



ANALYSIS OF THE CITY OF HARARE LAND PROBE REPORT BY THE HARARE RESIDENTS' TRUST (HRT)

3 May 2010

1. Executive Summary:

The City of Harare carried out an investigation into the dealings involving their Department of Urban Planning Services (DUPS), the City and Valuation Estates Management (CVEM), the Department of Housing and Community Services (DHCS) between last quarter of 2007 and August 2008. The report, dated 23 March 2010 and titled: **"Special Investigations' Committee's Report on City of Harare's Land Sales, Leases and Exchanges from the Period October 2004 to December 2009"** has raised serious issues concerning the council's land policies and gives an insight into the real motives for the appointment of illegitimate commissions to run cities and towns in place of elected councillors and also the unfair dismissal of council officials who were replaced by technocrats from the Local Government, Rural and Urban Development Ministry. In these deals, the Minister of Local Government, Rural and Urban Development, Ignatius Chombo, Pinnacles Director Philip Chiyangwa, Dr Tendai Mahachi, in his capacity as both City Strategist/Consultant and Town Clerk, and Michael Mahachi, in his capacity as Commission Chairman and a Special Interest Councillor, featured prominently, reasons this paper seeks to highlight.

This report comes at a time the police and the lawyers representing Philip Chiyangwa have taken legal action against the Mayor of Harare Muchadeyi Masunda and Elected City Councillors who investigated the land deals, including journalists who reported on the findings of the report. This action is an elitist attempt to stop the City of Harare from carrying out its lawful mandate of safeguarding public resources from plunder by government officials in high authority. The HRT views the actions of the police and the statements subsequently made by one of the major actors in the investigations report, Psychology Chiwanga as malicious and meant to protect the alleged involvement of Minister Chombo, Chiyangwa and senior City of Harare personnel. Chiwanga has claimed in media reports that he is being targeted because of his political beliefs. That is unprofessional on his part to try and hide behind party affiliation.

The report gives an insight into what went on in the Airport road deal between the City of Harare and Augur Investments, the Warren Hills Golf course Housing Development and the land swap deal between involving Kilima Investments, businessman Philip Chiyangwa's company.

This analysis seeks among other things to critically examine the contents of the City of Harare's report and measure the actions of each public official mentioned in the report against the principle of public interest, transparency and accountability. The HRT also seeks to highlight emerging trends in asset stripping of public institutions by corrupt and unaccountable politicians, hiding behind their public offices. Lastly, this analysis critiques the adherence to the provisions of the Urban Council's Act (Chapter 29:15), council's housing and land policies in the pursuit of good local governance.

Those implicated have to be dealt with in the harshest possible manner as a deterrent against future looting of public resources. It is not our intention as HRT to speculate, but to ensure that at the end of the day justice prevails. Public officials have to be held accountable. The utilisation of public resources has to be transparent.

2. OBJECTIVE OF THE REPORT

- i. The report is to present basic findings of the City's Probe Team
- ii. To critically analyse the role played by each major player in the conclusion of the land transactions.
- iii. To make recommendations on Housing and Land policies

3. Highlights of the City Of Harare Report

a. Key points: Sunshine Development (Pvt) Ltd

- Sunshine Development (Pvt) Ltd is the special purpose vehicle which came out of the agreement between the City of Harare and Augur Investments.
- Six directors of sunshine development namely;
 - o Kenneth Raydon Sharpe (SA), Olelcsandr Sheremet (Ukraine), M.J Van Bleck, Tendai Mahachi, Psychology Chiwanga (Zimbabwe) and Alistair Gibson (British).
- Augur investments was to finance the building of low and medium income houses at Hopley Farm and Warren Hills Golf Course area. They were also to construct a truck-inn near Mbudzi round-about and a hotel in the Golf Course area. The City of Harare was to provide the land for these projects. The shareholding structure in the deal was for Augur Investments to get 70 percent while the City of Harare was to get 30 percent.

b. Minister Chombo's Alleged Acquisitions:

- Minister Chombo also allegedly benefited from the irregularities by acquiring several stands for himself through investment companies believed to be his, identified as Harvest Net Investments, Waywick Investments, Waycorn Investments, Tonewick Investments and Nedbourne Investments. He also acquired **Stand 61 Helensvale**, after allegedly using his ministerial powers to override council resolutions.
 - o According to the report, the Full Council discussed the change of use of the stand in question on 4 October 1990. Seven individuals representing themselves or their companies applied for the said land to council but were turned down citing a previous council resolution. The last application was on 1 November 2006. [What is the resolution?](#)
 - o On 22 September 1992, the Full Council resolved to sub-divide 61 Helensvale and sell the stands to prospective house owners on the council's housing waiting list as sub-divided stands.
 - o This resolution made it possible for council to proceed to deal with change of use of stand 61 Helensvale without the need to seek the Minister's consent. It had an approved Town Planning Scheme in terms of Section 41 of the Regional, Town and Country Planning Act of 1976. This means that the area had a master plan, local plan in terms of the Act.
 - o 2 December 1992, the late Town Clerk Nomutsa Chideya indicated that the council agreed to the sub-division of the stand. But council later withdrew its approval of change of use after residents of Budleigh Park had objected in June 1994 according to former council lawyers Honey and Blackenberg. The residents wanted the stand to remain a natural reserve area and formed the Budleigh Park Natural reserve Association comprised households in the neighbourhood. Town Clerk later informed residents that the council had suspended the sub-division of 61 Helensvale.
 - o Ironically on 13 December 2006, Minister Chombo wrote a letter to Town Clerk Dr Tendai Mahachi proposing to acquire Stand 61 Helensvale. But at the time Mahachi was a strategist/consultant of the City of Harare.

- o Director Chiwanga then responded to the Minister's application indicating that he would help him get the stand. It is unclear how Chiwanga became involved because Minister Chombo had written his proposal letter to Town Clerk Mahachi.
- o On 21 March 2008, Chiwanga tabled a report to council advising of the Minister's proposal and he recommended to council that the Minister be sold the stand without going to tender in terms of council policy. On the same day, the Commission running the affairs of the City of Harare at the time considered the report, and followed up with an urgent meeting on 25 March 2008, where they pegged the price and sold Stand 61 Helensvale to Minister Chombo on the same day. On 27 March 2008, Chiwanga wrote to Minister Chombo advising him of the commission's decision to sell the stand to him.
- o In actions consistent with criminal intent, the Minister then approved the change of land use on 28 March 2008, on the eve of the historic Harmonised Elections after he had already bought the stand on 25 March 2008.

c. Nigel Lane House:

- o 95 Nigel Lane, Highlands-Otilia Dangwa, then in Chamber Secretary's Office was a sitting tenant and not Makwavarara.
- o Decision to sell to Makwavarara came as a verbal directive from the Minister Chombo. Makwavarara paid for the house despite hundreds of objections by residents.
- o The house was first occupied on 13 February 1998 by Ray Mutasa under lease agreement,
- o 2 August 1999- Mutasa was given an offer to purchase the house in three months.
- o 2 April 2002- a final notice of termination of lease was sent to Mr. C.T Mutasa
- o 8 October 2002- Mrs H Mutasa wrote to Council requesting to purchase the house after staying in the house more than ten years but was denied or turned down, 1 May 2003 the Mutasa family was evicted and stayed out of the house for weeks.
- o 21 May 2003- Agreement for occupation between O Dangwa and the City of Harare was signed.
- o 2 June 2003- District Officer Sunningdale requested treasury to repair houses for US\$8 million and the repairs were done and it was confirmed on the 13 June
- o The 1999 Resolution is not explained in the report.
- o 8 March 2004- Dangwa applied to buy the house under the 1999 resolution
- o 24 April 2004- Council wrote to Dangwa that the house could not be sold as per Commission Resolution 23 October 2002.
- o Nov 2004- Then Town Clerk Nomutsa Chideya wrote to Dangwa informing her that the house was to be sold to Sekesai Makwavarara.

d. Airport Road Deal

- i. 22 June 2007 Memorandum of Understanding (MOU) signed between Augur Investments and City of Harare
- ii. 4 September- Shareholders agreement-Town Clerk Mahachi, P Chiwanga Director Urban Planning, Josephine Ncube Chamber Secretary, S Makwavarara, Minister Chombo, Christopher Mushowe-Minister of Transport George Munyonga- Engineer Mbiriri Permanent Secretary
- iii. Josephine Ncube was advised not to sit for meetings concerning the airport road deal because Minister Chombo had said so.

- iv. City of Harare role was regulatory and Augur Investments to complete the project. Augur Investments was to import equipment on duty free and were to hand over equipment to Council after completion of road to Airport.
- v. 6 September 2008- Mahachi identified land as part payment by city of Harare to Augur and later he resigned as an agent of City of Harare.
- vi. 93, 01 ha of land was transferred to seven shelf companies which had no legal links with Augur Investments as payment for the preliminary work done on the road.
- vii. Engineer Munyonga went to South Africa to check on cost of the project and established that it would cost between \$60-67million. He allegedly approached the Power Construction of SA to do the work without Council's approval.
- viii. Committee findings –no tender was floated for Airport Road deal; no proper valuation of equities was undertaken, and Power Construction was subcontracted by Augur Investments to do the work, breaching agreement with the City of Harare.

e. Land transfers to Note:

- The HRT commends the Probe Team for highlighting some questionable land allocations. However, the investigation should have covered all land allocations made during the period under probe than to focus on few individuals, which has somehow undermined their findings. Their critics point to partisan motives.
- Other notable land transfers were made to Dr Sasha Jogi, currently a Special interest Councillor who was a commissioner under Michael Mahachi era. He received 40 371 square metres as a package for his work as a commissioner.
- There are 26 stands under the unauthorised system of processing and issuing of title deeds under the Municipal Sales Agreement (MSA) without using the council's official system of processing and issuing of title deeds under code "CVEM- City Valuation and Estates Management) which are signed for by the Mayor.
- These stands were given to commissioners and other people not appearing on the housing waiting list without issuing of Advice of Sale Forms, meaning these properties are not paying any rates, water charges, sewer charges or refuse removal charges to the council.
- Then Commission Chairman Michael Mahachi was allocated some stands including Stand 249 of Vainona Township measuring 2, 4 hectares, registered under his company Blessings Unlimited. The agreement of sale was signed on 15 February 2008. Stand 19280 Harare Township measuring 2, 5 hectares was sold again to him through his Mahachi, Gwaze and Partners firm. Stand 742 Greystone Park, measuring 4 200 square metres was also give to then Commissioner Mahachi as his package before he left the City of Harare. Under Mahachi Estates and Partners he allegedly got other council properties and an account **00044** was opened on the payment of this stand but details were unavailable for the probe team.

f. Job Retention Scheme

Low and medium income employees are asked to pay full purchase price of stand value while the executive pay 33% of the stand value.

- Valley Lane and Crowborough stands were meant for Council employees that belonged to the low and medium income but non Council employees benefited.
- Harare Municipal Workers Union, instead of the Allocations Committee allocated the stands

- Some employees allegedly got stands in both schemes.
- Council had intended to allocate land to Makwavarara in Belvedere following the stand 11267 STL Belvedere. **How many stands can be allocated to a Councillor?**

g. Staff Movements Under Harare Commissions:

The Report noted that Minister Chombo exerted his pressure on the Commissions to replace unwanted senior council employees with ‘technocrats’ from his ministry based on unsubstantiated accusations. The victims of this trend include;

- i. Engineer Zvobgo- his department was sub-divided into three departments with Engineering Services now headed by Philip Pfukwa, mentioned in the report as Minister Chombo’s brother in law. Engineer Zvobgo subsequently won his case and has been reinstated. He now heads the Department of Water and Sanitation.
- ii. City Planner M Gandiwa was seconded to a section mainly responsible for preparatory stages of land alienation. He was appointed a day before the inauguration of the current council.
- iii. Numero Mubayiwa, now in America, was fired during the Makwavarara Commission, and replaced by then Harare Provincial Administrator Justin Chivavaya in the Department of Housing and Community Services.
- iv. **City Treasurer Misheck Mubvumbi** was suspended in unclear circumstances and replaced by his deputy Cosmas Zvikaramba before his case was concluded. He subsequently won his case and he was reinstated in 2010.

N.B: All these senior council employees remained on the City’s payroll despite their suspensions. This means that during the years these employees were ‘suspended’ the ratepayer continued to foot the huge salaries bill.

In his own words the Chairman of the Investigations Committee, the councillors who were part of this investigation “volunteered their precious time” to carry out this investigation. The HRT is curious to know how much members of this committee received in allowances each day they were on this ‘voluntary mission’ until the final day they finalised this report.

HRT Commentary;

- **Augur Investments- Airport Road Deal:**

The HRT observes the inconsistencies in the recommendations made by the probe team. That Augur breached the terms of the deal and that it lacks the capacity to deliver is beyond dispute. Part One of the recommendations refers to Augur Investments as a ‘middleman’ without any capacity to complete the Airport road project. This is in direct contradiction with the recommendation made in part 6 which states that the Airport Road Project ‘be continued on the condition that Augur first brings machinery and equipment’ as per the Memorandum of Agreement they signed with the City of Harare. They say that failure by the company to ‘adhere to the agreement, City of Harare should engage Power Construction SA on the terms stated in their quotation to Augur, to continue with the project. It has to be noted here that Power Construction SA is the same company that Engineer Munyonga of City Highways approached during his trip to South Africa and his trip was not sanctioned by the council in the first place. The HRT is concerned with this inconsistency in the probe team’s recommendations, which appears to desperately want Power Construction SA to take over from Augur yet they were improperly subcontracted by Augur.

Engineer Pfukwa did the valuation and the City Council did not approve and he proceeded to sign US\$3, 990 129 in mobilisation fees including other preliminary works on 27 February 2009 (Page 30

of Report). However the mobilisation fee allegedly signed for by Engineer Pfukwa has changed to US\$3, 909 129 on **Page 34** of the report without explaining the difference of US\$81 000.

- **Sunshine Development**

- The shareholding structure was skewed in favour of Augur Investments.
- Land exchanged without necessary approval from full council
- Urban Councils' Act violations section 152- adverts of intentions to alienate Council land.

- **Housing Allocations to Commissioners:**

The HRT is concerned with the apparent abuse of office by commissioners who were appointed following the dismissal of elected councillors in the City of Harare in December 2004. Courts repeatedly ruled that these commissioners were illegally in office, rendering illegitimate any decisions they made after these court judgements. It is in the public interest to know what land benefits accrued to all the commissioners who were appointed following the dismissal of the elected council led by Engineer Elias Mudzuri. These include Zanu PF Politburo member Tendai Savanhu, Prisca Mupfumira, Justin Chivavaya (now the Director of Housing and Community Services), Sasha Jogi (now Special Interest Councillor), Michael Mahachi (now Property Manager at Augur Investments), Sekesai Makwavarara, and Alfred Tome. The major achievement of the commissions was personal enrichment and acted more as representatives of the Minister of Local Government, Rural and Urban Development than in the best interests of the City of Harare. The Minister secured their continued stay at Town House while they complied with his directives, verbal and written, without raising any objections. In terms Section 80 of the Urban Councils' Act (Chapter 29:15), the Minister is given powers to dismiss elected councillors for alleged wrongdoing and replace them with a caretaker council of commissioners. During their tenure of office, the commissioners are to carry out all the responsibilities of an elected council, provided that—

2 (i) the caretaker shall not, without the approval of the Minister, exercise any power conferred on the council to levy rates or taxes or to alienate any land or interest in land or to increase any charge fixed or levied by the council or to fix any new charge;

RECOMMENDATIONS:

Summary:

- i. The investigation into the land sales, leases and exchanges by the City of Harare should include every other land transaction from October 2004 to December 2009. The HRT notes that the investigation focused on a few individuals, leaving out the others, who might not be politicians but who might also have got land through illegal dealings.
- ii. Minister Chombo should be investigated for abuse of office.
- iii. All senior council officials who collaborated with the Minister and Philip Chiyangwa in the land deals in violation of council's policies should be immediately suspended pending the findings of an independent probe into their land dealings. There is no way that Minister Chombo, businessman Chiyangwa and other senior government officials would have acquired so much property in Harare without council officials' assistance.
- iv. All 46 City of Harare Councillors should disclose how much land they have acquired from the City of Harare as residential, business and industrial properties.
- v. Council should repossess all Council land which was given to Augur Investments without its approval as part payment for preliminary work done on the Airport Road. The deal should be restarted.
- vi. The City of Harare should focus on substantive service delivery issues that benefit the residents of Harare than political parties. There has to be an improvement in the state of roads, refuse collection, supply of adequate clean and enhanced sewerage reticulation.

vii. Council should adhere to provisions of the Urban Councils' Act with regards to advertising of land to be alienated.

The Full Council should **disregard** the recommendation made by the Probe Team (Page 47) that 'all land sold to bona fide beneficiaries on the housing waiting list in all suburbs of Harare and paid for during the so-called 'money burning period' should be re-valued. That is unacceptable and an attempt on the part of the investigations committee to correct Zimbabwe's economic history, which has faced hyperinflation. People should live with their past, no matter how painful or ugly. The City cannot attempt to address the valuation of properties in retrospect. It should serve as a lesson for future land sales.

- **On Minister of Local Government, Rural and Urban Development:**

- o An independent enquiry, instituted by the Speaker of Parliament should investigate the relationship that has existed between Minister Chombo as a Minister of Local Government, Rural and Urban Development, and the City of Harare since 2005 to 31 March 2010. This probe should establish;
- o The movement of staff from the Ministry of Local Government Rural and Urban Development to the City of Harare, and establish whether proper procedures were followed.
- o The role played by the Local Government Board in these recruitments.
- o How commissioners appointed to run the affairs of the City of Harare ended up acquiring several properties to the extent of the City of Harare owing one commissioner a residential stand.
- o The number of senior civil servants, military and security personnel who have been allocated land, and the circumstances surrounding those allocations.
- o The relationship that exists between the Minister and Psychology Chiwanga, the Director of Housing and Community Services in land dealings to the extent that the Director recommended the violation of a standing council policy simply to appease the Minister (**Page 38 of report**).

- **On Philip Chiyangwa's Land deals with City of Harare:**

- o The City of Harare's Director of Urban Planning Services Psychology Chiwanga should be immediately relieved of his responsibilities pending a full enquiry into his role into these deals. All provisions of the Labour Act have to be followed.
- o A full probe must be undertaken to establish the circumstances leading to the 12 December 2007 Finance Committee Minutes that 'approved' the land swap deal between the City of Harare and Kilima Investments. Kilima Investments had Stand 389 Derbyshire measuring 17, 6 hectares, zoned for industrial purposes while the City of Harare had Stand 19345 in Gunhill measuring 10, 23 hectares zoned for residential purposes.
- o In future, the City of Harare should never exchange its fixed assets for salaries (The Council lost in a deal in which businessman Chiyangwa was given Stand Number 625 Mandara in exchange for salaries.
- o The HRT recommends that the City of Harare should stick to its own policies. A Subcommittee of council like the Finance Committee does not have the mandate (**Page 10 of Report**) to make resolutions binding the Council but can only make recommendations for approval, amendment and or rejection by the council sitting as a Full Council.
- o The report points to a deliberate attempt by Director Chiwanga to defraud the City of Harare of its land, using his office.
- o

- The Parliamentary Portfolio Committee on Local Government should take charge of this investigation, bringing in all the relevant stakeholders to make submissions, including those that stand accused of any wrongdoing. The report lacks input of all key people.
- Legislation governing the administration of local authorities should be harmonised to minimise conflict. The Urban Councils' Act (Chapter 29:15), the Rural District Councils' Act (Chapter 29:13), and the Traditional Leaders Act, and lately the Local Government Act have contributed to the ongoing confusion on roles and responsibilities of statutory bodies like the Local Government Board. The Minister still wields too much power and there has been consistent misuse of power and abuse of authority.
- Systems of accountability and transparency within the local authorities' administration and the local government arena are weak and have to be enhanced to protect public resources.

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For feedback and comments on this critique, please feel free to contact the Harare Residents' Trust on 0912 869 294, 0912 255 784 or 0733 296 806 or email us on hretrust@yahoo.com or hretrust79@gmail.com