

SMMH3

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# PARLIAMENTARY DEBATES

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MOTION:

Economic Challenges Facing Zimbabwe.

### CORRECTIONS FOR BOUND VOLUME

Corrections which Members desire to suggest in the reports for their speeches for the bound volumes should be clearly marked in this *Hansard*, and the copy containing the corrections must be received by the *Hansard* Editor within seven days of the date of this report.

Members are reminded that suggested corrections must be confined to the correction of grammatical mistakes and errors in the reports of their own speeches.

Note:— The symbol \* indicates a speech interpreted from Shona and the Symbol † indicates a speech interpreted from Ndebele

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[Mr. Speaker]

to remain on the record. I am saying withdraw that word then you can continue.

**MR. SIKHALA:** I withdraw.

**MR. CHINAMASA:** There is no truth whatsoever that any political person or political force dipped hands into the funds of SMMH. I understand the motivation behind the question is to mud sling than to secure a truthful response.

**MR. SIKHALA:** I do not think so Mr. Speaker. I have evidence to this effect. My understanding is that the former Minister of Mines and Energy, Mr. July Moyo, said that he is going to make sure that SMMH refused to fund some politicians who approached them to fund their political project.

**MR. SPEAKER:** There is no substance in that question.

#### INDEBTEDNESS OF SMM HOLDINGS

8. **MR. SIKHALA** asked the Minister of State Enterprises, Anti-Monopolies and Anti-corruption to enlighten this House on the indebtedness of SMMH since the appointment of an administrator and to provide a breakdown of application of the funds.

**THE MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS (MR. CHINAMASA):** As I have already alluded to in my earlier responses, as at 6th September 2004 when I issued the Reconstruction Order, SMM Holdings was indebted to the State in the sum of Z\$115 billion between that date and April 2005. The government advanced a total of Z\$510 billion. This gives a total of Z\$616.5 billion owed to the State by SMMH, hence the reconstruction scheme. We are merely seeking to convert what we are owed into equity in SMMH. There is no other creditor who is owed this much. In fact we have had to pay off other creditors in order to allow suppliers to continue supplying SMMH. So we are basically now the sole creditor of SMMH.

The administrator has estimated that the company might need further government funding in the sum of Z\$85 billion to return to viability status. Thus, the total estimated indebtedness stands at Z\$825 billion including interest estimated at Z\$120 billion by 30 June 2005.

The said government funding has been applied as follows:—

Indebtedness as at 6 September 2004 \$115 billion

Funding between 6 September 2004 and 30 June 2005 \$510 billion

Estimated funding required to take us to 30 June 2005 \$88.5 billion

Estimated interest to end of 30 June 2005 \$120 billion

To allow for electricity to be reconnected we paid ZESA and other creditors as at 6 September 2004 \$8.5 billion

We paid other creditors \$64 billion

It is important to note that the administrator has done tremendous work to turn around the fortunes of the company with the necessary government funding outlined above.

This was a company which had ceased to operate which was jeopardizing the employment of at least 5 000 workers at SMMH, which was also jeopardising the viability of Zvishavane itself. The whole Zvishavane community rotates around SMMH. So government had to intervene in the national interest in order to rescue the company in order to ensure that the company continues to be a leading foreign exchange earner in our economy.

**MR. MADZIMURE:** Due to the fact that SMMH was a private company, what was the interest of government in funding a privately owned organisation to the tune of Z\$115 billion? How was government funding the operations?

Were there due diligence reports which were produced by this organisation so that the government will now make a decision to fund it?

**MR. CHINAMASA:** I thought the hon member had been listening. I said and I gave reasons why government had to intervene in a supposedly private company. Because of its critical role in our economy — it is the producer of asbestos and we are a very key world producer of asbestos. It earns foreign currency and also it employed 5000 workers. The Zvishavane community basically rotates around these mines. The mine still has a life of 25 to 30 years at current production levels. So taking all that into account, it was critical for us to save jobs. It was critical for us to save a foreign exchange earner, especially bearing in mind that the company had viability. If only the owners had not externalised US\$18.5 million dollars and a lot of foreign currency in Rands and Canadian dollars — if that had not happened, this company could have been very viable and we would not have had any reason to interfere at all in its operations. We came to its rescue because the workers had gone for three months without being paid. They were coming to borrow from us. We were lending and as time went on, it was very clear that we had to take an interest in what was going on. When we did, that

[Mr. Speaker]  
so they can be recorded as part of the record of the procedures of the day.

*Questions Without Notice were interrupted by MR. SPEAKER in terms of Standing Order No.33.*

## ORAL ANSWERS TO QUESTIONS WITH NOTICE

### STATE INDEBTED INVOLVENT COMPANIES ACT

1. **MR. SIKHALA** asked the Minister of Justice, Legal and Parliamentary Affairs whether he is aware that the State Indebted Insolvent Companies Act breaches the constitutional provision on property rights, and if so what corrective measures he intends to take, especially in light of the fate of Shabanie-Mashava Mines.

**THE MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS (MR. CHINAMASA):** I can state categorically that the Reconstruction of State-Indebted Insolvent Companies Act (the Reconstruction Act) does not breach the property rights enshrined under our Constitution. The constitutionality or otherwise of a piece of legislation or an administrative action is determined by our Supreme Court in terms of the

Constitution. There is a presumption of constitutionality in the interpretation of our legislation and such legislation is presumed to be constitutional until declared otherwise by the Supreme Court. Accordingly, the Reconstruction Act referred to by Hon. Sikhala is constitutional until the Supreme Court rules otherwise.

To my knowledge, SMM has not filed a constitutional challenge of the Reconstruction Order, which was issued on the 6th September 2004. Instead, they have filed an application in the High Court seeking the setting aside of the Reconstruction Order. I am therefore at a loss as to Hon. Sikhala's bold assertion regarding the breaching of section 16 of the Constitution providing for the right to protection of property.

For the record, there is nothing that the Minister of Justice should do *vis-a-vis* the said corrective measures especially bearing in mind that the Reconstruction Act is constitutional. It is difficult to understand what corrective measures he wants the Minister of Justice to take in view of the following:—

a) SMM was as at 6th September 2004 indebted to the State in the sum of ZW\$115 billion and to other creditors to the tune of ZW\$22.4 billion and was unable to repay the debts. It was

overwhelmed with debts to the extent that banks could no longer lend it while trade creditors and suppliers had ceased dealing with it for non-payments. Business had ground to a halt and Government was forced to pay off the Creditors.

All this was caused by the externalisation of SMM foreign earnings of US\$18.5 million by South African companies owned by Mr. Mutumwa Mawere. It faced imminent closure and thousands of jobs and livelihoods were at risk of loss.

It could not repay its trade creditors and the mining concern was literally insolvent and incapable of proceeding.

b) SMM was placed under Reconstruction in terms of the said Reconstruction Act with a view to rebuilding it and ensure it returned to its viability status through a proposed Scheme of Reconstruction. The Reconstruction of a company is on the basis of indebtedness to the State and not any other ground.

c) In any event, it is also in the public interest that companies should be placed under Reconstruction given the fact that it was owing public funds and was a debtor of the State. Thus, the provisions of the Reconstruction Act are defensible on those bases.

d) The Reconstruction Act was duly passed in this august House late last year. The Act provides for a procedure to be followed before the Reconstruction Order is issued in respect of a company and the whole process of Reconstruction is subject to approval/confirmation by the Courts. Accordingly, the provisions of the Reconstruction Act, which more or less are similar to provisions in the Companies Act, which governs and regulate Reconstruction schemes, clearly remove any doubt of unconstitutionality.

### EXECUTIVE'S INVOLVEMENT IN THE ADMINISTRATION OF PRIVATE COMPANIES

3. **MR. SIKHALA** asked the Minister of Justice, Legal and Parliamentary Affairs to comment on the Executive's involvement in the administration of private companies in the name of national interests without resorting to the courts as provided for in our bankruptcy laws, citing the case of Shabanie-Mashava Mines.

**THE MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS (MR. CHINAMASA):** The Executive is not involved in the administration of private companies. This is common cause I would want to believe. I do not know where the Hon.

**The Minister of Justice**

member got that conclusion. I am not aware of any private company that has been meddled with by the Executive in the name of national interests. The classical case of SMM cited by Hon. Sikhala has been misunderstood. The concept of bankruptcy is alive in English law and the Roman Dutch equivalent used in Zimbabwean law is "insolvency" as provided for in the Insolvency Act.

SMM has been placed under Reconstruction in terms of the Reconstruction of State-Indebted Insolvent Companies Act (Act No. 27 of 2004) (the Reconstruction Act) and not dealt with in terms of the Insolvency Act.

The Reconstruction Order is done through the judiciary as the Reconstruction Order issued by the Minister of Justice is subject to confirmation by the High Court. The process of reconstruction of State-Indebted Insolvent companies is not new to Zimbabwe as the concept is already part of company laws in Zimbabwe. The Reconstruction process seeks to restore the viability status of an indebted company and enabling it to settle its debt through a Scheme of Reconstruction proposed by the Administrator appointed by the Minister of Justice.

The process saves jobs and livelihoods of employees. The Reconstruction Act was tabled before this august House late last year and debated at length. Hon. Sikhala was part of this august House during the passing of that Act and he will recall that there are clear procedures following in the placement of such companies under reconstruction.

It is therefore incorrect and misleading to the House to suggest that the Executive meddles in the affairs of private companies and disregards the relevant legislation in place.

**MR. SIKHALA:** The Administrator who was appointed for the administration of SMMH is Auther Gwaradzimba and was appointed directly by yourself and the question to buy shares on behalf of the government to have total control of SMMH — what is your comment?

**MR. CHINAMASA:** It is true that the company he is referring to acted as the nominee of the government to acquire a controlling interest in T and N which was a shareholder in SMMH — that is correct and the acquisition was done.

**SPECIFICATION OF COMPANIES**

4. **MR. SIKHALA** asked the Minister of Justice, Legal and Parliamentary Affairs to clarify the steps involved in the specification of companies explain-

ing how companies are placed under state-appointed administrators.

Act in order to familiarise himself and get in-depth understanding thereof.

**THE MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS (MR. CHINAMASA):**

Individual persons and companies are specified by the Minister of Justice in terms of Part III of the Prevention of Corruption Act [Chapter 9: 16] on reasonable ground of suspicion that any person has by theft, fraud or other unlawful means caused the misappropriation of funds.

Section 6 of that Act is instructive in this regard. A notice of specification is published in the *Gazette* in terms of section 6 (2) and then an Investigator is appointed to investigate such person or company in terms of section 7 of that Act. Section 8-11 provide in detail the work of the investigator.

A specified person has a right of appeal against such specification to the Minister in terms of section 12. It is misleading for the Hon. member to say that the specified persons/companies are placed under state appointed administrators. The administrators referred to are appointed by the Minister of Justice in terms of section 5 of the Reconstruction Act to administer State-indebted insolvent companies. I would respectfully refer Hon. Sikhala to the provision of this

**STATISTICS ON FOREIGN INVESTMENT**

5. **MR. SIKHALA** asked the Minister of Industry and International Trade to provide statistics on foreign investment, given that Zimbabwe is under spotlight against the background of international concern about the rule of law and property rights.

**THE DEPUTY MINISTER OF INDUSTRY AND INTERNATIONAL TRADE (MR. CHIHOTA):** I would like to thank the Hon. Member of Parliament for asking the question on the foreign investment in Zimbabwe. Investment promotion remains a key pillar of the country's economic turn around programme, and accordingly Government has declared 2005 as the year of investment attraction. Government is also cognisant of the fact that the single biggest factor in attracting both Foreign Direct Investment (FDI) and domestic investment lies in enabling environment which offers incentives.

In this endeavour, the Government will be bringing to Parliament a Bill that seeks to merge the Zimbabwe Investment Centre with the Export Processing Zones Authority. The merged organisation create a one-stop

(The Dep. Min. of International Trade) investment centre that will facilitate approvals expeditiously.

— **MR. SPEAKER:** Order, Mr. Mukahlera.

**MR. MUKAHLERA:** The Minister is not answering the question. The question is on foreign investment. What he is talking about is not relevant to foreign investment that he has been asked.

**MR. SPEAKER:** The Minister is giving you statistics to support his response.

**MR. CHIHOTA:** Turning now specifically to projects, in 2004 the Zimbabwe Investment Centre approved 87 projects of which 29 were wholly foreign owned worth \$155 billion and 58 joint ventures, worth \$203 billion. Of the approved projects in 2004, 40 are in the manufacturing sector and are worth more than Z\$249 billion. The mining sector has 11 projects worth Z\$69 billion with the services sector having an equal number of projects valued at Z\$18 billion. Tourism and transport had 10 projects each, worth Z\$23.5 billion and Z\$12 billion respectively. In total the projects approved in 2004 are expected to create 6 921 jobs with an export potential of Z\$38 trillion.

The 87 projects approved in 2004 compare with 77 approved in 2003, 85, in 2002 and 2001 and 150 in 2000. The total number of projects operational since 2000 and 2004 is 176 out of the 523 projects approved. The total value of the projects approved by the centre as from 2000 to April 2005 is Z\$1.2 trillion.

Recently that is, from January to May 2005 the centre approved a total of 39 projects with three by foreign investors and 33 joint ventures. The projects are expected to create 1 708 jobs with export earning potential totalling Z\$154 billion. The Zimbabwe Investment Centre is currently conducting follow up visits to various projects to ascertain the progress that has been made towards implementation.

The major destinations of these foreign investments by sector and in ranking order were: construction, manufacturing, mining services, tourism and transport.

With regards to the Export Processing Zones Authority, from 2004 to date 15 projects worth US\$86 million have been approved and with potential of creating 4 260 jobs.

On an annualised basis and the period 1996 to 2004 the Export Processing Zones Authority approved 284 projects of which 183 are now operational with a total value of US\$200 million.

Recently the country has received interests for investments from all over the world including India, Japan, Iran, South Korea, China and Malaysia.

**MR. SPEAKER:** Hon. Mukahlera, may I draw your attention to Question Number Five. You ask the Minister of Industry and International Trade to provide statistics on foreign investments and what he was talking about were the approved projects and not on the statistics on foreign investment. So you were out of order.

#### MINISTRY OF STATE FOR INDIGENISATION AND EMPOWERMENT POLICY ON INDIGENISATION

6. **MR. SIKHALA** asked the Minister of State for Indigenisation and Empowerment to define the Ministries' policy on indigenisation particularly in light of the recent take over of assets owned by Black and individuals through state instruments like what happened to Mutumwa Mawere, James Makamba and Jefrey Munzawimbi.

**THE MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS (MR. CHINAMASA):** Mr. Speaker, on behalf of the Minister of Indigenisation and Empowerment I will read his answer. I would like to draw

attention of the House that there are two aspects to the answer, the first aspect is directed to the Minister of Indigenisation and the other one needs to be addressed by my Ministry.

Mr. Speaker, let me begin by advising the Hon. Sikhala that the Revised Policy on Indigenisation of the Economy is not only my Ministry's Policy but rather indeed, Government Policy, which was approved in October 2004.

The policy objective of the Government for the Indigenisation of the economy is to deliberately create economic opportunities for the historically disadvantaged black people in order to promote national economic well being and guarantee political and social stability by increasing their ownership of productive assets in the economy, creating a conducive economic environment that will allow indigenous participation, developing a competitive private sector that spearheads economic growth and development and a self-sustaining economy. Government has therefore decided that at least 50 percent enterprise shareholdings in all sectors be held by indigenous people.

Mr. Speaker, I would like to emphasise that Government's indigenisation policy is being implemented within the confines of the laws of Zimbabwe and should not

[The Minister of Justice]

be abused as a front for illegal and corrupt activities by an indigenous player.

Finally, I would request the Hon. member to refer the second aspect of the question relating to the alleged “takeover of assets owned by black individuals through state instruments” to the Minister of Justice, Legal and Parliamentary Affairs.

The indigenisation policy of the Government has been clear since its inception in the early 1990 whose main thrust is to economically empower the black indigenous Zimbabweans. It is not Government’s policy to ‘take over’ the assets of anybody by means other than by lawful means. I am not privy to take over of the assets of the referred to persons. However, it is incorrect for the Hon. Sikhala to merely assert or suggest that the assets of Mr. Mawere were taken over without making reference to the laws providing for such takeovers.

Mr. Mawere’s case is different from the other alleged two that it is in terms of the Reconstruction of State-Indebted Insolvent Companies Act and there are pending cases before our Courts in terms of that Act. The argument of the indigenisation policy being advanced by the Hon. member is tantamount to saying the laws of Zimbabwe should not apply to black indigenous Zimbabweans.

## APPOINTMENT OF MR. A. A. GWARADZIMBA

7. **MR. SIKHALA** asked the Minister of State Enterprises, Anti-Monopolies and Anti-Corruption to:

a) inform this august House on the process used in the appointment of Mr. A.A. Gwaradzimba as the administrator of Shabani-Mashava Mines Holdings (SMMH);

b) furnish this House with Mr. Aafurus M. Gwaradzimba’s remuneration package; and

c) confirm if SMMH funds were used to finance the Tsholotsho gathering in late 2004.

**THE MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS (MR. CHINAMASA):** Mr. Speaker, the question was incorrectly directed to the Minister of State Enterprises, Anti-monopolies and Anti-corruption. So, when it was brought to my attention that it should have been directed to me, I then prepared this answer.

i) The process used in the appointment of Mr. A. M. Gwaradzimba as the administrator of Shabanie-Mashava Mines Holdings (SMMH).

**Answer:** Mr. Gwaradzimba was appointed in terms of section 5 (1) of the Presidential Powers (Temporary Measures) (Reconstruction of State-Indebted Insolvent Companies) Regulations, 2004 published in Statutory Instrument 187 of 2004, now superceded by the Reconstruction of State-Indebted Insolvent Companies Act.

ii) The remuneration package of Mr. Aafurus M. Gwaradzimba.

**Answer:** The remuneration package of the Administrator is in terms of section 30 of the Reconstruction of State-Indebted Insolvent Companies Act, which provides that he shall be paid by reference to paragraph (3) of the Fifth Table of fees contained in the Seventh Schedule of the Companies Act and such remuneration shall be taxed by the Master of the High Court. Thus, the package is computed at 6 percent of the gross proceeds or gross turnover of the company and every associate or subsidiary thereof. The Administrator is the principal of a firm of Chartered Accountants AMG Global and such fees are payable to the firm.

iii) Whether SMM Holdings funds were used to finance the Tsholotsho gathering in late 2004.

**Answer:** I am not privy to what the Hon. member is asking and I deny that

any SMMH funds have been applied by the Administrator to purposes for which they were not intended.

**MR. SIKHALA:** Mr. Speaker, I think the Minister knows that when the SMM was started, he said that it was on the strategic interests of the nation. Mr. Speaker, that also includes the issue of being transparent and accountable. There are facts Mr. Speaker, that some funds were used for political campaigns last year by certain ZANU PF factions and these moneys were driven from SMMs could he clarify whether a certain faction of ZANU PF took the money?

**MR. SPEAKER:** Withdraw the word, ‘faction.’ You are advised to withdraw the term ‘faction’. If need be, mention, ‘users’. Otherwise you want the Minister to confirm whether some money was diverted.

**MR. SIKHALA:** I want to get clarification whether some politicians did not dig their hands into the coffers of SMMH since it was taken over by government and also whether the Minister is free and not scared that investigations be put in place to see how SMMH funds were used since the take over of that company by the government.

**MR. SPEAKER:** You are not going to win Hon. Sikhala. ‘Faction’ is going

**[The Minister of Justice]**

is when we realised that foreign currency had been externalised. So in order to save jobs and to save a foreign currency earner we intervened. The idea now is that we will convert our loans to the company into equity. Right now the scheme of reconstruction has, to my knowledge, already been gazetted or the process has already been introduced to give an idea of what creditors are there and how much they are owed and what will be our shareholding as government after the conversion. We are the only party that has put money into this company, not even Mawere. He relied very much on borrowings.

When you start a business, you will either start it by either borrowing money or by saving. If you borrow too much, you give power to your creditors instead of your company. That is what Mawere did. When we did realise that we need to take control of the company, that is what happened.

**MR. MUNGOFA:** Can the Minister explain? He has mentioned that there is a turn around in terms of the company but he does not specify how because the company is still indebted to the tune of over \$800 billion, probably, since it has now turned around to the tune of over \$650 billion.

**MR. CHINAMASA:** It is obvious that the Hon. member does not understand when I say we are reconstructing and we are turning loans into equity. At the end of the reconstruction exercise when it is confirmed by the courts the debt we are owed by SMMH will be written off. In return, we will take over the company. . .

**MR. MUNGOFA:** On a point of order.

**MR. SPEAKER:** I have not granted you leave to move a point of order. You will ask a supplementary question.

**MR. MUNGOFA:** I am also saying, point of order.

**MR. CHINAMASA:** As I was explaining, at the end of the reconstruction exercise, what the state is owed will be turned into equity. It means at that point in time, the company will no longer be owing the \$800 billion because that money will have been turned into equity.

If you start your business through borrowings and you do not return this debt, you give control of your company to the creditors of the business. Mawere did not use any savings but he used government guarantees to purchase the

## COMPLETION OF KUWADZANA LIBRARY

10. **MR. CHAMISA** asked the Minister of Local Government, Public Works and Urban Development to explain:

(a) why Kuwadzana Library has not been completed for such a long time since the local community is starved of library services; and

### THE MINISTER OF LOCAL GOVERNMENT, PUBLIC WORKS AND URBAN DEVELOPMENT

**(DR. CHOMBO):** I wish to thank the Hon. member for raising that question. It is true that Kuwadzana Library has not been completed for quite some time. I am pleased to inform the Hon. member that the City of Harare has budgeted for the completion of this library and we should see it completed end of this year.

On the second question, the Harare City Council is not reluctant to accept any donations from the Member of Parliament. If he has any assistance he wishes to give, the City will be delighted to accept and also the Ministry of Local Government will be delighted to accept that donation.

**MR. CHAMISA:** I just want to get an assurance in this House from the Minister, particularly, in line of the fact

// company. He was hoping that if the company flourishes, he would be able to pay back what he would have borrowed. That did not happen. If he had run the operations in a prudent manner, he would have been able to come out of debt, but he did not. There were huge interests where he would go into SMMH, dip into the till to go and buy other things like Schweppes instead of ploughing back into the company what would have been made from the sales of the proceeds of the company. That was not being done. Instead, the money was being used to buy other companies and he lost control completely to the creditors and we happened as a State to be one of the creditors.

**MR. MADZIMURE:** Does the State have the intention to give the shares that it would have acquired to the public so that the State does not get involved in the running of the business?

**MR. CHINAMASA:** The need was to return SMMH to viability and we have advertently to turn our minds to what will happen when it comes to that turn around. We will look into these points that you have raised. For now, our sole concern is to revert the business to a turn around position.