Journal of Research in International Business Management (ISSN: 2251-0028) Vol. 1(9) pp. 312-323 December, 2011
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*Full Length Research Paper*

# New property rights in former state firms in Uganda

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Accepted 23 November 2011

**The paper investigates the nature of property rights of the former state owned enterprises (SOEs) in Uganda. Several records both official and non-official were consulted. The results indicate that the nature of property rights of the former SOEs in Uganda were complex because of overlaps and cloning. An enterprise was capable of taking several forms including but not limited to local, foreign, state, mixed or joint ventures and private. For instance, local firms were either private or government. Some so-called private enterprises were parastatals (SOEs) in their countries of origin such as Eskom from South Africa that bought Uganda Electricity Generation Company Limited (UEGCL). Lastly, all SOEs assumed a legal form on registration after privatization. The dominant ownership type, however, was the local-foreign pattern. The dominance of local ownership over foreign, in terms of numbers sold, was explained by political interference and a policy of local entrepreneur development. Government preferred Ugandans to foreign Investors - a situation that tended to contradict foreign direct investment (FDI) promotion efforts as shown in the sale of Uganda Grain Milling Company (UGMC) and Entebbe Handling Services (ENHAS).**

**Keywords**: State owned enterprises, privatization, Uganda, property rights, ownership

## INTRODUCTION

### Privatization objectives and Uganda's Economy before Privatization

The principal objective of privatization was to reduce the budget deficit arising from the loss-making State owned enterprises (SOEs) (Public Enterprises Review and Divestiture Statute (PERDS) Act 9/1993) .The majority of SOEs were commercial while the rest were loss-making and needed discontinuing (*1 s. 1 (2), PERDS 9/1993).* This was to be achieved through the reduction of the role of the government in the economy and a corresponding promotion, development and strengthening of the Private Sector development (PSD), reform of those SOEs still under state ownership and control (*1 s. 1 (2), PERDS 9/1993)* to relieve financial drain and the administration burden, and raise revenue through SOE divestiture. The effect of privatization on the budget is beyond the scope of this paper.

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The second objective of privatization was to increase efficiency in SOEs through rehabilitation and restructuring, (*1 s. 3 (2) (c), PERDS 9/1993)* promotion of local entrepreneurs, (*1 s.3 (2)(d), PERDS 9/1993)* promotion of institutional arrangements, policies and procedures by ensuring efficient and successful management, financial, accounting, and budget discipline of SOEs; (*1 s.3 (2) (b) (ii), PERDS 9/1993)*.separation of ownership from management functions(*1 s.3 (2) (b) (ii), PERDS 9/1993)* and enforcement of accountability. (*1 s.3 (2) (b) (iv), PERDS 9/1993)*The push for divestiture and reform generated a new set of property owners in Uganda.

To achieve the above objectives of divestiture and reform, the Government sponsored a programme of intensive preparation of a longer-term PERDS through sector-wide studies and planning to identify the most effective means of bringing about such a programme. This Action Plan for public reform and divestiture (APPERD) was defined, the first stage being a "five year APPERD". Its major steps would include divestiture (including liquidation) of 50 SOEs in the first phase of rationalization of the sector and adopt several other reform measures (RoU, 1993:148-161).

Prior to privatization in 1992, the Uganda economy fared badly due to turmoil and insecurity of pre-1986 regimes. In 1979, Gross Domestic Product (GDP) was only 80 % of the 1970 level. In particular, industrial output declined sharply due to scarcity of equipment, spare parts and raw materials. Although the country experienced a 17.3 % growth rate attributed to agriculture, little progress was made in manufacturing and other sectors. The economic and political destruction in the 1970s and 1980s caused a decline in GDP with negative growth rates of 4.2 % in 1984, 1.5 % in 1985, and 2.3 % in 1986. ( 1 US Library of Congress http://countrystudies.us/uganda/39.htm).

## Structure of the Uganda Economy, Size and Role of the Public Sector

Uganda was predominantly an agricultural country. In 1980, the agricultural sector contributed 72 %, industry 4 % and services 23 % of GDP. In all sectors, the economy was just recovering from mismanagement by the military regime of the 1970s and civil wars of the 1980s. Amid the decay, the economy harboured a dominant public sector.

## The Emergence of the SOEs Sector in Uganda

SOEs emerged in Uganda mainly through the collapse of the colonial state after the Second World War and the nationalization policies of the 1970s.

## The Colonial SOEs after Second World War

The Second World War greatly hurt the financial clout of the British economy that in order to maintain a source of raw materials and a market for finished goods; she had to produce in the colonies using local capital (Marcussen and Torp , 1982). In Uganda, the colonialists established SOEs using local capital accumulated through savings from cotton and coffee sales between 1948 and 1953.

From 1940 onwards, the British allowed the Uganda colonial government to retain a larger part of the earnings of the peasants in the form of a Price Stabilization Fund (PSF) amounting to nearly £10.55 m by 1948. Finance was mobilized out of the Second World War profits on cotton and coffee that was put in a fund. Money amounting to £0.5 million was put into coffee Price Assistance Fund (PAF), while another £6 million was earmarked for various public development projects. Despite considerable transfers to the central government over the years for budget support, the balances accumulated to £37 million by mid-1954.The source of funds, as already hinted were export taxes on cotton and coffee of 15-20 % between 1948 and 1958, which dropped to 13 % in 1959 and 17 % in 1960 (World Bank, 1962:17-8). This money was channeled into development projects. A year after, £3.925 m was taken out straight into another “Price Assistance Fund” and between 1949 and 1953 had accumulated to £44.475m. In total, between 1945 and 1960, the state re-capitalized an amount equal to (£231.9-£112.9) £119.0 million.

By independence in 1962, there were 24 SOEs including Uganda Electricity Board (UEB), 16 subsidiaries and 7 associated companies of Uganda Development Corporation (UDC). UDC was charged with starting new enterprises. While the associated firms concentrated in food and beverages processing and the mining sectors, the subsidiaries were in manufacturing, building and property development, hotels and tourism, agriculture, banking and finance and commerce. The British-owned subsidiaries controlled the Ugandan economy, ensuring a source of raw materials and a market for the finished British goods and the exploitation of agricultural and mineral wealth continued prior to independence unabated. But independence threatened this exploitation.

Just two years to independence, in 1960, a plan was hatched to maintain control over the economy for the next post-independence 15-year era. The colonial government made a plan for the future "nationalist government". The Mission consisted of 9 members including two World Bank staff, United Nations Education Scientific Organization (UNESCO) and World Health Organization (WHO) helped recruit a specialist each for education and health respectively. The team(Architects of Uganda's Development Plans included Edward S. Mason, Chief of Mission; Andrew M. Karmarck, Chief, Economist; Richard F.Boyd (WHO), Advisor on Health; Norman D. Lees, Advisor on Industry; Franz Lutolf, Economist; George) of "specialists" mission objective as agreed upon by Britain, "Uganda" and World Bank was to present practical recommendations with supporting analysis and suggestions as to the specific actions to be taken as a basis for drawing a development programme from 1961/62-1965/66 (World Bank, 1962: vii)].

The team recommended that since world market prices of coffee and cotton had dropped and could not be used as a source of development capital, government needed to borrow. In addition, the "team of experts" argued that mining was 'insignificant' compared to other African countries. The chances for "expansion" where considered slim, for copper and wolfram, tin, gold and lead. However, borrowing did not solve the problem of shortage of development capital neither in 1963 nor later years [RoU, 1963:3; World Bank, 1962].

## The Obote Nationalization

Between 1962 and 1970, the Obote government created several SOEs through UDC. However, a greater number

of SOEs (78) were created by the 1970 Obote nationalizations. On International Labour Day, President Obote spelt out his socialist agenda termed ''the new all-embracing political culture of control of the means of the production and distribution for the decade." Obote argued that the new government policy was that the Ugandans had to actively engage in every field of production, commerce and industry, manufacturing and plantation industry while continuing to guide the immediate implementation of the Common Man's Charter.

Key policy pronouncements contained in the new agenda included:

Only SOEs would carry out all import and export business although oil companies would continue to import and distribute petroleum products;

Government would acquire 60 % of the shares of each of these oil companies;

Transport was one of the services that would be run effectively by the beneficiaries (passengers) to make it adequate and improve on the required standards. Kampala City Council (KCC) and the Trade Unions (TU) in Kampala would acquire 60 % of the Kampala and District Bus Services (KDS). In upcountry regions of Uganda the District administrations, together with the Trade Unions and the Co-operative Unions of each of these regions would acquire 60 % shareholdings in the bus companies;

UDC was empowered to increase its shareholding to 60 % in Kilembe Mines, while the workers and SOEs would acquire 60 % in any other manufacturing and plantations units; and

Lastly, government would immediately acquire 60 % of the shares of every Bank, credit institution and insurance company operating in Uganda. Since workers were owners, strikes were outlawed. The appropriated shares would not be paid for directly by government but from the profits made by the nationalized companies (Republic of Uganda (RoU), 1970: 2-4; *Uganda News*, May 1st No.1607/1970:2-5).

The media(……, (1970), Uganda News, *1st May (Ministry of information, Broadcasting and Tourism, Kampala).* termed the address "stirring" and the Minister for Cabinet Affairs announced May 2, 1970 another public holiday on top of May 1. Negotiations followed and 7 companies were dropped from the nationalization process. The Oil companies settled for 50-50 % shareholding alongside the government while the British Banks managed to get a better deal of 40-60 %. In the end, a total of 78 enterprises were nationalized. The British and Israelites, however, did not allow Uganda to exercise "The Move to the Left". They organized a military coup, which ousted President Milton Obote from power on January 25, 1971. Obote was replaced with his Army Commander, Major General Idi Amin Daada (Mamdani, 1983:30-1 Uganda thus remained firmly "Put to the Right.

The removal of Obote who was a Christian, socialist and who had encroached on foreign investments and replacing him with Amin who was a Muslim can have several interpretations. The first one is that to Britain economic interests were far more important than religious ones. According to Bade (1996:92), Britain had considered it important to give independence to a Uganda headed by an Anglican African President in 1962. But in 1971, just nine years later, this no longer mattered indicating either a shift in priority or policy in Britain. Secondly, the overthrow could be interpreted that besides the fear of military attack from communists by the West there were other genuine fears linked to African countries tending towards communism. That fear was the spread of socialism or communism in Least Developed Countries (LDCs) posed a threat to the capitalist advancement and expansion of the Multi-National Organizations (MNCs)' web of operations and accumulation.

After the British and Israelites had installed Amin in power, he paid back handsomely. President Amin reversed Obote's formula for government shareholding in the foreign investments. According to the military leader, "this was a vital amendment, which resulted into the return of confidence in the country's economic progress". Amin replaced Obote's 60-40 % shareholding with the 49-51 % formula (RoU, 1972:67). However Amin was not completely out of support with the nationalization policies.

## Amin Nationalization

Having abandoned the blanket nationalizations involving all foreign investments, he singled out the Asians and orchestrated probably the single biggest nationalizations in the entire world involving 5655 businesses. In August 1972, Amin under decree 17/1972 revoked the residence permits of Asians of Indian, Pakistan and Bangladesh origin and gave them 90 days to leave the country.

Amin accused the Asians of several offences including:

i) Abuse of Foreign exchange regulations resulting from export of goods and keeping the foreign exchange proceeds abroad. This also included undervaluing of exports and overvaluing of imports in order to keep the difference in their overseas accounts;
ii) Hoarding and smuggling of commodities like sugar, oil and hoes creating artificial shortages in order to keep the prices in the country unreasonably high;
iii) Undercutting African traders and unfair competition. Asians had been importers, wholesalers and retailers all in one. They ensured that business remained entirely in Asian hands. One trick they used was practising price discrimination against Ugandan African traders in that they supplied their fellow Asians with goods at low prices than those they supplied to Uganda Africans traders;
iv) Employing family members in their businesses and

if they employed the African they hid business secrets from him, mistrusted and did not give him authority;

v) Tax evasion where they kept two different books of accounts one for Income tax department and the other showed the true and correct account of the business and in Gujarati or Hindu and ensured they paid less tax than they ought to;

vi) Practising and spreading the dangerous disease of corruption. Asians believed that they could not get any service in the government department or parastatal without bribing their way; and lastly

Disloyalty to the country by the fact that Asians had been availed the facilities for both local and foreign training in medicine, engineering, law and other professions but many of them had either worked briefly for government or opted directly for private sector.( *1 President Amin's Speech of 12 August 1972, page 3-5*)

vii) Regardless of the truth of the accusations, the effect of the expulsion was to increase the number of SOEs and disrupt the Uganda economy.

Jorgensen (1981:288-9) has refuted the nature of strategy used to chase Asians, arguing that although Amin did not enact a decree to chase Asian Citizens, many left in fear of intimidation from the civilians and soldiers as well as the threat of being dispersed in rural resettlement schemes. Jorgensen reports a total of 49, 000 Asians expelled. Great Britain took 27, 000; Canada 6, 000; India 4, 500, Pakistan, West Germany, Malawi and the USA each 1, 000, Australia 500, Sweden 300, New Zealand 200, Austria and Mauritius each 100; 3, 600 wound up in European refugee camps; 2, 500 Asian citizens of Kenya and Tanzania simply went home; and 4, 000 Asians chose to remain in Uganda.

President Amin announced that all people who had applied for businesses formerly owned by Asians would be interviewed by four cabinet sub-committees. In addition, Amin nominated 30 Army and Air force officers and posted them to the sub-committees to check and distribute the businesses. The Minister of Information and Broadcasting, William Naburi chaired the subcommittee covering Kampala North; The Minister of Mineral and Water Resources, Erinayo Oryema headed the Kampala Central sub-committee; the Minister of Power and Communication, Lt. Colonel Obitre Gama chaired the Kampala South subcommittee and Engineer James Dhikusooka, the Minister for Works and Housing led the Entebbe sub-committee.1 The 5, 655 Asian properties were subdivided into 5, 502 business firms and 153 ranches to be distributed together with household property. The distribution favoured individuals who received 5, 299 business firms and ranches as well as 144 estates. Even the charitable organizations also shared the spoils and received two business firms and ranches. Government departments and Ministries received 175 enterprises while 33 went to parastatals [Jorgensen, 1981: 288-90; Government of Uganda (GoU), 1977:46].

Due to the immediate unplanned expansion in SOEs, UDC was given 45 more SOEs abandoned by the departed Asians in addition to her own 55 subsidiaries and associated companies. This act overstretched UDC's skilled and trained staff who were scattered to go and run enterprises left by Asians. Even junior staffs were made managers in order to cope with the situation. Yet still, more SOEs of a commercial nature were created overnight (Kinyatta, 1989:5-6). In the end, Amin created more SOEs than any other regime that has been in power in Uganda; but because of lack of human and capital capacity, insecurity and the donor-SOEs link, the large SOE sector caused de-industrialization instead.

## The Size and Role of the Public Sector in Uganda 1980-6

Hence the SOE sector was made up of mostly remnants of government investments put in place in the 1960s and Asians' assets expropriated in 1972. By 1986, when the National Resistance Movement (NRM) took power, government had a total of 146 SOEs, with 138 majority holdings and 8 minority state holdings (Ddumba-Ssentamu and Mugume, 2001:10). Most of the 146 SOEs existed only in the register. These SOEs made a sizeable contribution in employment, investment and value adding.

SOEs contributed greatly to employment in Uganda. For instance, the five manufacturing firms under the UDC employed a total of 3,905 persons in 1963 that increased to 4,019 a year later. Comparing these figures with national employment levels of 19,220 and 20838 for the same period indicates that SOEs accounted for 20% of total employment in each period. Employment increased rapidly over time whereby between 1954 and 1965 it grew by 22 %, fixed capital by 24 % and value-added increased even faster than the two (Stoutsdijk, 1967: 37-8). Comparing the 1963-64 Uganda data with the rest of the LDCs between 1978-85 shows that Uganda's SOE share of 20 % in employment was close to the LDCs where Africa's was 19.9 %, Asia's 2.9 %, and Latin America's 2.8 %. Uganda's figure doubled that of the LDC average of 10.2 %, implying that Uganda was one of those countries that over-recruited in the SOE sector during the period. The big size of the SOE sector also created macro-problems.

## General Problems of the SOE Sector

The majority of SOEs performed poorly as a result of country's violent political history and collapsed economy. SOEs suffered from low capacity utilization, large operating losses or low profitability, and being illiquid and indebted (Ddumba-Ssentamu and Mugume, 2001:10).

The UDC's subsidiaries which were Joint Ventures (J-Vs) give the worst scenario of SOE performance.

Before privatization and with the exception of 1988, the financial performance of joint venture companies returned an operating loss of shs.72 million (US$36, 000) between 1986 and 1988. The profit in the year 1988 was exceptional because of the Shs. 222 million (US$111, 000) made by Uganda Grain Milling Company (UGMC) through sales of wheat from barter trade. The loss before interest and tax (PBIT) was Shs. 265 million (US$132,500) in 1988 and profit-sales ratio of negative 9.7 % compared to 6.4 % for other manufacturing enterprises in the public sector. Most J-Vs were insolvent and illiquid, and were operating below 50 % capacity. They also had problems like obsolete plants, raw material shortages, under-capitalization, low motivation and morale, poor maintenance, failure of management to prepare alternate plans and strategies in a rapidly changing policy environment. The monopoly situation of most of the UDC group of companies did not encourage aggression and innovativeness (UDC, 1990:6-7).

The 1992 study indicated that SOEs contributed little or nothing at all to the treasury. The study that covered 30 SOEs showed that of this number, only 11 were profitable and the rest not. The overall average ROCE was 5.4 % considered very low when commercial lending rates of 35 % and inflation of 30 % for the period was taken into account (ROU, 1993:148). Hence, SOEs displayed very bad project management skills.

## Macro-level Troubles of the Ugandan Economy 1980-6

Between 1972 and 1986, the public sector, just like the overall Ugandan economy declined. In 1986, the economy suffered from severe shortages of supply of basic necessities, industrial bottlenecks of destroyed infrastructure and utility sector, lack of agricultural inputs and excess capacity, and continued insecurity that bred Internally Displaced Persons (IDPs), orphans and widows.

There was a huge budget deficit marched by an equally huge amount of money in circulation as a result of financing the budget deficits through money creation. Between 1981 and 1984, the budget deficit grew 1.9 times from Shs.26.9 million to Shs. 79.2 million. Most of this deficit was financed by money creation fanning inflation being 111.1 % in 1981 but fell to 42.9 % in 1984. The huge money supply in the economy caused hyperinflation and unfavourable Balance of Payments (BOPs).

Attempts to finance budget deficits through borrowing generated external debt growing over the period by 53 % between 1980 and 1984 from US$0.696.4 billion to US$1.065 billion respectively (RoU, 1987b: 1; RoU, 1988b: 1). This general poor macro economic situation discouraged investment and called for a drastic solution. The poor performance of both SOEs and overall economy paved the way for privatization in Uganda.

## Privatization Policy and Strategy and the Nature of Property Rights in PSOEs

This sub-section explores the privatization policy and strategy that includes timing and speed of the process, objectives, movers and institutional arrangements, and overall strategy.

## Timing, Sequencing and Speed

Privatization started unofficially in 1989 with the sale of some six firms. In 1992, 142 SOEs were officially put on sale launching the project. The PERDS 9/1993 and its subsequent amendments classified enterprises in five groups. The first group (I) included those enterprises to be fully owned by government and comprised firms that were economically viable, politically sensitive, provided essential services and were tied to projects that had huge external funds acquired by government for their rehabilitation. The second category (class II) consisted of enterprises in which government held majority shares and comprised of viable, politically sensitive and that provided essential services but differed from the first group by the fact that rehabilitation costs funded by foreign donors. The third category (Class III) included enterprises where government was to hold minority shares. These were viable economically and high cost projects that attracted private equity and technology if government were to take up some equity holding in them. The fourth (Class IV) included those enterprises that were economically viable and commercially oriented while the fifth (Class V) categories included those enterprises slated for sell and liquidation respectively. They were economically unviable and defunct or non-operating SOEs. The criteria of starting with small ones, to medium and later to large seem to have been at work and was intended to be cautious as they learnt by doing (RoU, 1993:148-161).

The Government adopted and utilized a set of criteria to classify SOEs into those which would remain entirely, majority or minority Government ownership; those to be privatized, and those which would be liquidated. First SOEs that were non viable would be liquidated since their continued operation was only a drain on the Treasury. Second, government would not operate any commercially-oriented SOEs unless it was for security reasons politically sensitive or provided essential services. Third Government would as a rule take minority shareholding only in new enterprises where high cost projects would attract private equity and technology.

All other enterprises, except those falling in the

second class above, would be privatized (*RoU, 1993:148-161*).

The Government would partly privatize the SOEs in Classes II and III, while fully privatizing those in Class IV and liquidating the rest (Class V). The classification was not completely rigid and SOEs could always be re-classified depending on any peculiar circumstances applicable to a specific SOE or at any specific moment in time. In reality, this was only a target classification, subject to review during implementation when more detailed technical evaluations of SOEs would be available. Henceforth, Government delegated the Divestiture Implementation Committee (DIC) to change the classification of individual SOEs based on strict application of the above Cabinet-approved criteria (RoU, 1993:148-161).

The process delayed due to intervention by Parliament that halted it twice over issues of corruption. A timetable was drawn to sell all SOEs by 1995. By 2005, several years off schedule, some 38 parastatals remained including strategic ones such as the Uganda Railways Corporation (URC), National Insurance Corporation (NIC), Kinyara Sugar Works (KiSW), National Housing and Construction Company (NH &CC) and Uganda Diary Corporation (UDC).( *s. 1 (2), PERDS 9/1993).*

**Divestiture Policies**

The Government recognized that the effectiveness of the divestiture programme in attracting investors would depend upon the overall investment climate as well as the attractiveness of the sales package for a particular SOE. Separately the Government took measures to improve the investment climate including the enactment of a new vestment Code 1991. Government proposed to ensure investor interest in divestiture in four ways. First, in order to attract investments SOEs for divestiture would have a good profit potential. Second, the new owners would have access to term finance for PSOEs rehabilitation and autonomy to manage the operations on fully commercial lines. Third, government would freely permit Ugandans with funds held abroad to acquire equity in divested SOEs. Fourth and lastly, government would encourage commercial banks to provide credit for SOEs purchase and rehabilitation after divestiture by ensuring that the divested enterprises had sound management and strong prospects of adequate profitability (*RoU, 1993:148-161*).

Further, the implementation of divestiture policies would be flexible and designed to ensure optimal economic benefits to Uganda and the investors. In this context, Government would undertake an annual review of the divestiture program and its policies and modalities. Government's broad guidelines for the divestiture program included valuation, joint ventures, FDI, legal technicalities, and subsidies.

- Valuation would be based on market rather than book value;
- in SOEs to be converted to joint ventures, private sector partners would acquire a majority interest and had management control without government interference;
- consider foreign investment where there was a need for external equity, management and/or technology;
- all legal issues would be addressed before putting up a SOEs for sale; and
- No undue advantage or protection would be offered to investors (*RoU, 1993:148-61*).

**SOEs Reform Policies**

Retained SOEs reform would follow five basic principles: (a) management autonomy (b) greater accountability (c) providing support for improved performance on a one-time basis, (d) rewarding good, and punishing performance, which included letting loss-making SOEs close down rather than provide them subsidy or other support, and (e) ensuring adequate competition to SOEs by not restricting entry of other enterprises into similar activities; and for natural monopolies, prompt the development and introduction of suitable regulatory mechanisms by the supervising ministries.

The main elements of the reform process included autonomy, financial discipline, improved reporting, and financial measures (RoU, 1993:148-61) immediately elaborated.

**Autonomy: Separation of ownership and management functions**

Government promised to separate ownership from SOE management role in four ways. First, it would agree with SOE Boards of Directors on the SOEs' general objectives and targets; granting explicit management autonomy to SOEs to achieve said objectives by running their operations in an optimally efficient and competitive manner and without interference; and making explicit provision for holding managements accountable for the results achieved by them. Second, SOE Boards of Directors would be restructured in a manner that would stress their role as top management organs by selecting their membership from rosters of technically and managerially qualified persons to be set up for that purpose on the basis of candidate screening and authentication by a Committee of Eminent Persons (CEP); this action would be harmonized with the existing policy prescribing a minimum number of SOE board members to be selected from parliamentarians, by ensuring that the rosters would include adequate representation of parliamentarians. Third, systems for evaluating performance would be set up to ensure the

necessary transparency and commitment in regard to all stakeholders. Fourth and last, UDC role would be redefined in various ways such as emphasizing it as an Industrial Promotion Agency and not as a holding company. UDC would be restructured to disengage its management from its delegated ownership functions and responsibilities over its subsidiaries and associated enterprises, thus equating UDC subsidiaries with the non-UDC SOEs (RoU, 1993:148-61).

## Financial discipline

Government promised to affirm and elaborate its existing policy against providing financial support to SOEs through an explicit hard-budget policy that would involve cessation of loans, subsidies and guarantees to SOEs. Exceptions, if any, to these rules would define and made on an a-priori basis at the same time as the details of the rules were defined and made, be limited without fail to cases clearly covered by them, and would in any event be subject to commercial terms. Government promised to separate commercial from non-commercial objectives of individual SOEs. The non-commercial objectives would be supported by government through transparent financial transactions. But the commercially-oriented SOEs would be expected to become financially self-sufficient, from internally-generated funds and commercial bank credit operating; failing which they would be liquidated (RoU, 1993:148-61).

Third, direct government support in form of equity contributions and loans would be discouraged and only within the context of approved corporate plans and the Public Investment Program (PIP) for major investment projects, and only to supplement internal funds and, where applicable, commercial loans. Given that many SOEs required assistance in preparation of corporate plans, these guidelines would be applied in suitable phases (including removal of subsidies), pending completion of the corporate plans (RoU, 1993:148-61).

## Improving accounting, budgetary and appraisal processes

Government promised to take steps to strengthen the appraisal, accounting and budgetary processes in retained SOEs. To that effect it would cause substantial improvements to be instituted in investment appraisal; record-keeping and follow-up procedures and guidelines of financial transactions of the SOEs; and accounting systems and procedures making possible efficient performance of all the above as well as other functions such as effective monitoring of performance (RoU, 1993:148-61).

A key element in the implementation of the PERDS program greater autonomy and accountability of SOE management was recognized as designing, implement ting and operation of a SOE monitoring system to ensure that timely, pertinent, reliable and comparable financial and operational information be made available to all concerned decision-makers, both at the enterprise and at the ministerial levels (RoU, 1993:148-61).

Further, a performance evaluation and incentive system would be introduced to complement the SOE monitoring system for purposes of rewarding good and penalizing bad performers. In the short term, measures of performance would be based on such basic performance indicators as financial profitability and physical productivity with other, more complex, indicators, being devised and monitored as the system was refined at later stages in the process (RoU, 1993:148-61).

## Financial measures

Government promised to take steps to improve the financial and especially capital structure not only of the retained SOEs but also the PSOEs, so as to provide both retention and privatization with the best potential for success. In all cases where these steps toward financial restructuring had a financial cost that could in the last resort be covered only by Government, on a one-time basis after which the SOE would seek further financial assistance form banks. This applied in particular to the resolution of situations characterized by excessive debt or deficient equity or working capital. Government promised to create a restructuring fund to assist to the extent possible in the resolution of such situations, according to a set criterion to be put in place. For PSOEs, government would facilitate access to term finance through the banking sector by ensuring that commercial banks had such finance available for the private sector in general (RoU, 1993:148-61)..

## Institutional framework and Movers: World Bank and President Museveni

In order to implement the SOEs Reform and Divestiture programme, Government put in place two arrangements. The first was a Divestiture Implementation Committee (DIC), chaired by the Prime Minister who reported to the Cabinet. It was responsible for implementing the Public Enterprise Reform and Divestiture programme (PERDS) and was empowered to take all the policy decisions and approve all actions required to implement the programme. The second arrangement was the PERDS Coordinator who reported directly to the Finance Minister and implemented the programme on behalf of the DIC. The Coordinator would lead and coordinate the definition of specific action plans and their implementation. He also chaired the Policy Review Working Group (PRWG) that

comprised the Permanent Secretaries of line ministries, which advised him **on** all relevant policies and programmes. He was directly assisted the co-coordinator by the Public Enterprise Secretariat (PES), and the Divestiture Secretariat (DS) (RoU, 1993:148-61).

To facilitate PE Reform, Government promised streamlining operating systems for: (a) corporate planning and budgeting as a basis for greater financial discipline, culminating in a phased introduction of the hard-budget constraint; and (b) a Management Information System (MIS) for facilitating autonomy and accountability of performance (RoU, 1993:148-61). While these bodies were put in place, other stakeholders namely World Bank and President Museveni played leading roles in shaping and influencing outcomes.

## Role of World Bank

IFIs tried to impress President Obote in early 1980s with their policies in vain. In response, the International Finance Institutions (IFIs) withheld the money. The overthrow of Obote and incoming of Museveni turned the tide. Right from 1989, President Museveni allowed the IFI experiment without any reservations so long as they provided him with finance to run his government. In return, the IFIs lent Uganda to the tune of over US$ 5 billion in loans and also extended several grants in a period spanning close to a two decades. Towards the end of the two decades of Museveni's rule, IFIs and other donors cancelled all Uganda's debts. Hence, the IFIs dictated policies, such as maintaining interest rates at 5 % as well as liberalization of trade; and also financed the whole privatization project.

The International Monetary Fund (IMF) maintained inflation at 5 % per annum and also controlled credit to banks through various legislations such as financial institution statutes. Ironically, while IMF and World Bank concentrated on inflation and privatization since the 1980s, evidence indicated that developments in the financial sector had greater impact on the economy than the current donor focus. For instance, financial development and credit to the private sector impacted on growth in a mixed manner. While financial repression impeded growth, credit to the private sector promoted it. The implication of this was that government needed to set optimal targets for both growth and inflation programmes that optimized both. Evidence indicated that an increase in financial repression by 10 per cent led to stagnation by 7.2 per cent between 1967 and 1996 explained by low levels of diversification of the financial assets and instability. On the contrary, an increase in credit to the private sector by 10 per cent increased growth by 9.2 per cent over the same period (Kasule Juma, 1998:89). This impact on growth was explained by fact that higher credit contributed to both purchasing power as well as in investment. Despite the reality, policy dictated by donor community underplayed investment in preference for price stability.

Interestingly, inflation impact on growth in Uganda was not always negative with short and long-run effect contradicting, and with the long-run gains superseding the short-run losses. The effects of inflation on growth were in such a way that in the short run, an increase in inflation by 10 per cent reduced growth by 0.2 per cent. The negative effect was explained by erosion of profitability on investments, discouraging investments and reducing the level of economic growth. But evidence also indicated that, in the long run, inflation fuelled growth by 0.6 per cent between 1987 and 2000 (Nuwamanya , 2004). By restricting credit, the IFIs definitely sealed the fate of the privatization process.

Lack of access to cheap loans was the biggest restriction for upcoming entrepreneurs and hampered growth. Uganda had about 6% of its US$6b GDP available to the private sector as credit, less than half the average for a country at that level of development. The real interest rate on that borrowing of between 18 and 20% was higher than a low-income country ought to be charging. Without easy credit, most entrepreneurs started with savings and built their businesses with retained earnings till they got to 50 or 100 employees when they needed the bank support. Comparatively, Kenya performed better in providing financing to the small and growing businesses.( ……, (2004), ''Expensive loans killing entrepreneurship – IMF'', The New Vision, Thursday, 30 September). Hence, despite being the world's most entrepreneurial country, it lacked a cheap credit, thus dampening growth rates. While low inflation and macro-economic stability were the benefits of a good monetary policy, they should not be ends in themselves. The main criteria for judging monetary policy effectiveness should be the development of the country's productive capacity and improvements in living standards. The IMF tight monetary policy resulted into inadequate manufacturing and export growth rates below development targets.( … …, (2004), ''OPINION: Cheap money wanted,'' The New Vision, Thursday, 30 September).

Lastly, with respect to privatization, World Bank estimated SOEs sale proceeds at about US$500 million and a solution to the annual US$200 million subsidies to SOEs. Basing on the optimism of reducing the subsidies and a revenue haul, the bank supported the process beginning with a US$48.5 million loan in 2001. (*1 s. 1 (2), PERDS 9/1993)*

## Role of President Museveni

Right from the start, President Museveni was key figure in the privatization process by likening non-performing SOEs to dead people that required burying, using the divestiture process to enrich party supporters, his

relatives, supporting Asian investors, and operating bailout operations for selected PSOEs.

During the privatization process at least seven (9 %) of 74 SOEs were undervalued and sold to government employees(The undervalued amount of US$336,000 arising from the sale of Margerita Hotel to Reco Industries has been converted to Uganda Shillings at the current rate of US$1=Shs.1,850. The calculation then becomes US$336,000x1,850=Shs.621.6 million.) including ruling party supporters such as cabinet ministers, presidential advisers, National Resistance Movement (NRM) supporters and Members of Parliament (MPs). These SOEs included Lira Hotel, ENHAS, UGMC, White Horse Inn Kabale, Printpak, Soroti Hotel and UMI Soroti. Five SOEs were undervalued, one SOE defaulted and one was undervalued and it also defaulted. Such SOEs were either under-priced or they defaulted on payment explained by the politics that characterized allocations.

In addition to party supporters, Museveni's relatives helped themselves to the privatization spoils citing *nationalism*. Interestingly, in both cases, when *Ugandan nationalism* was cited, the first family of President Museveni was involved. Secondly, this *nationalism* rotated around very profitable SOEs such as ENHAS, UGMC and UCB. In the case of UGMC, that *Ugandan Nationalism* turned out to be speculation since re-sale took place on the very first day it was transferred. In both cases, the decisions also turned out to be inferior because the new owners lacked capital. While UGMC went into receivership, ENHAS offered an inferior service at Entebbe Airport charging a higher price compared to that offered in Kenya.

Lastly, the President also operated bailout operations to PSOEs explained as "strategic intervention in vital sectors generating employment and fighting poverty through helping businesses that generated wealth.''(Allio Emmy & Alfred Wasike (2004) ''Basajja bailout strategic – Buturo,'' *The New Vision*, Friday, 29th October.) The most notable and frequent beneficiaries were three Asians, namely, Mehta, Madhvani and Sekhar Mehta. So far government had sunk a total of US$95 million since Museveni assumed power, divided between Mehta Group (US$68 m) and Madhvani Group (US$27 m).( ……. (1998) Government to Lose US$20 million in dubious Payment for Madhvani Loans*," Uganda Confidential*, Number 315, 20-26th November.) In contrast, government refused to bail out other PSOEs sold to local investors such as UAC, UMI Kampala, Nyanza Textiles Limited (NYTIL) and Paper Company (PAPCO) that cried out for help. For instance, Uganda Airlines Corporation (UAC) needed Shs. 2 billion (US$500, 000) to fund her operations. On three occasions, it was bailed out to the tune of US$3 million (Shs. 3 billion). The fourth time, however, there was no alternative but to sell Entebbe Handling Services (ENHAS) shares in order to raise the money.( Yunusu Abbey (1998) "Uganda Airlines Sell off ENHAS Shareholding," *The New Vision,* 11 April 1998. Several other PSOEs such as NYTIL, PAPCO and a private local Bank International Commercial Bank (ICB) solicited for support in vain. In only one case, the local exporter of hides and skins, government guaranteed the loan. These activities of Museveni negatively impacted on the economy and the privatization process in particular.

Both the media and opposition politicians explained this as a political strategy by Museveni to entrench himself in power. First, the media argued that government preferred foreign to local investors because in a crisis, the former were likely to support the government in power in order to protect their investments unlike the latter that could ally with the opposition to change government. But the opposition politicians argued that the government policy, besides being strategic, was also selfish because it was targeted to impoverish Ugandans who did not belong to Museveni's ethnic group (*non-Hima*) in general and non-clansmen (non-*Basita*) in particular so that they could respect them and also be easily governed.

In September 2007, A World Bank (WB) Country Economic Memorandum warned that Uganda's economic growth strategy could fail if corruption, cronyism, waste and inefficiency among others in public spending were not checked urgently. Museveni's leadership needed to develop a culture of compliance with regulations and accountability in the public sector. The report was launched by the Prime Minister Apolo Nsibambi at the Sheraton Kampala Hotel. The World Bank was, however, optimistic that the existing and future obstacles to growth could be overcome basing on the country's past record of recovery and growth which had been amongst the best on the African continent made possible by strong policy reforms and a stable macroeconomic environment. However, more effort was needed to move the country beyond recovery to sustained economic expansion. John MacIntire, the World Bank (WB) country director for Uganda and Tanzania, argued the need to fundamentally re-think the overall market-friendly approach to growth outlined in the poverty eradication action plan (PEAP) and the Medium Term Competitiveness Strategy (MTCS). Maintaining the past gains from a stable macro management and trade-friendly policy reform were vital as well as support to private sector development. The country needed to maintain an investment climate that fostered market development and maintained prudent regulation to correct market failures. Government was advised to avoid picking winners and supporting losers. Government was also advised to be equitable in giving any investment incentives and stop selective support to specific investors.( 1 Juuko Sylvia, (2007), ''Graft stifling

growth – World Bank,'' *The New Vision*, Wednesday, 12th September)

## Divestiture and Nature of Property Rights in the Private Sector

Several methods were used to transfer ownership of SOEs to the private sector. But the most used two were asset and share sales although other methods such as repossession and Management Buy Out (MBO) were applied. Out of 74 firms divested, 23 (31%) were divested through asset sales; another 23 (31%) by shares sale; 7 (10%) by auction; 4 (6%) by MBO, contract and joint venture; 6 (8%) by pre-emptive rights; and, 4% through repossession. These methods were used for various reasons.

While asset sales were used mostly on industrial establishments and plantations, share sale was applied on trade and service enterprises mainly. In some instances, asset sale was used when they failed to get a core investor, as was the case with Coffee Marketing Board Limited (CMBL). CMBL could not be sold to a core investor as a going concern because its US $ 4 million capacity combined with private processors exceeded nine million 60 kgs bags annually, which was twice the coffee production capacity of Uganda. As such, its assets were sold piecemeal. Repossession was applied on expropriated assets of Asians. These assets were returned to their owners free. Lastly, pre-emptive rights were used when the SOEs had private, minor shareholders who where given priority to purchase the remaining shares. Six firms where involved under this scheme. In one instance, however, that of Pepsi-Cola Limited, priority was not followed due to political preference in favour of some National Resistance Movement (NRM) party supporters. These diverse sale methods bred new and complex sets of ownership and property rights.

## Local-Foreign Ownership Pattern

It was very difficult indeed to state exactly the number or types of property rights or ownership after privatization because of overlaps and cloning. An enterprise was capable of taking several forms including but not limited to local, foreign, state, mixed or joint ventures and private. For instance, local firms were either private or government. Some so-called private enterprises were parastatals (SOEs) in their countries of origin such as Eskom from South Africa that bought Uganda Electricity Generation Company Limited (UEGCL). Lastly, all SOEs assumed a legal form on registration after privatization. The major ownership form, however, was local-foreign divide.

Being local or foreign owned became the major category of property rights after privatization. During privatization, the majority of enterprises were sold to either local or foreign buyers. Out of a total of 74 enterprises sold, 41 went to local, 27 to foreign buyers and 6 to joint ventures, representing 55, 37 and 8 per cent respectively.

The dominance of local ownership over foreign, in terms of numbers sold, was explained by political interference and a policy of local entrepreneur development. Government preferred Ugandans to FDI - a situation that tended to contradict FDI promotion efforts as shown in the sale of UGMC and ENHAS. In the case of UGMC, the highest bidder for the enterprise was UNGA, a Kenya-based food company but it was sold to President Museveni's brother, Salim Saleh, under a company called Caleb International on the argument that "Ugandaness" was the awarding criterion. Interestingly, however, Caleb International used foreign companies, namely, Tiger Oats and a South African company Number One Foods (PTY) Ltd as partners in securing the UGMC purchase. For ENHAS, the firm was (…….., (1999), "Now ENHAS Wants to Kill *AJAS," Uganda Confidential, 8-14 January, 320).*

sold neither to the highest bidder (Dairo Air Services) that offered US$6.5 million nor to the second highest bidder, South African Alliance Air that, bid US$ 4.5 million citing pre-emptive rights.( *Yunusu Abbey,(1998), "Privatization Unit, ENHAS Sign Sale Agreement: Airlines Staff Wary of Pact,* The New Vision*, Tuesday 5 May).* (*The UAC had been a major shareholder in ENHAS with 50% stake, Efforte (Salim Saleh's company) and Global Air links each had 20%, and Sabena 5%, the UAC workers and Civil Aviation Authority (CAA) had 2.5% each).*It was instead sold to Kutesa, a relative of the President by marriage. Saleh refuted allegations that he and Kutesa used their political influence to buy the airport ground handling company shares at the give-away price of Shs. 3.375 billion (US$1, 687, 500) when the company had been valued at Shs. 5 billion (US$2.5 m) and Shs. 8 billion (US$4m) by Ernest Young and DFCU respectively.( *Yunusu Abbey, (1998)," Saleh Defends ENHAS,* The New Vision*, 20th April).*

Interestingly, in several of these cases, when *Ugandan nationalism* was cited as the key consideration, the first family of President Museveni was involved. Secondly, this *nationalism* rotated around very profitable SOEs such as ENHAS, UGMC and Uganda Commercial Bank (UCB). In case of UGMC, that *Ugandan nationalism* turned out to be speculation since re-sale took place on the very first day it was transferred. In both UGMC and ENHAS cases, the decisions also turned out to be inferior because the new owners lacked capital. While UGMC went into receivership, ENHAS offered an inferior service at Entebbe Airport charging a higher price compared to what was being charged in Kenya. Despite

buying more enterprises, locals paid less money on average per enterprise compared to the foreign buyers.

Although the majority of the buyers were local, foreigners tended to buy SOEs with higher values constituting 75 % of the total divestiture proceeds while the value of SOEs bought by locals accounted for 16 % (Ddumba and Mugume, 2001:39). While the locals paid a total of Shs. 39.68497 billion (US$19.8m), the foreigners paid Shs. 187.05 billion (US$93.5m). The difference in payments was explained by government policy of promotion of local entrepreneurs as well as the limited capital base of the private sector.

On the onset of privatization, government realized the need to support local buyers of SOEs. This was because all the local resources in banks were not enough to purchase the available assets. For instance in 1989, while total bank deposits were Shs. 46 billion [US$ 46 m], total SOEs assets were valued at Shs.200 billion [US$200 m] clearly showing that locals alone could not afford to purchase all the SOEs (Museveni, 1989). In the meantime, I present another ownership type - '*state*'.

## From state to 'State' Ownership

At least two SOEs were sold to other local or foreign SOEs in a *privatization-drive*. This meant that essentially, the divestiture just replaced Central Government by another SOE or another state as in Uganda Clay Works Limited (UCWL) and UEDCL. First, before privatization Westmont Construction, a foreign company, owned 75 % and NH & CC (a SOE) and 25 % of UCL shares. NH & CC was involved in the construction of houses in the country. On privatization in 1999, the company's 500, 000 shares were offered for sale through public offerings (UCL Report, 2001:24**).** Out of a total of 60 % of the shares previously owned by government, over 45 % shares went to National Insurance Corporation (NIC) and National Social Security Fund (NSSF), both parastatals in the insurance and pension sectors respectively.

In the second instance, the giant electricity provider Uganda Electricity Board (UEB) was sold to ESKOM, another SOE of South Africa. Before privatization, UEB had a sole monopoly of generation, transmission, distribution and regulation of electricity in Uganda. On privatization in 2000, however, UEB was split into 4 companies, namely, Uganda Electricity Generation Company Limited (UEGCL), Uganda Electricity Distribution Company Limited (UEDCL), Uganda Electricity Transmission Company Ltd (UETCO), and a regulating body (ERA). ESKOM was a fully state-owned enterprise in South Africa but bought the Uganda Electricity Generation Company Limited (UEGCO). Essentially, this meant reducing the size of the Ugandan state but increasing the influence of the South African state in Uganda and also establishing a route of transfer of foreign exchange earnings since UEB was a net exporter of electricity.( Eskom had twenty-four power stations found almost in every province of South Africa and was the World's, fourth producer of electricity. Eskom targeted to pursue strategies to make her an African and global energy King.1 Ironically, South African government planned to sell 30 % shares in Eskom in 2004)

Unlike other countries, Uganda had left her power sector, the engine of economic growth, with private investors. There were many examples in and outside Africa to show that power sectors are best run by national governments and not private investors. For instance, in Africa, Algeria produces 6,468 MW; Morocco 4,687 MW, Ethiopia 1,200 MW and South Africa 4, 0676 MW but their sectors were still being run by the national governments. Elsewhere, Canada produces 104,371MW, China 116,287 MW, Japan 268,287 Mega Watts (MW) and South Korea 54,673 MW but these governments still run their power sectors.( Dickens Kamugisha, (2007), 'Mr President, let's make Bujagali different,' New Vision, 7th May, 2007). In the study, UEGCL is categorized as a private foreign-owned firm. These firms were transferred to a new 'state' ownership because the buyers were not precluded to invest in SOEs. Theoretically, however, ethical questions were raised.

## CONCLUSION

The paper set out to investigate the nature of property rights of the former state owned enterprises in Uganda. Several records both official and non-official were consulted. The results indicate that the nature of property rights of the former state owned enterprises in Uganda were complex. The new ownership of the privatized enterprises was difficult to completely describe although the major ownership type was the local-foreign pattern. The dominance of local ownership over foreign, in terms of numbers sold, was explained by political interference and a policy of local entrepreneur development. Government preferred Ugandans to FDI - a situation that tended to contradict FDI promotion efforts as shown in the sale of UGMC and ENHAS.

It was very difficult indeed to state exactly the number or types of property rights or ownership after privatization because of overlaps and cloning. An enterprise was capable of taking several forms including but not limited to local, foreign, state, mixed or joint ventures and private. For instance, local firms were either private or government. Some so-called private enterprises were parastatals (SOEs) in their countries of origin such as Eskom from South Africa that bought Uganda Electricity Generation Company Limited (UEGCL). Lastly, all SOEs assumed a legal form on registration after privatization.

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