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The Constituent Objectives of Development - Zimbabwe Case Study

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PERSPECTIVE

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The law is not simply an instrument for dispute resolution. By facilitating or negating particular activity it also assists in the creation of its environment and forms part of the cultural hegemony at both the state and international levels. Consequently the relationship between the law and political economy is strong. At the state level specific laws are required to implement and support policy and to enhance or modify existing power structures. The same applies at the international level, albeit that the distinction between law and political economy may be harder to draw in the international context. This is especially true of the evolving right to development,[1] which is not recognized

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1. International Covenant on Economic, Social and Cultural Rights art. 2; *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, reprinted in* INTERNATIONAL LAW AND DEVELOPMENT 425-51 (Paul De Waart et al. eds., 1988); *Declaration on the Right to Development*, U.N. GADR 3d Comm., 41st Sess., 97th plen. mtg., arts. 1 & 2, U.N. Doc. A/Res/41/128 (1986), *reprinted in* 1986 U.N.Y.B. 717 [hereafter G.A. Res. 41/128]; Organization for African Unity, *African Charter on Human and Peoples' Rights* arts. 1, 2 & 22, *in* 21 I.L.M. § 58-68 (1982); INTERNATIONAL LAW ASSOCIATION, DECLARATION ON THE PROGRESSIVE DEVELOPMENT OF PRINCIPLES OF PUBLIC INTERNATIONAL LAW RELATING TO A NEW

as justiciable and hence arguably can only be viewed as a putative rather than legal right.[2]

Whatever the current status of the right to development may be, there has clearly been a parallel evolution in the understanding of what the right might comprise, and of the appropriate policies and implementation of policies required to engender development. Traditionally successful development has been measured by increase in the gross national product. Conventional western development policy has focused on market liberalization and monetary belt-tightening to achieve that end. During the 1970s that view was revised and concepts such as distributive justice and growth with equity began to emerge. However these goals were never implemented and further revision during the 1980s produced the current "basic needs" approach. Development is now seen as a people-centered, equitable process whose preeminent goal is the satisfaction of human need.[3] The present course of economic structural adjustment in Zimbabwe[4] purportedly reflects this transformation.

The purpose of this article is to examine the changing perception of the constituent objectives of development as applied in the Republic of Zimbabwe. While Zimbabwe may be regarded as unique for a number of reasons,[5] the key features of its reform program are currently applied in most countries in sub-Saharan Africa.[6] It thus affords the opportunity to examine whether the emerging view of the right to development is yet more rhetoric pregnant with the disappointment that followed the declaration of the New International Economic Order,[7] or whether it will be fully applied to improve life for the world's majority. The

INTERNATIONAL ECONOMIC ORDER art. 6 (1986); *Charter of Economic Rights and Duties of States*, U.N. GAOR. 29th Sess., art. 7, U.N. Doc. A/Res/3281 (XXIX) (1974), *reprinted in* 14 I.L.M. 251, 256 (1975).

2. Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 4, at 138 (June 27); *see also* Anthony Allott, *The Law of Development and the Development of Law, in* INTERNATIONAL LAW OF DEVELOPMENT: COMPARATIVE PERSPECTIVES (Francis Snyder and Peter Slinn eds., 1987).

3. UNITED NATIONS DEVELOPMENT PROGRAMME [UNDP], HUMAN DEVELOPMENT REPORTS: 1990-1992; INTERNATIONAL BANK FOR RECONSTRUCTION AND DEV. [WORLD BANK], WORLD DEVELOPMENT REPORTS: 1990-1993; WORLD BANK, POVERTY REDUCTION HANDBOOK AND OPERATIONAL DIRECTIVE (1992); and UNITED NATIONS CHILDREN'S FUND, AFRICA'S RECOVERY IN THE 1990S: FROM STAGNATION AND ADJUSTMENT TO HUMAN DEVELOPMENT (Giovanni Andrea Cornia et al. eds., 1992).

4. The policy is set out in ZIMBABWE, A FRAMEWORK FOR ECONOMIC REFORM: 1991-1995 (Government Printer, Harare, Zimbabwe, 1991) [hereafter ZIMBABWE REFORM].

5. These reasons are discussed below, but they are summarized in Masima Tafirenyika, *Southern African Research and Documentation Centre Special Report, in* STRUCTURAL ADJUSTMENT IN ZIMBABWE: WILL IT SUCCEED? (Harare, Zimbabwe, June 30, 1991).

6. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, TRADE AND DEVELOPMENT REPORT, 1993, OVERVIEW BY THE SECRETARY-GENERAL OF UNCTAD 11 (1993) [hereinafter TRADE OVERVIEW].

7. Abdur Razzaq Bangladesh, The New International Economic Order 2-5, Workpaper presented at the Barcelona Conference on the Law of the World, World Jurist Association, Washington, D.C. (Oct. 6-11, 1991).

crystalization of the right to development, together with a concrete agenda for its implementation, are well overdue.

I. The Emerging Right to Development

Etymologically the term "development" is history-less and object-less since all it implies is some form of positive change. This in itself has made it difficult to determine, in a practical manner, how best the right to development might be realized. Moreover, inability to elucidate specific obligations and duties has been closely allied with the failure to fully integrate the right into the international legal framework.

The approach to date has been to define the right both individually and collectively. Thus, the United Nations Declaration on the Right to Development (1986)[8] provides in Article 1(1) that, "the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised."[9]

This is said by some to reflect a structuralist interpretation of human rights, which is more concerned with the realization of human rights in general and the reasons underlying human rights violations.[10] If this were true, one might expect that one step further could be taken and that the imbalances of power that help create and stifle economic development could be addressed. Contemporary notions of development law, however, merely recognize that a link exists between state prosperity and the satisfaction of the needs of a state's individual members. The demands of less developed countries to participate more fully in a share of the world's resources are not answered directly. Rather, the emphasis is upon state action, given the resources available to the state and obtained from the international community. While states are obliged to promote the realization of economic, social, and cultural rights in other states, they do so on the basis of cooperation and assistance. Thus, global economic structures remain as given.

Consequently, current orthodoxy regarding the appropriate objectives of development is similarly constrained. The "basic needs" approach foreshadowed ear-

8. G.A. Res. 41/128, *supra* note 1.

9. *See also* INTERNATIONAL LAW ASSOCIATION, *supra* note 1, art. 6.1, which provides: "The right to development is a principle of public international law in general and of human rights in particular, and is based on the right of self-determination of peoples"; and Organization for African Unity, *supra* note 1, art. 22, at 62, which provides:

> 1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
>
> 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

10. E.V.O. Dankwa & C. Flinterman, *The Significance of the Limburg Principles*, *in* INTERNATIONAL LAW AND DEVELOPMENT, *supra* note 1, at 276; Etienne Richard Mbaya, *Relations Between Individual and Collective Human Rights: The Problem of Rights of Peoples*, 46 L. & ST. 7, 21 (1992).

lier is essentially predicated upon application within a politically pluralist and liberal economic system. This approach targets areas of human concern such as health, education, poverty, and nutrition for expenditure priority, while at the same time implementing market mechanisms to ensure cost-effectiveness in human investment.[11] The assumption is that with some intervention the market can be harnessed to assist the poor. This view has firmed with the collapse of the Communist bloc.

The shift in the balance of world power that followed the collapse of the Communist bloc has also led to a weakening of the position of the least developed countries no longer courted in a political battle between the West and East, and resulted in increasing donor control of policy orientation. Coupled with the greater interdependence of world trade and the decreasing strategic significance of the supply of raw materials by the least developed countries, the formation of iconoclast economic policy has become unrealistic. As the economic problems of the least developed countries have grown, so has the willingness of donors to introduce economic and political conditionalities. Originally these conditions were short-term economic requirements associated with averting spiralling debt, but gradually the requirements have encompassed the creation of social programs and, more recently, the reform of government infrastructure.[12]

II. Position in Sub-Saharan Africa

In sub-Saharan Africa the International Bank for Reconstruction and Development (the World Bank) has been the most significant player in setting the development agenda.[13] While other sources of aid and lending for the purposes of development may have yielded greater monetary sums, the World Bank, as the chief source of multilateral finance, has dominated economic and development policy. Twenty-four sub-Saharan African countries have recently or are currently embarking upon economic programs initiated by the World Bank and its sister institution, the International Monetary Fund (IMF). These programs have been generically labelled "structural adjustment programs," or SAPS. In Zimbabwe

11. Richard Morgan, Regional Economic Advisor, UNICEF, Eastern and Southern Africa, Targeting Human Development Priorities: Forward Movement in Africa (Nov. 1993) (unpublished paper, on file in the UNICEF Library, Harare, Zimbabwe).

12. WORLD BANK, SUB-SAHARAN AFRICA: FROM CRISIS TO SUSTAINABLE GROWTH (1989) [hereinafter SUB-SAHARAN AFRICA]; WORLD BANK, THE SOCIAL DIMENSIONS OF ADJUSTMENT IN AFRICA: A POLICY AGENDA ch. 2 (1990) [hereinafter A POLICY AGENDA]; S.D.A. STEERING COMMITTEE, THE SOCIAL DIMENSIONS OF ADJUSTMENT PROGRAM: A GENERAL ASSESSMENT (Aug. 1993) [hereinafter A GENERAL ASSESSMENT].

13. *The World Bank—King of the Development Castle*, THE COURIER, Sept.-Oct. 1993, at 71-72; WINSOME J. LESLIE, THE WORLD BANK & STRUCTURAL TRANSFORMATION IN DEVELOPING COUNTRIES: THE CASE OF ZAIRE 5 (1987). Note also the support for World Bank development policy by Paris Club members in *African, Caribbean and Pacific States—European Economic Community: Final Act, Minutes and Fourth ACP-EEC Convention of Lome (Lome IV)* arts. 23 & 220, 29 I.L.M. 783 (1990).

the program is known as ESAP (Economic Structural Adjustment Program). The key features of the programs are (1) deregulation of the markets for goods, services, and labor; (2) removal of tariffs and foreign exchange control; (3) privatization of parastatal enterprise; (4) strict monetary policy to fight inflation; and (5) enhancement of the agricultural export sector. Measures for reducing poverty and improving social infrastructure have been integrated into these reforms via the Social Dimensions of Adjustment Program.[14] According to the World Bank's agenda, this policy was intended to do more than mitigate the negative effects of structural adjustment. On the contrary, the program was intended to form part of the adjustment process itself.[15] During 1991-92, eleven of the thirteen structural adjustment loans and three of the five sectoral adjustment loans made by the World Bank contained tranche release conditions dependent on poverty alleviation.[16] The Social Dimensions of Adjustment Program had a five-year time span from 1987-92. Now that it has expired, its work has been carried into the Special Program of Assistance in Africa.

In addition, since the World Bank has indicated that structural adjustment alone is insufficient to create long-term sustainable development, emphasis on "capacity building" has increased.[17] This goal is intended to build Africa's capacity to develop itself. It has several facets. Primarily it consists of encouraging African governments to produce their own development plans. This effort is supported by the provision of funds for economic studies and research and by providing funds for training indigenous economic managers and replacing expatriate resident technical assistance.[18] More controversially, it also encompasses a demand for better governance. This demand applies to every level of government and requires moving away from a patrimonial bureaucracy and implementing rewards/sanctions based on performance and merit,[19] making national government more accountable, upholding the rule of law, and encouraging debate and

14. A POLICY AGENDA, *supra* note 12.

15. *Id.* at 23.

16. A GENERAL ASSESSMENT, *supra* note 12, at 55.

17. SUB-SAHARAN AFRICA, *supra* note 12; Edward V.K. Jaycox, *Capacity Building: The Missing Link in African Development*, THE COURIER, Sept.-Oct. 1993, at 73-75.

18. In 1990 the African Capacity Building Foundation was established with US$100 million from the World Bank, the United Nations Development Program, and the African Development Bank in Harare for the purpose of training African managers. *See* Masimba Tafirenyika, *World Bank in Africa: Can the Leopard Change its Spots?*, S. AFR. NEWS FEATURES (Harare, Zimbabwe), June 1993. In addition there are plans to move World Bank training programs from the United States and other Western countries to local African universities and professional training institutions. *See* Jaycox, *supra* note 17, at 74.

19. MAMADOU DIA, A GOVERNANCE APPROACH TO CIVIL SERVICE REFORM IN SUB-SAHARAN AFRICA (1993) (Tech. Paper No. 225, Afr. Tech. Dep't Ser., World Bank, 1993). In Zimbabwe the United Nations Development Program and Overseas Development Agency have assisted in setting up performance management programs and the success of ESAP has been linked to the need to create an efficient and effective public service. *See* ZIMBABWE DEP'T OF INFORMATION, PRESS STATEMENT No. 216/1993 (delivered by John Nkomo, Minister of Pub. Serv., Lab. and Soc. Welfare, Aug. 19, 1993).

pluralism within society, especially on the local plane.[20] Particularly galling to a number of World Bank critics is the suggestion that development programs initiated in the past failed as a result of corruption and political decline.[21]

Quite clearly the structural adjustment programs applied in the past ten years have not managed to deliver notable improvement to the economic and social conditions of sub-Saharan Africa.[22] It is therefore of significant interest that Zimbabwe has embraced the structural reform program despite its failure elsewhere. Whether the World Bank's shift of focus to a bottom up, people-oriented form of development policy will redress these failures and lead to success in Zimbabwe may therefore be a matter of unrequited hope. Nevertheless, the government is firmly resolved that the program will deliver all that it promises.

III. Zimbabwe

Compared with other countries that have embarked upon structural reform programs, Zimbabwe has a well-developed manufacturing sector, prosperous commercial farming, considerable mineral wealth, and relatively good infrastructure.[23] Nevertheless, economic growth has been modest and inequities among Zimbabweans have been widening. Moreover, the economic structures of Zimbabwe's colonial past remain little changed. Half of the land remains concentrated among approximately 4000 white farmers while over 1,000,000 black families crowd onto poor quality communal lands.[24] Similar imbalances prevail in the commercial and industrial sectors.[25]

Following the collapse of UDI[26] in 1980, the current government led by Robert Mugabe and the ZANU (Zimbabwean African National Union) Peoples' Party took over a highly regulated and inward looking economy that had been subject to international sanctions for over a decade. Most of the controls implemented by the colonial regime were maintained in order to redress the unequal colonial legacy. Prices for consumer goods were controlled, labor markets were highly regulated, foreign exchange shortage was solved by administrative allocation, and parastatals were expanded. Despite the government's socialist platform, these controls and the increasing bureaucracy that accompanied them tended to preserve

20. SUB-SAHARAN AFRICA, *supra* note 12.

21. *See, e.g.*, Bjorn Beckman, *Empowerment or Repression? The World Bank and the Politics of African Adjustment*, XVI AFR. DEV. 45-72 (1991).

22. Giovanni Andrea Cornia, *Is Adjustment Conducive to Long Term Development? The Case of Africa in the 1980s*, UNICEF, INNOCENTI OCCASIONAL PAPERS, EPS No. 21, Oct. 1991, at 23-27; TRADE OVERVIEW, *supra* note 6, at 11-12.

23. ECONOMIC INTELLIGENCE UNIT, COUNTRY PROFILE: ZIMBABWE, 1991-1992 (1992).

24. ZIMBABWE REFORM, *supra* note 4, at 17.

25. P.G. KADENGE ET AL., ZIMBABWE'S STRUCTURAL ADJUSTMENT PROGRAMME: THE FIRST YEAR EXPERIENCE 2-3 (1992).

26. The UDI period began with the Unilateral Declaration of Independence by the white minority government led by Ian Smith in 1965. Prior to the declaration, Zimbabwe, then known as Rhodesia, had been a British colony.

the existing colonial edifice. In addition, the terms of the Lancaster House agreement, which had led to the peaceful solution between the UDI government and the black liberation forces, prevented property expropriation for up to ten years. Consequently the economy remained dualized along racial lines with a wealthy white enclave and a subsistence economy for the black majority. However, while unable to address the structural deficiencies, the government did make notable advances in education, health, rural development, and income improvement. Between 1980 and 1989 primary school enrollments increased by 1 million and secondary school enrolments by approximately 600,000[27] (Zimbabwe's total population is approximately 7.5 million). During the same decade, in health, the number of children fully immunized had tripled, infant mortality had decreased from 86 to 61 per 1000 births, and life expectancy had increased from 55 to 59 years.[28] In rural development the small farmers' share of marketed maize rose from 0 in 1980 to just over 70 percent in 1989.[29]

A number of factors combined that led the government to change direction and liberalize the economy. The economy had experienced modest growth, but this growth did not keep pace with increases in population. Officially, unemployment rose to 27 percent.[30] Further, most of the new jobs that were created were in education, health, and public administration. Investment declined partly because of the shortage of foreign exchange, which inhibited improvement or expansion of existing plants, and partly because of the wariness of new foreign investors. As a result of the expansion of social services, in 1990 government spending amounted to 40 percent of GDP and the budget deficit rose to US$10.4 billion.[31] Zimbabwe's balance of payments also showed a deficit of Z$249 million,[32] which was exacerbated by spiraling foreign debt. In 1980 Zimbabwe's total foreign debt was US$786 million. By 1990 it had risen to US$3 billion.

Apart from Zimbabwe's economic difficulties, the end of the 1980s accompained a world-wide ideological shift to market economics. Zimbabwe was not immune from this trend and, like other developing countries, could not pursue policies in splendid isolation. According to the primary government manifesto on ESAP:[33]

> The fundamental objective of economic reform in Zimbabwe is to improve living conditions, especially for the poorest groups. This means increasing real incomes and lowering unemployment, by generating sustained higher economic growth. In order to achieve this primary objective, the economy needs to be transformed to make it more competitive and productive. This transformation entails moving away from a highly regulated econ-

27. ZIMBABWE REFORM, *supra* note 4, at 1.
28. *Id.*
29. *Id.*
30. Unofficially, unemployment was regarded as much higher. *See* PETER BALLEIS, A CRITICAL GUIDE TO ESAP 11 (Mambo Press in association with Silveira House, Harare, Zimbabwe, 1993).
31. *Id.* at 12.
32. *Id.* at 13. The current exchange rate for Zimbabwe dollars is approximately Z$7.5 per US$1.
33. ZIMBABWE REFORM, *supra* note 4, para. 13.

> omy to one where market forces are allowed to play a more decisive role, while concurrently taking steps to alleviate any transitional social hardships which may arise from this transition.

The Zimbabwean Government set a five-year time span to implement the reform program. In order to achieve the desired transition the government needed to attract US$3.4 billion in foreign funds. The World Bank organized a special donors' conference, held in Paris in March 1991. The conference strongly endorsed the Zimbabwean Government's plans and pledged US$700 million for 1991-92.

The government's agenda for reform addressed a number of key economic goals, the achievement of which can only be regarded as interstitial. Implementation of ESAP has also been adversely affected by drought. The 1992 drought was the worst experienced by Zimbabwe in over 100 years, and during that year gross domestic product fell by 8 percent. By itself, agricultural output fell by 35 percent.[34] Following good rains at the end of 1992 and during 1993 it appears, however, that the economy is recovering and that some of the promised aims of ESAP will be realized.

IV. Elements of Reform

Trade liberalization constituted one of the fundamental targets of reform. Originally the government planned to gradually expand the Open General Import Licence (OGIL) scheme[35] so that by 1995 all items would be importable. By this means industry would be supplied with the necessary input to increase investment and expand exports, and domestic industry would be forced to become more competitive. At the same time tariffs would be used to protect local industry, but these were intended to be reduced over time.[36] Initially, basic components of the packaging industry, textile industry, and cement production were placed on the OGIL. By July 1993 about 20 percent of imports were on unrestricted OGIL.[37]

To promote exports necessary to sustain the liberated imports and pay off foreign borrowings, the government significantly upgraded its Export Retention Scheme. Initially, if a firm increased its export earnings it could retain between 5 and 7 percent of the foreign exchange generated by the overseas transactions for its own use. By early 1993 firms were permitted to retain up to 50 percent of their export earnings.[38]

1993 also saw the introduction of the foreign currency denominated account

34. ZIMBABWE: BUDGET STATEMENT, 1993 (1993).
35. Control of Goods (Open General Import License) Notice 1991, Stat. Inst. No. 249 (1991) (Zimbabwe) (as amended).
36. *E.g.*, Customs and Excise (Suspension) Regulations of 1993, Stat. Inst. No. 2 (1993) (Zimbabwe).
37. ZIMBABWE: BUDGET STATEMENT, 1993, para. 10 (1993).
38. *Id.*

(FCDA) for local and foreign individual investors, which enables individuals to hold foreign currency and earn nontaxable interest for three years at rates applicable in world markets. These accounts enable the sale of foreign currency at a market determined rate, which in November 1993 stood at between 30 and 35 percent above the official exchange rate.[39] Between July and November 1993 about US$30 million had come into Zimbabwe from funds previously held abroad.[40] There are plans to extend the FCDAs to corporate accounts in early 1994 and eventually use these to replace the Export Retention Scheme, OGIL, and the remnants of the foreign currency allocation scheme. This step will effectively lead to a floating of the Zimbabwean dollar.[41] Consequently the Zimbabwean dollar is likely to devalue by 20 to 25 percent, which, while beneficial for exports, will add to domestic inflation and cause additional hardship to the average Zimbabwean consumer.[42]

Investment was another key target of deregulation. Prior to the implementation of the reform program, several bureaucratic approvals were required in order to sanction new projects. In 1992 the government established the Zimbabwe Investment Centre (ZIC),[43] whose function was to expedite approval of investment projects by providing a single-window clearance agency for both foreign and domestic investors. When applying its discretion the ZIC is directed to give priority to projects benefiting rural areas, projects enabling the international transfer of advanced technology, projects generating substantial employment opportunities, projects increasing productivity, projects improving the balance of payments, and projects involving substantial research and development expenditure.[44]

The Zimbabwean Stock Exchange was also given a boost by a relaxation of the rules in relation to foreign investment. The relaxation of these rules represented quite a turnaround from the decision of the government in 1984 to suspend all external dealings on the exchange pending acquisition by the Reserve Bank of Zimbabwe of all shares represented in external currency. Under the new rules local and foreign investors can purchase shares on the exchange using funds from their FCDAs. Foreign investors using foreign exchange are permitted to invest on the Zimbabwe Stock Exchange with a restriction that only 5 percent of the

39. Savvas Kyriakides, *From a Jack to a King*, S. AFR. ECONOMIST, Nov. 1993, at 37.

40. Funny Mushava, *Personal Foreign Funds Bring in over $200*, BUS. HERALD (Harare, Zimbabwe), Nov. 18, 1993.

41. Hatred Zenenga, *Proposed Corporate FCDAs a Positive Step, Say Dealers*, BUS. HERALD (Harare, Zimbabwe), Nov. 4, 1993.

42. As a result of the reform program and drought, inflation shot up to 42% in 1992 and lowered to 28% in 1993. John Robertson, Economic Structural Adjustment Programme and its Impact on Financial Stability and Balance of Payments Position, Paper Presented at the On the Road to a Market Based Economy Conference, organized by the Konrad Adenauer Foundation in conjunction with The Southern African Foundation for Economic Research, Harare, Zimbabwe (Nov. 3-5, 1993).

43. Zimbabwe Investment Centre Act, No. 16 (1992).

44. *Id.* § 19.

shares of Zimbabwean companies listed can be purchased per investor and that collectively only 25 percent of the entire issued share capital can be owned by non-Zimbabweans.[45] Dividends and capital gains therefrom are freely remittable less any taxes due. From January 1994 capital gains tax will be reduced from 30 to 10 percent and the tax on dividends will be reduced from 20 to 15 percent.[46] Since over 66 percent of existing listed companies were already beyond the 25 percent threshold, the new rules have had a successful impact. Trading activity on the exchange following introduction of the rules doubled, and the Zimbabwean Industrial Index has risen by over 70 percent in U.S. dollar terms.[47] While foreign investment coming into companies already listed on the exchange is unlikely to lead to the establishment of new businesses and thus create new employment opportunities, the moneys can be used to lower existing debt-to-equity ratios and thus assist with the balance of payments position. These funds can also be used to rejuvenate and reequip factory stocks, which due to the previous shortages of foreign exchange had been allowed to deteriorate.

To further encourage investment Zimbabwe became a signatory to the World Bank Convention Establishing the Multilateral Investment Guarantee Agency,[48] an organization that issues guarantees for international finance against non-commercial risks and provides a forum for policy cooperation in investment matters between capital importing and exporting countries. Zimbabwe also signed protocols with the Overseas Private Investment Corporation in order to assuage any doubts that might be raised by prospective foreign investors.

Small business investment has also been a target for reform. The Law Development Commission of Zimbabwe[49] has recommended the enactment of a bill providing for the simple and easy formation of small closely held corporations. The bill is currently before the Zimbabwean Parliament.[50] It is hoped that the implementation of a simpler method of incorporation and less formal regulation of private corporations will encourage additional investment from the small business sector.

Lending at concessional rates is available to small businesses through the Small Enterprise Development Corporation, and, at the government's behest, several other financial institutions have made a number of facilities available to assist small business. For instance, the Zimbabwe Development Bank has in place a Z$30 million line of credit for the procurement of capital equipment.[51] Further,

45. STAND. CHARTERED AFR. Q. REV., Apr. 1993, at 16 (regulations unavailable from the government printer at the time of writing).

46. ZIMBABWE: BUDGET STATEMENT, 1993, para. 77 (1993).

47. Kyriakides, *supra* note 39, at 37.

48. 24 I.L.M. 1598 (1985).

49. LAW DEVELOPMENT COMM'N OF ZIMBABWE, INTERIM REPORT ON PROPOSED NEW PRIVATE BUSINESS CORPORATIONS BILL, Report No. 5 (Jan. 1990).

50. Bill unavailable from the government printer at time of writing.

51. ZIMBABWE, THE PROMOTION OF INVESTMENT: POLICY AND REGULATIONS para. 34 (Sept. 1991).

the Reserve Bank has also been operating a facility for medium scale exporters that supplies pre- and post-export finance at concessional rates.[52]

Market forces have been given further play through the relaxation of price and distribution controls. Until 1990 the government had imposed price controls to ensure the supply of basic commodities at affordable prices, to increase rural incomes, and to minimize restrictive trade practices. Gradually these controls have been lifted so that the market now determines the price of goods. The impact of the relaxation of price controls, together with the measures designed to liberalize trade, was highly inflationary. In January 1993 inflation stood at 45 percent.[53] Food was the most significant component of that figure, especially for basic commodities like meat and maize. When the control of bread prices was repealed[54] in March 1993 and the price of bread rose 300 percent over the next six months, riots broke out on the streets of Harare.

Coupled with the removal of price controls the government has also decontrolled the agricultural marketing boards, so that they effectively remain residual buyers of the products in which they previously held a marketing monopoly. Prior to the advent of the reforms, output in the regulated agricultural sector had been gradually declining[55] due to low producer prices and stagnation in technology. On the other hand, output and trade in noncontrolled commodities like tobacco had grown. Under the reform program subsidies for agricultural products were removed and domestic trade in certain commodities (for example, maize) was deregulated. However, government approval is still required for both imports and exports. Thus, the export of controlled products (grain, oilseed, cotton, beef, and dairy products) has remained in the hands of the relevant marketing boards. There are plans to delink these boards from government control and eventually make their profits self-sustaining. Already the Dairy Marketing Board operates in a competitive environment free of government assistance.[56] The impact of the reforms on the agricultural sector has yet to be determined, although clearly they have affected consumer prices.

A significant problem with reforms of this nature identified in other countries is that encouragement of the expansion of the agricultural sector does not necessarily lead to greater export earnings since the price elasticity of demand for many of these products is very low and increases in production throughout the region

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52. ZIMBABWE: BUDGET STATEMENT, 1993 (1993).

53. Jessica Woodroffe, *Electricity in Ten Years Time—or Survival Now?*, VIEWPOINT: CHRISTIAN AID POL'Y UNIT, Mar. 1993.

54. Stat. Inst. No. 127 (1993) (Zimb.).

55. T. Takavarasha & E.A. Attwood, The Performance of the Agricultural Sector under the Economic Reform Programme and the Agricultural Sector's Role as a Major Foreign Currency Earner to Finance this Programme, Paper Presented at the On the Road to a Market Based Economy Conference, organized by the Konrad Adenauer Foundation in conjunction with The Southern Africa Foundation for Economic Research, Harare, Zimbabwe (Nov. 3-5, 1993).

56. *Id.* at 15.

tend to offset any profit gains.[57] To this end a Project Implementation Committee has been formed between members of the Southern African Development Community, Preferential Trade Area, and the Indian Ocean Community, at the instigation of the World Bank and a consortium of multilateral donors, to coordinate implementation of the SAPS in the Southern African region. One of the functions of this group will be to ensure that trade policies are coordinated and that efficient patterns of growth will be created.[58]

In line with the suspension of price controls and the dismantling of monopoly markets, the labor market has also been deregulated. Instead of direct intervention in wage setting, the government has introduced regulations[59] permitting collective bargaining between workers and their employers subject to statutory minimum wages well below prevailing market rates. Labor disputes are now governed by employment councils that have gradually been established industry by industry. The employment councils have been given significant powers in relation to suspension and discipline of employees during labor disputes and are thus involved in the regulation as well as the resolution of disputes.

As a rule, since the introduction of ESAP, wages have not kept pace with price rises.[60] The new methods of wage-fixing and dispute settlement appear to have undermined a previously strong labor movement, especially in the wake of rising unemployment.[61] Falling real wages have added pressure to the difficulties faced by ordinary householders.

The reform of public enterprises or parastatals was planned in order to reduce the government deficit and also make the markets in which they operate more competitive. Insofar as ESAP is concerned, in this area the government has failed to achieve notable reform and in fact appears to be going in reverse. Historically parastatals in Zimbabwe have operated at sizeable losses significantly affecting priorities in government spending. Furthermore, most have been forced to borrow, thus exacerbating balance of payments problems. As part of its reform program the government promised to commercialize many of the parastatals that were not maintaining essential social services. To that end the government has increased the domestic price of Zimbabwe Iron and Steel Company's products to import parity; granted Air Zimbabwe autonomy to set domestic prices; increased electricity tariffs; and removed the monopoly position of a number of agricultural marketing boards. However, reduction of the size of the parastatals and the consequent drain they place on the public purse, together with a reduction in the

57. Cornia, *supra* note 22, at 32.

58. Bethuel Setai, *Carrying the SAP Further*, S. AFR. POL. & ECON. MONTHLY, Aug.-Sept. 1993, at 28.

59. Labour Relations (General Relations) Regulations, Stat. Inst. No. 31 (1993) (Zimb.); and Labour Relations (Settlement of Disputes) Regulations, Stat. Inst. No. 30 (1993) (Zimb.).

60. Woodroffe, *supra* note 53, at 13-14.

61. Lloyd M. Sachikonye, *The New Labour Regime Under SAP in Zimbabwe*, S. AFR. POL. & ECON. MONTHLY, Feb. 1992, at 41, 43-44.

civil service, remain outstanding. At the end of November 1993 government subsidies were expected to exceed Z$1 billion.[62] The target of ESAP was to reduce losses to Z$340 million.[63] Yet no concrete plans exist for disinvestment other than a broad policy statement to the effect that it would be desirable in a number of cases. Major restructuring will be required for most of the debt-ridden parastatals if privatization is to be a success. Plans for such restructuring are currently underway.

Apart from the reduction in the civil service and the commercialization of the parastatals, another controversial method for reducing the government deficit has been the introduction of cost recovery methods for the provision of education and health services. The social impact of these measures, in particular, has galvanized much of the community opposition to the ESAP program. Fees have been applied for all urban schooling and treatment in hospitals and clinics, except where monthly income falls below Z$400 per month. (Initially the threshold figure was Z$150 per month, but this was so low that only the destitute qualified). The introduction of the cost recovery program conforms to the World Bank's policy of targeted safety nets to protect those most vulnerable to economic adjustment; however, in hindsight, it appears that the safety nets have been inadequate.

Evidence to date indicates that attendance at hospitals and clinics has declined and that the poor are most likely to fail to attend for treatment in the event of illness or injury.[64] In particular there have been startling increases in the number of babies born before arrival at hospital, which has in turn led to significant increases in infant and maternal mortalities. The number of maternal deaths increased by 88 percent between 1989-90 and by 27 percent between 1990-91.[65]

Similar trends have been experienced in the education sector. During 1992 education costs increased by 43.1 percent, due to the introduction of fees and increases in the costs of sitting examinations. Increased cost led to reduction in school attendance, and consequently up to 14 percent fewer children were sitting "O" level examinations.[66]

Apart from increasing costs to the consumer, the quality of education and health services under ESAP appears to have significantly deteriorated. While nominal budget spending on these services has been increased, the increases have

62. *Government Subsidies Now Put at Over $1 billion*, BUS. HERALD (Harare, Zimbabwe), Nov. 25, 1993, at 5.

63. *Reforming Public Enterprises*, BUS. HERALD (Harare, Zimbabwe), July 16, 1993, at 3.

64. Munhamo Chisvo, Government Spending on Social Services and the Impact of Structural Adjustment in Zimbabwe 7 (Mar. 1993) (unpublished Consultancy Report produced for UNICEF-Zimbabwe); BALLEIS, *supra* note 30, at 27; Woodroffe, *supra* note 53, at 7-9; ANNE RENFREW, ESAP & HEALTH (Mambo Press in association with Silveira House, Harare, Zimbabwe, 1992).

65. Chisvo, *supra* note 64, at 7.

66. *Id.* at 8. "O" Level examinations refer to the Ordinary Level of the General Certificate of Education examinations, which is comparable to a high school certificate. There is also an Advanced Level of the General Certificate of Education.

been undermined by population growth and high levels of inflation. Real public funding for health and education has fallen by approximately 25 percent.[67]

To assist in the amelioration of the impact of ESAP the government established the Social Dimensions of Adjustment fund. The objectives of the fund are to provide targeted food subsidies to the poor; to provide relief for school fees for the children of families identified by the Department of Social Welfare as unable to pay; and to provide for fee relief for health services for those identified by the Department of Social Welfare as unable to pay, and to assist retraining of retrenchees. Initially the fund was set up with Z$20 million seed money. The fund was supposed to be accessible at the time that ESAP was launched in October 1990. However, funds were not available for distribution until 1992, and even then were grossly inadequate to cope with the burdens imposed under ESAP. Within the first six months most of the allocation for health and education had been spent on education fees, with little remaining for health. Funds allocated to retrain retrenchees had also not met the burgeoning need. By April 1993 the Social Dimensions of Adjustment Fund had only retrained 1000 retrenchees, whereas the actual number of retrenchees was estimated at 20,000.[68] Unfortunately, it appears that those most in need of assistance are unable to obtain access. The procedure to obtain benefits is highly bureaucratic. Applicants have to present a number of documents (for example, birth certificates and marriage certificates) and fill out forms. They may have to wait outside social welfare offices for days, and delays in processing applications for assistance can be interminable.[69]

Despite an increase in the allocation of Z$150 million for the Social Dimensions of Adjustment Fund in the 1993 budget,[70] compared with an allocation of Z$1.5 billion for defense,[71] the government does not appear to be giving social needs a high priority. At best the Social Dimensions of Adjustment Fund offers little more than an inadequate compensatory measure to offset some of the worst effects of ESAP. When compared with total budget strategy, social welfare cannot be regarded, as the World Bank claims it should be, as an integral part of the adjustment program. At the moment the Social Dimensions of Adjustment policy is based on the assumption that the costs of adjustment are of a transitory nature only. Clearly, however, areas such as illiteracy, health, and food security will affect long-term sustainable development. To ensure that the basic needs approach to development is implemented much more effort is required.

The United Nations Children's Fund and the United Nation Development Program (UNDP)[72] have suggested that one method of really making social need an

67. *Id.* at 5.

68. Woodroffe, *supra* note 53, at 16.

69. *Id.* at 15.

70. ZIMBABWE: BUDGET STATEMENT, 1993, para. 51 (1993).

71. *Id.* para. 48.

72. UNICEF, Structural Adjustment in Zimbabwe: Protecting the Vulnerable through Adversity (1992) (unpublished statement available from UNICEF, Harare, Zimbabwe); UNDP, HUMAN DEVELOPMENT REPORT: 1993, Overview at 7-8.

integral part of Zimbabwe's development program would be to increase and retarget official development aid. In 1992 only 2.6 percent of the total of such aid was directed to priority human sectors. It has been suggested that this should be increased globally to at least 20 percent.

V. Development Indicators

At this stage the economic indicators for Zimbabwe have been largely negative. Inflation is high (although falling consistently), unemployment remains a central problem, and the introduction of tight credit policies and high interest rates to control inflation have led to disinvestment. The devastating drought of 1992 has also had a negative effect. With the recovery of the agricultural sector the government hopes to make gains in export growth and reduction in food imports.[73] Nevertheless, the government deficit continues to grow and the balance of payments position remains negative.

Economists generally regard the government's current policies as an essential first phase for introducing measures that will actually achieve structural adjustment and sustainable development.[74] The process of trade liberalization, by itself, has not, and will not, lead to economic restructuring. Rather than strengthening the economy, the process of trade liberalization has rendered it vulnerable to the world competitive environment. By itself, trade liberalization has merely served to reinforce existing inequities and has further dualized the economy along racial lines. In supporting an export-oriented white enclave, the promise of development for the whole community remains unfulfilled.

ESAP needs to be complemented by more strategic planning to develop and restructure the Zimbabwean economy. Successful economies such as Japan and South Korea indicate that the government can and should play an interventionist role in the growth process. Continuing to roll back the state apparatus has not proven to be a successful formula for development. A crucial priority will be to focus upon the key assets of the productive system (for example, the question of land reform that is currently the subject of a constitutional battle before the courts). Further, if the development is to be sustainable, human needs will need to be addressed in a far more comprehensive manner. For example, greater priority on education will be required to produce a skilled labor force capable of diversifying the economy. A healthy population is also essential for economic growth.

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73. ZIMBABWE: BUDGET STATEMENT, 1993, para. 7 (1993).

74. Tom Mswaka, Does Zimbabwe Need an Economic Structural Adjustment Programme?, Paper Presented at the On the Road to a Market Based Economy Conference, organized by the Konrad Adenauer Foundation in conjunction with The Southern Africa Foundation for Economic Research, Harare, Zimbabwe (Nov. 3-5, 1993); Fay Chung, *ESAP Not Yet Proven To Be a Successful Development Strategy*, THE SUNDAY MAIL (Harare, Zimbabwe), Sept. 19, 1993, at 8 & 11.

VI. Conclusion

The model of trade liberalization and deregulation formulated by the World Bank and applied by the Government of Zimbabwe does not address the goal of eradicating structural inequality, nor does it appear to lead to sustainable development. Despite government statements that indicate commitment to human investment, the basic needs approach has not been implemented. Current ideology requires certain macro and micro economic conditions to be created in order for the basic needs approach to be effective. However, the creation of those conditions is not a sufficient development goal by itself. The World Bank, donors and other international organizations such as the United Nations Conference on Trade and Development and the UNDP are clearly aware of that certitude.

The situation calls for stronger commitment to the basic needs approach from the international community, from international aid and finance organizations, and from the individual state. This committment may follow if the right to development has a more certain place within the international legal framework.