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I recommend that the obligatory essay prepared by
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THE PERFORMANCE OF PARASTATALS: A LEGAL ANALYSIS

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THE PERFORMANCE OF PARASTATALS: A LEGAL ANALYSIS

**Being an obligatory essay submitted to the
faculty of law of the University of Zambia
in the virtue of partial fulfilment of the
requirement for the award of the degree of
the Bachelor of Laws (LL.B)**

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DEDICATION

To my late Father and Brother

"To whom I owed so much"

ACKNOWLEDGEMENT

Firstly, I wish to express my heartfelt and utmost gratitude to my Supervisor Mr. C. Hakasenke for the amount of patience, keen interest and valuable time he spent going through my work as well as whose comments had greatly broadened my scope of understanding the subject. To him I am greatly indebted.

Secondly, I wish to sincerely thank brother Mpande, Ms K. Kaluba, the Lisas and all the other members of my family^{for} being a source of inspiration. May the Lord be with you always.

INTRODUCTION

The aim of this work is to give a treatment of state owned companies using economic history of developed countries to help explain the law and economic theories that had assisted in moulding and institutionalizing parastatals in Zambia. It is not however a paper on law and economics, the emphasis is still predominantly on questions of; what necessitated the adoption of state enterprises. How has the institution grown and in what legal environment? Have the policy objectives of the state been attained in these state corporations? If not what remedies ought to be prescribed to curb the problem of parastatals?

Scope and area of Study

In this essay I shall cover in the first chapter the institutional basis of parastatals in general. In this regard the justifications for state enterprises shall be considered in the context of reasons given by other states that used the system during their early stages of economic development.

The second chapter shall look at how and for what objects state owned companies were introduced and developed in Zambia.

The third chapter will address the question of how these parastatals performed in Zambia vis-a-vis the objects of the state enshrined in them. In helping understand the issue of performance apart from documentary data, statutory law and common law, personal interviews shall be conducted with officers in parastatals. This will help in the objective and pragmatic analysis of the performance issue in state-owned companies.

Chapter four will proceed to give alternatives, solutions and recommendations on how to better attain the goals of these

corporations under the 'new' Social and Economic Challenges in Zambia.

Methodology of Study

Both primary and secondary Sources of information shall be used in the paper. On primary sources- personal interviews shall be conducted with parastatal chiefs and officers to help build objectivity in the paper. Secondary sources of documentary data shall be collected from books, government and public documents, statutes and case law.

Literature review

This is a topic which has been covered by many scholars whose profound knowledge I have greatly appreciated. The most notable ones are Dr. Mulwila's PhD. thesis, Dr. G.K. Simwinga's PhD thesis, Mr. Ndalameta's Obligatory essay and Ms. Muyowe's obligatory essay.

Dr. Mulwila's work on parastatals though it addressed the issues of theoretical history, it did not tackle the idea of parastatals in other jurisdictions as having formed a basis for their adoption in Zambia. It is also lacking in that it was written more than 13 years ago within which time a lot of changes have taken place which my paper has sought to dwell into.

Dr. Simwinga's work also dealt with the problems brought by government interference with state corporations autonomy. My paper is different in that it is supplemented by personal interviews and documentary data gathered in 1993. Close to two decades after Dr. Simwinga's work. Within this time difference, a lot of changes and events have taken place which guarantee a new approach to the issue. Besides the time difference, my paper

only incorporates government control as only one of the many components of the work while Dr. Simwinga's dissertation has it as its focal point.

Mr Muyowe also wrote an obligatory essay on government owned corporations. The paper concerned itself with the problems of conferment of monopolistic powers on state owned establishments. This is an issue quite different from our area of concern which basically addresses matters of performance in these institutions.

There was also another essay written by Mr. Ndalameta on the supervision of cooperatives in Zambia. Though my paper will look at cooperatives it will concern itself with the performance of state owned cooperatives and their affiliate institutions vis-a-vis the attainment of their goals. This is quite different from Mr. Ndalameta's obligatory essay which enumerates the modes of control of cooperatives in Zambia.

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CHAPTER ONE

PARASTATALS

To appreciate the topic of public corporations it shall be necessary to start by defining what the parastatal sector is, its scope and then state what objectives have been held to lie behind its creation.

1. DEFINITION AND SCOPE

A parastatal is said to mean any organisation or corporation in which the state owns a considerable measure of its operations.¹ This definition is a bit restrictive as it confines itself to the inherent government control of public corporations. Perhaps a more elaborate definition was that given by the Mwanakatwe Commission that a public corporation is "an organisation which is not an integral part of government but an institution or agency which is wholly or mainly financed or owned or controlled by the state."² In other words, these are commercial, Semi-Commercial or service enterprises to which governments delegate some of their authorities.

To fully understand the present economics of state intervention, it is necessary to dig into the history of public corporations generally, then specifically address the issue of parastatals in Zambia vis-a-vis the experience it might have got from other countries. This is useful to the extent that it gives an insight into the structure of ownership and control of the economy which the post-independence government sought to change. Economic history is also useful to the extent that it traces the origins of state intervention and the then objectives for the introduction of state corporations.

REASONS FOR THE CREATION OF PUBLIC CORPORATIONS:

(a) Assertion of economic independence

The reasons behind governments taking to parastatals are extensive. One of the main ones is that in the newly independent states, there existed the inherited colonial economic structures whose basis was the Laissez-faire model. Consequently the creation of public corporations represented a defence against the perceived dangers of foreign economic domination.

For reasons derived from their former conditions of dependence, and also in view of their specific cultural characteristics, these countries had reached a stage of economic development which they hardly controlled.

The dependence syndrome in the newly independent states was so much that colonial policies were seen to have continued to perpetrate in the economies. Each Sector of the economy was seen to have a strong tie to a metropolitan economy. The dependence was such that it was easier for foreign economies to maintain the international division of labour which consigned Africa to primary production and retarded her industrialisation. For example in Nigeria where good demand for oil stood, the country concentrated so much on oil exports and consequently, forgot on its agenda the other necessary aspects of agriculture. ³ This in turn meant Nigeria exporting more oil but importing even the small food stuffs that could be cheaply grown locally. This was a common feature of African economies, so to remedy the situation governments had to come in with the authority bestowed in them to prescribe a would be 'panacea'. Suddenly, the post independence regimes found themselves obliged to initiate rapid

economic and social change and to undergo a process of economic development, which was to be integrated locally; one which would not be obeying forces of attraction rather than an internal order. This situation explains the magnitude of the nationalist reaction. The governments took to the parastatal sector as one way of asserting firm economic arms of the state. This explains also why political independence once acquired, many an African government's emphasis was laid on the conquest of economic independence, without which, as one socialist observes, "Political Sovereignty would be empty of all content." 4 It will thus be appreciated that one of the goals for the newly independent states was to assert their economic independence. The assertion of economic independence implied that independent states had to create economic structures that could inhibit the infiltration of external economic forces which robbed the locals infant industries of the much converted local market, moreover, the new governments thought they were deprived of their administrative powers. To reverse this situation, states adopted policies which could see to it that almost all the cardinal limbs of the economy are under the direct control of the indigenous ruling government. This was achieved through the creation of the parastatal sector either by nationalising the existing private corporations or creating new ones which adopted a monopolistic way of conducting business. With this scenario of government protectionism, it was idealised that a government could have a say or a hand in the supervision of the country's economic life. To illustrate this, President of Senegal Mamadou Dia writes 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."5

The apprehension shown by the newly independent states is that as long as they remained passive observers in the economic lives of their states, the development they so much 'prophesied' would be a subject of the wild wind to which they could not have control. So vesting of the most strategic enterprises in the hands of the state or its citizens who would not externalise the proceeds of their businesses but cultivate it in the economic development of the state.

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 businesses comparatively at a disadvantage to that of the locals. With this it was hoped that-economic independence would be achieved.

2. (b) Unsuitability of free trade for developing countries

The other reason for the creation of the public sector apart from that of asserting economic independence, was that, the doctrines of Laissez faire were said to be best for countries that had already created a steady economic base that is, those that had reached a stage where they could, with the resources available, produce goods efficiently, and with the employment of technology available could produce goods and services at a minimum cost.

It is with this stage of development, that a state can effectively be expected to participate in multi-national trade.

This line of thought was echoed by a Germany Socialist Friedrich List, who concedes that "free trade was best from a cosmopolitan Standpoint, but argued that a nation could not afford to head to allocative arguments until it had developed its national industries. Only then," he argued, "could a country get its rightful gains from international trade."⁶ List's arguments not only won the day but survived to bedevil economic policies in the less developed countries of our own era.

2C. The theory of protectionism.

The other reason is that most developed countries started their economic life on a protective .

The theory of protectionism in essence implies that almost all states started their economic development on a protective note. Therefore, before a country could take itself to be at par with other countries to compete on international trade, it should first build a protective economic structure to protect the indigenous industries from foreign competition. How this is done is a matter of great subjective government policy. However, the most opted for protective mechanisms are the creation of the parastatal sector (to help regulate the economic life of a state) or the enhancement of trade barriers ie. adoption of high tariff rates on goods imported into the country.

This contention of a state having to start development on a protective note, though not accepted as the right development strategy, the Germany socialist views it as a practical solution though it is not overtly appreciated.

To illustrate the point of economic development behind a closed economy, we may in brief look at how socialists have

argued that even the ardently held capitalist states started on a protective note. We shall look at three countries. These are the united states of America, Germany and Britain.

2C. (i) The United States of America.

In the first half of the eighteenth century the American infant industries enjoyed tariff protection particularly in 1815,⁷ when there was a strong support for a new tariff law fashioned to protect the young manufacturers of Southern American States. The Napoleonic wars had disrupted ordinary channels of trade and, the Jeffersons embargo, designed to prevent impressment of American seamen by forbidding them to go to sea, had cut the country out of the European international trade. The wars and the embargo were equivalent to prohibitive tariffs on imported produce giving American industry unrivaled opportunities for growth.⁸ But with the coming of peace and resumption of trade European goods began to cross despite the opposition from the American industrialists.

In 1828, the American producers proposed a high tariff bill to counter the effects of imports on the market of the local produce. These were the highest in the history of America and they were dubbed as the tariffs of abominations." Which inspired South-Carolina's "ordinance of nullifications," which proclaimed a states's right to abrogate Federal legislation, asserting that "the tariff law of 1828 and the amendment to the same of 1832 be null and void and, no law nor binding upon the state nor its officers." However, this overt challenge to federal power met firm resistance from President Andrew Jackson and furor died down.

American tariffs began to fall mainly as a result of a turn about in policy. When the American industries had increased and diversified their production, the market for their produce became a problem being substantially limited to the American market itself. With the growth of the population it was felt that a campaign for an integral market which would attract more exports and less imports, it was idealised that more avenues for employment would be opened. In 1934 President Roosevelt asked congress for power to negotiate bilateral trade agreements that would cut united states tariffs by as much as half in return for reciprocal reductions by other countries. The president told congress that "a resumption of international trade cannot but improve the general situation of other countries, and thus increase their purchasing power. Let us well remember that this in essence spells increased opportunity for American Sales --- legislation such as this is an essential step in the programme of economic recovery."⁹

Roosevelt promised that he would not injure American producers by opening them to competitive imports. In effect, he said he foresaw the allocative gain from international trade, looking instead for effects on employment through expansion of exports. He planned to bargain the rates that could be cut without attracting imports but attract exports which could impliedly increase employment.

The relevance of the American history of economic development for our particular study of parastatals is to bring out the argument that even the today's 'die-hard' developed capitalist states had started their economic development on a

protective note. Though America did not adopt the System of a parastatal sector in its infancy stage, the effects of the high tariff walls were of similar effect -ie- having the government to control the economic life of the state. This argument was indeed given good ground in Germany.

2c (ii) GERMANY

In 1873, Bismark the then leader of Germany had abolished tariffs on iron.¹⁰ But he had over-reached himself; when the industrialists and farmers united to support the beleaguered manufacturers of Rhineland, he was forced to backtrack. Bismark in 1879 brought in law which afforded substantial support and protection to industry and agriculture in Germany.

This new turn of higher tariffs was defended to invoke protection of infant industries. The argument was given even more elaborate emphasis by a German. Friedrich List who had lived in the United States of America and was impressed with the rapid growth of the economy behind high tariff walls. He returned to Germany a passionate advocate of infant industry's protection for his native country. His basic argument was that a nation which has not fully developed its local industries should not be expected to compete fairly on the international Market.

2c (iii) THE UNITED KINGDOM

Lastly on our comparative argument of the economic protectionism, we may consider Britain. Britain has for a long time had on its agenda public corporations." To Britain parastatals are not a product of the twentieth century. Their presence dates back to 1835, when the municipal corporations Act

was enacted to deal with specific Social problems, for example, the maintenance of roads through collection of toll, building of work houses for relief of the poor e.t.c. These corporations were less rigorously Screened from political control, they were subject to financial controls and a measure of general ministerial regulation though they were free from detailed central control.¹² In theory the tasks undertaken by public Corporations could be done by Civil Servants working in government departments, although this could mean an increase in the civil service hence the adoption of the parastatal sector.¹³

The existence of so many public corporations affords strong evidence for the view that departmental administration of major industries is likely to be less efficient and less flexible than management by a public board.

Thus, the English post war nationalization policies aimed at a combination of vigorous and efficient economic ethics. The civil service methods and accountability were considered unsuitable for the running of a large Complex industry.

In the 1941-51 period, when major public utility, transport and energy undertakings were acquired by the state, they were entrusted not to government departments but to the boards.¹⁴

The relevant Ministers were given important powers relating to the boards but were not expected to become concerned with the day-to day management of the industries. Similar reasoning led to the Creation of public corporations to take over from government departments, for example the British airports authority (1965), Post Office Corporation (1969). This was the political framework of parastatals in England.

In all cases the public corporations were created with a purpose of achieving the greatest happiness of the greatest number of the natives. This reason was manifested in the legal documents creating some of these parastatals forexample, the then Air Corporations Act (1949)¹⁵ which provided that "the air corporations shall have power to provide air transport services and to carry out all other forms of work --- and it shall be a duty of corporations to provide such duties particularly at reasonable charges." This provision implies that the air corporations in England though created defecto on commercial lines were expected to strike a balance between making profit and rendering services at economic charges. Thus, running these Corporations on purely commercial lines would be ultravirus to the provisions of the enabling Act; which expects the corporations to render services at 'particularly reasonable charges.

By and large, the most conspicuous use of public corporations in England was as vehicle for the governments involvement in the control of the economic development of the state, which involvement has much reduced since 1979.

2C. (iv) HOW THE ECONOMIC HISTORIES COULD HAVE INFLUENCED THIRD WORLD COUNTRIES.

From the foregoing examples of American, German and English economic histories, we may safely conclude that even the avowed developed countries had adopted protective economic strategies in their early stages of development, and the most resorted to mechanisms were the adoption of prohibitive tariffs our imports and the creation of public bodies. The protective strategies

stood as some of the reasons for the adoption of prohibitive tariffs on imports and the creation of public corporations by third world countries for a simple reason that, ~~the countries for a simple reason that~~, the countries that had colonised them, or at least those they considered developed had started their economic developments on a protective model. It was not until they had attained such stage of economic development, where they were able to be self reliant in most of the demands of the local market and when they produced more than the local market could demand, that is when they thought of opening up to the competitive international market.

Therefore, it was to be expected that the third world countries had to trace the economic trends used by the countries they viewed as developed which were the high tariffs and the parastatal sectors.

2d OTHER REASONS FOR THE CREATION OF PARASTATALS .

2d (i) To reduce direct Political Control .

The other reason for the creation of public corporations is to entrust an activity to an autonomous body thereby reducing the scope for direct political control.⁷ Where a commercial institution is left to be run by politicians, the most likely qualification for appointment to top management level would be allegiance to the government in power and not on merit.

There would also be rampant transfers from the Civil Service to posts in the parastatal bodies if management powers of corporations were to be left in the hands of the government officials. The obvious implications of appointments on the basis of allegiance and transfers from the Civil Service to public

corporations may be that the personnel that may be appointed may lack the technical 'Know-how' of running business ventures, thereby, making the running of public institutions more susceptible to failure than success. These problems are not to be expected where there is a body entrusted with the running of the affairs of the corporation which is independent in the formulation of policies for the Corporation. Thus, the creation of parastatal bodies is important; so as to separate them from government day-to-day supervision, for instance, the existence of British broadcasting corporation and the independent broadcasting authority separate from the government,¹⁸ was necessary if ministers were not to be responsible for every programme to be broadcasted in Britain.

2d. (ii) Parastatals can be used as Vehicles for import substitution.

The other reason for the introduction of the parastatal sector was what was termed as import substitution. This was a popular approach to development.¹⁹ This was due perhaps to the decline in the demand and earnings for primary products which led to a fall in foreign exchange earnings. Import substitution came first, as it was argued in the process of foreign trade, the underdeveloped countries had already established markets and so by import substitution, the country could, by supplying the local 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 a specific

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programme of action, but would execute the duties with minimal government control.

It was argued that import substitution would help industrialisation and diversification of the economy. It was also contended that import substitution under public corporations would make more goods available than would allow imports constrained by foreign exchange.

In sum, the objectives behind the institution of parastatals are mainly; to represent a defence against foreign domination;

promotion of self reliance in the strategic sectors of the economy; reducing regional disparities in development; preventing the concentration of economic powers in the hands of few individuals; parastatals may be adopted as a result of trying to emulate the way developed countries positively employed them to achieve social and economic development; and may be used to reinforce social control on trade and industry in order to ensure equitable distribution of goods and services between urban and rural areas.

On the basis of the foregoing, we may comfortably conclude that parastatals were and are justifiable to some extent.

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CHAPTER TWO

THE ZAMBIAN PARASTATAL SECTOR

1. HISTORICAL BACKGROUND.

Having established in general the rationale for the creation of public Corporations, we may turn to look at how the system was institutionalised in Zambia, its historical evolution, legal creation and finally, the justifications advanced by the proponents of the Zambian parastatal sector.

The nature of the post colonial state in Zambia can only be best understood in relation to its colonial history. Although colonialism was of a relatively short duration, its effect on the economy was overwhelming. The dominance of foreign capital and the settlers who followed on came to set the terms on which the country's resources would be used thereafter even, to a considerable extent, after independence.

1. a. Before Independence.

The federation of Rhodesia and Nyasaland was set up on the 23 of October 1953 at the peak of the influx of white settlers. The Copper mines were the largest industries in the federation but the people of Northern Rhodesia did not benefit from it. The few industries that were set up were those that were to be supplying the essentials to the mines and the railways for the efficient extraction of copper.¹

The Copper companies were able to externalise their profits and the federal government with its heart in Southern Rhodesia, was able to extract substantial tax revenues and foreign exchange resources for development in the South. The result in Northern Rhodesia was economic stagnation and wage

employment remaining at 270,000 throughout the federation period. Most of the development that was targeted to Northern Rhodesia was that which was required by the mining industry.² Manufacturing received little encouragement and the supplies were generally obtained from the South.

Therefore, left to itself, the colonial government showed no interest in pursuing policies that would promote the growth of industry in Northern Rhodesia. It was the Strong and Constant Pressure from the European settlers that forced the government to appoint in 1945 an advisory Committee on industrial development (ACID) whose recommendations were a colossal failure; in that it made recommendation to the government to the effect that it should not intervene in industry, except to build one large cement factory in Chilanga.³ The Chilanga factory began production in 1951 and became the first state enterprise.

The settlers did not give up their fight. Their continued attack on government indifference resulted in the state creating an Industrial loans board (ILB) in 1951 which lent out loans, chiefly to help set up metal engineering and building materials industries. The Industrial loans boards object was not typically to promote industries but to await requests for loans from Credit Worthy entrepreneurs. Its activities, however Small, generated an expectation of and demand for continued state intervention, resulting in the setting up of the Industrial Corporation in 1960 to takeover from the Industrial loans board.⁴ The Industrial Corporations objects appeared more broader and 'dynamic'. In addition to giving loans to private entrepreneurs, it was also asked to set up new industries.

The Development Corporation was a modest affair designed to facilitate expatriate business without however adopting an interventionist or a supervisory function. It was certainly not anticipated then that this would become the INDECO that spearheaded State intervention in the first and second republics of Zambia.

In 1963 the Development Corporation was transferred to private shareholders with government retaining a minority share. However, in August 1964 the Company reverted back to government after the withdrawal of Anglo-American, Roan Selection trust, the British South-Africa Company and the Commonwealth development Corporation.

1.b. After Independence

The period before independence was marked by substantial inequalities of income and political power between whites and Africans. The Northern Rhodesia State apparatus were concerned not with development but with maintaining law and order for the better exploitation of mineral resources.

The challenge to all this came with independence on the 24th October 1964. UNIP was popular despite being devoid of a clearly defined economic policy. The priority of the new government was to rapidly 'Zambianize' all the top positions. The government had also acquired the mass media institutions.⁶

A pointer that winds of economic change were to take place was signalled by the appointment of Andrew Sardanis, a Zambian businessman as head of the development corporation. His task was to initiate such development strategies as would stimulate rapid economic growth, thereby furthering a central aspect of

official policy, namely that it would be government rather than private business which would mobilize the development effort by providing massive investment capital.

There were inherited statutory bodies in Zambia which catered for agriculture (mainly settler), electricity supply and African housing. The Industrial Corporation a public body was subsequently named as the Industrial development Corporation (INDECO). INDECO became the main vehicle for state led industrialisation, deriving its capital from taxes imposed on the mining companies at the time when copper profits were high.

All in all there was a surge of economic activity after independence which was targeted at narrowing the gaps in the infrastructure through local efforts and the new manufacturing industries that were established. The government shortly after independence allowed new parastatals to emerge, "but it restricted its activities, for the most part, to the reorganisation of existing structures or the implementation of previously declared Policy."⁷

However, after the appointment of Sardanis, INDECO expanded its scope and agreements were made with foreign investors for new industrial enterprises. There was therefore a pragmatic combination of cautious continuity with the maintenance of inherited economic institutions with some bold initiatives to breakaway from colonial business links into wider multilateral relationships.

2. WHAT THE POST INDEPENDENCE GOVERNMENT SOUGHT TO REDRESS.

The policies of maintaining the colonial institutions were intended to calm settler and multinational corporations'

anxieties in order to prevent a flight of capital and the disruption of economic life, while the policies of establishing new economic structures were intended to initiate a new enabling environment for economic growth. INDECO rapidly established itself as a strong force in the economy taking over responsibility for the management of its minority interests in associate companies and those enterprises and corporations in which it held a majority or total share.

The government had seized the opportunity to take hold of the economic infrastructure and reshape the parastatals to reflect the government's desire for greater control over the economy. It was also helpful in providing the institutions through which the government could begin to increase the scope of Social welfare Provision; increase employment and reorient economic activity in various ways.⁸ Indeed, the then President, Kaunda had summed it up that "we must experiment with the best methods we can think of spreading wealth to all our people in as short a time as possible."⁹ This statement of the President was to be construed as being the probable (and not the certain) means of achieving the goals of the government. In other words, the experimental policies could or could not bear the expected results depending on the interplay of such factors as the means of production, the efficiency with which the technology employed yields produce, social needs of the people and above all, the administrative instruments involved in the organisation of the means of production.

The then increasing state intervention seem not to have coursed any alarm in its early stages possibly because it was

widely accepted that much needed to be done to make up for the gross colonial neglect and partly because state intervention was an accepted phenomena at the time.

It has been contended that the private sector was in any case too small to provide the funding needed for the kind of proposed economic growth. The other factor behind government intervention was the evident incompatibility of interests between the balanced development it envisaged and the sectoral structure of private industry.¹⁰ The multinationals had showed little interest in diversifying into other industries apart from Cooper Mining.

The then President of Zambia, Dr Kaunda had on many occasions stressed that the state was to play a Key role in the progress of the economic and social life of a humanist society. This was explicitly put in the first three major reforms.

3. THE ECONOMIC REFORMS AS 'REMEDIAL INSTRUMENTS'

3(i) The Mulungushi reforms.

Former president Kaunda in a speech on the 16th April, 1968 at Mulungushi complained that there had been excessive expatriation of profits made in the economic boom after independence. As a result there was gross neglect and under capitalization, excessive local borrowing, a massive increase in foreign expenditure on invisible, transfer pricing etc. He therefore proposed new reforms which would direct available capital to development and ensure that Zambians " individually and comparatively share in the commercial and industrial life of the country."¹¹ He stressed that the new measures of state intervention were necessary because Zambians lacked the capital

and skills to be economically active on their own.

Only the government of the people can participate on their behalf and ensure that the nation has control over the vital resources of the country and also provide avenues for the acquisition of skills pertaining to economic development and participation."¹²

Thus in the Mulungushi reforms, the government acquired a substantial 51% share in twenty four (24) companies which were involved in the production and distribution of goods through out the country. This was the time that the national production only accounted for about a third of the local market for manufactured goods and, total manufacturing accounted for only six percent (6%) of the gross domestic product. The real hold on the Zambian economy leaned on the mining industries.

Inspite of the small margin that manufacturing companies contributed to the G.D.P, it was felt under the Mulungushi reforms that acquisition of majority controlling shares in the enterprises was a necessity; as it broke the monopoly of foreign enterprises, in the limited processing of primary products, in the production of consumer goods requiring low-level technology such as textile, footwear furniture etc.

3(b) Matero reforms

While the Mulungushi reforms might have raised many eyebrows, it was the subsequent matero reforms which caused a major uproar.

On August 11, 1969 the state acquired 51% controlling interest in the giant mining companies, Anglo-American corporation and Roan Selection trust which were the main Pillars

of the economy.

The actual takeover of controlling interest was carried out with much circumspection - and major concessions were made with the owners of the companies that were taken over. The actual negotiations for the nationalization went on smoothly and fairly quickly and became effective on 1st January 1970¹³ though the terms of the policy were signed on the 24th of December 1969.¹⁴ The justification of the nationalization policies are discussed at the close of this chapter, what is worth mentioning here is that in all these 'state take-overs,' the object of the government was to vest the economic infrastructure in the state, to increase the scope of social welfare provision, increase employment and reorient economic activity to national interests by breaking foreign capital interests in the major limbs of the economy.

3(c) THE 1970 ECONOMIC REFORMS

The other major step in the reform process was taken on the 10th November 1970 when the former President stressed that Zambia was determined to "remove foreign domination of our economic life by acquiring control of the major means of production and services while at the same time we established a firm foundation for genuine Zambian business."¹⁵

Substantially the effect of the 1970 economic reforms was to give the state some controlling interests in the big financial institutions, forexample the state acquired a minimum of 51% in insurance companies, building societies and other various large private Companies.

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

4. THE LEGALITY OF NATIONALISATION POLICIES

The legal nature and effect of nationalization policies have been a crucial subject in Zambia's bid to woo investors. However, the policy has been held to be a legal one. Before we go into substantiating the legality of the policy, we may try to give a definition of our subject.

Nationalization has been defined as the "act by which one state forces certain categories of individuals or corporate bodies to suffer their rights in all or certain categories of their property, movable or immovable, tangible or intangible which property is submitted to its sovereignty, being vested in that state or in state controlled bodies for further exploitation."¹⁶ Though it may appear to be unjust and an infringement of personal or corporate liberties, international organisations have recognised nationalization as a valid and legal practice.

The United Nations recognises the right of a state to nationalize property within its jurisdiction as valid. This is according to the 1962 United Nations resolutions relating to permanent Sovereignty over natural resources. The resolution however, limits nationalization to be based on the grounds of public utility, security or national interest.¹⁷

This resolution was reaffirmed by another United Nations resolution which confirmed the "inalienable right of all countries to exercise permanent sovereignty over their natural resources."¹⁸ From these U.N. resolutions therefore, we can conclude with certainty that nationalization as a policy is legal.

Having looked at the policies of 'take over' in their legal sense, we may now turn to see the legality of the institutions that were created there under.

5. THE LEGAL NATURE OF PARASTATALS.

The issues of the nationalization policies were parastatal institutions, which were companies created under the Companies Act ~~in~~ or under separate Acts of parliament. A company is defined as a number of persons or legal bodies that have joined together for a common purpose. This literal definition suggests that there is an inherent dynamicity in the objects that a company may pursue. This largely depends on the objects of the owners of the company.

In the case of the public bodies that were created, the objects were those of the government of the day which owned substantial controlling shares. These objects were not in the most, incorporated in the memorandum of associations but were

given concurrently with the powers creating those bodies under separate Acts of parliament or through directives from ministries under which particular bodies fell. These objects could in sum be stated as creation of economic independence, diversification of the economy and reducing economic disparities in development. To this end we may turn to discuss how these parastatals performed in practice, and thereafter it would be prudent for us to conclude whether or not the objects of the companies were realised.

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CHAPTER THREE

THE PERFORMANCE OF PARASTATALS IN ZAMBIA

To appreciate how public corporations performed, data has been collected on a number of subsidiaries of ZIMCO. This data has been collected from (both rural and urban situate parastatals), and assessed and classified on the basis of successes and failures vis-a-vis the objectives for which these public institutions were created.

1. ZIMCO-THE MOTHER BODY

In the wake of the economic reforms, ZIMCO emerged as the motherbody of all parastatal companies in Zambia and thus its economic performance was to be the best indicator of the general performance of public institutions.

ZIMCO had contributed to national economic development by emerging as the major employer in Zambia. It had also participated in raising revenue for the government through excise duty and income tax, forexample in 1977, it contributed an aggregate of K164 million in excise duty and income tax while in the 1986 fiscal year it contributed a K666 million.¹

However, the performance of ZIMCO per se painted a gloomy picture of its future. The aggregate marginal profits fell by about 13% in 1973 and another 7.6% in 1975, finally to Zero in 1977² Such shoddy performances were registered against multimillion kwacha worthy of assets a situation quite uncommercial.

1.(a) INDECO THE MAIN SUBSIDIARY OF ZIMCO.

By 1970 INDECO had become a subsidiary of ZIMCO. INDECO had been formed and groomed to militate against the inherited

economic structures which were import oriented. Notwithstanding the substantial state intervention, the corporation had failed to effect the government object of import substitution in it's industrial growth. This was because of the unavoidable use of imported parts and materials. The local industries could only produce the less sophisticated goods, beer, foodstuffs etc while other enterprises were characterized by final stage processing and assembly of materials and parts respectively. This went to denting the government objective of import substitution.

The INDECO group of companies started experiencing hard times with several subsidiaries operating sub-economically on a worrying scale. The 1972 Annual report gave warnings of growing inefficiencies due to increasing prices of imported raw materials. The issue of state controlled prices was also noted and was to remain a focal point of controversy on government objective in parastal institutions. The administrators here were and still are found in a dilemma of having to choose between social factors and the making of profit.

These inefficiencies continued through the 1970s. During the 1977/78 financial year , the INDECO group of companies had made an aggregate profit of only K2 million on assets worth of about half a billion Kwacha. Among the companies with sub-economic performance were; Indeco milling, Kabwe Industrial fabrics and National Hotels, all of which registered losses in millions of Kwacha.³

2. CLASSIFICATION OF PARASTATALS ACCORDING TO OBJECTIVES.

2 (a) Financing development

The state had created financial institutions whose main object was to provide funds for economic development. This parastatals like Lima Bank, Lintco and the Tobacco Board of Zambia were created to provide loans to farmers. The export and import bank (Exim Bank) was created to provide funds and incentives to Zambian exporters and importers. The funding of these parastatals came from government Coffers. However, its worth noting that these institutions have not achieved much because of their limited beneficiary constituency and sometimes the development loans made are hardly recovered.

Sometimes the funding of some development projects was to be coming from within the parastatals themselves . This was evident during the third national development plan, where government anticipated major investments in Mining, Agriculture and Manufacturing. The funds for these projects were to come from an anticipated 5% growth in G.D.P and a substantial amount from parastatals and the national budget.⁴ Crucial doubts arose about these third national development projections. When the parastatal companies had performed so poorly, it was most doubtful how the parastatal institutions could have realised the proposed amounts. For example, Indeco the backbone of the parastatal sector was tabled to contribute a K199 million to the national course but it had lost K12 million during the 1978-79 financial year. A ZIMCO official revealed that quite apart from the contributions that parastatals had to make to the government investment budget, some state corporations had to pay their

creditors 'neck breaking' interests on loans per month.⁵

What this implies for our particular study is that, because of the poor performance of parastatal companies; they failed to secure money for government investment, and thus government objectives in these parastatals had failed because they did not achieve the objects for which they were created.

2(b) Agricultural development

The state upon getting independence embarked on ending the nation's dependence on the relatively small number of white commercial farmers who produced most of the marketed agricultural produce. The state set out to expand the agriculture base. An institutional programme was initiated through creation of producer cooperatives whose aim was to bring many households into the cash economy.

The cooperatives operated in such a way that any ten people would come together and register as a cooperative. Upon registration, they would become eligible for seasonal loans, medium term loans for capital improvements and farm equipment.

By the early 70s cooperatives had failed in numbers and were unable to pay-back loans. The reasons for failure of producer cooperatives were ably analysed by Quick⁶ who wrote that, firstly, government provided far too much money in loans and subsidies, hence the recipient cooperatives were incapable of utilizing the capital productively and tended to treat the money as income rather than investment funds, thus their inability to pay. Secondly, the inability of cooperatives to use capital efficiently was due to the managerial incapacity of most members to run highly commercial agricultural establishments.

The other contributing factor to the failure of Cooperatives is that the proponents of the system were of the view that a village was a kind of natural cooperative unit which could be transformed into a modern communal production unit with the addition of modern agricultural technology. This assumption is rebuttable and was rebutted when it failed in Zambia. Failure from governments inability to organise and train 'ambassadors who could have brought to the peasant basic agricultural training as a complement to the agriculture additives and implements given.

The purpose of discussing cooperatives here is to make easier understanding how the parastatal institutions that bore the task of providing loans performed i.e. the failure of cooperatives that had got handsome loans directly meant betrayal of government objectives in the institutions that were engaged in the disbursing of funds. With these registered losses, government withdrew its support from peasant agriculture and the peasant was again in the cold. Solace came with the introduction of the Agriculture finance company which made loans for agriculture inputs. However, only a very small fraction of subsistence farmers benefited from the fund,⁷ and the government objective of achieving increased agricultural production was little felt due to the small number of beneficiaries.

On the general performance, the total agricultural output rose from an estimated K97.4 million in 1965 to K260.3 million in 1977. If the effects of inflation are removed and the amounts measured in constant 1965 prices, agriculture took an aggregate share of 13.7% in 1977.⁸ These statistics show the degree of

inertia in the agricultural sector inspite of the unwaivering government support.

Some of the factors that contribute to failure of parastatals engaged in agricultural production are that the public bodies engaged in the marketing of crops tend to discourage farmers for example, when buying crops, usually buying agents are too late and the procedure involved is long, this tendency is perennial and has permeated to the present day government, where the MMD government has failed to provide adequate marketing mechanisms to buy the Crop for the 1992/93 marketing season. Late payments by parastatals like CUSA, Lima bank, Zambia Cooperative Federation (Z.C.F.) tend to discourage farmers.

These failure in agricultural development are implicitly the failure of parastatals that were created to boost agricultural development. An example could be given here of NAMBOARD which had failed to run efficiently because a lot of capital was cultivated into extending its infrastructure even to areas where the feasibility of servicing agriculture efficiently were remote because of, transport costs and low production in most traditional farming units.

3. MANAGEMENT OF PARASTATALS IN ZAMBIA.

3(a) Internal management and performance.

The prudent management of any going concern is as important as the gathering of capital for effecting the objects of the company. In case of parastatals, appointment of managers was/is by government which has the majority or controlling shares. The people appointed are usually Zambian nationals.

The effect of Zambianization in parastatals was that management posts were given to people who were usually lacking in technical-know how of the institutions they were given to administer. Forexample, the past Vice Chancellors of the University of Zambia have been people whose educational background had nothing to do with the administration of a big institution, Professor Mwafuluka was a botanist, Prof. L. Goma was a natural Scientist. These people had secured their posts either through patronage or the subjective discretion of the president. The effect of such appointments of people who were lacking in the administration of a large human organisation led to watering-down the internal management efficiency. Which was a requisite for the attainment of the goals of these corporations.

Sometimes even where the legal instruments creating parastatal companies had vested the appointment of managers in the board of directors, the president would still be heard making appointments. For example, section 16 of the Dairy produce Board⁹ vests the appointment of the general manager in the board with the approval of a minister. However, in practice the appointment of the general Manager was made by the president and it was a usual practice that whenever the Head of state held a press conference top posts in parastatals were usually shaken. In this practice Mr Mulaisho was appointed as General Manager for Namboard and Mr. Nkoloma as General Manager for Dairy Produce Board in 1974,¹⁰ instead of the boards as provided for in the Acts of parliament.

The essence of presidential appointments for our particular study is that, the practice tended to remove the management

powers from the Board of directors to the President in the sense that the appointed parastatal chiefs are supposed to exercise their powers and perform duties in accordance with the interests of the President and not those of the board or Company. This goes to weaken the system of management enshrined in the Acts of parliament and in case of those state enterprises registered under the Companies Act, the articles of association are greatly abrogated by such appointments. Such a situation leads to varying objectives in parastatals, the board may be of the view that profits are the object of the company while a general manager appointed by the President may insist on Social factors as being the goals of the Company.

The other problem that arises in the management of state corporations is that the Acts of parliament creating these bodies are sometimes not precise enough and thus tend to give general directives and powers. As Himoonga ¹¹ notes, some Acts merely provide that boards are to exercise and perform duties in accordance with directives from ministers. This imprecise phrasing of the Acts seems to suggest that Ministerial directives are unlimited in character and scope. In sum, the imprecise definition of Acts seem to justify all kinds of intervention, thereby putting directors in a dilemma when considering issues of policy for the companies; they were expected to keep prices low, pay reasonable wages, expand employment, make profits and undertake uneconomic expansions.

A homely example here is the Livingstone Motor Assembly. The Company in 1980 used to make a substantial loss of K1000 on each car assembled. With the labour force of the company it had

the capacity of assembling 500 cars per day but it was only producing 5 cars per day.¹² It's worth mentioning here that despite producing below capacity, the company still maintained the same labour force. This implies that the company's profit making objectives are defeated by the social and political factors of job creation, which led to the company's cumulative losses.

The then President had also joined the Critiques of parastatal managements when he adduced evidence during the "Watershed Speech" that some parastatal chiefs had given themselves unjustified increases in salaries, entertainment and transport allowances.¹³ These increases were not usually performance related nor were they measured against the profits of the company. This goes to show how public administrators were keen to spend what was realised from State-Owned Companies on uneconomic ventures.

This inefficient capital and investible resource management accounted in part for the falling off in performance of parastatal companies, leading to failure to attain the objectives for which these corporations were created.

In the transport sector, creation of state enterprises eased the transport net work in the country. The targeted beneficiaries were not only the urban dwellers, but also those living in rural areas. Despite this well tabled programme, the success or failure of these corporations was assessed against performance. To fully understand the issue of management and performance in these parastatals, we may look at two state controlled transport companies ie. U.B.Z and Zambia Airways.

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3a(i) The United Bus Company of Zambia (U.B.Z)

U.B.Z was created with the prime object of providing transport services to rural areas, intercity and international routes. The governments objective in the company was to make the enterprise while pursuing profit objectives, to consider providing services intensively and extensively to the rural areas, so as to speed up the transport network . While profit making remains the main objective for the company, overtime the social factors of providing transport per se perpetrated by politicians on the board have become more pronounced. This has made the company to continue operating on consonant losses as the chart below shows.

The losses of the Company have been attributed to the uneconomic administrative structure which seems to place emphasis on trivial issues like time than on the making of money for the company, For example, when buses go to rural areas, drivers are given time within which to return. This at times makes buses to travel hundreds of Kilometres with as few as ten passengers in order to beat the time limit.¹⁴ This is something that an efficient private operator would not do because the fuel wasted and the engine run is money and moneys worth.

The other problem in the company is lack of adequate inspecting mechanisms on operating buses. This has contributed to losses of the company. Drivers pick passengers without issuing them with tickets, this tendency of drivers could be easily controlled if inspectors were extensively patrolling routes and bringing offenders for administrative discipline and thus, could have deterred potential offenders.¹⁵

Maintenance is said to lack in the Company leading to uncalled for shortening of the life spans of buses. The Company losses about 20 buses every year, most of which could be repaired given the needed spare parts but Management is said not to be easy to take into buying replaceable parts.

An interview with the Managing Director, ¹⁸ revealed that the performance of the company was also affected by the make of buses that are bought. He said if the company was to be buying strong makes like Leyland, it could be saving a lot of money on spare parts because the make takes long to break down. He further revealed that feasibility studies conducted by INDECO towards the close of the second republic recommended that Tata buses should not be considered whenever buying a new fleet for the company; because of their unsuitability for Zambian conditions.

However, this seems to contrast sharply with the statement made by the Public relations officer later in the year that government had bought 25 tata buses for the Company.¹⁹ This was corroborated by a spot-check which found new tata buses that had just been received from the copperbelt and were just pending to start services. It is under such circumstances that one finds it hard to determine what the company's policy objectives are; if the report of feasibility studies reveal that the company should discontinue buying a given make, then the financiers of the company go on to buy that which is condemned pursuit of Company objectives become difficult for the management and hence its bound to fall.

The Kayope Commission on the operations of parastatals also revealed some important issues about the operations of U.B.Z.¹⁹ It cited lack of proper accountability as one of the reasons that have perpetrated pilferage of spare parts leading the Company into insurmountable losses.

To grasp how the Company performed, we may look at the profit and loss chart below.

U.B.Z. ANNUAL PROFITS AND LOSSES (IN THOUSAND KWACHAS)

| YEAR | 1977 | 1978 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 |
|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| PROFIT | NIL | NIL | NIL | NIL | NIL | NIL | NIL | NIL |
| LOSS | 3,961 | 5,991 | 4,754 | 6,207 | 6,953 | 13,559 | 22,550 | 80,096 |
| ASSETS | 15,121 | 20,976 | 23,881 | 28,884 | 23,454 | 23,374 | 24,050 | 48,6 3 |

(Source: Annual Reports, Various years).

From the chart one notices that the company had never made profit for a decade inspite of the huge assets owned. On the basis of this we can comfortably conclude that the Company has failed to achieve its goals both social and economic in that the profits that were to enable the efficient provision of transport services were not made.

3(a)(ii) ZAMBIA AIRWAYS CORPERATION

Having looked at the performance of U.B.Z. we may turn to the national airline. The Corporation was created with the objects of providing transport and freight services on commercial basis.²¹

The Corperation has achieved its goal of providing transport services through creation of both local and international routes.²² On the local scene, the airline by establishing routes

to the nations tourist resorts has enabled the state to attract tourists and hence earn foreign exchange. This attraction of tourists has also helped create employment among travel and tour agencies which directly benefit from the continued operations of the airline.

A director ²³ with the Corporation argued that quite apart from the financial position of the Company, the airline has helped government realise the object of Zambianization. When the state Corporation was taken-over by government all pilots and engineers were expatriates but now there are only three expatriate pilots the rest are Zambians and there are no expatriate engineers.

On the basis of the foregoing we may say that the national carrier has registered some successes. However to balance the beam we have to weigh these successes against the failures. During the 1992/93 financial year, Zambia Airways had registered a staggering K4 billion loss.²⁴ To show the gravity of the problem, the airline was in early 1993 blacklisted by the International air transport association (IATA) for failing to settle a debt with the association. And as if to add pain to the injury of the already losing airline, one of its planes was reported to have been impounded in Tel Aviv (Israel) as security for a debt. This has deepened the corporations inertia to operate efficiently.

The Managing director said that lack of planes has substantially contributed to the losses of the company.²⁵ Another source of worry for the airline was the bloated workforce of 2000 of which 20 were general managers. Thus in a bid to bring the

company to its feet, feasibility studies on the profitability of the Company vis-a-vis some routes and Staffing were conducted and as a result the airline has reduced its workforce by a 600 margin in 1993.

The other factor that had been held to have contributed to the airlines consonant losses was the high level fringe benefits awarded to employees. For example before 1992, each employee was entitled to a family air ticket to any destination to which the airline flies, and as if the free tickets were not enough, the families were given substantial allowances for up-keep while abroad.²⁶ This exercise was uneconomic for a company established to make profits. Thus the direct implications of these fringe benefits were that they were a good negative index on the proceeds of the company. Perhaps these allowances are what made the Minister to officially declare that government had decided to stop funding the airline ²⁷ and hence, it had to start paying its way through to enable it attain reasonable levels of efficiency.

In sum, we note that though the national carrier has been able to achieve some social objects of its creation, it has failed to operate efficiently because of the poor management which has plunged the Corporation into escalating losses. This therefore, implies that even though the Company has managed to Zambianize its workforce and created employment, the company will be said to be a colossal failure in that the profits that were the prime objective ²⁹ were not made. Thus even the social goals of the state were bound to fail because the money that was suppose to create an enabling environment for the creation of

jobs was not made.

3(b) GOVERNMENT MANAGEMENT OF PARASTATALS

Just as shareholders in registered companies have residual powers of management thus can appoint company directors; the Zambian government by virtue of being the principal share holders have derived powers of appointing and setting of rules for the appointment of corporation's executives.

As a result of these derivative powers of the government Civic officials have been transferred from the Civil Service to top posts in state enterprises. A direct consequence of this is that the people who may be so transferred may not have the technical know-how of running Commercial Ventures thereby making parastatals more susceptible to failure than success. Former President Dr. Kaunda is quoted in this regard conceding that government had itself to blame for giving certain jobs to unqualified persons.³⁰ This underscores the seriousness of maladministration in parastatal companies.

Quite apart from manpower transfers from the Civil Service to state enterprises, the frequent reshuffles also contributed to the poor performance of parastatal Companies because an individual executive hardly had time to settle in the new job before he was moved to another.³¹ Indeed these apprehensions are echoed by former Minister and Chairman of the Cold Storage Board who illustrated the problems of adaptation by Ministers due to constant reshuffles in both their political positions and as members of boards of state owned companies. He said "the effective date of my takeover --- was a day before the completion of activities covered in this report which puts me in

a very invidious position when writing the forward of this annual report"³².

The fears of the Minister are practically true. Not until one has had time to fully address himself to the practicalities of a given going concern can he be in a position to deal with its matters competently. This therefore means that the reshuffling of officers and the transferring of parastatal chiefs from the Civil Service to State Corporations waters down the management efficacy of these institutions, and ultimately may lead to failure to attain the objectives of these Companies because the managers are either, 'too new' in the companies or they do not have the called for skills.

3b (i) Investments in parastatals versus government

The government did in practice try to achieve its goals through public institutions. This took the form of investing and creating state enterprises in its priority areas of policy. Thus, the state could insist that the investible funds available in a parastatal be invested in accordance with the social and economic interests of the State. This to some extent is justified as any shareholder should have his interests represented in the Company.³⁰ However, the usual practice in companies is that the corporate autonomy of a company should be respected and as such, investment decisions should be left to the board of directors the only requirement being that they should be compatible with the overall company objectives.³¹ In case of parastatals the story was different and thus, it was usual to see government direct investment in a corporation like INDECO against its resolutions.

To illustrate the extent of government interference in the investment decisions, we may look at three companies that were established under such circumstances. These are Mansa batteries, Luangwa industries and the Livingstone Motor Assembly.

These three companies were established for three major policy objectives of the government; firstly to provide employment to people living in rural areas. Secondly to reduce regional disparities in economic development ³² and thirdly, to make profits from the establishments. ³³

From these well laid down company targets one feels tempted to comment on the possibility of attaining all three objects from the same industries. On the first object of employment creation, the three state enterprises achieved it with much ease in view of the Capitals pumped into the companies. Coming to the second aspect of reducing regional disparities in development, it was also achieved adequately as all the three enterprises were established in rural areas. The most intractable is that of reaping profits. On this issue we may take turns to look at each company's prospects of making profit.

In the case of Luangwa industries, a Company created for the assembling of bicycles, the spare parts upon arrival from abroad are first kept in Lusaka enroute to Chipata. After the assembling process they are brought back to Lusaka which is the centre for the bicycle market. Here one notes that the transport expenses incurred in transporting these spare parts and bicycles to and from Chipata are a good margin on the production costs of the company and so are they a negative index on the profits of the company.

The same is the case with the Livingstone motor assembly. The fiat spare parts first come to Lusaka then taken to Livingstone for assembling and back to Lusaka for sales. This makes the cars expensive due to high production costs and thus, make the cars be shunned. To maintain the sales the company has had to be selling below the economic price to keep itself running.³⁴

In the case of Mansa batteries, the Company was initially to be situate in Kabwe. However, upon political and social considerations of the government it was decided that the company be established in Mansa.

While appreciating that the Company has attained its goals of employment creation and reducing rural and urban economic imbalances,³⁵ the state enterprise has failed to attain high levels of efficiency to maximize profits because of the high production costs. These production costs have in part been escalated by transport charges involved in transporting manganese and lead (the raw materials for dry cells) from Kabwe to Mansa. These cost could have been reasonably checked if the state corporation was established in Kabwe were most raw materials are mined.³⁶

Besides the mineral deposits in Kabwe, the company could have further minimized the costs if it was situated along the line of rail because the transport charges involved in ferrying the batteries from rural Mansa to the line of rail for sale is money which could be rationally invested into other Viable Ventures which would help realize the most sought development.

The feasibility studies conducted by INDECO³⁷ revealed that

quite apart from the remoteness of the area, Kabwe could have been a better location because it had all the housing facilities and amenities which the new location lacked.

These high production costs have led the Company to be running at reduced industrial activity and as a direct consequence, the dry cells from Mansa batteries are hardly on the market because they cannot compete favourably with imported cells which are cheaper. In sum, the company has failed to achieve its objects because though it has employed and brought economic development to rural area, the state enterprise faces a bleak future as it can not make enough money to facilitate and secure the attainment of these social goals of the state.

Government interference therefore has extended to the day-to-day activities of parastatals. A classical example here is the case of Kafue textiles limited. During the 1972-73 financial year, Indeco subsidiaries including Kafue textiles and Kabwe industrial fabrics were experiencing reduced industrial activity and as a result they were closed down.³⁸ The normal course of things could have been to lay off workers until such time that the Companies were able to stand on their feet. Indeco however, was directed by government to keep all workers on the payroll during the entire period of inactivity. The same repeated itself particularly in the case of Kafue textiles. In 1992 the textile Company was running insurmountable losses and was subsequently closed down.³⁹ The interesting thing about the second closure is that it had happened after a new government had come into power. In spite of the government's pro-capitalist policies, it ordered that workers be maintained on the payroll.

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The Labour Minister argued vehemently that "there is no way a company can be allowed to maintain its labour force after the prospects for the company rising to its feet have been shattered by economic factors."⁴⁰ The Minister's sentiments were subsequently overruled by a collective government resolution that workers be maintained. The Kafue textiles is of course just one of the Companies that the state has kept running for very political and social reasons of providing employment even to an inefficient labour force.

In a nutshell, we may conclude that though there were successes registered in parastatals, the failures were more pronounced making the general performance of state enterprises a colossal failure.

FOOTNOTES

1. ZIMCO annual reports 1977 and 1986
2. ZIMCO annual reports 1973, 1975, 1977
3. Third national development plan 1980 P417
4. Third national development plant
5. Times of Zambia 19.8.80
6. S. Quick, Bureaucracy and Rural Socialism; the Zambia experience 1975 Ph.D. dissertation.
7. President D.K. Kaunda at the opening of a seminar on rural development Lusaka 23 March 1970.
8. Central statistical office, Monthly digest of statistics - various issues
9. Cap. 348 of the Laws of Zambia
10. M. Ndulo ed. Law in Zambia, 1984. P214
11. Ibid P215

12. Daily Mail 26th March 1990
13. President Kaunda's address to the U.N.I.P. National Council
Lusaka 30th June 1975 (LUSAKA 1976) .
14. Interviews of Mr. Mwelwa, Senior Driver at U.B.Z. on 23rd of
April 1993.
15. Interview with an Inspector 23rd April, 1993.
16. Interview with an engineer - Mr. Banda, 23rd April 1993.
17. Mr. Robert Chomba (M.D) Interviewed on the 25th June.
18. Mr. Mwanza - The Public Relations Officer - 2nd July 1993.
19. Based on an interview with the Commercial Director - Mr.
Sakuwaha.
20. Mr. Sakuwaha - Commercial Director 14th May, 1993.
21. According to Mr. T. Simakoloyi - Finance Director. 14th May,
1993.
22. Mr. T. Simakoloyi 21. Zambia Airway Annual Report.
23. Opt. Cit.
24. Times of Zambia 13th July 1992.
25. According to an Air Hostess (Mrs. Kaoma) June 25, 1993.
26. Times of Zambia 2nd October 1992 P.3 (Andrew Kashita).
27. Cap. 744 Sect.13. (Zambia Airways Corporation Act).
28. Times of Zambia 24th March 1977 and 23rd April 1977.
29. Mr. Mwanakatwe, summary of the salaries Comm. Report 1975.
GRZ.
30. Mr. Kunda's forward in the Cold Storage Board Annual Report.
1973.
31. A shareholder being a subscriber to the memorandum and
articles of association and so to the objects of the
company.

12. Daily Mail 26th March 1990
13. President Kaunda's address to the U.N.I.P. National Council
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1973.
31. A shareholder being a subscriber to the memorandum and
articles of association and so to the objects of the
company.

32. Implied by Greer L.J. SHAW and SONS LTD-V-SHAW (1935) 2kB 133
at 134.
33. Remmy Chisupa - INDECO Annual Report 1976/77 P.5
34. INDECO Annual Report 1973/74 P.32
35. Daily Mail 26.3. 1980.
36. INDECO Annual Report 1976/77 P.5
37. Naidoo, A Secondary Geography of Zambia, 1990, Longman. P.57
38. Cited in memo MM/101/24/ Vol. P11, 12th March, 1974 Ministry
of Mines Lusaka.
39. INDECO Annual Report - 1973 P 32.
40. Daily Mail 15.9 1992.
41. Ibid. Mr. Ludwig Sondashi.

CHAPTER FOUR

RECOMMENDATIONS FOR THE FUTURE OF PARASTATALS

Having discussed the performance of parastatals and concluded that they had generally failed to achieve their goals, we may zero into the nitty -gritty of prescribing alternatives to the institutions or other structural changes that can be adopted to help achieve the objects of the state in these public corporations.

In making suggestions, we shall start by generally considering the objects of these enterprises vis-a-vis their attainment, thereafter, we shall make recommendations on the legal and commercial management of these state establishments.

1. Financing development

The failure of financial institutions was implicitly the failure of the beneficiary enterprises which were supposed to oil the engines of economic development. The loan facilities offered by parastatals were more favourable than those offered by the commercial banks which were indexed to prohibitive interest rates. These institutions were and are still the back bone of farmers and industrialists. In deed these sentiments were echoed in the words of the President¹ who said the state would inject sums of money into Lima bank and the Development bank of Zambia to avoid producers borrowing money at high interest rates.

The bone of contention in these state owned "banks" is that though their roles had affinity for social needs, they were expected to run on their own after they had attained reasonable levels of efficiency. Because of lack of proper management, efficiency was not attained. The loans made were usually not

recovered because of the small workforce which could not effect 'door-to-door' collections of mature loans.² Sometimes, even where those engaged in the collection exercise had made efforts to collect, the records were not comprehensive enough and thus some beneficiaries were not traced. This led to losses which made the state a perpetual reimbursers for inefficiencies of these companies instead of the enterprises recircling the funds that are available by lending it out then collect it.

To redress the trend therefore, we would suggest that the financial institutions as vehicles of government objects, should adopt a 'focal point approach.' In view of the limited number of officers in these parastatals, they should be posted to the main agricultural areas of the territory in an effort to combine a positive lending policy with a reduction of the number of defaults on the loans. The same should be done to state corporations that finance Industrial activities (e.g. D.B.Z), they should deploy their officers extensively in areas where industrial activities are more pronounced for example, along the line of rail and in Provincial and district headquarters that have viable resource endowments. This would with certainty bring some development by people making use of development loans and natural resources within their vicinity.

Certain operations do not appear to confirm fully to the avowed purposes of the focal point approach. Production of certain crops (notably sorghum and cassava which are drought resistant) and creation of small industries are being encouraged in some areas which are remote and have poor communications. So that, returns to the effort and investment being made are

reduced; and the staff available is probably being spread too thinly over too many projects of varying merit.

We suggest here that the efforts of the financial parastatals should even more highly be concentrated, than at present, on areas, crops and products likely to give high returns in terms of increased money income.

The programmes which seem to justify a greater concentration of effort than is at present attempted are; encouragement of peasant cultivation of maize, seed beans and rice; and extension effort to expanse and improve peasant production of certain oil seeds. This could easily bring agricultural development if the financial facilities were made to permeate the whole productive substratum.

We would also suggest that the beneficiary constituency of these development loans be extensively revealed to allow more producers access to the loans. This would enhance growth of the economy in that though the individual production would be negligible on the national figures, the aggregate of many small production units would give overwhelming results.

2. Agricultural Development

Suggestions to parastatals engaged in agriculture are centred mainly on the inadequate marketing programmes which are at the core of the failure of the system to provide incentives to the farming community. Here we have situations where after farmers have delivered their produce to the buying agents they have to wait for months before being paid for their crops. Sometimes payments are made well after the subsequent farming season has started.

We would recommend therefore that parastatals like Z.C.F. Lima bank and Provincial Cooperatives should overhaul their operations so that spot cash is paid on delivery. This could be a good incentive to the farmers as they would always be assured of prompt payments for their produce and thus can have time to plan for the seasons to come.

To operationalism this system, its unavoidable that we need a powerful hand of the government to provide funds because institutions on their own may not have enough money to buy the crops. It may be argued that this theory of making government finance crop purchases is contrary to the wind of change which has sought to make government an observer in the economic life of a state.

It should be emphasized here that market forces should not be extended to certain crops (e.g. Maize) because failure of growing them would plunge the state into importing the crop. Even the so called avowed capitalist state do buy crops from producers and its the state that fixes the prices and not the market forces.³

We further propose that state enterprises engaged in agricultural development forge ways of becoming self sustaining by diversifying their operations. This would involve these companies using the resources available to invest in other economic ventures like treasury bills during their idle-seasons i.e. after they have bought the produce from farmers and resold it before the money so received could be used to buy agricultural inputs for farmers, they can invest the money into the national treasury or indeed in other commercial activities like retailing.

3. Industrial Development

Industrial development has been encouraged through parastatals under INDECO. Industry in Zambia has failed to achieve high levels of economic efficiency mainly because government expected too much from them. They were expected to run profitably, to employ as many people as possible and to finance government projects. Here one notices that government was acting contrary to the law by asking these state companies to finance its projects. Section 107 of the companies Act ⁴ provides very conclusively that no dividends should be paid to the shareholders of any company except out of profits. From this therefore we recommend that to institutionalize some form of discipline in the running of public corporations, government being the majority shareholder should not be dictating internal management in corporations unless those vested with the management of the company act in a manner ultra-vires to the overall policy objectives of the company. This would also instil financial and administrative discipline in the company executives. If this government interference was curtailed, industrial development would be witnessed with renewed impetus than ever before. However, it should be proposed here that if after serious considerations, it is found that government does not have anymore national interest in some inefficient industries it could be worth considering privatising them.

Lastly on industrial development, we would make recommendations on the implementation of liberalization vis-a-vis State Controlled industries. The M.M.D Government has embarked on an international campaign to woo investors, this has brought

about such drastic changes as scaling down tariff barriers on imported goods, encouraging exports in Zambian industries and the privatisation of parastatal companies.

The direct effects of such liberalisation in case of low tariffs on imports is that should it happen that imported products are cheaper than locally produced goods, the local industries will have to close for lack of market and also the government objective of employment creation will have failed because the employing institutions will be non operational. Usually what makes imported goods cheaper is that they are heavily subsidized from the exporting countries. Indeed this overt injustice to local industry was evidenced when the South African attache for trade said that South African imports would kill Zambian business because their export products are subsidized by government up to 25% on the value added to raw materials.⁵

Our recommendations in this regard are aimed at protecting the national industry. Being fully aware of the financial status of our economy we could not suggest that the state should also start subsidizing its exports, but that high tariff walls should be maintained on borders. These tariffs which are aimed at protecting national interests are justified under the safeguards clause of the general agreement on tariffs and trade (GATT).⁶ These measures would help parastatals in manufacturing to efficiently grow and help achieve the objects of industrial development. Consequently, since Zambia cannot afford subsidies, Zambian exporters would compete favourably on the international market. This is a development model Americans had used as seen

in the first chapter. On the issue of privatization of industries we recommend that for economic development to be achieved privatization perse would not help much. What is needed is that there should be encouragement of, especially new industries for the practical work out of market forces. For example, it would not help Zambia much if Zambia Sugar Company the only company engaged in that line of trade was to be privatized because it would just imply removing a monopoly from government hands into private ones. The best that can be done is to encourage other companies to start growing and producing sugar so that they can be competing with the already established Company. This is the capitalistic state of things that should be encouraged-because the new companies would create more employment apart from the labor force in already established companies and because of increased production, there may be more to export, thus industrial development will begin to show due to increased industrial activities in the economy and prices would fall due to increased supplies.

4. Import Substitution

The government object of import substitution has been given emphasis through local companies especially parastatals. This was in a bid to alter the pattern of manufacturing in Zambia which is import oriented.

We suggest in this regard that in order to concretise local industries without disturbing the market forces, a few considerations should be taken in new projects which should contribute explicitly to expanding productive employment opportunities and the gradual improvement of the standards of

living of the people.

In these state enterprises the issue of employment creation should be carefully considered in determining whether the technology used in specific projects ought to be labour or capital intensive. Given the two technologies available, the choice should tend towards the one using more labour and less capital. This is so because labour in Zambia is readily available at reasonable wages which are well below the capital intensive requirement.

The places of each project should be considered in terms of the possibility of establishing a network of growth and essential linkages in each province and district if the national economy is to be efficient.

We would further propose that the state which has the interest in rural areas where private entrepreneurs do not go, should finance some state establishments to buy the farmers increased output and process it for sale. This might include fruit and vegetable processing projects with re-usable containers from say Kapiri glass products or Ethol plastics (Kitwe). Such development would by implication keep imports at bay. Further, factories like Kafue textiles, for example, can provide an expanding market for domestically produced and ginned Cotton as long as appropriate measures are taken to encourage cotton production. This could militate against imports from other countries which rob the Zambian industry of the much converted market and the hard-earned foreign exchange.

5. SUGGESTIONS ON THE MANAGEMENT OF PARASTATAL

5 (a) Management Intercede.

What contributed to the failure of parastatals was lack of proper legal instruments and in cases where instruments were present it was failure to use them to appoint and retain Skilled manpower in the top management posts. There are two types of legal documents that govern Public Corporations. The first are the articles of association which are for companies incorporated under the companies Act⁸ and the second are the Acts of parliament which specifically provide for the creation of certain -parastatal bodies.

The Parastatals that have been incorporated under the companies Act and whose Articles or Associations are table A have specific provisions on the management of companies by directors and these powers cannot be divested by the shareholders of a company.⁹ However in practice it was usual to hear the president appointing parastatal chiefs contrary to the articles of association. The same is the case with corporate bodies created under separate Acts of parliament. This goes to watering down the management efficacy of these institutions because by not letting the board of directors which is well versed with the practicalities of that particular institution, management is usurped by inexperienced government officials.

To redress the anomaly we recommend that in case of companies like Z.C.B.C. and Kafue textiles Ltd., which are established under the companies Act, appointment of parastatal chiefs should be left to the board of directors in strict compliance with Article 72¹⁰ which vests management powers in

directors except for those reserved for the company in a general meeting.

In case of companies created under Acts of parliament, we recommend that if powers of management are in the board of directors, and they have also the power to hire and fire it should be the board to hire and fire and not any government official. For example Zambia National Broadcasting Corporation Act NO 16 of 1987 provides under section 17 for the appointment of a Director General by the board of directors and there is no where in the Act where it provides for the Minister to fire the Director general other than the board, but it was reported that a Director general adopted by the Board was dismissed by a Minister.¹¹ This is a breach of the contract enshrined in the company's legal document. In the case of AUTOMATIC SELF - CLEANSING FILTER SYNDICATE CO.-V-CUNNINGHAME ¹². Where the articles for the company provided that the directors alone shall manage the affairs of the company which are not expressing required by the articles or statute to be exercised by the company in a general meeting. The court held inter alia that the articles constituted a contract by which shareholders had agreed that the directors and directors alone shall manage.'unless and until their powers were curtailed by extraordinary resolutions of the general meeting or alteration of the articles of association they would ignore the resolution of a general meeting on matters of management.

From this therefore, we recommend that in case of parastatals registered under the companies Act, government should not have a hand in the management of public enterprises,

it should be in board of directors and no one else should be responsible for the management of the company except in matters specifically reserved for the company in general meeting of shareholders. These company law principles should be given ground in parastatals to avoid flaws.

When flaws in the appointments of Parastatal chiefs have been ironed out, the problem of having semi-qualified personnel will consequently phase itself out because the people who will be electing will be members of boards of directors who know the calibre of people needed to do the job.

5(a): Reshuffles of Parastatal Heads.

Shifting administrators like shifting cultivation is inescapably inefficient. It seriously undermines efficiency and the self confidence of managers. It takes time for an official to acquire thorough knowledge of local conditions and vernacular, that is to say before ones usefulness as an administrator in a particular parastatal reaches its peak he has to acquire experience. Losses due to frequent reshuffles are greater in those cases by no means infrequent, where no systematic attempt is made to transmit experience by one official to his successor. This problem is hard to combat given the subjective interests of appointing authorities .

Nevertheless, we earnestly propose that attention should be given to keeping parastatal chiefs for a reasonable length of time in posts to which they have shown themselves well suited. We further suggest that in case of boards to which there is a provision that the Minister responsible should be the chairman or just a member of the board, it is our appeal that since

ministers are susceptible to reshuffles than Permanent Secretaries, it should be the Permanent Secretary or his deputy who should represent government interest on boards of parastatal institutions. The two advantages of this are; firstly, the P.S. is the person who actually administers a ministry and thus knows what obligations are incidental to its operations than the Minister and secondly, a Permanent Secretary is most likely to have technical know-how of the operations of his ministry as has been witnessed where Dr. Mwansa a criminologist has been appointed as Permanent secretary in the Ministry of Home Affairs and Dr. Sichinga an agriculturist has been taken on as Permanent Secretary in the Ministry of Agriculture, Food and Fisheries.

5b. Power Sharing between government and Parastatal Boards.

In view of the power vacuum that exists in some parastatals where there are no conclusive laid down rules to empower state corporation chiefs to exercise duties independent of the state, for example where a statute provides that the board is to exercise and perform duties in accordance with directives from the minister. This type of phrasing creates problems when a minister is not available to issue instructions and the company has to make a decision.

We recommend here that it's important that the working relations between ZIMCO and the government be clearly defined; INDECO and all the other subsidiaries under ZIMCO be given considerable independence in their day to-day operations. However, the ministry officials responsible should be given power to decide what operations the INDECO group of companies should undertake and issue directives on broad matters of policy and

should be responsible for corporations broad policies, but not for the details of its operations. To clearly understand the mode of operational management see the chart below.

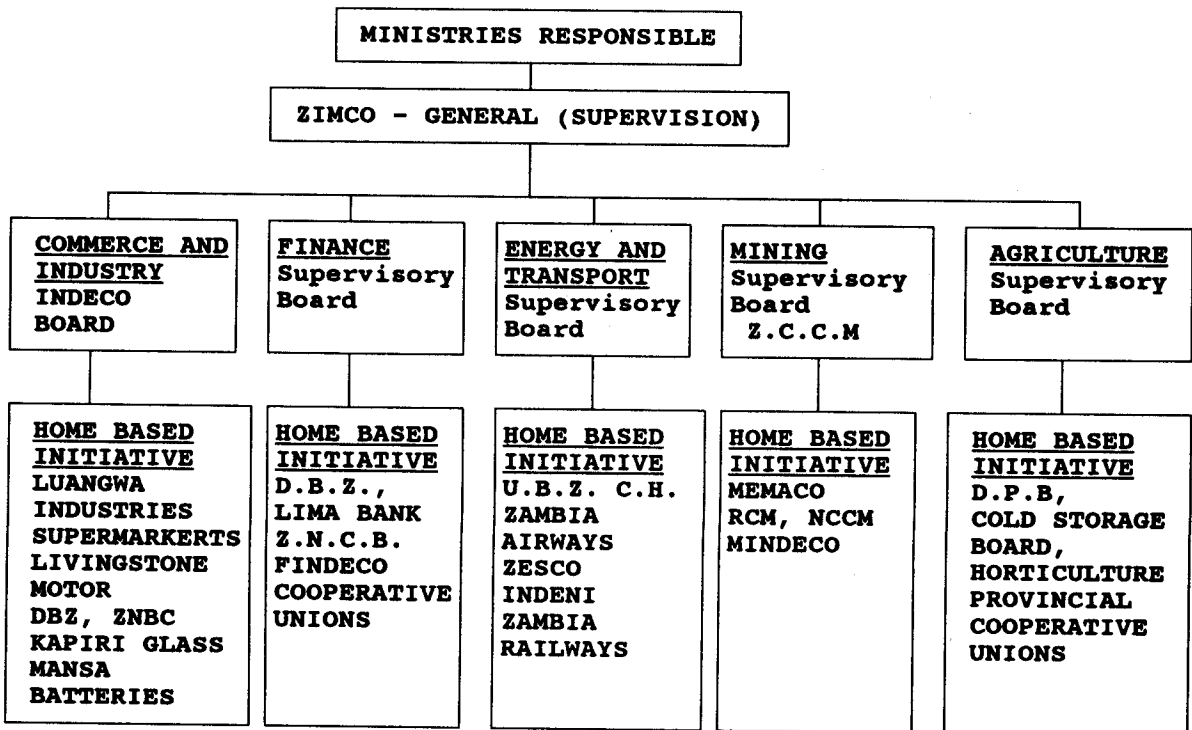
5b (i) Recommendations on investments in State Corporations.

As noticed investment and initiative for state companies used to come from the government. This is not good because planning for the future of an institution should be based on the practicalities of its successes and failures and not on alien resolutions of shareholders who know very little about the operations of the company.

We therefore recommend that respective responsibilities of the government and of the INDECO group in design of projects should be clearly laid down. We propose that initial surveys and the investigation of projects up to the stage of drawing up the master design should be left to specialist staff of the department of National Planning in the Ministry of finance. INDECO or other subsidiaries under ZIMCO should become involved at the stage of detailed design and should be able to express an opinion on the technical and commercial feasibility of proposed projects. The advantage of the proposed arrangement is that INDECO would not be obliged to keep a large specialist staff duplicating the survey and planning staff of the Ministry of finance under the department of national planning. For its participation in detailed design of projects and feasibility studies, INDECO could call in consultants as needed to supplement its own resources of operational knowledge and its on the basis of this 'Indeco in-door resolutions' that a decision can be taken on the viability of the investment. Under such an

arrangement flaws such as Mansa batteries being situated in Mansa away from the raw materials can be taken care of.

SUGGESTED PARASTATAL MANAGEMENT STRUCTURE.



FOOTNOTES

1. Sunday Times, July 4 1993 P1
2. S. Quick, Bureaucracy and rural socialism; the Zambian experience 1975 PhD dissertation.
3. For example the U.S.A. as noted by B.K. Petered International economics, 3rd edn, Prentice hall 1971 P 36
4. Cap 686 of the Laws of Zambia
5. The Weekly Post April 8-15 1993. P 7
6. Article 19 of the GATT to which Zambia is a signatory.
8. Cap 686 of the Laws of Zambia
9. Clause 72 of Table A. Cap. 686. see also GREER L.J. in JOHNSHAW & SONS (SALFORD) LTD-N-SHAW(1935) 2KB 133 at 134.

10. Cap 686 of the Laws of Zambia.

11. Daily Mail, 27th August 1993. 12. (1906) 2nd 34.

CONCLUSION

The content of this paper has been concerned with the justifiability and performance of parastatals in the light of their objectives.

It has been established that parastatals were one of the instruments that the now developed world used in their early stages of development. It was established that state corporations if properly administered are a good vehicle for settling down the economy of a newly independent state. They also help create a good defence against foreign economic domination which a purely capitalistic system could not do.

Therefore, upon Zambia's adoption of the state run corporations, the culture brought with it a lot of legal instruments and administrative structures which had to be exhausted if an economy responsive to Zambian needs was to be created. These were good objectives justified at both national and international forums. However, the state failed to fully implement its objectives in parastatals for very unprecedented circumstances that came to take order of the day, such as, poor management at grassroot level, excessive government interference in the day-to-day operations of state owned companies e.t.c. Thus the system was 'made' to fail to attain its goals.

From this it has been recommended that administrative and managerial remedies be sought as would be 'panacea' to the parastatal sector's poor performance. The rationale for suggesting administrative and managerial remedies is that if the initial objects of the state in these institutions were good and are still good, then when the system fails to attain its goals due to some curable ailment,

it is only good that just the factors that made the system to fall sick should be given corrective remedies and not a complete overhaul of the system. Therefore, if what had led to the failures of parastatals was the poor management and not the objects, then the state should devote its time and resources on restructuring the management and administration of the sector and not privatizing the whole enterprise together with its relevant and essential elements.

However, for those parastatals in which the state does not hope to achieve its goals or even if they were to be achieved the state would have very little to benefit, then its just important to consider privatising them.

On the issue of government interference as having been one of the causes of losses, new legal and administrative measures ought to be worked out to help create corporate autonomy in parastatals in accordance with the principles and practice in companies.

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STATUTES

Cap 340 - Dairy Produce (Marketing Levy Act

Cap 388 - Cold Storage Board (Establishment) Act

Cap 686 - Companies Act

Cap 689 - Cooperatives Act

Zambia National Broadcasting Act No. 16 of 1987