states that 75% of the shareholders should be Zambians for an investor to be given land for investment in Zambia.

enterprises authorised by the Bank of Zambia. Non-observance of these regulations attracts stiff monetary and other penalties.⁶⁰

Therefore, the amount of money repatriated by an investor is subject to these regulations. This acts as a risk to an investor. Among the most important risks to be faced by an investment project abroad are those related to foreign exchange. High inflation rates of its currency, can severely limit, or even eliminate the profitability of the project.

In fact in Zambia the exchange rate is so high and it fluctuates, for example, at present, the dollar is trading at K3700,00 per 1U.S dollar whilst in the mid of the year of 2006 it came down to K2900 per 1U.S dollar.

However, an investor can still argue under the Investment Act Section 36 that he is entitled to repatriate all his profits as long he has paid the relevant taxes and that he or she has registered his foreign capital with the Bank of Zambia. For instance, Spur Bakery alone makes over fifty million Kwacha weekly but it converts all its money into foreign currency and repatriates all its money to South Africa.⁶¹ Shoprite is also another example which repatriates its profits. This is coupled with tax exemptions and importation of goods in the country in preference to locally produced goods. Most of the companies that have been given tax exemptions are the ones which have been repatriating profits and the danger is that after the tax exemption period expires, there is a possibility that these companies can leave the country like others have; smart center, supreme furnitures, Guys and Girls, Arcamans and many others.

Moreover these are supposed to be government's sources of revenue through tax, but strange enough these are the companies that are enjoying tax privileges.

The investment laws should be aimed at attracting investors and maximizing benefits by putting in place regulatory schemes. Indeed this is what the legislation should aim to achieve.

Therefore, the need for adequate provisions in the Investment Act is inevitable.

Generally speaking, the ability of a foreign business to undertake an investment project in a foreign country is subject exclusively to the sovereignty of the host country. It is well

⁶⁰ Bank of Zambia, Foreign Exchange Regulations and Guidelines

⁶¹ Discussion with spur employee

settled in international law that a state has the right to control the movement of capital into its territory, to regulate all matters pertaining to the acquisition and transfer of property within its national boundaries, to determine the conditions for the exercise of economic activity by natural or legal persons and to control the entry and activities of aliens.

Therefore, as much as we need foreign investment for our development, measures must be put in place to ensure that investment is forthcoming as the onus is solely on the host country.

This chapter has examined the investment laws in Zambia by looking at the salient provisions of the Investment Act of 1993 and the Privatisation Act of 1992 as well as a critical analysis as regards their efficacy.

It can be deduced from the discussion that the legislation was done in a hurried and ambitious manner, partly due to the tailor-made policies that were not viable and hence failed to achieve the expected national economic development. As a result, the efficacy of the laws has been affected. The failure to take into account the need to place laws in conformity with other related laws led to inconsistencies, conflicting legislation and lack of co-ordination among regulators involved in the enhancement of investment. The enactment of the Privatisation Act and Investment Act failed to take into account the social and economic conditions pertaining within the country. More focus was placed on the attraction of investors as a means to attain the much needed flow of capital. This can be evidenced from the freezing of salaries and wages of the civil servants in the bid to attain the Highly Indebted Poor Countries (HIPC) completion point. Less attention has been paid to poor working conditions both in government and private sector; the overly sidelined issue of casualisation; the problem of street kids; the students' plight,⁶² and generally the socio-economic aspect of the nation as the poverty levels are now at 68% of the countries population.

⁶² Former Zambia's Vice President Lupando Mwape's sentiments that students' riotous behaviour will scare away investors.

However, despite the failure to achieve the intended results, there is room for improvement. This can be achieved through the formulation of legislation that is in conformity with the macro economic policies tailored by all stake holders taking into account all the internal factors. In an effort to attract investment into the country, the laws must not only target investment, but also seek to achieve economic development that will benefit the average Zambian citizen. For instance, the change in government policy to direct the Bank of Zambia to issue or rather to regulate the flow of foreign currency out of Zambia can be attributed to the fact that despite repealing the Exchange Control Act, it has not necessarily resulted in increased investment levels and that the desired amount of foreign capital may not be forthcoming as most of it will be siphoned out of the country.

With the attainment of the HIPC completion point, there is need to revisit the laws and ensure that Zambians feel the benefits of their long suffering. Studies have to be conducted so as to ensure that strict laws are put in place which will restore the economic freedom that has been lost. Zambians need to be empowered once again to effectively foster for the development of their country and to attain economic independence.

Zambia must adopt regulatory and fiscal framework that are complete and consistent. Incomplete and inconsistent laws and regulations often allow great ministerial or administrative discretion which can be abused and hence detrimental. The laws must come out with a clear national vision which will encompass the country's and international policy aspects economically and socially.

Offences and penalties must be included in the investment regulatory frameworks to ensure compliance of conditions and rules that may be set out for investors. For instance, strict adherence of the labour laws to avoid ill treatment of the Zambian workers. This would help regulatory authorities to effectively monitor investors.

The Zambian Investment Act must provide for the minimum requirement on the amount of investment that can be brought into the country. Also, the sort of investment that falls under the Act must be stated. The Act should also provide restrictions on the number of shareholders who can be accorded immigration status for an investment of a given

magnitude. For instance if a country has the capacity of employing 30 employees and it has 10 shareholders, only 2 should be accorded immigration status, so as to create employment for local people.

The Act should further close certain sectors of the economy to foreign investment and reserve them for Zambian investors. This is to encourage local investors to participate in the economy and create a local base for them.

The Act should make it mandatory for all investors to register with the Zambia Investment Centre. This will enable the centre to provide adequate information with regard to the actual number of investors, which sectors they are investing in and which sectors need to be boosted. Apparently, the information that the centre has, only reflects of investors that have registered with the centre. Therefore, not a true reflection of investment activities in the country.

The Investment Act should make provision for portfolio investment to make Investment Act comprehensive. This will create a base for capital market.

The Investment Centre needs to extend the circle of collaborating institutions to include the active participation of Local Government, other Government Departments and Ministries, at the level of project development, assessment and monitoring. In this way, the promotion and facilitation of investment in Zambia will not be regarded as the sole responsibility of the Investment Centre, but of all institutions. However, this will require effective co-ordination and communication between the Investment Centre and other Government Ministries.

The Centre should harmonize the licensing procedures of some of the institutions issuing secondary licenses to cut down on the procedures. Moreover, that is the essence of a one-stop shop.

Further, the Investment Act in the absence of exchange controls must provide for re-investment. Foreign investors must not be permitted to repatriate all their profits. They

should be given a conditionality of ploughing a portion of their profits back into the country either in a new investment or an expansion of the existing investment.

The Act should provide some regulatory mechanism for technology transfer and it should set up criteria for ascertaining its appropriateness in the context of investment in Zambia. This will mean that only appropriate technology compatible with the socio-economic situation in Zambia will be allowed. Hence, will be beneficial to the country as a whole.

Areas of improvement in the Privatisation Act would be a moment too late because as the process is almost through. However, countries intending to embark on a privatisation process of its state owned enterprises must view privatisation as part of a comprehensive economic reform programme, than a mere transfer of ownership. It needs to clearly define the rules of the state and the private sector in production and distribution of services. Further, it is advisable to start with smaller, less complicated companies to minimize the risks of failure. Thereafter, large commercial companies may follow. They must clearly define the role of the privatised companies and put in place strict rules that ensure that the privatised entities remain beneficial to the socio-economic needs of the country. For instance, the plight of workers in the privatised entities and the new conditions of service must be terms of conditions for privatisation. It should not just lay off people in the streets as the experience gained from Zambia of not finding better alternative to put back people into employment shows that the exercise is unattainable and increases unproductive citizens thereby making the state poorer as evidenced from the country's position of being the 11th poorest countries in the world.

In the privatisation of a company, the price should not be the driving motive in accepting bids, but a whole range of broad consideration such as financial and technical capability of the investors to build a growing and profitable enterprise and also achieving the objective of broader participation by citizens. The legislation on privatisation must provide protection of local labour and their conditions such as minimum wages and redundancy or retirement packages, but to mention a few. One case in point is the outcry by the UBZ ex-employees who are still struggling to get their packages whilst more than

426 of their colleagues have since died without getting their money⁶³. This is after 15 years of privatisation of the UBZ.

2.3 CONCLUSION

Despite the privatisation and promotion of investment laws, there has been little meaningful investment in Zambia. However, Zambia needs to put in place legislation, which while enhancing foreign direct investment will also promote the local investor. Encouragement of domestic or local private investment is necessary to assist indigenous entrepreneurs to mature so that they can in the long run effectively bargain with foreign investors for mutually beneficial investment contracts. Zambians have the primary responsibility to develop their country and they should be assisted most in this regard. Therefore, there is need to close certain sectors of the economy to foreign investors and reserve them for Zambian or local investors. However, there is also need to attract large scale, strategic or targeted investment; there should be an area where foreign investors must be actively encouraged to participate so that they bring in meaningful investment in the country.

⁶³Ex-UBZ employees appeal to Levy over benefits., The Post, Wednesday May 17, 2006p13

CHAPTER THREE

3.0 THE IMPACT OF LIBERALISATION

The main objectives of the government's economic policies were to restore the Zambian economy; accelerate the manufacturing and agricultural sector; improve and expand economic infrastructure for foreign direct investment, tourism and others; and to improve and expand social infrastructure to improve living standards and to service the huge debt⁶⁴. This was to be achieved through the liberalisation programme.

There is a two-fold view to the impact of liberalisation. Some would argue that given the situation that the country was in, the country has achieved tremendously from the liberalisation programme. Others have viewed the programme as a total failure. However, it is the aim of this paper to show whether the liberalisation programme has brought about economic freedom or independence.

3.1 ECONOMIC FREEDOM

Freedom is literally taken to mean liberty⁶⁵. Economic freedom can be attained if the people are at liberty to take up developmental projects that would enhance the growth of the economy. Economic independence is a situation where the people of a given society effectively and efficiently drive the economy. This is where the country can effectively and efficiently utilize its resources so as to trade with the outside world to earn the much needed foreign exchange to better its own economic growth.

Economic freedom further connotes the full participation of the citizens of a country in the economic affairs of the country. This can only be achieved if each and every citizen was to fully realize his or her own potential and this could only be realized if the people were empowered. This is by having the education and skills to employ in a given environment. Therefore it is the government's responsibility to ensure that it offers its citizens an able environment to attain that. This is by spending on its people on education and skill training. Then the people would be effectively involved in the running of the country.

⁶⁴ Sakala, R. and Chanda, D., (Ed) *Poverty Eradication. The Zambian Experience.*(1999), p.175

⁶⁵ Oxford Advanced Learners Dictionary of Current English., p.487

Having access to the basic needs of life and living a minimum standard of living as envisaged by the UDHR are indicators of economic independence. This is access to good health, shelter, quality education and other social amenities.

We can say that we are economically independent as a country when we are able to sustain ourselves financially without asking for budget support from donors, when there are more jobs available, the industrial base is growing, the education system and the health sector is performing well.

With the open door policy, economic freedom can only be attained if the citizens are protected by the government from being disadvantaged through unfair competition from non-Zambians in economic affairs. If the government empowered the citizens like through an innovation of the Empowerment Act⁶⁶ which we are yet to see its implementation, development in almost all sectors was going to be seen and felt by the Zambians themselves. From what has been highlighted, the country even after 42 years of independence has not attained economic freedom. All developmental projects are donor driven. Even the anticipated attainment of the Millennium Development Goals had to be set by the cooperating partners. The country could not set its own road-map to attain these basic human needs.

Chief Chamuka of the Lenje people of the Central province of Zambia has stated that the country would only be economically independent if they stopped depending on foreign aid⁶⁷.

Taking the economic history into account, the liberalisation process can be seen to be the best option that the country had to undertake. As at the end of 2003, Zambia's external debt amounted to 7.2 billion United States dollars. Over the years, Zambia has negotiated different ways of dealing with this huge amount of debt. In 1987, President Kaunda

⁶⁶ Act No. 9 of 2006 which among other things also provides for the president to prescribe areas of commerce and industry that should be reserved for Zambians.

⁶⁷ Times of Zambia, Tuesday October, 24th 2006., p.3

simply stopped meeting the agreed upon debt servicing, before backing down in 1989⁶⁸. The international financial institutions came in with conditionalities on the state to help in the management of the debt; among them were the liberalisation and the privatisation programmes to ensure that the debt was paid. The country undertook the programmes in 1991.

However, in 1997 the World Bank and the IMF declared Zambia a “highly indebted poor country”. This meant that we could be eligible for some debt relief: according to a formula of “sustainability” based on our export earnings and government revenue ratios⁶⁹.

The good results have been that the country’s macro-economy is now more stable than it was in the second republic. The inflation rate for instance has come down to a one-digit figure. For the first time in more than thirty years; on April, 27th 2006, the inflation rate came down to around 9.8 percent. It has continued to come down and as of 26th of October, 2006, it was 7.6 percent.⁷⁰ This means that the people would have more money in their pockets with value. The kwacha strength in the first half of the 2006 has also shown some remarkable economic growth, it came down to about K2,900.00 per 1 United States Dollar in the month of May, 2006 unlike it was when it went up to as much as K4,600.00 per United States Dollar, taking into account that at some point in time, it was one kwacha to one dollar in the 1970s. This is a good indicator of economic stability.

One report on the progress of the privatisation in the sub-Sahara concludes that the response to, and the results of privatisation have been mixed. But the report shows that Zambia has been some how a success story, that “*Zambia has been the most successful privatisation programme and the experience there offers many examples of the best practices.*”⁷¹

The most remarkable achievement of the liberalisation programme to date is the cancellation of the country’s debt. On the 25th of July, 2006, Zambia’s debt reduced to

⁶⁸ Akashambatwa, M.L., *Zambia 40 years After Independence: A Comparative Analysis of Economic Development During Colonial Office Rule(1924-1964) and since Independence 1964-2004* AIACAED

⁶⁹ Ibid.

⁷⁰ Central Statistics Office, Current Statistics on Inflation.

⁷¹ World Bank Report on Privatisation in Africa, 1995., p.321

500 million United States dollars after the continued cancellation of the country's debt by cooperating partners. The Germany government on the 10th of August 2006 reduced the country's debt further down by cancelling a further 906 billion Kwacha. All this is attributed to the country's successful attainment of the Highly Indebted Poor Country's completion point programme.

Also, the country is still recording an influx of foreign investors due to its investor friendly conditions or favourable condition for investment. This has been due to the continued building of investor confidence by the government.

On the other hand, the achievements met have been attributed to the sacrifice that the Zambians had to go through like the wage freeze of civil servants, and hence, not been positive in many ways. The programme has been met with a lot of dissatisfaction. Whilst the economic indicators are performing well, the situation has still not stabilised to state that the country is economically independent. Neither significant changes nor improvements have been recorded nor seen nor felt by the people.

3.2 FAILURES OR SHORTFALLS OF THE LIBERALISATION PROCESS

The liberalisation process has failed to yield desired goals as the whole programme has proven to be a failure to the many Zambians. Very little achievement has been recorded from this process, it has plunge the country in more poverty and difficulties.

The achievements been recorded should be seen and felt by everyone. For the inflation rate for example, ZAM chairperson Diego Casilli has stated that provided the production costs remain high, the inflation rate and the kwacha strength shall not be felt by the Zambian citizen.

In the first instance, the programme is foreign designed. As much as it was supposed to yield good results, it could have been possible if the whole programme was locally or indigenous based. The same goes to the inflation rate and a number of other things like prices of fuel; the Zambian government has no control over that, it is externally controlled.

The **JCTR** have also noted that despite the improvement in the economy, such as low inflation rates, the basic food basket for an average family of six has gone up. As at 3rd August, 2006, it had come to about K1, 408,700.00 in cost of essential items. Yet, studies have shown that an average Zambian leaves on less than a dollar per day.⁷²

The country did not adequately study the whole process, hence lack of harmonisation of the laws to curb the shortfalls which have negatively impacted on the whole system. For instance, no security was provided for by the law in the privatised parastatals to enable new employers to take up the employees nor immediate plans were put in place by the law to avoid the retrenched employees from becoming destitutes. If proper research was done, the country could have foreseen the poverty levels and economic handicaps at hand and it could have negotiated on the conditions given by the international institutions.

As not enough time was taken to undertake such a programme, many problems are with us today; one of them being casualisation. When investors come in the country, if they register with the Investment Centre, they are guided by the Investment Act, and in the Act, there are no strict rules on how the investor should carry on their businesses, hence, many cases of ill treatment of employees⁷³ and casualisation. From casualisation, employers escape a lot of responsibilities from the state. One of them being the remittance of Pay As You Earn (PAYE) which should eventually be benefited by the employee after retirement or eventual stoppage of work. Also, this means that the state can not even get any revenue from the employees to help in the development of the country as the law does not place such a responsibility on them to remit any tax such as Personal Levy. Casual workers get wages and not a salary. They are not fully employed for the relevant authorities to place certain obligations on them. Therefore, can not help the country as regards economic development as no revenue is collected from them. This is lack of study. The laws are scanty; as a result, the country is losing out and creating more difficulties for the country. As refuted by the ZCTU, this can not be fixed by mere

⁷² Living conditions in Zambia, 2005 by Central Statistics Office

⁷³ As evidenced from the recent Cinderella Company where the workers were locked up inside the factory and narrowly escaped death when fire broke out. Newscast ZNBC Tuesday 17th October, 2006.

workshops as suggested by the current Deputy Minister of Labour Mr. Austin Liato⁷⁴. Proper laws should be put in place.

The employment of casual workers has brought in many problems as the employers can not even remunerate them decently. This has resulted in escalating poverty levels as many live below the poverty datum line. As it is commonly being said that a Zambian lives on less than a dollar per day.

As the whole process was not carefully studied, the country has seen no meaningful achievement from the whole process. As with the investment laws, little was put in place to ensure that the foreign investors bring in meaningful investment. As can be observed from the previous chapter, there are neither specific guidelines nor direction on the part of the institution to properly direct the economy as regards development of the country. They were supposed to have studied which areas needed development the most so that when investors want to come, they give them available avenues and not what is happening at hand, investors are flocking in the stores, market places and our poor Zambians are being displaced. This has seen Zambians being squatters in their own country as they have to ask from the foreign investors for a place to trade from⁷⁵. The Zambians have nowhere to seek redress as the Act⁷⁶ does not provide any special guidelines as regards the same.

This has also resulted in the investors flooding the capital city. This has left out the other provinces of the country and has led to the rural-urban drift experienced in the capital city of Lusaka⁷⁷. People have abandoned their villages where they could have been developing if proper structures were put in place, for Lusaka where they turn to destitutes. The investors are protected by the Act.

This is at the cost of development. If there were proper guidelines, we could have recorded a number of industries in the country. If studies were carried out, ZIC could have been looking for investors to come and put up a processing plant for our copper so

⁷⁴ Times of Zambia newspaper, Wednesday 4th October, 2006

⁷⁵ As can be seen in the kamwala trading areas of Lusaka where Zambians are conducting their businesses on the corridors of the Indian Shops

⁷⁶ Investment Act, Chapter 385 Laws of Zambia

⁷⁷ Chief Kashiba of Luapula Province has bemoaned the neglect of investors and has called on the government to encourage investors to exploit the sleeping economic potential in the area. The post, Friday June, 2, 2006

that everything could be done here, for the country to realize more from our copper than what is currently obtaining, where the Zambians feel they gave away the mines on a silver plate as we are not getting a substantial amount to talk about and to rely on as our major economic asset.

Also, as the whole programme is internationally driven, the country has neglected to develop the resources that the country is endowed with. The donors are directing the country's economy. As a result, there has been no utilisation of resources in the country. We are totally out of control and very much under slavery for we can not think on our own as a sovereign state. This simply shows how economic independence is very far from being attained. No developmental project can be implemented without the interference from the donor community.

The country can not develop in cases where the foreign investor is given a tax free incentive for a long period. This has seen the country getting absolutely nothing from the privatisation process and the investment laws in place as there are neither proper guidelines nor political will to help uplift the standards of our people and the economy. No meaningful revenue is collected by the country to inject in the economy as the foreign investors keep ploughing from the country's resources. A number of them have escaped using this system at the expense of the Zambians. An instance can be given where a foreign investor came in and registered under the name of **De Clarke cotton** and was given five tax free years. In the fourth year, the company was sold and changed its name and was also given five years tax free period. This has led to collapse of the manufacturing industry which should be the backbone for development. The country keeps the local investors operate under unfavourable conditions for them to survive on the market, to keep its workers and to remit revenues to the government. A lot of them have gone under or kept a sizeable work force to remain operational. All this is at the expense of development and leaving the Zambians economically handicapped.

The main thrust when embarking the programme was only at attracting foreign investors and ignoring the effects. Others attribute it to the much needed foreign exchange which

has not improved the situation at all. In such a set up, no economic liberalisation can be talked about.

Due to policies which are donor driven, all sectors of the economy have been affected. For example, the education sector, for the country to employ teachers, it first has to consult the donor community as funding is done by them. The Zambia National Union of Teachers (ZNUT) President, Roy Mwaba called on the government to reduce donor dependency in the funding towards the educational sector as it was affecting the educational system negatively⁷⁸.

Zambians have known no economic independence though they are politically independent. The liberalisation system has negatively impacted the Zambian market as it was too much for the country's market, which was in its infancy stage.

3.3 THE SOCIAL ECONOMIC IMPACT

The immediate effects of liberalisation and privatisation have been the cause of significant job losses. The economic logic of opening the economy to the private sector, which must be competitive if it is to make profits, has seen many former uncompetitive SOEs 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 running up to privatisation proper. However, it was unlikely redundancies would end with privatisation as many of the new owners would want to cut their work force in order to increase productivity.

Under the liberalised economic policies, most retrenched failed to cope with the changed circumstances and many of them were turned into destitution. Many former employees of the United Bus Company of Zambia (UBZ), Contract Haulage, Mansa Batteries, and

⁷⁸ He said that three quarters of the money funding education currently comes from donors and has called on the government to try to ensure that 50percent or more comes from government so that we can independently make decisions that affect our people as we know what our people need., The Post News Paper, Friday, October 6th 2006

Zambia Airways have been reported to die in destitution due to delayed payments⁷⁹. In the face of such suffering and misery, people resort to all sorts of survival strategies, ranging from reducing the number of meals in a day, to street vending, unleashing their children on to the streets to beg or children going to scavenge on their own⁸⁰. Others take to more desperate actions and engage in such social vices as prostitution, thieving and robbery. As a result the people contracting the deadly HIV virus is on the increase, not that they do not know the effects or precautionary measures, but due to poor living standards.⁸¹

In spite of the dropping socio-economic standards, Zambia is a signatory to many human rights instruments. For example, the International Convention on Economic, Social and Cultural Rights. **Article 6 of the ICESCR** recognizes the right of everyone to the opportunity to gain his living by work, and the state parties have undertaken a commitment to safeguard this right to work. Among the steps provided for under **Article 6(2)**, the state should take to achieve the full realisation of these rights, by putting in place programmes and policies that enhance economic and social development.

The high levels of poverty makes this ‘**right**’ even more removed from reality for the Zambian citizen. The right to adequate housing is derived from the right of everyone to an adequate standard of living...provided for in **Article 11 of the ICESCR**. Like other rights in the convention, this right too, is far fetched. The Committee on Economic, Social and Cultural Rights sets very high standards for this right. Reports of professionals lacking decent accommodation are a clear testimony of this. A case in point is a well known fact that most civil servants like teachers and law enforcement officers like police officers have been forced to stay in shanty compounds due to lack of decent accommodation⁸². Reports have shown that in compounds, over 200,000 people live in

⁷⁹ UBZ Steering Committee Secretary General, Rochester Nundwe said the ex-UBZ workers were living in poverty and about 426 of their colleagues have died without getting their terminal benefits and those who are alive can not even send their children to school., The Post Newspaper, May 17th, 2006

⁸⁰ Afronet, Zambia Human Rights Report, p.37

⁸¹ Talk with the Northmead Assemblies of God Church, Paseli Women’s Group (former sex workers)

⁸² police officers find shelter in stores of the unfinished chilenje market as Given Lubinda, Kabwata Member of Parliament pays them a surprise Visit

one square mile.⁸³ The problem of suffering and homelessness continues. The quality of people's lives also continues to be lowered and human dignity tremendously eroded. This is happening even after 42 years of the country's political independence and after 15 years of liberalising the economy.

In spite of macroeconomic arguments about creating the right conditions for growth, there is uncertainty about how unemployment has caused a descent into poverty for the majority of the Zambian population. In fact, 68 percent of the Zambian population lives below the poverty datum line.⁸⁴ Broadly defined, poverty is the lack of basic capacities to live in dignity⁸⁵. Out of the eleven million Zambians, only 400,000 are in formal employment, meaning the country can not collect meaningful revenue to inject in the economy. It is an obvious fact now that despite the economic indicators of growth, the Zambian citizen is said to be living on less than one dollar per day.

Another source of concern in the Zambian economy has been the collapse of industries in the manufacturing sector. Due to lack of and other restrictions on imported goods, the Zambian manufacturing industry has collapsed, although this has been justified by the lack of competition from Zambian manufacturers, it is obviously detrimental to the economy. It has been reported by the Zambia Federation of Association of Women in Business that cheap imported goods have continued to hurt the local industry. **ZFAWIB** Chairperson Christine Mulundika said that the increase in the importation of foreign products has flooded the market with sub-standard goods. She said that though the appreciation of the Kwacha was a good indicator of economic progress, most people benefiting from this development were ordinary traders and not local manufacturers. She has urged the government to put into place measures to promote the local industry and to make sure that the imported goods were not sub standard and to ensure that Zambia was not a dumping ground for poor quality foreign goods.⁸⁶ The Zambia Association of Manufacturer's Chairperson Casilli Diego, placed the blame on the government for the low growth in the manufacturing sector stating that the government has failed to address

⁸³ As was the case for areas like Mtendere, Kalingalinga and Kanyama, the worse living conditions in sub-Saharan Africa. Obligatory Essay by Mwenya Kaela., UNZA 2001

⁸⁴ Prospects for sustainable development in Zambia, 1996., p.321 & current central statistical office, 2006

⁸⁵ Sidoti, E and Franvovits, A., The Right Way To Development, p.213

⁸⁶ Times of Zambia, 24th June 2006. P.6

the pertinent economic issues. He said that high cost of production in the manufacturing sector was the biggest enemy of Zambia's economy. He stated that the government should lead the way in addressing the cost of production by championing the reduction of inputs such as taxes to level with the foreign investors if the manufacturing industry was to survive and yield desired goals⁸⁷.

In another related development, there have been calls on the government to protect Zambians' interests. Zambia must strive to have a manufacturing sector in order to create employment for its nationals. African Explosives Limited (AEL) Managing Director Wayne Du Chenne has said that Zambia needs a value addition industry to create employment⁸⁸. Wayne also that the government should audit investors to see to it that they meet world class standards, to ensure that safety rules were adhered to.

The point raises the issue of the speed of the privatisation programme in relation to both the mental and technical attitudes prevailing in the country. The question to ask is, was the Zambian government adequately prepared for privatisation? I think not. A policy of incremental privatisation should have been adopted; this means that the programme should have been one involving gradual divestiture, so as to give the local manufacturing industry time to adjust as its collapse frustrates the purpose of the programme.

The question to ask is, has liberalisation brought about economic freedom or independence? From the happenings in the economy, one would assume that little has been achieved in economic freedom, as Zambians are not actively involved in the economics of the country. The Zambian economy does not sufficiently utilise domestic human and natural resources. Furthermore, the economy does not operate on the basis of much local value addition and provision for local and export finished markets, under an equitable exchange.

⁸⁷ The Post, Wednesday May 17th, 2006; p.8

⁸⁸ He stated that " Zambia needs value addition not just exploiting opportunities in the country."

CHAPTER FOUR

4.0 BEST PRACTICE EXAMPLES OF LIBERALISATION FROM OTHER COUNTRIES.

HOW CAN THE GOVERNMENT ENSURE THAT LIBERALISATION WORKS FOR BOTH ECONOMIC GROWTH AND ECONOMIC INDEPENDENCE?

Countries have taken different steps in addressing some flaws of both the privatisation and investment laws to make them more meaningful and to ensure that their citizens do not lag behind in economic activities of their countries.

For example in Czechoslovakia to prevent privatisation replacing state monopolies by private ones, Investment Funds were not allowed to hold more than a 10 percent stake in any one company and were only allowed to invest in at least ten companies⁸⁹.

In Zambia we can employ a similar method and where monopolies are unavoidable, strict competition laws should be enacted.

The scarcity of funds does not create an atmosphere wherein all potential local buyers can raise the required capital. The setting up of the Investment Fund and Privatisation Trust are possible ways of assisting the local investors but the question is whether all the local investors will be eligible for the two Funds.

Realizing the difficulty of privatising in the absence of domestic capital, the Czechoslovakia government decided to give industry to the people through a coupon scheme. For every adult Czech at a fee of about KR21, 000.00, a coupon could be exchanged either for shares in a privatised company or in any Investment Fund which in turn invested the voucher on behalf of the holder. The idea behind this move was to offer the people a stake in economic reforms and it seems to work⁹⁰.

In Zambia to ensure that every adult person participates in the economic programme, we propose that credit schemes be created with particular attention to the monetary policy

⁸⁹ White House. 1, "Privatisation Strive to Stay on Track," EUROMONEY(a sponsored supplement April,1992)., p.21

⁹⁰ Ibid., p.22

and also employee's wage deduction and loan schemes for the purchase of shares be set up. When these schemes are created, securities for the loans should be within an ordinary Zambian means.⁹¹

There appears to be no specific guidelines with regards to the extent of foreign ownership. This is why concern has been raised in the country that foreign investors will swamp the economy as the government has maintained an open door policy to foreign investors. One would argue that real investment is when investors build infrastructure and major in strategic businesses where Zambians have failed and not to invest by starting up or renting stores in market places.

One way in which Zambia can find profit from the privatisation process is by looking for investors to put up processing plants. For instance, for the copper so that the investors do not take our primary raw materials, as we are not getting the real value from our copper which is the backbone of our economy. If the processing plant was established, the real value for our copper could have been realised.

The above problem was quickly foreseen in Czechoslovakia where privatisation was employed in two ways, viz, "small" and "big" privatisation. The "small" concerned small shops and restaurants and were auctioned only to Czechs and Slovaks. While in the "big" one, it involved large industries where foreigners participated⁹².

A similar approach was adopted in Hungary where large industries were exclusively offered to foreigners. And also, Like the Ghanaian Investment Promotion Centre Act, 1994, the Zambia Investment Act must protect local investment by closing certain sectors of the industry to foreign investors. Zambian entrepreneurs must be given an opportunity to maintain control of areas where they can adequately provide services and produce goods. Zambian participation in the ownership of companies must be encouraged.

⁹¹This could be the best way of ensuring that employees benefit from the mines to bring back home ownership.

⁹²Hermann, A.H., "The Social-Economic Scene," Economic and Legal Problems of Transition to Market Economy. P.27

The government, therefore, should set up proper guidelines as to foreign ownership before investors actually flood Zambia more. As the case is, all areas of investment have been taken by the foreign investors⁹³ leaving the Zambians to trade in the streets.

A number of elements in the country's investment climate need immediate attention. In this respect, aspects such as the Investment Act and other related matters must be tidied up.

As regards the social economic difficulties, one best example is South Africa. The proponents for the justiciability of socio-economic rights argues that if these rights are not given meaningful protection by the constitution, the legitimacy of the constitution would suffer because people would be bound to say it did not deal with their most fundamental needs⁹⁴. The arguments on the other side is that since rights impose corresponding duties, the constitution would lose its credibility if it told people they have the rights in respect of which the state cannot deliver due to lack of resources. It is believed that such a situation would be equally erosive of the legitimacy of the constitution⁹⁵.

The legitimacy of the constitution, as Nwabueze points out, "*is concerned with how to make it command the loyalty, obedience and confidence of the people*"⁹⁶. It should be understood by the people and be accepted by them so that they can identify themselves with it. This involvement will produce a feeling of attachment to the constitution and it will be accepted as the property of the people's confidence thereby making them responsible in observing its rules⁹⁷. In the absence of this, the constitution will remain a remote artificial object with no more real existence than the paper on which it is written, and the popular phrase in most constitutions, '*we the people... do hereby give to ourselves this constitution*', will be no more than a mere incantation. Constitutions should, therefore, not only be viewed narrowly from the classical perspective of clothing

⁹³ shops in newly constructed markets

⁹⁴ Heyns, C. and Brand, D., "Introduction of Socio-Economic Rights in the South African Constitution."

⁹⁵ Ibid.,p.1

⁹⁶ Nwabueze, O., (1997). Constitutionalism In The Emerging States. p.24

⁹⁷ Ibid

the various organs of the government with power and defining the parameters of such power, but also with addressing the socio-economic problems in the country.

The Zambian constitution lamentably failed in this area; it is silent on the economy and social problems⁹⁸. This consequently affects the country's economic independence.

This failure, coupled with the non-justiciability of socio-economic rights, leads to serious problems in the social-economic sector, such as inadequate housing, health and educational facilities, poor conditions of service, high prices of food stuffs and low incomes which have found their way in the country by the introduction of liberalisation.

The consequences of such a situation as experienced in Zambia are usually very bad. Workers may withdraw labour; others engage in corrupt practices; the unemployed turn to robbery; while some may go for looting and food riots and many other vices. Public service workers also have similar demands. This has led to a situation where the workers are either on strike or threatening to do so. The result of strikes has been disastrous. For instance, the strike by UNZA lecturers led to a premature closure of the University's first semester of the year 2006 Academic year⁹⁹. Also the continuance strike by the judicial workers which lasted for three weeks¹⁰⁰ left the courts paralysed as cases could not be heard. Strikes are indeed crippling to government wings. In very severe and desperate situations, resort may be had to unorthodox methods such as corrupt practices whose results are equally disastrous. This can be evidenced by the World's ranking of Zambia as the 9th most corrupt country¹⁰¹ on the Corruption Perception Index by Transparency International.

All these characterise the situation in Zambia in her 15 years of the liberalised state.

Clearly, the causes of all these is the non-availability of basic necessities of life. It is evident that a country, which continues to adopt the *laissez-faire* attitude towards socio-

⁹⁸ Sangwa, J.P., The Making and Remaking of Constitution in Zambia: The Need for a New Perspective.

⁹⁹ UNZA management orders students to leave campus, *The Post*, 29th, June 2006.

¹⁰⁰ Judicial officers demand for better conditions of service., *The Post*, Thursday, 3rd August, 2006

¹⁰¹ Report Transparency International. Monday November 6TH 2006.

economic rights, does so at its own peril as this may lead to its downfall. It is therefore, incumbent on the government to adequately protect these rights in order to fulfill their obligation as required by the **ICESCR** and also to enrich the quality of life of the people so they can live dignified lives as envisaged by the **UDHR**

The following observation by Christof and Brand¹⁰² gives a summary of the incorporation of the socio-economic rights in the South African Constitution,

“the very structure of the Bill of Rights is designed to emphasize the fact that socio-economic rights are part and parcel of the wider concept of human rights. Socio-economic rights are not listed separately under their own heading or even grouped together; they are interspaced between the other rights, on an equal level, emphasizing the independence and indivisibility of the different generations of rights.” The incorporation is largely moulded on the international model. The Bill of Rights is formulated in such a way that it gives rise to two categories; the internally qualified and the priority rights.

The internally rights are subjected to special qualifications¹⁰³ such as ‘availability of resources’ and ‘progressive realization’. Internally qualified rights are also referred to as ‘access rights’ because the limitations found therein provides that only ‘access’ to the social goods in question, needs to be provided¹⁰⁴. Clearly, this arrangement restricts the obligations of the state. The obligation is only limited to creating an enabling environment to enable citizens acquire the social goods in question and not for the government to directly provide the goods, except in certain exceptional circumstances like times of famine.

As regards internally rights, there is no absolute entitlement by individuals to the provision of the social goods in question. People can not get these goods as of right or get them freely and on demand. For instance the right to access to sufficient food, provided for in Section 27(1) (b), does not mean the state should literally put food on every

¹⁰² Bekker, G., 1999(ed). Introduction of Socio-economic Rights in the South African Constitution, A Compilation Of Essential Documentation On Economic, Social and Cultural Rights..p.1

¹⁰³ Ibid., p.4

¹⁰⁴ Ibid., p.7

citizen's table. It should only ensure that there is enough food available and this should be at affordable prices so that the citizens can reasonably access that food¹⁰⁵.

Other examples of internally qualified rights are Section 26(1), which provides that everyone has the right to have access to adequate housing; Section 22(1)(a), which provides that everyone has the right to have access to health care service, including reproductive health care; Section 27(1)(b), which guarantees access to sufficient food and water, Section 29(1)(b) which provides that everyone has the right to further education which the state, through reasonable measures, must make progressively available and accessible.

The priority rights are rights with no internal qualifications or limitations on them. This means the obligations on the state is immediate and much more direct just like in civil and political rights. Provisions dealing with the priority rights include the following: Section 29(1) (a), which provides that everyone has a right to a basic education including adult basic education; Section 27(3), which guarantees that no one may be refused emergency medical treatment, is another example of priority rights.

In Zambia, this is nonexistent and the result is an increase in street kids and street vending. In the first republic, the then president in order to increase the number of educated people, a number of night schools were opened. These are no more except for just a few which are operational like Timothy Night School in Lusaka.

It is appreciated that what is appropriate and practically possible in one country may not be so in another country with a different historical and economic background. In the light of this, it would be unreasonable to literally transport the South African experiences into the Zambian situation. However, on the reasons warranting the justiciability of the socio-economic rights, there seems to be more similarities than differences. For instance, the provision of social services like medical services and shelter is needed in both countries. On the issue of resources, the fact that South Africa has a stronger economy¹⁰⁶ than Zambia, this cannot stand because each country should work within its own budget, by

¹⁰⁵ Ibid.

¹⁰⁶ World GDP Ranking: GDP for South Africa is \$412 Billion and is at number 21st, while GDP for Zambia is \$8.5 Billion and is at number 133rd position.

using the resources available in that particular country. Therefore, the comparative aspect in terms of economic strengths falls out. The argument that socio-economic rights are resource-based is also not a valid one, because, there are some civil and political rights that need resources.

The other argument in the Zambian government's case in the inclusion of the socio-economic rights in the Bill of Rights as justiciable rights is that some of these rights are already provided for in other parts of the constitution (other than part IX) and are therefore enforceable.¹⁰⁷ It is also argued that some of these socio-economic rights are legally under separate pieces of legislation.¹⁰⁸ These arguments notwithstanding, it is submitted that socio-economic rights should be made directly legally enforceable in their own right just like civil and political rights. This will provide a much more direct way of accessing these rights and the other pieces of legislation that provide for them can be alternative means of redress. Even for political and civil rights, there are some that are protected by the constitution and also provided for in other pieces of legislation.¹⁰⁹ Therefore, the same arrangement must be extended to socio-economic rights

The last argument by the Zambian government is that; "courts in Zambia have in appropriate cases given judicial notice to international instruments which Zambia has ratified or acceded to, even though not reduced into domestic legislation and have accordingly given redress."¹¹⁰ It is submitted that it is unreasonable for the state to argue on this basis. Socio-economic rights hinge on people's lives, so to depend on the goodwill of the courts to take judicial notice of an instrument in order to enforce these rights is unreasonable. Courts will not do so at all times and sometimes they do things wrongly.¹¹¹ It would therefore, be more rational to enact domestic legislation on the international instruments that the country has ratified or acceded to.

¹⁰⁷ Zambia's Initial Report on UNCESCR.,P.26 includes Article 14,21,23 and 24 of the constitution

¹⁰⁸ Ibid.,p.23-26, includes, Employment Act cap 268; The Food Reserve Act cap 225; Education Act cap 134; Public Health Act cap295 of the Laws of Zambia

¹⁰⁹ Article 16 protects the right to property, also the Land Acquisition Act, Cap 199 of the Laws of Zambia.

¹¹⁰ Ibid.,p.22

¹¹¹ See Case of Fellow Nanzaluka, SCZ No. 82/2001

4.1 CONCLUSION

The restrictions, regulations and harmonisation of the laws are not a futile exercise. They work to the advantage of the country's development and promote citizen's independence. The enforcement of the socio-economic rights has a duo effect: firstly, it makes the state more accountable and responsible in the use of the available resources, as failure to provide adequate resources often leads to an order by the court to provide the services required. Secondly, the enforcement of these rights is extremely beneficial to the citizens because it is one way of getting the government to provide required social services such as medical care, houses and educational facilities. This in turn translates the vision of UDHR into reality, to restore 'the dignity and worth of a human being.' All in all, it leads to an effective and efficient citizen to foster individual development and independence, thereby, fostering economic growth and, proclaim economic freedom.

The socio-economic aspects give a more appropriate view of the countries economic growth and independence. The economic reforms taken by any country should ensure that people's lives and institutional infrastructure are improved and not decreased as the problems highlighted above of inadequate accommodations or strikes for instance. It is therefore, a more needed concept that they be incorporated in the constitution which is the peoples document of independence to ensure that the government put in place sound economic reforms and put to task to implement them for both economic growth and independence.

CHAPTER FIVE

5.0 CONCLUSION

5.1 SUMMARY

The objective of this work has been to make an observation of the liberalisation process and to show how far it has helped in the attainment of economic growth and freedom or economic independence. Although one of the primary objectives for the country's struggle for independence was to attain self determination and independence, we have not yet achieved an acceptable measure of economic and social independence. The struggle for political independence was indeed about attaining our inalienable rights as a people.

It has been established that the Zambian people do not decide the country's social and economic policies, but the foreign institutions, meaning; Zambia is still in the neo-economic slavery. Hence, no economic independence can ever be achieved. For as long as the country continues limiting the options for development to market forces and money, which the poor and victims of the world system are precisely designed to have no control over, good economic policies must be careful not to overly regard money, even foreign exchange, as the be-all and end-all economic and development resource. Money, even in foreign exchange terms, is not and can never be, the sole resource needed for the stated goals of poverty eradication, sustainable growth and sustainable development in an inclusive and equitable global economic system. The stability in inflation rates and the currency gaining strength can not be an end-all economic and development resource. The country has to tailor its own destiny to attain all the challenges posed by liberalisation.

Zambia has also taken a hands-off approach to the socio-economic rights. This has greatly eroded the worth and dignity of the people and resulted in the economic policies undertaken of no use to the people as such were intended to uplift both economic and social growth. There are no rules guiding the foreign investors as to how they are supposed to treat their employees as that was overlooked by the law makers.

From the observations made of different countries like South Africa, lack of adequate resources can not be a bar to the legal enforcement of socio-economic rights. Zambia can not plead lack of resources because the resources are there; it is the utilisation of these resources that is in issue. She can not also claim that it is a weak economy because each country has to work

within its own budget. The problem is that the economic policies of the country have been internationally or donor driven thereby sidelining the socio-economic growth and independence of the people.

Notwithstanding this, each country has primary responsibility for its own economic and social development, and the role of national policies and development strategies cannot be overemphasized. At the same time, domestic economies are now interwoven with the global economic system and, inter alia, the effective use of trade and investment opportunities can help countries to fight poverty.

However, not all hope is lost; something can be done to redress the situation.

5.2 RECOMMENDATIONS

We can not expect to attain growth in our economy unless we are able and willing to address the factors which militate against growth. For any country to attain sustainable growth and prosperity for the people, the negative challenges must be dealt with. Practical action from all of us will help create a conducive atmosphere for the attainment of economic independence.

- **CHANGE OF PERSPECTIVE**

The first step towards correcting past mistakes is to change the perspectives of both the governors and the governed. Only then will there be meaningful economic development and the attainment of economic independence.

Good governance issues are of vital importance for sustainability of the law and order and the observance of human rights. Where governance issues are ignored or not observed, people in general are victims. Their rights and fundamental liberties can not be guaranteed. Part of good governance involves the presence of an independent and effective society.

Any government should recognize that land and natural resources of a country belong to the indigenous people of the country and that it has a responsibility to protect its interests in the resources. Investment should be regarded as a partnership

between the investor and the citizens of the country. It must be a mutual relationship, which benefits both parties. The people are not as poor as one may think because they own land and natural resources which have value, but this value has always been ignored by those that govern us, either by design or ignorance. The utility possibility and value development advocacy of appropriate system changes and good economic policies depends on acting out and facilitating the performance of good citizenship.

We need policies that will protect our interests in land and natural resources. This country has to provide food security. We need investments, which will maximise the potential of the citizens.

- EDUCATION

Both academic and skill training are vital for the survival of the nation as knowledge is power. Incorporation of culture and education brings about meaningful development and empowerment. Training or equipping people with skill tailored on the environment in which they live yields results as people will not be leaving their areas in search of livelihood; they will always have something meaningful in areas where they live. For instance, in rural areas, people will not be leaving for the urban areas, if skilled. They will find their livelihood in either fishing, agriculture, carpentry and many others. Equipping people with knowledge reduces dependency and suffering. It enhances development and promotes economic independence.

- PRACTICABILITY

The policies enacted should be those that better the lives of the citizens. It is very easy to evaluate if policies are working policies or not. Zambians must re-examine their current economic policies because it needs great adjustments and increased production in all areas of the economy. The policies in place have seen the levels of poverty rising to extremes and inefficient citizens. Currently, the policies do not favour the poor. As can be seen, forty-two years after independence, the country only has two universities and yet countries like Mozambique, which attained its independence much later, has seventeen universities. Policies must be made with a foresight, not just with power but also with implications on a common man.

- **AMENDMENT TO THE BILL OF RIGHTS**

One sure way of making the government respond to socio-economic problems is to oblige it to do so under the constitution. This calls for an amendment to the Bill of Rights to make these rights legally enforceable or justiciable just like civil and political rights. As South African experience has shown, the government becomes more accountable in the use of resources and in the implementations of economic and social programmes. Thus, the challenge is to both the citizens and lawmakers to fight for socio-economic rights and to amend the law respectively.

- **JUDICIAL ACTIVITISM AND CREATIVITY**

A creative and active judiciary can overcome the limitations imposed on the citizen's full enjoyment of life by the non-justiciability of socio-economic rights. Judges should not just rigidly follow the black letter of the law without considering the social context in which the law operates. This will create an important and necessary link between the laws enacted and the actual results on the ground and the results will get the government to positively respond to the needs of the people. Hence a creative and active judiciary can shape the agenda of government by recognizing and enforcing the law to ensure that citizens enjoy the rights even before constitutional amendments are done.

- **RIGHT TO STOP IMPLEMENTATION OF POLICIES NOT BENEFICIAL TO CITIZENS**

The government should be under constitutional obligation to only implement such programmes and policies as are beneficial to its citizens. People should have the right to stop the implementation of such programmes as the SAP, which leads to wholesale retrenchments, redundancies and unemployment and just worsens the suffering of the people. A case in point is the attempt by the Labour movement to stop the privatisation of some key companies like ZANACO and ZESCO. Citizens should be able to do this as of right.

- GOVERNMENT TO BE PROACTIVE

The full realisation of economic growth and independence needs the government's active participation and political will. The government has to be in full control of all situations in order for things to move. The *laissez-faire* attitude has to be controlled and the traditional 'duty to respect', which calls for non-interference, has to be replaced by the duties to protect, promote and to fulfill. These are positive duties, which require positive action. The government should no longer confine itself to the duty not to interfere but should be at the center of making things work. This is also provided for under the WTO and GATT Agreements,¹¹² that for a country to effectively participate in the world economic growth, it first has to ensure that it works on its own economic growth. For instance, the obligation to promote, impose a positive duty on the state to ensure that people are aware of something. When applied to socio-economic rights, it means the government should ensure that people know these rights. The duty to protect, if applied to food security, implies that the state should regulate prices of basic foodstuffs to ensure that they remain within reach of ordinary persons. When the government becomes proactive as suggested the quality of life will surely improve and the economic independence, will be attained.

A poverty banishing budget and economic plan cannot rely on a free market to raise living standards. It has to take account that the pillar of poverty reduction is poor-targeted investments. These investments have to ensure that all people, including the poorest, have access to basic health, nutrition and schooling, as well as basic infrastructure, including electricity, information and communications technology, safe drinking water and modern agriculture. A quality political leadership for a quality economy appreciates that spending on the poor, for health, education, safe drinking water, electricity and the like, is not simply pandering, but constitutes a necessary, serious and productive investment for economic and human development. This is because while it is costly and difficult to finance social services, an unhealthy and uneducated population guarantees an even more costly and difficult. In short, harnessing prosperity requires national planning, with both an internal permeation, within the country, and external outreach, into the global sphere, as well as a

¹¹² Part IV General Agreements on Trade and Tariffs. And the World Trade Organization

debt cancellation arrangement that does not weaken national sovereignty and state institutions.

The most important recommendation is for the laws to be revisited so that they can afford the whole process of liberalisation a proper legal framework to ensure that the people of Zambia do not suffer at the hands of the *laissez-faire*. There is need for the laws to be complete, consistent and be in harmony. The laws should aim at liberating the economy and the people of Zambia. Both the Empowerment Act¹¹³ and the Zambia Development Act,¹¹⁴ which has repealed the five investment laws¹¹⁵ among them, the Privatisation Act of 1992 and the Investment Act 1993 as amended in 1998, so as to harmonise and create a one-stop facility for invest in Zambia, should ensure that they address the cardinal issues raised in this dissertation and offer Zambians economic freedom or they will just be pieces of legislation.

The recommendations made are very practical; it only takes the will of the people. They can very much work and produce desired results for the whole world to emulate. Practical action from all of us is needed to attain economic independence.

¹¹³ Act No. 9 of 2006

¹¹⁴ Act No. 11 of 2006

¹¹⁵ Others repealed by section 84 of Act No. 11 of 2006 are; Export Development Act, Small Enterprises Development Act and the Zambia Export Processing Zone Act.

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Mr. Chipwende, Chief Executive Officer, Zambia Privatisation Agency

By Monge Noyoo

ZAMBIA National Union of Teachers (ZNU) general secretary Roy Mwaba has advised government to reduce donor dependency in the funding towards the education sector.

And Mwaba has called for increased dialogue between government and teachers as a way of reducing industrial unrest.

In an interview, Mwaba said government should not depend too much on money that comes from donors.

"Three quarters of the money funding education currently comes from donors. We should try to ensure that 50 per cent or more comes from government. ~~It is~~ why when government wants to employ teachers or increase their salaries, they are questioned by donors because they fear that they may bear all the costs," he said.

ZNU ^{Chairman} advises govt to reduce donor dependency

Mwaba said the government should put enough money in the government treasury to employ and train more teachers as promised in their campaigns.

"Government should divide budget allocation in terms of money meant for capital projects and personal emoluments not bunching up everything to inflate the figures because other sections will suffer," he said.

Mwaba said the education sector critically needed more teachers as it was currently

losing 700 teachers a year from the HIV/AIDS pandemic.

"President Mwanawasa promised that his government would employ 10,000 teachers before the end of the year. It is important that this is executed as we are currently facing a critical shortage of teachers. We have more teachers in streets than in schools," he said.

Mwaba said as government settles down it should put in place modalities of ensuring that teachers' conditions of

service were improved.

"Salaries don't necessarily have to be high but the conditions of service such as provision of car loans, housing allowances and rural hardship allowances would make a difference," he said.

And Mwaba said there were

no teachers' strikes due to constant dialogue between ZNU and the government.

"This whole year we have tried to put off strikes due to dialogue. Every time we have something to say or when government wanted to implement something that affects us, we

would be consulted. It's important that this continues so that government does not impose anything on the teachers. If we are constantly consulted, we will be able to offer our knowledge and expertise on some of the issues that affect us," said Mwaba.

MMD has big responsibility in rural areas - Bishop Mumbi

By Nomusa Mchelo

THE MMD has a big responsibility to the rural areas that voted for them, Luapula Anglican Bishop Robert Mumbi has said.

In an interview, Bishop Mumbi said govern-

ment should take a leadership role in their socks and do more for the people especially in the rural areas where their needs are greater."

He said President Mwanawasa admitted that this election had taught him a lot and that he should learn from this experience.

ZAMBIA DAILY MAIL
LUSAKA
HOME NEWS
TUESDAY, OCTOBER 24th 2006

'Zambia needs economic independence'

By CHRISTINE
CHISHA

CHIEF Chamuka of the Lenje people in Central Province says Zambia will only attain the true meaning of independence once it stops depending on foreign aid.

Speaking ahead of the Independence Day, which falls today, Chief Chamuka said the dependency on the donor community makes Zambia not fully independent.

"As an economist, I

can say that Zambia is politically free but economically the country is dependent. We will only attain the true meaning of independence once we are economically free," Chief Chamuka said.

He also said Zambians should guard against all the money repatriated by investors.

And Chief Chamuka has implored investors with intentions of setting up businesses in his

area to take meaningful development ventures otherwise they would be kicked out.

The chief said investors should plough back their profits into the communities in which they operate.

He said he would not allow investors who exploit his people.

Chief Chamuka said people in his area lack employment which was his source of worry.

He also appealed to villagers to cooperate with the investors in bringing development to Chisamba.

Protect Zambians' interests

Editor,

Bovilian President, Evo Morales must be commended for his efforts to embark on the agrarian revolution for his country.

Any government should recognize that land and natural resources of a country belong to the indigenous people of the country and that it has a responsibility to protect its people's interests in the resources.

Investment should be regarded as a partnership between the investor and the citizens of the country. It must be a mutual relationship which benefits both parties.

The people are not as poor as

one may think because they own land and natural resources which have value, but that this value has always been ignored by those that govern us, either by design or ignorance.

Value is not only attached to development, but also to untapped land and unexploited resources.

Zambians own vast land and huge natural resources, but we are slowly losing grip on these resources.

Our share in companies engaged in mining and agriculture should be in the form of these resources and such investments must take into account our contribution.

It is known that some Zambians have been chased away by an investor with title deeds, from land on which they might have settled for decades, without being offered alternative land by the Ministry of Lands.

Those in leadership must have a heart of compassion.

We need a policy that will protect our interests in land and natural resources.

This country needs the agrarian revolution which provides food security. We need investments which will maximise the potential of agriculture.

Steven Chizinga
Lusaka

By Kingsley Kaswanda
and Jean Chirwa

Local business experts have questioned the genuineness of Zambia's single-digit inflation and whether the country will sustain it.

But the Bank of Zambia (BoZ) has maintained that Zambia will maintain the single digit inflation if the current exchange rates are sustained, money supply is controlled, production is enhanced and energy prices do not increase further.

At a Cefel Media Club discussion forum with the theme "Single Digit Inflation: Will Zambia Sustain It", JCTR assistant co-ordinator for the basic needs basket, Chris Petrovski, said it seemed unlikely that Zambia would sustain the single digit inflation because the Central Bank has no control on external factors that have a bearing on inflation, such as energy prices.

He wondered whether the 9.4 per cent inflation rate attained last year was real, when it had no bearing on households.

He said despite the reduction in inflation the value of the basic needs basket, which is the average price of essential household needs for an average family of six, has grown in the last one year.

Petrovski said the reduced inflation had not benefited the people because prices were still high.

He said most food items were still fetching at high prices, with little chances of price reduction, though prices of commodities such as mealie-meal were pegged at a slightly lower price last month as compared to the

Experts question Zambia's capacity to maintain single-digit inflation

previous months.

The slight reduction in mealie-meal prices are currently being attributed to a surplus in maize production recorded in the agriculture sector during the 2005/2006 farming season.

According to a JCTR Basic Needs Basket compiled for the month ended May, 2006, there was an increment by at least K12,000 over April's figure of K1,408,700 in costs of essential items for a family of six in Lusaka.

Local economist David Punabantu said Zambia's reduced inflation was a state of deflation, which is simply a decrease in the level of money supply.

Punabantu said the current situation was the opposite of inflation, and meant a decrease in the general price level, or the rise in the purchasing power of money with respect to a "basket" of goods and services, over a period of time.

Zambia Association of Manufacturers chairman, Diego Casilli, also said the single digit inflation was not real because it was only a result of the appreciation of the kwacha.

"We have dollared inflation, the benefits of the reduction of inflation are attributable to the appreciation of the kwacha. Its effective-

iveness is yet to be ascertained," he said.

Casilli said there had been a lot of fluctuations in the local currency, which had led to the reduction in inflation. He said Zambians had failed to experience the benefits of the single digit inflation because it was not backed by production.

ZAM vice-chairman, Oswald Mwewa, wondered whether it was by chance that Zambia had attained the sin-

gle-digit inflation, as it was not planned for now.

He wondered why interest rates had remained sticky despite the reduction in inflation.

Mwewa also wondered why some workers were demanding 100 per cent salary increments and wage work stoppages at the inflation rate of 9.4 per cent.

"It is surprising that we can attain 9.4 per cent without a change in other sectors of the

economy. Was it a fiscal activity or a production activity?" he said.

Mwewa also wondered why the government wanted business houses to reduce prices when it had not reduced taxes and other levies.

However, Bank of Zambia director for financial markets, Kellyford Nkalimo, said the sustainability of the single digit inflation was dependent on controlling

money supply, stabilising exchange rate movement, increasing agricultural production and stabilising energy prices.

Nkalimo anticipated that with the reported bumper harvest of maize, inflationary pressures from the food component of the consumer price index would be minimised.

"The central bank's part will continue to be tight monetary policy," he said.

By Carol Ilombho
FORMER United Bus Company of Zambia (UZ) employees have appealed to President Yanwasa to help them receive their terminal benefits.

EX-UBZ employees appeal to Levy over benefits

In an interview yesterday, UBZ Managing Committee secretary **Ans. Rockester Nundwe** said the former employees have decided to seek President **Yanwasa's** intervention in the matter because the Ministry of Finance and the office of the vice-president have not responded to them. "We have been having meetings with the Ministry of Finance over a long period and despite **Maganje** assuring us that he'll consider the matter, nothing has been done and now he refuses to meet us," Nundwe complained.

"So after that, we appealed to the Vice-President but we haven't seen anyone on the matter," Nundwe said. Each employee was paid K1.5 million as part pay.

ment in former president **Chiluba's** regime and that they were assured they would be given the rest of the money. "The K1.5 million they are

talking about is too small for someone who has lost employment suddenly and has nothing else to do," Nundwe observed. "Moreover, the same money

was also given to those companies that got their terminal benefits, but why are they discriminating against UBZ?" he asked. Nundwe said the ex-UBZ workers were living in poverty. "About 425 of our colleagues have died without getting their terminal benefits and some of the families can't even send their kids to school," he said. Nundwe said some of his colleagues had resorted to illegal activities to make ends meet. "Some of them are even in prison because of illegal activities," Nundwe said.