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**SECURING LAND RIGHTS AND IMPROVING LAND USE AT GRASS ROOTS:
A look at the situation in Zimbabwe**

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CONFERENCE THEME – Moving towards transparent land governance: Evidence-based next steps

Thematic Area - SECURING LAND RIGHTS AND IMPROVING LAND USE AT GRASS ROOTS: a look at the situation in Zimbabwe.

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Introduction

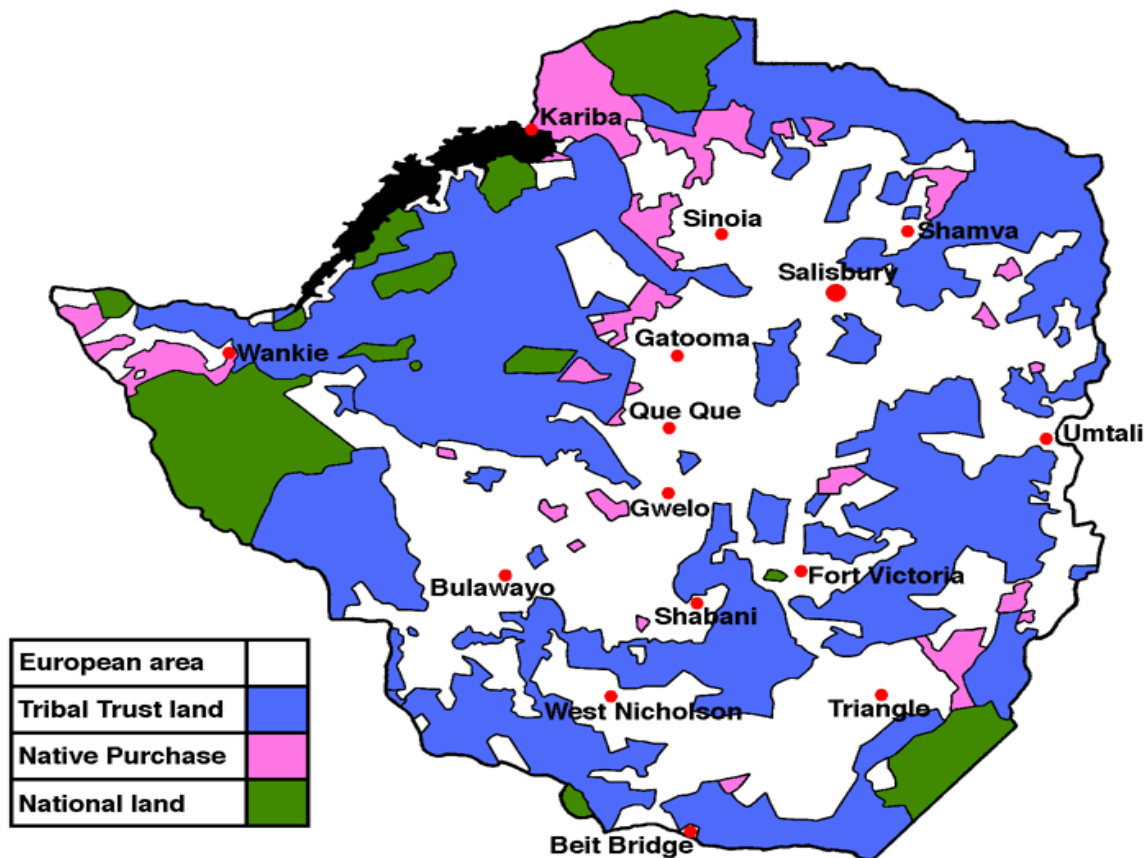
Recent international trends suggest that there is direct link between secure systems of tradable security of land tenure (private property rights) and economic development. Examples from Rwanda and former Soviet nations have demonstrated that secure tradable land tenure has, amongst other things, equated to long term job creation, industrialization and sustainable poverty alleviation. The overall modalities or administration of legal systems governing secure tradable land tenure is central to their success as a trigger for economic development. Optimal Land administration systems must be accessible to all citizens, simple, efficient, fair, transparent and accountable. Using land markets to drive economic development can happen where adequate provision is made for low cost finance and farmer skill development. The risk of creating a landless class is also acknowledged but can be mitigated by proper holistic economic growth policy frameworks and good land administration systems.

This paper focuses on lessons from Zimbabwe in this regard. It seeks to highlight the impact on economic development when rights to private property are cancelled and land administration is politicized. Arguably, Zimbabwe has transformed land from an economic asset into a political asset. The paper's central argument is therefore that land administration systems must strike an appropriate balance between the social, political and economic function of land in order for agricultural and economic growth to occur. As a point of departure a short contextual overview is presented. Thereafter some strategies for securing land rights and increasing production are discussed.

Land Tenure Distribution and Early Land Reform in Zimbabwe

Prior to independence in 1980 land was classified as European land, Tribal Trust Land, native purchase area and national land, the latter reserved for state managed game reserves and forests. The map below illustrates the relative holdings. The exclusive reservation of a substantial area of quality agricultural land for white farmers was one of the causes of the protracted war of liberation that led eventually to the country's independence from Britain. That history led to a dual agrarian economy where development of a large scale commercial sector based on freehold tenure contrasted with the subsistence small scale production in tribal areas based on traditional tenure.

MAP 1: Land allocation pre 1980



In 1980 the Government removed the exclusive reservation along racial lines of the commercial sector and embarked on a Land Reform exercise acquiring land for resettlement on a willing seller - willing buyer basis. By the mid 1990s in excess of 3,54 million Ha had been purchased for resettlement. The acquired land during this first phase of Land Reform was vested in the state and those persons resettled

were granted permits or state land leases. This allowed people access to land but constrained its use as collateral for working capital or infrastructural development. Simultaneously, with the opening up of the land market after independence around 1000 black investors had bought commercial farms by the mid 90's. In 2000 the Government embarked on a Fast Track Land Reform Programme (FTLRP). Land holdings in Zimbabwe are now classified as large scale commercial, small scale commercial, communal areas, resettlement areas, state owned land and urban areas.

An important contextual feature of the period was that the Lancaster House Agreement precluded Government from the Compulsory Acquisition of land for resettlement unless full compensation was paid allowing the owner to extenuate the amount. This provision was in place by agreement for the first ten years post independence. On its expiration, Government enacted the 14th Constitutional Amendment and the Land Acquisition Act of 1992. This legislative framework was intended to facilitate Land Reform through designation and Compulsory Acquisition of Land.

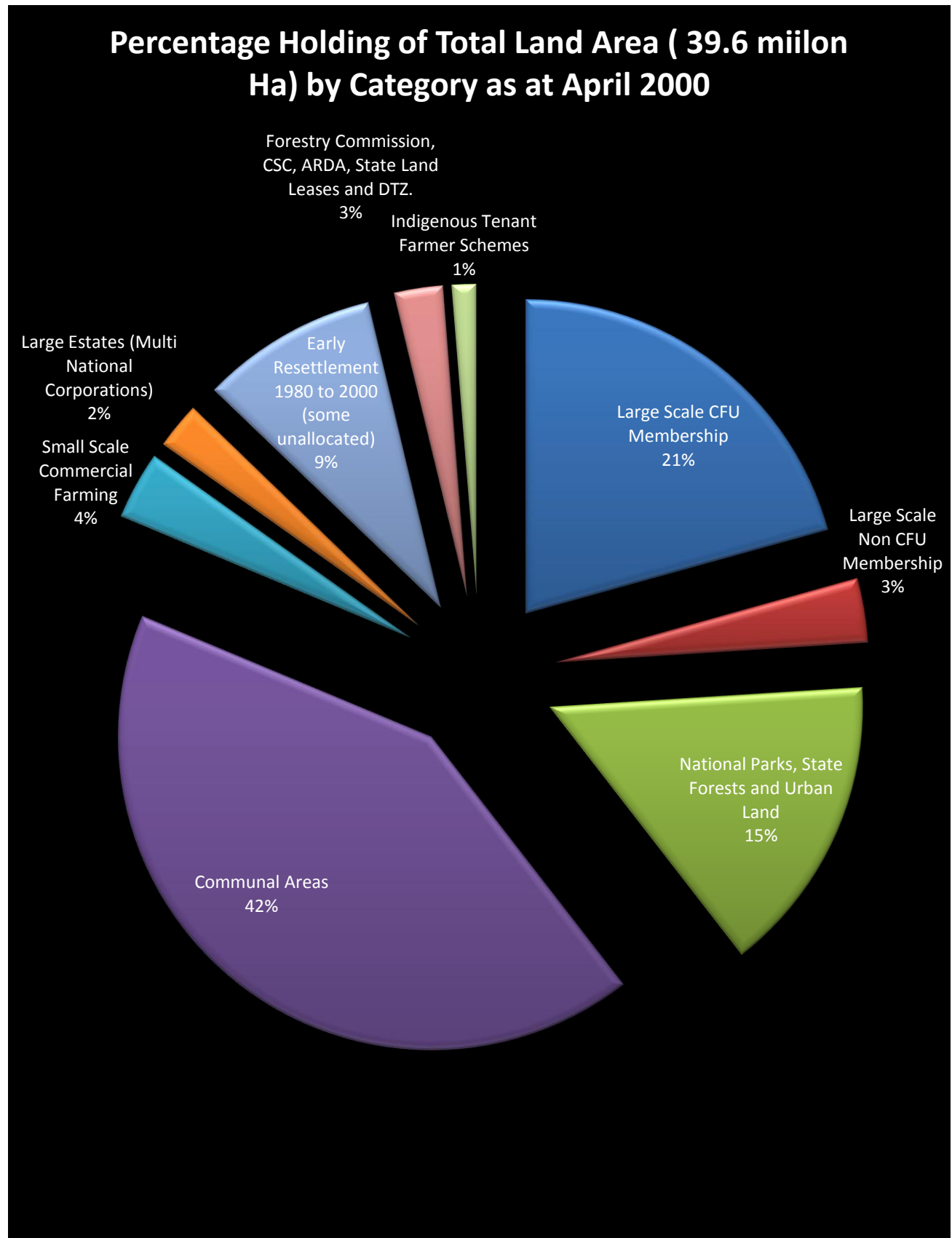
Early recommendations by the World Bank were made to introduce a progressive Land Tax on underutilized land to incentivize Land owners to subdivide and sell. Government did not explore this option, but instead focused solely on a model of land reform underpinned by compulsory acquisition and resettlement.

The Table below sets out the broad land categories that were in place by the year 2000. This paper concentrates on the first five categories which make up the total land area devoted to agriculture.

Table 1 shows land distribution by sector prior to the start of FTLRP in 2000.

TABLE1:Distribution by sector prior to FTLRP 2000		
SECTOR	HECTARES	%
1. Large Scale Commercial Sector	11 020 000	28.2
2. Small Scale Commercial Sector	1 380 000	3.15
3. Communal Areas	16 350 000	41.8
4. Resettlement Areas	3 540 000	9.1
5. ARDA (State Farming))	250 000	0.6
6. Parks/Forest Land (State)	6 339 000	16.2
7. Urban Areas	200 000	0.5
TOTAL	39 079 000	100

The Pie chart below gives a more detailed breakdown of land holdings including land held by Commercial Farmers Union members which was the primary target of FTLRP. Membership of the Union was not exclusively white.



In 2000 Government initiated its fast track land reform programme (FTLRP). Since then over 11.2 million hectares of large scale commercial farm properties have been expropriated by Government under the Land Acquisition Act and by Constitutional Nationalisation. This comprises some 99% of the freehold land formerly in the sub-sector.

Property Rights

In the communal areas of Zimbabwe arable land-use rights are allocated by resident traditional leaders. Every married man is customarily entitled to a plot of arable land. Grazing pastures are a communally shared resource. There is no land market because land cannot be owned by individuals and sold.

In the large scale commercial farm sub-sector land was held as freehold property until the onset of the FTLRP. Land in the sub-sector could be purchased and a formal title deeds system was in place to register legal ownership of a particular piece of land. Once ownership was acquired the owner could develop and use the land and resources as that person saw fit. The freehold land ownership system has fallen away to a very large extent.

During the period 1980 to 2000 Government acquired 3.54 million hectares for resettlement (Table 1). Both pre- and post 2000 resettled farmers occupy properties either by holding permits, state land leases or so-called "offer letters", neither of which accord proper security of tenure.

Land reform during 1980s and 90s failed to address the crucial issue of the dual land tenure system.

While the Land Resettlement Programme attempted to address the needs of the landless poor, it did little to solve the increasingly pressing issue of overcrowding in the Communal land areas. No policy was put in place to standardise land tenure and abolish the dual system that discriminated against communal farmers.

A Land Tenure commission (Rukuni Commission) in the mid 1990's recommended that the dualist system of land tenure should be replaced with a uniform land tenure system. However the FTLRP which has seen Government acquiring over 11million Ha from the commercial farm sector and transfer of title to the state, has effectively done away with the system whereby commercial farm owners held bankable collateral but communal farmers did not. The situation that perpetuated poverty has not been addressed and all sectors are now without collateral. There is no market for Agricultural Land in Zimbabwe.

The Effects of Fast Track Land Reform on Property Rights

Prior to Constitutional Amendments 16 (2000) and 17 (2005) the rights to Private Property were afforded reasonable levels of protection. However, major problems have arisen because fast track compulsory acquisition has not been done properly. Government methods of acquiring land did not follow the legislative requirements pertaining to this, including paying compensation.

These departures from the law and best practice are detailed below and have significantly contributed to the erosion of both foreign and local investor confidence:

1. The questionable sincerity in the GoZ motivation for the FTLRP, implemented in July 2000. This followed a referendum defeat by Government in February of that year news coverage of which had created a public perception that many white farmers supported the MDC (Movement for Democratic Change, a newly formed opposition party.) President Mugabe subsequently publically labeled white farmers as "*enemies of the state*". There is evidence¹ of direct state and ZANU(PF) incitement, coercion and sponsorship of the "*spontaneous demonstrations by land hungry peasants*".
2. There is also evidence² of widespread politically motivated violence, forced attendance to political meetings and political intimidation that is associated with the farm seizures and land reform. The bulk of the victims of these violations, being the approximately 1.8 million farm workers and their families who resided on commercial farms and who were apparently perceived to be opposition party supporters.
3. The patently partisan behaviour of the Zimbabwean Republic Police (ZRP) in using the concept of a "political matter" in order to evade a duty to uphold the law (i.e. an intentional failure to prevent political intimidation, violence and disruptions on commercial farms)³ in direct violation of court order(s)⁴.
4. GoZ's unilateral departure from the terms that it had agreed to in the Abuja Agreement in 2002.
5. The lack of transparency with regard to the selection of beneficiaries of land resettlement and the criteria employed in their selection including the *prima facie* improper selection of senior government officials and civil servants, members of the judiciary and of the security services as beneficiaries of land resettlement.
6. The selection of members of the judiciary as beneficiaries of land reform is one of the factors that appear to compromise their independence. It is a trite tenant of law that justice must not only be done but must be seen to be done. It is thus highly inappropriate for these judges to preside over cases where white commercial farmers attempt to assert their rights against the operation of the FTLRP. This has been coupled with the ouster of local jurisdiction to hear challenges by property holders to compulsory acquisition.
7. Challenges to acquisitions prior to the enactment of amendment 17 had little practical effect in their implementation. Government was seen to simply manipulate the legal framework to retroactively sanitize improper acquisitions. Constitutional amendment 17 is a clear example of this and further ousted the jurisdiction of the courts to enquire into the reasonableness of acquisitions. Now land can be acquired at the stroke of a pen and no court can enquire into the rationale or reasonableness of the acquisition.

¹ See for example *Destruction of Zimbabwe's Backbone Industry in Pursuit of Political Power*. A qualitative report on events in Zimbabwe's commercial farming sector. Report prepared by The Justice for Agriculture (JAG) Trust and the General Agricultural and Plantation Workers Union of Zimbabwe (GAPWUZ).

² *Ibid*

³ *Ibid*

⁴ See for example *Commercial Farmers' Union v Minister of Lands & Ors 2000 (2) ZLR 469 (S)*. Also see Zimbabwe Human Rights Bulletin September 2002 Issue number 7 Produced by Zimbabwe Lawyers for Human Rights, page 158.

8. No adequate provision in the National budget has ever been made for the payment of compensation for improvements but the wholesale nationalization and eviction of former owners has proceeded unhindered.
9. The GoZ's stated policy of disregarding Bilateral Investment Promotion and Protection Agreements (BIPPAs) as upheld by the Supreme Court of Zimbabwe⁵. Further compounding this is the fact that Government despite being obliged to pay adequate compensation in terms of the BIPPAs concerned has failed to attempt to do so in any meaningful fashion.
10. The unilateral nomination of Britain by GoZ as the sole party responsible to pay compensation in respect of land acquired from both whites and blacks,
11. The fact that international rulings by the SADC Tribunal and the International Center for the Settlement of Investment Disputes (ICSID) have been ignored or treated with contempt.
12. The inconsistency of land reform in practice versus the Planned Programme of Land Reform as laid out in the GoZ's Phase II Land Reform and Resettlement Programme documents.
13. The development of an un-transparent land administration system associated with reports of corruption and political intimidation.
14. The lack of accountability with regard to the use of acquired state land by beneficiaries.
15. The lack of accountability and transparency with regard to any rentals received, or indeed, whether or not rentals have actually been paid in respect of resettled state land.

This situation has had a disastrous effect on commercial farm output. The confidence required for investment and growth in commercial agriculture is almost non-existent. For practical purposes of securing working capital requirements, there is now little difference in the two previously dominant forms of tenure.

The commercial agriculture sub-sector was founded on, and developed because farmers were able to mortgage their fixed properties and raise finance by providing financiers with mortgage bonds. This system of providing security for credit was fundamental to being able to carry out farming operations, and governed investment and output. It was the cornerstone to stimulating the entrepreneurial spirit that developed this sub-sector.

As a result of FTLRP ownership appears to have been acquired by Government and not by persons that were allocated the properties. There are no plans in place for these persons to eventually buy the farms. This has destroyed confidence in property rights in Zimbabwe, thus generally de-incentivizing investment by beneficiaries of the allocated land.

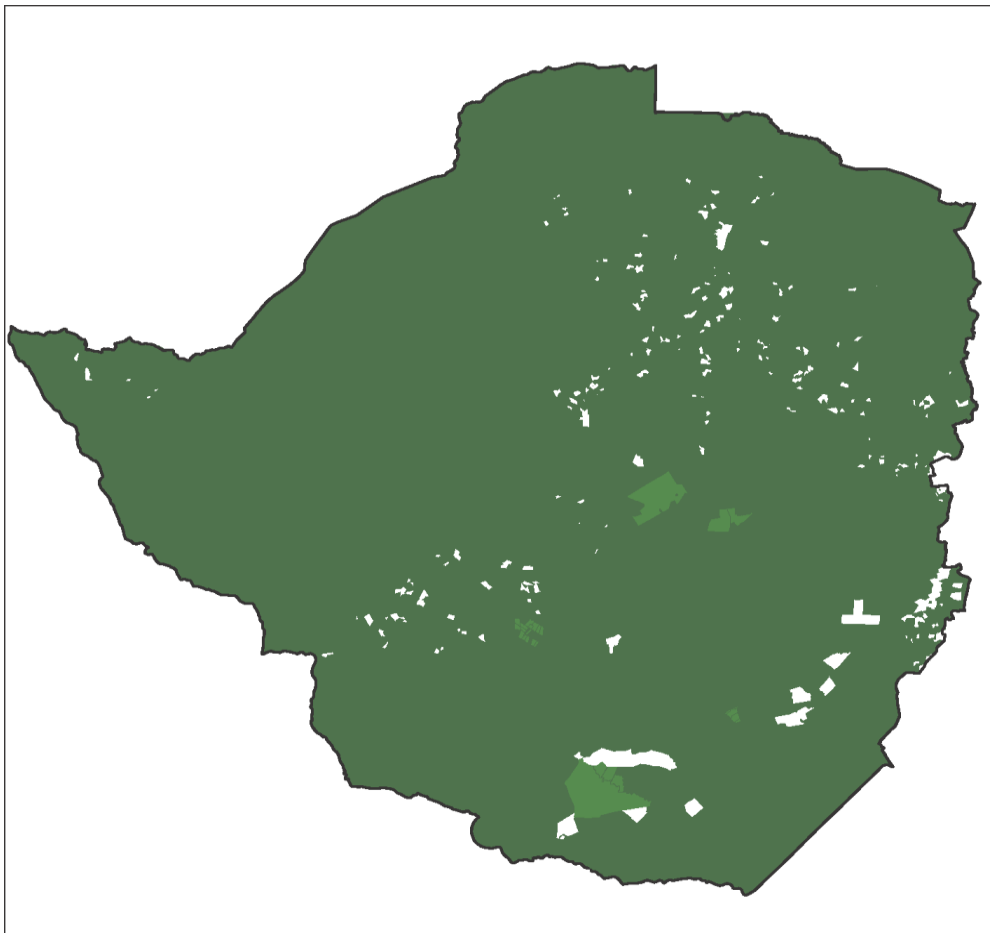
There have been moves to introduce lease agreements to replace the title deed system. The object is to put in place a system of tradable leases that financiers will accept as security for loans. So far Government has not produced a standard lease document acceptable to financiers as security for credit advanced.

⁵ Nyahondo Farm (Pvt) Ltd v Minister of Lands and Resettlement in the Office of the President and Cabinet and another (SC176/08).

The current position is that as a result of wholesale acquisition of farms the land market in the large scale commercial sub-sector has collapsed and no properties are being traded. The collateral value of immoveable property has been locked up and this has jeopardized the ability of private sector financial institutions to back agricultural production and infrastructural development.

Those few old commercial farmers who are still operating are provided with finance mainly on the basis of past creditworthiness ratings. The new farmers (i.e. those who have been allocated farms as a result of redistribution) are in a worse position because they do not hold title deeds to the properties that they have taken over, and nearly all have no track record or creditworthiness ratings. As such, few banking organizations are prepared to provide them with credit. This has seen the rise of risky contract farming as the only source of funding working capital requirements.

Map2: Twelve years since the start of FTLRP, only those un-shaded areas on the map still have title to land.

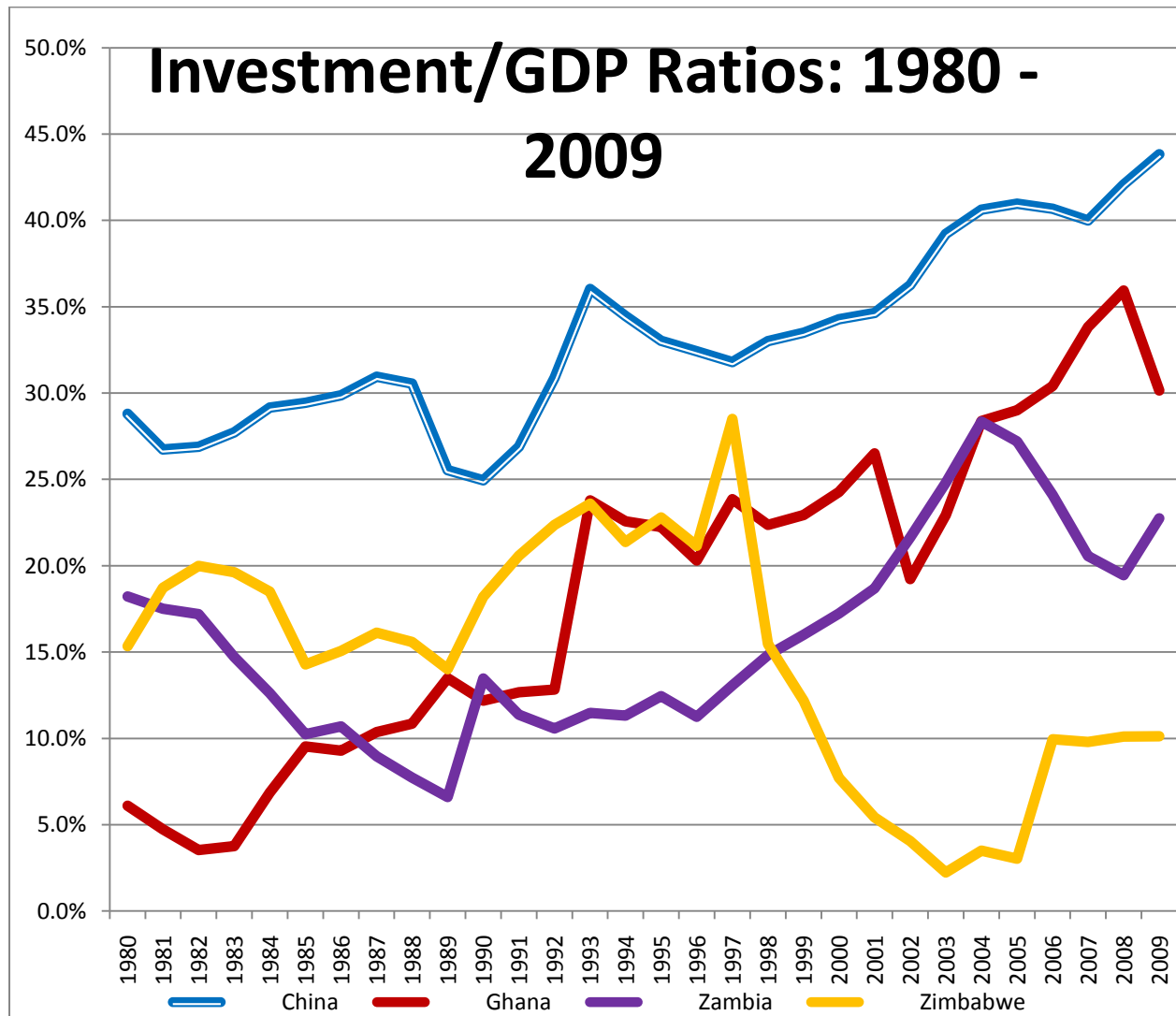


The situation requires a serious look at what will truly empower farmers beyond the current focus on political management and control of land, perhaps the adoption of a farmers' charter would be a good first step.

The Effects of Fast Track Land Reform on Agricultural Output and the Economy

The substantial contraction in agricultural output after 2000 has been almost entirely due to much reduced commercial farming productivity. Plantings and herd sizes in the small-scale farming sub-sectors have not varied much from normal during the twelve year period since 2000. Factors like the effects of drought, late deliveries of inputs, and lack of finance caused these minor output variances.

The collapse in commercial farm output has been the primary cause of total economic decline in Zimbabwe. At its peak Agriculture contributed to as much as 30% to GDP as well as being a significant employer of human effort. This production was supported in the commercial sector by a full basket of land rights which included: Use rights, Transfer rights, Exclusion and Enforcement and exclusion rights. These measures within the commercial sector have been replaced since state acquisition and Zimbabwe requires a mechanism to resolve disputes and ensure land rights are made secure in all categories.



There are very strong linkages between agriculture and other sectors. About 60% of manufacturing firms rely on agriculture as a source for raw materials or as a market for agricultural inputs. Raw material supplies dried up and demand for inputs fell drastically. Many other categories of businesses also provide goods and services to agriculture. The severe difficulties experienced in agriculture negatively affected business generation in other economic sectors, and hence led to a major recession.

By 2009 Zimbabwe's gross domestic product (GDP) had contracted to less than half the size it was in 1998. The significant drop in agricultural exports (mainly tobacco) resulted in balance of payments difficulties, non-servicing of foreign debts, and very little international support. Zimbabwe changed from being a food exporter to being a chronic food importer.

Since economic reforms in 2009 there has been some recovery with real growth in the economy for the last three years. However agricultural recovery has a long way to go to reach former productivity levels. Since the advent of the multicurrency system in Zimbabwe, banks have not been able to structure the appropriate finance. This is because the source of finance by banks is deposits which are very transitory and of short term nature. Attempts to source lines of credit from off shore have also met with little success. This has resulted in very little involvement of banks in funding agricultural enterprises.

The impact has been a steady increase and dependency on imported products across the board. Whereas 10 years ago the supermarkets stocked over 80% local produce and manufactured goods; today probably in excess of 85% all products are imported.

Industries such as the coffee industry which developed around the beneficial relationship between small sector growers associated with their large scale neighbours have collapsed; with the loss of the large scale sector, the whole industry has disappeared.

The rural network of suppliers associated with the service of large scale producers has also suffered enormously. The impact of the loss of this service has had knock on impact on the source of supply of inputs to farmers not directly impacted by land reform. The sourcing of inputs has become tricky and costly as industries such as the fertilizer and seed sector have been forced to take on a substantial burden in the cost of financing stocks traditionally purchased by farmers with access to credit from commercial banks. Constant pressure by Government to supply inputs to an agricultural sector unable to finance itself has contributed to a spiral of increasing costs of production and challenged viability.

Service providers such as the electricity network are faced with problems of maintaining and servicing power supplies to non viable farmers unable to meet tariff charges. Road maintenance has suffered enormously and increasingly production, where it is achieved, is left in danger of failing to reach

Similarly services such as schools and clinics have been negatively impacted along with a reduction in formal employment. Youngsters choosing a career in farming associate it with poverty, this needs to be broken through the delivery of a truly enabling environment. A proper system of mentorship is an essential component to this.

Poor Performance by Farmers

Many of our new farmers are still learning the ropes in terms of production as well as Financial Management. Yield levels being achieved for virtually all crops are generally sub-economic. This problem exists with virtually all banks involved in agriculture having significant bad debt portfolios.

This problem has been compounded by recent developments where Government has offered inputs procured under guarantee from suppliers in exchange for produce. This has alienated the banks more and more resulting in a situation where farmers are unlikely to harness the required future support from banks. Land allocation has involved creating a system of political patronage where "security of tenure", so called, is solely dependent on loyalty to a particular political party. This basing of security of tenure on political considerations has not allowed for accountability for the use of the "free" land and the resultant "free" or subsidised inputs, equipment and cheap loan finance.

This effectively burdens the tax payer with an unmanageable liability for compensation even for acquired improvements in the context of massive declines in agricultural output and general contraction of the economy.

The evidence of the negative consequences of removing bankable land rights and experienced farmers in Zimbabwe is overwhelming.

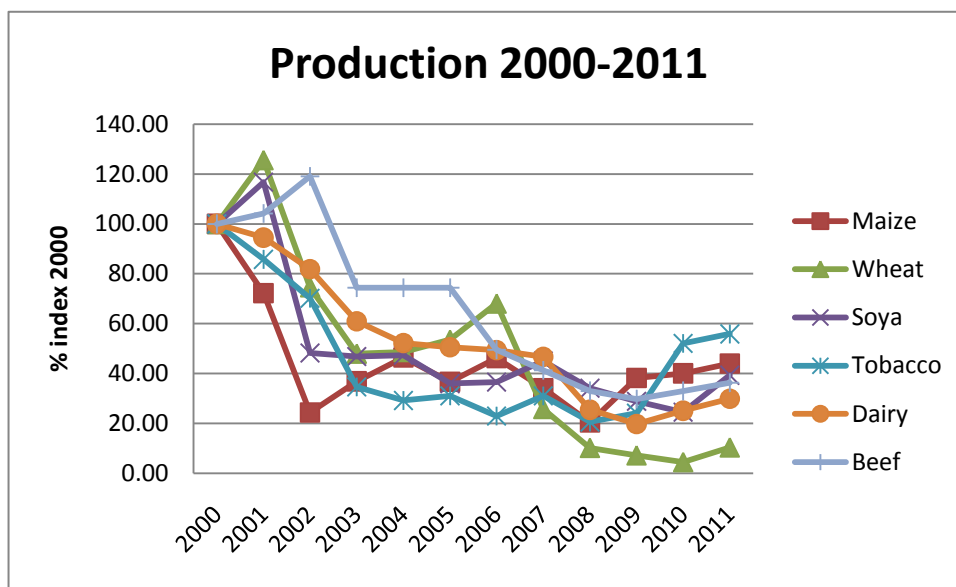
Table 2 :Comparison Large Scale Commercial Crop Hectarage

Crop	1999/2000	2010/11**	Difference
	hectares	hectares	hectares
Virginia Tobacco	75,000	41,600	-33,400
Burley Tobacco	1,800	n/a	
Maize (incl Seed)	160,000	162,835	2,835
Cotton	22,000	7,700	-14,300
Sorghum	5,500	2,600	-2,900
Groundnuts	1,200	8,800	7,600
Wheat	55,000	9,000	-46,800
Barley	5,500	5,000	-500
Edible Beans	2,100	n/a	
Soybeans	58,000	25,100	-32,900
Sunflowers	1,500	2,850	1,350
Potatoes	2,400	2,500	100
Coffee	8,400	100	-8,300
Fruit	8,000	n/a	
Sugar Cane	40,000	39,000	-1,000
Tea	6,000	5,500	-500
Horticultural Crops	7,500	n/a	
Paprika	4,000	270	-3,730
Fodder	5,000	n/a	

Silage	13,100	n/a	
Pastures	12,000	n/a	
TOTAL	494,000		

Key:**= inclusive of A2 farmers, n/a= not available

There has been some recovery in production since 2008. This has largely been on the back of the adoption of a multicurrency system and the dropping of the Zimbabwe dollar. Much of the recovery is being driven by a move to contract farming. This has been demand driven by traditional marketers of commodities of such as Tobacco, who have driven the recovery through the provision of credit to farmers. Food security has not been reached and a successful model for agricultural finance has not been achieved across the board. Lending to agriculture remains limited, expensive and risk ridden.



Graph: Relative production of major commodities 2000-2011

Notably the decline in Beef production has been accompanied by the virtual loss of the valuable seed stock industry built up over the preceding 100 year period. Apparent Initial growth post 2000 of beef was driven by destocking and the slaughter of breeding herds. Wheat production rose in 2001 on assurances to farmers that they would be spared from land acquisition if they grew the commodity.

A move to soya away from maize at that time was price driven. Most commercial farmers were evicted between 2001 and 2005.

Strategies for Securing Agricultural Land Rights and Increasing Productivity

Notably the decade immediately preceding the start of FTLRP saw a proliferation in construction of farm dams. Many of these were quite large and the result of syndication between groups of commercial farmers spurred to develop on the back of tax incentives, and a need to mitigate the impact of several

severe droughts in the early 1990's. There has been a collapse in dam construction and irrigation systems have suffered through the fragmentation of infrastructure, poor maintenance and lack of investment. Although the central Government through quasi-fiscal activities provided enormous incentives during the hyperinflationary period, much potential from this was lost because of a lack of security held by beneficiary farmers.

Land tenure reforms that grant farmers stronger, more secure and tradable property rights will be the lynch-pin for the transformation of agriculture and increased productivity across all sector holdings.

A series of actions must be undertaken to restore and extend bankable rural land rights and improve land use.

- Property rights to agricultural land should be protected and be enforceable through the courts.
- Land reform and rural land management and administration must be depoliticized and simplified making security of tenure accessible to all types of farmers, and an independent Land Board constituted to deal with all land issues. It should take over all land administration functions from Government.
- The Board must conduct an initial land audit and ensure farms are demarcated.
- All persons, without discrimination of any kind, who have a real interest in making a career of farming, should have access to land.
- Land holders must be issued with legally binding and transferrable tenure documentation
- The Board must maintain a land registry, be totally transparent and impartial in its operations, settle disputes, and collect rents.
- In the longer term the Board must resolve the issue of there being a multiplicity of land tenure systems operating in Zimbabwe. These cover free hold title, lease hold, communal, and permit systems. There is need for a uniform tenure system.
- Long term land tenure is desirable so that farmers can make costly long term investments requiring lengthy pay-back periods.
- If the lease agreement option is pursued, leases must be supported by documents that guarantee security of tenure, be enforceable in the courts, and be freely tradable. The lease documents must be fully acceptable by the financial sector as collateral for credit advanced.

Once property rights are restored a land market will be re-established. The financial sector can then again become fully involved in providing credit to commercial farmers on the back of legally binding tradable tenure instruments. The resuscitation of agriculture is highly dependent on farmers being able to access finance.

- The finance made available by banks must be properly structured to meet all requirements i.e.: short term finance for working capital, medium term finance for farm machinery and equipment, and long term finance for investments in capital improvements like dam construction, irrigation development, buildings, fencing, etc.
- Recovery in the agricultural sector will restore food production self-sufficiency, boost export earnings, and bring downstream benefits to other sectors with links to agriculture. Overall growth of the economy will benefit the country and alleviate poverty.
- The issue of compensation remains relevant and urgent because it is the trigger point for rehabilitation, investment and productivity. It is also a signal to other investors of a clear

indication by GOZ of a resurgent respect for property rights and the rule of law, both essential indicators to interested investors.

Farmers Charter- an example applicable to Zimbabwe that incorporates clauses securing land rights.

We the farmers of Zimbabwe declare:

- That all farmers regardless of scale need security of land tenure so that they can invest in their farms with confidence and also harness the collateral value of land to achieve maximum production for the nation.
- That in the event that the state must expropriate agricultural land and infrastructure for a public purpose farmers are fairly, timeously and adequately compensated for the loss of investment.
- That farmers need access to affordable working capital along with affordable capital for new technologies and equipment and for the construction of infrastructure necessary for optimal production.
- That farmers need access to the latest appropriate skills and technologies.
- That farmers need access to optimal quality inputs and equipment. There must be an enforced regulatory environment which protects both farmers and the environment from inferior and hazardous equipment, chemicals, fertilizers and seed.
- A fair balance between the rights of Agricultural Workers and the economic viability of farmers must always be made.
- A fair and appropriate balance is drawn between the need to ensure sustainable use and management of the environment and the need to ensure maximum agricultural output.
- Farmers always need fair value for their produce.
- That farmers are protected from monopolies and unfair competition.
- That where Government does not subsidize agriculture; subsidized imported produce is subjected to a surtax to allow farmers to be competitive.
- That farmers need access to all markets for their produce. All barriers to trade must be removed or minimised.
- Government possibly in collaboration with the private sector must maintain a robust well developed, well managed and well maintained transport, water storage and energy infrastructure.
- That Government must adopt a role that facilitates a conducive business environment and reduce direct interference in the Agricultural Industry.
- That Government commits to spend 10% of the national budget on developing the Agricultural sector in accordance with a sound and robust policy framework.
- That state taxes and levies must never undermine the viability of farming business.

Only when these issues are addressed by Government in partnership with farmers will agriculture be able to revive and develop. This in turn will sustain rural infrastructure capable of driving supply and

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demand to the industrial and manufacturing sectors so key to a coordinated growth of the overall economy.