ZIMBABWE

COMMISSION CHAIRPERSON, JUSTICE TENDAI **UCHENA'S** PRESENTATION

To

HIS EXCELLENCY, THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE

Summarising Findings and Recommendations

By

THE COMMISSION OF INQUIRY INTO THE MATTER OF SALE OF STATE LAND IN AND AROUND URBAN AREAS SINCE 2005

9 DECEMBER 2019

STATE HOUSE

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- Your Excellency, the President of the Republic of Zimbabwe, Cde E.D Mnangagwa;

- Honourable Vice President, Gen. (Rtd) Dr. C.G.D.N. Chiwenga;

- Honourable Vice President, Col. (Rtd) Cde. K. C.D. Mohadi;

- Honourable Minister of Local Government and Public Works, July Moyo;

- Chief Secretary to the President and Cabinet, Dr. M.J.M Sibanda;

- Deputy Chief Secretaries to the President and Cabinet;

- Fellow Commissioners;

- Secretary to the Commission; Mrs. V. Mabiza;

- Members of the Secretariat.

1. Introduction

- Your Excellency, on behalf of the Commission of Inquiry which you appointed on 1 February 2018, I present to you Your Excellency, the Commission's Report on findings and recommendations of the Commission.
- Section 7 (c) of the Commissions of Inquiry Act [*Chapter 10:07*] and Paragraph f (vi) of SI 102 of 2017 place an obligation on us as the Commission to report to you your Excellency, in writing, the result of the Inquiry.

2. The Reports

- Your Excellency, Given the nature of Inquiry, we produced three (3) categories of reports which we shall present to you as follows:

a) A Main Report which presents the background against which the Commission was established; the procedure which the Commission adopted in the execution of its mandate and an outline of the applicable laws, policies and procedures on urban state land administration. The Main Report should be read together with the Provincial Reports.

b) Provincial Reports which present findings and recommendations of the Commission on all the investigated farms/urban state land units in the ten (10) Provinces of the country:

c) The Executive Summary specifically produced for your reference, Your Excellency, which summarises the Main Report and findings and recommendations arising from the

inquiry into the sale of urban state land since 2005 in the ten (10) provinces.

3. Methodology

- Your Excellency, Section 11 of the Commissions of Inquiry Act and Paragraph f (v) of S.I. 102 of 2017 guided us on the methodology we had to adopt in order for us to arrive at the findings and recommendations we made for the Report.
- Our methodology was inquisitorial. This approach allowed witnesses to freely adduce evidence before us without adhering to stringent rules of evidence.
- The methodology is outlined under Item 1.4 of your Executive Summary.

4. Summary of Findings

- Your Excellency, our findings which are outlined both in the Main Report and Provincial Reports and summarised in your Executive Summary were guided by the Terms of References you prescribed for the Commission. I will touch on the Commission's findings on a few selected issues of interest:
    - Handover of Farms for Urban Development;
    - Payment of Intrinsic Value for urban state land;
    - Infrastructure development needs; and
    - Other findings

Handover of Farms for Urban Development

- The Commission established that generally, sale of urban state land, planning and development took place on 91 farms which were acquired by the Ministry responsible for lands and handed over for urban development to the Ministry responsible for Local Government. Sale of urban state land, planning and development also took place on 79 farms which were acquired by government before such farms were handed over for urban development. This makes a total of 170 farms in and around urban areas where urban development is taking place.
- People in the farms/ urban state units or settlements we inquired on are living without basic human and urban necessities such as access to potable water, sewer and access roads.
- Over and above farms acquired since 2005, the Commission inquired into land which has always been state land under the jurisdiction of the Ministry responsible for Local Government, in terms of paragraph (f) (vi) of S.I 102 of 2017 which allowed the Commission to investigate any other matter which it deemed appropriate and relevant to the inquiry.

Payment of Intrinsic Value

- The Commission established that the Ministry responsible for Local Government has a responsibility to value all the farms handed over to it and recover the monetary value from the local authorities, developers and cooperatives in the form of intrinsic value.

- However, the Ministry responsible for Local Government has not been able to value all the farms utilised for urban development.
- Accordingly, planning, allocations, development and occupation have taken place without valuation for most farms.
- The Commission's computation of the total value of the farms according to the Ministry responsible for Local Government is USD3 004 368.931 *[three billion four million three hundred and sixty eight thousand nine hundred and thirty one United States Dollars]*
- However, the government of Zimbabwe has recovered less than 10% of the intrinsic value of the land and is owed almost three (3) billion United States Dollars by beneficiaries of urban state land. To be exact, the total full prejudice to the State stands at USD 2 977 072 819 *[two billion nine hundred and seventy seven million eight hundred and 19 thousand united states dollars]*

Infrastructure Development

- The Commission established with serious concern that most new residential estates on urban state land throughout the country have no services such as roads, water reticulation, sewer reticulation and amenities, yet these settlements are already occupied.
- The Commission further established that in some cases where development is taking place, it is being done without

approved engineering designs for roads, water and sewer reticulation.

- The Commission found that for infrastructural development in urban settlements the country needs USD 1,420,241,598 [*one billion four hundred and twenty million two hundred and forty one thousand five hundred and ninety eight]* for roads; USD 857,721,234 [*eight hundred and fifty seven million seven hundred and twenty one thousand two hundred and thirty four*] for sewer; and USD 226,315,016 *[two hundred and twenty six million three hundred and fifteen thousand and sixteen]* for water. This adds up to USD 2,504,277,849 *[two billion five hundred and four million two hundred and seventy seven thousand eight hundred and forty nine]* for the whole infrastructural needs of urban state land in and around urban areas since 2005.

Other Findings

- The identification and Occupation of farms in and around urban areas was a complex process, which involved:
  a) Farm invasions by home-seekers;
  b) Farm invasions by war veterans for agricultural purposes, which subsequently morphed into urban settlements;
  c) Allocations to co-operatives, trusts and land developers by the Ministry responsible for Lands and Ministry responsible for Local Government;

d) Creation of new urban settlements by aspiring or sitting Members of Parliament as a way of mobilizing political support;
e) Abuse of political office in the allocation and appropriation of urban state land; and
f) Use of names of top ruling party leadership to exert undue influence on Government institutions and processes.

- This led to:
  a) The illegal sale of urban state land;
  b) Cooperative leaders and developers selling state land and pocketing the proceeds without developing on-site and off-site infrastructure;
  c) Weakened Government institutions, inadequate policies, administrative and state land development control roles;
  d) Creation of opportunities for land barons/criminals to sell urban state land. Land barons are usually politically-connected, powerful, self-proclaimed illegal state land 'authorities' who illegally sold state land in and around urban areas without accounting for the proceeds;
  e) Housing development has occurred on unplanned areas such as: wetlands, under power lines, on top of sewer lines, sites designated for institutional or commercial use (schools and clinics), and recreational centres and for other public uses.
- The State suffered prejudice due to losses, which occurred as a result of Ministry of Local Government undervaluing

urban state land or complete failure to value it, poor record keeping, poor financial management and failure to invoice developers and beneficiaries of urban state land;

- In an attempt to accelerate housing delivery, Ministry of Local Government introduced the policy of parallel development resulting in houses being built without adequate services such as access roads, water and sewer reticulation.
- As a result of lack of water and sewer reticulation, pit latrines have been built very close to water sources, thus polluting the underground water sources and creating circumstances which can cause the outbreak of water borne diseases.

5. Cases for Further Investigations

- The Commission established that there are several serious cases which require further investigations by relevant bodies which have arresting and enforcement powers such as the Zimbabwe Anti-Corruption Commission, National Prosecuting Authority and Zimbabwe Republic Police.
- The statistics for cases recommended for further investigations are as follows:

Province	No. of Cases for Further Investigations
Harare Metropolitan	156
Mashonaland Central	25
Mashonaland East	120
Mashonaland West	50
Midlands	27
Manicaland	22

Masvingo	21
Matabeleland South	5
Matabeleland North and Bulawayo Metropolitan	5
Total	431

6. Recommendations

- Your Excellency, while both the Main Report and Provincial Reports have presented recommendations, allow me to outline some of the Ministry-Specific recommendations which may be prioritised.
- The Commission recommends the following:

6.1. Ministry-Specific Recommendations

a) Ministry of Local Government

The Ministry Should:

- Suspend new allocations of un-serviced urban state land to co-operatives, trusts, land developers and individuals for housing development.
- Carefully scrutinize all pending applications for approval under Section 43 of the Regional Town and Country Planning Act and Section 205 of the Urban Councils Act to ensure that no new settlements are approved without compliance with all planning and development requirements.
- Suspend approval of lay out plans where there is no clear indication of how off-site infrastructure will be provided.
- Suspend approval of sub-division permits in terms of Section 40 of the Regional Town and Country Planning Act for acquired urban state land where indigenous persons are claiming ownership of state land until issues of ownership are resolved.

- Prohibit local authorities from issuing parallel development permits to enable beneficiaries to settle and develop before on-site and off-site infrastructure is put in place.
- Suspend consideration of applications for conversion of acquired agricultural land use to urban.
- Sign all outstanding memoranda of understanding, draw up and sign Memorandum of Agreements for co-operatives, trusts, land developers and individuals who were allocated un-serviced land through offer letters and partnership agreements.
- Cause valuation of all urban state land handed over to it by the Ministry responsible for Lands and allocated to co-operatives, trusts, land developers and individuals who should be required to pay intrinsic value.
- Investigate all officers, past and present, involved or connected with management of urban state land (allocation, planning, valuations, survey, and allocation of commonage, creation and transfer of title) since 2005 on allegations of abuse of office, receiving bribes, and general corrupt conduct; and conduct lifestyle audits on them.
- Enforce payment of intrinsic value by all allocatees of urban state land based on updated valuations of urban state land.
- Update all records of urban state land handed over to it by MLRR and urban state land developed for housing before such hand over.
- Review with a view to cancelling or enforcing all Memorandum of Agreements with co-operatives, trusts, land

developers and individuals, which are long outstanding where there is no meaningful development on the ground.

- Review its policy on sale of urban state land clearly stating the roles of the Ministry responsible for Local Government and defining elements of illegal sale of state land.
- Establish an interim management body or structure for areas such as Caledonia, Nyatsime and Crowhill in order to fill the administrative vacuum and spearhead development.

b) Ministry responsible for Lands, Agriculture, Water and Rural Re-settlement (MLRR)

The Ministry Should:

- In view of the water crisis affecting every city and urban sprawl which has taken place without water supply posing a serious risk of outbreak of water borne diseases such as cholera and typhoid in towns and cities, it is imperative that the Zimbabwe National Water Authority, working in conjunction with Catchment Councils, takes urgent steps to utilize all available nearby water bodies to supply additional bulk water to towns and cities while awaiting the development of long term projects such as Kunzvi Dam, Gwaai-Shangani Dam and Muda Dam.
- Update all records of state land handed over to Ministry responsible for Local Government for urban development purposes.
- In consultation with Ministry responsible for Local Government, identify record and hand over all state land

acquired since 2005, which is being used for urban development.

- Respond to all requests by Ministry responsible for Local Government for handover of land for urban development.
- Exercise due diligence in the issuance of certificates of No Present Interest to avoid issuing such certificates in respect of acquired state land as happened in the cases of Zimati kop and Rockingstone farms in Makoni district near Rusape town or issuing large tracts of state land to one beneficiary because of their political connections such as land which was offered to Muungwe Properties (Pvt) Ltd owned by one family in Makoni District which is almost the size of land occupied by Rusape Town Council.
- Investigate all officers, past and present, involved or connected with the issuance of certificates of No Present Interest, handover of stateland to Ministry responsible for Local Government without authority and transfer of acquired land to individuals.
- Not directly allocate or settle beneficiaries for housing development.
- Not settle people for farming within municipal boundaries.

c) The Department/Ministry responsible for Cooperatives
The Department Should:

- With immediate effect, effectively supervise housing cooperatives by ensuring that they prepare and submit audited annual financial reports and financial statements.

- Update its records of all registered and compliant housing cooperatives with a view to de-registering non-compliant cooperatives.
- Enforce punitive measures provided for in the Cooperative Societies Act against non-compliant housing cooperatives.
- Monitor the operations of housing cooperatives to ensure strict compliance with the law in terms of the Cooperatives Societies Act.

d) The Ministry of Justice, Legal and Parliamentary Affairs

The Ministry Should:

- Cause an audit of all urban state land transfer records in the Deeds Registry offices (Harare and Bulawayo) with a view to identifying un-procedurally transferred urban state land (to be carried out by the Auditor General's office).
- Ensure that the Deeds Registry system is computerised to minimise tampering with transfer records.
- Ensure that all title deeds of acquired farms are endorsed as such.
- Ensure that the Deeds Registry, after consulting with Ministry responsible for Local Government and Ministry responsible for Lands and other relevant authorities, keeps a proper inventory of all acquired farms/urban state land units.

e) The Judicial Services Commission

The Commission should:

- Introduce specialised land courts to deal with land disputes, sale of urban state land, allocations among other issues quite distinct from the Administrative court.
- Ensure that judicial officers are trained on handling land disputes.
- Ensure that the courts expeditiously deal with cases involving sale of state land.
- The judicial system should be tightened to prevent the production of fake court orders.

f) The Ministry of Home Affairs and Culture

The Ministry Should:

- Introduce specialised police units to investigate land disputes, sale of urban state land, allocations among other issues quite distinct from the Land Inspectorate.
- Ensure that police officers are trained in investigating cases of abuse of state land.
- Ensure that police officers expeditiously and fully investigate all reported and suspected land cases.

g)The Ministry of Finance and Economic Development

The Ministry of Finance Should:

- Follow up on individuals, land developers, housing trusts, housing cooperatives and institutions involved in land development for compliance with tax obligations arising from their operations.

- Taxation on change of use and non-agricultural use should be restrictive to discourage farmers from offering their land for urban development.

6.2. General Recommendations

- In view of the water crisis affecting every city and urban sprawl which has taken place without water supply posing a serious risk of outbreak of water borne diseases such as cholera and typhoid in towns and cities, it is imperative that the Zimbabwe National Water Authority, working in conjunction with Catchment Councils, takes urgent steps to utilize all available nearby water bodies to supply additional bulk water to towns and cities while awaiting the development of long term projects such as Kunzvi Dam, Gwaai-Shangani Dam and Muda Dam.
- Government should insulate urban state land administration from corrupt and negative political influence.
- The Ministry responsible for Local Government's current position on the elements of illegal sale of state land should be refined to clearly spell out circumstances, which constitute civil and criminal liability. The illegality referred to by the Ministry responsible for Local Government may be a breach of contract, which may not, subject to the full facts of each case, be a criminal offence.
- The Ministry responsible for Local Government should carefully look into all its state land records of allocated land to enable it to do the following:

i. To audit and compile an inventory of all urban state land units and allocatees.
ii. To complete valuation of all urban state land/units and issue invoices to allocatees.
iii. To claim from allocatees who sold its land the value of such land.
iv. To ensure that all allocatees sign Memorandum of Agreements, Partnership Agreements or Agreements of Sale.
v. To enforce compliance by allocatees with conditions of allocation as contained in the offer letters, Memorandum of Agreements and partnership agreements, in particular the provision of infrastructure.
vi. To, where applicable, regularize plans and development on its urban state land in order to comply with planning and development standards.
vii. To audit all urban state land and compile an inventory of commonage, institutional, commercial and industrial stands receipts and allocations.
viii. To facilitate the issuance of enforcement orders against illegal developments.
ix. Pursue criminal prosecutions against cooperative leaders, trusts leaders, developers, companies and individuals who sold urban state land

- There is need to enact/review targeted laws to regulate:

i. Urban state land administration, specifically regulating allocations, withdrawals, valuation, intrinsic land value, structural aspects thereof, and commonage.
ii. Housing Development trusts.
iii. Housing Development cooperatives.

7. Implementation Strategy

- Your Excellency, the Commission's findings highlight five interrelated challenges that the government must attend to if the country is to succeed in spearheading sustainable urban development as follows:

a) The violation of urban development laws and policies;
b) Inadequate urban development laws and policies;
c) Deficits in infrastructure provision;
d) Weakened local government systems; and
e) Weak Central Government monitoring role.

- Your Excellency, failure to confront these challenges is a threat to society in terms of outbreak of disease, dissatisfied population and poor performance of the economy.
- There is need to upgrade the various settlements created and bring infrastructure development to a desirable urban development standard as soon as possible.
- Evidence on the ground shows lack of capacity for infrastructural development in both Central Government and Local Authority levels. The task is onerous hence there is need for joint actions and coordination. The Office of

President and Cabinet appears well placed to handle this task.

The Proposal- Special purpose Vehicle

- It is recommended that the OPC creates a special purpose vehicle for taking up this task. This special vehicle should be given the responsibility to develop the required standard of infrastructure and then hand it over to local authorities for maintenance. Some Local authorities were in the past, not involved in the identification and allocation of urban state land under their jurisdiction. It is their mandate to provide this infrastructure.
- The special vehicle should not be viewed as another addition to bureaucracy. It must be given a special task, targets and timeframes to complete the assignment. It should not be kept for more than ten years.
- The primary objective of establishing the special purpose vehicle is to strengthen the country's technical, financial and institutional capacity to supply affordable housing and comfortable cities and towns through reform of:
    a) the urban land management system to establish a steady land market and improve accessibility to affordable land for housing, commerce and industry;
    b) the urban development infrastructure system to improve the supply of serviced land;
    c) the housing delivery system including financial systems to improve access to finance and mortgage; and,

d) Local government institutions for the supply of urban infrastructure and related services.

- A Cabinet Committee may be necessary for the supervision of this special purpose vehicle.
- A Working Party of Permanent Secretaries is needed to synthesize and monitor the implementation of the special purpose vehicle's mandate and to take timely corrective action.
- A Secretariat is important for the planning and coordination of the various specialized programmes.
- The special vehicle needs to be well integrated with the key line Ministries.
- It is suggested that the bulk of the staff with the necessary expertise for the special purpose vehicle be seconded from the line Ministries.
- The special purpose vehicle has budgetary implications which government has to fund or may approach its partners for such support.
- The following four components are suggested for the special purpose vehicle's mandate:

a) Institutional Development Component;
b) Finance and Development Component;
c) Capital Development Component; and
d) Capacity building and Skills Development

8. Presentation of Reports

- Your Excellency, allow me to present to you the Executive Summary: *[handing over to His Excellency the President]*

- Further, allow me Your Excellency to present the Main Report: *[handing over to His Excellency the President]*

- Allow me Your Excellency, to present the Reports on findings and recommendations for Ten (10) Provinces arranged in the following order:

a) Report on findings and recommendations for Harare Metropolitan Province;
b) Report on findings and recommendations for Mashonaland Central Province;
c) Report on findings and recommendations for Mashonaland East Province;
d) Report on findings and recommendations for Mashonaland West Province;
e) Report on findings and recommendations for Manicaland Province;
f) Report on findings and recommendations for Masvingo Province;
g) Report on findings and recommendations for Matabeleland South Province;
h) Report on findings and recommendations for Midlands Province; and

i) Combined Report on findings and recommendations for Bulawayo Metropolitan and Matabeleland North Provinces.

[Handover to His Excellency the President]

- We have also printed extra copies for you and your office. *[Handover to His Excellency the President]*

9. Conclusion

- Let me take this opportunity to thank you and your office for the support you extended to us since the day you swore us in to work as Commissioners.
- I also wish to convey my gratitude and that of the Commissioners for the opportunity you availed to us to learn and deepen our experience in the area of urban state land administration.

I thank you Your Excellency