



THE ROLE OF PROPERTY RIGHTS IN INVESTMENT PROMOTION

**SUPPLEMENT NO. 2 OF THE JANUARY 2009
MONETARY POLICY STATEMENT
BY**

**DR. G. GONO
GOVERNOR
RESERVE BANK OF ZIMBABWE**

JANUARY 2009

INTRODUCTION

1. The performance of any economy relies upon investment in the various sectors of the country. In developing countries, including Zimbabwe, investment opportunities are mainly in the primary industries, particularly the extractive industry (mining) and agriculture.
2. One of the main drivers of investment is a sound and clear policy on property rights. Respect of property rights attracts and promotes private sector investment which is the engine for economic growth.
3. In order to attract investment, Zimbabwe should continue to uphold the sanctity of property rights. Both domestic and foreign investors find comfort in internationally acclaimed property rights. This brings about confidence in the country's policies and security to investment.

PROPERTY RIGHTS DEFINITION

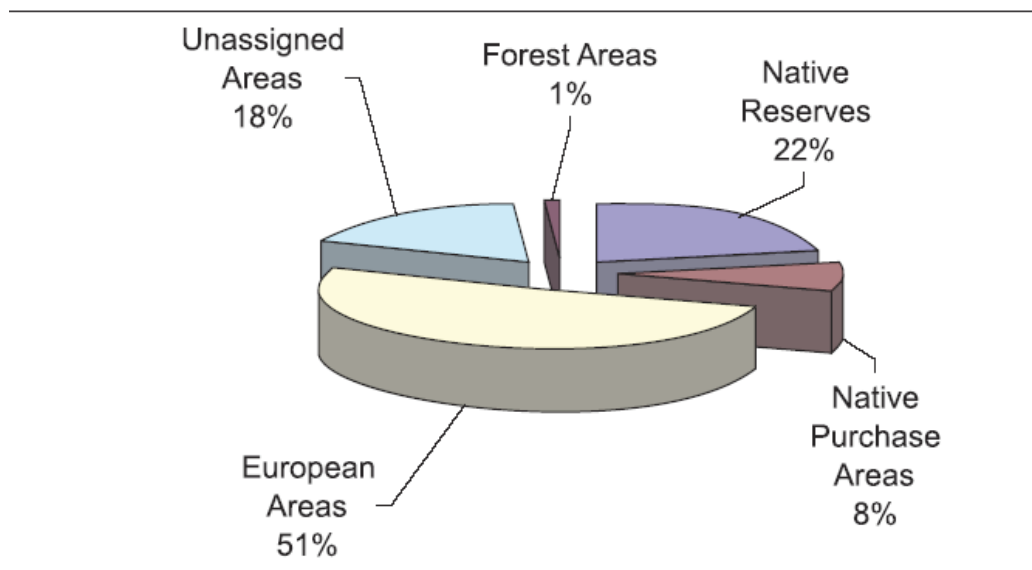
4. A property right is an exclusive authority possessed by an owner of property to consume, sell, rent, mortgage, transfer and exchange their property.
5. In recognition of this, Governments make constitutional provisions that seek to enhance investor confidence.
6. In making investment decisions, investors seek confirmation that they would be rewarded for investing in a particular asset, and also want guarantee of security over their investment.
7. Property rights should be clearly defined and enforced. A compensation clause should always be embedded in the property rights.
8. Importantly, Government should not inappropriately nationalize or expropriate investments. Nationalization should only be done for public purposes, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation.

PROPERTY RIGHTS IN ZIMBABWE

Land Tenure System Prior to Independence

9. The purpose of the Land Apportionment Act of 1930 was to formalize the separation by law, of land between the native population and the white settlers. This was after deliberations and recommendations of the Morris Carter Land Commission of 1925. The Land Apportionment Act provided for restricted rights of the Africans to land ownership, to designated Native Purchase Areas.
10. Under this Act, the fertile high rainfall areas became large scale privately owned white settler farms.
11. Figure 1 below shows the distribution of land in 1931 among the different categories.

Figure 1: Land Distribution



12. In subsequent years, a number of instruments were put in place to enforce certain agricultural practices. The Native Land Husbandry Act of 1951 was meant to enforce destocking and conservation practices on black held land.

13. The Rukuni and Eicher 1994 Land Report found that the Native Reserves and Special Native Reserves were combined and renamed Tribal Trust Lands, where land was vested in Board of Trustees for exclusive use by Blacks. This was done under the auspices of Tribal Trust Lands Act of 1967.
14. Land ownership under the Tribal Trust Lands Act did not confer property rights to the indigenous population, which was largely settled in unfertile and low rainfall areas.
15. In July 2000, the Government embarked on the Fast Track Land Reform Programme (FTLRP) in order to correct the historical social imbalances. Under this program, instead of title deeds, resettled farmers are given property rights through issuance of 99 year leases.
16. After the Fast Track Land Reform Programme, the land ownership by indigenous population increased to levels commensurate with the demographic composition of the country.

Figure 2: Land Ownership Patterns after FTLRP

Category	Area (Million Hectares) as at 31 July 2003	%
A1	4.2	11
A2	2.2	6
Old Resettlement Area	3.7	9
Communal Area	16.4	41
Large Scale Commercial	2.6	6
Small Scale Commercial	1.4	4
National Parks & Urban	6.0	15
State Land	0.3	1
*Other	2.8	7
Grand Total	39.6	100

Source: Utete Report (2003)

17. Currently, there is limited investment in agriculture because some of the beneficiaries of the land reform have no legal claim to the land. In order to address this short coming, the issuance of transferable 99 year leases should be expedited.

18. In this respect, there is need to capacitate and resource the Ministries of Lands, Resettlement, Agriculture and other responsible institutions.

Mining

19. In Zimbabwe, all mineral rights are vested in the State. These rights are immediately transferred to private holders upon registration of a claim.
20. Once these rights are transferred, it is up to the holder to commence mining operations, dispose of the claims or just hold onto the rights indefinitely.
21. The current Mines and Minerals Act has no specific provision for titleholders to inform or seek permission from the Government or Ministry of Mines to dispose of claims.
22. In order to ensure that the country remains competitive for foreign direct investment, there is need to have clear and unambiguous legislation which gives investors a basis to plan and make concrete decisions and commitments on their future investments in Zimbabwe.

Mines and Minerals Act (Amended)

23. While it is a noble idea to ensure that the indigenous people benefit from the exploitation of minerals, this should be done in a manner which should not retard growth of the sector.
24. Considering the capital intensive nature and risk involved in mining development, there is need to review the proposed minimum shareholding to be reserved for the Government and/or indigenous investors.
25. Other consideration such as investment in infrastructural development and social responsibilities should also come into play in determining the equity levels.

Mining Licences

26. Property rights in the mining sector are covered under the following titles:
- Special grants are mining licences for energy minerals including coal, mineral oils and natural gas.
 - Exclusive Prospecting Orders (EPOs) cover all minerals with specific limitations for prospecting area according to the mineral being sought.
 - Certificates of Registration of Claims are issued to individuals and companies for mining gold, chrome and tantalite.
 - Mining leases enable individuals and companies to manage their claims under one roof, while Special Mining Leases are available to foreigners intending to venture into mining for the purpose of exporting.
27. In order to attract and promote investment in the mining sector, there is need to respect existing claims whilst at the same time ensuring that claims are not held for speculative purposes.
28. In this regard, the terms and conditions of existing special grants, mining leases and exclusive prospecting orders as well as their utilization should be considered.
29. Failure to invest in the exploitation of minerals should necessarily result in the withdrawal or transfer of the claim to other prospective investors. Property rights in this respect are guaranteed as long as holders of the claims undertake visible investment.

Manufacturing

30. Manufacturing is an important economic activity in Zimbabwe with significant contribution to GDP, foreign exchange earnings and employment.

It is diversified and well integrated with the rest of the economy, exhibiting particularly strong linkages with agriculture, mining, construction and commerce.

31. The sector is dominated by both heavy and light industries located in the major cities and towns in the country. In addition, there are also small to medium enterprises operating as cottage industries.
32. It is important to note that most of the heavy and light industries operate from premises leased from institutional investors such as pension funds and insurance companies, who have title to the land and buildings.
33. In order to promote and attract investment in the manufacturing sector, there is need to guarantee the security of leased properties to allow for re-investment and re-tooling in the sector.

Bilateral Investment Promotion and Protection Agreements (BIPPAs)

34. The Government has signed BIPPAs with a number of countries which aim to ensure that the sacrosanct nature of private property and property rights is observed across all sectors of the economy, in conformity with the best standards and international agreements.
35. Given the centrality on protection of investment capital in economic growth, the Government should champion the respect for BIPPAs and other strategic agreements with regional and international business partners in order to promote further investment.

INTERNATIONAL CONVENTIONS

36. Zimbabwe is a signatory to various international treaties and conventions which the country should adhere to in order to promote investment. This helps to portray the country as a safe and attractive investment destination. The Conventions which Zimbabwe is signatory to include the following;

Multilateral Investment Guarantee Agency (MIGA)

37. As a member of the World Bank, the country signed and acceded to the World Bank's Multilateral Investment Guarantee Agency (MIGA). The MIGA is an insurance guarantee scheme available to World Bank member countries investing in the territory of another member country of the World Bank.

International Centre for the Settlement of Investment Disputes (ICSID)

38. Zimbabwe signed and acceded to the Convention establishing the International Centre for the Settlement of Investment Disputes (ICSID) to enable foreign investors have access to international arbitration over and above domestic law courts. This gives the investor recourse to international arbitration should they be unhappy with Zimbabwean judicial system.

OTHER COUNTRY EXPERIENCES

China

39. In China, not only the public properties are under the protection by law, but also private properties have been gradually recognized and protected by law due to the swift growth of private properties during the development of the socialist market economy.
40. The protection of private properties in China has been a significant contributor and indicator to the country's decade of accelerated and sustained economic growth.

Germany

41. The German Government adheres to a policy of national treatment, which considers property owned by foreigners as fully protected under German law. There is no discrimination against foreign investment and foreign acquisition, ownership, control or disposal of property or equity interests, with airline ownership being an exception.
42. German law provides that private property can be expropriated for public purposes, only in a non-discriminatory manner and in accordance with established principles of constitutional and international law.
43. There is due process and transparency of purpose, enabling investors and lenders to expropriated entities to receive prompt, adequate and effective compensation.
44. Such an investor friendly environment has significantly contributed to the growth of the German economy.

Tanzania

45. The Government of Tanzania committed itself to promoting investment and devised strategies to uphold the sanctity of property rights. At the domestic level, contractual and property rights are protected under the legal system.
46. In accordance with the Constitution of Tanzania, every person has a right to own private property and receive protection for property that has been lawfully acquired.
47. The Constitution prohibits the expropriation or acquisition, for the purpose of nationalization or for any other purpose, of private property lawfully acquired.
48. In addition, the Government of Tanzania reviews all legislations whose provisions contradict its policy of economic liberalization and national investment.

49. At the international level, Tanzania is also a member of regional and international agencies such as MIGA and ICSID whose purpose is to consolidate investment guarantees and boost investor confidence.

Malawi

50. Malawi is also a signatory of the ICSID and MIGA. Malawian law also provides for security of foreign investment, which includes compensation to property damaged through civil strife and/or political unrest.
51. In addition, Malawi has bilateral investment protection and promotion agreements with a number of countries including Malaysia, Republic of China and Mauritius.

CONCLUSION

52. The establishment of property rights and the subsequent enforcement of these rights is key to attracting investment, promoting economic growth and development, as well as improving the living standards of people.
53. It is against this background that the Government of Zimbabwe should honour the provisions of all existing BIPPAs which have been signed with other countries.
54. Zimbabwe, being a signatory to various international treaties and conventions like MIGA, ICSID and the United Nations Convention on International Trade Law, should continue to observe compliance with such arrangements.
55. Furthermore, the judiciary system should be further resourced adequately to ensure speedy resolution of investment disputes.
56. The upholding of property rights leads to increased investments by the private sector both domestic and foreign. The private sector is the engine of economic growth in various countries as it results in the development of the economy.

57. Pursuant to this, the Government also benefits from a broader tax base that provides more funds for investment in social sectors (health and education), ultimately leading to the improvement in the standard of living of people in both rural and urban areas in Zimbabwe.

Thank You.



DR. G. GONO
GOVERNOR

RESERVE BANK OF ZIMBABWE
JANUARY 2009

