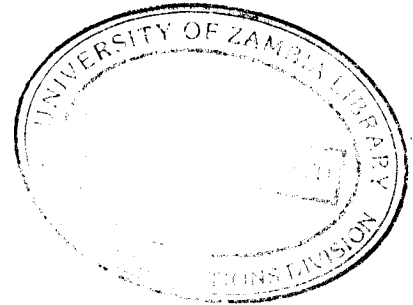


**THE CITIZENS ECONOMIC EMPOWERMENT (AMENDMENT) ACT 2010;
BROAD BASED CITIZEN PARTICIPATION**

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PAMELA CHITUWO

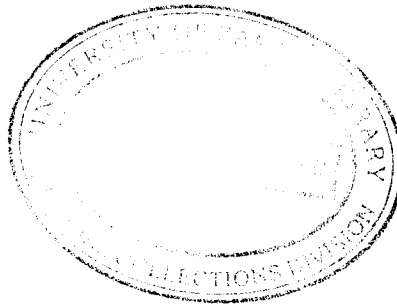


A dissertation submitted to the University of Zambia Law Faculty in partial fulfilment of the requirements for the Award of the Bachelor of Laws (LLB) Degree.

2012

DECLARATION

I PAMELA CHITUWO COMPUTER NUMBER 27107639 hereby declare that the contents of this directed research are entirely based on my own findings and it has not previously been submitted for a degree at the University of Zambia or any other University. All other works referred to in this essay have been duly acknowledged. I bear absolute responsibility for all errors, defects or any omissions herein.



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Entitled:

**THE CITIZENS ECONOMIC EMPOWERMENT (AMENDMENT) ACT 2010;
BROAD BASED CITIZEN PARTICIPATION**

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

Professor Munalula

Date

DEDICATION

To my parents, Dr and Mrs Chituwo for your belief in me and the support you have given me throughout my studies. To my sister Omega and my brothers Kambole and Jonathan and to Dorothy and Dennis, for the good example you have set me and for all the encouragement given during the difficult times.

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I would like to thank my supervisor Professor Munalula for the guidance rendered throughout the writing of this paper.

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ABSTRACT

The aim of this research is to establish the principal objectives of the Citizens Economic Empowerment Act and whether these objectives were subsequently met by the enactment of the Citizens Economic Empowerment (Amendment) Act. In order to reach this objective, this research aimed at identifying and highlighting firstly, the question of what the shortcomings of the Principal Act were and the reasons that led the enactment of the Amendment Act. The second question related to what changes were introduced by the Amendment Act and whether these changes effectively covered the deficiencies of the Principal Act. The third question that was addressed in this research was whether the change in the administration and disbursement of the Principal Act will fulfil the Acts intended objective relating to citizen empowerment.

During the course of this research it was found that the shortcomings of the Principal Act were centred mainly on two issues. Namely, the lack of specifically providing for marginalised citizens as beneficiaries of the Citizen Economic Empowerment Commission's mandate relating to empowerment and the administration of the Citizens Economic Empowerment Fund. It was found that specific provisions in the Principal Act were amended by the inclusion of targeted citizens and a change in the administration of the Fund was made to further the objective of citizen empowerment.

In addition, the second question in this research as aforementioned was addressed by stating the specific changes that were introduced by the Amendment Act. The Commission has the mandate to provide certain services and to work in conjunction with other institutions in order

to aid marginalised citizens. The Amendment Act made specific mention of targeted citizens as beneficiaries of the services provided by the Commission. Furthermore, there was also an amendment made to the administration of the Fund. The Principal Act provides for the Fund to be vested in the Commission but managed by various financial institutions and fund managers. In order for the Fund to be administered in line with the Principal Acts objective to empower targeted citizens, a change in its administration was made. There was a conflict between the financial institutions which lend money at high rates for profit and the Commission which lends money to empower citizens. Therefore, the Amendment Act remedied this conflict by providing that the Fund would be administered by the Commission.

Consequently, the third question this research aimed at addressing was answered. In highlighting the fact that the Principal Act was amended to give the Commission the mandate to administer the Fund, at affordable rates, the objective to empower targeted citizens through the Fund was fulfilled.

This research is based on qualitative data with the primary sources of information being the Principal Act and the Amendment Act. Parliamentary debates and Reports further gave insight into the reasons for the enactment of the Amendment Act. Various articles and internet sources on the importance of citizen participation in promoting a good investment climate were also made reference to.

In conclusion, it was found that the provisions of the Amendment Act addressed and remedied the deficiencies of the Principal Act. However, this research identified that there are

other costs that targeted beneficiaries may incur despite being offered assistance through the Fund. It is recommended therefore that the cost of setting up a business prior to being eligible for assistance from the Fund be reduced so as to promote an increase in citizen participation and subsequently encourage citizen empowerment.

TABLE OF STATUTES

The Citizens Economic Empowerment Act No. 9 of 2006

The Citizens Economic Empowerment (Amendment) Act No. 43 of 2010

TABLE OF CONTENTS

Title.....i

Declaration.....ii

Supervisor’s Recommendation.....iii

Dedication.....iv

Acknowledgements.....v

Abstract.....vi

Table of Statutes.....ix

Table of Contents.....x

CHAPTER ONE

**THE CITIZENS ECONOMIC EMPOWERMENT (AMENDMENT) ACT 2010;
BROAD BASED CITIZEN PARTICIPATION**

1.0 Introduction 1

1.1 Statement of Problem2

1.2 Objectives4

1.3 Research Questions.....4

1.4 Rationale and Justification.....5

1.5 Methodology.....6

1.6 Outline of Chapters.....6

1.7 Conclusion.....7

CHAPTER TWO

**THEORIES OF THE INVESTMENT CLIMATE CONCEPT AND THE CITIZENS
ECONOMIC EMPOWERMENT ACT**

2.0 Introduction.....9

2.1 The Concept of a Good Investment Climate.....9

2.2 Economic Policy and the Citizens Economic Empowerment Act 2006.....14

2.2.1 Economic Policy in the First and Second Republic.....14

2.2.2 Economic Policy in the Third Republic15

2.3 The Citizens Economic Empowerment Act 2006; Aims and Objectives.....16

2.4 Conclusion.....18

CHAPTER THREE

SHORTCOMINGS OF THE CIITZENS ECONOMIC EMPOWERMENT ACT

3.0 Introduction.....19

3.1 Inadequacies of the Principal Act.....19

3.1.1 Limited Scope of Targeted Beneficiaries.....19

3.1.2 The Citizens Economic Empowerment Fund.....24

3.2 Conclusion.....27

CHAPTER FOUR

THE CITIZENS ECONOMIC EMPOWERMETN (AMENDMENT) ACT 2010

4.0 Introduction.....29

4.1 Amendments Made to the Principal Act.....29

4.1.1 Amendments Involving Targeted Beneficiaries.....29

4.1.2 Amendments Involving the Administration of the Citizens Economic Empowerment Fund.....34

4.2 A Positive Investment Climate and Citizen Participation.....36

4.3 Conclusion.....38

CHAPTER FIVE

CONCLUSION

5.0 Introduction.....39

5.1 General Conclusions.....39

5.2 Recommendations.....43

5.2.1 Reducing Costs Incurred Prior to Accessing the Fund.....43

5.3 Conclusion.....45

CHAPTER ONE

THE CITIZENS ECONOMIC EMPOWERMENT (AMENDMENT) ACT 2010;

BROAD BASED CITIZEN PARTICIPATION

1.0 Introduction

The growth of a country's economy is dependent on various factors. One of the factors that drive a country's economy is the investment policies adopted by the government. Policies that promote a positive investment climate depend not only on government initiatives to improve various sectors, alleviate poverty and provide employment but also on the policies that promote citizen empowerment and participation in development. It has now been recognised that Zambia's future does not lie in the government selecting sectors to promote but in creating policies and institutions that encourage investors to productively and creatively employ its resources and its people.¹ In Zambia, the manifestation of the government's policy to promote citizen empowerment has been through the enactment of the Citizens Economic Empowerment Act of 2006 and the subsequent Citizens Economic Empowerment (Amendment) Act of 2010. In addition, the Principal Act establishes the Citizens Economic Empowerment Fund through which broad based economic programmes can be developed.² It is through this Fund that the government is able to promote citizen participation in the economy by aiding the disadvantaged in society.

This chapter will highlight specifically what will be examined in due course of this study, in relation to the Principal Act and the Amendment Act. In particular, this chapter contains a

¹ RPED Business Knowledge for Development, *An Assessment of The Investment Climate In Zambia*, p. i

² The Citizens Economic Empowerment Act No. 9 of 2006, Section 29

statement of the problem and objectives which states the problem to be considered in reference to the Principal Act and the aim of the study respectively. Furthermore, contained in this chapter is a list of research questions to be considered and the methodology that will be employed in answering these questions. Lastly, the order that will be followed in answering the research questions and meeting the objective of the study is contained in the outline of the chapters.

1.1 Statement of Problem

It has been recognised that improving the investment climate is a key pillar of developing countries' path to promote economic growth and reduce poverty.³ One of the ways the investment climate in a country can improve is for a government to formulate policies that promote private sector involvement. This entails citizen participation and the development of private enterprise.

In a developing country such as Zambia, poverty and low levels of education make it difficult for citizens to actively participate in the economy. The lack of capital and high interest rates from lending institutions hinder the development of private enterprises. In response to the need for increased citizen participation and financial assistance to citizens with little or no access to funding that would enable the growth of private enterprise, the Citizens Economic Empowerment Act No. 9 of 2006 was enacted. The Act was enacted among others, with the objective to promote economic empowerment of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies, and encourage and

³ RPED Business Knowledge for Development, "*An Assessment of The Investment Climate In Zambia*," p. i

increase broad-based and effective ownership and meaningful participation of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies in the economy in order to contribute to sustainable economic growth. The Act also provides for a Citizens Economic Empowerment Fund. This fund is the means through which the objective of assisting citizens in developing private enterprise is realised.

There developed however, a few hurdles in implementing the objectives under the Citizens Economic Empowerment Act of 2006. In order to effectively fulfil its purpose, it was necessary for the Act to undergo some amendments. In his speech to the National Assembly, Mr Mutati who was then Minister of Commerce, Trade and Industry stated that;

The current amendments to the Citizens Economic Empowerment (Amendment) Act seek to regularise the management and administrative practices regarding the fund and embrace the recommendations of the Business Licensing Reforms Committee pertaining to the definition of prospective beneficiaries to the Citizens Economic Empowerment Fund.⁴

One of the issues that led to the recommendation that the Principal Act be amended was the administration and the disbursement of the Citizens Economic Empowerment Fund. In addition, the beneficiaries of the fund were limited and not clearly defined. The aim of the amendment was to specifically target certain individuals as beneficiaries.

Thereafter, a Report of the Committee on the Economic Affairs and Labour on The Citizens Economic Empowerment (Amendment) Bill was produced and there followed the various stages during which the Bill was presented to Parliament. The Citizens Economic Empowerment (Amendment) Act No 43 then came into force in 2010.

⁴ The Zambian Parliament, <http://www.parliament.gov.zm> accessed at on 25th October 2011

It is important to establish whether the amendments made to the principal Act give effect to the intended objectives, namely, the efficient disbursement of the fund and the empowerment of the intended targeted beneficiaries. Furthermore, it must be critically considered whether the Amendments further promote a positive investment climate in Zambia and whether in comparison to other jurisdictions with similar initiatives, anything more can be done to foster a positive investment climate.

It is therefore necessary to consider whether the Citizens Economic Empowerment (Amendment) Act covers the deficiencies of the principal Act. It is also cardinal to consider whether the Amendment Act, in broadening the scope of targeted beneficiaries helps promote a positive investment climate in Zambia.

1.2 Objectives

The overall objectives of this study are to establish what the deficiencies of the principal Act were and what consequently led to the enactment of the Amendment Act. Furthermore, it will be ascertained what changes were introduced by the Amendment Act and if these changes fulfil the intended objectives of the principal Act. In addition, this study will ascertain to what extent the principal Act and Amendment Act, as initiatives by the government to promote citizen empowerment, help foster a positive investment climate.

1.3 Research Questions

1. What were the shortcomings of the Citizens Economic Empowerment Act 2006 and

What reasons led to the Citizens Economic Empowerment (Amendment) Bill being presented to parliament?

2. What changes were introduced by the Citizens Economic Empowerment (Amendment) Act and do the changes introduced by the Amendment Act effectively cover the deficiencies of the Principal Act?
3. Will the change in the administration and disbursement of the Citizens Economic Empowerment Fund fulfil the intended objective of the Principal Act?

1.4 Rationale and Justification

Taking into account the view that the implementation of the objectives of the principal Act, specifically the disbursement of the Citizens Economic Empowerment Fund to its targeted beneficiaries, was met with a few difficulties, it is important to establish whether the Amendment Act effectively addressed those difficulties.

In answering the research questions above and addressing the aforementioned rationale of the study, it can be said that the overall benefits of the study are that the position regarding disadvantaged citizens access to the Fund will be clarified. It is important to understand which body has been given the mandate to administer and distribute the Fund, as well as the intended beneficiaries of the Fund. The advantages of this will be that the body administering the Fund will be held accountable for its distribution and the intended beneficiaries will be clearly defined. This will consequently lessen the chances of mismanagement of the Fund.

1.5 Methodology

This research paper is based on qualitative data and draws information from a number of sources. The primary sources are the Principal Act and the Amendment Act. Secondary sources such as Parliamentary debates and reports are used to give insight into the reasons behind the enactment of the Principal and Amendment Act. Journals, Articles and Reports on the Investment Climate provide detailed information relevant to assess the situation currently prevailing in Zambia. Finally, information such as obligatory essays provide information on the efficiency of the Principal Act.

1.6 Outline of Chapters

To begin with, Chapter one is an introduction to the study being undertaken and gives an outline of the issues that will be discussed in depth. The statement of the problem and the objectives highlight the areas to be examined and the research questions focus specifically on the direction of the study. The outline of the chapters states the order in which the information collected throughout the research will be presented.

Chapter two of this research begins by focusing on the concept of a good investment climate. An analysis of the factors that make up a positive investment climate and a look at the prevailing investment climate in Zambia then follows. The chapter then introduces the Principal Act, outlines its objectives and highlights its intended beneficiaries. Thereafter, a critical assessment of whether the Principal Act promotes or aids in fostering a positive investment climate in Zambia is made. In addition, a comparison with other countries that have initiatives similar to Citizens Economic Empowerment in Zambia will be made.

Following the introduction to the Principal Act made in chapter two, chapter three then takes an in depth look at the shortcomings of the Act with particular emphasis on the Citizens Economic Empowerment Fund and the targeted beneficiaries. The shortcomings of the Principal Act are assessed in relation to the factors that make up a positive investment climate. Against the background of the Principal Act's deficiencies, the recommendations made for Citizens Economic Empowerment (Amendment) Bill are assessed along with the rationale behind its enactment into an Act.

Chapter four discusses the provisions of the Citizens Economic Empowerment (Amendment) Act, particularly the administration of the CEE fund and the broadening of the scope of targeted beneficiaries. Thereafter, an analysis of the changes introduced by the Act is carried out. The chapter evaluates whether the provisions of the Amendment Act address the shortcomings of the Principal Act. This evaluation is carried out in light of factors that make up a positive investment climate. Therefore, an assessment of whether the Amendment Act promotes a positive investment climate is then made.

In conclusion, chapter 5 draws on information already discussed in preceding chapters and gives a summary of the main issues pointed out.

1.7 Conclusion

In conclusion, this chapter has highlighted the foundation upon which this study is based. The Citizens Economic Empowerment Act of 2006, as the manifestation of the government's intention to promote broad based citizen participation in the development of the economy,

was flawed and an amendment was necessary. This chapter has stated briefly the areas to be further explored in this paper in relation to the reasons for the amendments to the 2006 Act. This paper essentially considers the amendments made to the 2006 Act and assess whether these amendments remove the hurdles that existed initially in the effective implementation on the Act. Furthermore, this paper considers whether the 2006 Act and the subsequent amendment Act promote a positive investment climate in Zambia.

CHAPTER TWO

THEORIES OF THE INVESTMENT CLIMATE CONCEPT AND THE CITIZENS ECONOMIC EMPOWERMENT ACT

2.0 Introduction

In order to establish whether a good investment climate exists in a country, it is necessary to first consider what factors make a good investment climate. This chapter will examine the concept of a positive investment climate. Having regard to the fact that the focus of this study as a whole is the Citizens Economic Empowerment Act¹, and the Citizens Economic Empowerment (Amendment) Act², this chapter will discuss the investment policy in Zambia with particular reference to Principal Act. A brief history of the economic policy adopted by the government in the three republics will be given leading up to the reasons for the enactment of the Principal Act. Lastly, the aims and objectives of the Principal Act will be highlighted.

2.1 THE CONCEPT OF A GOOD INVESTMENT CLIMATE

The definition of the concept of an investment climate precedes an explanation of its factors so as to provide a basis for describing a climate favourable for investment. The concept however is not one that is easily defined. It is a broad concept and on the ‘wildest’ definition can comprise all factors external to firms, including the policy, legal and regulatory framework; external trade policy; governance and institutions; physical security; the social and cultural context of business; access of firms to financial and business services; and the

¹ No. 9 of 2006

² No. 43 of 2010

availability of physical and social infrastructure services.³ Another definition explains that an investment climate is a menu of policy, regulatory and institutional factors that provide incentives sufficiently robust to induce the private sector to invest in socially desirable projects.⁴ Furthermore, an investment climate is a policy, institutional and behavioural environment, both present and expected, that influences the returns and risks associated with investment.⁵ Therefore, in a nutshell, it can be said that the investment climate comprises things that affect investment⁶ or that an investment climate is the overall environment for investments.⁷ From the above definitions it can be said that an investment climate is an environment that comprises various factors which influence both present and future investment in a particular country. The breadth and complexity of the investment climate and different views on what it should comprise possess inherent difficulties in attempts at measurement, or to compare the quality of investment climates between different countries.⁸ Nevertheless, there are detailed and comprehensive reports that have been compiled and consist of basic factors that constitute a good investment climate.

A report by the World Bank lists a number of important factors. Firstly, a good investment climate drives growth by encouraging investment and higher productivity. This is done by providing opportunities and incentives for firms to develop, adapt and adopt better ways of doing things.⁹ Secondly, a good investment climate encourages firms to invest by removing

³ K. Silva-Leander, "Making Sense of Investment Climate Surveys," Paper presented at International Conference, Cairo, (October 2005), p.4

⁴ The World Bank, www.sitesources.worldbank.org accessed on 18th February 2012

⁵ S.A Mahmood, "Why The Investment Climate Matters," The World Bank, (February 2006)

⁶ M. Moore and H. Schmitz, "Idealism, Realism and The Investment Climate in Developing Countries," Working Paper 307 Institute of Development Studies at the University of Sussex, Brighton, UK, (June 2008), p.16

⁷ The Free Dictionary, www.financial-dictionary.thefreedictionary.com, accessed on 18th February 2012

⁸ K. Silva-Leander, "Making Sense of Investment Climate Surveys," (October 2005), p.4

⁹ The World Bank, "World Development Report: A Better Investment Climate for Everyone," World Bank and Oxford University Press, (2005), p.2

costs, risks and barriers to competition. Thirdly, a good investment climate provides opportunities for people to better themselves and a critical complementary agenda is to invest in and empower people so they can take advantage of those opportunities.¹⁰ It is important to provide opportunities and incentives for private firms as they have a lot to offer to stimulate economic growth. It can be said that;

Private firms—from farmers and microentrepreneurs to local manufacturing companies and multinational enterprises—are at the heart of the development process. They provide more than 90 percent of jobs, creating opportunities for people to apply their talents and improve their situations. They provide the goods and services needed to sustain life and improve living standards. They are also the main source of tax revenues, contributing to public funding for health, education, and other services. Firms are thus critical actors in the quest for growth and poverty reduction. The contribution firms make to society is mainly determined by the investment climate—Government policies and behaviours play a key role in shaping the investment climate.¹¹

Therefore, policy makers need to focus on legislation that provides opportunities for private firms to grow and develop. Priority should be given to private enterprise as they are a necessary part of economic growth. Furthermore, an investment climate should lessen the costs and risks of doing business as well as remove barriers to competition. Firstly, surveys find that policy related risks dominate the concerns of firms in developing countries.

Secondly, the policy related costs shouldered by firms can be substantial and make many potential investment opportunities unprofitable.¹² Thirdly, competitive pressure drives firms to innovate, improve productivity and share benefits of productivity gains with consumers

¹⁰ The World Bank, *“World Development Report: A Better Investment Climate for Everyone,”* World Bank and Oxford University Press, (2005), p.1- 2

¹¹ The World Bank, *“World Development Report: A Better Investment Climate for Everyone,”* p.1

¹² W. Smith and M. Hallward-Driemeier, *“Understanding the Investment Climate,”* Finance and Development, (March 2005), p. 41

and customers.¹³ There is need therefore, for policy makers to ensure that policies are predictable in order for firms to properly plan their business activities. Also, the cost of doing business should be reduced in order to provide an incentive for people to invest in various businesses. Competition should be encouraged so that firms are forced to be innovative in order to make substantial profits. All this can be achieved through the enactment of the relevant legislation.

In addition, it is necessary to provide opportunities for people to be empowered. Being a third world country the poverty levels in Zambia are high and providing opportunities for people to better themselves means aiding people to better their lives and eradicate poverty.

In light of the aforementioned factors, it can be said that establishing a favourable investment climate requires adopting the necessary policies and enacting the requisite legislation. Such a climate is not a serendipitous occurrence: it is the result of country authorities formulating, implementing and enforcing an appropriate set of policies.¹⁴ Economic policy is an area where authorities should be proactive and this is reflected in the legislation that is enacted. An attempt to provide legislation that reflects an investment climate that empowers the people can be seen in the Citizens Economic Empowerment Act. The OECD Investment Policy Review of Zambia highlights the attempts that Zambia has made in terms of investment policy. The Minister of Commerce, Trade and Industry states in the report that;

The Government has introduced a series of private sector reforms to strengthen its policy framework for investment and to enable private business to grow. We are also pushing the legal framework up to global standards and have strengthened the

¹³ W. Smith and M. Hallward-Driemeier, "*Understanding the Investment Climate*," Finance and Development, (March 2005), p. 41

¹⁴ Governance and Social Development Resource Centre, Helpdesk Research Report: "*Investment Climate in Fragile and Conflict Affected States*," (2010), p.1

institutional landscape for private sector development with specialized agencies such as the Zambia Development Agency.¹⁵

Furthermore;

Zambia began to liberalise its trade regime in the early nineties, and embarked on a privatization programme in 1992. A more ambitious reform agenda followed in 2004 under the Private Sector Development Reform Programme (PSDRP) to improve the investment climate and boost the private sector's contribution to economic growth.¹⁶

The report further states that the Private Sector Development Reform Programme (PSDRP) was launched to provide an integrated framework for systematically addressing interventions required to improve the investment climate, reduce the cost of doing business and stimulate rapid and sustained private sector-led economic growth. The PSDRP was rationalised and focal areas were narrowed down to the following priority areas; Business licensing and regulatory reform; SME development; labour and labour productivity and; trade expansion. In focusing on SME development, the Citizens Economic Empowerment Act was established in 2006 to support Micro Small and Medium Enterprises (MSME) with low cost and flexible project finance for their business ventures.¹⁷ It can be said therefore that the CEE Act was an attempt by the government to provide legislation that reflects an investment climate that empowers the people.

¹⁵ OECD Investment Policy Review of Zambia; "*Advancing Investment Policy Reform*," Preliminary draft, (2011) p. 5

¹⁶ OECD Investment Policy Review of Zambia; "*Advancing Investment Policy Reform*," p. 8

¹⁷ OECD Investment Policy Review of Zambia; "*Advancing Investment Policy Reform*," p. 26

2.2 ECONOMIC POLICY AND THE CITIZENS ECONOMIC EMPOWERMENT

ACT 2006

2.2.1 Economic Policy In The First and Second Republic

Since independence, Zambia has adopted various modes of economic development. The chosen mode of economic development is usually reflected in the government's policies and subsequent legislation. In October 1964, Zambia adopted the socialist mode of economic development ostensibly to redress colonial imbalances and bring about a more equitable distribution of wealth.¹⁸ The socialist model entailed the State taking the lead role in economic activities.¹⁹ This essentially meant that the State was in control of all major industries and citizen participation in economic development in the form of privately owned businesses was restricted and discouraged.

Zambia was highly dependent on its copper exports and enjoyed the benefits of the high price of copper on the international market. Through the revenue generated from the sale of copper, the State was able to nationalise most industries and provide free access to education and health services. By the 1970's however, there was a sharp turn down in the price of copper on the international market. Given Zambia's high dependency on the revenue from copper exports, the drastic slump in the price of copper on the international market meant that the government could no longer afford to sustain all the industries it had control of. The government was thus compelled to implement structural reforms in the 1980's. By 1990 however, there was demand for multi-party democracy and change of government. The Movement for Multiparty Democracy (MMD) subsequently came into power in 1991.

¹⁸ OECD Investment Policy Review of Zambia; *"Advancing Investment Policy Reform,"* p. 13

¹⁹ OECD Investment Policy Review of Zambia; *"Advancing Investment Policy Reform,"* p. 13

2.2.2 Economic Policy In The Third Republic

When the MMD government came into power in 1991, they adopted a liberal economic policy. This essentially meant that the government's approach to the private sector was one of little interference in private enterprises. Not only did the government adopt a laissez-faire approach to private enterprises but the privatization of State Owned Enterprises (SOE) was seen as a critical component of the new economic regime. The reforms covered areas such as abolition of price controls; liberalization of interest rates; 100 percent repatriation profits; free entry investment in virtually all sectors of the economy; removal of quantitative restrictions on imports and improvements to the general investment climate.²⁰

In order for the new economic reforms by government to be successful, it was necessary to amend and enact the necessary legislation to support a liberalized economic environment. Among the legislation that was enacted for this purpose were the Income Tax Act of 1991, the Companies Act of 1995, the Privatisation Act of 1993 and the Zambia Development Agency Act and the Citizens Economic Empowerment Act of 2006. The government of Zambia enacted the Citizens Economic Empowerment Act, that aims to foster broad based economic empowerment, in order to improve economic participation of Zambian citizens in the economy, increase employment of Zambian citizens especially in decision making positions and to increase local investments.²¹

²⁰ OECD Investment Policy Review of Zambia; *"Advancing Investment Policy Reform,"* Preliminary draft, (2011) p. 14

²¹ Ndambo.E.M. Ndambo, *"An Overview of The Citizens Economic Empowerment Act; Does It Possess The Requisite Legal Efficacy To Enhance The Participation of The Indigenous People In The Economic Affairs of The Country Without Stifling The Foreign Direct Investment,"* Obligatory Essay submitted to the School of Law in partial fulfilment of the award of a Bachelor of Laws Degree (LLB), 2008.

2.3 THE CITIZENS ECONOMIC EMPOWERMENT ACT 2006; AIMS AND OBJECTIVES

Citizen Economic Empowerment is defined as an integrated, broad based and multi-faceted strategy aimed at substantially increasing the participation of citizens at all levels of the population in the economy as well as significantly decrease income inequalities.²² It can be said that the CEE Act of 2006 is principally aimed at uplifting the targeted citizens who have suffered marginalization. It is meant to level the playing field and raise the citizens to a position where they can effectively participate in the economy.²³

There are a few key areas that the Act focuses on. For instance, empowerment is defined as a broad based and multifaceted strategy aimed at substantially increasing the participation of targeted citizens at all levels of the population in the economy, fostering wealth creation and significantly decreasing income inequalities.²⁴ The Act aims at empowering targeted citizens and defines a targeted citizen in section 3 as a citizen who is or has been marginalised or disadvantaged and whose access to economic resources and development capacity has been constrained due to various factors including race, sex, educational background, status and disability.²⁵ Therefore, it can be said that the overall aim of the Act is to increase the participation of marginalised citizens in society, so as to foster wealth creation and sustainable growth of the economy. This is an important aim of the Act as the empowerment of citizens is a cardinal factor in creating a positive investment climate.

²² *ibid*

²³ Ministry of Commerce Trade and Industry <http://www.mcti.gov.zm>, accessed on 25th October 2011

²⁴ <http://www.mcti.gov.zm>, accessed on 25th October 2011

²⁵ The Citizens Economic Empowerment Act No. 9 of 2006

It can further be deduced from the aims of the Act that a positive investment climate, which contributes positively to economic growth, should be one that includes not just a few individuals with the means to start private businesses but should also include the less privileged in society; that is, the intended beneficiaries of the Act who are the targeted citizens.

The objectives of the Act include among others, the establishment of the Citizens Empowerment Economic Commission; establishment of the Citizens Empowerment Fund; promoting the empowerment of targeted citizens; and promoting investment through fostering joint local and foreign ownership of companies.²⁶

In order to create an investment climate where citizens are empowered, it is important to establish a body to oversee the empowerment of the targeted beneficiaries of the Act. Thus, the Citizens Economic Empowerment Commission is established under section 4. Furthermore, in order for the Commission to effectively fulfil its mandate of empowering marginalised citizens whose access to economic resources and development capacity is limited, there needs to be a Fund through which the Commission can provide aid. The Fund which is established pursuant to section 29 of the Principal Act is necessary to empower citizens not only financially but also through the provision of development services which are listed under section 3 of the Principal Act.

²⁶ <http://www.mcti.gov.zm>, accessed on 25th 2011

Despite the clearly stated aims and the statutory body established to see to the implementation of the Act's objectives, there were impediments in relation to the realization of the core purposes of the Act. This will be dealt with further in Chapter three.

2.4 CONCLUSION

In conclusion, it can be said that a number of attempts have been made to determine what makes a good investment climate. One thing that most definitions include is that the relevant policy must be in place in order to promote investment and drive economic growth. In Zambia, the Citizens Economic Empowerment Act was enacted to empower citizens, thereby increasing the number of participants in the economy. Subsequently, this will lead to economic growth. The next chapter assesses the Principal Act with regard to the factors that make up a positive investment climate.

CHAPTER THREE

SHORTCOMINGS OF THE CITIZENS ECONOMIC EMPOWERMENT ACT

3.0 Introduction

The Citizens Economic Empowerment (Amendment) Act was enacted to rectify the shortcomings of the Principal Act. Before looking at the amendments made to the Principal Act that culminated in the Amendment Act, it will be necessary to highlight the deficiencies of the Principal Act. This chapter will discuss the shortcomings of the Principal Act and the next chapter will focus specifically on the amendments made it.

3.1 INADEQUACIES OF THE PRINCIPAL ACT

3.1.1 Limited Scope of Targeted Beneficiaries

The preamble of the Citizens Economic Empowerment Act¹ states that, among other objectives, it is an Act to establish the Citizens Economic Empowerment Fund; promote the economic empowerment of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies. Targeted Citizens are provided for in the Act and are defined in Section 3 as citizens who are or have been marginalised or disadvantaged and whose access to economic resources and development capacity has been constrained due to various factors including race, sex, educational background, status and disability. As aforementioned, despite the clearly laid down objectives of the Act to establish a fund and to promote empowerment of marginalised citizens, a number of amendments needed to be made.

¹ No. 9 of 2006

One of the shortcomings was in relation to the intended beneficiaries, particularly targeted citizens intended to benefit from the Citizens Economic Empowerment Fund. Marginalised citizens are meant to benefit from the Act and as such they should have been adequately provided for in the Act. The Committee on Economic Affairs and Labour on the Citizens Economic Empowerment Bill identified the definition of intended beneficiaries as limited. More specifically, the Committee stated that the Act does not capture the element of citizens working in groups as well as cooperatives.² It was stated in the same report that the Business Licensing Reform Committee recommended that the scope be widened to include targeted citizens, groups of citizens, and co-operatives so that access to finance is broadened. Therefore, not only was the scope narrow but there were categories of citizens left out of the group of intended beneficiaries.

In addition, during the second reading of the Citizens Economic Empowerment (Amendment) Bill, the Minister of Commerce, Trade and Industry, Mr Mutati, stated that;

The Act does not explicitly include citizens working in groups as well as co-operatives. The Government is of the view that it is prudent that the scope be widened to include the targeted citizens, groups of citizens and co-operatives so that access can be broadened.³

Section 29(1) of the Act establishes the Citizens Economic Empowerment Fund for supporting the development of broad based economic empowerment programmes. Subsection (3) of section 29 gives the Commission a number of directives. For instance, the commission shall, in order to facilitate the flow of financial resources to programmes for broad based economic empowerment;

² Report of the Committee on Economic Affairs and Labour on The Citizens Economic Empowerment (Amendment) Bill N.A.B 37 of 2010 for the Fifth Session of the Tenth National Assembly, (September 2010), p.3

³ The Zambian Parliament, <http://www.parliament.gov.zm> accessed at on 25th October 2011

- (a) On its own or in cooperation with other State institutions identify citizen owned companies, groups of citizens or co-operatives, citizen empowered companies and citizen influenced companies and broad-based economic empowerment programmes which require financial assistance.

The Act defines broad-based economic empowerment to mean the empowerment of targeted citizens, citizen empowerment companies, citizen influenced companies and citizen owned companies.⁴ Therefore, according to section 29(1) which establishes the Fund and section 29(3) and section 3 which states specifically what the Fund shall be used for, it can be said that groups of citizens or co-operatives are included as beneficiaries of the Fund but targeted citizens are left out.

Furthermore, section 29 (3) states in subsections (b) and (c) that the Commission shall;

- (b) Provide information on sources of finance and promote investments for companies and programmes specified in paragraph (a)
- (c) ...render development services to companies specified in paragraph (a)

The aim of establishing the Fund under section 29 is to support the development of broad based economic empowerment programmes and in order to facilitate the flow of financial resources to these programmes, the Commission has been given directives under subsections (b) and (c). Development services are defined in section 3 to include advisory services promoting training and financing, facilitating the preparation of business plans, project proposals, loan applications, financial statements, audited statements of expenditure and accounts and other similar services. Providing information on sources of finance, promoting investments and rendering development services are part of the ways in which the Act aims

⁴ Citizens Economic Empowerment Act No 9 of 2006, Section 3

to meet its objectives of empowering marginalised citizens. Despite targeted citizens being one of the main beneficiaries of the Act as stated in its preamble, this group is specifically left out of subsections (b) and (c). Citizen empowerment companies, citizen influenced companies and citizen owned companies are also left out of the subsections. Companies are the only category of beneficiaries mentioned and a company has been defined in section 3 as a private or public company as defined in the Companies Act. With reference to the meaning of broad-based empowerment, companies are not listed as targets of economic empowerment. Therefore, subsections (b) and (c) are inadequate in that targeted citizens, citizen empowerment companies, citizen influenced companies and citizen owned companies, which are the intended beneficiaries of economic empowerment, are not listed as recipients of information on sources of finance and development services.

Additionally, in order to facilitate the flow of economic resources to programmes for broad based economic empowerment, the Commission shall;

- (d)* ...establish and design standards for loan administration, effective use of loan funds and repayment mechanisms by groups of citizens or co-operatives of companies specified under paragraph *(a)*
- (f)* Secure incentives through relevant authorities for any financial institution which undertakes to finance or develop a company specified under paragraph *(a)*

In order to effectively aid disadvantaged citizens in establishing businesses, it is necessary to ensure the effective use of loan funds. The Commission has the mandate to establish standards for the effective use of loan funds and repayment mechanisms. It can be noted however that under subsection (d) as with subsection (a), targeted citizens are not listed among the groups of citizens under the Commission's standard to ensure effective use of loan

funds. In addition, the Commission shall secure incentives for any financial institution which undertakes to develop a company specified under subsection (a). Financial institutions play a role in promoting the participation of citizens in the economy. It is important to ensure that these institutions are provided with incentives to encourage them to finance businesses owned by marginalised citizens. Subsection (f) makes reference to companies specified under subsection (a). As aforementioned, subsection (a) leaves out targeted citizens. Therefore, targeted citizens would not benefit from the aid of financial institutions which have been provided with incentives to aid marginalised citizens.

It can be noted from the above sections that the commission has been given the mandate to use the Fund for programmes that promote broad based economic empowerment. In other words, the Fund should be used to substantially increase the meaningful participation of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies in the economy.⁵ However, despite the Act's objective to assist marginalised citizens through the use of the Fund, targeted citizens and the aforementioned groups are left out of the above provisions. The fact that they are not specifically provided for is a serious oversight which goes against the core purpose of the Act; that purpose being to empower the disadvantaged in society.

In relation to creating a favourable investment climate, it can be said that the omission of targeted citizens from the above mentioned provisions does not foster a positive investment climate. A good investment climate is one that drives growth by encouraging investment and higher productivity and this is done by providing opportunities and incentives for firms to

⁵ Citizens Economic Empowerment Act 2006, Section 3

develop.⁶ The opportunities that need to be provided for growth to take place is the participation of citizens in the economy. Private enterprises run by marginalised citizens should be encouraged to develop as it is said that they create jobs, provide goods and services and are the main source of tax revenue.⁷ Therefore, the scope of beneficiaries needs to include targeted citizens as a way of widening the number of participants in the economy in order to contribute to economic growth.

3.1.2 The Citizens Economic Empowerment Fund

The preamble of the Citizens Economic Empowerment Act states that it is an Act to promote the economic empowerment of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies. Economic empowerment entails the meaningful participation of citizens in the economy. In order to ensure the participation of citizens in the economy, it is necessary to provide financial aid for private enterprise to develop. It is for this reason that the Citizens Economic Empowerment Fund was established. Section 29 of the Act establishes the Fund and section 30 of the Act which provides for the management of the Fund states that;

(1) The Citizens Economic Empowerment Fund, established under section twenty nine, shall be vested in the Commission but shall be managed and administered by various financial institutions and fund managers that meet the criteria prescribed by the President.

There have however, been some hurdles in the administration of the Fund. The Report of the Committee on Economic Affairs and Labour on the Citizens Economic Empowerment

⁶ The World Bank, *“World Development Report: A Better Investment Climate for Everyone,”* World Bank and Oxford University Press, (2005), p.2

⁷ The World Bank, *“World Development Report: A Better Investment Climate for Everyone,”* p.1

(Amendment) Bill states that from inception, the Commission faced obstacles in administering the Fund under the Access to Finance Policy.

The Commission had reached no agreement with any fund managers and financial institutions except for Access Bank on the management of the Fund. The main issues bordered on competing interests as well as management of fees. Whereas Banks lend money at commercial rates, the Commission on the other hand intended to lend empowerment funds at affordable rates in view of the rationale to empower marginalised Zambians. As the Act required that the Fund be administered by the Fund managers and financial institutions it became impractical for the Banks to lend CEEC money at a lower rate while their own money was at higher interest rates.⁸

The high interest rates the Bank was charging defeated the purpose of aiding marginalised citizens. The purpose of Citizen Economic Empowerment is to increase the participation of targeted citizens so as to ensure sustainable economic growth. Charging high interest rates means that the profits of any businesses started by targeted citizens would go towards paying back interest instead of reinvesting the money into the business. This would stifle the growth of businesses and hinder economic growth.

Another one of the shortcomings in administering the Fund has to do with the conditions to be met in order to access the Fund. The purpose of the Fund is to enable citizens have access to finance that is as cheap as possible and as easy as possible to access so as to finance empowerment.⁹ The pre-requisites to accessing the fund are among others; company registration; bank account statement; security pledge (above K50 m); and a business plan¹⁰

The requirements listed above have been criticised as a barrier to accessing the Fund. In a parliamentary motion on the Citizens Economic Empowerment Programme¹¹, Hon Sakwiba

⁸ Report of the Committee on Economic Affairs and Labour on The Citizens Economic Empowerment (Amendment) Bill N.A.B 37 of 2010 for the Fifth Session of the Tenth National Assembly, September 2010, p.4

⁹ The Citizens Economic Empowerment Power Point Presentation September 2010

¹⁰ *ibid*

¹¹ Zambia News Features, "*Hon. Sakwiba Sikota's full Parliamentary Motion on Citizen Economic Empowerment Programme*," <http://www.zambianewsfeatures.com>, accessed on 21st December 2011

Sikota gave a statement on the access to the Fund. He addressed two of the requirements, namely registration of a business and development of a business plan. He stated as follows;

Mr Speaker it is very unfair for government to expect poor people who have been denied access to education to come up with a bankable business plan. Mr Speaker even in this House there are very few Hon Members who can develop a business plan on their own. In most cases they have to contract at a high fee other business development experts.

Mr Speaker poor people have no money to pay an expert to develop a business plan. Therefore, government needs to find a way in which poor people can come up with business plans that will give them access to the Citizens Economic Empowerment Fund.

On the issue of registering a business he stated;

The cost of registering companies and acquiring operating licenses in sectors such as tourism is too high for the majority of poor Zambians and it defeats the purpose for which the Economic Empowerment Fund was set up.

In order to effectively empower marginalised citizens in society, it is necessary to ensure that there are certain advantages afforded to them. There must be a difference between the requirements necessary for an ordinary person to do business and the programmes meant for targeted citizens under the Citizens Economic Empowerment Act. The reason for the empowerment programme is to aid those not able to conduct business in the ordinary way due to lack of capital. Therefore, it can be said that the two requirements addressed above, that is, registering the business and developing a business plan before having access to the Fund is a barrier to empowering targeted citizens.

In addition, one definition of a favourable investment climate is that a good investment climate encourages firms to invest by removing costs, risks and barriers to competition.¹² In relation to the Parliamentary motion by Sakwiba Sikota, it can be said that drawing up comprehensive business plans and registering a business would be a huge cost incurred by beneficiaries of the Fund. The purpose of the Citizens Economic Empowerment Act is to empower the less advantaged citizens in society. If the cost required to set up a business is more than the targeted beneficiaries of the Act can afford then that is detrimental and goes against the core purpose of the Act. Furthermore, in order to access empowerment funds, potential recipients must draw up business plans.¹³ As aforementioned, that would be an extra cost for disadvantaged citizens to be expected to meet. The purpose of the Fund is to aid as many of those who cannot afford to raise the necessary capital to start businesses on their own. If a pre-requisite to acquiring financial aid from the Fund is to incur costs that most disadvantaged citizens might not be able to afford then this is a fundamental flaw and does not foster an environment that empowers people to better themselves.

3.2 CONCLUSION

The Citizens Economic Empowerment Act was intended to empower targeted citizens so as to contribute to economic growth. There are however, a number of shortcomings that led to its amendment. The two main areas in which changes need to be made are the provisions that left out targeted citizens as beneficiaries and the administration of the Citizens Economic

¹² The World Bank, *“World Development Report: A Better Investment Climate for Everyone,”* World Bank and Oxford University Press, (2005), p.2

¹³ The Citizens Economic Empowerment Commission, *“How to Access Empowerment Funds,”* (September 2010), p.4

Empowerment Fund. The next chapter discusses the amendment that were made to the Principal Act and that subsequently led to the Amendment Act.

CHAPTER FOUR

THE CITIZENS ECONOMIC EMPOWERMENT (AMENDMENT) ACT 2010

4.0 Introduction

As aforementioned in the previous chapter, the Citizens Economic Empowerment Act 2006 had a number of shortcomings. In order to effectively elucidate the changes that were made to rectify the inadequacies of the 2006 Act, it will be necessary to highlight the specific provisions that were amended. This chapter will discuss the amended provisions in the Amended Act and an evaluation of whether the amended provisions effectively address the shortcomings of the Principal Act will be carried out. In addition, an assessment of whether the Amendment Act promotes a positive investment climate will be made.

4.1 AMENDMENTS MADE TO THE PRINCIPAL ACT

4.1.1 Amendments Involving Targeted Beneficiaries

The Citizens Economic Empowerment Act was enacted to assist in the development of private enterprise and encourage economic participation by providing financial and other services to disadvantaged citizens. More specifically, the Act provides for the promotion of economic participation of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies. It is imperative therefore, that these groups of citizens be provided for in the provisions of the Act intended to aid marginalised citizens. However, as explained in the previous chapter, not all groups of disadvantaged citizens are catered for.

Section 29 establishes the Citizens Economic Empowerment Fund and lists in subsection (3) a number of functions the Commission shall undertake in order to facilitate the flow of financial resources to programmes for broad based economic empowerment. Subsection (3) (a) states that the Commission shall identify citizen owned companies, groups of citizens or co-operatives, citizen empowered companies and citizen influenced companies which require financial assistance. This provision was amended by section 2 (a) of the Amendment Act and it states;

2. Subsection (3) of section twenty-nine of the principal Act is amended-

(a) in paragraph (a), by the insertion immediately after the words “groups of citizens” of a comma and the words “targeted citizens”;

Targeted citizens are therefore added to the list of intended beneficiaries the Commission is required to identify for financial assistance. It can be said that financial assistance is at the core of the objective of citizen empowerment because without financial aid, disadvantaged citizens would not be able to set up businesses. This in turn would affect participation of citizens in economic development. Promoting citizen participation is also part of the functions of the Commission listed in section 6 of the Principal Act. Section 6 (2) (c) of the Principal Act states that the functions of the Commission shall be to encourage effective and meaningful participation of targeted citizens in the economy in order to contribute to sustainable economic growth. Therefore, in light of the amended provision, the Commission is carrying out its function of encouraging meaningful participation by providing financial assistance to a wider group of citizens.

To further facilitate the flow of financial resources to programmes for broad based economic empowerment, the Commission shall, in Section 29 (3) (b) of the Principal Act, provide

information on sources of finance and promote investments for companies and economic empowerment programmes. The provision has been amended in section 2 (b) of the Amendment Act;

(b) by the deletion of paragraph (b) and the substitution therefore of the following paragraph;

(b) provide information on sources of finance and promote investments for companies, groups of citizens or co-operatives, targeted citizens and programs specified in paragraph (a);

As well as providing financial assistance for starting up businesses, the Commission is mandated to promote investments for targeted citizens, companies and groups of citizens or co-operatives. Promoting investment for targeted citizens is a complementary function to providing financial assistance in that promoting investment further aids not only in encouraging citizen participation but in setting up and sustaining successful businesses.

In addition, section 29 (3) (c) of the Principal Act provides that the Commission shall on its own or in cooperation with other State institutions and other institutions render development services to companies specified in subsection 3(a) so as to enable them to access financial resources. This provision is amended;

(c) in paragraph (c), by the insertion immediately after the word “companies” of a comma and the words “groups of citizens or co-operatives and targeted citizens”;

Development services as defined in section 3 of the Principal Act, includes advisory services promoting training and financing, facilitating the preparation of business plans, project proposals, loan application, financial statements, audited statements of expenditure and other accounts and other similar services. These services are essential for aiding citizens in the process of starting, running and maintain their businesses. As already stated, private

enterprise promotes economic development and the more citizens that are provided with the opportunity to start up their own business, the better that will be for economic development. Therefore, groups of citizens, co-operatives and targeted citizens are included as beneficiaries of the Commission's function to provide information on sources of finance, promote investments and render development services.

Furthermore, section 29 (3) (d) states that the Commission shall in conjunction with any financial institution financing micro and small enterprises, monitor, establish and design standards for loan administration, effective use of loan funds and repayment mechanisms by groups of citizens or co-operatives of companies specified under paragraph (a) so as to curb misuse of funds. This provision has been amended;

(d) in paragraph (d), by the deletion immediately after the words "repayment mechanisms" of the words "by groups of citizens or co-operatives of companies" and the substitution therefore of the words "by targeted citizens, groups of citizens or co-operatives and companies";

The intended beneficiaries are therefore provided for to benefit from the Commission's standard for loan administration, effective use of loan funds and repayment mechanisms, as this standard is created to curb the misuse of funds and ultimately aid marginalised citizens.

The Commission is also mandated in section 29 (3) (f) to secure incentives for any financial institutions which undertake to finance or develop a company specified under subsection (3) (a) or any company carrying out any broad based economic empowerment programme. The amended provision in section 2 (e) of the Amendment Act states that that the Principal Act is amended;

(e) by the deletion of paragraph (f) and the substitution therefore of the following paragraph:

(f) secure incentives through relevant authorities for any financial institution which undertakes to finance or develop a targeted citizen, group of citizens or co-operative or a company specified under paragraph (a) or any company carrying out any broad-based economic empowerment programme.

The addition of targeted citizens and group of citizens widens the scope of citizens intended to benefit from the financial aid given by financial institutions that have been given incentives to do so. This provision is a further illustration of the Commission's function as stated in section 6 (2) (e) of the Principal Act. The section states that the Commission shall ensure as part of its function, equal opportunities for and where necessary, ensure preferential treatment to, targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies in accessing procurement contracts and other services of any state institutions. Securing incentives for financial institutions as well as procuring contracts for targeted citizens further promotes citizen participation in the economy.

In the previous chapter, it was established that the main shortcoming of the Principal Act is the exclusion of targeted citizens and in general, the narrow scope of citizens catered for. Having listed the provisions in the Principal Act that were subject to amendment and the provisions as amended, it can be said that the shortcomings of the Principal Act were adequately addressed. The inclusion of targeted citizens, groups of citizens and co-operatives illustrates that all the beneficiaries of the Principal Act intended to be catered for have been included in the Amendment Act.

Furthermore, it can be said that, the amendments made to section 29 centred on the beneficiaries of the Citizens Economic Empowerment Fund. The essence of the Principal Act's provisions is to aid marginalised and disadvantaged citizens through the Fund. This was not fully reflected in section 29 and amendments were therefore, necessary. As well as the changes made to the scope of targeted beneficiaries of the Fund, there were also amendments made to the administration of the Fund.

4.1.2 Amendments involving the Administration of the Citizens Economic Empowerment Fund

Section 30 of the Principal Act provides for the management of the Fund. It states in subsection 1;

(1) The Citizens Economic Empowerment Fund, established under section twenty nine, shall be vested in the Commission but shall be managed and administered by various financial institutions and fund managers that meet the criteria prescribed by the President.

As can be seen from section 30, the Fund is to be administered and managed by various financial institutions and fund managers. The Fund was only vested in the Commission and they had no power to administer or manage the Fund. There developed a few hurdles however and it was necessary to address them through an amendment.

The main issue centred on conflicting interest rates and management fees. The Commission and the financial institutions could not agree on the rates at which they were to provide loans. Whereas banks lend money at commercial rates, the Commission on the other hand intended to lend empowerment funds at affordable rates in view of the rationale to empower

marginalised Zambians. As the Act required that the Fund be administered by the fund managers and financial institutions, it became impractical for the banks to lend CEEC money at a lower rate, while their own money was at higher interest rates.¹ Having failed to come to an agreement with financial institutions, the Commission began to administer the Fund on its own so as not to delay empowerment programmes. This led to the amendment of section 30 which essentially gave the Commission statutory power to administer the Fund.

Section 3 of the Amendment Act states;

The principal Act is amended in section thirty by the deletion of subsection (1) and the substitution thereof of the following subsection:

(1) The Citizens Economic Empowerment Fund, established under section twenty nine, shall be vested in the Commission and shall be managed and administered by the Commission, either by itself, or with such financial institutions and fund managers as the Commission may appoint for purposes of the Fund.

In conclusion, due to the fact that the aim of the Commission is to aid disadvantaged citizens, it would not be practical to have financial institutions lending money at the normal high rates. This would defeat the purpose of empowerment as all the profits made from the businesses started under any empowerment programme would use all its profits to pay back the bank instead of further investing it in the business.

Having established that the amendments made to the Principal Act cater for all the intended beneficiaries, it must next be considered whether broadening the scope of beneficiaries promotes a good investment climate. In particular, the importance of citizen participation in the economy will be discussed.

¹ Report of the Committee on Economic Affairs and Labour on the Citizens Economic Empowerment (Amendment) Bill N.A.B 37 of 2010 for the Fifth Session of Tenth National Assembly Appointed on Thursday, 23rd September (2010), p. 4

4.2 A POSITIVE INVESTMENT CLIMATE AND CITIZEN PARTICIPATION

An investment climate comprises the things that affect investment.² As stated in a previous chapter, there are several factors that make up a positive investment climate. It can be said that a good investment climate is one that provides opportunities for people to better themselves and a critical complementary agenda is to invest in and empower people so they can take advantage of those opportunities.³ Therefore, one factor that promotes a good investment climate is the availability of policies and legislation that provides specifically for citizen participation in the economy. The relevant legislation should not only provide for citizen participation but should provide the means through which citizens can participate in economic development. The means provided for include financial assistance, development services and the encouragement of other entities such as financial institutions to participate in aiding citizens.

Also, a good investment climate drives growth by encouraging investment and higher productivity. This is done by providing opportunities and incentives for firms to develop, adapt and adopt better ways of doing things.⁴ Financial institutions are encouraged to participate in boosting citizen participation in economic development by incentives being provided for, as stated in section 2 (e) of the Amendment Act.

² M. Moore and H. Schmitz, *"Idealism, Realism and The Investment Climate in Developing Countries,"* Working Paper 307, Institute of Development Studies at the University of Sussex, Brighton, UK, (June 2008), p. 16

³ The World Bank, *"World Development Report: A Better Investment Climate for Everyone,"* World Bank and Oxford University Press, (2005), p.1- 2

⁴ The World Bank, *"World Development Report: A Better Investment Climate for Everyone,"* p.2

The Citizens Economic Empowerment Act is one way in which citizen participation in the economy can be effected. The Act provides an opportunity for disadvantaged citizens to better themselves and provides several ways, through the Commission, in which marginalised citizens can be aided. Some of the functions of the Commission, as earlier stated, include promoting investment and rendering development services to targeted citizens. Through the functions performed by the Commission, recipients of the Citizens Economic Empowerment Fund will have the necessary information and essential services provided in order for them to start businesses which will empower them and promote economic development. In this way, disadvantaged citizens are given the opportunity to better themselves.

Therefore, since a positive investment climate is one that empowers people by providing opportunities for them to better themselves, it can be said that the Amendment Act promotes a positive investment climate by providing for a broader scope of citizens to participate in the economy. The more citizens there are participating in the economy, the greater the chances for economic development.

It must be noted however that the goal of creating a positive investment climate is a process and not an event. The World Development Report states that;

No country has a perfect investment climate and perfection on even one policy dimension is not necessary for significant growth and poverty reduction. Experience shows that progress can be made by addressing important constraints in a way that gives firms confidence to invest and by sustaining a process of ongoing improvements.⁵

⁵ The World Bank, *“World Development Report: A Better Investment Climate for Everyone,”* World Bank and Oxford University Press, (2005), p. 7

Therefore, it can be said that identifying factors that make up a good investment climate and ensuring the manifestation of those factors is only part of reaching the goal to establish a positive investment climate. The ongoing process of making improvements, identifying shortcomings and enacting the relevant legislation to address the prevailing needs is all part of a process. Increased citizen participation in the economy can only be encouraged by legislation that addresses the challenges that are faced in developing private enterprises. New challenges in developing private enterprises may arise and it is necessary to strive to adapt legislation that addresses these challenges.

4.3 CONCLUSION

Having taken into account the provisions of the Principal Act that were amended, it can be said that there were two main issues that were the focus of the amendments. The first issue dealt with the inclusion of targeted citizens in the various subsections of section 29 and the second issue dealt with the administration of the Fund under section 30. With regard to section 29, targeted citizens, groups of citizens and co-operations were included, thereby broadening the scope of targeted recipients of the Citizens Economic Empowerment Fund.

CHAPTER FIVE

CONCLUSION

5.0 Introduction

In concluding this study, this chapter will take into account the discourse in the preceding chapters and will assess whether the objectives of the study have been fulfilled. Overall, the study was aimed at discussing the Citizens Economic Empowerment Act, the Citizens Economic Empowerment (Amendment) Act and the requirements for a positive investment climate. This chapter will state whether the Amendment Act has been discussed in light of the deficiencies of the Principal Act and whether both Acts have been discussed in light of the factors that make up a positive investment climate.

5.1 General Conclusions

The Citizens Economic Empowerment Act was enacted in light of the government's policy to increase citizen participation in the economy. The objectives of the Act centred on ensuring that the disadvantaged in society are afforded the opportunity to better themselves through financial aid and development services such as loan applications, advisory services promoting training and financing, facilitating the preparation of business plans among others. Also, the Act establishes the category of targeted citizens and lists them in the preamble as intended beneficiaries of the Act's objective to encourage effective ownership and meaningful participation in the economy. Promoting the participation of targeted citizens in the economy is intended as a means through which sustainable economic growth can be achieved. Despite the Act's clear objective and the intended beneficiaries of the objectives, there were some shortcomings in the Act. The inadequacies of the Act were mainly in two areas, namely, the

intended beneficiaries of the Act and the administration of the Citizens Economic Empowerment Fund.

As stated in chapter three, there were a number of deficiencies in the Principal Act and they are found mainly in section 29 of the Principal Act. One of the objectives of the study as stated in Chapter one, was to establish what these deficiencies were. Section 29 establishes the Citizens Economic Empowerment Fund. The Fund is to be used by the Commission to facilitate the flow of financial resources to programmes for broad based economic empowerment. As aforementioned, chapter three highlights the shortcomings of the Act and it can be said overall that the intended beneficiaries falling under the Commission's mandate was limited. In identifying companies or groups that need financial assistance in section 29 (3) (a), targeted citizens were left out. This led to its amendment in section 2 (a) of the Amendment Act and the inclusion of targeted citizens as recipients of financial assistance from the Commission.

Furthermore, in section 29 (3) (b) of the Principal Act, groups of citizens or co-operatives and targeted citizens are not included as recipients of information on sources of finance and the Commission's mandate to promote investments is not extended to them. This led to the amendment of section 29 (3) (b) by the deletion of the section and the inclusion in section 2 (b) in the Amendment Act, of targeted citizens and groups of citizens as beneficiaries of the Commission's mandate to promote investment and provide sources of information.

In addition, section 29 (3) (c) of the Principal Act states that the Commission has the mandate to render development services to companies specified in subsection (3) (a). As already stated, this subsection did not include targeted citizens and subsection (3) (c) itself only mentions companies. It was therefore necessary that this section be amended. Consequently, section 2 (c) of the Amendment Act amended section 29 (3) (c) by the inclusion of groups of citizens or co-operatives and targeted citizens as beneficiaries of development services rendered by the Commission.

Also, section 29 (3) (d) of the Principal Act requires the Commission, in conjunction with any financial institution financing micro and small enterprises, to establish design standards for loan administration and effective use of funds and repayment mechanisms so as to curb misuse of funds. Similar to the aforementioned provisions, subsection (3) (d) of section 29 did not include targeted citizens. It was therefore amended by section 2 (d) of the Amendment Act by the inclusion of targeted citizens, groups of citizens or co-operatives and companies.

Lastly, section 29 (3) (f) of the Principal Act states that the Commission shall secure incentives through relevant authorities for any financial institution which undertakes to finance or develop any company carrying out any broad based economic empowerment programme. This provision only makes reference to companies and was subsequently amended by section 2 (f) of the Amendment Act. The amendment states that the Commission shall secure incentives for financial institutions which undertake to finance or develop targeted citizens, group of citizens or co-operative, or companies specified under paragraph (a).

As earlier stated, there was also a deficiency in the Act with relation to the Citizens Economic Empowerment Fund. As stated in chapter three, difficulty arose in relation to the rates at which financial institutions would lend money. Section 30 of the Principal Act provided that the CEE Fund would be vested in the Commission but shall be managed and administered by various financial institutions. The Commission wanted to lend money at lower rates than the banks so as to promote citizen participation. The conflict between the interests of the financial institutions and the Commission led to the amendment of section 30. This section was amended by section 3 of the Amendment Act and provides that the CEE Fund shall be vested in the Commission and shall be managed and administered by the Commission.

Overall, it can be said that, the deficiencies in the Principal Act were firstly, as a result of the absence of targeted citizens as beneficiaries. The absence of targeted citizens meant that this particular group could not benefit from the specific functions of the Commission that were intended to empower and encourage citizen participation in the economy. The functions of the Commission that would foster economic empowerment include as aforementioned, providing financial assistance, providing information on sources of finance, rendering development services and securing incentives for financial institutions carrying out broad based economic empowerment programmes. It was therefore necessary to include targeted citizens as beneficiaries of the Commission's function so as to economically empower them.

Secondly, the other shortcoming of the Principal Act was in relation to the administration and management of the CEE Fund. With the Commission administering the Fund, there will be

no conflict of interest and the Fund can be effectively administered for the purpose of citizen economic empowerment.

5.2 Recommendations

5.2.1 Reducing Costs Incurred Prior to Accessing the Fund

As mentioned in chapter two, in identifying a good investment climate, consideration should be had to the cost of doing business, the risks associated with it and the barriers to competition. It can be said that the Principal Act aims to reduce the cost of doing business for targeted citizens by providing financing, lending money at affordable rates and rendering development services. The financing provided by the Commission comes from the CEE Fund. As mentioned in chapter three however, there are pre-requisites to accessing the Fund. The two requirements that must be met in order to access the Fund are; the registration of a business and the development of a business plan. Hon. Sakwiba Sikota made reference to these two requirements in a statement and gave reasons as to why these requirements were detrimental to economic empowerment. He stated that it was unfair to expect poor people with very little education to come up with a bankable business plan. He asserted that coming up with a business plan would require the services of an expert and that the poor people who were supposed to benefit from the Fund could not afford to pay an experts for that particular service.

Hon. Sikota went further to talk about the requirement necessitating the registration of business. Similar to the requirement of having a business plan, the costs associated with registering a business are too high. Hon. Sikota stated that the cost of registering a company

and acquiring operating licences is too high for the majority of poor Zambians and defeats the purpose for which the Economic Empowerment Fund was set up.

Therefore, it can be said that the requirements for accessing the Fund are an obstacle to the goal of the Principal and Amendment Act which is to empower targeted Citizens. The cost of developing a business plan before accessing the Fund hinders citizen participation in the economy as only those with the requisite knowledge of developing business plans will be able to access the Fund. Also, only those citizens who can afford to enlist an expert to aid in developing a business plan will be able to access the Fund. In addition, registering a business is also a high cost that will be incurred prior to accessing the Fund. It is therefore recommended that just as the Commission administers and manages the Fund in order to lend money at lower rates than financial institutions, the cost of registering a business should be lowered for those who require the aid of the Fund to set up a business. The Commission, or a separate body established through the amendment of the Principal Act, can be granted the mandate to ensure that potential recipients of the Fund should pay a lower price for the registration of their businesses.

Furthermore, it is recommended that expert assistance should be available for drawing up business plans. As already stated, targeted citizens may not have the means to hire expert assistance. They may also have very little education and would therefore be unable to come up with a viable business plan. In addressing the challenge that this requirement represents it can also be said that assisting targeted citizens should be on two levels. The first level, as already mentioned, is that expert assistance should be provided to help with drawing up business plans. The Commission should be given the mandate to procure the services of

business experts in assisting targeted citizens to draw up business plans. These services should be provided at a lower rate than would normally be charged.

The rationale behind recommending that registering businesses and developing business plans by targeted citizens should be done at a lower rate with expert assistance being provided is that one of the objectives of the Principal Act is to promote and encourage the participation of citizens in the economy. If fulfilling the requirements prior to accessing financial assistance from the Fund entails incurring high costs, this will deter citizens from attempting to set up businesses and applying for the aid provided for under the Principal Act. This will consequently reduce citizen participation in the economy and will stifle economic growth. Citizen economic empowerment should not just be at the level of aiding targeted citizens once they have registered businesses but should also encompass measures that reduce barriers such as high costs of business registration.

5.3 Conclusion

This research has looked at the Citizens Economic Empowerment Act and the reasons for its enactment. Its main goal is to provide financial assistance to targeted citizens thereby promoting citizen participation in the economy. The Act establishes the Citizens Economic Empowerment Commission which has the mandate to facilitate the flow of financial resources to programmes for broad based economic empowerment. The source of the financial resources made available for programmes promoting economic empowerment is Citizens Economic Empowerment Fund which is established under the Act. The Act however had a number of shortcomings and this led to the Citizens Economic Empowerment

(Amendment) Act. The amendments dealt with the issue of broadening the scope of targeted beneficiaries and the administration of the Fund. This research established that the amendments made effectively addressed the shortcomings of the Principal Act and promoted a positive investment climate by encouraging citizen participation in the economy. In conclusion, it has been established that in meeting the requirements necessary to access the Fund, the potential recipients would incur significant costs in registering businesses and developing a business plans. This chapter recommends that in fulfilling its objective of promoting citizen economic empowerment, the Act should provide for assistance to be given through the Commission, to aid potential beneficiaries to develop viable business plans and that registering businesses should be at a lower cost for marginalised citizens.

BIBLIOGRAPHY

Reports

The World Bank. “*World Development Report: A Better Investment Climate for Everyone.*”
World Bank and Oxford University Press (2005).

Governance and Social Development Resource Centre Helpdesk Research Report:
“*Investment Climate in Fragile and Conflict Affected States*” (2010).

Report of the Committee on Economic Affairs and Labour on the Citizens Economic
Empowerment (Amendment) Bill N.A.B 37 of 2010 for the Fifth Session of the Tenth
National Assembly (September 2010).

Papers

Silva-Leander K. “*Making Sense of Investment Climate Surveys.*” Paper presented at
International Conference, Cairo (October 2005).

Mahmood S.A. “*Why the Investment Climate Matters.*” The World Bank (February 2006)

Moore M. and Schmitz, H. “*Idealism, Realism and The Investment Climate in Developing
Countries.*” Working Paper 307 Institute of Development Studies at the University of Sussex,
Brighton, UK (June 2008).

Smith W. and Hallward-Driemeier M. “*Understanding the Investment Climate, Finance and
Development.*” Finance and Development (March 2005).

Internet Sources

The World Bank. <http://www.sitesources.worldbank.org> (accessed on 18th February 2012)

The Free Dictionary. <http://www.financial-dictionary.thefreedictionary.com>, (accessed on 18th February 2012).

Ministry of Commerce Trade and Industry. <http://www.mcti.gov.zm> (accessed on 21st December 2011).

Zambia News Features. *"Hon. Sakwiba Sikota's full Parliamentary Motion on Citizen Economic Empowerment Programme."* Available at <http://www.zambianewsfeatures.com>. (accessed on 21st December 2011).

The Zambian Parliament. <http://www.parliament.gov.zm> (accessed on 25th October 2011)

Dissertations

Ndambo.E.M. Ndambo. *"An Overview of The Citizens Economic Empowerment Act; Does It Possess The Requisite Legal Efficacy To Enhance The Participation of The Indigenous People In The Economic Affairs of The Country Without Stifling The Foreign Direct Investment."* Obligatory Essay submitted to the School of Law in partial fulfilment of the award of a Bachelor of Laws Degree (LLB) 2008.

Other Sources

RPED Business Knowledge for Development. *"An Assessment of The Investment Climate In Zambia."*

OECD Investment Policy Review of Zambia; *"Advancing Investment Policy Reform."* Preliminary draft. (2011)

The Citizens Economic Empowerment Power Point Presentation (September 2010)

The Citizens Economic Empowerment Commission. *“How to Access Empowerment Funds.”*
(September 2010).