

Beyond the Crisis in Zimbabwe: Sorting Out the Land Question

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I. The Urgent Challenge

The depths of the political and economic crises in Zimbabwe require no elaboration. As the political *denouement* plays out over the next several years, the pressing challenges of economic reconstruction will be identified. A general development strategy—imported from other “post-crisis” countries—will be unveiled. Rather standard development projects will be quickly deployed. Donors will line up to do good work and development assistance—millions of dollars/Euros and much technical assistance—will materialize. The usual remedies will be on offer—microfinance schemes, infrastructure loans, the latest in seeds, fertilizer, agricultural extension services, irrigation infrastructure, and marketing/input cooperatives. The international donor community knows exactly what is needed. And their confidence in that regard will be predicated on their conviction that what is needed in Zimbabwe is precisely the same bundle of goods and services regularly made available everywhere else. Development assistance is now regarded as a rather standard package of programs and projects. The donors “fight poverty” and most anything they do is presumed to accomplish that goal. The Millennial Development Goals will provide the “mental model”—the “framework” as the donors put it—for what needs to be done. And it will very likely fail.

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Our purpose here is to argue that it is a mistake to presume that Zimbabwe is ready to receive the standard development prescription (medicine). The basis for our firm agnosticism is the “land question.” Unless the international donor community is absolutely clear about the freighted history of land in Zimbabwe any and all attempts to bring about economic recovery will founder and have few agreeable effects.

II. The Land Question

The national asset portfolio of Zimbabwe is dominated by land, and it should therefore not surprise us that land lies at the center of political activity [Rukuni and Jensen, 2003]. Of perhaps greater importance, land is the physical manifestation of a long history of white colonial rule in Zimbabwe. This history lies at the core of the current struggles in Zimbabwe. That struggle can be thought of in terms of: “whose land is it, anyway?”

In recent years the government of Zimbabwe has amended laws—or ignored court rulings—in an effort to create uncertainty over this very question. Under the Land Acquisition Amendment Act (2002) more than 2,900 of Zimbabwe’s 4,500 white commercial farmers were given 45 days to stop production, and another 45 days to leave their farms [Campbell, 2003]. The penalty for not leaving expropriated farms was a heavy fine and/or imprisonment. Current circumstances must, therefore, be understood in terms of a contested and convoluted historical process.

Although conflicts over land reached their greatest intensity in 2000, the conflict actually dates back to British colonization in 1890. When Zimbabwe gained independence in April of 1980, the Lancaster House Constitution secured the land rights of white farmers for a period of ten years. The matter was left vague beyond that initial decade. Despite this initial assurance to

the white farmers, land occupations have been a strategy used by the poor and dispossessed to press their demands for resettlement. Some suggest that these occupations were driven by a desire to redress historical injustices [Alexander, 2003]. But other views prevail. While Rukuni and Jensen [2003] argue that the Zimbabwean war of liberation was fought—to a large extent—over the land question, Raftopoulos [2003] suggests that the liberation war was driven by political, economic, social, and cultural demands. On this view, land redistribution was seen as but one of the key aspects of larger economic demands.

Soon after independence, a few rural people began to occupy land that had been abandoned by white farmers during the war for independence. In addition, occupations occurred on land that had been purchased by the government, as well as land that was being actively farmed by whites. There is some sense that such occupations were not spontaneous but were instead sanctioned by the local level ZANU (PF) elite [Alexander, 2003]. Such grass-roots nationalism in the early 1980s is said to have encompassed a desire for the return of the land now that the country had attained independence. That is, the land occupations of the early 1980s were sanctioned from below, while those that started in early 2000 were sanctioned from above. In the early 1980s, the state responded by formalizing land occupations through the implementation of an accelerated resettlement model. However, in those cases where land occupations threatened to disrupt commercial farming activities, the government stepped in to evict the occupiers.

Even then, the official position was quite selective. In the case of Commissioner of Police v Rensford and the Messenger of Court, Gweru, the official government position offered sympathy to the occupiers [Tshuma, 1997]. A white farmer, Rensford, obtained an eviction order against people who were “illegally” occupying his farm. The deputy messenger of Court then sought the assistance of the police for purposes of serving the warrant. The police declined

such assistance on the grounds of a directive from the Minister of Lands, Resettlement and Rural Development that required them to obtain the Minister's written authority prior to prosecution of illegal land occupants. The Messenger of Court, and Rensford, applied to the High Court for an order for breach of duty by the Commissioner of Police, and a companion order that the police fulfill their duty. The High Court then granted the order, but the Commissioner of Police appealed the decision to the Supreme Court. The Supreme Court rejected the appeal and cited with approval the High Court judge's remarks that:

This kind of situation is calculated to lead to anarchical results. The system which exists in Zimbabwe for the protection of rights does not recognize the taking of the law into one's own hands. If inadequate machinery existed in Zimbabwe for the enforcement of proprietary rights, there would be the danger of individuals seeking to protect their rights by violent and uninhibited means [Tshuma, 1997, p. 63].

The judgment reinforced the idea that the purpose of the law is to "protect" private property and this leaves little room to incorporate sympathy for the poor and dispossessed [Tshuma, 1997]. The government considered this a judicial subversion under the cloak of legality and subsequently ignored the judgment. Soon the government enacted the Emergence Powers (Resolution of Disputes over Occupation of Rural Land) Regulations (SI 243 A/1984). These regulations gave the government the right to buy privately owned land that had been "illegally" occupied for more than five years. The government then compulsorily acquired Rensford's land, paid compensation for taking the land, and thus the occupants became tenants of the state. This case foreshadowed events of the year 2000.

Until 1985, illegal land occupants had access to high ranking politicians, but soon the government introduced squatter-control committees at the district and provincial levels. These committees were tasked to control land occupations and enforce evictions. From 1988, the number of farms occupied decreased until 1995 when 200 farms were occupied. There are no

data on the number of farms occupied between 1988 and 1995. However, that period witnessed rather low-intensity land occupations. The government used forced evictions to restrain land occupations during the transition into and during the actual period (1991-1995) of the imposed structural adjustment program of the IMF and the World Bank. Between 1995 and 1997 the number of occupied farms had risen to a total of 800 [Moyo, 1998]. These occupations occurred on commercial farms, state forests and national parks, state farms, and in communal and resettlement areas [Marongwe, 2002]. During this period therefore, it would seem that “land hunger” rather than retribution toward white farmers was an important motivation. However, starting in 2000 land occupations began increasingly to focus on white commercial farms. During this period the government ceased to impede such occupations. There are good reasons to believe that the government’s silence—if not encouragement in the beginning—was calculated to take the public’s mind off of the worsening economic situation.

By the early 1990s, Zimbabwe’s economy was on a downward trajectory [Moyo and Yeros, 2005]. Compared with annual rates of economic growth of slightly over 4% in the 1980s, the annual rate of growth between 1991 and 1997 went from 2.7% in 1991 to 0.7% in 1997. During this period Zimbabwe experienced two major droughts. The first, in 1992, was described as the worst in more than a century. The 1995 drought was more localized. Compounding the effects of these droughts was a series of years in which unfavorable global commodity prices brought serious economic stress to agriculture.

It was during this time that Zimbabwe underwent a major economic structural adjustment program imposed by the World Bank and the IMF. As a result, per capita incomes fell dramatically, social conditions worsened, and the number of people living in extreme poverty

increased. The upsurge in “land hunger” must be seen in the light of this profound retrenchment of the industrial workforce, and an associated decline in urban-rural remittances.

August 1997 was an important turning point. Thousands of veterans who had been demobilized in the early 1980s started demanding compensation for their role in the war of liberation. At a time of increasing immiserization, and in light of new revelations concerning widespread political corruption, the war veterans decided to press their claims for recognition of service to the cause of independence. To quell unrest, the government paid each of the registered war veterans a pension of Z\$50,000 (US\$4 761.90) plus Z\$2,000 (US\$190.47) per month [Bond and Manyanya, 2002]. The long-run political benefits of such payments would seem significant.

In February 2000 a referendum was held on a draft of a new Constitution. The referendum was defeated. The draft contained government-backed clauses reinforcing the right of compulsory acquisition of land, and qualifying the existing criteria for compensation for land so acquired by the government. The new conditions would have required the government to compensate commercial farmers only for improvements on the land, but there would be no compensation for the land itself. The Commercial Farmers Union, along with others, campaigned against the draft Constitution. “Shortly thereafter, twelve war veterans occupied farms in Masvingo decrying that the white farmers had connived to defeat the draft Constitution in the referendum [Moyo, 2001, p. 318].” At this stage the wave of farm occupations began to gather a new momentum. When leaders of the war veterans association, and the ruling party, realized that white farmers were actively campaigning for the major opposition group Movement for Democratic Change (MDC), and were encouraging their farm workers to do the same, subsequent farm occupations became violent and increasingly intertwined with the political campaign for the June 2000 parliamentary elections [Moyo, 2001].

Nearly a decade on from this uncertain period, tenure security remains highly problematic. The Zimbabwe government is ambivalent and often perverse in its activities, and local communities are becoming increasingly pre-occupied with the land question. A number of legislative changes have been effected through government's repeated confrontation with both the High and Supreme Courts responsible for tenure security [Moyo and Yeros, 2005]. And it is therefore no surprise that the foundation for economic progress has been weakened. Zimbabwe's legal and administrative systems have not delivered trust, security and competence. "Land occupations in Zimbabwe have thrown into disarray the concept of security of tenure [Marongwe, 2002, p. 22]."

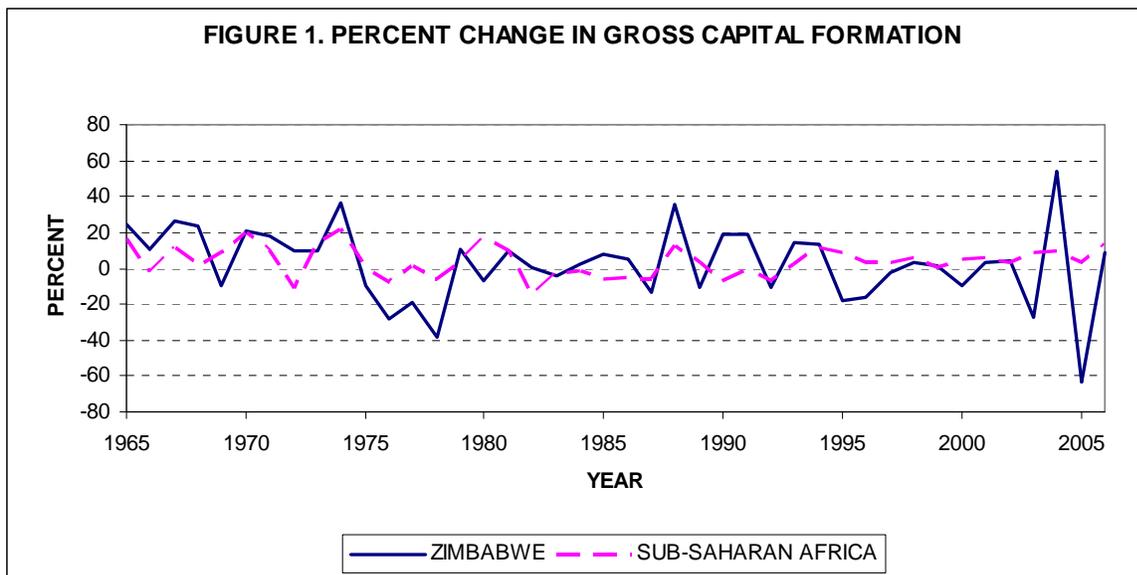
Since 1980, ZANU (PF) has campaigned for legitimacy in terms of its plan to restore land that was seized in the early 20th century under colonialism. The issue of the need to restructure property rights comes up in political campaigns at times of elections—land has been used to solidify relations of patronage and to gain political loyalty. The Zimbabwean government now finds itself unwilling to offer white farmers tenure security, but also increasingly unable to control land occupations.

To appreciate the current situation with respect to the Zimbabwean economy, we present some recent evidence.

III. The Economics of Chaos

We show several figures for sub-Saharan Africa as a whole, and a comparison with Zimbabwe.² The data for Zimbabwe are included in the data for sub-Saharan Africa. The difficulty in separating Zimbabwe out from this larger group of countries seemed excessive given our immediate purpose. That is, we are not using these data to specify an econometric model—their inclusion here is for general illustrative purposes only.

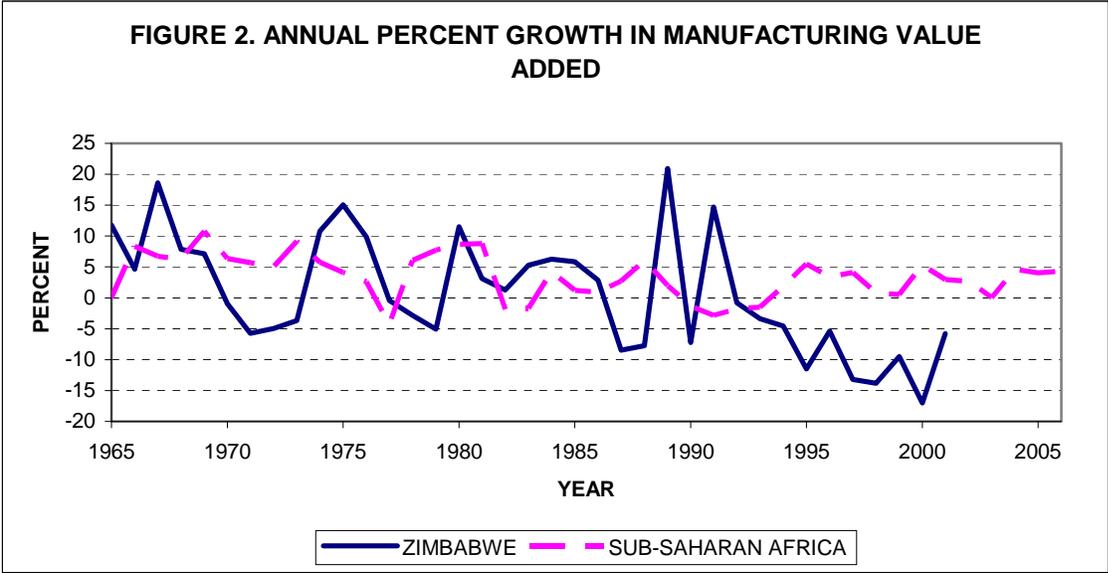
First, there is general recognition that the Zimbabwe economy has suffered a lack of investor confidence—especially over the past 15 years. Figure 1 depicts the percent change in gross capital formation for the sub-continent and for Zimbabwe.



Source: World Development Indicators, 2007.

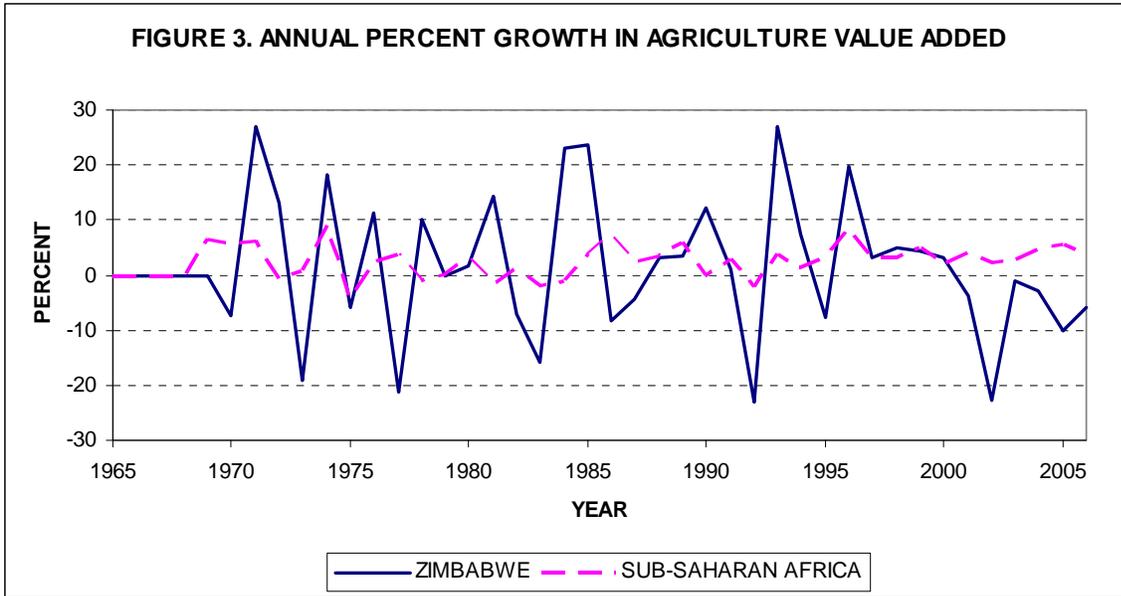
² Sub-Saharan African countries included in World Development Indicators (2007) are: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Republic of Congo, Côte d'Ivoire, Equatorial Guinea, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mayotte, Mozambique, Namibia, Niger, Nigeria, Rwanda, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, and Zimbabwe

The effect of this uncertain investment climate can be seen in Figure 2—the annual percent growth in manufacturing value added. We see that manufacturing has suffered greatly since the beginning of the 1990s.



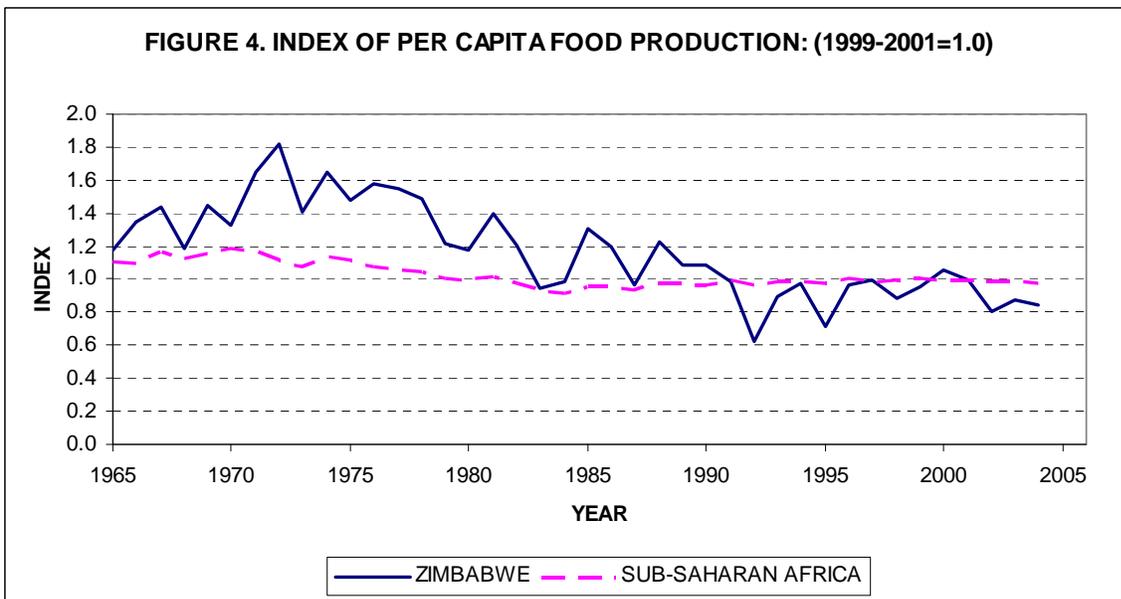
Source: World Development Indicators, 2007.

Turning to the agricultural sector, Figure 3 shows the percent annual growth in agriculture value added. The wild swings since 1970 must be seen from two different perspectives. First, as a single country measured against 48 countries, it is to be expected that the experience of but a single country would display more swings than the averages of all 48. But from the perspective of agricultural value added in a country long buffeted by a number of forces, the picture in Figure 3 is ominous.



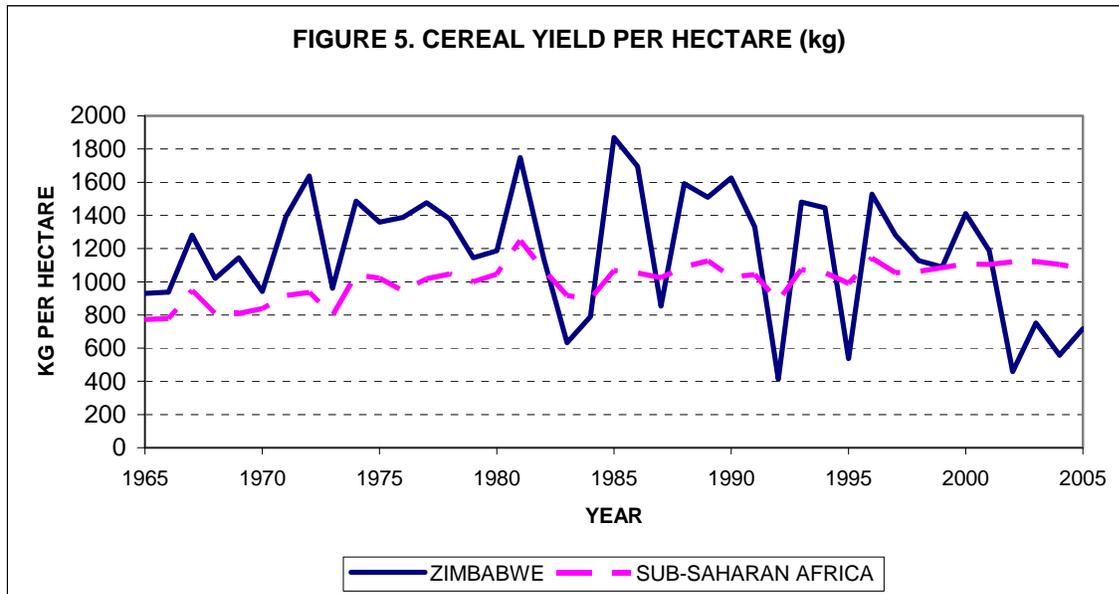
Source: World Development Indicators, 2007.

Turning to the more specific issue of per capita food production, the indifferent record of the entire sub-continent can be seen in Figure 4. Notice that all 48 countries have lost ground in this battle going as far back as 1965. But the impact on Zimbabwe is both more extreme, and perhaps more tragic.



Source: World Development Indicators, 2007.

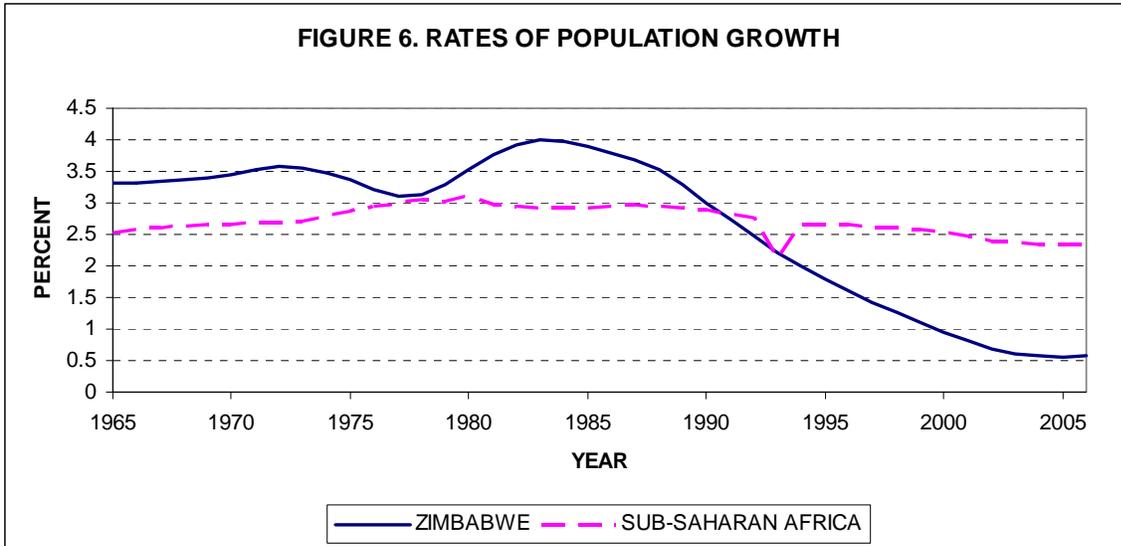
Another perspective on this grim picture is seen in Figure 5 where we see cereal yield (kg) per hectare since 1965.



Source: World Development Indicators, 2007.

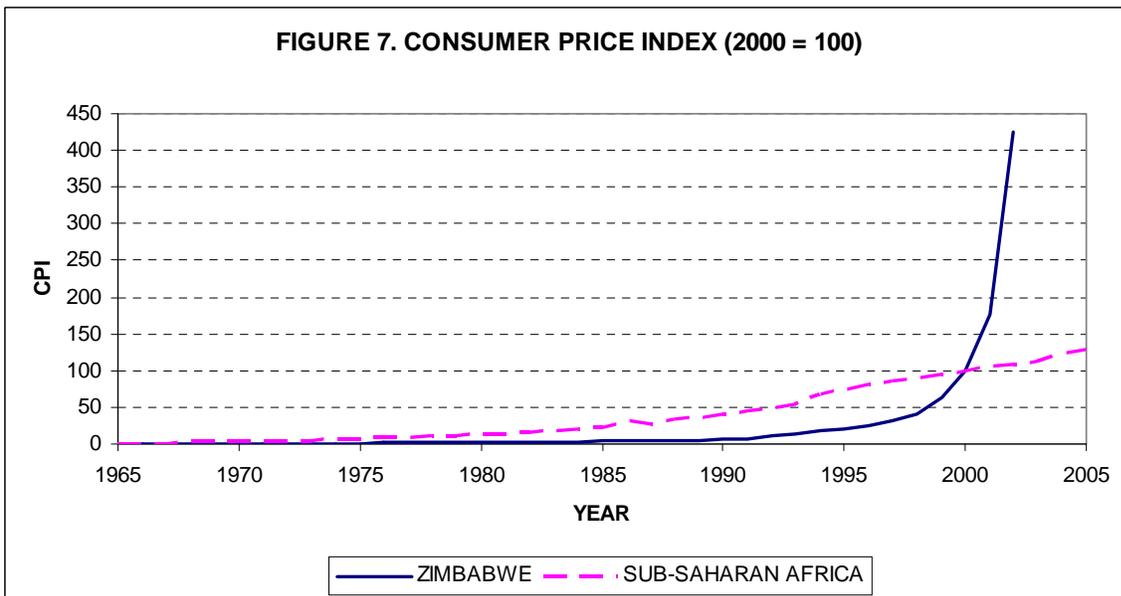
It is well known that human fertility rates drop in the face of un-promising political and economic outlooks. When the Soviet Union collapsed birth rates plummeted. We see in Figure 6 that Zimbabwe has experienced a similar “birth dearth.”³ The steady decline in the rate (percent) of population growth since 1984 is illustrative of the despair. While falling rates of population growth are usually welcomed on the sub-continent, the Zimbabwe trajectory cannot possibly be considered good news.

³ The dip for the sub-continent in 1992-94 most likely represents the horrific experience in Rwanda.



Source: World Development Indicators, 2007.

Finally, consider what may be the cruelest possible phenomenon in a poor country, the consumer price index (Figure 7). It is here, in the plummeting purchasing power of what little cash might be on hand, that we see the full implications of political chaos in Zimbabwe.



Source: World Development Indicators, 2007.

By whatever measure one may choose, the life of the Zimbabwe people has, for the past several decades, been one of unremitting hardship. We now turn to the historic roots of that problem.

IV. Land and “Rights” in Land: An Historical Perspective

The southern African country now known as Zimbabwe was, from 1901 to 1964 called Southern Rhodesia by the white settlers. Between 1964 and 1979 it was called Rhodesia . Starting in 1979 it was known as Zimbabwe Rhodesia, and at independence in 1980 it was renamed Zimbabwe.

A. The Early Years

The discovery of gold in 1886 on the Witwatersrand at Johannesburg, South Africa triggered direct British occupation of what would become, in a few years, Southern Rhodesia. This discovery by Afrikaners of gold was seen by the British as a serious threat to their colonial supremacy in southern Africa. Cecil John Rhodes, the English financier and mining magnate, quickly understood that continued British dominance in the region could only be guaranteed by the discovery and exploitation of a “Second Rand” north of the Limpopo River. In 1888, Rhodes obtained the Rudd Concession from King Lobengula. This grant from the King gave Rhodes “and his assigns” exclusive control over all metals and minerals situated and contained in Lobengula’s kingdoms, principalities and dominions—along with the full power to do what he deemed necessary to win and procure the same [Rayner, 1962]. The British Government upheld the Rudd Concession despite subsequent repudiation by King Lobengula. As with many treaties of this sort, it is doubtful that the treaty would stand the scrutiny of what we now call the “canons

of construction.” In general terms, treaties between indigenous leaders and foreign powers must always be understood against the background of granting the benefit of the doubt to indigenous peoples. After all, such treaties are written in the language of the colonial conqueror and so it is to be expected that the balance of favor in such negotiations lies with the colonial party seeking concessions from an indigenous leader [Brownlie, 1992; Orange, 1987; Wilmsen, 1989]. The Rudd Concession is accordingly considered to be both controversial and fraudulent [Palmer, 1977; Palley, 1966]. Sharing Rhodes’ alarm, the British government quickly granted Rhodes a charter empowering the British South Africa Company:

To hold, use and retain for the purpose of the Company and on the terms of this Our Charter, the full benefit of the Concession and agreements made as aforesaid, so far as they are valid, or any of them, and all interests, authorities and powers comprised or referred to in the said concession and agreements [Chanaiwa, 1981, p. 125].

The British South Africa Company (BSAC) was founded in 1889. Members of the Pioneer Column were recruited from all over South Africa—with each of the 196 pioneers being promised a free farm of 3,175 acres and 15 reef claims of 400 by 150 feet. The primary interest of the pioneers was the gold, and therefore many pioneers sold their land claims to speculators for about £100 each while still on the march to Salisbury (Harare) [Palmer, 1977].

Early in 1891 Southern Rhodesia was already being pegged (platted) into farms even though the BSAC did not acquire the Lippert Concession until April 22, 1891. King Lobengula granted Edouard Lippert:

The sole and exclusive right, power, and privilege for a full term of 100...years to layout, grant, or lease... farms, townships, building plots and grazing areas; to impose and levy rents, licences and taxes thereon, and to get in, collect and receive the same for his own benefit, to give and grant Certificates...for the occupation of any farms, townships, building plots and grazing areas [Palmer, 1977, p. 27].

As with the Rudd Concession, the Lippert Concession has been described as defective because Lobengula did not have the right in customary law to make such a land grant, and he certainly lacked the right to sign away land over the entire country. For instance, in the area between the Limpopo and Zambezi rivers, the pioneers only recognized the Ndebele state, and were thus under the false assumption that Lobengula controlled the whole of Southern Rhodesia.

Rhodes soon bought the Lippert Concession for 30,000 BSAC shares (at £1 each), 20,000 United Concessions Company Shares (at £1 each), and £5,000 in cash. In addition, Rhodes turned over land grants of 32,000 acres in Mashonaland, and 48,000 acres in Matabeleland. Ironically, this land was still under Lobengula's control [Palmer, 1977]. Land grabbing typified the pioneer era in Southern Rhodesia. In 1890, Archibald Colquhoun, the first administrator of the BSAC, recognized that the company had no legal right to grant land titles—an opinion that would end his position with the BSAC. Colquhoun was of the view that it was necessary to obtain the permission of Lobengula and the Shona chiefs before there could be an allotment of farms to white settlers. Colquhoun's successor, Leander Starr Jameson "...did not share Colquhoun's regard for Shona land rights, and after being told by numerous disgruntled pioneers that the land chosen by Colquhoun was heavily timbered and unsuitable for farming, he allowed them to peg their farms where they pleased [Palmer, 1977, p. 35]."

Jameson was successful in inducing quasi-aristocrats such as the Honorable Henry and Robert White—sons of Lord Annaly—and a number of their friends to come to Southern Rhodesia, a tactic made attractive by offering them lavish grants of land. A number of speculative companies were floated in this manner and by 1896 they had attracted over £20 million of capital investment. Because so many pioneers dispensed with their land certificates to investment combines, approximately 9.3 million acres out of the original 15.8 million acres that

had been turned over to Europeans by March 1899 ended up in the hands of commercial enterprises. By 1892 Rhodes had decided to stop free land grants and the BSAC sought to sell land to individuals who intended to settle as farmers in Mashonaland.

The Pioneer Column decided to march to Mashonaland, in part as a strategy to avoid the warlike Ndebele people. Upon arrival in Salisbury, the pioneers were disbanded and were now free to peg their promised fifteen gold claims and to ‘ride off’ their 3,175 acre farms. “Few of them paused to reflect on the legal aspect of these exciting promises. The status of the farms was particularly questionable, for the Company was not in a position to give valid title to land [Blake, 1978, p. 93].” After realizing that the gold fields in Mashonaland were only a shadow of the South African Rand, Rhodes’ attention turned not only to land speculation in Mashonaland, but to the mineral wealth of Matabeleland that he hoped would be greater than that of Mashonaland—and where the fertile and well-stocked highveld was an added advantage. When, in 1893, an excuse arose for the BSAC to attack Matabeleland, the Ndebele state was destroyed. The land speculation that was typical of Mashonaland was replicated in Matabeleland, but on a larger scale. In August 1893 the Europeans in Fort Victoria, in abrogation of their contracts, refused to fight for the company until they had been granted certain concessions. Jameson was left with no option except to comply with their demands which culminated in the Victoria Agreement. The agreement, which applied to 414 men who invaded Matabeleland from Fort Victoria, and 258 men of the Salisbury column, stipulated that those who took up arms were entitled to a free farm of 6,350 acres anywhere in Matabeleland with no obligation to occupy the land. When the Company won the war, the victorious soldiers seized land wherever they wanted. “Within a few months of the European occupation...practically the whole of their most valued

region ceased to be their patrimony and passed into the private estates of individuals and the commercial property of companies [Palmer, 1977, p. 38].”

By the end of 1895 it became clear that the anticipated gold discoveries in Matabeleland were a mirage. At this time, one-sixth of the country’s 96 million acres had been expropriated by Europeans. The land dispossession provoked the Ndebele and Shona Uprisings of 1896-7. Again the BSAC prevailed. The BSAC assumed that it was the “owner” of the land in Southern Rhodesia. On the basis of this assumption, the Company granted land titles to members of the Pioneer Column and other European Immigrants. After the defeat of the Ndebele in 1893, the Company regarded itself as master of Rhodesia by right of conquest. This assumption was later found to be defective.

Matters came to a head in 1918 over the question of ownership of unalienated land in Southern Rhodesia. The claimants—in a case brought before the Privy Council in Britain—were the BSAC, representatives of European settlers, and Africans. Judgment in the case was given in favor of the Crown. That is, the Privy Council upheld the titles of those to whom the Company had granted land. It further remarked that the natives had lost their land rights through conquest. In the same judgment, the Lippert Concession was declared null and void as a title deed. The implication of the ruling was to take an expedient route favorable to the Crown. In 1893, the British government objected to the BSAC’s proposal to impose a hut tax on the unconquered Shona, pointing out that “the natives are probably in law and equity the real owners of the land they occupy,” and that the proposed tax amounted to a ‘charge...for the occupation of their own lands [Palmer, 1977, p. 43].” In essence, the Shona had not ceded any authority to the Company.

The decision of the Privy Council affirmed British colonial policy in Southern Rhodesia. While in Nigeria the Crown acted to respect the land rights of natives, in Southern Rhodesia the

Crown overrode native land rights. This is apparent in *Sobuza II v Miller and Others* and in *In re Southern Rhodesia*. In the latter case, the Privy Council denied the property rights of Lobengula's people following his defeat and the extension of British sovereignty over Southern Rhodesia [Klug, 1995]. In *Sobuza II v Miller and Others* the Privy Council declared that "The true character of the native title to land throughout the empire, including South and West Africa...is a uniform one...[which] takes the form of a usufructuary right, a mere qualification of a burden on the radical or final title of whoever is sovereign [Klug, 1995, p. 122]." These judgments had the combined effect of terminating native land rights other than in reserves. The Crown's powers had, over the years, become unfettered as it came to be understood that Crown action in protectorates was unchallengeable, and that the Crown could vary previous Orders in Council. This dispensation left native land rights at the mercy of the protecting power.

After the Ndebele conquest of 1893 neither the Company nor the inhabitants of Southern Rhodesia were entitled to any rights which they had enjoyed under Lobengula, except in so far as these were recognized by the new sovereign. Although in international law a change in sovereignty ought not to affect property rights, there seems to be no municipal court with authority to enforce such obligation [Palley, 1966]. "If rights were of a public nature they lay at the disposal of the Crown on the conquest, while, if they were of a private nature, in order to be enforceable they required the recognition either by agreement express or implied, or by legislation [Palley, 1966, p. 111]." Thus rights possessed by the Company under the Rudd and Lippert Concessions were unenforceable until they were recognized by the Crown. In 1915 the Crown pointed out that it did not recognize the Lippert Concession. In that year the Crown lodged its case claiming ownership of unalienated land in Southern Rhodesia. This was a

departure from the position taken by the Crown in 1892 when it recognized the Lippert Concession.

In 1923, the white settler community voted for the status of “self governing colony” rather than union with South Africa. The same year the company surrendered its power to the settler government. In 1965 the Rhodesia Front led by Ian Smith declared unilateral independence from Britain. The Shona and the Ndebele did not consider this as independence because black people had no franchise. Neighboring Malawi and Zambia had obtained their independence from Britain in 1963 and 1964, respectively and this development spurred blacks in Southern Rhodesia to press for majority rule. The war for independence reached its peak after Mozambique became independent in 1975. In parts of the country where the war was being fought, the freedom fighters held night rallies at which rural peasants were repeatedly reminded that “we are fighting so you can get your land back [Cliffe, 1981, p. 30].” The war for independence came to an end following the signing of the Lancaster House Peace Agreement in 1979. The 1980 elections brought full independence to Zimbabwe.

B. Property Rights After Independence

When Zimbabwe finally forced Britain to grant independence in 1979, the interesting question became: what remains of the alleged property “rights” of white commercial farmers? Notice the ironic twist here. Since the British Crown failed to acknowledge native land rights during the hegemony of white rule from the mid-nineteenth century up until Zimbabwean independence in 1979, what basis in law can be found to prevent the independent government of Zimbabwe failing to acknowledge land titles held by whites—titles granted by the British Crown? It would seem that white farmers, who imagine themselves “owners” under the new Zimbabwean

dispensation, are in a legally tenuous situation. Ranger [1985], Riddell [1978], Moyo [2001] and Marongwe [2002] provide detailed accounts of resistance and claims over the white farmers' land by dispossessed clans. Yudelman [1964], while commenting on the fate of pioneers in different regions of the world, offers some interesting insights.

Unlike the Western frontiersmen of the United States, the Southern Rhodesian frontiersmen encountered a numerically superior indigenous population that was seeking land for itself. As a distinct minority at independence, white farmers faced a most uncertain future. One of the pioneers, Frederick Courteney Selous may not have realized the irony of his message when he wrote to his mother to say "So you see the campaign is virtually over and the fair-headed descendants of the northern pirates are in possession of the great King's Kraal, and the calf of the black cow has fled into the wilderness [Blake, 1978, p. 111]."

The question becomes, to what extent does contested possession become ownership? One of the central issues here is the myth of empty land—*terra nullius*.

The doctrine...is identified...as that of *territorium nullius*, empty land, which asserts that lands occupied by foraging peoples at the time of settlement by Europeans became the sole property of the "original [European] discoverers" because such native peoples were deemed to be even more primitive than others encountered in European expansion [Wilmsen, 1989, pp. 1-2].

The issue of *terra nullius* is as old as European contact with peoples engaged in an economy that differs in virtually all aspects recognizable to Europeans. The Latin phrase could certainly not have been uttered by indigenous peoples, even in a tongue other than Latin, because the concept of "empty" would be an unlikely concept invoked by indigenous people with reference to space. We can imagine the adjectives "dry" "unfriendly" "dangerous" and "promising" being applied to geographic regions. But for land to be regarded as "empty" implies

that other land in their mental world must necessarily have been regarded as “full.” This distinction seems inapplicable to peoples who had forever been quasi-sedentary. But the full brunt of the word “empty” in its European usage does not fall on the number of people observed to be occupying a specific geographic domain. Rather, it is a conceptual deceit in what the term rationalizes. European settlers could never have been in doubt concerning the lie of “empty” land since they were constantly aware of very great danger to their health and safety. If the land were really “empty” they could have been afraid of only ghosts and wild beasts. So the term “empty” was a convenient excuse to lay claim to all the land they could possibly get their hands on.

The British in southern Africa differed little in this regard from Europeans who ventured to North and South America, to Australia, and to New Zealand. The mental idea of *terra nullius* was simply an expedient to all the colonizers to get on with the task at hand. Interestingly, when the British arrived in Egypt, in Sudan (to a somewhat lesser extent), and in South Asia they encountered agricultural practices—and settlement patterns—that were recognizable to European minds. With *terra nullius* no longer available, colonialism took on a somewhat different character.

Still as Palmer reports, “When the Europeans came to Rhodesia in the 1890s, they were immediately struck by the vast amount of seemingly empty land [Palmer, 1977, p. 38].” And, as always, the appearance of human settlement and rural livelihood strategies deceived European arrivistes because of embedded cultural norms concerning land, land occupation, and land ownership. For example, local hostilities and an abundance of wild animals often resulted in small compact settlements and large expanses of seemingly vacant land. Land that was being rested in systems of shifting cultivation could be mistaken for land that is not being used. And,

other parcels, owing to local cultural significance, may not be used as that term is often understood by foreigners. It was also common for tribal groups to reserve land for hunting, for the gathering of timber, firewood, and herbs, and for the grazing of livestock. Thus, assertions such as: “Land was plentiful, and there was little pressure on Africans to earn a livelihood from other sources [Yudelman, 1964, p. 42]” are false and cannot be taken seriously.

V. The Way Forward: Revitalizing the Agrarian Economy

Despite the collapse of commercial farming over the past decade, the agrarian economy comprises the essential engine of economic recovery. Revitalizing the agrarian economy will require a comprehensive economic recovery program spanning at least 5 years. The core components of the economic recovery program will be the need to stabilize the macro-economy, restore basic public services, and generate employment. Such an economic recovery program would include timely normalization of relations with the international community and rapid support comprised of aid, debt relief, and private finance.

A. Enforce Rule of Law and Build Trust

The first step is an obvious one: restoration of the rule of law and building of trust. Without renewed commitment to the Constitution, an independent parliament, and an independent judiciary, the current economic situation will remain problematic. The land invasions that became common after 1999 have been promoted by the selective application of the rule of law along racial, class and political lines. Constitutional amendments have undermined the perception of a society based on the rule of law and are understood to represent a defeat for

impartiality. The absence of an independent Judicial Services Commission has further jeopardized the legal environment.

Economic activities are undermined by capricious and arbitrary legal procedures. Over the immediate past there has been inconsistency and incoherence in application of the law, and a correlated erosion of confidence in the government's ability to govern effectively. As a result of lack of confidence in government's ability to enforce the rule of law, fast track land reform beneficiaries have had few reasons to invest in farm infrastructure and equipment. At the same time, the government has taken the initiative to remove some occupiers from certain farms, often where such properties are destined to become the possession of high-ranking politicians, bureaucrats, or the business elite.

An important element for recovery of the agricultural sector would be the need to build trust on the part of foreign and domestic investors that their investments are safe from potential expropriation. The speed at which the agricultural sector can recover ultimately depends on the ability of the government to inspire trust among citizens, banks, and investors. Legal and administrative systems must foster trust at all levels of society.

B. Land Audit, Adjudication and Restitution

The next required step is that the government must conduct a land audit. The chaotic manner in which land reform was implemented after 1998 resulted in some people having claims to multiple parcels of land. Conflicting and competing claims exist over land parcels, while other individuals have sold or abandoned the land parcels that they occupied. Information gathered through a land audit would help the land adjudication and restitution process. A land audit is

necessary for each pre-1998 commercial farm. Such a land audit would among other things establish:

- The names of all land claimants, including, as relevant, the former owner of the commercial farm, farm workers and resident and non-resident land reform beneficiaries
- Size and location of respective landholdings
- Size, nature and value of physical assets owned or claimed
- The level of utilization of the landholdings

The audit should identify all land and physical asset claims, including multiple and overlapping claims.

Land adjudication will be required to resolve conflicting land claims, systematically regularize landholdings, and reconcile overlapping land claims. Competing claims to land exist by commercial farmers, farm workers, new settlers, and the state. Land adjudication is the process through which existing rights in a particular parcel of land are finally and authoritatively ascertained. Land records must be regularized, and there is a need for a functioning system of land administration. This work could be undertaken by an independent Land Commission, established by law and specially tasked to hear land claims, validate land rights and provide redress to commercial farmers whose farms were taken over by the government since 1998. The Land Commission should consist of individuals experienced and knowledgeable in land reform issues, and its work will be enhanced to the extent that there are clear terms of reference, and staff and financing are adequate to the task. Claimants must have the right of appeal to the regular courts. There should be consideration of a land compensation fund-or other means to compensating commercial farmers for their land. Various options for paying compensation such as public bonds or annuities should be considered.

C. Promotion of Dialogue, Reconciliation and Rebuilding the Capacity of Government Agencies

The years of crisis have produced a serious polarization of society along political and racial lines. Obviously this situation has been corrosive of political stability, economic growth, and social integration. As above, a plan for putting Zimbabwe on the path to economic recovery must be accompanied by a program to build trust in the political system. Such a program would seek not to only promote dialogue and reconciliation between the major political parties, but amongst all citizens.

A program that promotes dialogue and reconciliation will need to be supported by reform of the police, the army, the judiciary, and the intelligence services. “Politicization and corruption of the police, military, intelligence services, and judiciary have undermined what were once professional and highly regarded institutions [Moss and Patrick, 2006, p. 27].” Any program for economic recovery must include investigation of officials for past abuses, training officials in civilian policing and criminal justice, and disbanding the militia.

D. Develop An Agricultural Sector Strategy

An agricultural sector strategy will need to be formulated with strong participation of the government, international community, and various farming sectors. The strategy would aim at increasing agricultural productivity and employment. The agricultural strategy would address the following main aspects:

1. Resuscitating Production in Former Large-Scale Commercial Farming Areas. As part of a land audit and adjudication process, racial integration would be promoted in these areas as a means to provide a more secure base for social and political stability. White farmers who still

wish to pursue commercial farming will through land restitution be afforded the opportunity to do so—but in other parts of Zimbabwe.

While it will not be desirable—or politically feasible—to restore the pre-1998 agrarian structure, there are policy solutions that strike a balance between the compelling needs of the landless in Zimbabwe, and the interests of commercial farmers who were forced off their land. A policy that supports the building of a multicultural farming community would provide opportunities for mutual support between returning commercial farmers and new settlers. It is essential to recall that white commercial farmers have vast knowledge, and the requisite entrepreneurial skills, to benefit new settlers. Opportunities exist for the realization of mutual benefits through equity-share schemes, land rental arrangements, and other initiatives. Policies that promote land rental markets have the potential to bring currently underutilized farm land back into production.

Measures that can be taken to increase optimal land use, and the release of land onto the market, include the introduction of a land tax that takes into account land-use potential, the encouragement of land subdivision where necessary, and the disposal of government-owned land with the first option to purchase the land being given to current occupants. A high land tax based on land-use potential would induce farmers to use land optimally, thus contributing to an increase in productivity. Hence, apart from being a production incentive, a land tax can reduce land hoarding and speculation, and it can help to mobilize the land market.

The development of a viable land market could also be promoted through new legislation that facilitates and secures various leasing and sharecropping contract arrangements. The basis for such arrangements already exists as grazing land in resettlement areas is often leased to commercial farmers by absentee new settlers. Farmers and their workers often enter into

sharecropping arrangements so as to spread risk, share resources, and have joint responsibility for minimizing theft.

2. Promote the Smallholder Agricultural Sector. Beneficiaries of the land-reform program, and communal farmers, will likely lack knowledge and experience in farm management. These farmers will require training and education in order to equip them with the necessary skills to become successful farmers. Boosting production in the smallholder sector will require a package that includes drought mitigation measures, research, special credit facilities, and augmented market channels for inputs and for products. For instance, tomato production has been very successful on many resettlement schemes but most farmers have not been able to find a viable market for their tomatoes. There is a need to finance the development of irrigation and other infrastructure, to augment the agro-industry sector, and to upgrade services in communal and resettlement smallholder farming areas.

Experience from the 1980s demonstrates that the smallholder farming sector can perform at impressive levels of success if it has access to timely input supplies, high-quality extension services, training and educational programs, access to credit, and viable marketing channels.

3. Increase Tenure Security. There must be new policies to strengthen security of tenure in all rural areas. In the commercial farming areas there should be 99-year leases over land, with an option to purchase after 10 years. This approach will give farmers the option of title to land upon completion of certain minimum levels of land improvement. In the communal areas, new land policies must provide for legal recognition (by the state) of customary land rights. Depending on demand, communal land should be surveyed and registered in the name of

individuals, families or groups. With increased security in lease/free-hold areas, and in communal areas, the incentives to invest and to adopt appropriate environmental measures will be strengthened.

4. Improve Incentive Structures and Support Services. There must be strengthened incentives for production and investment in commercial farming. The first necessary step is that government involvement in factor and product markets must be eliminated. At the present, the government controls the distribution of seed and fertilizer to smallholder farmers, thereby thwarting the preferences of smallholders who would rather buy inputs on the market. Moreover, production could recover if the government relaxed its control over input distribution. On the output side, the government requires farmers to sell their grain through the Grain Marketing Board. An observer notes that “Sharecropping arrangements are entered into between farmers and their workers, particularly for food crops, in order to circumvent marketing regulations that require the delivery of maize and wheat grown on commercial farms to the Grain Marketing Board within 14 days of harvest [Hasluck, 2003, p. 67].” Prices offered by the government are far below what farmers can fetch on the open market. That is, prices in the parallel market for commodities are usually three to four times higher than that offered by the government.

Innovative supply-side policies will need to concentrate on the deregulation of product and factor markets, and on the supply of services. The new program will need to provide for infrastructure that ensures reliable access to transportation and communication at feasible costs.

Farms of all types and sizes will require substantial capital investment. Both white and black commercial farmers who had their farm assets looted—and who have been resettled—will

require ready access to capital if they are to return underutilized land to production. The need for extension services, infrastructure, and social services is paramount.

5. The Agrarian Trust Fund. An agrarian recovery program will require substantial international funding. The international donor community should establish an agrarian trust fund to allow the immediate launch of the necessary first steps. Those steps will include an assessment of Zimbabwe's priority needs—including evaluation of the infrastructure deficit and other areas that can be privately financed. A national coordinating body can be established for purposes of managing financial inflows.

VI. Summary

The situation in Zimbabwe is troublesome because, at least since 1980, the land question has hovered over—and distorted—all political and economic considerations. Claims and counterclaims about alleged “property rights” have further hijacked the quest for clarity. And all sides in past and current disputes have, in an unfortunate sense, benefited from this muddle. The history traced here reinforces the point that political and economic coherence will be elusive until there is definitive closure to that unpleasant past. The essential transformative step is for a consensual governance process to emerge from the turmoil of the Mugabe period. That process must immediately confront the question of “Whose land is it, anyway?” The answer, as in all constitutional democracies, is that property rights are not “discovered” by a careful reading of some sacred texts [Becker, 1977; Bromley, 1989, 1991, 1992, 2004, 2006; Christman, 1994]. Rather, property rights are created by the political community in which various assets and income streams arising there from are accorded extraordinary protection. The political

community must decide which assets in that community shall be given the extraordinary reification we call “property rights.”

Once that is done, the restoration of investor confidence in Zimbabwe’s commercial farming sector will not be far behind. The core components of that revitalization include a return of the rule of law, a degree of financial predictability, and assurance concerning the nature of law and consistency in its application. A comprehensive financial package would help restore much needed macro-economic stability. These measures would begin to bring about social and political stability, reduce the corrosive effect of great uncertainty, and once again turn Zimbabwe into an attractive destination for new investment.

But there is more to economic revitalization than foreign and domestic investment—there must be a full array of feasible and transparent economic incentives introduced to mobilize human energy in the interest of entrepreneurial activity and the building of a civil society. However, quick and decisive settlement of “the land question” is the *sine qua non* of political and economic change in Zimbabwe.

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