



FIRST REPORT

**OF THE PUBLIC ACCOUNTS COMMITTEE ON THE ANALYSIS OF
ZINARA'S AUDITED ACCOUNTS FOR THE YEARS ENDING DECEMBER**

2017 AND 2019

AND THE 2017 FORENSIC AUDIT REPORT

THIRD SESSION – NINETH PARLIAMENT

[S.C ..., 2020]

On Tuesday, 27 October 2020, the Speaker of the National Assembly, announced that all Committees of the Second Session would continue to operate as previously constituted until such time that new Committee are appointed by the Committee on Standing Rules and Orders. The following are Members of the Public Accounts Committee:

1. Hon. L. T. Biti (Chairperson)
2. Hon. B. Bushu
3. Hon. O. Bvute
4. Hon. B Chikwama
5. Hon. P. Dutiro
6. Hon. R. M. Maboyi
7. Hon. W. Madzimure
8. Hon. A. Markham
9. Hon. E. Masuku
10. Hon. N. Matsikenyere
11. Hon. M. Mbondiah
12. Hon. F. T. Mhona
13. Hon. T. Mliswa
14. Hon. P. Mpariwa
15. Hon. E. Mushoriwa
16. Hon. E. Mutodi
17. Hon. D. T. Nduna
18. Hon. A. Nkani
19. Hon. Dr. M. Nyashanu
20. Hon. J. Nyokanhete
21. Hon. M. Raidza
22. Hon. B. Rwodzi
23. Hon. T. W. Sansole
24. Hon. C. Sanyatwe
25. Hon. Z. Sibanda
26. Hon. G. Sithole
27. Hon. S. Sithole
28. Hon. P. Togarepi

Terms of Reference of the Public Accounts Committee -

Standing Order No. 16:

“There must be a Committee on Public Accounts, for the examination of the sums granted by Parliament to meet the public expenditure and of such other accounts laid before Parliament as the committee may think fit.”

EXECUTIVE SUMMARY

Introduction

1. The role of Parliament is spelt out in Section 119 of the Constitution. In carrying out its functions, Parliament has a sacrosanct power of oversight over all public bodies and entities. In exercising its powers of oversight, the Public Accounts Committee is a unique Parliamentary Committee that exercises special oversight over public resources.
2. The unique power and role of the Public Accounts Committee is derived from Section 299 of the Constitution. The purpose of oversight is to curb misuse of public funds, corruption and effect good practices.
3. The Committee makes thorough scrutiny over substantive, procedural and legal processes relating to public expenditure.
4. The Public Accounts Committee is constituted in terms of Standing Order No. 16 of the Standing Rules and Orders of the National Assembly.
5. In doing its work, not only does the Committee measure compliance arising from reports of the Auditor General or other reports but **the Committee also looks at constitutional and statutory compliance in so far as it relates to financial and audit matters.**

Background.

6. The Zimbabwe National Road Administration (ZINARA) was established in 2001 by the Roads Act [*Chapter 13:18*] to administer the fixing, collection, management and disbursement of road funds.
7. ZINARA is administered by a Board appointed by the Minister responsible for Roads and Transport in terms of Section 8 of the Roads Act [*Chapter 13:18*].
8. The functions of the Zimbabwe National Road Administration (ZINARA) are spelt out in Section 7 of the Roads Act. The functions of the Road Fund are spelt out in Section 13(3) of the Roads Act [*Chapter 13:18*].
9. The Road Fund is funded primarily by road use charges that largely consist of vehicle license fees, road tolls and other road charges.

Methodology.

10. As part of its routine work, the Committee received and analyzed the 2017 and 2018 Auditor General's Reports and a 2017 Special Forensic Audit Report that was carried out by Grant Thornton on behalf of the Auditor General at the special instance and request of the then Minister of Transport and Infrastructural Development.

11. The Committee received oral evidence from key stakeholders that included the Minister of Transport and Infrastructural Development and his Permanent Secretary, the Board of Directors for ZINARA, the Acting Chief Executive Officer and Senior Management of ZINARA and representatives from some of the contractors awarded contracts by ZINARA.
12. The Committee thoroughly analysed the same and made findings and recommendations guided by the Constitution of Zimbabwe and several relevant Acts of Parliament.

SUMMARY OF THE COMMITTEE'S KEY FINDINGS

13. This Report makes important findings and conclusions which are contained in the main body below. The findings and recommendations provided therein, are only a non-exhaustive summary of the Committee's findings and recommendations.

Presentation of Audit Reports

14. The Committee finds that there is a challenge in respect of which special, forensic and audit reports are tabled before Parliament. The current law rests the responsibility and obligations on the responsible Minister without any timelines and clearly defined procedures.
15. In the present subject matter, there was a clear refusal by the responsible Minister of tabling the Forensic Audit Report. The Committee and Parliament have experienced similar challenges with other Ministers and other forensic audit reports.
16. The Committee makes a finding that the current legal provisions pertaining to the tabling of reports needs to be harmonized with the Constitution to remove obstacles presented by Members of the Executive unwilling to have reports tabled.
17. A key company in the Committee's enquiry, Univern Enterprises (Private) Limited t/a Southern Region Trading Company, refused to give evidence before the Committee citing legal privilege.
18. The Committee makes the strong finding that there is no legal privilege or protection that is available to a private actor that would have received state resources either by way of contract, donation or grant.
19. Wherever public resources are received or used, the Constitution gives absolute power to Parliament of scrutinizing use of those resources.
20. The Committee makes the finding that the legal defence by Univern and other entities in some of the Committee's enquiries, including the Reserve Bank of Zimbabwe has no legal basis at all.

SUMMARY OF RECOMMENDATIONS

21. The definition of “special reports” in the Audit Office Act [*Chapter 22:18*] must be expanded widely to cover **any form of inquiry** including, Value for Money audits, special internal audits, Forensic Audits and Special Investigations in terms of Section 40 of the Public Enterprises Corporate Governance Act [*Chapter 10:31*].
22. The Committee makes the following recommendations:
 - i. That all public sector audits, including special audits (Central Government, State Owned Enterprises and Local Authorities) and all reports of special investigations conducted in terms of Section 40 of the Public Entities Corporate Governance Act [*Chapter 10:31*] must be forwarded to the Auditor General within 14 days of their completion;
 - ii. The Auditor General must in turn automatically submit to Parliament the concerned special report within 14 days of her receipt;
 - iii. The responsible Minister must table the concerned report before the National Assembly within the next 7 sitting days after the completion of the audit;
 - iv. Where the Minister fails to table the report as defined above, the Speaker of the National Assembly shall lay before the House the report on the first sitting of Parliament after the lapsing of the 7 sitting days above.
 - v. Therein after, the relevant Committee must examine the report or the National Assembly itself must debate the report within 21 sitting days of its tabling.
23. Given the frequency in the number of private actors that are pleading the defence of the High Court privilege before Parliament, it is time the National Assembly makes a strong point on this issue and if need be seeks a declarator from the High Court.
24. The Standing Orders need amendment so that they make it clear that there is no privilege for those that are appearing before a Parliamentary Committee to give evidence.
25. The Committee acknowledges the setting up of the Central Internal Audit Unit whose function among other things is to receive all internal audit reports. The reports should be transmitted to the Auditor General and to Parliament, consistent with regional best practices.

SUBSTANTIVE ISSUES

Corporate Governance Issues

26. The Committee makes the finding that there was no corporate governance at ZINARA, that there were no systems, no manuals and no sound procedures for the running of the organization.
27. The Committee makes the finding that ZINARA was totally and absolutely misrun and totally mismanaged. As a result, there was gross abuse of resources, no corporate governance culture and no corporate compliance.

28. The Anti-Corruption Commission must investigate the abuse of office by current and former ZINARA officials as covered in this report.
26. The Committee recommends that disciplinary action should be taken within a period of six months upon adoption of this report, against all concerned employees at ZINARA from senior and middle management to lower case staff that were operating during the period under discussion. Where employees have left or resigned, we recommend the institution of criminal proceedings for abuse of office or corruption. ZINARA must develop financial and human resources manuals, with the aid and assistance of experts;
29. The current and former Board of Directors who were unlawfully paid allowances outside the terms of reference and contracts should be asked to refund and pay back what was paid to them within six (6) months of the adoption of this report. In the event of failure, legal action should be instituted.
30. ZINARA must as a matter of urgency and within three (3) months of adoption of this report, seek expert help from accounting officers, audit firms, human resources firms and legal practitioners to develop the following:
 - i) Human resources policies and manuals;
 - ii) Accounting policies, systems and manuals;
 - iii) Recruitment policies and manuals; and
 - iv) Administration policies and manuals.

On Recruitment

31. The Committee makes the finding that there was no sound human resources policy or system at ZINARA.
32. There were no requisite checks and balances and no compliance with sound principles of human resources management.
33. The Committee made a finding that unqualified people were nepotistically recruited without a process of public interviews, public scrutiny and public competition.
34. As a result, ZINARA ended up being saddled with incompetent individuals who unfortunately were controlling and running budgets that ran into millions of United States dollars.
35. The Committee also makes the finding that corruption at ZINARA, amply demonstrated in this Report was as a result of unqualified persons deliberately recruited to emasculate the institution.
36. ZINARA represents a classic example of the capture of a public institution by nefarious individuals whose sole purpose was to loot public resources.

On Structural Issues

37. As a result of this capture, the Committee makes the finding that ZINARA then deviated from its key functions as defined in the enabling Act, the Roads Act.
38. It failed to fulfil its mandate under its enabling Act, the Roads Act.
39. The Committee makes the finding in absolute terms that the model of ZINARA has failed and failed in absolute terms.
40. The Road Act establishes the Road Fund in Section 13 thereof. It is the one with the principal functions of collecting funds and equitably allocating between Road Authorities. That function is replicated in favour of ZINARA in terms of section 7 of the Roads Act captured above.
41. The Executive must seek to harmonize the Roads Act and to resolve the structural contradictions arising out of the creation of an infrastructure, ZINARA, to manage another infrastructure, the Road Fund.
42. In resolving this issue, the Committee urges the Executive to carry out regional and international studies to establish best practice within six (6) months of the adoption of this report.
43. The Minister of Transport and Infrastructural Development and indeed the Government of the Republic of Zimbabwe must re-examine the mandate of ZINARA, whether or not it has fulfilled its obligations and or its policy expectations and aspirations from its formation and consider whether the issue of roads and roads maintenance is still best served by ZINARA or another agency. In carrying out this evaluation, the Committee recommends that the Government works with experts such as the World Bank and the African Development Bank. The Minister is obliged to present to Parliament his evaluation and assessment report by end of September 2021.

On Harmonisation

44. The Committee noted a disconnect between the issue of passenger safety and the licencing regulatory regime. Passenger safety is important. Passenger safety is secured by the qualifications of the driver, fitness of the motor vehicle, the insurance thereof and the licencing of that vehicle.
45. At the present moment, different departments perform these functions, in particular the Vehicle Inspection Department, Road Motor Transport Department, Zimbabwe Revenue Authority, Central Vehicle Registry and insurance companies.
46. None of these know what the other is doing. In other words the left hand does not know what the right hand is doing.
47. The Committee proposes a harmonized system, a Zimbabwe Integrated Transport Management System (ZITMS), which can easily be achieved through digitalization to ensure that ultimately one registration takes place which consists of multiple registration.

Failure to comply with procurement laws

48. The Committee makes the findings that ZINARA failed to comply with the procurement laws of the country, in particular the Procurement Act [*Chapter 22:14*].
49. Not only that, particularly in the case of Univern's three software contracts, the Committee made the finding that ZINARA deliberately misled the State Procurement Board which then purportedly issued a condonation in some of the contracts.
50. The Committee makes the finding that millions of dollars were lost through failure to go to tender, overpayment of contracts or the manipulation and alteration of contracts after the tender Board had made approval subject to certain conditions or the deliberate misleading of ZINARA.
51. The Committee makes the finding that ZINARA Management and employees abused their offices where they fraudulently and corruptly benefitted from the breach of Zimbabwean laws.

Univern's Contracts

52. The Committee makes the finding that the private company known as Univern Enterprises (Private), with the complicit cooperation of ZINARA Management abused Zimbabwe, abused ZINARA and abused the principles of sound corporate governance in respect of the following:
 - i. the contracts relating to the supply of graders;
 - ii. the contracts relating to the maintenance of those graders;
 - iii. the three software agreements relating to tolling system, motor vehicles licencing system and the transit fees and fuel levy system.
53. Under these contracts Univern received the following huge amounts:
 - i) Grader payments \$17 305 240, (An overpayment of \$1 223 640);
 - ii) Grader maintenance \$ 5 218 000 (Not covered nor provided for in state procurement conditions of award of tender); and
 - iii) US \$ 70 403 738 from the three software contracts between 2012 and 2015.
54. A review of the payment vouchers raised by ZINARA for the purchase of the eighty (80) graders reveal that the total payments made to Univern for the motorized graders amounted to USD 17 305 240.
55. Grader maintenance costs for the period 2013 to first four months of 2015 amounted to a total of USD 5 218 000.

56. The table below shows an estimation of the amounts due to Univern for the commission relating to the motor vehicle licencing system, tolling system and transit fees system:

| | 2012 | 2013 | 2014 | 2015 | Total |
|-------------------|------------------|------------------|-------------------|-------------------|-------------------|
| | USD | USD | USD | USD | USD |
| Vehicle licencing | 4,787,540 | 7,460,567 | 10,105,906 | 11,270,449 | 33,624,462 |
| Tolling fees | - | 1,108,857 | 4,027,967 | 5,181,087 | 10,317,912 |
| Transit fees | - | - | 1,196,969 | 2,371,022 | 3,567,991 |
| Total | 4,787,540 | 8,569,424 | 15,330,842 | 18,822,558 | 47,510,365 |

57. The total amounts thus paid to Univern between 2012 and 2015 were as follows

| | |
|--------------------|----------------------|
| Software contracts | \$ 47 510 365 |
| Motorized Graders | \$ 17 305 240 |
| Maintenance | \$ 5 218 000 |
| Others | \$ 370 133 |
| Total | \$ 70 403 738 |

Univern's Software Contracts

58. The Committee makes the finding that the three software contracts referred to above, were not awarded properly in terms of the procurement laws of Zimbabwe.
59. In addition, the Committee makes the finding that there was a deliberate misleading of the State Procurement Board, which acting on wrong information or alternatively in collusion with same proceeded to issue a condonation.
60. The Committee makes a further finding that the issuance of a condonation by the State Procurement Board, in respect of Univern's three software contracts was done illegally and outside the provisions of the Procurement Act [Chapter 22:14] and therefore is a nullity.
61. The Committee, therefore, makes the finding that all the three software contracts are null and void. For the avoidance of doubt, the contracts are a legal fiction and the authorities must start afresh.
62. Out of an abundance of caution, the Committee makes the finding that those contracts should be cancelled forthwith as a result of non-compliance with the procurement law.
63. The Committee makes the finding that the software contracts that ZINARA executed with Univern can in no way be described as a Private-Public Partnership (PPP) arrangement, justifying the protection and coverage of PPPs as they are defined in international law or Zimbabwe's own Joint Ventures Act [Chapter 22:22]

64. Treating these software contracts as PPPs resulting in the extensions and running for years and years is a fraud on the people of Zimbabwe. A contract for the supply and provision of software such as the one Univern signed with ZINARA can never be described as a PPP agreement.
65. Univern failed to provide evidence of the proof of any investment they had made in these three contracts to justify a PPP.
66. This failure and the finding that a software contract cannot be a treated as a joint venture contract under the Zimbabwe Joint Venture Act [Chapter 22:14] or a PPP leads to the inevitable conclusion that the contracts are against the public policy of Zimbabwe and should be cancelled forthwith.
67. The software contracts were in any event unconscionable and unenforceable in other respects, that was of great concern to the Committee. First was the requirement that when the contract ends, the software and hardware remains with Univern.
68. Secondly is the fact that the contracts appear to be in perpetuity and in any event monopolistic. Thirdly, the raw data and statistics so essential to the software is owned and controlled by Zimbabwe. In particular, the data relating to the number of vehicles in Zimbabwe, their registration thereof, is owned by ZIMRA, Ministry of Transport and Infrastructural Development and local authorities.
69. Fourth, the various commissions, levied on the various agreements, which are in any event levied on gross amounts, including VAT, are extortionate and unconscionable. They are not consistent with any comparable regional or international precedent.
70. Most disturbing is the fact that ZINARA bears the cost of the collections. Its staff mans the tollgates. Its staff is responsible for all collections and other expenses such as transportation, security, electricity, generators and fuel for generators. Thus making Univern commission a net profit.
71. **The charges by Univern have crippled ZINARA and rendered ZINARA a collection agent for Univern very much against its core mandate. This is as unconscionable as it is unacceptable.**

Recommendations

72. The Committee makes the following recommendations:
73. That the Ministry of Transport and Infrastructural Development must take urgent corrective measures to protect the interests of Zimbabwe and the interests of ZINARA.
74. That the Minister of Transport and Infrastructural Development must report to Parliament within two (2) months from the adoption of this report on the urgent corrective measures taken.
75. ZINARA must, through the Minister of Transport and Infrastructural Development, present to Parliament within two months from the adoption of this report:

- i. a breakdown of all amounts paid to Univern by ZINARA from inception to date;
 - ii. the breakdown of all monies that have accrued to ZINARA in respect of tolling, motor vehicle licenses and transit fees; and
 - iii. details of the capital outlays made in the construction of toll gate infrastructure and sources thereof of the finance.
76. This report and the Audit report should be referred to the Zimbabwe Anti-Corruption Commission (ZACC), the Zimbabwe Republic Police and the National Prosecuting Authority, within two (2) weeks of the adoption of this report, for a thorough investigation on commissions and omissions by named individuals and officials that include officials at ZINARA, Univern and the then State Procurement Board.

Special Projects

77. ZINARA executed special projects with many questionable and dubious contactors which costed the organization the sums of USD 71 487 896, 21 and ZAR 31 452 102, 53.
78. The Committee makes the finding that ZINARA has no authority in terms of the Roads Act [Chapter 13:18] of entering into any special contracts with any contractors.
79. The Committee makes the finding that ZINARA is a Road Fund whose sole function is to distribute resources to road authorities who are in fact local authorities.
80. The Committee, therefore, makes the finding that the huge amounts of USD 71 487 896, 21 and ZAR 31 452 102, 53 that were spent in respect of these contracts were done illegally and outside the laws of Zimbabwe.
81. The Committee further makes the finding that, in the majority of the special projects, there was no delivery, no performance and no oversight by the ZINARA Board.
82. The Committee therefore makes the finding that the special projects were nothing other than looting of resources by the executive of ZINARA in connivance with corrupt contractors.

Recommendations

83. The Committee makes the following recommendations:
- i) ZINARA, on a case by case basis, with the assistance where necessary of experts, for instance the Zimbabwe Engineers' Council and the Institute of Zimbabwe Engineers, must endeavor to recover any amounts paid to contractors who did not perform or render services in terms of their contracts. The recoveries must be made within a period of twelve (12) months from the adoption of this report;
 - i) ZINARA must recover all payments made without any underlying contractual basis, without any Interim Payments Certificate (IPC), for instance, the payments to MADZ Construction of US\$3,650,000 and ZAR 1,192,500;

- ii) ZINARA must evaluate and assess the involvement of all its employees during the period covered by the Audit Report and take appropriate disciplinary action within three (3) months of the adoption of this report;

The Plumtree to Mutare Highway Project

84. The Committee makes the finding that the Plumtree-Mutare Highway Project, covered by the Development Bank of Southern Africa Limited (DBSA) and Infralink (Private) Limited was a proper PPP, covered by the definition of a PPP in international law and Zimbabwe's Joint Venture Act [Chapter 22:22]
85. The Committee makes the finding that Zimbabwe must express gratitude to the Republic of South Africa and to DBSA for providing a loan of US\$ 206 million at a time no other country was willing to provide Zimbabwe with any resources.
86. The Committee makes the findings that, Zimbabwe must therefore honour its contracts in respect of the Plumtree to Mutare Highway Project.
87. However, to the extent that some of the conditions of this contracts are now too onerous for ZINARA, the Committee makes the finding that ZINARA must renegotiate these contracts to suit the limited scope and capacity.

Recommendation

88. The Minister of Transport is directed, within three months of the presentation of this report to Parliament to present a report to Parliament on the Plumtree-Mutare Highway Project and all other incidental issues including the result or status of the renegotiation process.

MAIN REPORT

Introduction

1. The role of Parliament is spelt out in Section 119 of the Constitution, which obliges it to ensure that provisions of the Constitution are ***“upheld and that the State and all institutions and agencies of government at every level act constitutionally and in the national interest.”***
2. Accordingly, Parliament in general and the Public Accounts Committee in particular has the responsibility to ensure that accountability and openness of the State through oversight of activities of the Executive and its auxiliary bodies takes place.
3. The purpose of oversight is to curb misuse of public funds, corruption and effect good practices. Parliament performs this duty through its oversight role and through the committee system.
3. In carrying out its functions, Parliament has a sacrosanct power of oversight over all public bodies and entities. This power of oversight lies at the heart of the doctrine of separation of powers, defined as a foundational principle in Section 3 of the Constitution.
3. In exercising its powers of oversight, the Public Accounts Committee is a unique Parliamentary Committee that exercises special oversight over public resources.
4. The unique power and role of the Public Accounts Committee is derived from Section 299 of the Constitution which reads as follows:
 - (1) *“Parliament must monitor and oversee expenditure by the State and all Commissions and institutions and agencies of Government at every level, including statutory bodies, government-controlled entities, provincial and metropolitan councils and local authorities, in order to ensure that-*
 - (a) *all revenue is accounted for;*
 - (b) *all expenditure has been properly incurred; and*
 - (c) *any limits and conditions on appropriations have been observed.”*
6. The Public Accounts Committee is one of these committees of Parliament whose key functions is financial scrutiny. In all parliamentary jurisdictions, the Public Accounts Committee occupies a unique position and enjoys a special mandate as a post audit committee. The Public Accounts Committee does not regulate or question policy. It is simply there to ensure oversight over revenue and expenditure.
7. The Public Accounts Committee is constituted in terms of Standing Order No. 16 of the Standing Rules and Orders of the National Assembly which reads:

“Public Accounts Committee

16. There must be a Committee on Public Accounts, for the examination of the sums granted by Parliament to meet the public expenditure and of such other accounts laid before Parliament as the committee may think fit.”

8. In other words, the Committee’s mandate is broad. The Committee makes thorough scrutiny over substantive, procedural and legal processes relating to public expenditure.
9. In doing its work, not only does the Committee measure compliance arising from reports of the Auditor General or other reports but **the Committee also looks at constitutional and statutory compliance in so far as it relates to financial and audit matters.**

Background.

10. The Zimbabwe National Road Administration (ZINARA) was established in 2001 by the Roads Act [*Chapter 13:18*] to administer the fixing, collection, management and disbursement of road funds. The Fund consists of road user charges collected. The funds are disbursed to local authorities, the Department of Roads and District Development Fund for the purpose of road maintenance, rehabilitation and construction.
11. The Zimbabwe National Roads Administration (ZINARA) is administered by a Board appointed by the Minister responsible for Roads and Transport in terms of Section 8 of the Roads Act [*Chapter 13:18*]. The Board shall consist of 12 members appointed by the Minister, ‘*for their integrity and ability and appropriate experience in matters relating to roads*’.
12. The functions of the Zimbabwe National Road Administration (ZINARA) are spelt out in Section 7 of the Roads Act [*Chapter 13:18*] and include the following:

“In consultation with the Minister and Minister responsible for Finance;

 - a. to fix road user charges and to collect such charges;*
 - b. to allocate and disburse to road authorities;*
 - c. to audit the use of funds from the Road Fund;*
 - d. to manage the Road funds in accordance with the Act;*
 - e. to monitor the implementation of road maintenance works by road authorities;*
 - f. to assist road authorities in making annual or multi-year road maintenance rolling plans;*
 - g. to assist the Minister in setting maintenance, design, construction and technical standards; and*
 - h. to perform any other function that may be conferred or imposed in terms of the Act”.*
13. The functions of the Road Fund are spelt out in Section 13(3) of the Roads Act [*Chapter 13:18*] which reads as follows:

*‘...to provide a stable, adequate, secure and sustainable **source of funding** for maintenance works in Zimbabwe and to ensure the **equitable allocation** of its moneys between road authorities for the purposes of maintenance works’.*

(Our emphasis)

14. From the above, it is quite clear that the key function of ZINARA is to administer the Road Fund established in terms of the Roads Act [Chapter 13:18].
15. The Road Fund is funded primarily by road use charges that largely consist of vehicle license fees, road tolls and other road charges. This is provided for in Section 14 of the Roads Act [Chapter 13:18]. In short, the Road Fund is financed by the public and from public funds.

Methodology.

16. As part of its routine work, the Committee received and analyzed the 2017 and 2018 Auditor General’s Report for State Enterprises and Parastatals. In the process of the Committee’s work on ZINARA, the Committee was then alerted of the existence of a March 2017 Special Forensic Audit Report that was carried out by Grant Thornton on behalf of the Auditor General at the special instance and request of the then Minister of Transport and Infrastructural Development.
17. The Committee assessed this Forensic Audit Report and subjected it to thorough scrutiny and inquiry.
18. The Committee received oral evidence from key stakeholders that included the following:
 - i. The Minister of Transport and Infrastructural Development and his Permanent Secretary;
 - ii. The Board of Directors for ZINARA;
 - iii. The Acting Chief Executive Officer and Senior Management of ZINARA;¹
 - iv. Representatives of Univern Enterprises (Private) Limited;
 - v. The Director of Madz Construction, Mr. C. H. Madzingira;
 - vi. The Director of Forit Construction, Mr. I. Madziyire; and
 - vii. Representatives of Haingate Investments.
19. The summary of evidence received, is contained in this report in the **Annexures**.
20. Having received oral evidence, the Committee thoroughly analysed the same and made findings and recommendations guided by the following pieces of legislation;
 - i. The Constitution of Zimbabwe;

¹ The Acting CEO of ZINARA Mrs. Mathlene Mujokoro resigned midway through our inquiry. She was later followed by Mr. Precious Murove, the Administrator. Mr. Simon Taranhike, the Finance Director was fired (subsequently convicted and jailed) during our inquiry for commissions relating to the Committee’s work. By the time the Committee finished its enquiry, the original members of staff interviewed had all left bar Eng. Kufa, the Acting Director of Projects.

- ii. The Roads Act [*Chapter 13:18*];
- iii. The Public Entities Corporate Governance Act [*Chapter 10:31*];
- iv. The Joint Ventures Act [*Chapter 22:22*];
- v. The Competition Act [*Chapter 14:28*];
- vi. The Toll Roads Act [*Chapter 13:13*]; and
- vii. The Procurement Act [*Chapter 22:14*] and Regulations.

FINDINGS OF THE COMMITTEE.

Procedural Challenges

Non-Tabling of the Report

21. During the work of the Committee, the Committee experienced serious challenges regarding the tabling before Parliament of the Grant Thornton Forensic Audit Report (herein after referred to as the Forensic Report).
22. As indicated above, the Forensic Report was prepared at the special instance, request and direction of the Minister of Transport and Infrastructural Development, who had received complaints and reports from local authorities and other interested stakeholders on the disbursements of funds from the Road Fund and the unsatisfactory performance of some contractors carrying out special projects.
23. The request for a forensic audit was made to the Auditor General who in turn sub-contracted Grant Thornton to carry out the work. Grant Thornton completed their work in March 2017.
24. Upon completion, the Auditor General submitted the Forensic Report to the Minister as is required by Section 11 of the Audit Office Act [*Chapter 22:18*].
25. Section 12 of the Audit Office Act makes it clear that any report transmitted by the Auditor General to the Minister in terms of Section 11, shall be laid by the Minister, before the House of Assembly on one of the seven days on which the House of Assembly sits next after the Minister has received the report.
26. The Committee was able to access the report from Parliament but before it was formally tabled by the Minister in terms of Section 12.
27. During the process of receiving oral evidence, ZINARA Management pulled a rabbit out of the hat and refused to give evidence on issues related to the Forensic Report on the basis that the Forensic Report had not been formally tabled before Parliament by the Minister of Transport and Infrastructural Development.
28. In the Committee's initial meeting with the Minister of Transport and Infrastructural Development, the Minister also relied on his failure to table the Report, as the basis of his refusal to answer questions connected to the Forensic Report.

29. The Committee's work was also complicated by the standard disclaimer provision in any Audit.
30. Reliance was placed by ZINARA Management on clause 6,1 of the Forensic Report which reads as follows:
- “This report has been prepared solely for use by the Office of the Auditor General of Zimbabwe and the Ministry of Transport and Infrastructural Development. It contains legally privileged and confidential information which should not be quoted in whole or in part without prior written consent. This report should therefore not be utilized for any other purposes. No responsibility to any third party will be accepted for any publication or other unauthorised use, as this report has not been prepared, and is not intended, for any other purpose.”*
31. The Committee's work was thus stalled and delayed for a few weeks until the Minister formally tabled the Forensic Report in the National Assembly on 26 June 2019.
32. The Committee is gravely concerned by the unclear manner in which special reports are tabled before Parliament.
33. The provisions of Section 10, 11, 12 and 13 of the Audit Office Act [Chapter 22:18] are unclear and leave Parliament in general and the Public Accounts Committee in particular, hanging at the discretion of the relevant Minister whose state enterprise or local authority has been subjected to an inquiry.
34. In the Committee's view, the Audit Office Act needs to be harmonized with the Constitution. In particular the Audit Office Act must recognize the sacrosanctity of the oversight role of Parliament codified in Section 119.
35. The Committee proposes that the Audit Office Act should be amended to allow the following:
- i. The definition of special reports in the Audit Office Act [Chapter 22:18] must be expanded widely to cover any form of inquiry including, special or forensic audits and special investigations in terms of Section 40 of the Public Enterprises Corporate Governance Act [Chapter 10:31].
 - ii. That all public sector audits, including special audits (Central Government, State Owned Enterprises and Local Authorities), and all reports of special investigations conducted in terms of Section 40 of the Public Enterprises Corporate Governance Act [Chapter 10:31] must be forwarded to the Auditor General within 14 days of their completion;
 - iii. The Auditor General must in turn automatically submit to Parliament the concerned special report within 14 days of her receipt;
 - iv. The responsible Minister must table the concerned report before the National Assembly within the next 5 sitting days after the completion of the audit;

- v. Where the Minister fails to table the report as defined above, the Speaker of the National Assembly shall lay before the House the report on the first sitting of Parliament after the lapsing of the 5 sitting days above.
 - vi. Therein after, the relevant Committee must examine the report or the National Assembly itself must debate the report within 21 sitting days of its tabling.
 - vii. Civil and criminal penalties must visit any officer who fails to submit or lay any Report as described in the Act.
36. The Standing Orders need amendment so that they make it clear that there is no privilege for those that are appearing before a Parliamentary Committee to give evidence.
37. The Committee acknowledges the setting up of the Central Internal Audit Unit whose function among other things is to receive all internal audit reports. The reports should be transmitted to the Auditor General and to Parliament, consistent with regional best practices.

Univern's Refusal to Give Oral Evidence and to Provide Documents.

38. On the 5th of April, 2019, the Committee interviewed officials from Univern Enterprises (Pvt) Ltd (hereafter referred to as Univern). Those present were Directors, Mr. Serge Levy Mr. Musekiwa Kumbula, the Chief Executive Officer, Mr. Phil Mushosho and the Chief Operations Officer, Mr. J. Smith.
39. In the meeting of 5th of April 2019, although Mr. Serge Levy was initially uncooperative, distractive and obstructive, the Committee made good progress on its work. A lot of useful information was provided by Univern's officials.
40. The meeting was postponed to a later date to enable Univern to provide the following information, which information Univern agreed and undertook to provide:
- i. Copies of all agreements entered into and executed with ZINARA;
 - ii. Full details of all capital outlays and expenditure made by Univern in its three main contracts with ZINARA (the vehicle licence system contract, the tolling system contract and the transit fees and fuel levy contract); and
 - iii. Full details with proper break downs of all monies received by Univern from the above three contracts and from other contracts with ZINARA (for instance its supply of graders).
41. When the Committee subsequently engaged Univern, it read out a letter from its legal practitioners of record, stating their client's refusal to supply documents and to provide further oral evidence on the following basis:
- i. That Univern was a private company and Parliamentary oversight did not extend to private actors;
 - ii. On the basis of Section 13 (2) (b) of the Privileges, Immunities and Powers of Parliament Act (CAP: 2:08). This reads as follows;

“(2) No witness in or before Parliament or a Committee must be required or permitted to-

(b) produce any document or thing; which he or she would not be required or permitted to produce it in any case pending before the High Court by reason that the fact, matter, thing or document on a principle of public policy and from regard to public interest ought not to be disclosed and is privileged from disclosure.”

42. The Committee dismissed as baseless the contentions by Univern.
43. As shown above, Parliament’s powers of oversight are without limit. Section 299, in particular allows Parliament to follow every public penny received or spent.
44. Any private entity that receives public resources whether as a result of a contract, donation or a grant is subject to public scrutiny. More so, an entity like Univern which receives millions of dollars annually from public funds and which in any event has claimed that it is in a joint venture agreement with a public entity, ZINARA.
45. The issue of High Court privilege does not have any merit in the eyes of the Committee. High Court privilege is limited to few and narrow instances such as self-incrimination.
46. High Court privilege is also subject to public policy. There is no public policy in the world that provides privilege to any entity being investigated for corruption and abuse of public resources.
47. The Committee found the stance taken by Univern to be obstructive, unlawful and unconstitutional, more so when it had in fact provided unsubstantiated evidence in the first meeting.
48. Furthermore, it was in their best interest to in fact rebut the serious allegations of fraud made against same by the Forensic Audit Report. Indeed only crooks and criminals can wish to avoid the gaze of people, exercised through Parliament. Only those with something to hide will find excuses of not testifying before Parliament.
49. Given the frequency in the number of private actors that are pleading the defense of the High Court privilege before Parliament, it is time the National Assembly makes a strong point on this issue and if need be seeks a declarator from the High Court.

Governance Issues

50. Both the Forensic Report and the Auditor General’s audit reports disclose an unacceptable situation at ZINARA, one of complete capture and broken sound governance systems in breach of the Constitution as well as the Public Entities Corporate Governance Act.
51. There were no checks and balances. Money was distributed at every level from the Board to ordinary workers without respects to budgets, rules and sound principles of corporate governance.

52. It appears that every layer of the institution was pampered with resources in order to turn a blind eye to the massive looting that was taking place virtually at every level of the organisation.
53. The Auditor General's reports and the Forensic Report contain massive detail of the breakdown and it is not the Committee's intention to reproduce all the failures. The Committee will simply highlight the most striking instances.

The Board

54. Without approval from the parent Ministry, fees and allowances were paid to Board Members. Table 1 below captures the payments:

| Years | 2011 | 2012 | 2013 | 2014 | 2015 | 3 months up 31 March 2016 |
|---------------------------|-------------|-------------|-------------|-------------|-------------|--|
| | USD | USD | USD | USD | USD | USD |
| Board fees and allowances | 70 780 | 195 608 | 137 094 | 122 729 | 121 530 | 26 003 |

55. Over and above this, Board Members were paid fees and allowances in respect of any activity done in the name of ZINARA. This included workshops, conferences and other functions. Apart from huge board fees, Board Members were the recipients of a number of unauthorised goods and payments which included the following:
 56. Christmas hampers worth USD 55 700 were bought from OK MART on the 11th of December 2018 from a CBZ Account. Each Board member received hampers valued at USD 9 600. The Christmas hampers were accounted for in the records of ZINARA as expenditure for 'office supplies'.
 57. On 22 August 2014, a payment of USD \$23 518 was made to Solution Centre for the purchase of Ipads for 12 Board Members. This purchase was not authorised by the parent Ministry.
 58. At one stage on 5 September 2014 and without a reasonable explanation, a Board meeting was held in Victoria Falls. Board Members were asked to complete two separate allowance forms totaling fees of USD \$5 140 paid to 12 Board Members.
 59. When Infralink was formed, three Board Members were seconded to the Company, namely Mr. Albert Mugabe, Mr. Davison Norupiri and Engineer Jeffrey Nkomo. Without Ministerial approval a total of USD \$44 167 was paid to these Board Members.
 60. Furthermore, until 23 April 2015 when it was approved the Board was operating without a Board Charter.
 61. The following were also missing:
 - i. Procedures manual;

- ii. Human resources policy; and
- iii. Finance Policy, Budgetary and Monitoring Process.

Weak Governance Structures

- 62. Governance and procurement issues were at the epicenter of ZINARA's vulnerabilities.
- 63. Both audits reflect the existence of weak internal controls over cash and banking with ZINARA disbursing cash to provinces outside of its normal banking infrastructure, through employees' personal bank accounts.
- 64. In addition, there was no laid down policy or procedure to cover this arrangement. The Auditor General also noted that there was no evidence of approval by the head of station on the petty cash voucher. The petty cash voucher was only signed by the accounts clerk.
- 65. The Road Administration was treating revenue from vehicle licencing in the period in which the cash was received. As a result, vehicle licencing amounts received in advance were being treated as revenue for the current period despite the fact that the amounts related to a future period. The vehicle licencing system was not configured to split amounts paid for the current period and payments that were made in advance.
- 66. Furthermore, revenue and expenses for ZINARA were not being matched as revenue was being accounted for on a cash basis and while expenses were being accounted for on an accrual basis
- 67. The Road Administration disposed of three (3) motor vehicles to its managers and the benefit arising from disposal of vehicles was not subjected to income tax. This was in violation of the Income Tax Act [*Chapter 23:06*]. In addition, the vehicles disposed were still in the name of the Road Administration. According to the Vehicle Licensing and Registration Act [*Chapter 13:14*], when there is a change of ownership of vehicles, the new owner shall change ownership within 14 days from the date of purchase.
- 68. ZINARA Management was entering into business arrangement with third parties without entering into contracts.
- 69. ZINARA Management did not avail vouchers for audit.
- 70. The document filing and retrieval system for the safe keeping of the Administration's documents were not adequately designed and operated.
- 71. The Administration was flouting approved policies and procedures in paying benefits and allowances.
- 72. There was no evidence of approval from the parent ministry for the representation allowances that were being paid to the Board Members whenever they attended workshops and other non-board/committee meetings.

Staff Over runs and staff expenses

73. Generally senior staff were overpaid resulting in massive overheads for ZINARA which were not consistent with fiscal prudential levels defined in the law.
74. Section 15(d) of the Roads Act [*Chapter 13: 18*] states that the Administration shall use the Road Fund in meeting any salaries, allowances and other expenses of the Road Administration provided that expenditure of this purpose shall not exceed 2.5% of the revenue of the Road Fund in any financial year.
75. ZINARA's average wage expenditures were 11% of total expenditure, being 8.5% over the statutory limit.
76. During the financial year 2013, seven senior managers received gym equipment worth USD \$4 000 per person. A total amount of USD \$27 000 was paid to OK Mart from ZINARA's account.
77. The Auditors noted there was no provision of gym equipment in the contracts of the individuals.
78. Furthermore, the Auditors noted that the concerned employees already had a contractual paid benefit to any gym or sports club of their choice. The gym allowance was not processed through the payroll and the payment voucher was not acquitted.
79. For the period 2011 to 2013, a hair allowance was paid for every lady employee for a hair do at **She and He, Red Rose and Ladies Hairdo** saloons for a total amount of USD \$24 500.
80. The lady employees' contracts did not provide for this benefit and further, just like the gym allowance, this allowance was not processed through the payroll.

Human Resources

81. Despite the fact that ZINARA was established in 2002, the same did not have a Human Resources (HR) Policy by December 2016. At the time of the Committee's oral interview in 2019 ZINARA did not have one.
82. The absence of an HR policy resulted in the following serious anomalies:
 - i. Recruitment of personnel without interviews or sometimes with interviews conducted by one person;
 - ii. Personnel recruited without requisite qualifications;
 - iii. Payment of benefits not stipulated in contracts; and
 - iv. The absence of an employee grading system with the Patterson grading system only introduced in 2014.
83. The Auditors also established a ring of nepotism in the recruitment which affected promotions and were done with tacit approval of the Human Resources Department.
84. Senior employees clearly lacked qualifications as highlighted below:

- i) Mr. Frank Chitukutuku, the Chief Executive Officer was recruited as an Accounting Clerk studying Part B of the Institute of Chartered Secretaries and Administrators' modules. In 2006 he was suspended from duty as the Accounting Controller for failing to submit a salary adjustment schedule to then Chief Executive Officer for approval. In the same year he became the Human Resources Manager without an interview being carried out. On 1 April 2009, again without proof of an interview he became the Chief Executive Officer of ZINARA at a time when he was still in Part B of the Institute of Chartered Secretaries studies;
- ii) Mr. Precious Murove, Director Administration and Human Resources was recruited as a Procurement Officer on 24 August 2009 and was interviewed by the Chief Executive Officer, Mr Frank Chitukutuku. His qualifications at the time were a Diploma in Biblical Studies from Africa Multination for Christ College obtained in 1998 and a Certificate in Stores and Supplies Management from the Air Force of Zimbabwe. On 1 August 2010, Mr Precious Murove was promoted to the position of Human Resources Manager with no human resources qualification and there was no evidence of interviews held. On 15 March 2013, he was promoted to the position of Director Administration and again there was no evidence of an interview. By that time his personal file reflected that he was a holder of a diploma in Business Administration from Azalia University. However, Azalia University lost its accreditation in June 2002, implying that the qualification is questionable.
- iii) Mr. Moses Juma, the Technical Director was appointed as the Planning and Monitoring Engineer on 1 August, 2010. The Auditors noted that there was no newspaper advertisement flighted for the post and the interviews had been conducted by Mr. Chitukutuku as the sole interviewer. Mr. Juma was further appointed as the Acting Chief Executive Officer in July 2014.
- iv) Mr. Shadreck Matengabadza, the Finance Manager was appointed by ZINARA as an Accountant on 21 May 2010. In another contract signed on the same day, he was appointed as the Finance Manager. From a review of the personal files by the Auditors, Mr. Matengabadza held a Diploma in Accounting Technicians (ZAAT) and was in the process of completing an Accounting Degree with Bindura University.
- v) Mr. Botereri, the Administration Manager was appointed by ZINARA as the Stores Clerk on a temporary basis on 1 December 2010. The Auditors review of his personal file revealed that he did not possess any procurement related qualification at the time of his appointment. He only attended a course on Procurement and Stores Management at the Zimbabwe Institute of Public Administration and Management from 20 – 24 June 2011.
- vi) Mrs J. Maposa, the Human Resources Manager was appointed on 3 September 2013. Her appointment followed interviews carried out by one person, Mr. M. Juma.

85. In all the appointments above, the Auditors noted that there was no involvement of the human resources personnel in the interview processes.

External Procurement

86. In general terms, ZINARA embarked in massive procurement without compliance with the law and good corporate governance. In some instances, contracts were awarded without tender and even without Board approval.
87. In 2014 seven Prefab Offices were purchased for various Border posts which included Kariba, Victoria Falls, Kazungula, Plumtree, Mount Selinda, Mukumbura, Mphoeng, Maitengwe and Pandamatenga. The total costs of these structures were USD \$168 912.
88. The Auditors established that these structures were purchased without Board approval and tender during the tenure of Engineer M. Juma as Acting Chief Executive Officer.
89. Between 1 January 2011 and 31 March 2016, ZINARA bought equipment and various materials which included graders, jet patchers, fuel and road construction materials.
90. In the same period a total sum of USD \$562 035 was spent purchasing fuel for local authorities, all of which was purchased from Redan.
91. On 31 October 2014, the Board was advised that ZINARA had purchased two Jet Patchers for USD \$600 000. The challenges with these transactions were that they were not subjected to tender, but more importantly ZINARA was acting out of its mandate of being the provider of finances to local authorities.

Univern: Tendered 40 Motor Graders

92. On 23 March 2012 the ZINARA Board made a resolution for the purchase of 40 Motor Graders for the Department of Roads and District Development Fund (DDF).
93. Although the Auditors were unable to obtain a letter inviting tenders for this transaction, they were advised that tenders were invited on 13 July 2012.
94. The invitation to tender closed on 21 August 2012 and 39 bids were received. On 17 September 2012, Mr. Chitukutuku wrote a letter to the State Procurement Board (SPB) making their recommendations for the supply and delivery of forty (40) motor graders.
95. Top of the list was Univern Enterprises which undertook to supply 40 JLS 220 graders, to be delivered within eight weeks at a price of USD \$201 020 per grader.
96. On 19 October 2012, the SPB awarded the tender for the supply and delivery of 40 graders at a total cost of USD \$8 040 800 through Procurement Board Resolution (PBR 1854).
97. On 19th November 2012, ZINARA entered into a contract with Univern for the supply of forty (40) motor graders.
98. The agreement between ZINARA and Univern for the supply and delivery of forty (40) motor graders was signed on 19 November 2012. Mr. Frank Chitukutuku the ZINARA

CEO signed on behalf of ZINARA, witnessed by Mr. Kaschula and Mr. Kassim. Mr. Kasere signed on behalf of Univern with Mr. P. Murove strangely signing as a witness for Univern.

99. The tender documents issued by the State Procurement Board provided for the following material terms:
 - i. the goods would be delivered within eight (8) weeks;
 - ii. the purchase price would be paid within seven (7) days from the date of delivery;
 - iii. delay of the delivery of the product would result in a penalty fee of 1% of the total cost of the contract, per week up to a maximum of six weeks, upon which the contract would be cancelled.
100. Contrary to the above ZINARA and Univern signed a contract that in Clause 7(4) provided that 30% of the total purchase price, in the sum of USD \$2 412 240 would be paid up front.
101. The Committee was greatly concerned by this agreement. Firstly, the agreement was clearly a variation of the tender conditions set and defined by the SPB. Secondly, it lacked any provisions to protect ZINARA. Missing provisions found in any standard capital expenditure (Capex) agreement included the following:
 - i) Warranties by the supplier in respect of the fitness of the product sold;
 - ii) Delivery frameworks including termination provisions in the event of the supplier's default; and
 - iii) Penalty clauses for delayed or defective performance.
102. On the contrary, the agreement protected and covered Univern and in fact anticipated Univern's breach in two material respects. These were:
 - i. The obligation on warranties was anticipated by clause 4 of the Agreement which provided that the parties would sign a service level agreement notwithstanding that the graders to be supplied were supposed to be new; and
 - ii. Delay in delivery was anticipated by clause 8 of the Agreement which had a generous definition of *force majeure*.
103. However, the agreement, reproduced as Annexure 13 in Volume 1 of the Forensic Auditor's Report had two important annexures. Annexure A was SPB/C/24 being the SPB's letter dated 19 October 2012, awarding the tender to Univern. Annexure B was the document detailing the technical specifications of the equipment to be delivered.
104. In Annexure B, the Technical Specification Document, a two-year warranty was provided for with the following terms:

"1800-4000 working hours or two years whichever comes first' (20 000 km is an error on the tender document)".
105. USD \$2 412 240 was paid by ZINARA on 10 December 2012.

106. Again, contrary to the agreement and tender documents, the forty (40) graders were delivered seven months later on 14 June 2013.
107. Meanwhile between 10 December 2012 and 21 May 2013, ZINARA had been paying to Univern's various accounts held at Nedbank, CBZ, NMB, POSB, ZABG the total sum of USD \$9 515 240.
108. This, therefore, means that **Univern** was overpaid by the sum of USD \$1 223 640.
109. ZINARA was entailed to a 1% penalty up to a maximum of six (6) weeks and thereafter the agreement would be cancelled.
110. The agreement was not cancelled and had the penalty clause been enforced for the seven months delay in performance then ZINARA would have been entitled to a penalty fee of USD \$80 400 per week which total comes to USD \$2 251 200 over seven months.
111. In terms of the tender document, Univern undertook to supply motor graders of the type SJLS 220 within eight (8) weeks at a total cost of USD \$8 040 800. The Motor Graders supplied and delivered by Univern were Sany SJLS 200C and not the tendered for JLS 220 as would be shown below.
112. The motor graders so supplied developed serious technical problems as confirmed by the Audit Report and as would be discussed below.
113. The unanswered question is whether or not the Sany SJLS 200C model supplied was better than the SJLS 220 tendered for.

Univern: Untendered 40 Motor Graders

114. On the 15th March 2013, after a presentation by the Chairperson of the Board's technical Committee, the ZINARA Board took a decision to purchase forty (40) additional motor graders and sought approval from the Ministry of Transport and Infrastructural Development.
115. On 23 April 2013, the then Secretary for Transport and Infrastructural Development, Mr. M. Munodawafa wrote back to Mr. Frank Chitukutuku expressing the Ministry's concerns on the condition that the procurement process was not in compliance with the State Procurement Board requirements.
116. Contrary to the provisions of Section 5 of the Procurement Regulations published as Statutory Instrument 171 of 2002, ZINARA did not go to tender and instead awarded the contract to Univern.
117. The Auditors established that there was no written agreement executed between ZINARA and **Univern** in respect of these forty (40) additional graders. According to the Forensic Audit Report, representations were made by ZINARA to the State Procurement Board on the 7th of August 2014 wherein condonation was sought for the failure to tender. ZINARA indicated that the terms and conditions for the additional forty (40) graders were similar to the original forty (40) tendered graders.

118. The Forensic Audit Report in paragraph 10.19 on page 79, makes the claim that condonation was granted by SPB for the purchase of these forty (40) additional graders. They make reference to annexure 15 in their bundle of documents, which is a letter dated 8 April 2016, reference SPB/C/24 addressed to ZINARA and granting condonation for a different contract being the Public Private Partnership agreement on Computerization on Motor Vehicle Licensing and Revenue Collection systems, which this report deals with below.
119. The Committee, therefore, establishes as a matter of fact that there was no tender, nor condonation in respect of the purchase of the additional forty (40) motor graders.
120. The Committee is fortified in this position by the oral evidence provided for by Mr Taranhike, the then Finance Director of ZINARA. In his oral testimony before the Committee, he admitted that a tender was not issued but pleaded that ZINARA got authority from the Ministry.
121. However, as the Committee has established above, Mr. Munodawafa's letter of 12 April 2013 made it clear that ZINARA had to abide by the country's procurement laws.

Disbursements of funds to Univern

122. The Committee noted with concern the opaque disbursements of amounts to Univern. Multiple accounts created in various banks as reflected in the following diagram:

| Date | Description | Amount | Bank | Account Number | Payment Voucher Number |
|-----------|-------------------------------|---------|---------|----------------|------------------------|
| | | USD | | | |
| 20 May 13 | Purchase of motorized graders | 100 000 | POSB | 049 | 716 |
| 20 May 13 | Purchase of motorized graders | 80 000 | Metbank | 918 | 717 |
| 21 May 13 | Purchase of motorized graders | 100 000 | POSB | 324 | 729 |
| 21 May 13 | Purchase of motorized graders | 100 000 | ZABG | 048 | 731 |
| 22 May 13 | Purchase of motorized graders | 20 000 | CBZ | 085 | 732 |
| 24 May 13 | Purchase of motorized graders | 195 000 | POSB | 324 | 741 |
| 24 May 13 | Purchase of motorized graders | 25 000 | CBZ | 085 | 742 |
| 24 May 13 | Purchase of motorized graders | 30 000 | Metbank | 934 | 744 |
| 27 May 13 | Purchase of motorized graders | 160 000 | POSB | 324 | 747 |
| 27 May 13 | Purchase of motorized graders | 20 000 | ZABG | 723 | 748 |
| 30 May 13 | Purchase of motorized graders | 50 000 | POSB | 324 | 761 |
| 31 May 13 | Purchase of motorized graders | 120 000 | POSB | 324 | 762 |
| 31 May 13 | Purchase of motorized graders | 60 000 | POSB | 324 | 763 |
| 4 June 13 | Purchase of motorized graders | 300 000 | POSB | 324 | 766 |
| 4 June 13 | Purchase of motorized graders | 140 000 | POSB | 324 | 769 |
| 5 June 13 | Purchase of motorized graders | 270 000 | POSB | 324 | 777 |
| 7 June 13 | Purchase of motorized graders | 285 000 | POSB | 324 | 779 |

| | | | | | |
|------------|-------------------------------|------------|---------|-----|------|
| 11 June 13 | Purchase of motorized graders | 600 000 | POSB | 324 | 983 |
| 12 June 13 | Purchase of motorized graders | 120 000 | POSB | 324 | 789 |
| 14 June 13 | Purchase of motorized graders | 98 000 | POSB | 324 | 797 |
| 14 June 13 | Purchase of motorized graders | 100 000 | POSB | 324 | 798 |
| 19 June 13 | Purchase of motorized graders | 150 000 | POSB | 324 | 807 |
| 19 June 13 | Purchase of motorized graders | 280 000 | Capital | 151 | 810 |
| 26 June 13 | Purchase of motorized graders | 30 000 | ZABG | 724 | 825 |
| 5 July 13 | Purchase of motorized graders | 300 000 | NMB | 837 | 850 |
| 8 July 13 | Purchase of motorized graders | 70 000 | POSB | 837 | 849 |
| 10 July 13 | Purchase of motorized graders | 100 000 | POSB | 324 | 857 |
| 24 July 13 | Purchase of motorized graders | 100 000 | Metbank | 934 | 921 |
| 26 July 13 | Purchase of motorized graders | 100 000 | POSB | 465 | 894 |
| 26 July 13 | Purchase of motorized graders | 100 000 | POSB | 324 | 895 |
| 29 July 13 | Purchase of motorized graders | 7 000 | CBZ | 065 | 896 |
| 29 July 13 | Purchase of motorized graders | 29 000 | CBZ | 015 | 897 |
| 29 July 13 | Purchase of motorized graders | 34 000 | POSB | 465 | 898 |
| 30 July 13 | Purchase of motorized graders | 50 000 | CBZ | 085 | 904 |
| 2 Aug 13 | Purchase of motorized graders | 50 000 | POSB | 324 | 915 |
| 8 Aug 13 | Purchase of motorized graders | 100 000 | POSB | 324 | 926 |
| 21 Aug 13 | Purchase of motorized graders | 500 000 | NMB | 837 | 958 |
| 29 Aug 13 | Purchase of motorized graders | 50 000 | NMB | 085 | 973 |
| 3 Sep 13 | Purchase of motorized graders | 50 000 | CBZ | 103 | 986 |
| 3 Sep 13 | Purchase of motorized graders | 40 000 | CBZ | 085 | 987 |
| 3 Sep 13 | Purchase of motorized graders | 250 000 | NMB | 837 | 989 |
| 10 Sep 13 | Purchase of motorized graders | 5 000 000 | NMB | 837 | 1004 |
| 11 Oct 13 | Purchase of motorized graders | 300 000 | POSB | 324 | 1081 |
| 17 Jan 14 | Purchase of motorized graders | 100 000 | POSB | 324 | 1265 |
| | | 17 305 240 | | | |

Univern's Service Contracts

123. On 29 July 2013 a service level agreement was executed between ZINARA and Univern, being the agreement that Univern had anticipated in Clause 4 of the Purchase Agreement mentioned above. The service level agreement is attached as Annexure 16 in Volume 1 of the Forensic Audit Report.
124. The service level agreement gave exclusive monopoly to Univern of repairing the graders at fees and rates determined by Univern.
125. Furthermore, all repairs were to be done in Harare, with Univern arranging for the transport for any vehicle requiring workshop assistance at ZINARA's expense.
126. Despite the existence of the warranty on the machines described above and despite the fact that the machines were only delivered from June 2013, huge amounts of money were paid

to Univern for repairs. Between 2013 and the first 4 months of 2015. The following amounts were paid by ZINARA:

- i. In 2013, USD 618 000;
- ii. In 2014, USD 3 300 000; and
- iii. In the first four (4) months of 2015, USD 1 300 000.

127. The above costs were submitted by the Chairman of the Board’s Technical Committee on 15 May. The minutes of that Board meeting are found as Annexure 19 of Volume 1 of the Forensic Audit Report.
128. The Board itself, in its deliberations expressed great disquiet and unhappiness with the service level agreement and the associated costs. The following points were made:
 - i. “.....*The graders were bought using the allocations meant to be disbursed to Road Authorities*”;
 - ii. “*The cost of maintenance at three million three hundred thousand dollars (\$3 300 000. 00) is very high as the organization can purchase more than 10 new graders with the same value*”;
 - iii. “.....*There is need to interrogate the persons who sign off for the fault reports at the Road Authorities and the person who acknowledges that the work has been done*”; and
 - iv. “.....*Road Authorities have capacity to maintain graders.*”
 - v. The Board recommended that “.....*ZINARA should analyse and probe the cost of maintenance and service delivery.*”
 - vi. A review of the Board minutes of the meeting held on 19 December 2014 revealed that the Finance Chairman advised the Board that ...*graders are not incorporated in ZINARA’s balance sheet nor the Road Authorities’ balance sheets*”
129. Transport costs were also incurred in transporting the graders from the local authorities to the workshops. Without going to tender contracts were awarded to Pesket Trading (Private) Limited for the transportation of the graders. Pesket charged USD \$5 per kilometer and was paid USD \$230 133, 50.
130. Over and above this, the sum of USD 370 133 was spent on a number of expenditure lines that were outside the agreement.
131. The first was a trip to China by ZINARA officials on 1 February 2013, where they went to inspect some motor graders. That visit would have been pointless because the two agreements for the supply of forty (40) graders had already been concluded in 2012. This trip costs the sum of USD 44 749.

132. Once the graders had arrived in Zimbabwe, lavish ceremonies were held. First was a lunch for a handover ceremony that was held at Rainbow Towers for a total cost of USD 15 884. Second was another lunch at the Holiday Inn on 12 November 2013. On that same day there was a photo shoot of the graders for USD \$2 100.
133. People were brought in for the November ceremony and accommodation was paid for at Rainbow Towers for the total sum of USD 11 940. Further, a conference package was paid for a total cost of USD 5 250. Promotional material for grader commissioning cost USD 22 825.
134. Another lunch for VIP Grader Commissioning was held a week later. This lunch costs USD 2 750.
135. The full breakdown of USD \$370 133 is as follows:

| Date | Beneficiary | Description | Amount | Payment processed through |
|-------------|--------------------|---|---------------|----------------------------------|
| | | | USD | Bank/Ref |
| 27 Feb 13 | Univern | Airfares and accommodation for delegation to China to inspect graders | 44 479 | CBZ-65 |
| 20 Jun 13 | Rainbow Towers | Lunch for grader handover ceremony | 15 884 | NMB 837 |
| 9 Jul 13 | Courtman | Brochures for handover ceremony | 30 000 | CBZ-85 |
| 19 Jul 13 | Pesket Trading | Transportation for graders from Harare to various destinations | 43 459 | Stanbic |
| 23 Jul 13 | Pesket Trading | Transportation for graders from Harare to various destinations | 48 789 | POSB 465 |
| 2 Aug 13 | Pesket Trading | Transportation for graders from Harare to various destinations | 64 366 | POSB 465 |
| 12 Nov 13 | Rainbow Towers | Grader commissioning accommodation for local government delegation | 11 940 | CBZ 103 |
| 12 Nov 13 | Algo inc | Photographic coverage for grader ceremony | 2 100 | CBZ 103 |
| 12 Nov 13 | Holiday Inn | Lunch for grader ceremony | 7 100 | CBZ 103 |
| 12 Nov 13 | Rainbow Towers | Conference package for grader ceremony | 5 250 | CBZ 103 |

| | | | | |
|-----------|----------------|--|---------|----------|
| 12 Nov 13 | Media Net | Filming and video production for grader ceremony | 6 900 | CBZ 103 |
| 12 Nov 13 | Stylestay Ent | Promotional material for grader commissioning | 22 825 | CBZ 103 |
| 20 Nov 13 | Rainbow Towers | VIP food for grader commissioning | 2 750 | CBZ 103 |
| 6 Dec 13 | Pesket Trading | Transportation for graders from Harare to various destinations | 64 021 | POSB 657 |
| | Total | | 370 133 | |

Univern's Software Contracts

136. Univern Enterprise (Pvt) Ltd, trading as Southern Region Trading Company (SRTC) is a company registered in Zimbabwe with two shareholders Laurence Neil Sher and Sherice Sher. There are three Directors namely, Laurence Neil Sher, Sherice Sher and Musekiwa Kumbula.
137. Three contracts were awarded to Univern, all without tender, which have serious financial and security ramifications to the Republic of Zimbabwe.
138. These contracts are as follows:

| Date contract signed | Contractor | Contract sum | Nature of content |
|-----------------------------|-------------------|---|--|
| | | USD | |
| 23 Mar -12 | Univern | 18.5% of gross revenue, (VAT exclusive) | Supply and installation of the motor vehicle licensing system |
| 2 Oct – 12 | Univern | 16% of gross revenue, (VAT exclusive) | Supply and installation of the tolling system |
| 19 Nov – 12 | Univern | 16% of gross revenue, (VAT exclusive) | Supply and installation of the transit fees and fuel levy system |

139. This report now analyses and breaks down these massive contracts.

Motor Vehicle Licensing Software Agreements

140. According to the Forensic Audit Report, on 8 April 2011, ZINARA resolved to engage Univern to computerize vehicle licensing.
141. In a meeting on 13 March 2012, the ZINARA Board resolved that Univern:

'...is hereby engaged to put a licensing system in place for a period of 12 months, renewable thereafter for a cost of 20% after ZIMPOST commission has been paid.'

142. The Forensic Audit Report refers to a contract having been agreed to between ZINARA and Univern on the above terms but there is no production in the Annexures of a written agreement to this effect.
143. It is not in dispute that ZINARA did not go to tender and therefore there was no compliance with provisions of Part IV of the then Procurement Act [Chapter 22:14], read together with Section 8 of the Procurement Regulations SI 171 of 2002.
144. Through a letter dated 14 March 2016, which is not available in the two Audit Reports, Engineer J. M. Juma, the Acting Chief Executive Officer wrote to the State Procurement Board seeking condonation.
145. On April 8, 2016, through Mr. Mutanhaurwa the Acting Principal Officer of the State Procurement Board, a letter was written to ZINARA where condonation was granted on the following terms;

“STATE PROCUREMENT BOARD

Established under the Procurement Act [Chapter 22:14]

Fifth Floor
Old Reserve Bank Building
76 Samora Machel Avenue
Harare
Telephones: 752539; 752540
753132; 723758

P. O. Box CY 408
Causeway
Zimbabwe
Fax: 773089
Telex: 22662ZW

April 8, 2016
Acting Chief Executive Officer
ZINARA

SPB/C/24

Eng. J. M. Juma

REQUEST FOR REGULARISATION OF ZINARA AND UNIVERN ENTERPRISES
P/L PUBLIC PRIVATE PARTNERSHIP AGREEMENT ON COMPUTERISATION
OF REVENUE COLLECTION SYSTEMS

Reference is made to your minute dated March 14, 2016, concerning the above.

During their Meeting No. 20/2016 of March 24, 2016, Members noted that the Private Public Partnership Agreement (PPP) entered into between Univern Enterprises P/L t/a Southern Region Trading Company and ZINARA was through Direct Engagement, contrary to Section 49 of the Procurement Act as read with PPP Guidelines (2005) and

Section 315(2) of the Constitution of Zimbabwe, all of which requires the identification of PPP Partners through a transparent process or by Tender.

The Accounting Officer and Univern Enterprises P/L should, within 14 days of notification and each pay US\$ 900. 00 administration fees for failure to follow proper tender procedures.

Univern Enterprises P/L should within 14 days of notification pay US\$ 12 000. 00 annual administration fees (being maximum payable for the Direct Award), for every year that the PPP subsisted and was consummated without proper authority, since 2012, in line with S.I. 159 of October 12, 2012.

The Accounting Officer should, within 14 days of notification, submit Annual Procurement Reports on the PPP Costs paid to Univern Enterprises P/L without proper authority since commencement of the Agreement, for the Board's records and verification of administration fees due.

You are therefore advised to proceed as follows;-

1. Take necessary steps as directed by the resolution.
2. In all communications, please quote the above PBR number and the date.

S. Mutanhaurwa
ACTING PRINCIPAL OFFICER
for: STATE PROCUREMENT BOARD

146. Regrettably the above letter by the State Procurement Board does not disclose what sort of documents were placed before the State Procurement Board in respect of which condonation was granted.
147. Regrettably too in the absence of Eng. Juma's letter of March 14, 2016, the Committee was unable to determine what documents were placed before the State Procurement Board.
148. Of significance however, is the fact that the agreement between ZINARA and Univern is now described as a Public Private Partnership (PPP).
149. Two questions arise which will be answered by this Report, namely:
 - i. The true nature of the agreement between Univern and ZINARA and whether or not it could be described as a PPP agreement; and
 - ii. Whether or not the said agreement as well complies with the letter and spirit of Zimbabwean Law

Unpacking the Agreements between ZINARA and Univern

150. On 23 March 2012, an Agreement headed “*Concession for the Supply and Commissioning of the Computerisation of the Vehicle Licences in Zimbabwe*” was entered into between ZINARA and Univern.
151. ZINARA was represented by its CEO, Mr. Frank Chitukutuku. Mr. Precious Murove and Mr. G.T. Kanotangudza were witnesses to Mr. Chitukutuku’s signature.
152. Mr Lawrence Sher signed on behalf of Univern, and without any restraint, hint of illegality and unethicalness, Mr. Murove and Mr. Kanotangudza were witnesses to Mr. Sher’s signature.
153. In terms of the Agreement, Univern would:
- i. manage the supply and implementation of a full computerized licensing system to be distributed to 29 registry offices in Zimbabwe: and
 - ii. exclusively supply software developed by it for the above computerized licensing system
154. In turn, ZINARA would
- i. provide Univern with access to its data, material and computer systems;
 - ii. make available “*sufficiently qualified and authorize ZINARA personnel with appropriate access rights and permissions*”;
 - iii. be solely responsible “*for data capture and the population of the software application with the content required*”;
 - iv. Warrant that all vehicle licences will be sold through the system provided by Univern Enterprises; and
 - v. Pay to Univern Enterprises 18.5% of the total gross transaction value as calculated by the system.
155. The duration of the Agreement was a period of 12 months subject to annual renewal “by mutual agreement”
156. Upon termination of the Agreement, the software developed and all assets provided by Univern Enterprises and the right to title and ownership of any code, forms, algorithms or materials developed by Univern would remain the property of Univern.
157. On 2 October 2012, an Addendum to the above Agreement was executed between the parties. This Agreement is Annexure 22 contained in Volume 1 of the Audit Report.
158. Mr. Chitukutuku represented ZINARA whilst Mr. S. Levy represented Univern. Mr. Kasin and Mr. Murove were witnesses to Mr. Chitukutuku signature while Mr. Kasere and Mr. Murove were witnesses to Mr. Levy’s signature.

159. The preamble to the Agreement made it clear that it was providing for *“a wider scope for ZINARA’s long term integrated technology and software solutions”*
160. The Agreement spelt out that Univern would manage the supply and implementation of fully computerized integrated solutions throughout Zimbabwe that included the following;
- i) consolidated licencing;
 - ii) tolling; and
 - iii) *“any other future software solutions required by ZINARA”*.
161. To fulfill its obligations, Univern was obliged to:
- i. undertake to supply and deliver both computer hardware and software for the implementation and commissioning of the project;
 - ii. provide full software support for the system; and
 - iii. undertake to train existing staff involved in the operation of the system.
162. In turn, ZINARA was obliged to provide access to Univern of all its material and computer system as well as to capture that data and population of the software application as was stated in the original agreement.
163. ZINARA also undertook to sell vehicle licences exclusively through the Univern system.
164. In addition, ZINARA warranted that it would exclusively use Univern for all tolling stations with the exception of the 9 toll stations covered under the Plumtree-Mutare Infralink route.
165. ZINARA was to make the following payments:
- i. 18.5% of the total gross transaction value for the Vehicle License System;
 - ii. 16% of the total gross transaction value of fees collected through the Tolling System; and
 - iii. 18.5% of the total gross transaction value as calculated by the system *“for software developed for ZINARA which is not income generating to be agreed by both parties prior to the commencement of the development of such system”*
166. The Addendum materially varied the duration of the Agreement. It now provided that the Agreement would run for a period of ten (10) years *“calculated from each implementation date”*.
167. The phrase *“implementation date”* is defined in the Main Agreement to mean *“the date the System Software is physically commissioned and ZINARA has productive use of the System for the collection of fees, including vehicle licence and other income”*

168. In terms of both Agreements, the fees to be paid by ZINARA excluded Value Added Tax (VAT) which was to be paid by ZINARA “*in addition to all fees, invoices and licences*”
169. On 7 February 2014, a further Agreement headed “*Second Addendum to the Concession for the Supply and Commissioning of the Computerization of the Transit Fee and Fuel levy in Zimbabwe*” was signed.
170. This Agreement reproduced as part of Annexure 22 to Volume 1 of the Audit Report was a short one, but with drastic legal and financial implications.
171. It allowed Univern, to collect a fee for Road Transit Fees and Fuel levy from income derived from the Road Transit System and Fuel Levy System supplied by Univern.
172. All the other terms of the Agreement as reflected in the Main Agreement and the First Addendum remained the same.
173. The financial implications of these Agreements is massive. In real terms to the extent that ZINARA was paying VAT, over and above the gross revenue collected, ZINARA was paying the following:
- i. 16% Toll Fee, (18.4%)
 - ii. 18.5% Vehicle Licensing (21.275%)
 - iii. 16% Vehicle Levy System (18.4%)
174. For the period under review, the following figures were collected:

| | 2012 | 2013 | 2014 | 2015 | Total |
|--------------------------------------|-------------|-------------|-------------|-------------|--------------|
| | USD | USD | USD | USD | USD |
| Commission – vehicle licencing 18.5% | 4,787,540 | 7,460,567 | 10,105,906 | 11,270.449 | 33,624,462 |
| Commission – tolling fees (16%) | ..... | 1 108 857 | 4 027 967 | 5 181 087 | 10 317 912 |
| Commission transit fees (16%) | ..... | ..... | 1 196 857 | 2 371 022 | 3 567 991 |
| Commission – road access (16%) | ..... | ..... | 99 863 | 223 390 | 323 253 |
| Commission – radio licence (14%) | ..... | ..... | 23 504 | 259 846 | 283 349 |
| Commission – fuel levy | ..... | ..... | ..... | 145 268 | 145 268 |
| | 4 787 540 | 8 569 425 | 15 454 209 | 19 451 062 | 48 262 236 |

The True Nature of the Agreement

175. In the letter dated 8 April 2016, written by the then State procurement Board to ZINARA “granting condonation”, the Agreement between ZINARA and Univern is referred to as a Public-Private-Partnerships (PPP).
176. The Agreements themselves contain no such description. The Main Agreement calls itself a Concession Agreement.
177. A PPP Agreement is one in which a private investor provides huge amounts of capital in an infrastructural project, wherein the Government/Public Entity lacks the needed capital. For consideration, the private investor is rewarded through fees arising from use of the capital project or is allowed to operate to its own benefit. The latter is often referred to as a Build Own and Transfer (BOT) or Build, Own, Operate and Transfer (BOOT).
178. The World Bank defines a PPP as “*a long term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance.*”
179. In 2016 the Government enacted the Joint Venture Act [Chapter 22:22]. This Act, uses the word Joint Venture in place of PPP. This Act did not apply at the time that the Agreements were concluded but its definition of a PPP or Joint Venture is incisive. In Section 2, a Joint Venture Agreement is defined as follows,
- “an agreement between a contracting authority and a counterparty, approved under this Act, in terms of which –*
- (a) the counterparty undertakes to perform a contracting authority's function on behalf of the contracting authority for a specified period; and*
 - (b) the counterparty receives a benefit for performing the function by way of-*
 - (i) compensation from funds appropriated by Parliament; or*
 - (ii) funds obtained by way of loan by the contracting authority; or*
 - (iii) user levies; or*
 - (iv) revenue generated from the project; or*
 - (v) any combination of the foregoing; and*
 - (c) the counterparty is liable for the risks arising from the performance of its function; and*
 - (d) public resources may be transferred or made available to the counterparty and includes any of the types of agreement specified in Part II of the Schedule.*
180. Applying the above to the facts before the Committee, the conclusion is that the Agreements cannot be defined or categorized as PPPs.

181. The Committee notes, for instance, that the original Agreement itself was for a period of one year. No serious capital project can be carried out in such a short period of time.
182. The Agreement was effectively for the sale of software and a software platform. That platform was to be developed using data provided for and captured by ZINARA itself. There was not even an obligation to supply any hardware. With such an obligation only being created in the First Addendum signed in October 2012.
183. During oral evidence, the Committee went at great length in asking from Univern figures of what they had put into the project. Mr. Phil Mushosho, the CEO, undertook to provide a written schedule, which he never did.
184. The Committee was told however, that Univern had spent a lot in training ZINARA staff and had also built some tollgates.
185. It is possible that Univern actually constructed some tollgates. However, it is hard to imagine a tollgate per se fitting into the category that a Government/public entity would fail to construct on its own.
186. However, the contract goes beyond tolling fees. They include vehicle licensing and fuel levy. The Committee did not hear of any claim of any capital expended in the vehicle licencing system nor the toll system.
187. It is the Committee's view, therefore, that a desktop software development program such as the one dealt with can under no circumstances be stretched into a capital project befitting the stature of a PPP or a joint venture.

The Legality of the Agreements

188. All public procurements in Zimbabwe are done subject to the procurement laws of this country. The relevant Act at the time of procurement was the Procurements Act [Chapter 22:40]². Part IV of this Act provides for a competitive process of public tendering.
189. Section 31 of the Act describes the tendering process which include among other things:
 - a) the invitation through the Government gazette to suppliers to tender;
 - b) qualification processes; and
 - c) the deadline for the tenders.
190. The Procurement Act is complemented by the Procurement Regulations, S.I. 171 of 2002. The Procurement Regulations define the elaborate and exhaustive tendering process in Zimbabwe.

² The Procurement Act [Cap 22:14] was repealed in 2017 through S.I. 152 of 2017 and replaced by the Public Procurement and Disposal of Assets Act [22:23] which came into effect on 1 January 2018. This report looks at compliance in terms of the relevant law at the time being the Procurement Act [Cap22:14].

191. It is common cause that in all the three supply agreements covered in the written agreements discussed above, there was no compliance with the Procurement Act and the Procurement Regulations.
192. The Committee emphasises that there were three distinct procurements that needed separate tendering and approval namely; the Motor Vehicle License contract, the Tolling contract and the Transit and Fuel Levy contract.
193. On 14 March 2016, the Acting CEO of ZINARA Mr. M. Juma wrote a letter to the State Procurement Board asking for “*regularization of ZINARA and Univern PPP Agreement on Computerization of Revenue Collection Systems*”. The same letter represented to the SPB that ZINARA was paying commission to Univern as follows:
 - i) Vehicle Licensing 18.5% (VAT exclusive)
 - ii) Tolling 12.5% (VAT exclusive)
 - iii) Transit 15.7% (VAT exclusive)
194. As indicated above in the letter dated 8 April 2016, whose contents we have reproduced above, the SPB condoned the non-compliance through SPB/C24.
195. Despite the request, the Committee has not been availed of the original letter written by Mr. M. Juma on 14 March 2016. However, it is clear to the Committee that it contained material misrepresentations.
196. The first one was the reference to the Agreements as PPPs when no such nomenclature was used in the Agreement nor had it been used anywhere else.
197. Second was the misrepresentation in respect of the fees that ZINARA was paying. The correct fees were as follows;
 - i) Vehicle License 18.5%
 - ii) Tolling 16%
 - iii) Transit 16%
198. The third misrepresentation by omission was the failure to outline the existence of three separate stand-alone contractual situations. Vehicle licensing is totally different from tollgate charges in as much as both are totally different from transit and fuel levies.
199. Where condonation is sought in any statute, the decision maker must be empowered with full and correct facts to enable the same to apply his/her mind fully and objectively. Where a decision is then made on the basis of incorrect facts, whether such misrepresentation is innocent or otherwise, the resultant decision is null and void. It is not a proper decision.
200. The Procurement Act gave the SPB powers of condonation under certain circumstances defined in Part VI of the Procurement Act [*Chapter 22:14*].

201. When the law has not been complied with, the SPB would then appoint an investigator in terms of section 46(2) of the Procurement Act. The investigator had extensive powers that included powers to obtain any books of records, powers of entry and search.
202. After completing investigations, the investigator was obliged to send a copy of the report to the SPB and a summary of his/her findings to the procuring entity and the relevant supplier whose conduct was the subject of the investigation.
203. Section 47(2) spelt out how the Board would deal with the investigator's report. It read as follows:
- “If, after considering an investigator’s report sent to it in terms of subsection of subsection (6), the State Procurement Board is satisfied that there has been a contravention of this Act or any other law in relation to any procurement proceedings or procurement contract, the State Procurement Board may take such action as in its opinion is necessary to rectify the contravention, including –*
- (a) annulment of the procurement proceedings;*
- (b) cancellation of the procurement contract;*
- (c) condonation of the contravention;*
- (d) ratification of anything done in relation to the proceedings;*
- (e) a declaration in terms of section forty-one; and, notwithstanding any other law, the proceedings or contract concerned shall be annulled, cancelled or have the effect, as the case may be, accordingly.*
204. From the above, it is clear that the power of condonation was only to be given by the SPB after an independent inquiry by an investigator. In this case there was no investigator appointed, there was no report of the investigator and for those reasons the SPB could not condone or regularise.
205. The Committee, therefore, came to the conclusion that the purported regularisation through SPB/C/24 was a nullity.
206. The Joint Venture Act [Chapter 22:22] was gazetted on the 24th February 2016. In section 12, this Act provides for unsolicited bids or expressions of interest. The Committee is aware that the original Agreement in this matter could be described as unsolicited bids.
207. However, no relief can be obtained by Univern from the Joint Venture Act [Chapter 22:22]. Section 16 of the same makes it clear that the Act shall not apply where the contracting authority has, before the commencement of this Act, either identified a counterpart or concluded any Joint Venture Agreement.
208. There are other parts of the Agreement that cannot stand the scrutiny of the law. The first, is the provision in the first Addendum that extends the scope of the Agreement to include “...any future software solutions as required by ZINARA using Univern technology and software developed by or on behalf of Univern”.

209. As correctly observed by the Auditors, the above limits ZINARA to make use of Univern for all software in the foreseeable future.
210. It is a restraint of trade that cannot be made by a public body subject to the laws of the country.
211. As correctly observed by the Auditors the clause goes against the Procurement Act and indeed its successor, the Public Procurement and Disposal of Assets Act.
212. The main Agreement contains three onerous provisions under the heading ‘Intellectual Property and Asset Ownership’. They read as follows:

“Intellectual Property and Assets Ownership”

Existing material. *All right, title and ownership of any code, forms, algorithms or materials developed UNIVERN ENTERPRISES (PVT) LTD independently and outside of the Agreement and provided during the course of the Agreement (“Existing material”) shall remain the sole property of the UNIVERN ENTERPRISES (PVT) LTD.*

Deliverables. *All right, title and interest, including all rights under all copyright. Patent and other intellectual property laws, in and to the Software, its source code and any Deliverables shall, unless expressly agreed to the contrary in any Annexure, vest in UNIVERN ENTERPRISES (PVT) LTD.*

Assets. *All assets provided by UNIVERN ENTERPRISES (PVT) LTD for the specific use in this concession agreement shall remain the sole property of UNIVERN ENTERPRISES (PVT) LTD at all times.”*

213. The net effect of the above is to vest sole ownership of the software developed to Univern perpetually. This is a strange and unconscionable provision. The essence of any purchase and seller agreement is for the transfer to the purchaser of the good being sold (*the merx*).
214. In PPPs or joint venture agreements, the capital project constructed must be transferred to the public entity at the end of the defined contractual period be it BOT, BOOT or BLT. The present Agreement is strange in that at the end of the contract the software, copyright, patent and other intellectual property remain with Univern.
215. This part of the Agreement is wrong and offends public morality and the laws of Zimbabwe.
216. The mode of payment for fees due to Univern is defined in the main Agreement.
217. The Agreement reads as follows;
- “All amounts due and payable by ZINARA shall be paid to Univern in US Dollars....”*
218. This provision was couched oblivious to changes in the currency and legal tender of the Republic of Zimbabwe. That provision is not immune to Zimbabwean law, in particular changes made to the currency of use through S.I. 33 of 2019, (*Amendment of RBZ Act and*

Issue of RTGS Dollars Regulations), S.I. 142 of 2019 (*Reserve Bank of Zimbabwe (Legal Tender) Regulations* and the *Finance Act* (No. 2) of 2019.

FINDINGS AND OBSERVATIONS

219. The Committee came to the conclusion that the Agreements executed by ZINARA and Univern are null and void for want of compliance with Zimbabwe's laws. The Procurement Act [*Chapter 22:14*] was not complied with nor was condonation properly granted. For the avoidance of doubt, the agreements are a legal fiction and the authorities should start afresh.
220. The Committee also came to the conclusion that Agreements are unconscionable and against the public policy of Zimbabwe. They are against public morality (*contro bonos mores*). The Committee says so on the basis of the huge amounts that are being paid, the absence of significant investment by Univern, the duration of the contract and the exclusive monopoly ownership of the software's intellectual property even at the conclusion of the Agreement.

RECOMMENDATIONS

221. Having established that the agreements are null and void, and a legal fiction, the Minister of Transport and Infrastructure Development must take the urgent corrective measures consistent with our finding of nullity, and must protect the interests of Zimbabwe.
222. That the Minister of Transport and Infrastructural Development must report to Parliament within two months from the date of this report on the urgent corrective measures taken pursuant to our declaration of nullity.
223. ZINARA must, through the Minister of Transport and Infrastructural Development, present to Parliament within two months:
- i) a breakdown of all amounts paid to Univern by ZINARA from inception to date;
 - ii) the breakdown of all monies that have accrued to ZINARA in respect of tolling, motor vehicle licenses and transit fees; and
 - iii) details of the capital outlays made in the construction of tolling gate infrastructure and sources thereof of the finance.
224. This report and the Audit Report are referred to the Zimbabwe Anti-Corruption Commission (ZACC) within two (2) weeks of its adoption by the National Assembly, for a thorough investigation on commissions and omissions by named individuals and officials that include officials at or previously with ZINARA, Univern and the State Procurement Board.

Special Projects

225. Section 7 of the Roads Act [*Chapter 8:13*] obligates ZINARA to allocate and disburse to Road Authorities funds from the Road Fund.

226. Road Authorities are defined to mean the Department of Roads, Rural and Urban Councils, and District Development Fund (DDF)
227. Contrary to the provisions of the Act, between 2011 and 2016, ZINARA disbursed funds towards Special Projects ostensibly for the construction of roads and road infrastructure to various companies and entities.
228. A total of US\$ 71 487 896, 21 and ZAR R31 452 102, 53 was disbursed to various contractors as reflected in the table below.

| Company Name | | 2011 | 2012 | 2013 | 2014 | 2015 |
|--------------|-----|------------|------------|------------|------------|------------|
| Badon | USD | 2165371.82 | 2962857.00 | 3775060.00 | 268462.35 | 56850.00 |
| Badon | ZAR | 1300455.00 | 4933400.00 | 6406940.00 | 661100.00 | 118855.00 |
| Bitumen | USD | 351842.10 | 1031293.00 | 1164762.00 | 4701785.10 | 3399687.54 |
| Drawcard | USD | ..... | 483017.91 | 668342.39 | ..... | 620650.28 |
| Earthset | USD | 917944.17 | 587322.78 | 941251.90 | 754341.75 | 118262.30 |
| Forit | USD | ..... | 568063.43 | 3876922.76 | 1670000.00 | 1462857.93 |
| Fossil | USD | ..... | ..... | ..... | 1015433.20 | 592360.49 |
| Fremus | USD | 3004568.88 | 2966129.74 | 1677536.84 | 496000.00 | 617367.25 |
| Fremus | ZAR | 1271010.00 | ..... | 3037500.00 | ..... | ..... |
| Haingate | USD | 1940501.05 | 2954085.92 | 1579737.00 | 425000.30 | ..... |
| Haingate | ZAR | 866970.00 | 3020270.00 | 6543850.00 | 329400.00 | ..... |
| Jepnik | USD | 377524.00 | 759939.37 | 643763.40 | 215420.00 | 1620.35 |
| MADZ | USD | 409000.00 | 1450005.00 | 750000.00 | 600030.00 | ..... |
| MADZ | ZAR | 949852.00 | 2012500.00 | ..... | ..... | ..... |
| Henan | USD | 3822487.00 | 2381321.00 | 200000.00 | 550000.00 | 270000.00 |
| Skindar | USD | 262850.00 | 300000.00 | 700000.00 | ..... | ..... |
| Tencraft | USD | 2048721.76 | 373371.11 | ..... | ..... | ..... |
| Transstar | USD | ..... | 557643.85 | 134856.00 | ..... | ..... |
| Notify | USD | 1542250.00 | ..... | ..... | ..... | ..... |
| Bermipools | USD | ..... | 431634.00 | 158114.94 | ..... | ..... |
| Twalumba | USD | 2519650.00 | ..... | ..... | ..... | ..... |
| | | | | | | |
| Total USD | | | | | | |
| Total ZRA | | | | | | |

229. In oral evidence before the Committee, ZINARA justified their direct dealings with contractors and direct disbursement to contractors on the basis that local authorities lacked capacity to tender as is required by the law.
230. ZINARA further argued that Special Projects were allowed and permitted by Section 13 of the Roads Act [*Chapter 13:18*].
231. Section 13 of the Roads Act reads as follows:

“Establishment, vesting and objects of Road Fund

(1) There is hereby established a fund, to be known as the Road Fund.

(2) The Road Fund shall be vested in the Board as trustee.

(3) Subject to this Part, the objects of the Road Fund shall be to provide a stable, adequate, secure and sustainable source of funding for maintenance works in Zimbabwe and to ensure the equitable allocation of its moneys between road authorities for the purpose of maintenance works.

(4) Part II of the First Schedule shall apply to the administration and auditing of the Road Fund.”

232. The Committee noted that there is nothing in the above section that allows ZINARA to deal directly with contractors. ZINARA is a creature of statute and as a creature of statute it can only do those things that it is specifically authorised by statute.
233. Section 7(b) of the Act is clear. It obliges ZINARA to allocate and disburse funds from the Road Fund. Put simply, ZINARA, like the National Treasury is an allocating fund and not an executing authority
234. The Committee asked ZINARA to provide a legal opinion justifying their dabbling in Special Projects. Not surprisingly, that opinion never came.
235. The Committee was pleased to note that both the Minister of Transport and Infrastructural Development, Hon. J. B. Matiza and the new ZINARA Board conceded and accepted that ZINARA had no authority to engage in Special Projects and that Special Projects had been done outside the Act.
236. More importantly, the Minister and ZINARA Board assured the Committee that ZINARA had stopped and ceased implementation and execution of Special Projects.
237. The Board further undertook to pursue all outstanding contractual issues with the contractors.
238. The Audit Report captures great detail on the contractors, their contracts, performance and in most cases their lack of performance. It is not the Committee’s intention to go over each and every one of the contractors. The Committee randomly chose two contractors namely Twalumba and MADZ Construction to illustrate the performances.

Twalumba Civils (Pvt) Ltd (Twalumba)

239. Twalumba a registered company, whose Directors were the late Nkululeko Sibanda, Miriam Sibanda and Barbra Banda. It operated from 7 Redhill Road, Highlands, Harare. The Company operated with other related entities namely; Notify Enterprises and Attachards

240. It does not appear that Notify Enterprises and Attachards were registered companies. In some documents identified by the Auditors, Twalumba represented Notify Enterprises and Attachards as trading names. What is however clear is that whatever contracts that were given to Attachards or Notify Enterprises for instance a contract for Umguza granted to Notify Enterprises was executed by Twalumba's principal, the late Nkululeko Sibanda.
241. What is also clear is that in many of the contracts awarded to Twalumba where ZINARA requested different competitive quotes for a project, Twalumba would submit quotations from itself, Notify Enterprises and Attachards and pretend that they were different entities.
242. The following contracts were awarded to Twalumba to the total value of USD 10 195 669:

| Road Authority | Contractor Name | Contractor Sum USD | Date of Contract Signing | Scope of Work |
|--------------------------------|------------------------|---------------------------|---------------------------------|--|
| Bindura Urban Council | Twalumba Civils | 1 563 934. 10 | 28 Feb. 2011 | Rehabilitation of urban road networks stretching 40 km |
| Bindura Rural District Council | Twalumba Civils | 4 343 974. 04 | n/a | Rehabilitation of Mumhurwi Road 29,7 km and a 6 spam bridge along Pote River |
| Umguza Rural District Council | Notify Enterprises | 1 600 000. 00 | 1 Oct. 2010 | Construction of the 12km stretch Ilitshe road and construction of a bridge over the Umguza river |
| Bubi Rural District Council | Notify Enterprises | 1 100 000. 00 | 1 Oct. 2010 | Construction of the 19 km stretch Ilitshe road |
| Binga Rural District Council | Attachards | 1 587 761. 30 | 29 Aug 2012 | n/a |

Bindura Urban Council

243. This contract was for the rehabilitation of urban road networks stretching 40km. A Memorandum of Understanding between Twalumba and Bindura Urban Council was signed on 28 February 2011.
244. Upon signing the Agreement, the sum of US\$ 300 380 was immediately paid. However, notwithstanding that the Agreement was signed on 28 February 2011, Twalumba would only move on the site three and half months later, on 14 June 2011. However, soon after the contractor had moved on site, Bindura Municipality, through a Mr. B. Musona had made a further request to ZINARA of US\$365 700 on 15 June 2011.

245. The performance of the contractor was poor. In a progress report dated 29 July 2011, Mr. B. Musona of Bindura Municipality queried the quality of the workmanship with reference to a portion measuring 10 square meters along Matepatepa road.
246. ZINARA only responded to this letter on 13 April 2012 through a letter by the CEO Mr. F. Chitukutuku who stated that, *“It is regrettable that the project was not properly implemented.”*
247. However, and most shockingly Twalumba left from site without completion of the work on 1st August 2011, which was approximately seven weeks from the date of commencement.
248. More shockingly on 26 November 2012, Bindura Municipality entered into another contract with another company Haingate Investments totaling USD 1 639 279.21 to carry out the work that Twalumba ought to have done.

Bindura Rural District Council (Bindura RDC)

249. On an undisclosed date in 2011, Twalumba entered into a contract with Bindura RDC for the rehabilitation of a 29.7 km stretch Mumhurwi Road and a 6 span bridge along Pote River. The total contract price was the sum of USD 4 343 974.04.
250. Needless to say, Bindura RDC did not go to tender in breach of the Procurement Act read together with the Procurement Regulations, SI 171 of 2002. Instead 50% down payment was made.
251. On 12 July 2012, Bindura RDC through its legal practitioners Warara and Associates, cancelled the Agreement between Twalumba and Bindura RDC. In their letter of cancellation, Warara and Associates contended that:
- (i) Twalumba had failed to complete the Pote Bridge,
 - (ii) Twalumba indicated that they were not able to fund the completion of the works; and
 - (iii) Only 45% of the works on the bridge had been completed.
252. The Auditors, carried out a review of the preliminary bills of quantities for Pote Bridge and Mumhurwi Road. They established that US\$2 289 241.42 would have been required for Pote Bridge and US\$1 514 738.62 would have been required for Mumhurwi Road, meaning that the quoted price of US\$4 343 974.04 would have been adequate.

Umguza Rural District Council (Umguza RDC)

253. On 1 October 2010, a contract was executed between Umguza RDC and Notify Enterprises, for reconstruction works of Ilitshe Road and construction of a 6 span Bridge along Umguza River. In an undated letter forwarded to ZINARA by Umguza RDC in 2010, Umguza RDC indicated that they required the following works to be done:
- (i) Road rehabilitation and regrading;
 - (ii) Gravelling of road;

- (iii) Provision of drains; and
- (iv) Bridge construction across Umguza Road.

254. Their bill of quantities reflected an estimated cost of US\$865 367 and US\$734 724.80 for the 12km Ilitshe Road reconstruction and the Umguza Bridge reconstruction respectively, totaling the sum of US\$1 559 991.80.
255. The contract was a 3 page document outlining the contract price, the obligation by Notify Enterprises to provide certain services to Umguza RDC and Umguza RDC had a responsibility to compensate the contractor for the work done.
256. The Auditors established that the contract was inadequate and not consistent with standard construction contracts. They highlighted the following omissions:

| Clause | Description | Details as required by ZGCC | Details as noted in the contract with Notify Enterprises |
|--------|--------------------------------------|--|---|
| 9 | General Obligations | The contract should have the following general obligations: Contract Agreement, Sureties, Inspection of Site, Sufficiency of Tender, Adverse Physical Conditions, and Artificial Obstructions, Quotation Estimates etc | <i>The contract does not specify the surety or performance surety in the case where the contractor fails to perform.</i> |
| 41 | Commencement Time and Delays | The contract shall state the commencement time and also any penalties for delays. | <i>The contract is silent regarding the date(s) of commencement and completion of the contract. There is also no mention of penalties for delays.</i> |
| 51 | Alterations, Additions and Omissions | No contract variations shall be made by the Contractor without an order in writing of the Engineer. | <i>The contract does not state any variations on the form, quality, and quantity of works to be performed.</i> |
| 71 | Variation of Price | The contract shall state the procedure to be followed with regards to variation of price (Plant, Labour and Materials) and variations after completion date. | <i>Nothing was stated regarding price variations.</i> |

257. Pursuant to this, payments were then made to Twalumba when there was no evidence of work being done. The following payments were made:

| Date | Certificate No. | Certificate Amount USD | Recommendation Umguza RDC Engineer |
|--------------|-----------------|---------------------------|--|
| 8 Nov. 2010 | Claim 1 | 267 928. 00 | No evidence of recommendation |
| 29 Nov. 2010 | Claim 2 | 491 360. 50 | No evidence of recommendation |
| 3 Jan. 2011 | Claim 3 | 87 000. 00 | No evidence of recommendation |
| Total | | 846 388.50 | |

258. There were no supporting documentations to the above payments nor were they endorsed by Umguza RDC’s Engineer.
259. Consistent with other contracts analysed above, Notify Enterprises did not perform. On 29 July 2011, Umguza RDC CEO wrote to the ZINARA CEO informing him that more than 10 months had passed since Umguza RDC and Notify Enterprises had entered into a contract to rehabilitate Ilitshe Road yet no work had been done by Notify Enterprises. As at the time that the audit was done and completed in 2016, Notify had not performed in terms of its contract.

Binga Rural District Council (Binga RDC)

260. On 29 September 2010, a contract was signed between Binga RDC and one of Twalumba Holdings’ Enterprises, Attachards.
261. The Auditors established that in a meeting of the Roads and Works Committee of the Binga RDC held on 29 December 2011, it was recorded “ ... *that Twalumba Civils Engineering, (trading as Attachards) under Twalumba Holdings be given the job to construct and or maintain roads at Binga Centre if the proposed funding was received from ZINARA.*”
262. Notwithstanding that the contract price was for US\$1 587 761.30, there was no compliance with the Procurement law as the tender Board was not involved.
263. The Auditors raised an issue with the fact that Binga RDC awarded a contract to Attachards when Attachards did not have any financial statements nor any documents to prove a track record in construction.
264. Consistent with the record of Twalumba shown above, there was also no performance under this contract. On 3 June 2013, Mr. Benjamin Utete of Binga RDC wrote a letter to the site manager of Attachards, on behalf of the CEO of Binga RDC expressing concern that Attachards had demobilised part of the plant that had been mobilised for the project without the consent of the Council.

265. On 16 January 2014, Attachards responded and admitted to not having done much work on the project. They highlighted that they were experiencing financial constraints.
266. On 14 May 2014, Binga RDC notified ZINARA of the termination of the Attachards Contract for Binga Special Projects. Part of the letter read as follows: *“After the award of the contract, the Contractor managed to mobilise and did 1km of road construction. We then processed payments for the works done after certification from both Council and ZINARA.... His execution speed thereafter deteriorated until he was way out of the agreed timeframe. After Council made several frantic efforts to speed up the process... to no avail, we finally had no other option except to terminate the contract which was done on the 8th May 2014...ZINARA was advised of the termination and request for authority to engage another contractor to which the response was that this facility for Special Projects had been suspended...”*.
267. Attachards did not perform its part of this contract and the Auditors established that the total financial prejudice to ZINARA was a sum of USD72 000.

MADZ Contractors (Private) Limited

268. MADZ Contractors (Pvt) Ltd was incorporated in Zimbabwe in 1993. The Company offers services in civil and structural works, which include construction of roads and storm water drainage, water reticulation and irrigation pipework, sewerage reticulation and sewerage ponds among others. The company has two directors namely C.H. Madzingira and J. Madzingira.
269. MADZ was awarded contracts as shown below:

| Date of signing contract | Road Authority | Nature of contract | Contract sum |
|--------------------------|-------------------------------|---|---------------------|
| | | | USD |
| 31 Jan. 2011 | Makoni Rural District Council | Rehabilitation of 44 km Mufusire (Wenseydale) C118/Chirarangwe S34 Road | 1 345 349.52 |
| 3 Sept. 2009 | Mazowe Rural District Council | Rehabilitation of Rufaro Portlock 24.3 km road and draining works | 3 144 859.64 |
| TOTAL | | | 4 490 209.16 |

Mazowe Rural District Council (Mazowe RDC)

270. On 2nd September 2009, Mazowe RDC entered into a contract with MADZ Contractors for the rehabilitation of Rufaro Portlock 24.3 km road and drainage works valued at US\$3 114 859.64.
271. Mazowe RDC CEO Mr. L. Mufandaedza made the following representations regarding the procurement process followed in awarding the contract to MADZ Contractors:

“Mr Madzingira approached the CEO of Mazowe RDC... looking for a contract under special projects which we had no knowledge of.”

272. Mr. Madzingira is reported to have indicated to Mr Mufandaedza that he had been referred by the CEO of ZINARA, Mr. Frank Chitukutuku. When requested by the CEO of Mazowe RDC to put his request in writing, Mazowe RDC received two letters from ZINARA, one dated 5 August 2009 and the second one dated 17 August 2009. Based on the letters MADZ Contractors was awarded the contract to do Rufaro Portlock Road under Special Projects.
273. The contract between Mazowe RDC and MADZ Contractors was subsequently signed on 2 September 2009. The contract was entered into before a council resolution was passed and without going to tender as required by the Procurement Act [Chapter 22: 14].
274. The contract was signed by Mr. L. Mufandaedza the CEO of Mazowe RDC on behalf of Mazowe RDC and Mr. C. Madzingira the Managing Director of MADZ Contractors on behalf of MADZ.
275. According to the contract, 50% was payable at commencement of works. The contract was also silent on when the works were to begin.
276. However, Section 18(b) of the Roads Act (Chapter 13:18) states that: *“the Board shall ...pay to every Road Authority out of the Road Fund ... on the basis of completed works certified by an independent qualified engineer or other person with such qualifications as are recognized by the Board...”*
277. There was no evidence that the works were done satisfactorily. A review of the IPCs revealed that a total of USD 2 481 739 was certified by Mazowe RDC, a figure which is lower than the contract value of USD 3 114 859.64.

Makoni Rural District Council (Makoni RDC)

278. On 31 January 2011, Makoni RDC entered into a contract with MADZ Contractors for the rehabilitation of Wensleydale/Chirarangwe road covering 44 km for a contract value of USD 1 345 349.52. The scope of the contract covered regravelling of the roads and a total reconstruction of drainage structures.
279. However, the winning bidder was Joystone Investments (Pvt) Ltd, who responded to the bid request together with Lavigold Investments and Tencraft Contractors. MADZ Contractors did not submit a bid document for the rehabilitation works nor was it part of the bid analysis carried out by the Council in 2010.
280. Makoni RDC CEO, Mr. E. Pise represented that MADZ Contractors was appointed by ZINARA and the Council drafted the contract together with the contractor, although it was subject to approval by ZINARA.
281. There was no evidence that Makoni RDC followed the tendering process prior to awarding the contract to MADZ.

282. MADZ was awarded the contract with a price of USD 1 345 349.52 which was higher than the bid price of USD 1 167 050.09 quoted by Joystone who had initially been awarded the tender.
283. The project commenced on 21 March 2011 and was to last for twenty four weeks. The Contractor failed to meet the deadline, and as at 12 October 2011, the Contractor had only compacted and graveled 11km out of the 44km.
284. MADZ Contractors requested for an extension of the project to December 2011, but however did not state the reasons for the delay and failure to meet the contractual date. The contract was extended and MADZ Contractor was made to pay a penalty charge of USD 10 000.
285. On 20 February 2012, Mr. Edmore Chidembo wrote to the ZINARA CEO stating that the rehabilitation of Mufuruse (Wensleydale) C118/Chirangwe S34 road was now complete but had exceeded the initial allocation by USD 206 284.86 VAT inclusive. He also stated that the road length was exceeded by 3.5km.
286. However, the Auditors noted that the project had not yet been completed, with a running balance of USD 2 450.
287. The Auditors noted that Makoni RDC certified IPCs that exceed the contract value by USD 471 464, but there was no evidence regarding the approval of works and price variations from SPB and ZINARA.
288. Payments were directly made to MADZ Contractors by ZINARA. The total payment was approximately USD 1 833 746. The Auditors noted that ZINARA may have overpaid MADZ Contractors by USD 16 932.
289. On the 13 June 2012, MADZ managing director Mr. CH Madzingira wrote a letter to ZINARA in which he requested compensation in the sum of US\$ 3, 5 million dollars. The rational and justification of this payment was explained as follows in his letter under discussion.”
290. The letter also stated that,

“As explained in our earlier letter, we made commitments anticipating a project value of \$18 millionn and the value has since been reduced to about half that amount, and still coming down, and we therefore not going to recover the large plant, labour and material costs that we had committed into this project.

As an indigeneous company, we are therefore asking you as the client to compensates us for these losses which are in the region of about \$3.5 million. This is so that we can at least break even on this project.

We are therefore asking you to convene a an urgent meeting so that we can further explain this matter to you, as continued delay jeopardise our ability to deliver the project on time, as Group Five continue to delay our payments and cut

down our work load due to their own internal procedures which require all issues pertaining to the contract to be approved in South Africa. We hope you will consider our request favourably.”

291. Pursuant to this and without board approval, ZINARA proceeded to pay the sum of US 3,650,000 and a further sum of ZAR 1,192,500
292. Before the Committee, Mr. Madzingira failed to justify the above payments, despite the Committee impressing upon him, the possibility of criminal charges arising and connected with these payments. He undertook to provide a written explanation within two weeks thereof. He never supplied an explanation.

FINDINGS AND RECOMMENDATIONS ON SPECIAL PROJECTS

293. Special projects were carried out at the special instance and instruction of ZINARA, which dealt directly with the contractors. In addition and in some instances ZINARA generated demand and imposed a construction project on a road authority, that is to say a local authority.
294. ZINARA, is a mere fund set up by the Road Act [*Chapter 13: 18*]. Nowhere in the Roads Act is ZINARA authorised to substitute itself for a road authority. Nowhere in the Roads Act is ZINARA allowed to engage in Special Projects.
295. The Committee rejects in totality the half-baked submissions by ZINARA management made through Engineer Kufa that Special Projects are permitted under Section 13 of the Roads Act. Section 13 allows for no such travesty.
296. In fact Section 13 (3) simply refers to the Road Fund whose function is to “to provide a stable, adequate, secure and sustainable source of funding for maintenance works in Zimbabwe and to ensure the equitable allocation of its moneys between road authorities for the purpose of maintenance works”.
297. Put simply ZINARA is an allocating authority and not an executing entity
298. That being so, the Committee recommends that ZINARA must forthwith cease the carrying out of any activity other than that of collecting and allocating resources to road authorities.
299. Before the Committee, both the Minister of Transport and Infrastructural Development and the ZINARA Board assured the Committee that ZINARA had stopped executing special projects.
300. To allay Parliament fears, the Committee directs that the Minister of Transport and Infrastructural Development must provide a comprehensive report on ZINARA’s activities to Parliament within two months of the date of presentation of this report in Parliament.

301. A total of \$US 71487896, 21 and ZAR 31452102, 53 was paid out to contractors. These are huge amounts indeed.
302. It is the Committee's findings in the main that:
- i. Contracts were awarded without going to tender and without compliance with the strict provision of the Procurement Act.
 - ii. Contracts were awarded without bills of quantities, so essential in contract evaluation and cost control;
 - iii. Contracts were awarded without strict performance timelines and penalty clauses in the event of non- performance;
 - iv. Contracts were awarded without strict performance timelines and the depositing by the contractor of performance guarantees
 - v. In many cases payment was done without any performance and sometimes without even the contractor ever visiting the site;
 - vi. There was no monitoring of performance by ZINARA, complaints by road authorities were ignored and payment certificates were processed without the input of the road authority.
 - vii. Save for FORIT Contractors, the majority of the contractors did not perform and payments were made without value;
 - viii. In some instances, payments were made without any underlying contractual basis or justifiable objective reason. For instance, the additional payment made to MADZ Construction in the sum of US\$ 3,650,000 and ZAR 1,192,500; and
 - ix. The actions of ZINARA management including (Mr. Chitukutuku and Eng Kufa) were grossly negligent if not fraudulent. They broke every rule of sound corporate governance. There were no checks and balances and there was no oversight.
303. In light of the above, the Committee makes the following additional recommendations;
- i) That ZINARA, on a case by case basis with the assistance, where necessary of experts for instance the Zimbabwe Engineers' Council, and the Institute of Zimbabwe Engineers must endeavor to recover any amounts paid to contractors who did not perform or render services in terms of their contracts. The recoveries should be done within six (6) months of the adoption of this report;
 - ii) That ZINARA must recover all payments made without any underlying contractual basis, without any interim payments certificates (IPCs), for instance, the payments to MADZ Construction of US\$3,650,000 and ZAR 1,192,500;
 - iii) ZINARA must, within three (3) months of the adoption of this report, develop financial and human resources manuals, with the aid and assistance of experts such as ICAZ and IPMZ, consistent with international best practice and basic values and principles governing public administration as defined in Chapter 9 of the Constitution of Zimbabwe;
 - iv) ZINARA must evaluate and assess the involvement of all its employees during the period covered by the Audit Report and take appropriate disciplinary action within six (6) months of the adoption of this report; and

- v) The Minister of Transport and Infrastructural Development and indeed the Government of the Republic of Zimbabwe must re-examine the mandate of ZINARA, whether or not it has fulfilled its obligations and or its policy expectations and aspirations from its formation and consider whether the issue of roads and roads maintenance is still best served by ZINARA or another agency. In carrying out this evaluation, the Committee recommends that the Government works with experts such as the World Bank and the African Development Bank. The Minister is obliged to present to Parliament his evaluation and assessment report by end of September 2021.

Plumtree to Mutare Highway Project

304. ZINARA entered into a number of agreements to facilitate the 823 kilometre Highway from Plumtree to Mutare.
305. On 18 April 2011, Mr. F. Chitukutuku signed a Memorandum of Understanding (MOU) on behalf of ZINARA with the South African National Roads Agency Limited (SANRAL), the Development Bank of Southern Africa Limited (DBSA) and Infralink (Private) Limited.
306. The scope of SANRAL's support services was to advise ZINARA on all aspects of Zimbabwe's road management programme and transmission of knowledge and expertise to and capacity building of ZINARA particularly with regard to collection and management of revenue, safe and effective maintenance of Zimbabwe's roads.
307. SANRAL was also expected to advise ZINARA on Zimbabwe's tolling strategy and tolling policy framework and tolling legal framework as well as ways to continually address and expand road tolling in Zimbabwe into the future.
308. The MOU provided that there would be no costs to SANRAL in providing support services as SANRAL agreed to bear such costs internally except for out of pocket expenses (excluding but not limited to travel and accommodation expenses).

Development Bank of South Africa Loan

309. ZINARA, through Infralink (Private) Limited acquired a Single Currency Term Loan Facility of USD 206 600 000 with DBSA. The recipient of the loan disbursement was Group Five International.
310. The loan had the following terms, 1% of the facility amount as Commitment fee, 1.75% of the facility fees as front-end fees, interest rate of 6,18% + 3 months libor, a tenure of ten years from the first disbursement date and all taxes paid by the borrower.
311. The borrower was to repay the loan in thirty (30) equal quarterly instalments on the interest payments dates, commencing on the interest payment date occurring 30 months after the first disbursement date.

The Implementation Agreement

312. An implementation agreement between ZINARA and DBSA, Infralink (Private) Limited, Group Five International, Group Five Construction, Intertoll Zimbabwe, Ministry of Transport and Ministry of Finance was signed on 11 May 2011.
313. Infralink was a PPP, being joint venture with ZINARA owning 70% shareholding and Infralink with 30%. Infralink was bestowed with powers to implement and manage the Project and authority to procure and engage the necessary contractors and sub-contractors.
314. Group Five in its capacity as shareholder, by participation on the Board of Directors of Infralink was to assist in achieving the project financing requirements of the Project and advise on strategies to optimize and periodic maintenance over the life of the projects roads.

Toll Operation and Routine Road Maintenance Contract

315. On 4 August 2011, Infralink (Private) Limited signed an agreement with Mzima Toll Road Services t/a Intertoll Zimbabwe for the collection of toll fees from the nine toll plazas along the Plumtree to Mutare Road.

Engagement and Mandate Agreement

316. This was an agreement signed on 30 June 2011 between ZINARA, Infralink and the Ministry of Transport and Infrastructure Development. In this agreement the Minister of Transport and Infrastructural Development, through the Department of Roads appointed ZINARA as an agent and representative to perform all things contemplated under the agreement within the scope of responsibility or authority of the Transport Minister.
317. ZINARA in turn appointed and engaged Infralink to implement and manage the Project commencing from the commencement date until the date of expiry of the Operation and Routine Road Maintenance contract.
318. Infralink had the responsibility for the planning, design, construction, development, implementation and overall supervision of all aspects of the Project.

Deed of Assignment and Charge

319. On 23 March 2012, ZINARA and Infralink signed a deed of assignment charge agreement. This spelt out that ZINARA, with full title guarantee hereby irrevocably assigns and agrees to or owing or from time to time becoming due or owing to ZINARA in the form of the road user charges.

Investor Agreement

320. ZINARA also signed an Investor agreement on 7 November 2014 with Golden Road, a private company incorporated in the British Virgin Islands. The agreement provided that:

“As and when ZINARA requires any funding, the investor shall either lend or advance the relevant project loan or procure that a financial institution selected by the investor, lends and advances the relevant project loan to ZINARA.”

FINDINGS AND RECOMMENDATIONS ON SPECIAL PROJECTS

321. The Committee noted that the Plumtree -Mutare highway was a huge project in respect of which the Republic of South Africa through DBSA loaned Zimbabwe a huge amount of US \$ 206 million at a time when Zimbabwe like now still had huge arrears to the World Bank, the African Development Bank and the Paris Club of Lenders.
322. For this gesture of Pan African solidarity the Committee expresses gratitude to DBSA and the Republic of South Africa
323. The Committee encourages the Government to seek further assistance and partnerships with the Republic of South Africa and other African countries for similar cooperation and help in the development of its infrastructure projects pending the clearance of its arrears with International Financial Institutions and other international creditors.
324. In this regard therefore, the Committee urges the Republic of Zimbabwe to honour all its commitments in the various agreements with concerned parties
325. However, given how onerous these obligations are, the Committee endorses the decision taken by the ZINARA Board and the Minister of Transport and Infrastructural Development of renegotiating the terms and conditions of the agreements.
326. The Minister of Transport of Transport and Infrastructural Development is directed, within three months of the presentation of this report to Parliament to present a report to Parliament on the Plumtree-Mutare Highway Project and all other incidental issues including the result or status of the renegotiation process.
327. After the process of compiling this Report, the Committee learnt that the shareholding and ownership of Group Five had changed hands. The Committee was made to believe that such a change of ownership affected the agreement with the authorities in Zimbabwe particularly Infralink and ZINARA.
328. In the interest of transparency, the Committee requests that the Minister of Transport and Infrastructural Development to present a report to the Public Accounts Committee on the following issues:
 - i) The change of ownership, if any in respect of the parties to the agreement;
 - ii) Full details of all the monies paid to all the parties in respect of the agreements;
 - iii) A report on the renegotiations to the contract in light of Zimbabwe's changed macro-economic environment.

CONCLUSION

329. In conclusion, the Committee places on record that the ZINARA audit was amongst the toughest oversight functions that the Committee has carried out to date.
330. The extent of the omissions and commissions at ZINARA, the extent of the corruption and the extent of the extraction is huge.

331. The Committee trusts that the Executive shall react with urgency and panic to the findings of this Report and ensure that measures are taken to ensure that the country's institutions are never captured and subverted in the manner that ZINARA was.
332. The Constitution of Zimbabwe is clear.
333. The Constitution of Zimbabwe stands for good governance transparency, openness and accountability. These principles are clearly spelt out in Chapter 9 of the Constitution of Zimbabwe.
334. Public entities such as ZINARA must abide by the Constitution of Zimbabwe.