**Brooklyn Journal of International Law**

Volume 21
Issue 1
Symposium: Comparative Models of Privatization: Paradigms and Politics

Article 5

9-1-1995

# Commentary

Benjamin Lubinda Ngenda

# COMMENTARY

## COMPARATIVE MODELS OF PRIVATIZATION: A COMMENTARY ON THE AFRICAN EXPERIENCE

*Benjamin Lubinda Ngenda**

### I. INTRODUCTION

Privatization of state owned enterprises (SOEs) in Africa is a recent trend. Unlike Latin America, whose privatization programs date as far back as the 1970s, African countries only started these programs around 1990. We, however, seem to experience similar problems and issues to those that arose in Latin America. Africa is, of course, a vast continent with varying political, cultural and economic conditions that vary, to a greater or lesser extent, from region to region. Some differences result from our colonial legacy and sociopolitical systems instituted after independence.

Most African states were granted independence in the 1960s. The transfer of political power to the indigenous peoples without accompanying it with economic clout would have been unacceptable. Hence, the newly instituted African governments devised ways for economic empowerment of their citizens. One such method was for the nationalization or expropriation of certain privately owned corporations and the creation of state monopolies.

Unfortunately, most of these SOEs did not perform as well as expected. Their special monopoly status and preferential treatment did not act as a catalyst or incentive for efficiency and higher productivity. On the contrary, they became classic cases of massive wastage of resources, bloated staff levels and

---

* *Mr. Ngenda is the former Vice Chairman of the Zambia Privatization Agency.*

tools of political patronage. By the 1980s it became obvious to all and sundry that African economies could no longer sustain and defend such economic irresponsibility. Numerous attempts at reform were made without success. Further investments, without fundamental structural reform, resulted in additional losses. Hence, the 1980s were characterized as the lost decade for Africa. It became apparent that these SOEs could not be restructured to high productivity and efficiency under the prevailing conditions.

Not surprisingly, the political leadership came under intense local and external pressure to institute fundamental economic structural adjustment programs to narrow the budget deficit, halt the decline in standards of living and upgrade educational and social amenities. Multilateral and funding agencies, such as the International Monetary Fund and the World Bank, as well as donor agencies, were instrumental in this regard by setting conditionalities to further assistance. These include implementation of structural adjustment programs (SAPs) and enhanced structural adjustment programs (ESAPs) devised as part of economic rescue packages for most developing countries.

## II. MODALITIES

The question that arises is therefore not whether to privatize but how to. The whole process has to be well planned, executed and overseen. In view of the fact that in most cases SOEs comprise about 80% of economic activity, the success of this process is critical to the well being of the economy. Specific legislation has had to be enacted to detail the process and give legal backing to the program.

Privatization can be overseen by different institutions or officials, such as:

- A council of Cabinet ministers representing ministries of Industry, Finance, Trade, Agriculture, etc.

- A committee of the legislature appointed from among members of Parliament.

- A committee comprising high level civil servants or bureaucrats.

- A select group of senior SOE management officials with extensive experience in managing public corporations.

- An independent body or private persons representing progressional bodies or interest groups such as the chambers of commerce, trade unions, bar associations, and professional accounting bodies.

Some African countries have opted for one or the other of these forms of oversight. Others have adopted a hybrid by having people from different categories working together. The general distrust of politicians, coupled with the need for transparency and fairness has created a credibility gap. Hence, there is a wide preference for oversight by an independent non-political body with little or no ties to the establishment.

State divestment of SOEs through privatization can be achieved in many ways. These are spelled out in the privatization law, where one exists, and include the following:

Trade sales through public bidding or auction are the most popular method, especially if the SOE is perceived as profitable and attracts a lot of interest from potential buyers. The whole corporation is sold lock, stock and barrel to a single buyer.

In view of the need for transparency, negotiated sales through private treaty are used, but only if the potential buyer is a share-holder with preemptive rights. Such contractual rights have to be honored to the extent that government is legally bound to offer its shares to the other party, before outside offers can be entertained. It is not unusual, however, to negotiate with a minority shareholder to waive some of these preemptive rights in order to, for instance, enable the government to sell some of its shares by public flotation.

Employee share ownership schemes are quite popular but not practical in all situations, especially if the nature of the corporation's business requires a majority strategic shareholder. In the latter case, the corporation may not attract an outside buyer for fear of insufficient control due to employee interference. Unlike Eastern Europe, where free vouchers have been distributed to citizens or employees, African countries are wary of the voucher system. Provision of credit and payment by installment terms is however not uncommon.

Public flotation is the most attractive as it ensures transparency and wide share-ownership. Moreover, it gives an opportunity for people with limited financial resources to participate in the privatization program by buying some shares in the corporation. Unfortunately, the lack of institutional capacity in the form of capital markets makes it impracticable to have public flotations. This is one of the main reasons why most African countries are in the process of establishing stock exchanges to facilitate and regulate public trading in shares and other securities.

Asset sales or stripping is a method of privatization, especially if the assets are redundant or surplus to the SOEs requirements. This occurs where the corporation is reducing its range of activities and concentrating on its core competencies. The money raised is used to clear some debts and thereby make the corporation more attractive to potential buyers.

Liquidation is also a form of privatization, though it is invoked only if the corporation cannot be sold at all.

## III. SOCIAL ISSUES

Unemployment is a major social issue that needs to be addressed. Since most SOEs have bloated labor forces, a lot of people are likely to be laid off in order to make the company cost efficient, more productive and competitive. A sizable proportion of this labor force is relatively well trained and comparatively young. The SOEs and governments cannot afford to pay redundancy benefits, let alone re-train and relocate them. Massive lay-offs make the privatization programs unpopular and may lead to political disillusionment.

Reducing the labor force also results in narrowing the tax base at a time when the government is trying to reduce the budget deficit and revive the economy.

## IV. MONOPOLIES AND EFFICIENCY

A number of SOEs are either natural or artificial monopolies. The sale of such corporations is likely to create private monopolies, with the accompanying risk of uncompetitive and unfair trade practices. As a result, it is necessary to pass legislation to provide for regulation of monopolies and prohibition of anti-competitive business conduct.

It is hoped that privatization programs will result in positive benefits to the economy. Improved productive capacity and efficiency are expected to create more employment opportunities. Increased earning capacity should lead to greater savings and spending ability for the overall good of the economy. It remains to be seen whether Africa will survive in this endeavor.