

## LEGAL CONTROL OF STATUTORY BOARDS

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This is a general examination of two aspects of the control of parastatal organizations, namely, the legal machinery of control contained in the Acts of Parliament (hereinafter called the Acts) establishing the organisations concerned and the problems concerning this machinery of control. The central focus of the discussion is the control of statutory boards only.<sup>1</sup> The statutory boards with which we are concerned are: The Dairy Produce Board, Cold Storage Board, National Marketing Board and Tobacco Board of Zambia. Briefly, the boards are established to carry out certain functions and duties in marketing of dairy products; production, sale, export, etc. of tobacco; buying, selling and distribution of agricultural requisites etc.; and purchasing of livestock delivered to the board, operation of abattoirs, refrigeration and meat products. A general discussion of the machinery of control of these boards is possible because of substantial similarity in the legal framework under which they are established. The boards are established by similar Acts of Parliament.

### Definitions

The term 'parastatal organisation' is used here in reference to the boards in order to distinguish them from those organisations which are an integral part of the government such as government departments. A parastatal is defined by A. Simmance as:

An organization which is not an integral part of government but an institution, organization or agency which is wholly or mainly financed or owned or controlled by the government. The criterion of such public enterprise would be ownership by the government of 51 % or more of the capital shares, or other forms of governmental participation or effective influence in all the main aspects of management of the enterprise.<sup>2</sup>

Ownership of the boards by the government is not characterised by equity participation by the government since these organisations have no share capital. They are however financed by the government in certain respects and this and other aspects of governmental influence which we shall consider later in relation to the control system seem to fit the boards in Simmance's definition of parastatals.

Parastatal organizations are, according to Simmance's definition autonomous from the government though they are controlled by it. This may sound contradictory. But perhaps the autonomy must be understood to mean that the parastatals are commercial or semi-commercial and whatever control is exerted on them by the government has to take into account the fact that the parastatals operate on business-like principles. This means that they are free from government interference in their day-to-day business. Thus parastatals are distinguished from government departments which are not commercially oriented. Some of the Acts bring out the commercial nature of the boards

by providing that the object of the board "shall be to exercise its functions and conduct its business as to ensure that its revenues, taking one year with another, are not less than sufficient to enable the board to meet the outgoings of the board properly chargeable to revenue account . . . ." <sup>3</sup> This indicates that the boards in question are to a certain extent expected to be self-supporting financially. The exceptions are the National Marketing and Tobacco Boards of Zambia. The Acts establishing these two organizations do not contain provisions similar to the one quoted above. This perhaps strengthens the view commonly held that these organisations are non-profit making organizations. This view has further been explained by the way the boards in question are financed. Explaining the way National Marketing Board is financed, the financial controller<sup>4</sup> of National Marketing Board said that the board as it is presently constituted is a non-profit making service organization. To illustrate this point the board is financed by the government in three different ways. Firstly the government gives National Marketing Board a price differential subsidy in respect of those products which it sells at below cost. Secondly, the board receives subsidies for handling costs and, thirdly, it receives short term loans from the government for the procurement of maize and fertilizer. This procurement loan is repayable to the government by the board on a monthly basis as the stocks of maize and fertilizer are disposed of.

When insufficient allocations are made by the government with regard to the price differential subsidies and the handling costs subsidies referred to above, the shortfall in these subsidies is naturally reflected in the books of account of the board at the end of each financial year as a deficit. If a 'profit' happens to be recorded in the books of the board, all that this means is that the board received subsidies in excess of their actual requirements for the year in question. This is possible due to the fact that the basis of the subsidy vote is an estimate projected a year in advance of the board's financial year in which the estimate is to be expended.<sup>5</sup> Thus as long as the government continues to control the prices of products sold by the board and generally continues to regulate the affairs of the board as it presently does the board cannot be expected to make a profit or be self-financing to any extent in performance of its normal functions. Whether or not the boards are semi-commercial in the sense that the Acts establish them to be self-supporting financially they are all subjected to the same system of control under the Acts. In order therefore to appreciate this similarity in the control system of the boards we shall make a brief distinction between the boards (semi-commercial) and purely privately owned commercial organizations. This will explain why commercial or semi-commercial boards are not left to operate like any other commercial concern free from the restrictive machinery of control presently imposed upon them.

The semi-commercial boards possess the flexibility and initiative of a private enterprise. However they are limited in this respect by the element of public ownership and accountability. All boards are publicly owned in the sense that they are financed, whether to a large or small extent, from public funds. In this respect the Acts provide that the funds of the boards shall consist, *inter alia*, of moneys appropriated by parliament and that if the funds of the boards are not sufficient to meet fully any lawful expenditure incurred by the boards in exercise of their powers, functions or in performance of their duties, the amount of such deficiency shall be made by loans made by the minister out of moneys appropriated for the purpose by parliament.<sup>6</sup> Because of this

element of public ownership of the boards, the boards are also limited in their operations as commercial concerns by the element of public accountability which justifies the system of control set out in the various acts establishing them. We shall now consider this machinery of control in three parts namely, the role of the minister in the boards, the role of parliament and that of auditors in the control system of the boards.

### **The minister<sup>7</sup>**

For purposes of control, the minister may be said to represent the government which is the custodian of public interest in parastatals. As such he plays an important role in the control of the boards as we shall see below.

The boards are operated by members (usually 5–10 people).<sup>8</sup> The members of the board are appointed by the minister.<sup>9</sup> The minister also appoints one of the members of the board to be chairman. Although this gives the impression that the chairman is a person other than the minister, in practice the minister is the chairman of the boards and as such performs all the functions of the chairman of the board under the Acts. His permanent secretary is, in practice, the deputy chairman of the boards.<sup>10</sup> These practices have been in operation since 1971.<sup>11</sup> However, no amendment has been made to the Acts to reflect these changes in practice. Neither has the legality of the practices been challenged. The practice of the minister being chairman of the boards puts him in a strategic position to determine whether the board's powers are being exercised in accordance with government or indeed in accordance with his own directives to the boards as the minister responsible for the supervision of the parastatals concerned.

The control of the minister over the boards is further extended by his power to dismiss the members of the boards before the expiration of their period of office<sup>12</sup> which is usually 2–3 years.

As regards the manner of exercise of functions and powers of the boards, the minister is empowered to give directives to the boards. In this connection the various Acts provide that the board shall in the exercise of its powers and performance of its duties, be subject: to the written directions, both general and specific of the minister;<sup>13</sup> or as in the case of the board any direction of the minister;<sup>14</sup> and that the board may exercise any of its powers, functions or duties solely or in conjunction with other persons in the case of yet another.<sup>15</sup> In this last case, the minister is not specifically authorised to issue directives to the board. But it appears that he can issue directives on the basis of the phrase which empowers the board to exercise its powers etc. in conjunction with other persons. The important thing to note about all the provisions empowering the minister to give directives to the boards is that they do not define the type of directives the minister has to give to the boards in the exercise of their powers and performance of their duties. It appears therefore to be up to the minister to give whatever directives he thinks fit for the exercise of the board's powers and performance of their duties. It might be argued that the Acts are deliberately silent on this subject in order to give room to the minister who is a government representative to give directives to the boards according to government policy from time to time. This indeed creates room for initiative and adaptation of parastatals to changing conditions affecting their operations. However this causes problems to the control of boards as is explained later.

The submission of annual reports of the boards' works and operations to the minister is another control on the boards by the minister. The annual reports are submitted to the minister six months after the end of each board's financial year<sup>16</sup> and consist of the balance sheet, a complete statement of revenue and expenditure duly audited, a report of the auditors and in some cases any other information as the minister may require to be submitted to him.<sup>17</sup> Furthermore the boards are in some cases required to submit any reports as the minister may require in addition to the annual reports.<sup>18</sup> The system of reports puts the minister in a position where he can be informed about the board's activities and performance, thereby enabling him to appraise the performance of the individual boards annually. He is also put in a position whereby he can assess the weaknesses and problems of individual boards and make appropriate recommendations to the government to improve the case of the boards concerned.

The Acts also provide that the boards may establish executive committees to whom they may delegate their functions and powers under the Acts. The members of the committees are appointed by the boards with the approval or consent of the minister.<sup>19</sup> The chairman of each board is also the chairman of the executive committee of the board.<sup>20</sup> Since the minister is in practice the chairman of the boards, he is also the chairman of the executive committees. Thus the minister has direct control over the executive committees (if established by the board) through his power to approve the membership of these committees as well as through his chairmanship of the committees.

Finally, three of the boards are empowered to appoint general managers with the approval of the minister.<sup>21</sup> The Tobacco Board Act does not seem to provide for the appointment of the general manager at all. However, in practice, a general manager is appointed for this board as well. The practice as regards the appointment of general managers of the boards is that the president of the republic appoints them instead of the boards as provided for by the Acts. Instances of presidential appointments of general managers in statutory corporations are very common. Among these may be cited the examples of the appointment of Mr. D. Mulaisho as general manager of National Marketing Board, Mr. Nkoloma as general manager of Dairy Produce Board and Mr. S. Mwamba as general manager of Cold Storage Board in 1974.<sup>22</sup>

The practice of the president appointing general managers instead of the boards with the approval of the minister to some extent removes the control of the managements of the boards from the boards and the minister to the president in the sense that the managers are responsible for the exercise of their management powers directly to the president since they owe their appointment to him. This shift in the power of appointment of the managers of parastatals tends to weaken the system of control established by the Acts as we shall see below.

### **Problems of control**

The problems of control of the boards to be discussed under this heading only refer to the system of control which centres on the minister discussed above. The problems will be discussed under several headings:

**Confusion and unjustifiable political intervention of the minister**

The Mwanakatwe Commission<sup>23</sup> found that confusion in the operation of parastatals and unjustifiable political intervention in the day-to-day business of parastatals was a result of the absence of clear-cut policy guidance of parastatals by the ministers. In the case of the boards it is indeed important for their smooth operation for the minister responsible to be able to give clear-cut policy guidance to them because the Acts do not define the nature or extent of ministerial directives to the boards.<sup>24</sup>

**Inadequacy of statutory provisions defining the role of the minister in the boards**

While it is acceptable that lack of clear-cut policy guidance can lead to confusion in the operation of parastatals, one wonders whether most of what is called unjustifiable political intervention by the minister in the operation of parastatals is not owed to the imprecise language of the provisions of the Acts used to define the role of the minister in these enterprises. As regards statutory boards, when the acts empower the minister to give directives to the boards, they do not indicate the extent to which the minister shall get involved in the enterprise without disrupting its commercial functions. It will be recalled that the Acts merely provide that the boards shall exercise their functions and perform their duties subject to the directives of the minister. Even if it is conceded that the Acts are deliberately imprecisely phrased so as to enable the minister to give directives in accordance with government policy for parastatals from time to time as we suggest earlier, we are still faced with the problem that the Acts do not actually limit the minister to giving directives of a policy nature only; nor do they limit him to giving directives relevant to the commercial nature of the boards only. In principle therefore, the Acts seem to justify all kinds of intervention by the minister including political intervention. Consequently, we may even go so far as to contend that in their present form the provisions empowering the minister to give directives to the boards do not provide a basis for determining whether a particular intervention of the minister is justifiable or unjustifiable political intervention. Moreover it should be borne in mind that a minister is a political figurehead as compared to a business adviser to the boards in which he is empowered to give directives. It should also be remembered that the boards, like most parastatals, have both commercial and social functions to discharge. As such when the minister is given powers of intervention in the boards' discharge of their functions in imprecise terms by the Acts he is more likely to project the social objectives to the detriment of the commercial objectives of the boards. This is because as far as he is concerned, the social functions of the boards are, albeit in short terms only, more relevant to his political career than the boards' commercial functions are. Thus if the objective is to have the minister balance his intervention in boards between their commercial and social objectives, it is not sufficient that the acts provide for his involvement in the board's performance of their duties. The Acts must in addition define his role more precisely, thereby providing a framework within which government policy is issued to the parastatals without giving the minister responsible opportunity to use the boards for his own political ends. This therefore calls for the amendment of the relevant parts of the Acts to redefine the extent of ministerial powers of intervention in the operations of the boards. Such an amendment would serve two purposes. Firstly, it would give the boards and the minister a clear picture of the role each is to play in the organisation. Secondly,

it would provide a means of determining whether the failure and inefficiency of the particular board is due to the weakness of the board members and the management of the board or whether it is in fact due to improper guidance and unjustifiable intervention by the minister.

### **Oral amendments of the Statutes**

The practice of changing certain provisions of the Acts regulating the boards without formally amending those provisions<sup>25</sup> is a possible source of confusion in the operation of the boards. If this practice is done on a large scale<sup>26</sup> then two separate regions exist side by side on the regulation of certain matters of the boards, i.e. one regime in form of the statute and bye-laws made thereunder and the other in form of directives and circulars issued to certain organs or officials of the boards by cabinet office and State House. The fact that the directives from cabinet office or State House require the affairs of parastatals to be managed differently from the requirements of the Acts creates a real possibility for uncertainty and confusion in the operation of these enterprises.

Furthermore, the shift in the source of directives to boards from the minister to the president itself weakens the system of control of boards established by the various acts, when the minister issues directives to the boards, he can in turn be questioned by parliament over the exercise of the boards' powers. In this way parliament controls the minister in his exercise of powers in the boards. Once the minister is deprived of the power to issue directives, his presence in the national assembly becomes useless from the point of view of control because he cannot be expected to adequately answer questions relating to boards over which he is not solely responsible for direction. The president who issues directives is not present in the national assembly for questioning. Thus parliament has no meaningful control over those persons who actually direct the parastatals in certain aspects although the legal framework contemplates that such persons shall be under its control and therefore under the control of the representatives of the people in parliament.

### **The role of the chairman of the boards**

We noticed earlier that the minister is, in practice, the chairman of the boards and that his permanent secretary is the vice-chairman. There are several problems associated with this practice.

Firstly, the minister assumes two completely incompatible roles of a sovereign on the one hand and a subject on the other. As a minister responsible for the boards he is expected to sanction or countermand decisions reached by the boards in performance of their duties. But these decisions of the boards are on the other hand taken under his own chairmanship.<sup>27</sup> The objectivity with which the minister can play these contradictory roles to the efficient operation of the boards is obviously open to question.

The second objection to the minister and his permanent secretary being the chairmen of the boards relates to the burden of office which they assume. The minister is a politician and has functions to discharge in that respect; he is also required to give directives and chair four boards in addition to related functions he may be required to carry out in other statutory corporations or companies falling under his ministry.<sup>28</sup> Similarly the permanent secretary who is a civil servant and heads a government ministry is required under this

practice to carry out the functions of chairman of a number of parastatals on certain occasions. The burden of office imposed on these two men can prevent them from discharging their responsibilities in parastatals effectively.

Thirdly, the fact that the minister is an active member of the board makes the operations of the boards susceptible to pressure from politicians at cabinet office and State House. For example, the minister is under the direct control of the president who appoints and dismisses him from office. If therefore the president wishes any particular action taken or abandoned by the boards to the detriment or otherwise of the boards he can pressurize the boards to take or abandon the action in question by simply threatening to dismiss the minister and permanent secretary in the event of the boards refusing to implement his directives. The minister, being the chairman of the boards, is in a better position to influence the boards in respect of the directives in question than if he were not a member. Thus the position of the minister as a member of the boards in practice opens a channel through which political pressure can be exerted on the boards.

Finally the practice of constantly reshuffling and changing ministers and parastatals from one ministry to another causes discontinuity in the operation of parastatals which affects the supervision and control of these organizations. In certain cases the changes are made so often that it becomes difficult to appreciate what benefits the ministries and organizations affected get from such reshuffles or changes. The serious problem that reshuffles create for the operation of parastatals is that there is no continuity in the service of those government officials charged with the responsibility of running parastatals such as the minister who is also chairman of the boards. Consequently, the minister or the boards never gets the opportunity to get acquainted with the parastatals under his responsibility and can therefore not be expected to render any meaningful supervision and control of those organizations. To illustrate this problem, the case of Cold Storage Board is in point. Before 1974, Cold Storage Board fell under the responsibility of the ministry of rural development and was under the chairmanship of the minister of that ministry. In January 1974 the board was transferred to the Ministry of Commerce.<sup>29</sup> On 13th June, 1975, the board was again transferred back to the Ministry of Rural development.<sup>30</sup> It was then transferred to the Ministry of Lands and Agriculture later in 1975.<sup>31</sup>

The statement of Mr. Kunda, minister of commerce and chairman of the board in 1973 perhaps illustrates the problems of adaptation by ministers to the affairs of parastatals resulting from these constant changes. In that statement Mr. Kunda said "The effective date of my takeover (of the board) was 1st January, 1974, which was a day after completion of the activities covered by this report (the annual report) which puts me in an invidious position when writing the foreword of this annual report".<sup>32</sup>

In view of the frequency with which changes were being made to the Cold Storage Board it is arguable that all the ministers or chairmen who became responsible for the board's affairs during this period found more serious difficulties than those expressed by Mr. Kunda as regards the nature of the board's business, its activities and performance. Consequently, the minister who is expected to constructively direct the affairs of the boards and control their activities becomes some kind of rubber stamp over the affairs of the boards in the sense that he has to accept as the true position whatever is given him by the boards as regards their performance since his inexperience with board

affairs prevents him from making an independent opinion over the performance of the boards.

### Parliamentary control

The control system to be discussed under this heading comprises of control by parliament (i.e. the national assembly and the president of the republic) and control by the national assembly alone.<sup>33</sup> Parliament and the national assembly provide a vital watchdog over the affairs of parastatals in several ways.

Parliament is the legislative organ of the state. It therefore enacts the Acts under which the various boards are established. These Acts define the objectives, functions, powers and the manner of exercise of these functions and powers by the boards. Furthermore, the Acts of Parliament can only be amended by parliament itself. Thus, in principle, no person has power to alter any matters that are regulated by those Acts concerning the operation of the boards; neither has any person power to operate the affairs of the boards otherwise than regulated by the Acts without a formal amendment of the Acts. In this respect these Acts are comparable to the constitution of a company registered under the Companies Act.<sup>34</sup> The constitution of a company, i.e. the memorandum and articles of association defines the objectives of the company, its powers, and those of the organs and officers who manage the company's affairs. The company's constitution can only be altered by the members of the company. This ensures that members (as owners of the enterprise) alone have power to change the nature of the company's business and the manner of carrying out that business.

The purpose of defining the objectives of the company in the memorandum of association is to render any exercise of powers of the company beyond those objectives *ultra vires*. A transaction which is *ultra vires* is void and not binding upon the company. The doctrine of *ultra vires* is therefore a potential weapon for the protection of the company's property against misappropriation and misapplication by those employed to manage the affairs of the company on its behalf. If the doctrine of *ultra vires* is applied to boards since they are juristic persons with defined powers<sup>35</sup> any exercise of powers and performance of duties of the boards beyond the provisions of the Acts is in principle *ultra vires* and not binding on the boards. This being the case, parliament which alone is vested with the power to enact the 'constitutions' of the boards and alone entitled to amend them has strong control over the activities of the boards' members, minister and other politicians in the operations of the boards.

However, this power of parliament to control the boards is diminished by the practice we noted earlier whereby some government directives contrary to the provisions of the Acts are accepted and implemented by the boards without question. If directives contrary to the provisions of the Acts are made to override those Acts then parliament's control of parastatals through controlling the form of the legal framework governing them is completely watered down. It may be argued that the practice of the government or the president issuing directives which are contrary to the requirements of the Acts and of implementing those directives without formally amending those Acts is acceptable and necessary to the efficient management of parastatals since the onerous and slow parliamentary procedure of legislating does not accord with the idea of fact adaptation and initiative which is important to the operation of any business enterprise. The



problem with this argument is that it ignores the problem that has already been the subject of a public outcry by Zambian parastatals concerning the interference of politicians in the operation of parastatals. In addition to the solution suggested earlier to the effect that the Acts ought to define the relationship between central government and the boards more clearly in order to minimise the interference of politicians in parastatals, a strict adherence to the doctrine of *ultra vires* in parastatals would contribute towards the solution of this problem in parastatals.

The national assembly on the other hand controls the activities of parastatals through its power to control government expenditure. To illustrate the role of the national assembly in this regard we shall briefly consider the procedure it adopts and manner of discharging its functions as regards approving government estimates of expenditure. As we saw earlier the boards are to some extent funded from public funds through government ministries which receive money appropriated to them by parliament.

Every year individual ministers prepare estimates of expenditure and the minister of finance lays before the national assembly within one month of the commencement of each financial year estimates of the revenue and expenditure of the republic for that financial year. When the estimates of expenditure have been approved by the national assembly the heads of the estimates together with the amount approved in respect of each one are included in the appropriation bill which is introduced in the national assembly to provide for the payment of the amounts for the purposes specified out of the general revenues of the republic.<sup>36</sup>

The function of the members of the national assembly is to scrutinize the estimates of expenditure. The presence of the ministers in the national assembly during the debates on this subject facilitates their being questioned on the subject by the members of the national assembly. But since the national assembly has little time to examine in detail the estimates of expenditure it employs the services of committees which examine more closely the estimates and examine how the money previously appropriated to each ministry was expended. The committees are established under the standing orders of parliament. The constitution empowers the national assembly to determine its own procedure<sup>37</sup> and under this authority, parliament has made standing orders to regulate its business. The committees are part of the national assembly and may therefore be given the same powers and privileges as the national assembly has under the Powers and Privileges Act.<sup>38</sup>

In order to facilitate the work of the committees the ministries are required to produce annual reports showing how each ministry expended the money previously appropriated to it. The auditor-general further examines the accounts of the various ministries every year before the estimates of expenditure are brought to the national assembly. Both the annual reports of ministries and the report of the auditor-general are laid before the national assembly. In addition, the parastatal organizations as we saw earlier in the case of boards, submit annual reports to the minister who in turn tables them in the national assembly.

For purposes of our discussion on control of boards, only three committees of the national assembly are relevant namely, the Public Accounts Committee, the Parastatal Bodies Committee and the Government Assurances Committee.

**Public Accounts Committee**

This committee was originally intended to examine financial affairs of all government departments and parastatals. As the parastatal sector expanded however, the committee was pressed with too much work. This necessitated the establishment of the Parastatal Bodies Committee. The establishment of the committee was announced by the speaker on 31st January, 1978.<sup>39</sup> The functions of the committee are: to examine reports and accounts of the parastatals, to examine reports (if any) of the auditor-general on parastatals; to examine in the context of autonomy and efficiency of parastatals, whether the affairs of the parastatals are being managed in accordance with sound business principles and prudent commercial practice and finally to exercise such other functions vested in the Public Accounts Committee as are not covered by the functions of the committee stated above as may be assigned to the committee from time to time by the speaker.

Several factors contribute to the efficiency of the Parastatal Bodies Committee as an instrument of control. Firstly, it has more time to devote to parastatal affairs than the Public Accounts Committee. Secondly, the procedure adopted by the committee is such that it can independently evaluate the position of the parastatals. In this respect, the speaker of the national assembly has prerogative powers to empower the committee to physically visit parastatals and examine any documents and witnesses necessary for the performance of its functions. The committee may be empowered by the speaker to compel any person to appear before it and give evidence or to produce any paper, book, record or document in his possession or under his control.<sup>40</sup> In fact, the two committees appointed since the establishment of the Parastatal Bodies Committee have undertaken tours of parastatals to investigate on their affairs. The first committee under the chairmanship of Mr. Kayope visited 19 parastatals and a reasonably large number of subsidiary companies.<sup>41</sup> The committee investigated various aspects of the internal control system, disposal of assets of parastatals and conditions of service of employees, etc.<sup>42</sup> all of which are relevant to the proper functioning and control of parastatals. There has been a second committee under the chairmanship of Mr. Musukwa. Thirdly, the committee is empowered to employ the services of an expert adviser in performance of its duties if it wishes to. This makes up for any deficiency in expert knowledge of the members of the committee of business affairs of the parastatals. It will be remembered that most of the members of parliament are people elected by the public without any regard to special skills or expertise possessed by them. They cannot therefore be expected to handle expertly the affairs of a business enterprise when appointed to the Parastatal Bodies Committee. It is understood that the speaker nominates members to serve on the various committees on the basis of the members' special qualifications and experience in the field in which the committee operates. But again, his choice is limited by the fact that members are not elected to parliament on the basis of certain specialist skills they possess. Thus the employment of an expert is of great value to the Committee of Parastatal Bodies. Fourthly, the committee is independent from government influence in the exercise of its functions since no member of parliament who is a minister or cabinet minister is eligible for appointment to the committee. If a member serving on the committee is appointed minister or cabinet minister, he automatically vacates his position on the committee. This is important because ministers

are responsible for supervising the parastatals falling under their ministries. If they were allowed to become members of the committee, they would prejudice its operations. In any case the committee would be served by the very persons it is intended to control (i.e. ministers responsible for the operations of parastatals).

The observation and recommendations of the committee are embodied in a report which is submitted to the national assembly. The members of the national assembly are then asked to deliberate upon it and once they accept the report it becomes a public document. The public nature of this report is itself important to the accountability of the parastatal organizations in as far as it publicises the affairs of the parastatals included in it. Its potentiality as a weapon of control lies in the knowledge (on the part of those involved in the operation of the parastatals) that sooner or later their activities will be exposed to the public.

### **Committee of government assurances**

The speaker of the national assembly announced the establishment of the above committee<sup>43</sup> whose function is to follow up the assurances made by the government on the findings of the other committees of the national assembly. Taking the example of the Parastatal Bodies Committee to illustrate how this committee operates, once the national assembly accepts the report of the Parastatal Bodies Committee, it has power (under the prerogatives of the speaker) to cause the government or Zambia Industrial and Mining Corporation Ltd<sup>44</sup> to take action on the findings and recommendations of the committee. It then becomes the responsibility of the government assurances committee to see what action is taken or promised to be taken by the government on those recommendations.

It is clear from the foregoing description of how the national assembly operates that it has quite a considerable amount of control over the affairs of parastatals. One defect is however apparent in the control of the national assembly of Parastatal Bodies Committee. The defect is that members of this committee keep changing within the life of parliament (which is 5 years). The members serve on the committee at most for only a period of one year before new members are appointed to the committee.<sup>45</sup> This is detrimental to the efficient operation of the committee in the sense that each year the committee members have to spend some time familiarising themselves with the affairs of the parastatals instead of spending all the time investigating the affairs of the organizations. Besides, the fact that the members have no knowledge of parastatal affairs before they start their investigations puts them at a disadvantage in their investigations. The financial affairs of parastatals are rather complex to be easily comprehended by a person serving on the committee for the first time. The disadvantage of having new members serving on the committee every year is that their investigations may turn to be superficial depending on the level of knowledge they can acquire concerning the affairs of the particular parastatal in the limited time they have to complete their task for the year. Consequently the committee is likely to leave out of its scrutiny the more fundamental and major shortcomings of the parastatals. For these reasons it is suggested that members serving on Parastatal Bodies Committee must be retained on that committee for longer periods (3-4 years) within the life of parliament. This will also help the committee to

carry out a more systematic investigation of parastatals from one year to another according to the experience of the members in previous years.

### **Auditors**

The Acts provide that the boards shall maintain proper books of accounts<sup>46</sup> to be audited annually by professionally qualified accountants called auditors. The auditors are appointed by the boards with the approval of the minister.<sup>47</sup> The books of account contain records relating to the undertaking, operations, works, and property of the enterprises. The statements of accounts is sometimes prepared showing in necessary detail the assets and liabilities and revenue and expenditure of the boards.<sup>48</sup>

The auditors are under a legal duty to certify whether or not they have received from the boards all the information and explanations which they consider necessary for the performance of their duties as auditors. They are also under a legal duty to certify whether or not the accounts of the boards have been properly kept and whether or not the accounts present a true and fair view of the financial position of the boards according to the information and explanations given and the books and records produced by the boards.<sup>49</sup>

It is clear from the statutory provisions regarding auditors that what is contemplated is an external audit as compared to an internal one. The internal audit if established in a board<sup>50</sup> is a department whose function is to ensure the proper maintenance of the books of account of the board and to review and check the accounting and financial affairs of the organization. Elsewhere the internal audit has been said to be an aid to management in respect of maintaining accounts and checking the financial affairs of the enterprise.<sup>51</sup> From this point of view, the internal audit is in itself a mode of control of the financial affairs of the boards.

It is also clear from the Acts that the boards can appoint persons in private business to be auditors of the boards. In fact the firms which have so far served as auditors to the boards are accountants in private practice.<sup>52</sup>

The institution of external auditors is otherwise a useful device in the control of parastatals. It provides for an independent check on the operation and performance of parastatals. The institution owes its independence to the fact that it is external and separate from the managements of the boards. Its appointment by the members of the boards also enhances its independence from the managements of the boards. The absence of a personal interest of the auditors in the boards is another factor which ensures that the boards benefit from the auditors' professional competency and integrity. Furthermore, its potentiality as a tool of control consists in the knowledge on the part of the managers of parastatals that they will in due course have to render an explanation to it as regards the application of the funds of parastatals.

The external audit has been said to serve several purposes<sup>53</sup> two of which we shall consider here. Firstly, the auditors are, as already stated, expected to certify that proper books of account are maintained and that the accounts present a true and fair view of the affairs of the enterprise with reference to a given period. In order to produce such a certificate the auditors must have undertaken various forms of examination of the transactions, assets and liabilities of the enterprise, thereby ensuring the accountability, of the managers of the boards in all financial transactions of the boards. Secondly, the

audit functions to ensure financial accountability of the enterprise in the sense that the auditors are expected to go beyond a mere checking of the correctness of entries made in the books of account of the organization to reviewing the accounts of the enterprises so as to establish whether the enterprise is operating within its objectives and therefore not wasting its resources in unauthorised business.

Although the institution of auditors has been said to represent an important means of ensuring the accountability of public enterprises in many developing countries including Zambia<sup>54</sup> its effectiveness for this purpose in Zambia is minimized by several factors. Firstly, the success of the function of an audit to establish whether the enterprise is functioning within its objectives appears to depend on how clear the objectives of the particular enterprise are. The problem with the boards in this respect is that their objectives are somewhat blurred by the minister's power to issue directives of an unspecified nature to the boards in performance of their duties. This has the tendency, as we saw earlier, of confusing the objectives of the boards. In view of this problem the auditors' efforts to establish whether or not the boards are operating within their objectives are likely to be frustrated by the confusion in question. Secondly, the degree of independence of auditors from management cannot be exaggerated. The auditors owe their renewal of contract to continue as auditors of the boards to management. The acts do not fix a period of tenure of office of the auditors. Their tenure of office therefore depends on recommendations made by management to the boards concerning their suitability to remain in office. Thus in performance of their duties the auditors may be forced to adopt an approach which is not offensive to the managements, whether such approach is beneficial to the boards or not, in order that they may not lose the audit. Moreover auditors are private businessmen whose livelihood is largely dependent on audit work. This is the more reason why they may not wish to offend the management in performance of their duties. This is however not to suggest that private auditors have no scruples or professional ethics to prevent them from projecting their own selfish interests in place of the interests of those who employ them and whose interests they safeguard in the boards. Professional ethics may and have sometimes been swept under the carpet by professionals in different fields for their own selfish ends. In the absence of other stronger forms of control over the activities of auditors in parastatals, auditors may be no exception to this problem of other professionals.

For these reasons, it would appear more rational and to the advantage of the parastatals to appoint the auditor-general who is a government agency and paid from public funds to audit the affairs of the boards.<sup>55</sup>

Thirdly, the poor maintenance of records and books of account of the boards prevents the smooth operation of an audit and ultimately impairs the assessment of the financial position of the boards by the auditors. In this respect, the following examples may be cited. In 1971 and 1972 the Cold Storage Board auditors expressed concern over the maintenance of records of the board. In 1972 they reported in particular that the accounts of one of the branches of the board had not been properly kept and that due to the complete unreliability of accounting records maintained at that branch, they were unable to express an opinion on the trading deficit for that branch which amounted to K62,681 and on all items emanating therefrom included in the accounts.<sup>56</sup> Similar problems were again reported in 1974/1975 when the auditors expressed concern over

the maintenance of records of the board relating to livestock. In this instance the records in question were inadequate to properly account for and control the movement of live-stock (one of the board's main business) during the year.<sup>57</sup> Another example is the Tobacco Board of Zambia. In 1974 the auditors reported that proper records had not been kept as a result of which they were unable to verify the production department's fixed assets with a net book value of K6,243,625. Furthermore the auditors were unable to adequately verify an exceptional stock write-off involving K610,000.<sup>58</sup> It is obvious therefore that in view of these problems the institution of auditors cannot effectively bring about the public accountability of the parastatals in financial affairs.

## Conclusion

Zambia's policy is state-participation in the country's economy through the device of parastatals. The spirit is to bring to fruition economic independence and to develop the type of economy which is effectual and beneficial to Zambians. In order for the government to succeed in these ventures however it has to seriously consider some of the problems currently affecting the performance of the parastatal sector. One has to appreciate that some of the problems afflicting this sector are problems of an international character over which the parastatals and the government have little control. But it is also an undeniable fact that most of the problems facing this sector relate to corruption, tribalism, misuse of funds and assets of parastatals, and sheer inefficiency on the part of those charged with the responsibility of operating parastatals. All of these problems would be minimized by strengthening the system of control to ensure the public accountability of these important institutions in Zambia's economy.

## Notes

1. Most of the matters which are discussed in this chapter apply to all statutory corporations in Zambia since they have more or less the same legal framework as statutory boards.
2. Simmance, *The Relationship Between Central Government and Parastatals in Zambia* PA/210/71/67 p. 1
3. Section 3 Cold Storage Board Act, Cap. 386 which together with the Cold Storage Board (Establishment) Act, Cap. 388 provide the legal framework for Cold Storage Board; also Section 3 Dairy Produce Marketing and Levy Act, Cap. 348 which together with Dairy Produce Board (Establishment) Act, Cap. 350 provide the legal framework for the Dairy Produce Board of Zambia.
4. Mr. Ezeokarfor in 'National Marketing Board Today', *Journal of the National Marketing Board*, 1979 Vol. 1 p. 1.
5. *Supra*.
6. See sections 18 and 19 of Tobacco Board of Zambia Act, Cap. 354; sections 22 and 23 of the National Marketing Board Act, Cap. 356; section 10(a) of the Cold Storage Board (Establishment) Act, Cap. 388; Section 12(b) of the Dairy Produce Board (Establishment) Act, Cap. 348.

7. "The minister" means the minister of agriculture and water development, being the minister presently responsible for the boards with which we are concerned. The minister responsible for any group of parastatals may change from time to time according to changes in the ministries responsible.
8. Section 4(1) Cold Storage Board Act, Cap. 388; section 5(2) of the National Agriculture Marketing Board Act; section 4(2) of the Tobacco Board of Zambia Act.
9. *Supra*.
10. Report of the Commission of Inquiry into the Salaries, Salary Structures and Conditions of Service of the Public Service and the Parastatal Sector, Vol. I p. 132 (hereinafter called the Mwanakatwe Commission, after the name of the chairman of the commission).
11. *Supra*.
12. An exception of Cold Storage Board and Dairy Produce Board where the minister does not seem to have a statutory basis for doing so. For the minister's power to dismiss the board members see section 6(5) of the National Marketing Board Act and section 6(4) of the Tobacco Board of Zambia Act.
13. Section 4 of the National Marketing Board Act.
14. Section 14(1) of the Dairy Produce Marketing and Levy Act; and section 4(1) of the Cold Storage Board Act, Cap. 386.
15. Section 5(2) of the Tobacco Board Act.
16. Section 17(1) of the Tobacco Board Act; section 12(1) of the Cold Storage Board Act, Cap. 386; section 27(1) of the National Marketing Board Act; section 18 of the Dairy Produce Marketing and Levy Act.
17. *Supra*.
18. Section 15 of the National Marketing Board Act.
19. Section 7(1) of the Dairy Produce Board Act, Cap. 350; section 8(1) of the Cold Storage Board Act, Cap. 388.
20. Except Tobacco Board where the chairman of the board, though entitled to convene meetings of the committees is only an ex-officio member of the committee.
21. Section 16 of the Dairy Produce Marketing and Levy Act; section 10 of the National Marketing Board Act.
22. *Times of Zambia*, 8th May, 1974.
23. The Report of the Mwanakatwe Commission, p. 131.
24. See our earlier discussion on the manner of exercise of power and performance of boards' duties.
25. Example of practices relating to the minister acting as chairman of the boards and the appointment of general managers by the president.
26. It is difficult to know exactly what happens in parastatals since most of their affairs are considered to be confidential. It is possible however that the practice of issuing directives which do not comply with the provisions of the Acts extend to matters other than appointment of executives to the boards.
27. See Report of the Mwanakatwe Commission, p. 130.
28. All parastatals, whether established by individual Acts of Parliament or under the Companies Act, Cap. 686 fall under government ministries and the ministers are

required to perform certain duties in respect of parastatals falling under their ministries.

29. Annual Report of Cold Storage Board of Zambia, 1973.
30. Annual Report of Cold Storage Board, 1974.
31. Annual Report of Cold Storage Board, 1975.
32. 1973 Cold Storage Board Annual Report.
33. Articles 57 and 58 of the Constitution of Zambia, Cap. 1 defines parliament as a legislative organ consisting of the national assembly and the president. The national assembly consists of 105 elected members and members nominated by the president (not exceeding 10) and the speaker of the national assembly.
34. Cap. 686 of the Laws of Zambia.
35. See R W. James and S. Ligunya, *East African Law Review, A Journal of Law and Development*, vol. 5 nos. 1 and 2, 1972, p. 57.
36. Article 109 of the Constitution of Zambia, Cap. 1 of the Laws of Zambia.
37. Article 81 of the Constitution of Zambia, Cap. 1 of the Laws of Zambia.
38. Cap. 17 of the Laws of Zambia.
39. See debates of the 5th session of the 3rd National assembly, 17th January to 8th April, 1978.
40. Sections 10, 13, 14 and 20 of the National Assembly (Powers and Privileges) Act, Cap. 17.
41. Report of the Committee on Parastatal Bodies for the 5th Session of the 3rd National Assembly, 1978.
42. *Supra*.
43. Announced on 30th March, 1979 in accordance with the Report of the Standing Orders Committee which sat on 27th March, 1979.
44. In the case of recommendations made on companies which are subsidiaries of ZIMCO and in which ZIMCO may be required to take the necessary action.
45. Experience over the two years in which the committee has been in existence shows that completely different members serve on the committee every year.
46. Section 21 Tobacco Board Act; section 24(1) National Marketing Board Act; section 11(1) Dairy Produce Marketing and Levy Act and section 11(1) Cold Storage Board Act, Cap. 386.
47. Section 22(1) of the Tobacco Board Act; section 12(1) of the Dairy Produce Marketing and Levy Act; section 25(1) of the National Marketing Board Act.
48. For example section 21 of the Tobacco Board Act and section 24(2) of the National Marketing Board Act.
49. Section 23 of the Tobacco Board Act; section 26(1) of the National Marketing Board Act; section 13 of the Dairy Produce Marketing and Levy Act and section 13 of the Cold Storage Board Act, Cap. 386.
50. There are no provisions in the Act regulating the appointment of internal auditors by the boards. Nevertheless these are appointed in some boards as part of management of the boards.
51. Organization, Management and Supervision of Public Enterprises in Developing Countries (United Nations) ST/TAO/M/65 p. 112.
52. The two firms of Deloitte, Griffiths and Company and Coopers and Lybrand have



between themselves served as auditors to the boards for many years. Reference can be made to the annual reports of the various boards since 1968.

53. Organization, management and supervision of public enterprises in developing countries (United Nations) ST/TAO/M/65 p. 112.
54. *Supra*.
55. For a more detailed account of the advantages and disadvantages of employing the auditor-general to audit the affairs of parastatals the reader is referred to the United Nations publication, *Management and Supervision of Public Enterprise in Developing Countries*; *supra*.
56. Cold Storage Board of Zambia Annual Reports, 1970 and 1971 p. 17.
57. Annual reports of Cold Storage Board for the years ended 1973 and 1974 pp. 17 and 19 respectively.
58. Report of the Auditors, Tobacco Board of Zambia Reports, 1974, p. 19.

