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CONTENTS

ARTICLES

Freedoms of Association and of Assembly: Some International and Comparative Perspectives 1

LOVEMORE MADHUKU

Anton Piller Orders in Nigeria 22

E.S. NWAUCHE

The Land Question in Zimbabwe : Can Indian Jurisprudence Provide the Answers? 30

WEBSTER CHINAMORA

Capital Punishment, the Death Row Phenomenon and the Supreme Court of Nigeria: *Onuoha Kalu V The State* [1998] 12 S.C.N.J. 1 45

A. A. OBA

The Roads to Nowhere: Fighting Corruption in Zimbabwe 61

KUMBIRAI HODZI

Electoral Process in Botswana: A Synopsis 70

OAGILE KEY DINGAKE

A Survey of Constitutional Amendments in Post-independence Zimbabwe (1980-1999) 82

LOVEMORE MADHUKU

NOTES AND COMMENTS

Review of Cases on Local Government Law Between 1980 and 1999 108

ARTHUR MANASE

A Review of the Law Governing Termination of Employment of Junior Employees in Local Authorities 111

ARTHUR MANASE

THE ROADS TO NOWHERE: FIGHTING CORRUPTION IN ZIMBABWE*

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INTRODUCTION

Everybody who does not matter knows that something needs to be done.¹ There was a time in Zimbabwe when the fundamental problem of addressing the issue of corruption and good governance lay in the lack of understanding of the nature and extent of the problem. Now, of course, there is an unshakable consensus by all that the crisis that is presently gripping Zimbabwe is first of all a governance crisis. There is a growing awareness that the political and economic crisis that is threatening the very survival of the nation is a result of gross misgovernance and grand corruption by the ZANU (PF) government. Zimbabwe is presently steeped in a multi-dimensional crisis as the country experiences the worst forms of crony corruption and is governed by a regime which can only be accurately described as a Kleptocracy.

The failure of Government to tackle the very palpable and obvious problems caused by corruption is eloquent testimony to a gigantic failure of a political will and it also demonstrates the gross limitations of the Zimbabwean legal system to combat corruption. The occasional public rhetoric and tirade against corruption by the Zimbabwean Executive has not been met by any corresponding effort to put into place a legal regime and system that can effectively be used to fight corruption. On the contrary, the Executive has on each and every opportunity, defended its administration and protected those members of his cabinet who have been linked to corruption.²

THE PRIMARY CAUSES OF CORRUPTION

In order to analyse the failures of the present legal system and regime in Zimbabwe to combat corruption, one needs to first of all look at the causes of the proliferation of corruption in the country.

* Article adopted from the paper presented at the National Anti-Corruption workshop held in Bulawayo on 26 October 1998.

1. See *The Herald* 26 November 1999, "ZCTU Demands Misplaced says Chimutengwende". There is a growing increase in the realisation that corruption is the main cause of the problems that bedevil the country hence the demand by the Zimbabwe Congress of Trade Unions (ZCTU) that incidences of corruption and fraud that are prevalent in all the government bodies and parastatals be addressed. This demand by the ZCTU has been categorised by the Government as political and divorced from the legitimate demands of the workers whom the ZCTU represents.
2. See *The Herald* 8 December 1998, "Drought to Blame for Economic Woes", p. 1.

If anything at all the Head of the Executive has consistently denied that corruption is the problem with his administration. Mr Mugabe has asserted that all the problems and the crisis that the nation is facing is a result of the "drought" whatever that means. Presidents, even the most corrupt ones, routinely deny that their administrations are corrupt. See *The Washington Post*, November 18, 1995, p. 1.

The primary and the dominant cause of corruption in the country stems from the very nature of the structure and style of our governance.³ The phenomenon of corruption is derived from an excessive authoritarian political and bureaucratic system. Power in Zimbabwe is heavily centralised, first and foremost into the hands of the Head of State, the President, who has far-reaching powers (formal and non-formal, defined and non-defined) and who has the powers to make ultimate decisions. It brooks no argument that the decisions that have proved to be most debilitating for the economy of the country and morality of the people of Zimbabwe have emanated from the Executive itself.⁴

From around 1985 onwards the tendency of the present ZANU (PF) regime has been to centralize all state power into the hands of the Executive, and the administration has transformed itself into what Professor Kim⁵ terms a bureaucratic despotic administration. Such a system is dominated by an almost feudalistic relationship of domination-subordination between the ruled and the rulers. Every appointment to public office is an act of patronage by the Executive and it is not dependent upon merit, qualifications or competence. In Zimbabwe all appointments to whatever public office is the sole discretion of the Executive. Diverse and varied appointments to such offices as all high ranks in the civil service, Police, Army and Prison service, diplomatic service, local government, parastatal service, university service, judiciary, Auditor General's Office, Attorney General's Office, Ombudsman's office, Governorship of all state-controlled banks including the Reserve Bank is all the exclusive right and prerogative of the Executive. Centralisation can be explained by the interest configuration of the economic, political, military and bureaucratic forces that comprise the ruling regime and this centralisation is so extreme and pervasive that every facet of life in the state is controlled by this authoritarian political elite. The relationship between those who are inside and those outside the elite is like that of the master and the servant. It is essentially because of this relationship that a vast majority of Zimbabweans are virtually third class citizens in their own country.

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3. See Dieter Frisch in "The Effect of Corruption on Development", a paper presented to the African Leadership Forum on "Corruption, Democracy and Human Rights in Africa," Cotonou, Benin, 19-21 September 1994. See also Jon S.T. Quah "Bureaucratic Corruption in the ASEAN Countries: A Comparative Analysis of their Anti-Corruption Strategies" in *Journal of Southeast Asian Studies*, Vol. 13 No. 1, pp 153-177 (1982).
 4. It is the Executive that made the decision to award unbudgeted sums of money to the so-called Ex-Combatants. The Executive has also granted pardon to those persons who have been convicted of extremely serious offenses of fraud and corruption. For instance, one Mudekunye, a former permanent secretary who had been convicted of corruption involving millions of dollars, was given a Presidential pardon. Frederick Shava, a former Government Minister who had been convicted of subornation, was granted a Presidential pardon after serving only a few hours of his jail sentence. The Executive has cancelled a number of awards made by the Zimbabwe Government Tender Board when he perceives the decisions by the Board to be contrary to the interests of his cronies. See also Professor Welshman Ncube's incisive summation of the Executive Acts of gross illegality.
 5. Kim, Young Jong, *Public Administration and Corruption Studies* 1998 (2nd Edition, Seoul, South Korea). Professor Kim's book aptly examines the structure and governance of states and the links of that structure and governance to the causation of corruption. Countries that do not respect democratic principles and the rule of law are generally found to be more corrupt from an empirical analysis. The Transparency International's annual corruption perception index somewhat confirms Professor Kim's analysis.

The despotic bureaucratic state is dominated by official patronage. In corruptnology terms Zimbabwe has moved from being an autocratic developmental state into a traditional racketeering state.⁶ Whereas in an autocratic developmental state, the ruling elites feather their nests, the state is also characterised by a semblance of economic development, building of new infrastructure and maintaining of old infrastructure, while in a racketeering state there is a subordination of all interests and power: military, economic and political to serve the ruling elite. This state is characterised by minimal economic development, stagnation and then recession. There is no pretence at any economic development. A racketeering state is dominated by unbridled greed by the ruling elites.⁷ A racketeering state is dominated by absence of the rule of law, the presence of a powerful political elite supported by a ruthless military base and the subordination of all power to serve the ruling elite. It is still, of course, debatable whether Zimbabwe is such a state or not. However, recent developments on the Zimbabwean political map seem to confirm that Zimbabwe is rapidly moving towards becoming a racketeering state.

Nowhere is this tendency more clearly illustrated than in a number of incidences that have occurred during the last few years. These incidences clearly show that in a corrupt environment resources would be directed towards non-productive areas — the police, the armed forces and other organs of social control and repression — as the elite move to protect themselves, their positions and material world. Laws will be enacted and resources otherwise available for socio-economic development would be diverted into security expenditure. This in turn causes the withering of democratic institutions as corruption rather than investments becomes the major source of financial gain. In the case of Zimbabwe the incidences have shown that corruption represents institutionalised unfairness and inevitably leads to litigation and calumnious charges. The case of Strive Masiyiwa, the telecommunications entrepreneur and engineer, clearly demonstrates this phenomenon.

Mr Masiyiwa's initial attempts to establish a mobile telephone network in the country were frustrated by the Executive using the most underhand and corrupt strategies imaginable.⁸ Mr Masiyiwa was perceived as one of the outsiders. The public procurement processes and procedures were manipulated in such a way as to ensure that Mr Masiyiwa's

6. See Michael Johnston, "The Political Consequences of Corruption: Reassessment," in *Comparative Politics*, July 1986 at pp. 467-8. Michael Johnston notes that "a full discussion of the implications of corruption in any given system must be constructed in the context of system-specific factors. The existence of ethnic factions among elites, the extent to which kinship norms mean that citizens and/or officials take a different view of patronage practices than does the law, or the exclusion of certain economic interests from decision-making processes, for example, can all be critical parts of the corruption story in specific settings." *Ibid*, p. 463.

7. In Zimbabwe the recent developments have put paid to all pretence of the country respecting the rule of law. In a blatant disregard of the rule of law, the military effected the arrest and allegedly tortured two journalists, Mark Chavunduka and Ray Choto of the *Standard Newspaper*. The military elites have also been linked to racketeering in the Democratic Republic of Congo where Zimbabwean troops are currently engaged in war.

8. See

(i) *Posts and Telecommunications vs Retrofit (Pvt) Ltd* 1994 (2) ZLR 71 (SC).

(ii) *Retrofit (Pvt) Ltd v Ministry of Information, Posts and Telecommunications* 1995 (2) ZLR 422 (SC).

(iii) *Econet (Pvt) Ltd v Minister of Information, Posts and Telecommunications* 1997 (1) ZLR 342 (H).

(iv) *Retrofit (Pvt) Ltd v Posts and Telecommunications Corporation and Another* 1995 (2) ZLR 199 (SC).

bid was frustrated. Likewise categorical and authoritative determination of this case by the highest court in the land were simply ignored or subverted by the Executive. On the other hand, those that were perceived to be the insiders, Telecel, chaired by James Makamba, a former radio disc-jockey-turned politician, were given all Executive support.⁹

The case involving the award of the tender to construct the Harare Airport is also illustrative of this tendency by the elite to subvert the law and administrative procedures to ensure the total exclusion of certain economic interests from the decision-making process.

The public procurement process and procedures were blatantly manipulated during the adjudication of the tender to build the multi-million dollar new Harare International Airport.

One Leo Mugabe, a close relative of the Head of State, was granted a tender to build the new Airport amidst extremely controversial and shady circumstances. When Parliament made a challenge to the granting of this tender and looked set to overturn this decision, the Executive bared its fangs and virtually forced Parliament to acquiesce to its demands. The Executive has arrogated to itself so much power that a Parliament has become subordinate to the Executive. Thus Parliament is virtually powerless to curtail instances of Executive excesses and abuse of power. This lack of checks on the Executive power by the Legislature has become the major cause of corruption in the country. It is exacerbated by the fact that through a systematic application of patronage, those that are entrusted with making and implementing all administrative decisions are members of the ruling elite.

Secondly, the other major cause of corruption in Zimbabwe has been the creation of bureaucratic elites in the process of policy making and implementation. This bureaucratic class was made as a result of patronage as pointed out above. It is the main submission of this discourse that the creation of this bureaucratic elite during the last 18 years has been instrumental in the collapse of the rule of law and the economy. Mugabe created several institutions to support his political and economic policies. The institution of the so-called black advancement was transformed into an elaborate patronage system. All strategic positions in the Public Sector and Parastatals were filled by party loyalists, by sycophants and hangers-on.¹⁰

9. In one of the most bizarre incidents, the then Minister of Information, Posts and Telecommunications, Mrs Joyce Mujuru, who is also married to General Solomon Mujuru, a shareholder in Telecel Zimbabwe, a rival to Strive Masiyiwa's Econet Company, actually threatened Mr Masiyiwa with detention and confiscation of his telecommunication equipment should Mr Masiyiwa persist in his battle against the ZANU (PF) Government to have a licence to operate a mobile telephone system. See *Econet v Minister of Information (supra)*.

10. One Tony Gara, Deputy Minister of Local Government, then a member of Parliament was appointed to Deputy Ministerial rank after incredulously proclaiming the Head of State to be the second Messiah. This Minister was awarded a tender by the City Council of Harare to collect refuse from the City's suburbs amidst shady circumstances. He is now claiming that the City Council of Harare owes him millions of dollars while the City Council insists that he never met the conditions of his contract.

See also *The Herald* 27 February 1999 page 1.

There are also a number of instances where top ranking members of ZANU (PF) party have said that all civil servants must be loyal to the party.

See *The Herald* Thursday 10 October 1998, "War Vets Assured a Composition of Task Force to be Re-examined", p. 5.

Mugabe has also allowed the creation of what in East Asia are called "chaebols".¹¹ These are family-oriented conglomerates and he has legitimised this development by using the so-called indigenisation and economic development-imperative excuse.¹² The chaebols are particularly harmful to the economy of the country. Although there is no exhaustive and comprehensive study of the economic hemorrhage that these chaebols inflict on the country, it is estimated that money which has been lost runs into billions of dollars.¹³ For instance, one such chaebol run by an insider, one Roger Boka, cost the nation of Zimbabwe more than four billion dollars in unpaid revenue; most lost as a result of fraud.¹⁴

Another such chaebol is the Zimbabwe Building Society (ZBS). The Zimbabwe Building Society has been implicated in a number of corrupt practices chief of which is the construction of sub-standard houses and inflation of loan repayment rates.¹⁵ Despite its massive economic advantage through cutting corners and wheeler-dealing, in late 1998, ZBS faced imminent collapse as a direct result of grand corruption and gross mismanagement. The Executive injected a massive \$400 million dollars, through the Reserve Bank of Zimbabwe, to protect and support this financially-troubled chaebol. Direct state intervention to support troubled chaebols was a feature of Jun's regime in Korea during the fifth Republic. It had grave ramifications for the Korean economy in that billions of dollars were siphoned from the national Treasury.¹⁶

However, what we witness in Zimbabwe today is no different from what Professor Kim observed about South Korea. Professor Kim, exposing the primary reason for rampant corruption in Korea under President Jun's administration, wrote:-

The Jun's regime in the 5th Republic of Korea was similar to military dictatorship — abuse of political and bureaucratic power. Military men were placed in charge of the police, ruling party, the intelligence network and planning. Hundreds of retired army officers were given political and administrative positions such as ambassadors, mayors and major positions in central government. This indicates that there was a formal government and then there was an "informal government" that really controlled things.

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11. Kim, Young Jong, *Bureaucratic Corruption* (1994 4th Ed) Chomyang Press.
 12. In Zimbabwe the family-oriented conglomerates are fashioned on the lines of those in Suharto's Indonesia. The conglomerates are controlled by families either related or closely-allied to the Executive or the ruling elites. The most famous and powerful of these conglomerates now controls a significant percentage of interests in all key sectors of the economy including banking, mining, agriculture, telecommunications, transport, education, health, industry and commerce.
See also *The Herald* Thursday 10 December 1998, "New Joint Venture Firm Set to Boost Export to the DRC", p. 1.
 13. The harm inflicted to the economy by blatant corruption has not yet been accurately quantified but even the government now acknowledges it runs into billions of dollars. The collapse of the Zimbabwean currency was precipitated by a number of complex but closely related factors chief of which is the perceived rampant corruption in the public sector and the increasing erosion of the rule of law. See *The Herald* Monday 21 December 1998, "Zimbabwe's Economy most Unstable in SADC, says Bank", p. 5.
 14. See also *The Herald* Saturday 15 August 1998 "Gross Fraud cited in Abuse of Fund", p. 1.
 15. The Zimbabwe Building Society which was then chaired by one Nhema, a son in law to one of the Vice Presidents in Zimbabwe, was never investigated. In fact, the bail-out by the Reserve Bank is a characteristic of a racketeering state. See Kim Young Jong, *Bureaucratic Corruption* (4th Ed) Seoul: The Chomyung Press, p. 116.
 16. See Kim Young Jong, *Bureaucratic Corruption* (supra).

In Zimbabwe the situation is no different. Major decisions are made either by these chieftains or for their benefit by the bureaucratic elites. All decisions are made for the protection and benefit of the Head of the Executive. The institution of the politburo of ZANU(PF) has become the informal government where all important decisions are made. A thoroughly and grotesquely bastardised version of the Old Soviet Politburo caricaturing all the excesses but none of the saving graces, the ZANU (PF) Politburo is truly a law unto itself. All its members are appointed by the Head of the Executive and its sole purpose is to instantly gratify each and every of his whims. It is accountable to no-one and it is the submission of this thesis that it is equally responsible for abuse of power in the same way the Head of State is.

Corruption is widely defined as the abuse of public power for private or sectorial gain. Alternatively it is referred to in the Klitzgaardian formula¹⁷ as follows:

$$\begin{array}{rcccccc} \text{Corruption} & = & \text{Monopoly} & + & \text{Discretion} & - & \text{Accountability} \\ \text{C} & = & \text{M} & + & \text{D} & - & \text{A} \end{array}$$

In the best traditions of the worst dictatorships, the Zimbabwean Executive has arrogated to itself the monopoly of all power and full discretion on the use of that monopoly without being accountable to any institution whatsoever. It is submitted that nowhere else does the Klitzgaard equation apply so snugly than when one is looking at the monopoly of power and discretion and lack of accountability by the Zimbabwean Executive.

Klitzgaard correctly points out that "whether an activity is public, private or non-profit and whether it is carried out in Ouagadougou or Washington one will tend to find corruption when an organisation or person has monopoly over a good or service and has discretion to decide who will receive it and how much that person will get and is not accountable". In essence, corruption emanates from problems related to power and power relations in the society. Corruption is not a crime of passion. It is a crime of co-deliberate calculation. If the adage "power corrupts and absolute power corrupts absolutely" holds true then most problems related to power should be ascribed to corruption. In this thesis the word "power" should be understood in its broadest sense. Power includes military power, gender power, technological power, the power of information, administrative power, bureaucratic power and even the power to just put an official stamp onto a document or the power of holding a key to a prison cell. Most functional democracies recognise the need to ensure democratisation through distribution of power to various separate organs that continuously balance and check each other's powers. This system of checks and balances has removed most of the blatant instances of abuse of power in those democracies. Concentration of power invariably leads to the crime of corruption. In Zimbabwe the tendency has not been

17. Robert Klitzgaard, 1998, *Controlling Corruption* Berkeley: University of California Press.

Professor Klitzgaard in a series of books and academic articles has written extensively on the question of the definition and causes of corruption. In his book *Controlling Corruption* he asserts that corruption is primarily caused by monopoly of power and discretion minus accountability. See p. 46.

the distribution and delegation of power but the reverse: the concentration and personalisation of public power. The Executive and not the legislature can commit troops to foreign wars, pass laws, overturn judicial determinations, dismiss elected officials, cancel awards made by the Tender Board, grant various licences and generally perform acts that are not strictly within its province.¹⁸

Public power is immense power. Public power is usually vested or granted to individuals, groups or institutions. The higher the individual, group or institution the more power it/she/he has. If it is accepted that the primary cause of corruption is abuse of power, then it follows that any anti-corruption programme that we adopt should address the problem at its roots. In Zimbabwe all public power (whether vested or granted to individuals, groups or institutions or not) is now interpreted by the president to be granted in his name.¹⁹ It has already been stated elsewhere in this paper that the head of the Zimbabwean Executive has arrogated to himself immense executive judicial and legislative powers and is accountable to no institution. It therefore follows that any anti-corruption programme and strategy should first of all address this primary source of abuse of power before concentrating on any other forms of corruption. It has long been assumed that persons in politics are not to be trusted while some suspicion of persons in high places is normal. There is an ill-defined level of fraud beyond which citizens sense a corruption that threatens their social order. In Zimbabwe the public is precluded from harbouring suspicions about the Head of State when it comes to the crime of corruption. The term "corruption" cannot be legally used in reference to any acts of commission or omission by the President. It is a state's legal system or laws that defines what conduct or behaviour constitutes the crime of corruption. The Zimbabwean anti-corruption legal regime suffers from two defects. The first defect is that the Prevention of Corruption Act Chapter 9:16 does not in any way apply to any acts and transactions carried out by the Head of State; in other words, acts of corruption in which the President is involved will not receive any attention from the state. The President cannot be investigated for corruption and neither can he be "specified" in terms of the Serious Offences (Confiscation of Property) Act.

The second defect is that the legal definition found in sections 3 and 4 of the Prevention of Corruption Act is extremely narrow. The legal application of the term corruption is only in reference to corruption in the public sector or with reference to interaction between the private sector and public sector. This is too narrow a definition and fails to take into account the general experience of corruption as a much wider phenomenon. In the sociology of law, it is accepted that if a legal problem is viewed or undertaken in a limited way, then the action to be taken would obviously address the problem in a limited way as well. Of particular concern is the development of public policy based on the limited understanding of the problem. It should be noted that the structuring of a problem is crucial in policy development.

18. See *The Herald* Saturday 28 November 1998 "President Uses his Power to amend Act". See also *The Herald* Thursday 1 October 1998, "War Vets Assured of Composition of Task Force to be Re-examined". *The Herald* Wednesday 21 October 1998, "Minister Orders City Council Investigated". *The Herald* Saturday 15 August 1998, "AG Cannot Proceed with Prosecution".

19. This interpretation became apparent during the recent crisis between the Executive and the judiciary over the detention of two journalists by the military. The President seemed to be suggesting that since he was elected and since he is the one who appoints the judges, then the judges should not act in any way against the Executive.

CONCLUSION

Fighting corruption in Zimbabwe requires a new integrated strategy that is more efficient and effective. Firstly, whichever administration is in power, or takes over power in Zimbabwe, must promulgate a comprehensive anti-corruption policy based on democratic principles and the rule of law. Nobody should be given wide ranging powers and discretion without any accountability. No-one should be seen to be above the law of the land and the office of the Head of State should certainly not be exempt.

Secondly, from an empirical analysis it is easily proved that it is those countries that have not only adopted an integrated anti-corruption policy but also established Independent Anti-Corruption Bureaus or Commissions that are effectively fighting corruption. In the case of Hong Kong, its Independent Commission Against Corruption (the ICAC), arguably the best and most effective in the world, has extensive powers. It has full powers of investigating all cases of corruption and it can focus on law makers, public officials, and private business people. It has powers to inspect all records including bank transactions. It has powers to publish its findings. It has a mandate to educate the public on ethical standards. More importantly, it has the power to formulate and plan anti-corruption policies and strategies without any interference and hinderance from politicians.

The state of moral decay in Zimbabwe has been allowed to reach such a pervasive level that extremely radical measures are required to redeem the situation. It is submitted that an independent anti-corruption commission with extensive powers to investigate, along the lines of the one in Hong Kong, will be a good starting point.

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