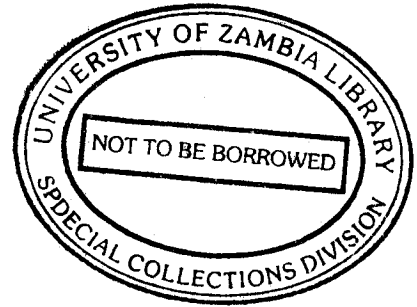


**CITIZEN ECONOMIC EMPOWERMENT
LAW IN ZAMBIA: ITS RELEVANCE AND
APPLICABILITY**



BY

LUNGISANI ZULU

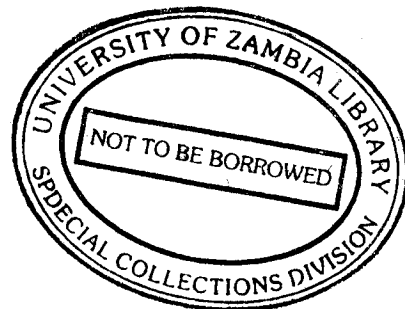
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TITLE

**CITIZEN ECONOMIC EMPOWERMENT LAW IN
ZAMBIA: ITS RELEVANCE AND APPLICABILITY**

BY



LUNGISANI ZULU

**AN OBLIGATORY ESSAY SUBMITTED TO THE
FACULTY OF LAW OF THE UNIVERSITY OF ZAMBIA
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**THE UNIVERSITY OF ZAMBIA
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P.O BOX 32379
DECEMBER 2007**

THE UNIVERSITY OF ZAMBIA


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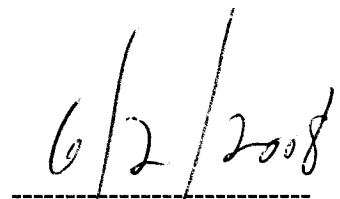
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Mr. Nicholas Khan-Fogel




Date

DECLARATION

I **LUNGISANI ZULU COMPUTER NUMBER 22093451** hereby declare that the contents of this Directed Research Paper are entirely based on my own findings and that I have not in any manner used any person's work without acknowledging the same to be so.

I bear the absolute responsibility for errors, defects or any omissions therein.

STUDENTS NAME..... LUNGISANI ZULU
SIGNATURE..... 
DATE..... 06/02/08

DEDICATION

To you my parents, Avelesi Banda and Shadreck Adonia Zulu, for the sacrifice and belief and my grandparents, Dr. Julius Banda and Mrs Agness Ngosa Banda for the support and encouragement.

ABSTRACT

Citizen economic empowerment has been a common theme for government officials in the recent past. The 2008 budget theme was styled 'Unlocking Resources for Economic Empowerment and Wealth Creation' aimed at engaging Zambians in productive activities. Earlier in 2006, the government enacted the Citizen Economic Empowerment Act in 2006 aimed at empowering citizens.

This work traces citizen empowerment law in Zambia before and up to the enactment of the Citizen Economic Empowerment Act in 2006.

It starts with citizen economic empowerment through Nationalisation and Zambianisation policies of the UNIP government and how those policies fared in empowering citizens. It examines how through the transfer of means of production from private to public hands government hoped to empower citizens. It further examines other Zambianisation measures aimed at empowering citizens such as limiting certain business sectors, certain business areas and local borrowing to local entrepreneurs as well as employment positions in parastatals and private companies.

It also looks at the privatisation programme of the MMD government and how it fared in empowering citizens. It looks the various facets of empowerment in the privatisation such as wide share ownership by citizens, home ownership and skills development and their efficacy in empowering citizens.

The paper then analyses the various provisions of the Citizen Economic Empowerment Act, highlighting its strengths and weaknesses. Some of the pertinent provisions examined include the Citizen Economic Empowerment Commission, Citizen Economic Empowerment Fund and broad-based empowerment measures under the Act.

After highlighting the weaknesses, some recommendations are rendered. These include the need to adequately fund the Citizen Economic Empowerment Commission to discharge the numerous functions under the Act, to develop appropriate measures to identify the beneficiaries under the Act and the to ensure that the Citizen Economic Empowerment Fund is effectively and efficiently administered.

ACKNOWLEDGEMENTS

The preparation of this work has been challenging to say the least. Of course the challenges mirror my entire stay in Law School.

However, am grateful to Jehovah God and his son our Lord Jesus Christ for the support, hope and power he has given me to overcome every challenge faced in my academic life and in general, thanks Lord.

Further, I would like to thank a number of individuals who have contributed to my blissful stay on campus and who have contributed to the materialisation of this work.

Firstly I would like to thank my supervisor, Mr. Nicholas Khan-Fogel who not only supervised my work, read the manuscript and patiently corrected my English, but also made valuable suggestions which improved the quality of my work. I shall forever be indebted to him.

My loving aunties Eliza, Mbembe, Martina, Emily and uncle Kabaja, uncle JS, Acklass and auntie Ngoza for most sincerely standing by me in all the hard times through out my academic life.

My friends Edward Sampa, thanks for being a brother, IOU big time, McQueen Zaza-Zenzo, thanks for your unfailing support and critic, am now a better man, Martha Kashala, thanks for your friendship, Monde Michelo and Bwalya Chilufya, Jean Couvaras, Eusatce Ngoma ,Grace Mukulwamutiyo, Charles Sinkala, Probbly Shambulo, Inutu Akolwa, for your support, encouragement and being a source of inspiration.

Of course not forgetting my roommates Choolwe and Chimuka Sianyinda, you are more than brothers to me. Other colleagues Mwape Moono, Francis Mwale J.K, the 'bearers'

Walubita Luwabela, Bertha Miyanda, Isaac Dumbe, Groy Shauma, Chilufya Chanda, and my learned colleagues Maingaila Paizele and Joseph Mileji.

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To you all and those I have been unable to mention by name for lack of space, may God richly shower you with his favour everyday.

Statutes

The Zambia Privatisation Agency Act (repealed).

The Citizens Economic Empowerment Act, No. 9 of 2006

Foreign Statutes

The Broad-Based Black Economic Empowerment Act, 2003 Act No. 53 of the Laws of the Republic of South Africa.

Glossary of Acronyms

CEEC - Citizen Economic Empowerment Commission

CEEF - Citizen Economic Empowerment Fund

INDECO - Industrial Development Corporation

ZIMCO - Zambia Mining and Industrial Corporation,

ZPTF - Zambia Privatisation Trust Fund

ZUFIAW - Zambia Union of Financial Institutions and Allied Workers

UNIP - United National Independence Party

MMD - Movement for Multi-Party Democracy

TABLE OF CONTENTS

Dedication	(i)
Abstract	(ii)
Acknowledgements.....	(iii)
List of Statutes.....	(v)
Glossary of Acronyms	(vi)
Table of Contents.....	(vii)

CHAPTER ONE

THE NATURE, DEFINITION AND RATIONALE OF THE CONCEPT OF CITIZEN ECONOMIC EMPOWERMENT

1.1 Introduction.....	1
1.2 The definition of Citizen Economic Empowerment	2
1.3 The Nature of Citizen Economic Empowerment	3
1.4 The Rationale of Citizen Economic Empowerment	5
1.5 Research Problems and Objectives.....	6
1.6 Research Methodology.....	7
1.7 Conclusion	8

CHAPTER TWO

ZAMBIANISATION AND NATIONALISATION POLICIES AS A MEANS OF CITIZEN ECONOMIC EMPOWERMENT

2.1 Introduction.....	10
2.2 Zambianisation Policies	12
2.3 Nationalisation Policies	15
2.4 Impact of the Policies as an Empowerment Measure.....	16
2.5 Conclusion	19

CHAPTER THREE

PRIVATISATION AS A MEANS OF CITIZEN ECONOMIC EMPOWERMENT

3.1 Introduction.....	20
3.2 Facets of Empowerment in the Privatisation Programme.....	21
3.3 Impact of Empowerment Measures in the Privatisation Process.....	23
3.4 Weaknesses.....	24
3.5 Conclusion	26

CHAPTER FOUR

EMPOWERMENT THROUGH THE CITIZENS ECONOMIC EMPOWERMENT ACT

4.1 Introduction.....	28
4.2 Objectives of the Citizens Economic Empowerment Policy.....	28
4.3 Citizens Economic Empowerment Commission.....	29
4.4 Citizens Economic Empowerment Fund.....	30
4.5 Broad – Based Economic Empowerment Measure.....	31
4.6 Critique of the Citizens Economic Empowerment Act	33
4.7 Conclusion.....	37

CHAPTER FIVE

GENERAL CONCLUSIONS AND RECOMMENDATIONS.

5.1 Introduction.....	39
5.2 Summary	39
5.3 Recommendations	42

5.4 Conclusion46

Bibliography.....47

CHAPTER ONE

1.0 THE NATURE, DEFINITION AND RATIONALE OF THE CONCEPT OF CITIZEN ECONOMIC EMPOWERMENT

1.1 Introduction

Citizen empowerment should be a central theme of every responsible government, particularly so in developing countries where citizens are usually found not to possess the relevant skills and resources to make a viable contribution to the growth of the economy. As such the growth of the local economy is left to the mercy of foreign investors who possess the much needed technological know-how and resources. But the danger of leaving the growth of the local economy to the mercy of foreigners cannot be overemphasised. In the recent past Zambia was stunned by an abrupt pull out of Anglo-America, a mining giant, from the Zambian economy. Foreign companies, though essential to every economy, may be unreliable as they can leave whenever and wherever in accordance with the economical whims and caprices of the foreign shareholders to the disadvantage of the local economy.

It is thus imperative that local entrepreneurship and investment should be encouraged in any country for sustainable economic growth.

In order to enhance Zambian citizens' chances of participating and gaining a stake in the Zambian economy and to encourage Zambian entrepreneurship and local investment, parliament enacted the Citizens Economic Empowerment Act.

However, it is imperative to define the concept of citizen economic empowerment before proceeding to discuss the various attempts made by government to empower citizens.

When faced with a question of defining a concept, a lawyer may spend volumes of pages to try to bring out a definition which would do justice in the particular situation. For example, a question of what law is has generated a plethora of books from different jurists but there is as yet no single definition to satisfy the differing schools of thought.

Such a philosophical approach to the definition of concepts, undoubtedly wastes so much time and space and shall not be attempted in this paper. However different and

inadequate in the eyes of critics, a definition is always required for concise elaboration of any topic. This chapter aims at defining the concept of citizen economic empowerment, its nature and rationale. At the end a brief conclusion shall be given.

1.2 The Definition of Citizen Economic Empowerment

The definition of the concept of citizen economic empowerment may be approached in two ways, e.g. by firstly defining the various components making up the concept or by looking at the nature of the concept.

Using the first approach, a dictionary meaning of the three words; citizen, economic and empowerment would be helpful.

A Citizen, according to the Longman Dictionary of Contemporary English is simply someone who lives in a particular town, country or region. It is merely a native of a particular country. According to the Oxford Advanced Learners Dictionary, citizen from which is derived the word citizenship, has been defined as:

The legal right to belong to a particular country...the state of being granted the legal membership of a given country and accepting the responsibilities that come with it.¹

Economic is defined as that which relates to trade, industry, and management of money. David Begg and Stanley Fischer (1991) define economics, where economic is derived, as the study of how society decides what, how and for whom to produce goods and services.² To empower is to give someone more control over their own life or situation.³ Citizen economic empowerment may thus be defined as the system of rules or mechanism which prescribes how persons belonging to a particular country can have more control over trade industry and the management of money.

However, such an approach to the definition of concepts may not do sufficient justice. Of course, it should be acknowledged that despite the faults in the above definition it does

¹ Hornby A.S (2000) Oxford Advanced Learners Dictionary. Oxford: Oxford University Press. P : 195 as quoted by Kamanga, Muziula in his paper entitled The Need to Redefine Zambian Citizenship: A legal Appraisal on the Concept of Citizenship within the Global Context at page 11.

² Begg, David and Stanley Fischer. 1991. Economics. London: McGraw-Hill. p. 2

³ Longman Dictionary of Contemporary English, New Edition. 2002.

shed light, little though, it may be, into the concept we are trying to define. This then leads us to the second approach. A more indirect and detailed approach is called for which looks at the nature of economic empowerment.

1.3 The Nature of Citizen Economic Empowerment

In many countries imbalances have been recognized in the distribution of wealth and the means of production. In most African countries, Zambia inclusive, newly independent governments found themselves with political power but the means of production in the hands of the colonial masters. In South Africa, the black government was faced with the necessity of putting the means of production in the majority black citizens which were hitherto the preserve of the white minority. In Malaysia the government has for a long time been faced with the challenge of implementing a policy to boost the Malays economic standing, mainly against the ethnic Chinese, who make up 33 per cent of the nation's population but control 70 per cent of its wealth.⁴ Even developed countries like United States of America, England and France have not been spared from disparities that so often afflict societies.

Faced with these disparities in the economic sector, various methods have been adopted to address them. In England, the ordinary people rose up in a peasant's revolt in 1210 demanding their rights and opportunities from the rich who controlled the nation. In 1792, the common man threw out the elite and ruling classes in the French Revolution. America is famous for its affirmative action. In South-Africa, the various legislative measures such as the Employment Equity Act, the Skills Development Act of 1998 and the Black Economic Empowerment Act of 2003 were put in place⁵. In Zambia, the post-independence Kaunda regime put in place Zambianisation and Nationalisation policies to address the problem.

Though the concept does not always go by the same name, citizen economic empowerment policy is the machinery that is put in place to address the imbalances in the

⁴ Daily parliamentary debates for the fifth session of the ninth assembly, Tuesday, 21st March, 2006

⁵Ibid,

economic sector. It usually aims at enhancing the economic standing of the targeted group of citizens through various policies. Enhancing of the economic standing is usually done through legal and extra-legal mechanisms. The legal machinery positively discriminates against a particular section of the citizenry in an effort to place them in the main economic arena. The ultimate aim is to re-distribute wealth and the means of production which are usually in a few hands.

There are various mechanisms and strategies that are employed in empowerment laws in different countries. In South Africa for example, black empowerment uses the following strategies:

- a. increasing the number of black people that manage, own and control enterprises and productive assets;
- b. facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
- c. human resource and skills development;
- d. preferential procurement; and
- e. investment in enterprises that are owned or managed by black people.⁶

The targets of such empowerment can be the women, youths, and people living in rural areas or indigenous citizens of a particular country. In the Zambian case, it has mainly been indigenous Zambians as reflected in the speeches of the political leaders when advocating for such policies.⁷ In south- Africa the empowerment programmes have been targeted at black citizens of the country. Black people are defined to mean Africans, coloureds and Indians of that particular country⁸. In Brazil empowerment policies have been targeted at black students while in Malaysia they have been targeted at indigenous Malays. In America, attempts have been made to empower rural citizens through the

⁶ Section 1 of Broad-Based Black Economic Empowerment Act, 2003 Act No. 53 of the Laws of the Republic of South Africa.

⁷ For example in his famous Mulungushi speech Kenneth Kaunda in 1968 stated “ it is time that we must take urgent and vigorous steps to put Zambian business firmly in the hands of the people of Zambia, just as political power is in their hands”. The Times of Zambia, April 20th 1968

⁸ Section 1 of Broad-Based Black Economic Empowerment Act.

United States Department of Agriculture. In fact any group of society can be a target for economic empowerment stretching from the youth to the women.

Being concerned with the economy, economic empowerment laws are closely linked with the economic ideology of a country. Economic ideology is at the same time driven by the political ideology. Empowerment laws are therefore not purely legal but represent a fusion of all three; legal, political and economic conceptions.

Implementation of empowerment policies to empower a targeted group needs to be done cautiously. There is need to take into consideration the interests of the already established major economic players. Haphazard application of empowerment laws can lead to unforeseen and untold problems. As rightly acknowledged in the South-African case, empowerment should not aim to merely take wealth from one group and give it to another. Such an attempt would only spell trouble for the economy as no economy can grow by excluding any part of its people more especially the major players⁹.

In Brazil, affirmative action aimed at empowering black university students has been declared unconstitutional while in Malaysia it has been a source of bloody armed conflict. Even in South-Africa itself, eyebrows have been raised by certain quarters against some empowerment policies questioning them whether they do not in fact sanction racism.

1.4 The Rationale of Citizen Economic Empowerment

The above notwithstanding, empowerment laws have been gaining momentum in various countries in the recent past. The rationale of empowerment policies is to address imbalances that so often afflict society in the economic sector. They represent a deliberate policy to correct the disparities in income distribution and bridge the gap between the haves and have-nots.

⁹South African Department of Trade and Industries, @ [http:// www. southafrica.info](http://www.southafrica.info) (last visited July 4, 2007)

In Zambia, the newly enacted Citizen Economic Empowerment Act is not the first attempt to empower citizens. Upon gaining independence in 1964, the new Kaunda regime found itself armed with political power but having no control over the economic destiny of the country. The means of production were in the hands of the few white colonial settlers. Realising that political independence is nothing so long as the control of the economy remains in foreign hands, President Kaunda pronounced far reaching policy measures through his Mulungushi and Matero reforms. How these reforms fared as a means of empowering the citizens is the concern of latter chapters. At this point it is sufficient to note that the Zambianisation and Nationalisation policies introduced by the above stated reforms were intended to economically empower Zambians.

In the third republic, the privatisation reforms were to some extent also aimed at economically empowering Zambians by giving them a stake in the running of public companies. Here too, the matter requires an elaborate exposition which is provided in the latter chapters.

1.5 Research Problems and Objectives

The above attempts go to show that Zambia has had to grapple with the problem of disparities in the economic sector and has had to rely on legal and extra legal empowerment measures to redress them. It is the aim of this paper to analyse the various attempts by the government to empower citizens starting with the nationalization and Zambianisation policies, then the privatization programme and finally the provisions of the Citizen Economic Empowerment Act.

The main objective of this research is to examine the citizen economic empowerment law in Zambia and whether the newly enacted Citizen Economic Empowerment Act adequately provides for the empowerment of citizens and whether it can achieve its intended objectives in the light of the past experiences.

The research problems intended to be tackled by the paper include how nationalisation and Zambianisation as well as privatisation policies fared as means of empowering citizens. What flaws these policies had that necessitated a more direct attempt to empower citizens through the enactment of the Citizen Economic Empowerment Act. Whether the Citizen Economic Empowerment Act adequately addresses the challenges of the past attempts to empower citizens. Whether the Act is indeed relevant and applicable to the Zambian scenario and what change, if any, the enactment of the Citizen Economic Empowerment Act has brought in the citizen empowerment law in Zambia.

Specific objectives of the study will be to:

- i. Explain what citizen economic empowerment is and its rationale;
- ii. Examine earlier attempts to empower Zambians;
- iii. Examine the policies of Nationalisation and Zambianisation as means of empowering Zambian citizens;
- iv. Identify and examine some flaws of Nationalisation as a means of empowering citizens;
- v. Examine the policy of Privatisation as a means of empowering Zambian citizen;
- vi. Identify and examine some flaws of Privatisation as a means of empowering citizens;
- vii. Analyse the provisions of the Citizen Economic Empowerment Act and its objective;
- viii. Examine whether the Citizen Economic Empowerment Act adequately addresses problems of past attempts to empower Zambian citizens.
- ix. Point out challenges in the implementation of the current law and provide suggestions on how it can be effectively implemented.

1.6 Research Methodology

It must be stated that not so much has been written in the Zambian jurisdiction in terms of citizen empowerment law and its rationale and efficacy. Though nationalisation and privatisation are discussed as tools of empowering citizens economically, a lot of materials focus on the two policies purely as general economic policies. However, in this

paper an ambitious attempt has been made to discuss the above policies as means of empowering citizens and isolate some of the flaws of the policies.

The major method of data collection deployed is desk research which has been supplemented by interviews with various personnel in sectors tasked with citizen empowerment. The data for this research has been sourced from books, Statutes, draft legislation, the internet, journal articles, paper presentations, student obligatory essays, reports by mandated bodies and, in a few and necessary cases, newspaper articles.

It must be acknowledged that scope of the research is quite wide that it cannot be adequately covered in the few limited pages in which the directed research paper is supposed to be submitted for examination. However, an attempt has been made to summarise the research in five chapters.

The next chapter discusses early attempts by the Zambian government to empower citizens through the policy of nationalisation of the economic sectors and the flaws of this mode of empowering citizens.

Chapter three examines the second attempt by the Zambian government to empower citizens through the privatisation policies and its flaws.

The fourth chapter discusses the current attempt by Zambian government to empower citizens through the provisions of the Citizen Economic Empowerment Act and how the provisions of the Act address some of the past challenges of citizen empowerment.

Conclusions and Recommendations are given in the fifth chapter.

1.7 Conclusion

From the discussion above, a clearer picture of the concept of citizen economic empowerment and its rationale emerges. It is an attempt to empower a certain group of

society using the legal and sometimes extra-legal machinery. It principally aims at redressing the imbalances that may exist in the power to economically exploit a country's resources. Borrowing the words used in the definition of the South African Black Economic Empowerment, it is an integrated and coherent socio-economic process that directly contributes to the economic transformation of a country and brings about significant increases in the number of the targeted people that manage, own and control the country's economy, as well as significant decreases in income disparities¹⁰. The law put in place to achieve empowerment in Zambia is what is of primary concern in this paper. The targets of empowerment policies can be the youth, women, indigenous citizens, rural citizens or indeed any marginalized group in society. The next chapter discusses Nationalization and Zambianisation policies introduced through the Matero and Mulungushi reforms of the Kaunda regime as a means of empowering Zambian citizens.

¹⁰ Black Economic Empowerment in South Africa, 2005 @ <http://www.fwdklerk.org.za> (last visited July 5, 2007)

CHAPTER TWO

2.0 ZAMBIANISATION AND NATIONALISATION POLICIES AS A MEANS OF CITIZEN ECONOMIC EMPOWERMENT

2.1 Introduction

Like most ex-colonial territories, Zambia on independence took over the reins of government with the economic sector entirely in the hands of non-citizens, particularly Europeans and Asians.

This chapter looks at the policies that were undertaken by the new United National Independence Party government led by President Kenneth Kaunda in order to empower Zambian citizens to enable them fully participate in the economic activities of the country. The chapter more specifically looks at the Zambianisation and Nationalisation policies introduced by the Mulungushi and Matero Economic reforms of 1968 and 1969 respectively. It further analyses how these policies fared as a means of empowerment and some of their weaknesses.

Political independence without corresponding economic independence is meaningless. Apart from exposing the newly independent countries to the overbearing influences of the economically powerful foreigners, such a situation makes planning by the government difficult as they do not control the means of production. This was realised by the new Kaunda regime and it resolved to re-dress the situation. The situation in the newly independent Zambia where the Economy was completely in the hands of foreigners was thus a fertile ground for aggressive empowerment measures to place the Zambian citizens in the mainstream economy.

As a result, soon after independence, the government started giving loans and know how to citizens in the firm belief that in this way Zambian entrepreneurship would be

established and built up. However, as acknowledged by the President himself, this method was slow and ultimately failed.¹¹

With the failure of a lukewarm approach to empowerment, it was realised that some aggressive steps to effectively empower the Zambian citizens were needed. Time had come for Zambia to take urgent and vigorous steps to empower its citizens. Some concrete steps were needed to promote the participation of the indigenous Zambians in the economic field. This was achieved through the various economic reforms introduced by the Mulungushi Reforms of 1968 and the Matero Reforms of 1969.

In his address to the National Council of the United National Independence Party (1968) at Mulungushi Rock of Authority, President Kenneth Kaunda announced far and wide sweeping measures aimed at putting Zambian business firmly in the hands of the people themselves just as political power was in their hand¹². These Mulungushi Reforms were further supplemented by the Matero Reforms announced in 1969.

The Mulungushi and Matero reforms introduced Zambianisation and Nationalisation which were aimed at empowering Zambians.

Zambianisation is defined as the transfer of the means of production and other economic sectors into the Zambian hands. Nationalisation on the other hand is the transfer to the state, by a legislative act, and in the public interests, of property and or private rights of a designated character, with a view to their exploitation or control by the state or to their direction to a new objective of the state.¹³

Nationalisation policies may take various forms in different countries and are carried out for various reasons but in these policies were an effort to empower the citizens as shall be presently shown.

¹¹ Zambia Economic Revolution: Address by His Excellency the President, Dr. K.D Kaunda at Mulungushi, 19th April, 1968, p. 27

¹² Ibid, p. 27

¹³ The Institutte De Droit International, as quoted by D.D. Nsereko, in "The Tanzanian Nationalisation Laws" East African Law Review, Vol. 3, No. 1, April, 1970

2.2 Zambianisation Policies

The Mulungushi Reforms introduced a number of measures in an effort to empower citizens in the economic sector.

Considering that the economic sector was dominated by foreigners, measures were aimed at putting the Zambian businesses into an advantageous position and also shield them from excessive competition from the Resident Expatriate Businesses.

2.2.1 Limiting Local Borrowing by Resident Expatriate Enterprise

One of the measures aimed at empowering Zambian businesses was through limiting local borrowing by Resident Expatriate business.

It was discovered at that time that lending firms were not keen to lend to Zambians. This was because most Zambians did not have the capacity to provide security for the loans and also incapable of repaying the loans. Lending firms thus preferred to lend to expatriate businesses whom they had previously dealt with and who also had the capacity to repay the loans and provide security.

To address this scenario, President Kaunda announced measures to limit local borrowing by Resident Expatriate businesses¹⁴. It was directed that Banks, Building societies, Insurance companies, the Hire Purchase companies and all other financial institutions in the country, before approving a loan application for business purposes had to ascertain the following:

- If a company, its members, shareholders are Zambians with Zambian passports and national registration cards.
- If a partnership, that all the partners are Zambians with Zambian passports and national registration cards.
- If an individual, that he is a Zambian with Zambian passports and national registration card.

If the application for a loan or overdraft comes from persons not Zambian, the application was to be referred to the Exchange Control Authorities. The Exchange control Authorities would either approve or reject the application using its own stringent criteria.

¹⁴ Zambia Economic Revolution: Address by His Excellency the President, Dr. K.D Kaunda at Mulungushi, 19th April, 1968, p. 28

These criteria included the amount applied for, the type of business they operate and the amount of their investment in the Country.

In this way, it was hoped that the excess liquidity will be channelled to Zambian businesses.

2.2.2 Limiting Resident Expatriate Businesses to Certain Areas.

Zambian businesses were given certain areas in which to operate without competition from expatriate business to enable them to develop.¹⁵ Certain geographical and business areas were the preserve of the Zambians to operate in retail trade. Expatriate businesses in retail trade were limited to centres of big towns only. The areas where they were allowed to operate were Chingola, Mufulira, Kitwe, Luanshya, Ndola, Kabwe, Lusaka, Mazabuka, Choma and Livingstone.¹⁶ The rest of the other trading centres in the country were to be the preserve of Zambian retail businesses and Expatriate businesses were directed to sell such businesses to Zambians.

President Kaunda also lamented at the absence of Zambian businesses in almost all the large towns in the country, the prime business centres. He stated,

“it pains me to see that three and a half years after independence there is not a single Zambian owned business in [Lusaka’s] Cairo road. There is not even a resident expatriate business or foreign controlled business or any business for that matter with a Zambian manager in Cairo Road. The same applies to the centre to Kitwe, Ndola, Chingola and all the large towns in the country”.¹⁷

It was therefore directed that additional trading licences in these areas were only to be granted to Zambian companies, partnerships and individuals.

2.2.3 Limiting Certain Economic Sectors to Zambian Businesses

Apart from trading areas, certain businesses were declared to be the preserve of Zambian businesses. Among the various businesses reserved for Zambian businesses included the following:

¹⁵ Ibid, p. 29

¹⁶ Ibid, p. 31

¹⁷ Ibid, p. 29

(i) Road Service Licences

Road Service licences for buses, lorries, vans taxis, and for any type of vehicle were not to be granted except to companies or co-operatives that had at least 75% of their members or shareholders Zambians, partnerships whose partners were Zambians or Zambian individuals.¹⁸ Expatriates operating in these fields were to continue only to the expiry of their licences, thereafter to sell their businesses to Zambians.

(ii) Building Material Permits

The construction field involving the digging and transportation of sand, soil, clay stone etc where a building mineral permit for people to extract sand or any other building materials were only to be granted to Zambians.

(iii) Sub-Contracts to Large Companies and awarding of Public Work Contracts.

It was further directed that sub-contracts to large companies including mining companies to do small jobs such as digging trenches, painting, clearing roads and many others were only to be awarded to Zambians.¹⁹ Contracts by the Public Works Department to do various public works below a certain specified amount were only to be given to Zambian businesses.²⁰

Other Zambianisation policies introduced by the Matero reforms included measures to encourage joint ventures between Zambians and expatriates in certain agricultural and industrial fields. These joint ventures were encouraged to set up their businesses in rural areas. The incentive was that such joint ventures could enjoy the status of Zambian business for the purposes of Exchange control regulations.²¹

Apart from retail trade being allowed to expatriates in certain areas only, by the Matero reforms, wholesale licences were also allowed to expatriates in only prescribed areas.²²

¹⁸ Ibid, p. 32

¹⁹ Ibid, p. 34

²⁰ The amount was K100, 000.00 which was a relatively a high amount at that time.

²¹ Towards Complete Independence; Address by His Excellency the President, Dr. K.D Kaunda to the UNIP National Council held at Matero Hall, Lusaka, 11 August 1969, p. 12

²² Ibid, p. 8

2.2.4 Zambianisation in the Employment Sector

In an effort to place *Zambians* in strategic positions deliberate measures were undertaken to encourage employing of *Zambian* citizens both in the private and public sector. Private businesses were encouraged to employ *Zambians* in jobs which could be done by *Zambians*. *Zambianisation* of administrative, managerial, executive and technical staff was also done by applying strict criteria to the issue of employment permits. Only if a job could not be done by a *Zambian* would a work permit for an expatriate be renewed.²³

2.3 Nationalisation Policies

Apart from encouraging individual *Zambian* businesses' participation in the economic field, the state also took a direct role in business. This was done by the setting up of various parastatals in various strategic industries. The government re-organised the Industrial development Corporation-INDECO as its business arm.

Through the Mulungushi and Matero Reforms, over twenty hitherto privately owned companies were invited to sell at least 51% of their equity share to the government through INDECO. Among the companies invited to sell their 51% shares included Anros Industries, Monarch Zambia Limited, Critall-Hope (Z) Limited, Anglo-African Glass Company which were in the construction industry.²⁴ In the steel and timber supply industry the affected companies were Steel Supplies of Zambia Limited, P.G. Timbers, Baldwins Limited, ZamTimba Ltd, May and Hassel (Z) Limited. Others in different industries included Nicholas Quarries, Greystone Quarry, Northern Breweries, Central African Road Services Ltd., Smith and Youngson Ltd., C.B.C Shops, O.K Bazaars, Mwaiseni Stores, Solanki Brothers Ltd, Zambia Newspapers Limited, Irwin and Johnson Limited among others.

The directive to sell at least 51% to government announced at Mulungushi hall in April, 1968 was swiftly carried out by INDECO such that by August 1969, almost 23

²³ Kaunda, Kenneth. 1968. Humanism in Zambia and a guide to its Implementation....

²⁴ Zambia Economic Revolution, p. 39

companies had been successfully nationalised. INDECO became a vast industrial corporation responsible for both new major enterprises which it had initiated in line with government priorities and the well established firms which dominated selected key sectors of production and distribution. INDECO was itself a member of the Zambia Mining and Industrial Corporation (ZIMCO), which was a holding company that controlled all the nationalised enterprises.

Nationalisation also affected the country's predominant copper industry. Through the Matero Reforms, the government took over 51% of the two newly created copper companies, Nchanga Consolidated Copper Mines (NCCM) and the Roan Consolidated Mines.

The aim of these measures was to enable government to control and rationalise the companies' production, to eliminate duplication and to lower their prices.²⁵

As an empowerment policy, this was aimed at empowering citizens, albeit indirectly, as the companies were now in their hands through the state. The means of production were placed in hands of Zambian citizens through the state.

2.4 Impact of the Policies as an Empowerment Measure

It cannot be doubted that the policies were instrumental in enhancing participation of Zambian businesses in the local economy. Whereas at the time of gaining independence the economic sector was purely dominated by foreign nationals, the above policies placed a number of Zambians in the mainstream economy. A number of Zambians were employed in strategic positions in the various parastatals established by the government. Further, through the operations of the Industrial Development Corporation (INDECO) the state played a crucial role in the industrial sector of the country's economy. The reforms managed to create a new breed of Zambian businessmen with managerial know how to manage big parastatal companies. Before the reforms President Kaunda had lamented at the absence of Zambian businesses in trading centres of big towns, but with the reforms the situation changed for the better.

²⁵ Ibid, p. 39

2.4.1 Weaknesses

Despite the numerous strides the nationalisation and Zambianisation policies made, there were certain weaknesses they had as a means of empowering Zambian citizens.

Firstly, the policies did not have any specific target group apart from Zambian citizens in general. As such only the already economically empowered Zambian citizens were truly empowered. Those without the know-how of doing business could not share in the sudden windfall that had befallen the Zambian business community. There were no serious attempts to empower the ordinary Zambians with the knowledge of how to run businesses before these policies were introduced. The directive that foreigners were to sell their businesses in certain sectors and business areas could not benefit just any Zambian but those with the money and knowledge of running businesses.

In the employment sector, not many ordinary Zambians had the qualifications to hold managerial, executive or senior positions in big companies. As such only the already educated better-off Zambians were the beneficiaries of this empowerment measure.

The other weakness was the provision for change of citizenship given to resident expatriate business owners. Resident expatriates could continue to operate and enjoy the benefits enjoyed by Zambian businesses if they themselves became Zambian citizens.

This loophole was exploited by a number of resident expatriate business owners who preferred to change their citizenship than to lose or forcibly sell their businesses. As such ownership of the means of production remained in the same hands without any actual empowerment of Zambian citizens taking place.²⁶ Those denied citizenship remained in business under the banner of 'Zambian-Asian', 'Zambian-African', 'Zambian-European' serving as the smoke screen behind which pre-economic reforms business owners continued to amass wealth without openly making themselves offensive to the state.

Though nationalisation was an attempt to empower the general citizenry by owning the means of production through the instrument of the state, the real beneficiaries were not the ordinary citizens. Without political influence it was difficult to access employment in

²⁶ Mushota, K .Remmy. 1975. Nationalisation and the Law of Business Association in Zambia, Directed Research Paper submitted to the University of Zambia in partial fulfillment of the Award of Degree of Laws, p. 16

managerial positions in government controlled companies. Positions in these companies were seen as a means of rewarding those faithful to the prevailing political regime.

The actual beneficiaries of these empowerment policies were thus a few individuals who were mostly UNIP supporters. Even President Kaunda himself acknowledged this problem when he stated:

The reforms have created a form of a state capitalism where tremendous power is concentrated in the hands of a small managerial group who have on the important switches and whose elitist attitudes set social patterns far beyond their immediate realm of command.²⁷

Empowerment did not benefit just any Zambian, but a few rich Zambians and a few indigenous Zambians of real political influence.²⁸

While it would be harsh to assert that the policies completely failed to empower Zambians, it is fair to conclude that the policies did not adequately and effectively empower the ordinary citizens. Compounded by the economic crisis in the country, the policies though enthusiastically carried out by the Kaunda regime, were ultimately destined to be discarded.

The general decline in copper prices, Zambia's major export on which the economy depended, was a major contributor to the economic crisis. This coupled with the general political turmoil in the southern Africa worsened Zambia's economic problems. Problems in Smith's Rhodesia and neighbouring Angola forced Zambia to abandon its major export and import routes and look elsewhere for alternatives. Inflation sky-rocketed, basic necessities were in critical shortage and there was general dissatisfaction among workers about their standard of living sparking countrywide strikes and riots.²⁹

With an economic crisis and the political turmoil prevailing in the country, the days of Kaunda's regime and his policies were numbered. With the loss of popularity of Kaunda and his socialist policies, Zambia discarded the above policies and looked to the neo-

²⁷ Kaunda, K. 1974. Humanism in Zambia and a Guide to its Implementation, part II, p. 111

²⁸ Times of Zambia, November 19th. 1973- A Report on its Contract and Discrimination.

²⁹ Meyns, Peter, 1984, "The Economy – A Neo – Colony?" In Klaass Worldrin and Chibwe Chibaye edited, Beyond Political Independence: Zambia's Development Predicament in the 1980s, p. 17

liberal policies of the Frederick Chiluba regime when multi-party democracy was re-introduced in 1991. The neo-liberalist Chiluba regime introduced privatisation as a form of correcting the mistakes of the past regime and empowering citizens. How this was done and its successes and weaknesses form the subject of the next chapter.

2.5 Conclusion

The chapter has shown how the Mulungushi and subsequent reforms set out to establish state control over crucial areas of economic independence activity and to strengthen the nascent Zambian business class in an effort to empower the general populace. Support for Zambian private entrepreneurs took the form of government protective measures. They were to have privileged access to credit from financial institutions. Business licences for retail trading throughout the country with the exception of central trading areas in the main line of rail towns, were reserved to Zambians. In other places new licenses were only to be given to Zambians as while as public works contracts below a certain amount could only be given to Zambians. Employment of Zambians in both the private and public sectors was encouraged. The state also took a direct role in the economic activities through the activities of the various parastatals in an effort to control the means of production on behalf of the citizens.

However, it has been shown that even though these policies achieved some of the intended aims, they were not very effective as they did not empower the general citizenry. Only those close to the ruling elite and those already well-off were the beneficiaries. As a result, when Chiluba took over power in 1991 he discarded these policies and focussed on privatisation as a means of empowering citizens.

CHAPTER THREE

3.0 PRIVATISATION AS A MEANS OF CITIZEN ECONOMIC EMPOWERMENT

3.1 Introduction

This chapter looks at the privatisation programme undertaken by the Movement for Multi-Party Democracy government led by President Frederick Chiluba and how it contributed to economic empowerment of citizens. It further analyses how this programme fared as a means of empowering citizens.

According to the Zambia Privatisation Agency Act, Privatisation means

“the transferring to the private sector of part or the whole of the equity or other interest held by the Government, directly or indirectly, in a State owned enterprise wholly or partly owned by the Government”³⁰.

From the onset, it must be made clear that where as the Kaunda regime took deliberate steps at empowering citizens through the nationalisation and Zambianisation policies, privatisation was not purely an empowerment measure.

It was rather part of government’s overall economic reform programme. There was a shift from state controlled economic policy to a liberal, private controlled economic programme in the Chiluba regime. It was discovered that a number of parastatals in government hands were not profitable and effective. To keep the parastatals running, government had to pump in a lot of resources in form of subsidies. Considering the huge number of parastatals in the country, government was losing a lot of money in budgetary support in form of subsidies.

Further, liberalisation policies were aimed at reducing government’s direct initiative in the economic actions. To achieve that, parastatals needed to be placed in private hands so as to reduce government’s administrative load by privatising them.

³⁰ Section 2 of The Zambia Privatisation Agency Act, which is now repealed. Any future reference to the Act is on the understanding that it is a repealed Act which has been replaced by the Zambia Development Agency Act.

The Zambia Privatisation Agency Act, No. 21 of 1992 was enacted to provide for the privatisation and commercialisation of state owned enterprises. To spearhead the privatisation programme, the Zambia Privatisation Agency was established whose functions included:

- (a) recommend privatisation policy guidelines to the Cabinet;
- (b) implement the privatisation programme according to the policy guidelines issued by the Cabinet;
- (c) oversee all aspects of the implementation of the privatisation programme in Zambia;
- (d) monitor progress of the privatisation programme in Zambia;

The objectives of Privatisation programme were:

- i. To scale down the government's direct initiative in economic actions and correspondingly its administrative load;
- ii. Reduce government's budgetary costs arising from subsidies;
- iii. Encourage wide ownership of shares;
- iv. Encourage the growth of capital markets;
- v. Promote competition and improve the efficiency enterprise operators;
- vi. Minimise the involvement of government's bureaucracy in enterprise operations;
- vii. Promote capital investment³¹.

From the objectives above it is clear that Privatisation was not solely aimed empowering the citizens.

3.2 Facets of Empowerment in the Privatisation Programme

Even though empowerment was not the sole purpose of the privatisation programme, citizen empowerment was clearly on the agenda. This is revealed by a number of initiatives in the privatisation programme aimed at empowering citizens.

³¹ Zambia Privatisation Agency Progress Report from 4th July, 1992 to 31st December, 1992. p. 2

Firstly, one of the objectives of privatisation was to encourage wide ownership of shares. This was an attempt to empower citizens through the ownership of shares in companies. Share ownership was identified as one area where the citizens could be empowered. To encourage share ownership by citizens, the Zambia Privatisation Agency Act established the Privatisation Trust Fund specifically for the benefit of Zambian citizens³². This Fund was to hold shares in trust in privatised companies for onward sale to citizens on the stock exchange. Through the Trust Fund, Zambian citizens were provided with certain incentives in the buying of shares.

Section 29(1) provided:

The Minister responsible for finance shall establish a Privatisation Trust Fund in which the Government shall hold shares in trust for citizens of Zambia for divestiture.

Section 29(2) of the Act provided that the following shall apply to citizens of Zambia-

(a) shares may be offered at a discount to persons who purchase a small number of shares;

(b) a share bonus shall be given at the end of a prescribed period to small shareholders who hold onto shares;

(c) individuals, management and employees of the State owned enterprise may pay for shares in instalments; or

(d) individuals may participate in the acquisition of shares which have been transferred in a State owned enterprise to a Privatisation Trust Fund which shall be established under this Act.

It is clear from the above provisions especially the incentives that the aim was to increase ownership of shares among Zambian citizens.

Apart from floatation of shares through the Zambia Privatisation Trust Fund, Zambians were to be empowered as entrepreneurs by direct buying of previously state owned

³² Section 29 of the Zambia Privatisation Agency Act, No. 21 of 1992(repealed)

enterprises. The purchases were to be made possible by management buy out, partnership investment and even direct investment³³.

Home ownership was another facet of empowerment in the privatisation process. Through the sale of ZIMCO property and INDECO properties, Zambians were to be empowered as home owners. Housing stock in parastatal companies which were considered non core assets were to be sold to Zambians³⁴.

3.3 Impact of Empowerment Measures in the Privatisation Process

The Zambia Privatisation Agency in its brochure on Empowerment and Privatisation states that through the privatisation programme, thousands of Zambian individuals have become share holders on privatised companies. Through the Zambia Privatisation Trust Fund shares in companies such as Chilanga Cement, Rothmans of Pall Mall (now British American Tobacco), Pamodzi Hotel, and BP Zambia have been sold to Zambian individuals.

It further states that many Zambians are now direct shareholders in their own right of the previously state owned companies. Zambian Airways, Copperbelt Energy Corporation (CEC), MEMACO, Setrec and Nkwazi manufacturing are cited as classic examples where Zambians have been empowered through the privatisation process. Other statistics indicate that of the 257 companies that the Zambia Privatisation Agency successfully privatised between 1992 and 2003, 56% were bought by Zambians, 33% by foreigners and 11% were sold as joint ventures between Zambians and foreigners.³⁵

In terms of Home ownership, the Zambia Privatisation Agency in its brochure on Empowerment and Privatisation boasts that most Zambians have been empowered as

³³ Section 22 of the Privatisation Act.

³⁴ The Zambia Privatisation Agency brochure on Empowerment and Privatisation, p. 3

³⁵ Mumba, M. 2004. Structural Adjustment: The Extent to which SAP policies were successful in Transplanting the sort of economic and Political change intended by the Western governments, international development and Financial Institutions. Paper presentation to the Reshaping Global Order Neo-Liberal Ascendancy workshop at the Institute of Social Sciences (ISS), The Hague.

home owners through the sale of ZIMCO property and INDECO properties³⁶. Other areas of empowerment through the privatisation programme have been cited as the training and manpower development across all sectors³⁷ and greater choice for consumer of the products available on the market.³⁸

3.4 Weaknesses

Despite the acclaimed success of the Privatisation process in Zambia, as an empowerment mechanism it has a number of flaws.

In the area of purchase of shares, it has been noted that most companies have been bought by people with close ties with the Chiluba regime which was in power at the time³⁹. This criticism echoes what was observed in the Zambianisation and Nationalisation policies that those who were empowered were either those already well-off or those with close ties with the ruling class. Of course, those without any means of purchasing shares or without any knowledge of the importance share ownership could never be beneficiaries of privatisation. As such it was only those who were already in positions of influence, the already empowered, who were actually the beneficiaries instead of the economically weak.

Further, even though records indicate that a number of Zambians actually bought shares through the Zambia Privatisation Trust Fund, some of these shares were not retained in the hands of Zambians⁴⁰. In as much as mechanisms were put in place to sell these shares to Zambians only from the ZPTF, there seem not to have been any mechanisms to prevent any further sale of these shares by Zambians to foreigners. As a result, most of the shares in privatised companies which were in Zambian hands have been sold to foreigners. Upon buying of these shares on favourable terms from the ZPTF, Zambians were free to transfer these shares to foreigners through the Stock Exchange thus defeating

³⁶ The Zambia Privatisation Agency brochure on Empowerment and Privatisation, p. 3

³⁷ Ibid, p. 4

³⁸ Ibid, p. 5

³⁹ Mumba, M. 2004. *supra*.

⁴⁰ Interview with Gideon B. Lintini and Remmy Kampamba, Director and Senior Economist respectively, in the Planning and Information Department, Ministry of Commerce, Trade and Industry, Lusaka.

the aim of empowering Zambians. In the final analysis, those empowered were not actually citizens as intended, but foreigners⁴¹.

There have even been widespread stories of fronting in the sale of shares. This is a scenario where foreigners with the money connive with citizens to buy shares for onward transfer to the foreigners. Though the author does not have any records on how rampant this vice was, the problem does represent some of the challenges of privatisation as an empowerment mechanism.

In companies which were sold directly to Zambians through management buyout using trade off methods with employees' terminal benefits there were yet other problems. The new owners did not have capital to revitalise and continue production. Even though this mode was soon abolished, companies sold this way did not take off⁴². It is hard to contemplate that citizens were empowered in these companies despite them having bought the companies.

While nothing bad can be said about home ownership, skills development and greater choice for consumers as a form of empowerment in the privatisation process, it is rather the harsh consequences of privatisation in general which have eclipsed some of these benefits.

Worldwide, it has been recognised that privatisation causes labour problems.⁴³ Citing a New Zealand example, New Zealand Telecom reduced its staff from 27, 000 to 12, 000 in three years following privatisation. In a small economy like Zambia without sufficient industries to absorb these retrenched workers and new workers, such a situation leads to an employment crisis. In Zambia, there were widespread retrenchments and redundancies after the privatisation process leading to a rise in unemployment levels. As a result, despite widespread campaigns by the government on the benefits of

⁴¹ Ibid.

⁴² Mumba, M. 2004. *supra*

⁴³ Roger Douglass, 1994, "Privatization: Lessons form New Zealand" In Ahmed Galal and Mary Shirley edited, Does Privatisation Deliver: Highlights from a World Bank Conference, p. 19

privatisation, privatisation is still synonymous with retrenchment and redundancy. It is no wonder that the opposition political parties, labour movement and civil society are opposed to any further privatisation. The labour movement is still pessimistic about the future effects of privatisation in Zambia judging from the sentiments of Zambia Union of Financial Institutions and Allied Workers (ZUFIAW) secretary general Joyce Nonde who predicted severe effects of privatisation in future.⁴⁴

It is hard to see any meaningful empowerment if the intended beneficiaries are distrustful of the method. Despite the perceived success of the Zambian Privatisation process, few would regard it as an effective means of empowering Zambians. It was thus realised that even though privatisation was still in progress, a more direct means of empowering citizens was required. This culminated in the enactment of the Citizen Economic Empowerment Act. This Act will be analysed in detail in the next chapter.

3.5 Conclusion

It is clear that even though privatisation was not embarked on solely for the purposes of empowering citizens, there were a number of facets in the privatisation process aimed at citizen empowerment. The establishment of the Zambia Privatisation Trust Fund was aimed at enhancing the citizen's participation in the purchase of shares in the hitherto government owned companies. Citizens were also intended to be empowered through direct purchase of shares, management buy out and partnership investment with foreign investors. Empowerment was also in the area of home ownership, skills development and greater choice for consumers that come with privatisation.

However, there were a lot of challenges in empowering citizens through the privatisation process. This included the fact that beneficiaries of purchase of shares were those who were already empowered and also those with closer ties with the ruling regime. And even where Zambian citizens bought shares, they did not retain them and sold them through the stock exchange to foreigners. Redundancies and retrenchments that accompany privatisation have also contributed to the negative image of privatisation such that it

⁴⁴ The Post Newspaper, Tuesday October 30, 2007, p 7

cannot be hoped to effectively empower the citizens who are distrustful of it. As such, alternative measures have been sought by the enactment of the Citizen Economic Empowerment Act.

CHAPTER FOUR

4.0 EMPOWERMENT THROUGH THE CITIZENS ECONOMIC EMPOWERMENT ACT

4.1 Introduction

This chapter looks at the provisions of the newly enacted Citizen Economic Empowerment Act and how empowerment is hoped to be achieved through the Act. It also analyses some perceived strengths and weaknesses of the Act.

The weaknesses of the past initiatives at empowering citizens necessitated a new legal and institutional framework for implementing the Citizens Economic Empowerment Policy. To develop a comprehensive empowerment policy and legislation, President Levy Mwanawasa appointed a Citizens Economic Empowerment Advisory Committee.⁴⁵

It is the recommendations of the committee which culminated into the Citizens Economic Empowerment bill which ultimately became law after presidential assent on 12 May 2006 and came into force on 21 July 2006.

4.2 Objectives of the Citizens Economic Empowerment Policy

The objectives of the Citizens Economic Empowerment Policy which the Act is aimed to implement are as follows:

- (i) expand citizen ownership and meaningful participation in the economy;
- (ii) increase management presence of targeted citizens in major companies;
- (iii) improve the education and skills levels amongst the targeted citizens so as to increase the productivity in citizens empowered companies;
- (iv) establish a special purpose vehicle to finance empowerment initiatives;
- (v) promote greenfield investments and partnerships between local and foreign investors;
- (vi) redistribute land equitably to targeted citizens;

⁴⁵ Daily parliamentary debates for the fifth session of the ninth assembly, Tuesday, 21st March, 2006

(vii) promote the empowerment of disadvantaged groups such as women, the physically challenged and the youth; and

(viii) introduce mechanisms to measure citizen's economic empowerment⁴⁶.

In so far as broad-based economic empowerment is concerned, the Act is to apply to all sectors of the economy including the value chain, and to all state institutions and any employer who employs at least twenty-five people.⁴⁷

The Act establishes two novel features in the empowerment programme, these being the Citizens Economic Empowerment Commission (CEEC) and the Citizens Economic Empowerment Fund (CEEF).

4.3 Citizens Economic Empowerment Commission

According to section four of the Act, the Commission is a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name. It is to be headed by a chairperson appointed by the President. The Commission's composition consists of the Secretary to the Treasury in the Ministry of Finance, permanent secretaries in the ministry of Commerce, trade and Industry and Ministry of Labour. Others are the Attorney General or his representative, a representative of the youth, two persons from the private sector and one person representing the disabled and three representatives from the University community, Central Statistics Office and the Labour unions. All are to appointed by the President.⁴⁸

The functions of the Commission is to promote the empowerment of citizens that 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. Other functions of the CEEC include to:

- i. advise on necessary changes to various pieces of legislation for effective delivery of empowerment initiatives;

⁴⁶ Ibid, at www.parliament.gov.zm(last visited July 4, 2007)

⁴⁷ Section 2 of the Citizens Economic Empowerment Act.

⁴⁸ Section 7 of the Act.

- ii. encourage effective and meaningful participation of targeted citizens in the economy in order to contribute to sustainable economic growth and promote gender equality.
- iii. mobilise resources for economic empowerment programmes.
- iv. develop or facilitate the development of sector codes and codes of good practice for economic empowerment.
- v. propose changes to the educational curricula in order to inculcate an entrepreneurial culture amongst citizens and to explore ways of fostering joint ventures in greenfield investments.
- vi. commission and conduct research for economic empowerment.
- vii. monitor and evaluate economic empowerment⁴⁹.

4.4 Citizens Economic Empowerment Fund

The Citizens Economic Empowerment Fund (CEEF) is established to support the development of broad based economic empowerment programmes. It is to be vested in the Citizens Economic Empowerment Commission but managed and administered by various financial institutions and fund managers that meet a prescribed criterion.⁵⁰

The Fund is to consist of monies appropriated by Parliament, grants, fees, loans or donations for the purposes of the fund and any interest from any investment made by the Citizens Economic Empowerment Commission.

The Citizens Economic Empowerment Commission is mandated to identify groups of citizens, citizen owned, empowered or influenced companies that require financial assistance and assist them in various ways to access the financial assistance. The Citizens Economic Empowerment Commission is mandated to lock in the equity of the funded companies for a period of time as a way of monitoring the use of the money and to ensure accountability.

⁴⁹ Section 6 of the Act.

⁵⁰ Section 29 - 32 of the Act.

4.5 Broad – Based Economic Empowerment Measures

Broad – based economic empowerment measures are to be taken to empower the beneficiaries under the CEE Act. These beneficiaries are the targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies as defined under the Act. Economic empowerment measures are to be applied by both state institutions and any company with at least twenty-five employees.

Among the measures, State institutions and Companies are required to identify and eliminate employment barriers which adversely affect targeted citizens. There should also be development of targeted citizens and implementation of training programmes in the State institutions and Companies.⁵¹

State institutions and Companies should also make reasonable adjustments for targeted citizens to ensure that they enjoy equal opportunities and are equitably represented at board and management.

The Act also places a legal duty on State institutions and Companies to prepare and implement employment and equity plans in order to achieve employment equity.⁵² The equity plans to be prepared and implemented by State institutions and Companies are supposed to state the objectives to be reached for each year, empowerment measures to be implemented, numerical goals to achieve the equitable representation of suitably qualified targeted citizens within each occupational category and level in the workforce, timetable within which goals and objectives are to be achieved and strategies to achieve those goals. State institutions and Companies are mandated to compile and submit to the Commission, information on employment policies and practices and the working environment for the purpose of the Commission identifying employment barriers which have adversely affected or may adversely affect targeted citizens.

Targeted citizens and companies are also to be given preferential treatment in accessing and being awarded tenders for the procurement of goods and services for any state institution. Licences are to be granted to foreign investors in certain businesses only on

⁵¹ Section 13.

⁵² Section 15.

the basis of joint ventures and partnerships with citizens. Priority in granting concessionary licences in businesses dealing with technological developments is to be given to targeted citizens and companies. As an incentive to companies to implement broad based empowerment measures, priority for concessions is to be given to those companies that are implementing the measures.

Further the Minister of Commerce and Trade is empowered to reserve specific areas of commerce, trade and industry for targeted citizens.⁵³

The Commission is also mandated to promote a supportive culture for the enhancement of empowerment programmes and issue codes of good practice on broad based economic empowerment programmes. These codes of good practice could be for further interpretation of empowerment measures, qualification criteria for preferential treatment, indicators to measure empowerment and anything necessary to achieve the objectives of the Act⁵⁴.

To measure the progress made in achieving broad based economic empowerment the Commission is required to ensure that codes of good practice are published in the print and electronic media, develop a score card to measure, evaluate and ensure compliance with the Act⁵⁵. It is also mandated to receive regular returns of relevant information from those involved in the economic empowerment programme. Companies and state institutions are also required to submit to the Commission once every year, a report on the progress being made to achieve broad based economic empowerment. They are also required to publish a summary of the progress report in their annual reports⁵⁶.

⁵³ Section 19 - 21

⁵⁴ Section 24.

⁵⁵ Ibid.,

⁵⁶ Section 35

4.6 Critique of the Citizens Economic Empowerment Act

4.6.1 Strengths

The provisions of the Citizens Economic Empowerment Act are quite encouraging in as far as citizen empowerment is concerned. It seems to merge measures of the past with novel introductions. For example an attempt to restrict certain businesses to Zambians and other preferential treatment is akin to the Zambianisation policies of the Kaunda regime.

Other measures however, are quite novel and more expansive.

For example, the Act places a legal duty on State institutions and Companies to prepare and implement employment and equity plans stating the objectives to be reached for each year, empowerment measures to be implemented, numerical goals to achieve the equitable representation of suitably qualified targeted citizens within each occupational category and level in the workforce, timetable within which goals and objectives are to be achieved and strategies to achieve those goals. This is likely to achieve employment equity in both the private and public sectors of the economy.⁵⁷

There is also mechanism put in to measure the progress made in achieving broad based economic empowerment under the Act. The Commission is required to ensure that codes of good practice are published in the print and electronic media, develop a score card to measure, evaluate and ensure compliance with the Act⁵⁸.

The commission is mandated to promote a supportive culture that permeates all levels of institutions through and amongst leaders in economic sectors by ensuring that the targeted beneficiaries under the Act are given priority when payments are being made. Incentives are also to be given to companies that introduce supportive culture programmes.⁵⁹

⁵⁷ Section 15.

⁵⁸ Section 24.

⁵⁹ Section 23 of the Act.

Further, the Commission in conjunction with the Technical Education, Vocational and Entrepreneurship Training Authority are empowered to develop a discrete sector plan for purposes of education and skills development for any economic sector⁶⁰. This could go a long way in empowering citizens with entrepreneurial skills.

Apart from these novel introductions, the Act has a number of other strengths.

Unlike in the past where empowerment was merely a part of the general economic reform, the enactment of the statute represents a serious attempt on the part of government to empower the citizens. Citizens will now be able to point to a specific law as the basis for demanding for empowerment.

Further, the establishment of the Citizens Economic Empowerment Commission (CEEC) for the first time in the empowerment initiative will go a long way in coordinating empowerment mechanisms. The functions of the Commission as provided by the enabling Act are expansive enough to enable it play a very cardinal role in the formulation, implementation and monitoring of empowerment policies in the country. The failure of the past attempts to empower citizens may partly be attributed to the lack of an autonomous and independent body wholly devoted to the monitoring and implementation of empowerment policies. The CEEC, it is hoped, will go a long way in remedying the situation.

The Citizens Economic Empowerment Fund (CEEF) is yet another important introduction in the empowerment programme. While in the past government has had to lobby and even coerce financial institutions to support local businesses, the Fund will provide the much needed assured support to the development of broad based economic empowerment programmes. Properly managed and administered, the Fund could stimulate local enterprise to high levels of productivity and profitability.

The Act also provides mechanisms to combat fronting in accessing funds, which can be a very difficult problem in empowering citizens. Fronting, according to section 29(8),

⁶⁰ Section 18 of the Act.

includes holding out as being the defacto director or shareholder of a company in order to hide the true identity of the shareholder or director of the company. Fronting is retrogressive in empowerment programme because those not entitled benefit at the expense of the deserving members of society. According to section 29 of the Act, penalties for fronting include withdrawal of moneys, barring the culprits from further financial assistance and fines upon conviction.

In view of these strides, it is no wonder that the Act has been received with enthusiasm and optimism among stake holders.

4.6.2 Weaknesses

However, there are also a number of issues that need further attention in the statute.

Firstly, it is clear that the Act is modelled on the South-African statute, the Broad-Based Black Economic Empowerment Act, 2003 Act No. 53 of the Laws of the Republic of South Africa.

While the South African statute has been acclaimed for its success, there is no guarantee that that success will be replicated here. As the Post Newspapers has rightly observed, policy making should not just be about copying what other countries have been doing without paying attention to the different socio-political or socio-economic history⁶¹.

Secondly, stakeholders have questioned government's ability to implement the Act. Zambia Consumer Association executive secretary Muyunda Illilonga has wondered where government will get the funds to implement the CEE Act when it is failing to find funds to pay the retirees.⁶² It will be interesting to find out how the government hopes to empower retirees using the CEE Act when it has failed to pay benefits which are supposed to empower them.

Further, some citizens question government commitment in empowering citizens when its actions do not match the rhetoric. It has been pointed out that instead of empowering

⁶¹ The Business Post, Tuesday August 14, 2007

⁶² Ibid.

its citizens, the government has encouraged foreign nationals like the Chinese to come into the country to construct roads, bridges, and buildings; jobs which can ably be done by the local entrepreneurs. Expatriates have also been allowed to fill up positions which Zambians can fill up unlike elsewhere where expatriates are only allowed to do jobs which locals cannot adequately do. All this is being done in the name of promoting foreign investment⁶³. It is questionable that the government will now change its attitude because of the Act when all along some of its actions have been to the contrary. Government may even be mistaken to be abdicating its duty to empower citizens to the private sector.

Additionally, while it is clear that the beneficiaries are targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies, identification of these beneficiaries will not be easy. The past has shown that empowerment mechanisms usually benefit the already empowered and those close to the corridors of power. It will be interesting to observe what regulations the Commission will put in place so that the past mistakes are not repeated. Unlike in South Africa where skin colour is the identification criteria, errors of omission and inclusion in the identification process are bound to occur. Identification mechanisms will have to sail clear of errors of omission and inclusion, where 'wrong' citizens will be included as beneficiaries and the deserving citizens will not be included.

The administration and management of the Citizens Economic Empowerment Fund also raises a number of questions. Repayment of loans is an important consideration if it is hoped that the Fund is to be self-sustaining. Considering that the Act has phrased the support to be given through the CEEF as financial assistance⁶⁴, may be repayment is not contemplated. Even then, there are still insufficient mechanisms to prevent abuse of funds by the intended beneficiaries. All that is provided is a mechanism where the Commission will lock in the equity of the funded company for reasonable period of time to ensure value addition to the company but there is nothing provided for citizens and groups of citizens.

⁶³ Caroline Katontobwe-Mukuka, The Post, Friday August 24, 2007.

⁶⁴ Section 29 of the Act.

Further, even though the Act places an obligation on state institutions and companies to prepare and implement employment and equity plans in order to achieve employment equity, there are no adequate mechanisms for enforcement of these provisions. According to section 34 of the Act, companies or state institutions which repeatedly fail to comply with these provisions shall be barred from accessing any moneys from the Citizens Economic Empowerment Fund or benefiting from any incentives under the Act. It is doubtful that this will be enough to compel already established companies and state institutions to implement the provisions when they may not require any funds from the CEEF or incentives from the Act.

Finally, even though it may be too early to judge, the capacity of the Citizens Economic Empowerment Commission to effectively discharge the numerous functions under the Act is also of concern. It remains to be seen whether the Commission will be able to attract skilled human resource and have sufficient funds to operate effectively. It is not uncommon in Zambia for government ministries, institutions and Commissions to work only at half capacity due to limited financial and human resource.

4.7 Conclusion

The Citizens Economic Empowerment Act presents an interesting picture in the empowerment programme in Zambia. It introduces new features in the empowerment programme which, it is hoped, will cure mistakes of the past empowerment programmes. Objectives of the Act include expanding citizen ownership and meaningful participation in the economy, increasing management presence of targeted citizens in major companies, establishing a special purpose vehicle to finance empowerment initiatives and promote the empowerment of disadvantaged groups such as women, the physically challenged and the youth.

To achieve these objectives, the Act establishes the Citizens Economic Empowerment Commission whose function is to promote the empowerment of citizens that have been

marginalised or disadvantaged. It is also required to spearhead the empowerment programme and monitor its progress.

The Act also establishes the Citizens Economic Empowerment Fund to support the development of broad based economic empowerment programmes.

Various empowerment measures such as preferential treatment, employment equity, and reserving of certain sectors to *Zambians* have been provided to empower the citizens.

While the Act is commendable in many ways, there are a number of issues that need urgent attention if empowerment of citizens is to become a reality.

CHAPTER FIVE

5.0 GENERAL CONCLUSIONS AND RECOMMENDATIONS.

5.1. Introduction

This chapter concludes the discussion on the citizen empowerment law in Zambia. It summarises the previous chapters and highlights their main aspects. It further provides recommendations on the ways to strengthen the citizen empowerment law.

5.2. Summary

Chapter one defined the concept of citizen economic empowerment, its nature and rationale. The concept of citizen economic empowerment was presented as an attempt to empower a certain group of society using the legal and sometimes extra-legal machinery. The South African Black Economic Empowerment has defined the concept as an integrated and coherent socio-economic process that directly contributes to the economic transformation of a country and brings about significant increases in the number of the targeted people that manage, own and control the country's economy, as well as significant decreases in income disparities⁶⁵.

The chapter also discussed the rationale of citizen economic empowerment policies. The principal aim is to redress imbalances that may exist in the power to economically exploit a country's resources.

Chapter two looked at the policies that were undertaken by the new United National Independence Party government led by President Kenneth Kaunda in order to empower Zambian citizens to enable them fully participate in the economic activities of the country.

It showed how the Mulungushi and subsequent reforms set out to establish state control over crucial areas of economic independence activity and to strengthen the nascent Zambian business class in an effort to empower the general populace. It pointed out the various forms of support for Zambian private entrepreneurs undertaken by the

⁶⁵ Black Economic Empowerment in South Africa, 2005 @ <http://www.fwdklerk.org.za>.

government. The various government protective measures included privileged access to credit from financial institutions for local entrepreneurs, business licences for retail trading throughout the country with the exception of central trading areas in the main line of rail towns, were reserved to Zambians.

The chapter further showed how the state took a direct role in the economic activities through the activities of the various parastatals in an effort to control the means of production on behalf of the citizens, directives that public works contracts below a certain amount should only be given to Zambians and efforts to employ Zambians in both the private and public sectors.

The chapter also highlighted some of the weaknesses of Zambianisation and Nationalisation policies in economically empowering citizens.

Some of these weaknesses included the failure of the policies to empower the general citizenry. Only those close to the ruling elite and those already well-off were the beneficiaries. Further, a number of the citizens did not have the know-how to successfully manage businesses. Control of the means of production by the state parastatals for and on behalf of the citizens was equally ineffective as it did not benefit the general public but a few elite.

Chapter three focused on privatisation as a means of empowering citizens. It showed how, even though not embarked on solely for the purposes of empowering citizens, privatisation aimed to empower citizens with the means of production. The establishment of the Zambia Privatisation Trust Fund aimed at enhancing the citizen's participation in the purchase of shares in the hitherto government owned companies. Citizens were also intended to be empowered through direct purchase of shares, management buy out and partnership investment with foreign investors. Empowerment was also in the area of home ownership, skills development and greater choice for consumers that come with privatisation.

The chapter also highlights a number of challenges in empowering citizens through the privatisation process. These included the fact that beneficiaries of purchase of shares were those who were already empowered and also those with closer ties with the ruling regime. And even where Zambian citizens bought shares, they did not retain them and sold them through the stock exchange to foreigners. Redundancies and retrenchments that accompany privatisation have also contributed to the negative image of privatisation such that it could not be hoped to effectively empower the citizens distrustful of it. As such, alternative measures had to be sought by the enactment of the Citizen Economic Empowerment Act.

Chapter four looked at the provisions of the Citizens Economic Empowerment Act and how empowerment is hoped to be achieved through those provisions.

It highlighted some of the new features in the empowerment programme which, it is hoped, will cure mistakes of the past empowerment programmes.

Objectives of the Act which include expanding citizen ownership and meaningful participation in the economy, increasing management presence of targeted citizens in major companies, establishing a special purpose vehicle to finance empowerment initiatives and promote the empowerment of disadvantaged groups such as women, the physically challenged and the youth were also highlighted.

The chapter also discussed the Citizens Economic Empowerment Commission, created by the Act, to spearhead the empowerment programme and monitor its progress.

Its principal function is to promote the empowerment of citizens that have been marginalised or disadvantaged. It also looked at the newly established Citizens Economic Empowerment Fund to support the development of broad based economic empowerment programmes.

Some of the empowerment measures under the Act include preferential treatment, employment equity, and reserving of certain sectors to Zambians have been provided to empower the citizens.

While the Act is commendable in many ways, the chapter pointed out a number of issues that need urgent attention if empowerment of citizens is to become a reality.

These include the absence of clear identification procedures of the beneficiaries under the Act, the capacity of the Citizens Economic Empowerment Commission to effectively discharge the numerous functions under the Act and the administration and management of the Citizens Economic Empowerment Fund.

In the light of what has been said above, it is important to end this discussion on citizen empowerment law in Zambia with some recommendations to strengthen the legal machinery.

5.3 Recommendations

It is undeniable that citizen empowerment law is relevant and applicable in Zambia considering that a number of citizens continue to remain in the informal sector. As such an effective legal machinery is required to deliberately uplift the targeted citizens most of whom are the youth and women.

It is on that basis that the enactment of the Citizen Economic Empowerment Act needs to be welcomed. However, as earlier stated, there a number of issues where much more can be done to improve the efficacy of the Citizen Economic Empowerment Act to achieve its intended purpose of empowering the targeted beneficiaries. An important principle in academia is that one ought not criticise for the sake of criticising. To be effective, criticism must be constructive and this demands that criticism must also be accompanied with suggestions to remedy the criticised ideas. It is on that premise that the following recommendations are rendered as way of contributing to this important piece of legislation in the hope of contributing to its efficacy.

Firstly, while there is nothing wrong in copying successful policies of other countries, it is important that implementation of the Act takes into consideration the difference in the socio-political and socio-economic circumstances of Zambia and South Africa on which Act was modelled. In South Africa, there are clearly two predominant racial groupings,

the blacks and whites. The whites dominated the economic sector to the exclusion of the indigenous black population. On the other hand, this is particularly the case in Zambia.

Further, South Africa's political and social history has been scarred by deliberate discriminatory state policy through the apartheid laws. The legal machinery in the apartheid regime sanctioned differential treatment of people based on skin colour. This led to varied inequalities of economic circumstances of whites and blacks. This situation had to be rectified by the enactment of the Black Economic Empowerment Act.

In Zambia on the other hand, while there are disparities in the economic circumstances of citizens, it is not necessarily between the blacks and whites as was the case in South Africa. Neither were these disparities legally sanctioned by the state to the same extent as exemplified by the apartheid laws in South Africa.

Due to these differences in the socio-political and socio-economic circumstances of Zambia and South Africa, it may not be appropriate to copy everything in the South African legislation addressing peculiar circumstances not present in the Zambian situation. It is suggested and recommended that the Citizen Economic Empowerment Commission ensures that as it is implementing the provisions of the ACT it takes into consideration the prevailing situation in Zambia. Where and when necessary the Commission should be prepared to alter its regulations on various issues in an effort to adapt them to the Zambian situation. This of course, should not be taken to mean that the Act does not take into consideration the Zambian situation. The underling principle is that the Commission to be flexible enough in order to implement this novel statute which hitherto has been unknown in Zambia.

Secondly, it is suggested and recommended that government shows more commitment with empowerment of citizens by ensuring that it discharges its obligations towards certain groups such as retirees. The Citizen Economic Empowerment Commission will need to lobby government to pay its outstanding liabilities to such people for it to be seen to be serious with empowerment programme. As rightly observed by Zambia Consumer Association executive secretary Muyunda Illilonga, it will be surprising for government

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to fund the empowerment policies under the CEE Act when it is failing to find funds to pay the retirees.⁶⁶ Government needs to inspire confidence in the citizens by ensuring that it is not seen to be focussing on one type of empowerment at the expense of another. Further, it is suggested that government set an example in promoting local investors by engaging them to construct roads, bridges, and buildings; jobs which can ably be done by the local entrepreneurs. It needs to re-look at its stance of awarding such jobs to foreigners such as the Chinese at the expense of local enterprise all in the name of promoting foreign investment.⁶⁷ Government should not be seen to be abdicating its duty to empower citizens to the private sector as this will have the consequence of corroding the confidence and resolve to support in the Act that the private sector may have.

Additionally, it has earlier been pointed out that while it is clear that the beneficiaries are targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies, identification of these beneficiaries may not be easy. It is suggested and recommended that the Citizen Economic Empowerment Commission devise effective identification mechanisms which will have to sail clear of errors of omission and inclusion, where those not intended to be beneficiaries are the ones who benefit at the expense of the actual intended beneficiaries. It is also suggested that other stakeholders such as women organizations, small business enterprises and the youth organizations be involved in devising these identification mechanisms. The need for effective identification mechanisms is compounded by the lessons from the past which has shown that empowerment mechanisms usually benefit the already empowered and those close to the corridors of power. The CEEC must ensure that beneficiaries are those which are genuine and that the Act is not used as a gift shop for rewarding those faithful to the ruling regime.

The administration and management of the Citizens Economic Empowerment Fund poses a number of challenges. While the Act has made provision that the Fund will be administered and managed by private institutions, there is need that a mechanism is

⁶⁶ The Business Post, Tuesday August 14, 2007

⁶⁷ Caroline Katontobwe-Mukuka, The Post, Friday August 24, 2007.

devised to ensure that the targeted beneficiaries easily access these funds. Since private banks are notorious for charging high interest rates, it is suggested and recommended that wide sensitization of the various conditionalities attached to accessing the funds be carried out once the fund has become operational. Lack of sensitization on the Fund can lead to low access from the targeted beneficiaries in the mistaken belief that the usual bank conditions attach to accessing the fund. As earlier observed, there are insufficient mechanisms under the Act to prevent abuse of the funds by the intended beneficiaries.

The Act only provides that the Commission will lock in the equity of the funded company for reasonable period of time to ensure value addition to the company but there is nothing provided for citizens and groups of citizens. The Commission will therefore have to mount intensive education campaigns to enlighten some of the intended beneficiaries and enhance their capacity to handle huge resources. The Commission will also need to continually monitor the activities of these intended beneficiaries to enable early identification of signs of problems and their subsequent resolution.

Further, since there are no adequate mechanisms for enforcement of the provisions of the Act requiring state institutions and companies to prepare and implement employment and equity plans in order to achieve employment equity, it is suggested and recommended the Commission should solicit for support from these institutions so that they willingly comply. Voluntary compliance will have to be inculcated in these institutions through consultative process so that the CEEC is seen as a cooperative partner in the empowerment programme and not merely as a watchdog.

Finally, it is clear that the success of the empowerment programme under the Citizen Economic Empowerment Act is hinged on the capacity of the Citizens Economic Empowerment Commission to effectively discharge its numerous functions. It is therefore recommended that the government adequately funds the Commission to enable it to discharge its duties. It must be able to attract skilled human resource and have sufficient funds to operate effectively. It will quite a strange situation if in fact, the body empowered to drive the empowerment programme is unable to fully discharge its

duties owing to insufficient funding. It will even bring into question government's sincerity in empowering citizens.

5.4 Conclusion

The Citizens Economic Empowerment Act is an impressive piece of legislation. It holds so much promise for the sidelined citizens to pull them out of abject poverty through the various empowerment measures. So impressive is it that one is even justified to expect that *Zambian* citizens will be adequately armed to be able to run their own economy and not expect foreign investors to do it for them. However, it is important that the provisions are actually implemented so that they do not end up, as many other 'sugar coated' policies of the past, being merely rhetoric on the part of government.

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