

ZIMBABWE BRIEFING

a crisis in zimbabwe coalition regional office weekly report

27 June - 04 July 2012

ISSUE 80



A New “Indigenous” Stock Market for Zimbabwe?

I WONDER if designers of the indigenisation laws considered the practical ramifications of the 51% indigenous ownership rule particularly in the case of publicly-listed companies. It effectively means that 51% of all publicly-traded companies required to comply with the laws will be restricted to a market of indigenous investors. Not only does it require vigilant and systematic monitoring, but it is apparent that there will inevitably be a distortion of the stock market. Just in case not everyone is familiar with the operation of stock markets where listed companies' shares are traded, perhaps a little very basic description is in order. There are two types of companies – private and public. The latter is allowed to market its shares to the public whereas the private company is not. Usually, most companies start off private, with less onerous obligations. But the company's ability to raise funds from the public is limited since it is restricted from selling shares publicly. So as the business grows, it makes sense to convert from private to public company status. For practical purposes, it also makes sense to simultaneously have the company's shares listed on a stock exchange, such as in our case, the Zimbabwe Stock Exchange.

The stock exchange is the equivalent of *Musika*, the farmers' market. The shares are there for all to see and for anyone to buy just as the farmers' tomatoes from whatever part of the country are there for all to view and buy at *Musika*. The main purpose of listing is to bring your company's shares to a platform where they will be visible to and tradable by more people. And because you are seeking to raise capital, it makes sense to list on the shares *musika*. To extend the analogy further, the Mrehwa farmer figures it probably makes better business sense to bring his tomato harvest to *Mbare Musika* than to stand by the roadside along the Harare – Nyamapanda road. He knows the market at Mbare Musika is bigger than at the roadside market. In the same way owners of public companies who wish to raise more funds know that they must go to the stock market and use the facility to sell the company's shares to the wider public. Usually, the biggest companies are listed on the stock market. But because the shares can be bought and sold by and to any person, there is always the risk that the founder can lose control of his company – hence the



A Media Briefing by Upfumi Kuvadiki, a Zanu PF militant aligned group being used in the Indeginasation Programme, March 2012: Pic by Media Centre

phenomenon of friendly and hostile takeovers of companies. There is a whole body of literature analysing the pros and cons of takeovers but suffice to say it is a natural phenomenon arising from the public character of the stock market.

As we have seen, the beauty of the stock market is that Investor A can sell his shares to Investor X without ever having met each other; without ever having spoken a word between them – these transactions usually take place through professionals called share brokers. Investor A can be a red Zimbabwean selling his shares to Investor X who is a blue Zimbabwean or a green European. All Investor A needs is money for the value of his shares. What prompts him to sell is probably that the company's share price on the stock market would have risen because the market perceives that the company is doing well. But there has to be someone available and willing to buy and he does not want the cost of searching and verifying the identity of the buyer. In fact, such searches could reduce the market's efficiency – it negates the whole aim of listing company shares and facilitating ease of trades.

With the indigenisation laws, however, it means 51% of the company must at all times remain in the hands of the indigenous as defined in the law. As an indigenous investor, you must sell your shares to another indigenous investor. You no longer have the liberty to sell to anyone else. Essentially, it means that the market for indigenous share owners in listed companies will have to be restricted to indigenous buyers only for to sell to a foreigner would upset the balance. The implication of this is the creation of a severely restricted 'secondary' market for indigenous

investors. It also means a severe distortion of the stock market and limitations in terms of access to capital for Zimbabwean listed companies – since at least 51% of what they seek can only be raised among locals. But then, what if the indigenous buyers are limited or unwilling to pay the price? This punishes even the honest and hard-working indigenous investor who owned shares before the inception of this rule because suddenly he finds himself with a restricted market of indigenous buyers. I could go on and consider how this will affect the take-overs market especially where companies are really struggling and need another company to bail them out via take-over.

I could go on and discuss the difference in the types of securities issued to investors – preference shares, ordinary shares, debentures, etc – issued by companies seeking to raise capital and how this will also be affected by the regulations. The larger question, of course, is how all this will be enforced going forward. Unless there is a formal indigenous securities' market, it's difficult to see how the restrictions on sales will be enforced on a regular basis. And it will prove cumbersome for indigenous investors to trade their shares without flouting the regulations. In addition, it's hard to see how publicly listed companies can be made accountable for change of ownership of shares between investors. Once given to the indigenous investors, the company can have no control over what the indigenous investor does with the shares. The share represents the investor's interest in the company and the investor has a legitimate right to deal in the share as he deems fit. The indigenous investor is free to keep or sell the shares in accordance with stock market norms. To restrict him would be to

deny him his freedom too and therefore negate the whole essence of empowerment.

Perhaps the state would have put in place a rule that gives them the right of first refusal in the public share market. This would have the effect that whenever an indigenous investor wants to sell his shares, he would be obliged to make a first offer to the state which would decide whether or not to buy. But surely, if the state had the resources to buy the shares in public companies, they would simply have bought 51% of every foreign-owned company and then sell on the shares to indigenous Zimbabweans. The state has no money.

In fact, inserting the right of first refusal would not work just as it didn't work in relation to the land issue when the state failed to maximise on its right of first refusal for many years after independence in 1980. In any event, the state has a poor record in business management as evidenced by the demise of almost every company in which it has a majority interest, the ailing Air Zimbabwe being a prime example. Furthermore, it would have the potential to create a bureaucratic and cumbersome process that would cause stock market inefficiencies.

As I have always maintained, I have no problem whatsoever with the theory behind policies to take ordinary people out of poverty and to benefit local communities from natural resources. Some people think when we are critical and point to loopholes that we are stridently opposed to ideas of empowerment. No, we are not. We simply plead that there be some modest investment in careful thought before taking steps that ultimately kill the proverbial goose that lays the golden eggs. I am not sure if the practical ramifications discussed above were considered and if so, whether there are mechanisms in place to deal with the challenges.

When all is said and done, the great tragedy is that there is no ideological shift at all behind the indigenisation agenda – it is not challenging the neo-liberal capitalist system – rather it is an attempt to remove the shoes from the feet of one set of owners of capital and into them place the feet of a new set of owners, albeit bearing a different complexion. There is nothing original or revolutionary about it and that is what is really and truly sad.

By Alex Magaisa

E-mail: wamagaisa@yahoo.co.uk

Disappearing Diamond Revenue & the Next Election

Coordinator's Note 80



dewaMavhinga

With the admission, although later hurriedly retracted, by the MDC-T deputy mines minister Gift Chimankire, that the army partly owns Marange's biggest diamond mining company, Anjin, it has become clear why Zimbabweans have a well-founded fear that the disappearing diamond revenue will be used to fund a violent election. At law, the current parliament term expires at the end of June 2013, and both president Mugabe and Zanu PF have demanded polls within the next twelve months, clearly in the absence of critical reforms that would dismantle the infrastructure of violence and pave way for credible, free and fair elections.

In recent weeks a number of senior army officials including Major-Generals Chedondo and Mugoba have publicly declared their association and allegiance to Zanu PF, and in turn, the former liberation movement has made public calls for the new constitution being crafted to enshrine the right of soldiers to participate in party politics. Credible reports, which both the defence minister Mnangagwa and finance minister Tendai Biti have confirmed, point to a massive recruitment drive into the security forces in the last few months alone. Another thing that has become clear with time is that the Kimberley Process Certification Scheme (KPCS) made a monumental blunder when it cleared Marange diamonds to be sold internationally notwithstanding a glaring failure by the government of Zimbabwe to address serious human rights abuses perpetrated mainly by the army in Marange since 2008. There is absolute lack of accountability regarding the diamond revenue amid widespread speculation that while the Chinese, through the company Anjin, may be creaming some of the revenue, the but of the diamond revenue may be used to fund a violent election on a scale worse than witnessed in 2008.

That Marange diamond revenue is disappearing into thin air, however, should not come as a surprise. Senior Zanu PF official and Mines Minister Obert Mpofu had elaborately set the stage early for diamond revenue to be channeled away from government treasury through the establishment of companies to mine diamonds under unclear circumstances, with unknown share-holding structures contrary to the requirements of Zimbabwe laws regarding due diligence and public tender procedures. In 2008 minister Mpofu orchestrated the booting out of legitimate mining company, African Consolidated Resources (ACR) and in July and August of the same year licensed Mbada Diamonds and Canadile Miners to mine for Marange diamonds. It is on public record that the leadership of these companies is closely aligned to Zanu PF and particularly to president Mugabe, with the Chairman of Mbada Diamonds, Robert Mhlanga, having served as Mugabe's personal helicopter

pilot for some 20 years. Mhlanga sits on the Mbada Board together with his daughter, Patience.

Further, the minister of mines granted a mining licence to a group of serving soldiers who partnered with the Chinese to form Anjin company. Again the operations are opaque and production figures are disputed. Research into the quality of Marange diamonds, including by the Kimberley Process Certification Scheme (KPCS) suggests that the diamonds are 15 per cent high quality gemstones and 85 per cent cheaper, industrial diamonds. Unofficial estimates presented to Parliament are that Mbada diamonds realised an astonishing \$1,4 billion (United States Dollars) for actual raw diamond sales in 2010 and \$1,7 billion dollars in 2011. Taking the other mining companies into account estimated annual sales from Marange diamond fields could over \$4 billion dollars a year. The Mines Minister Mpofu himself had at some point estimated that Marange diamonds had the potential to generate over \$2 billion

human rights abuses and to trace diamond revenue to see if it is benefiting the people of Zimbabwe in any way. In accordance with the KPCS Administrative decision of 1 November 2011, the government of Zimbabwe eventually agreed to allow civil society representatives to visit Marange diamond fields. The civil society groups referred to as the KPCS Local Focal Point including Crisis in Zimbabwe Coalition, Counselling Services Unit, Centre for Research and Development, the National Association of Human Rights and Zimbabwe Lawyers for Human Rights then visited Marange diamond fields on the 7th and 8th of March 2012. Two major issues of concern raised by the civil society representative following the visit, confirming the opaque and unaccountable nature of operations, were:

The CSOs could not access mine level data and therefore could not establish the quantity and quality of diamonds produced. All mining companies visited claimed that this information is not available during the

The civil society investigation mission into Marange was frustrated by lack of access to credible information pointing to a deliberate attempt by companies involved to hide relevant data and information. It is clear that the nation is not benefiting as much as it should from diamond revenue accruing for Marange. In Botswana, where similar conditions prevail in the diamond industry, over two thirds of all revenue from the sale of raw diamonds accrues to the State. In Zimbabwe, such an arrangement would enable us to collect very substantial resources each year from the Marange field and this would transform our national fiscal situation. As a result of continued lack of transparency and accountability regarding diamond revenue and its failure to benefit the people of Zimbabwe at large, civil society groups have recommended the ownership model at Marange Resources of 100% control by the state as the best model to follow in promoting the best interest of the people of Zimbabwe. This position is supported by the senior officials in the Morgan Tsvangirai led Movement for Democratic Change (MDC) party including Eddie Cross who have called for the Marange deposits should be nationalised formally and brought under direct government control to ensure a full measure of transparency and accountability.

The demand for full accountability and transparency is not just to ensure that the nation so much in need of cash benefits, but more so to ensure that diamond revenue is not channeled, as is widely feared, to build a war chest to fund electoral violence during upcoming elections expected within the next twelve months. The inclusive government has been unable to dismantle the infrastructure of violence or to guarantee conditions for holding credible, peaceful, free and fair elections.

One of the reasons why there was some support for Zimbabwe to be licensed by the KPCS to legally sell its diamonds on the international market was that it was the only way that the finance minister could keep track of diamond revenue, however, the reality is that even with under the supervision of the KPCS, there is no accountability or transparency regarding the flow of Marange diamonds revenue. For now, the diamond revenue is largely benefiting a few individuals with close connections to the military and to Zanu PF which controls the diamond fields and determines which individuals or companies get to be awarded mining tenders there.

By Dewa Mavhinga Regional Coordinator, Crisis in Zimbabwe Coalition



Workers demand a share of the Zimbabwe's diamonds during the 2012 May Day celebrations in Harare Gardens, copyright Dewa Mavhinga

The civil society investigation mission into Marange was frustrated by lack of access to credible information pointing to a deliberate attempt by companies involved to hide relevant data and information. It is clear that the nation is not benefiting as much as it should from diamond revenue accruing for Marange.

per year. Amid strong suspicions that the Mines minister has repeatedly misled Parliament on the issue of the magnitude and value of diamond sales from the Marange fields, finance minister Tendai Biti disclosed that in 2010 government only received \$80 million. He called his forecast, that government expected to get \$600 million from diamond exports out of Marange in 2011, "minuscule." Notwithstanding, government only got a tiny fraction of the expected income.

Civil Society groups have battled to access the Marange diamond fields to investigate

time of the visit. There is need to improve the issues of transparency and accountability on production data, revenues generated and allocation of mining rights.

The absence of adequate data and information on the diamond resource in Marange is problematic. There is need for government to carry out comprehensive exploration and put in place legal, policy, institutional and financial measures to address this.

UPCOMING EVENTS

3 to 6 July 2012 Namibia Advocacy Mission

9– 16 July African Union Summit, Addis Ababa, Ethiopia

17 to 20 July 2012 Tanzania Advocacy Mission

Zimbabwe Must Demonstrate Commitment to End Torture

Yesterday, 26 June, the world marked the United Nations International Day in Support of Victims of Torture. Torture and other forms of cruel, inhuman or degrading treatment or punishment are still widespread in Zimbabwe despite the prohibition of torture in the current constitution (section 15) and the new draft constitution (section 4.5). The government of Zimbabwe recently indicated its willingness to ratify the Convention Against Torture (CAT).

Crisis in Zimbabwe Coalition and other civil society organization call upon the government of Zimbabwe to criminalize torture in all its national laws and policies and to consider creating



an independent civilian oversight body for the police and other security opera-

Gabriel Shumba in suit, Executive Director of Zimbabwe Exiles Forum, demonstrating outside the Pretoria High Court in April asking the South African authorities to investigate and arrest perpetrators of political violence and torture in Zimbabwe when they come to South Africa

tives and adopt other measures to prevent incidents of torture.

Dewa Mavhinga, Regional Coordinator, Crisis in Zimbabwe Coalition

New Report Confirms Murky Diamond Dealings

A newly released report by Global Witness confirms our concerns that the Kimberley Process clearance of Marange diamonds for international trade was both premature and ill-advised. The report exposes how Zimbabwe's army and Central Intelligence Organization, together with named Chinese individuals, are involved in the Marange diamond business in ways that could directly undermine Zimbabwe's democracy. The report reveals how Sam Pa, a Chinese businessman based in Hong Kong has given off-budget financing to the CIO and how members of the CIO are directors of a group of companies, Sino Zimbabwe Development.

The named CIO operatives include: Gift Kalisto Machengete, identified as

a Director of Finance and Administration in the CIO, Pritchard Zhou, a former Minister-Counselor at the Zimbabwean Embassy in South Africa and Masimba Ignatius Kamba.

Key recommendations from Global Witness include:

- ◆ The reform of Zimbabwe's partisan security forces requires democratic and civilian control of their budgets;
- ◆ That Zimbabwe's Government of National Unity (GNU) should pass legislation banning serving and recently retired members of the military, police, the CIO and other members of the security services from con-



trol over, or beneficial ownership of, mining companies;

- ◆ That consumers should not buy diamonds originating from Zimbabwe's Marange mines until they can be certain they will not fund the Zimbabwean secret police, military and police; and that companies should conduct due diligence investigations into the source of their rough diamonds.

Dewa Mavhinga - Regional Coordinator, Crisis In Zimbabwe Coalition

Corruption Crippling Zimbabwe's Health Sector : TIZ

It is regrettable that corruption has found hostage in other sectors within the country particularly the health sector. The health sector has been crippled in the past decade due to economic meltdown. Currently the sector is on its path to recovery but despite such efforts corruption has remained rife. Despite having laws aimed at curbing corruption, the health sector continues to be transfused with reports of alleged abuse of public medical resources.



Reports have revealed that medical staff at government and municipal health institutions are alleged to be stealing drugs for re-selling in private pharmacies and in the illegal selling markets. Cases continue to accelerate at an alarming rate due to the fact that the government is lenient in applying and enforcing anti-corruption laws. The worst case is the failure by government to provide adequate anti-retroviral drugs to HIV positive pa-

tients but reports have shown that such drugs are being obtained from private health practitioners at exorbitant prices.

96 Central Avenue, Harare
Fax :263-4-793 246/7
www.transparency.org.zw

Inbrief Around Zimbabwe

EU Delegate's Tour of Marange Diamond Fields

EU diplomats started a tour of the Marange diamond fields in the Manicaland province, eastern Zimbabwe yesterday the 26th of June 2012. The two day tour by the delegates is the first by foreign diplomats. The delegates are being led by European Union head of delegation to Zimbabwe, Aldo Dell'Ariccia. The delegation comprises of ambassadors from Australia, Belgium, Canada, Czech Republic, Denmark, France, Germany and Spain. The tour will see the delegates visiting the controversial Marange diamonds and also Arda Transau where villagers from Marange were relocated. The visit comes at a time when Global Witness published a damning report confirming fears that unremitted revenue from the Marange diamond fields is being used to finance a parallel government. Full report is on link <http://www.globalwitness.org/sites/default/files/library/Financ->

[ing a parallel government Zimbabwe.pdf](#). The visit is in response to an invitation by the Mines Ministry which is trying to justify that the Marange diamonds "comply" with the Kimberly Process.

Progress in Drafting of the New Constitution

Sources in the COPAC negotiating team have indicated that they have reached consensus on the issue including devolution in the new constitution. Under the deal agreed by the three negotiating parties, the country's 10 provinces will each have a provincial assembly made up of Members of Parliament and Senators from that area, representatives of local authorities and 10 individuals elected by proportional representation as well as a provincial governor. The provincial assembly will nominate two possible candidates for governor which they will forward to the President who will choose from the two, according to sources familiar with the negotiations. Under the cur-

rent constitution, the President appoints governors who are invariably members of his party, ZANU PF.

Zimbabwe Information and Communication Technology Statistics

Recent estimates are that the Zimbabwe population stands at 12 million, with 9 million mobile phones users, 2 million internet users, 1 million on Facebook and 700 000 using mobile phones to access the internet.

This positive development in use of technology for communication and information sharing can be harnessed in communicating with the people especially in the current environment which is characterized by repressive legislation like the Access to Information and Protection of Privacy Act .

Women of Zimbabwe Arise (WOZA) Arrested in Bulawayo

OVER 100 members of Women of

Zimbabwe Arise (WOZA) are in custody at Bulawayo Central Police station, many are handcuffed in violation of women's right protocols. Riot Police ran wildly around the Main Street and 8th Avenue intersection on orders of their Officer Commanding Bulawayo who was present to demand they arrest members. Lawyers have been denied access on three separate occasions.

Those in custody include WOZA leader Magodonga Mahlangu, three minor children who are not members of WOZA and 3 breastfeeding mothers in custody. WOZA national coordinator Jenni Williams was not arrested. Ten protests were due to start at 11am Wednesday 27 June 2012 but Riot police had already arrested 40 members and by-standers by 10:30am.

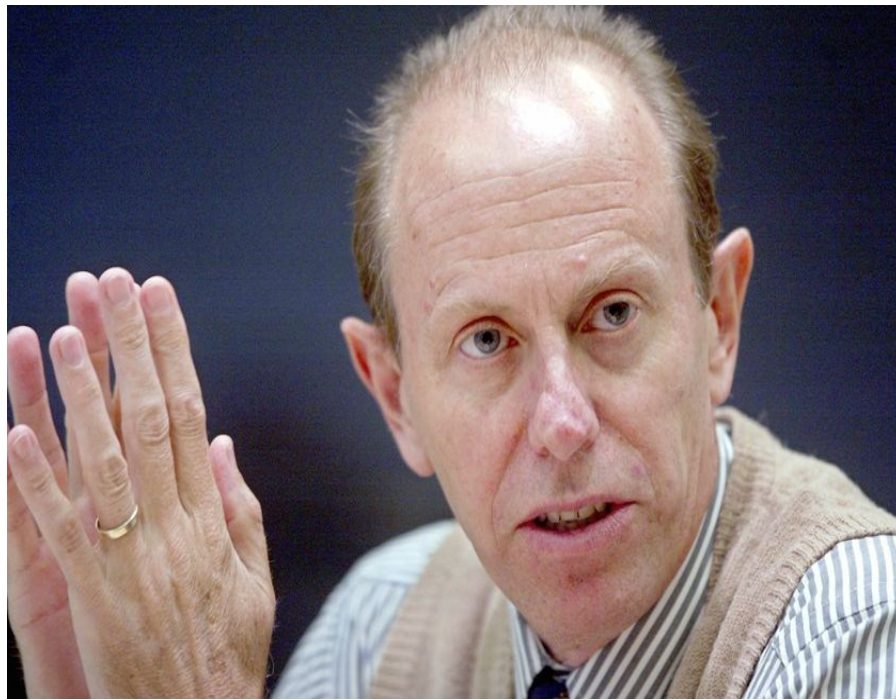
Only 3 of the ten protests made it to the sit-in location will be the road surrounding the space where the memorial statue of late Joshua Nkomo should be.

Government Departments Should Emulate Ministry of Education

ONE of the biggest challenges that Zimbabwe faces in its quest to develop is the absence of structures and institutions that ensure accountability and transparency in the operations of government entities and holders of public office. Many of the country's public institutions have thus degenerated into corruption hotspots, resulting in a failure to adequately provide public services. The most affected institutions in this regard include the Zimbabwe Republic Police, the Zimbabwe Electricity Supply Authority (ZESA), local authorities, the registrar's office, the vehicle inspection department and state hospitals. Resultantly, Zimbabweans find it difficult to access fundamental services and human rights such as access to health care, housing, passports and justice.

It was thus refreshing to learn that the Ministry of Education Sports Arts and Culture was engaging on a country wide probe of school heads to ascertain whether or not they are engaged in any fraudulent activities. The probe was reportedly necessitated by an unprecedented increase in allegations of misappropriation of funds and corruption against school authorities in schools across the country. According to the Ministry of Education, one of the aims of the probe is to entrench a culture of accountability in the operations of schools. The ministry also recently revealed that such probes may become a recurrent trend to ensure that the operations of school authorities are above board.

All government departments that are serious about ending corruption within their ranks should emulate the ministry of education. While probing schools may not be the magic bullet to end corruption in schools, it is a commendable step towards righting the wrongs that have become endemic in learning institutions. It is a concept that other government departments should copy and adopt to their own circumstances. For instance, Zimbabweans have in the past complained that ZRP traffic section personnel are corrupt and demand bribes from motorists. Instead of dismissing the allegations, the ZRP should probe the operations of its officers and try to verify the allegations. It is surprising that while bribes are exchanged in broad daylight on a day to day basis on roadblocks



Minister of Education Sports ,Arts and Culture , David Coltart [MDC]

all over the country, the top brass are failing to identify the culprits and let justice take its course. What they need to do is to put the interests of the people of Zimbabwe first, like the ministry of education, and launch a probe that will end all forms of corruption on the country's roads.

ities in the operations of some school heads.' The ministry has said that such school heads will be prosecuted. Thus in addition to serving as a deterrent to would be offenders, the probe will serve as a mechanism to flush out unruly elements from the education sector and punish them for their actions. But the

It can be argued therefore that what really lacks in Zimbabwe's current fight against corruption is lack of political will.

Those who hold positions of power seem reluctant to take concerted efforts to end corruption in their institutions.

Putting up structures to ensure accountability and transparency in the operations of government departments has the merit of acting as a deterrent to corrupt practices. A civil servant who knows that his/her behaviour may be investigated at any moment will obviously be reluctant to engage in corrupt activities as this would put his/her job on the line. This is in essence what probes such as the one that the ministry of education is engaging in achieve. Additionally, they provide a means to name and shame those who take part in underhand dealings thus serving as mechanisms for serving justice.

Already the education ministry has announced that the probe has unearthed 'serious irregular-

Education Department itself should do more if it truly wants to deal with corruption in schools for the ultimate benefit of Zimbabweans. Firstly, it should make public the procedures that it is using to conduct the probe and invite stakeholders such as parents and school development associations to input into the investigations. Secondly, it should publish the results of the probe to ensure that members of the public are aware of the outcomes and able to demand justice. This is necessary as stakeholder participation and availing of information to the public are fundamental components of ensuring transparency and accountability.

It can be argued therefore that what really lacks in Zimbabwe's

current fight against corruption is lack of political will. Those who hold positions of power seem reluctant to take concerted efforts to end corruption in their institutions. Maybe they do not realise the amount of damage that corruption is doing to Zimbabwe, even in monetary terms in the form of misappropriation of funds that are meant for the treasury. In Addition, Zimbabweans are being forced to spend exorbitant amounts of money on public services such as access to passports, licences and birth certificates because government employees are demanding bribes. This is money that people could instead be using to start entrepreneurial projects that could contribute to the country's Gross Domestic Product (GDP) or help alleviate high unemployment.

It is high time the government and its various departments took a stand against corruption, in the interest of the welfare of Zimbabweans. The ministry of education has set an example, it would be folly to ignore it. While the procedures and processes for carrying out the probe have not been ascertained, it is nonetheless a leap forward, by Zimbabwean standards, in the quest to inculcate values of transparency and accountability in the operations of public institutions.

Zimbabwe seriously needs to deal with its high level of corruption in order to develop and improve the lives of its citizens. Admittedly, more will still need to be done. There is a need for people to free themselves from their fawning attitudes towards political leaders, as this puts politicians above their people, dealing a heavy blow to the concept of people governance. There is also a need for a free press, to guard the interests of the public, and fairness in hiring of civil servants. But since every journey starts with one step, government departments might as well in the meantime take a leaf from the education ministry and engage in probes to ensure that the actions of their employees are above board.

Zibusiso Dube is the Information Manager at Bulawayo Progressive Residents Association (BPRA). He writes in his personal capacity. He can be contacted on dubezibusiso@gmail.com