MADNESS AND INDIGENISATION: A HISTORY OF INSANITY IN THE AGE OF LAWLESSNESS

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[This paper draws on several previous papers published by RAU, and is a general overview and update of what is provided there in greater detail with close analysis of policy statements and relevant legislation, which support the views given here].

Introduction

The defining characteristic of Zimbabwe’s indigenisation policy has been the wide disjuncture between the law (as it is), government pronouncements of the law (as they would like the public to believe it to be) and the policy in practice. The disjuncture between the first two signalled that the caprice of officialdom, rather than the rule of law, was to hold sway with regard to resource nationalism in Zimbabwe. This disjuncture also informed that between the second two. As it became clear that official whims were motivated by impending elections, the “indigenisation and empowerment” undertaken by most companies in practice merely acted out an understood role in a script written to advance ZANU PF’s pre-electoral rhetoric and pre-election objectives. The play unfolded without the need for so much as a nod and a wink between the main protagonists. There was little substantive compliance with either the law or stated policy. The impression created by the resultant political smoke and mirrors was accepted without question by the ZANU PF-controlled media in order to advance the party’s objectives, and also by the “independent” press because it created good copy. Reality only reared its head gently and occasionally before the election.

The decision to activate the Indigenisation and Economic Empowerment Act (Chapter 14:33), which had been passed by Parliament in December 2007, but had lain dormant until 2009, seemed to have been motivated by petty vindictiveness after President Mugabe’s wife lost a dispute over the supply of milk by her dairy business to foreign-owned Nestle Zimbabwe. The enormous potential of the policy, however, soon became readily apparent. It not only provided a means by which pressure could be brought to bear upon such recalcitrant companies, but also provided a seemingly inexhaustible well of rhetoric about sovereignty and fighting the capitalist-imperialist monster in the form of foreign companies. This fitted neatly into ZANU PF’s election campaigning.

The unspoken subtext and menace of the discourse around indigenisation was an echo of ZANU PF’s land policy which had proved such a winning electoral formula – a message to ZANU PF supporters to “go and take what you want, and, if we win, you can keep it”. This tacit and potential threat to foreign businesses, and an interpretation of the law which criminalised every foreign company already operating in the country, made foreign enterprises easy targets for extortion. The money extracted from them under the threat of full indigenisation was dispensed as ZANU PF largesse to constituents or directly added to party coffers. Such racketeering by regulation became more pronounced as the 2013 elections drew near.

The (Il)legal Framework

Lawlessness was present at the very inception of the policy. The Indigenisation and Economic Empowerment Act, by providing that when there was a change in the shareholding of a foreign company or when a foreign investor established a new company in Zimbabwe, at least 51% of the equity of the reconstituted or new company had to be held by “indigenous Zimbabweans” as defined, appeared to breach the constitutional requirement of freedom of association. No one, however, took the point. As noted, the Act was ignored until 2009 when the Indigenisation and Economic Empowerment Regulations were brought into being – by a Minister who had himself been appointed in contravention of the numerical limit on Ministers set by the then constitution.
If the Act was arguably ultra vires the Constitution, the Regulations also were ultra vires the enabling Act. The Act did not authorize the Minister to make regulations compelling extant foreign companies in Zimbabwe to make changes to their share structure. Common sense indicates why this is so. Companies do not own the shares in the company – the members of the company do. The legal title to the shares, and thus the power to treat with the shares (such as to cede the shares) lies with those who own the shares, and not the company, (a separate juristic entity) which issued the shares. A company cannot compel the transfer of stock by a shareholder. The Act accordingly did not provide for this. The Act also could not, as a general policy, seek to compel foreign shareholders to “dispose” of shares so that 51% of a company’s equity was held by indigenous Zimbabweans because the problem of how to determine which shareholders are to relinquish the shares to make up the 51% is often intractable. There are also several other legal and practical difficulties:

- In the case of private companies, the very definition of a private company is that the public may not be invited to subscribe for its shares. The Articles of Association of private companies almost invariably require that shares to be transferred must first be offered to existing members. If no indigenous member is among that number, it would require that all existing shareholders refrain from exercising the option given in terms of the Articles of Association in order to ensure transfer to an indigenous Zimbabwean. There is no legal mechanism available to ensure this.
- Small private companies are often formed and operate in a manner analogous to partnerships. Thus the company may have only two directors with a single share each. The basic premise of the company and essential element for its continued operations may be equality between the two directors and shareholders. Such companies could comply with the 51% requirement through a share issue and subsequent purchase of those shares by an indigenous Zimbabwean, but it is doubtful that many directors would want to continue with the enterprise. Many such companies depend, not only upon the personal relationship between the directors, but also upon the specific expertise they bring to the company. Such companies might well not have survived a complete take over unless the indigenous purchasers of the shares had the appropriate expertise. Where only two shares were issued, other than the transfer of the entire shareholding, the 51% requirement could only be achieved by a fresh share issue.
- Joint venture companies, which, while being large enterprises, might have small shareholdings based upon delicate and complex financial considerations and negotiations. Attempting to restructure such arrangements to accommodate indigenisation requirements might well prove impossible without jeopardising the entire operation.
- Potential problems are also evident in the case of large public companies. These companies may have millions of issued shares distributed over thousands of shareholders. Determining the race of each of these shareholders is a daunting task. In the case of a public company, the shareholding is subject to constant change through trade on the stock exchange. Accordingly, the extent of “indigenisation” of the 51% could be in a state of constant flux depending upon who is purchasing the shares. To avoid this, there would have to be legislation requiring that the race group of each purchaser and seller of shares is disclosed, and if the 51% is to be retained once reached, a prohibition on the transfer of
shares to a person of a particular race once a certain threshold is reached. This would require a separate, racially determined index of shareholdings to be maintained at the stock exchange or racially segregated bourses – something which the line Ministry claimed was under serious consideration.

The Minister, while claiming that the Act authorised him to make regulations to “indigenise” the shareholding of existing foreign companies in Zimbabwe through regulations, was at a loss as to how such a law could be phrased to give effect to this power, for the reasons outlined above. Accordingly, and contrary to what was constantly repeated by policy makers and the media of all ilk as being the effect of the Regulations which were brought into being, the law did NOT require all companies to dispose of 51% of “their” shares to indigenous Zimbabweans. Unable to fathom how a legal instrument could accomplish this, the Regulations simply passed the problem onto the foreign enterprises. So what the Regulations did require (though not authorised by the Act), was not the disposal by companies of shares they did not own or control, but the submission by extant companies in Zimbabwe of “indigenisation plans”. Through these plans, each foreign company had to propose to the Ministry how it intended to ensure the change of its shareholding so that 51% thereof was owned by indigenous Zimbabweans. Only the failure to submit such a plan when called upon to do so was criminalised. There was no legal penalty if the plan submitted was not acceptable to government, there was no legal penalty if the company chose to subsequently alter its indigenisation plan, and no legal penalty for a failure to implement the plan.

The result was a law in conformity with the Act, requiring that all new investments or major share transactions of extant companies (such as mergers, unbundling etc.) left Zimbabweans in control of 51% of the equity, and an invalid and unenforceable demand that all extant foreign companies dispose of 51% of “their” stock to indigenous Zimbabweans. ZANU PF rhetoric was strident in regard to the illegitimate latter component, and engaged in vague and obfuscatory mumbling when it came to the legitimate former component. Several new investments took place after the Regulations had been made, with the 51% requirement ignored for these favoured companies and ZANU PF officialdom was at a loss to explain why the law had not been applied.

When the absence of any legal provision to compel the indigenisation of the shareholding of existing foreign enterprises in Zimbabwe was pointed out to a government official by a RAU researcher at a public seminar, the response was that the government would achieve its objective by “political means”. These “political means” turned out to be a flurry of letters from the Ministry to companies containing threats of dire criminal penalties that would be visited upon companies that failed to indigenise - though the Ministry was unable to cite any legislative provision which had been breached by the “offending” company; threatening and abusive phone calls to company secretaries; threats issued in public statements by officials and intimidating visits to business premises by men in black Mercedes. A failure to indigenise, companies were told, would result in the withdrawal of work permits for foreign staff, labour unrest would be incited, export permits would be cancelled, expatriation of profits would be blocked. The Zimbabwe Investment Authority (although falling under an MDC controlled Ministry at the time) implemented a directive from the Indigenisation Ministry that no Investment Licences were to be renewed unless a letter of compliance had been issued by the Indigenisation Ministry. The Immigration Department at Linquenda House posted notices on its glass windows that work permits would not be renewed without the same letter of compliance.

Other illegalities perpetrated by the Ministry and National Indigenisation and Economic Empowerment Board (NIEEB) claimed, wrongly, the cover of the law. Section 5(4) of the Regulations provides that the Minister may gazette a lesser share than the stipulated 51%
required by indigenisation plans that indigenous Zimbabweans may hold in a business on a sector-by-sector basis and the period that this situation may pertain. At the same time as gazetting the lesser percentage, the Minister must also set out a percentage weighting to be accorded to economically and socially desirable projects undertaken by the business. When these Regulations were gazetted after a long delay, rather than a “lesser” percentage, the percentage was invariably set at 51% or more. No weighting that the Regulations rendered mandatory was given for economically and socially desirable projects. Any business attempting to accord a weighting to these projects in indigenisation plans or negotiations with the Ministry was darkly warned to drop the subject and not to be “confrontational”.

Effects

The Minister’s claimed authority to compel companies to indigenise (rather than merely submit indigenisation plans) and to exercise discretion to decide which companies were sufficiently compliant had unsavoury results. Local companies that had enviously eyed the operations of rival foreign companies, approached the Ministry asking it to compel the foreign company to indigenise – usually by incorporating personnel and shareholders from the local rival company. The Minister and his officials offered to “help” companies which seemed to be attractive commercial enterprises, by introducing “appropriate persons” who could assist the company to become compliant; companies were invited to call at the Ministry to arrange “win-win” arrangements, with hints that the company could propose other elements of a deal which would result in a transfer of less than the “required” 51%. Small partnerships and 50:50 companies that had operated harmoniously for years with a white and black entrepreneur descended into acrimony, as the black partner demanded a controlling share. Although not widespread, there were sporadic cases of individuals trying to muscle their way into companies and take over ownership under the cover of the indigenisation laws. ZANU PF youths in Bulawayo reportedly invaded buildings owned by persons of Indian origin with seeming impunity, claiming to be implementing government’s indigenisation policy. The youth group, Upfumi Kuvadiki, tried to elbow its way into the business operating the City of Harare’s paid parking and other enterprises.

With abundant opportunities for corruption, nepotism, and patronage in the manner the system (some might say deliberately) had been structured, ZANU PF was susceptible to the criticism, exploited by its opponents, that indigenisation would only benefit the ZANU PF elite. To counter this charge, the Minister amended the Regulations to provide that companies which seem, if they so wished, dispose of shares to Community Share Ownership Trusts (CSOTs). The manner in which these trusts were to be established and the determination of Trustees formed part of the Regulations.

Following the decline of agriculture in Zimbabwe, mining had become the country’s top earner. The Ministry thus decided to focus on this latter sector as one likely to yield the most dividends. It then became clear that the CSOTs could become a key plank in ZANU PF’s election campaigning. ZANU PF would use indigenisation “laws” to show its constituents that it could compel the mighty western imperialist mining institutions operating in the country to hand ownership of their concerns to Zimbabwean control. Zimbabwe and its mineral resources would be “for Zimbabweans”. Rather than the disposal of shares to CSOTs being at the option or “wish” of the foreign company, as the recently made Regulations provided, the Minister and the National Indigenisation and Economic Empowerment Board (NIEEB) stated that the law was that it was mandatory for every extant foreign mining company to “dispose” of 10% of “its” shares to a CSOT. Proforma trust deeds were distributed to mining companies in each province. The trustees proposed were chosen by the NIEEB and the selection violated the only recently amended Regulations in this regard. Invariably, traditional leaders were included as trustees. Ahead of “launches” of the CSOTs, mining companies in the relevant province received letters
advising them that they needed to contribute money both for the launch and as seed capital for the CSOTs. Thus, in one province, the larger companies were told to deposit into a specified account, $35 000 for the launch and thereafter at least $500 000 as seed money for the CSOT, with an immediate payment of $100 000. Deposit slips for the amounts had to be presented at the launch. The companies were also required to generate dummy cheques of varying amounts, but usually in the tens of millions, to be presented to his Excellency the President on the happy day. The firms were “invited” to attend a meeting at the Ministry to finalise these requirements. Failure to comply, the letters maintained, would render the company in violation of the indigenisation laws – though of course no provisions were cited to back up the threat, as none existed. The launches, attended by President Mugabe, were accompanied by much hoopla.

Ratcheting up the pressure, in March 2011, the Minister issued what claimed to be a General Notice pertaining to mining. The enabling Regulations, under which the General Notice was purportedly gazetted, were notable for the number of drafting errors, lack of intelligibility and, what in places, was merely legal gibberish. One provision, for example, was to the following effect:

*a [company]…shall not be considered not to have complied with section 4(1) and (2) unless [the secretary] also submitted the secondary document, either simultaneously with the primary documents or no later than the final day for compliance with section 4(1) or (2), whereupon section 4(4) shall apply to [the company] as if it had not submitted any primary documents."

The General Notice continued this trend. It was ostensibly issued under section 5(4) of the Regulations, but, as noted above, this section related to the gazetting of lesser percentages that could be held by indigenous Zimbabwean in a foreign company, and certainly did not authorize the Notice issued. What the Notice intended to achieve was uncertain. Relying on Ministerial statements, the press decided that what it meant was that by the 25th September, 2011, all non-indigenous mining companies had to dispose of 51% of “their” shares to the National Indigenisation and Economic Empowerment Fund; a Sovereign Wealth Fund; the Zimbabwe Mining Development Corporation; or an Employee Share Ownership scheme. Since, however, the Notice did not set out any penalty for non-compliance, most mining concerns decided that there was no need to resolve the difficulty of determining of what in fact was required by the Notice. Such parts of the Notice that were intelligible were clearly unlawful. Even the usually tolerant Parliamentary Legal Committee issued an adverse report on the instrument. Undeterred, the Minister then declared that those companies that did not meet the September deadline would have their mining licences suspended and face the full wrath of the law - despite the absence of any statutory provisions which authorise the suspension of licences in these circumstances or any law whose wrath might have had to be faced. The threat was later supplemented by another one to throw non-compliant companies out of the country.

The Ministry dealt with the embarrassment that might have arisen through the issuance of these empty threats by claiming, after September, that mining companies had “mostly complied”. However, this claim seemed to have been soon forgotten when, after a short period of tactful silence on the matter, an advertisement subscribed by the Minister appeared in a local financial weekly paper, the Financial Gazette, in the first week of April 2012. The advertisement stated that companies that had not complied with the General Notice:

*should note that 51% of their shareholding is now deemed to be owned by the State and any business transacted in respect of this 51% shall have been transacted on behalf of the Government of Zimbabwe….Companies are hereby advised that they are now dealing with assets of the State in respect to the 51% indigenised portion and any attempt to defraud the State will result in prosecution.*
The advertisement concluded with the following:

The Government of Zimbabwe, through the Ministry of Youth Development, Indigenisation and Economic Empowerment, enjoins all Zimbabwean citizens, top management, middle management, technical support staff and the general workforce of the companies involved that they are now expected to defend the Zimbabwean 51% equity stake and also to uphold and execute the national interest in respect of the administration, trade and any other business transactions so as to ensure total indigenous economic empowerment.

This latter paragraph was little less than a not-so-subtle incitement to engage in the sort of intimidation and violence which had characterised the invasion of land in Zimbabwe from 2000 onwards, known colloquially as “jambanja”. The advertisement sought to allow and encourage those engaging in the jambanja of companies to claim, however erroneously, the protection of “the law” as set out by the Minister. It seems that having made Regulations, issued General Notices, issued policy directives, and issued a plethora of threats, none of which could be supported in law, but all of which had been without challenge, the Minister had become deluded into thinking that whatever he wished done, so it would be - upon mere publication of his utterances in any form. The general derangement which had accompanied the policy from the outset appeared to have peaked – though arguably of a similar extreme was the Ministry’s claim to have reserved certain sectors of the economy for Zimbabweans only - retail and wholesale businesses, barbershops, hairdressers, beauty salons, bakeries, employment agencies, grain milling, transportation, estate agencies, tobacco grading and packaging, tobacco processing, advertising agencies and milk processing (a nod to the catalytic Nestle saga) - and the gazetting of a January 2014 deadline for foreigners engaged in these enterprises to close shop, relinquish their business to local Zimbabweans, or face arrest. The law supporting this ultimatum and threat was of dubious validity to say the least. The deadline was not enforced.

The NIEEB, now formally in charge of this indigenisation process, despite having claimed to have received $4 billion dollars worth of shares from complying companies, was broke. To remedy the situation, it issued an unlawful directive that all companies whose indigenisation plans had been accepted, and those which were fully indigenised anyway, had now to apply to it for “Compliance Certificates” – at $2000, $5 000 and $10 000 a pop, depending on the type sought, and the first two of which would only be valid for a two year period, after which the companies would need to pay once more. Failure to do so, the NIEEB warned, would mean that the company would be treated as non-compliant with the law. Once again, there was no legislation authorising this directive.

The Response

What, then, was the response to this “indigenisation policy” by those affected? Most companies that were not approached by the Ministry simply ignored the public statements and threats made around the policy. Those that were approached by the Ministry complied by submitting indigenisation plans that would never be, and often could never be, implemented. Others specifically stated that their plan was contingent upon the willingness of shareholders to dispose of shares to indigenous Zimbabweans and that they had no control over this process. When unhappy and belligerent “compliance officers” within the Ministry called upon such companies to discuss their plans, the tactic of business was to drag the negotiations out for as long as possible in the well-founded belief that the terrain would be more favourable after the elections. Few, if any companies, chose to be openly defiant. However, a veneer of compliance was all that ZANU PF required for electoral purposes, plus the relinquishment of some cash to assist campaigning. A symbiotic relationship developed between the Ministry and companies, whereby the Ministry claimed to have compelled companies to indigenise, and companies claimed to have
been so compelled. To facilitate this illusion, details of the indigenisation proposals made and accepted were kept under wraps by the Ministry.

The approach was typified by two of Zimbabwe’s largest foreign-owned concerns, those of Old Mutual and Zimplats. Old Mutual’s indigenisation plan was accepted on the strength of a $10 million “Youth Empowerment Fund” to be disbursed by its subsidiary, building society CABS, in conjunction with the Ministry, as small project loans to “deserving” youths. The proposals as to how 51% of Old Mutual’s millions of shares were to vest in indigenous Zimbabweans as the Ministry claimed was required, were left obscure and questions in this regard were responded to by vague generalities. The impression thus created was that Old Mutual had handed $10 million to ZANU PF aligned officials to dispense as largesse on the understanding that it would thereafter be left alone – as it seems came to pass.

Zimplats became the highest profile target of the Ministry. After protracted negotiations and reports in the ZANU PF-controlled press that Zimplats was arrogantly refusing to comply with Zimbabwe’s laws, Minister Kasukuwere was able to triumphantly announce that the mining giant had finally capitulated. The (yet to be formed) Provincial CSOT would not only receive millions of dollars worth of shares (its “10% quota”), but in addition would be given $10 million as seed capital. An employee shareholder trust (ESOT) would receive a further 10% of the shares and another 31% would go to the National Indigenisation and Economic Empowerment Fund. A smiling Mugabe was pictured receiving a dummy cheque from Zimplats for $10 million made out to a non-existent trust. If the mighty Zimplats had been brought to obeisance by Ministerial pressure and dedication to empowering Zimbabweans by ZANU PF officialdom, what hope lesser companies? The ZANU PF-controlled Herald newspaper exhorted other foreign firms to take a leaf from Zimplats’ book.

And take a leaf from Zimplats’ book they did, though what was written on the page was not that contemplated by the Herald. The Zimplats deal was structured in a way that ensured that it would never be implemented. The shares to be acquired by the CSOT and ESOT would be paid for by an interest-bearing loan serviced by dividends accruing from the shares themselves. The law proscribing a company from financing the purchase of shares in itself was ignored. Zimplats’ massive expansion projects, already in the pipeline, would ensure that little if anything in the way of dividends was likely to be available for some time, and, with the loan attracting interest, Zimplats might well make a profit on the deal. If the past pattern of dividend quanta continued, it would take several decades for the shares to be fully paid up. Until then, it seems, Zimplats would hold onto the shares. The 31% to go to the NIEEF would need to be paid for by the Zimbabwe government, at a cost of between $500 million and $1 billion, an amount that the government could not even come close to raising. The entire deal was also made subject to the condition precedent that government would pay Zimplats $153 million for mining claims it had handed to government in anticipation of the indigenisation policy, and on the understanding that it would be left alone when and if the policy was implemented. That arrangement, having been breached by government, Zimplats now wanted fair compensation for the claims – in an amount the hard pressed government clearly did not have. The $10 million seed money began to be disbursed to the CSOT – in tranches. Zimplats had already set aside the money (as revealed in its prospectus from a few years previously) as part of its corporate responsibility programme. Rather than going directly into community projects, the money was now channelled through the CSOT, with resultant “leakages” before the benefits reached the local community.

At Anglo-American’s platinum enterprise, Unki, lawyers amused themselves by structuring a deal in virtually impenetrable legalese which must have set heads at the Ministry spinning, but which gained their nod of uncomprehending approval and which ultimately was a deal similar to that made by Zimplats. Neither company parted with so much a brass farthing, other than what had
already been marked for dispersal. Government made enormous political capital from the deal and all retired from the fray satisfied, but only for a while. Reality intruded when the Zimplats majority shareholder, Implats, found it necessary to reassure its own nervous investors and expose the facts behind the deal. As this information filtered into Zimbabwe’s political domain, Mugabe attempted to save face by claiming that the responsible Minister had made “a mistake” when structuring the deal. He had forgotten, Mugabe claimed, that the platinum belonged to Zimbabweans already and thus no money should be paid for the shares. Not only was the signed and sealed agreement torn up, but in a fit of pique, the government moved to expropriate a swathe land with mining claims from Zimplats by placing a unique interpretation on the words “public interest” in the section of Minerals and Mining Act which allows governmental acquisition on this basis.

Despite the Zimplats setback, Government trumpeted the success of the policy. As a result of CSOTs it claimed, schools, clinics and roads were being built, boreholes sunk. Excited traditional leaders attended conferences to discuss how best to use the money headed their way and fought over which CSOT should be regarded as the legitimate recipient of the soon to be acquired wealth. Bogus CSOTs had sprouted up. Trustees, unlawfully appointed by the Ministry, gathered at hotels to consider the administration of the Funds, requiring generous sitting allowances and travel costs for the task.

ZANU PF proceeded to construct its entire election manifesto around indigenisation – mentioned some 180 times in the 108-page document. According a value to foreign-owned businesses in Zimbabwe in 14 sectors, ZANU PF claimed that 51% of this value, some $7.3 billion would somehow magically land in the coffers of government and be used in the post election period to create a land of milk and honey for Zimbabweans and nearly 2.3 million jobs. The manifesto thus declared:

> Only the Indigenisation and People’s Empowerment reform programme can meet the goals of the people. There’s no other alternative. Therefore, Zanu PF will unapologetically intensify the implementation of this programme over the next five years in order to meet the goals of the people….The main objective of this law as enshrined in Section 3 of the Act is “to endeavour to secure at least 51 percent of the shares (ownership) of every public company and any other business shall be owned by indigenous Zimbabweans”. For the avoidance of any real or mischievous doubt, this law is very clear in its application and thus does not exempt any public company or any other business for any reason whatsoever and therefore applies equally to all the 14 key sectors of the economy….Consequently, and going forward, there is a need to review, tighten and strengthen the law to among other things clarify the fact that indigenous Zimbabweans cannot be expected or required to buy back their God-given natural or economic resources.

**Post-election realities**

The July 31st poll left ZANU PF in control of a broke, and, relative to its GDP, heavily indebted government. News of the outcome resulted in considerable investor flight. The bourse immediately plunged by 21%, its largest fall since 2009. Company closures and retrenchments, shrinking the already small tax base, continued apace. Government’s tight financial and hand-to-mouth existence became epitomized in the constant shifting of civil servants’ pay dates as the finance ministry awaited the inflow of sufficient revenue to meet salaries obligations - its wage bill accounting for 73% of all government spending.

Although the new government’s economic “blueprint”, ZimAsset, drawn to guide Zimbabwe’s economic policy for the next five years was declared to be based on ZANU PF’s election manifesto, the issue of indigenisation was muted. The word is mentioned only 12 times in the 129-page document. The drafters of ZimAsset were all too aware that the $7.3 billion of ZANU
PF’s election manifesto would be unavailable to rescue Zimbabwe’s increasingly dire economic position. On ZANU PF’s own figures, of the $1.108 ($1.1 odd billion) that companies had dutifully “pledged” to CSOTs at flamboyant launches, only 4.7 million had actually been disbursed, with Zimplats and Unki accounting for the bulk of this. The dummy cheques appeared to be precisely that. Mining companies in diamond rich Mashonaland East Province not only abjured the $50 million dollar cheque which had been presented to President Mugabe, they claimed that they had neither heard of the recipient CSOT nor been approached on the matter. Former indigenisation Minister Saviour Kasukuwere was excused from appearing from explaining the matter to a Parliamentary Committee supposedly on the basis that he now headed a different Ministry – but not before reportedly threatening the Member of Parliament driving the enquiry.

Of the 58 CSOTs “launched” by the end of 2013 only 14 had actually come into being. Monies provided for the Youth Empowerment Fund trickled out to beneficiaries in small amounts - chickenfeed – mainly paltry amounts for poultry projects. Only the “deserving” benefited. Some politically connected beneficiaries received amounts much larger than the average, and opposition supporters and those from Matabeleland received little, if anything. Few projects were successful and even less duly repaid the loans to what was intended to be a revolving fund – one of the defaulters being the Indigenisation Minister’s own brother. Over two years after Old Mutual had agreed to establish the Youth Empowerment Fund in September 2011, just under 4 000 projects had been approved and only $5.5 million of the $10 million disbursed.

By March 2013, the Ministry disclosed figures indicating that some 1 119 companies had submitted indigenisation plans of which 509 had been approved. There were no statistics given of the number of plans that had been implemented. Left out of Ministerial statements (as had been omitted from ZANU PF’s election manifesto) accompanying the claim that the Ministry had realised $4 billion worth of shares as a result of this process, was the fact that to actually obtain ownership and the benefit of these shares, they would need to be paid for. Indigenisation clearly was not going to cure Zimbabwe’s economic ills.

The economic malaise

After the elections, a general consensus emerged that the remedy to Zimbabwe’s economic malaise was foreign direct investment - FDI. Zimbabwe however, is not listed as an attractive investment destination, ranked 170 out of 185 countries on the World Bank’s “ease of doing business” index. Matters have not been helped by propensity the of ZANU PF government representatives to tear up agreements made with international investors before the ink is scarcely dry. Most recently, this had been seen in the deal cut with Zimplats; it was seen in government’s dealings with Essar, an Indian company set to revitalise Zimbabwe’s steel producer before officials decided the concluded agreement was unfavourable; it was seen in the Minister of Finance’s statement, supported by the courts, that Bilateral Investment Promotion and Protection Agreements would not protect foreign firms from the seizure of their assets – with compensation to be paid at an indeterminate and distant date. Notwithstanding that this manner of doing business probably would have been a sufficient deterrent, it was also obvious that Zimbabwe’s indigenisation policy was the chief culprit for keeping FDI firmly at bay. A 2014 World Bank report indicated that of the nearly $32 billion in FDI following into sub-Saharan Africa for the previous year, Zimbabwe’s share was a negligible 1.5% - and less than a tenth of that received by neighbouring Zambia and Mozambique in the previous years.

Since a different approach to resource nationalism appeared to be the only way to prevent Zimbabwe’s economic decline and attract FDI, in the first quarter of 2014, rumours began to circulate that Zimbabwe would backtrack from its indigenisation policies. Given the centrality of
the policy in ZANU PF’s election manifesto, this could not be done without considerable embarrassment. ZANU PF spin-doctor, Jonathan Moyo, sought to dispel the rumour, asking po-faced: “Why change a winning policy?” and suggesting that anyone who sought to do so was “mad”. However, by then, Cabinet had, in fact, decided that a change of policy was the only way forward.

President Mugabe announced the shift, but presumably to evade the charge of insanity made by his Information Minister, Mugabe decreed, not that policy was to change, but everyone’s perception of it. The policy had been “misunderstood” he claimed - by all, including, judging from the foreword to which he subscribed in ZANU PF’s election manifesto, his Excellency himself. ZANU PF had never, it seems, claimed 51% ownership of all foreign businesses operating or wishing to set up in Zimbabwe. This, we were told, was a false claim put out by Zimbabwe’s detractors. However, it was also, in respect of new companies wishing to invest in Zimbabwe, what the legislation required. It was unequivocally stated (repeatedly) in ZANU PF’s election manifesto.

The Sunday Mail, nonetheless, perceived that government wished to signal a sea-change in the indigenisation policy to investors. It published the new policy under a banner headline “Govt in Major Climb Down”. ZANU PF, though, caught between giving one message to its constituents as promised by its manifesto, and another to lure investors, immediately forswore any such shift. There was no revision of the policy, the new Indigenisation Minister stated. Jonathan Moyo said the policy had in fact been strengthened. Zimbabweans were to own 100% of their resources not just 51% (as had long been the case as, by law, all minerals vest in the President) but those wishing to invest could enter into deals with government on a case-by-case basis to the advantage of all. The Finance Minister announced that there was no “one size fits all policy”. Never mind the law; investments he declared would be governed by the discretion of officialdom. If this was intended to be alluring, it achieved precisely the opposite effect. Investors want policy fixed, certain, and run under an established and comprehensible legal framework – not governed by policy makers who had shown themselves fickle in the past, and liable to change with every gust of political wind. And so matters currently stand.

**Conclusion**

In a functioning democracy, the governing party’s political fortunes are often tied to those of the economy. Policy is thus informed by economic considerations. Yet ZANU PF’s hold on power has never been contingent on economic performance. Policy decisions have been, and are, thus made irrespective of often profoundly adverse and foreseeable economic impact – for example the unbudgeted pay-outs to Zimbabwe’s war veterans in 1997 which sent the value of the Zimbabwe dollar tumbling by 70%; the disastrous and costly military intervention in the Democratic Republic of the Congo; the destruction of commercial agriculture through land invasions; the destruction of “illegal” housing under Operation Murambatsvina which displaced 700 000 people and consolidated Zimbabwe’s status as a pariah state; the appropriation of all substantial deposits in foreign currency accounts in 2008; the wanton printing of money which caused international records for hyperinflation to be broken and the Zimbabwe dollar to be rendered worthless; and the indigenisation policy itself.

If the ZANU PF government is hoping that investors will have the nous to realise that its statements in regard to its indigenisation policy are ambiguous on account of the fact that it cannot unequivocally state a change in policy due to the expectations raised by its election manifesto and that a new approach has in fact been adopted, it may well be disappointed. The track record of those at the helm of government is such that something more than vague assurances from officialdom is required. It may even be possible that a change in the
indigenisation law itself will not suffice. What may be required is a clear indication that those who have directed the unappetising and unstable policies of the past are no longer able to do so and that there is a new leadership in place, with new style of governance and a new way of doing business.