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Indigenisation Regulations Continue to Prevent Economic Recovery

The worst of the constraints affecting Zimbabwe's prospects continue to be self-inflicted policies that are still having profound effects on business confidence. Because political objectives lie behind all the policy decisions taken, these measures are impossible to describe in purely economic terms.

This remains true of the latest policies imposed; huge increases in mining taxes, fees and royalties make up one of the groups and another consists of renewed attempts to force non-indigenous investors, ranging from international banks to neighbourhood nursery schools, to relinquish 51% of the shares in their businesses. And now the Draft Constitution reinforces assertions that the State has the right to evict agricultural landowners and to deny them recourse to the law.

These moves have decisively undermined any hope of business expansion, job creation, export revenue growth or capacity improvements that could have promoted growth, made the country more competitive or improved revenue flows to the fiscus. Even Zanu PF does not deny that this has been the result, but the party's officials have resolutely kept the policies in place.

The purpose of the policies, therefore, is clearly much deeper than the widely discredited hopes that steady incomes will start accruing from the businesses to people who are supposed to believe they will soon become beneficiaries of wealth redistribution laws. Very poor dividend prospects and the uncertain futures of the businesses are now seen to promise nothing but disappointment, so energetic defence of the policies can only mean that a few influential people are getting something else they want.

What they want, and what they are getting, is the prevention of any hope of economic recovery, whatever the cost. And the reasoning: to them, a far greater cost would be to lose the next election. As an economic recovery would be fully credited to the MDC, and as that might tip the electoral scales, all hopes of economic recovery are being deliberately suppressed.

Tragically for Zimbabwe, the cost has already been staggeringly high. However, the ruling political class is happy to dismiss the entire topic with a simple, "Who cares?" response. This is because they have very deliberately directed all these costs onto the shoulders of the general population, a population that is considered deserving of both punishment and contempt because the majority has transferred its loyalty to the opposition party.

So deep is the ruling political class's disdain for the population at large, it doesn't even pretend to believe its fatuous promise that the painful costs to everyone will be comfortably offset by indigenisation empowerment gains. They all know that their promises cannot be kept and they have never even pretended they planned on trying to keep them.

However, most targets of the intended deception have understood the real objectives better than the perpetrators. Every day they receive reminders of tough conditions that have made them victims, not beneficiaries, and all too clearly they see evidence of the increasing riches of their oppressors.

While they know that only temporary empowerment will be acquired by very few, they are also keenly aware that ordinary people will carry the enormous costs of the privileged class's ill-gotten gains for years to come.

A few years from now, the ruling political class might well decide that its dismissal of the masses was their biggest mistake. Ordinary Zimbabweans know the origins of their handicaps and are measuring the costs a lot more carefully than are the politicians who are imposing them.

To shake off responsibility, the politicians are much more preoccupied with placing the blame elsewhere. And they can conjure up myths of sanctions, droughts and regime-change conspiracies at least as fast as they can use the party-controlled media to relay their deliberate attempts to deceive.

However, for the anything-but deceived population the costs are all too easily measured. They take the form of vanished employment prospects, deteriorating social services, increasingly unpleasant and hazardous living environments, rising crime rates and police harassment that selects the least privileged for the harshest treatment.

For many, the most devastating of the costs has been the loss of hundreds of thousands of jobs that once existed and which made Zimbabwe the envy of Africa. When these went, workers and those still to complete their school years saw the evaporation of opportunities to receive training in valuable skills that would have served them well for the rest of their lives.

While the loss of existing jobs was bad enough, an even larger number of jobs were prevented from coming into existence. As a result of yet more policy decisions, party officials could authorise themselves to expropriate domestic savings and balances held in foreign exchange accounts. Even before the plans to force indigenisation were hatched, investor confidence had been destroyed, corporate savings had been confiscated, new capital inflows had been discouraged, businesses had been starved of resources and Zimbabwe's productive sectors had been forced to become less competitive.

Leaving school at the rate of hundreds of thousands a year, our young people now have almost no prospect of finding jobs that will lead to any hope of respectable career development. It is they who will bear the highest costs. They are already resentful, but their anger will mount much more rapidly when they realise they will suffer directly from the consequences of the current disastrous policies for the rest of their lives.

In the past few weeks, the indigenisation pronouncements have been packaged in even more absurd terms, a shortcut through which might simply state that, whatever business non-indigenous investors run, 51% of its dividends have to be shared with non-indigenous people who should not be expected to earn the money or pay for the shares.

But everyone is now feeling that the investment-hostile business environment and the stretching from months into years of the needed process of change have made the economy dangerously fragile. Indications suggest that the hesitant and unconvincing hints of improvements in business activity claimed for the first two quarters of 2012 failed to acquire momentum and no signs of productive sector growth are now visible.

Developments are continuing in retailing, specially supermarkets and fast-food operations, but these will be offering services to a population whose buying-power is at best static, so the newer entrants will be able to achieve success only by capturing market share from existing traders.

Consumers might enjoy benefits from more keenly priced goods, but service sector activities will add little to employment and even less to Gross Domestic Product, simply because most of the traded goods will be imported.

Zimbabwe's very unimpressive 2012 food crop harvests will ensure that imported foodstuffs will continue to dominate the retail market. Having seen further difficulties develop in the major western economies and the sharp increases in world commodity prices, Zimbabwe could soon experience higher inflationary pressures and higher import bills for basic foods that could have been grown at home.

The country's interests would be best served by restoring its ability to feed itself and to take advantage of the higher world prices by offering surpluses to export markets. Without question, such volumes are within the country's reach. However, the people who know how to produce the crops on the needed scale are not allowed to farm.

Instead, a few months away from what should be the start of the 2013 planting season, very few of the needed inputs are affordable or available where they could be put to use, but more seriously, those who could have met the food security challenges have been forced to remain inactive, while most of those to whom their confiscated farms were allocated are nowhere to be seen. The main exceptions have grown tobacco, and this year they have enjoyed the good fortune of an improvement in prices. Unfortunately, this has been countered by a sharp decline in cotton prices.

As was the case last year, the more efficient social structures in the communal lands might be expected to again support the mostly subsistence levels of cultivation, but most of the farmers who were offered land in the former commercial areas appear to have opted for non-food crops or to have abandoned their allocations. At the much higher world prices for grain, it seems likely that Zimbabwe will be spending more than ever before on food imports and all the purchases will reduce the amounts that can be spent on other necessities.

Increased urgency for service delivery can be expected to open up new business opportunities in the final quarter, but the level of activity will be held down by shortages of money, by the farmers' very limited access to credit, the shrinkage of commercial services in the farming areas and the very bad condition of most of the rural road network.

Other problems include the eagerness of many to choose other income-earning options, such as gold-panning, and the fact that the emigration of able-bodied people has left many areas of the country with almost nobody but children and the elderly to do the farming.

Under these conditions, business prospects appear set to remain severely depressed until progress is made on removing the barriers to the inflows of working capital and investment funds.

If the focus moves to other handicaps, such as the country's crippled infrastructure, it becomes evident that many of the services need to be dealt with urgently and simultaneously. And they all need money.

However, the barriers that matter are of a political nature, in that they were created by policy choices that make the owners of all of the working capital and investment funds that Zimbabwe needs determined to avoid making any longer-term commitment to the country.

On this, the owners of the money are particularly adamant: while the political authorities show every intention of depriving them of their assets and denying them their rights, they will happily choose one of the two hundred other countries in the world that are offering more attractive investment environments. For Zimbabwe, the indigenisation demands, of course, attract special attention, but the bigger issue is Zimbabwe's apparent disrespect for property rights.

Most people cannot accept the basic indigenisation demands being made of existing or intending investors, simply because they sound unbelievable, if not too ridiculous for words. When forced to accept that the policy demands are real, people move the debate into discussions about what the political strategy might be, particularly as irrational behaviour, shown in displays of official aggression towards investors, has so badly damaged Zimbabwe's credibility.

Zanu PF members appear proud to claim that political power entitles them to take whatever they want. To reduce challenges to their entitlements, they have passed laws to legitimise the exercise of their authority. Indigenisation, however, has generated so much opposition, much of it from the lower ranks of Zanu PF and more of it from people claiming that the law is unworkable, that the heavyweights have resorted to threats to speed up the process.

All the signs suggest that certain individuals want to get shares transferred into their names before the courts reject the Act, or it is repealed by Parliament. The increased bullying is believed to reflect growing urgency as well as their profound selfishness; the asset snatchers have not the slightest concern for the welfare of the country, for the jobs that might be destroyed or for the jobs that their actions will prevent from ever coming into existence.

Evidence that the law is unworkable has accumulated fairly quickly and most of it can be placed into two separate folders: the evidence that almost everybody realises it will do nothing whatever to empower the population at large, and the evidence that the demands of the legislation are in conflict with many other established and much more important laws.

In particular, it is in conflict with Companies Act, with the Constitutional rights of citizens and with the obligations of the State to foreign investors, specially those from countries with which Zimbabwe has signed a Bilateral Investment Promotion and Protection Agreement.

Parts of the Indigenisation and Economic Empowerment Act are even in conflict with other parts of the same Act, and also with clauses in the Statutory Instruments that are supposed to give effect to the Act. However, a third folder has been filling up with a different kind of evidence.

This does not argue against the claims that the indigenisation law will prove massively disappointing to those who hoped to get something out of it, or that the law is already doing harm the business environment. Instead, this evidence suggests that from the start, the whole purpose of the legislation has been to slow, if not prevent the recovery of the Zimbabwe economy.

Zanu PF authorities seem to have been happy to see all the various claims and counter-claims absorbing the energies of non-indigenous company officials and fuelling the excitement of the less well-informed who have been deceived into believing that riches will soon flow into their pockets. But these party officials seem to be getting much more satisfaction from the powerful evidence that they have achieved their hidden motive: Zimbabwe’s economic recovery has been scuttled.

Most people would prefer not to be persuaded to accept such an accusation, but nobody doubts that every needed recovery measure requires investment capital. The accusation rests on two pieces of evidence, the first being that every step actually taken has undermined, if not destroyed Zimbabwe’s prospects of attracting the investment the whole country so desperately needs. The second is that Zanu PF is still defending every decision made.

Consider the facts: despite its history of having been one of the most outstanding economies in the Third World, Zimbabwe has seen output from its productive sectors fall so low that Zimbabweans have come close to being ranked among the poorest people on Earth.

The country’s vital technical and managerial ranks are now scattered across many other regional and more distant countries, food imports are essential to prevent starvation, exports are so low that multi-billion dollar debts are in arrears and cannot be paid. The power, transport, water, education and health services are inefficient and the domestic banking services not only lack the resources to fund the desperately needed recapitalisation exercises, they cannot attract the needed lines of longer-term credit from abroad while Zimbabwe is disqualified by its self-inflicted country-risk handicap.

Investment made possible Zimbabwe’s former levels of success and the policies chosen to support that success were designed to create and strengthen investor confidence. In recent years, however, all the policies appear to share a common purpose: to make investment more difficult, investment decisions more risky and to make all foreigners other than Chinese feel unwelcome.

It seems that Zanu PF reached a sudden decision that it could most easily bring businesses under their total control by sweeping aside property rights. After launching the Land Reform Programme, Zanu PF saw that it had at last broken the back of an economic sector that had not only used its importance to defend its position, but seemed also to have used its influence over the country’s biggest workforce to undermine support for the party.

By taking away farmers’ property rights, the party found it could turn this group into weak and submissive entities that could no longer influence political events, and all but the few who were permitted to qualify for the party’s patronage could be forced out of business.

The importance of the displaced farmers did not go away, but contributions to national output from their successors have not since measured up to politicians’ promises. To deflect criticism, Zanu PF decided that the economic cost of having to import food and to forfeit foreign earnings should be defined as a political price worth paying.

Happily for Zanu PF, they quickly found that they did not have to pay this price themselves. Instead, they inflicted it upon the hundreds of thousands who lost their jobs and whose schools, clinics and housing were swept away by the land grab. Even this caused no embarrassment to Zanu PF; these people were considered deserving of their fate because voting patterns showed they had turned their backs on the party.

However, before long, costs were being inflicted upon a great many other people. Jobs were destroyed in the manufacturing sector when supplies of local inputs failed and shrinking export revenues placed imported inputs beyond reach. Scarcities drove up production costs, but as exchange and price controls forced more business closures and job losses, more casualties were soon being seen among retailers, tourist operations, financial services and, because of shrivelling tax revenues, even among government-run bodies such as the power stations, railways and airways.

All of these forced the emigration of skills as career prospects collapsed and employers downsized their businesses, but increasing numbers of less mobile people had to line up for handouts of food from charities and aid organisations. Others, after struggling in vain for months to get passports, had to risk their lives to break through border security fences and gangs of thieves to seek sanctuary in neighbouring countries.

Many manufacturers and retailers lost business when Zanu PF further tightened absurdly inappropriate price controls in response to scarcity-driven inflation. Businesses stopped functioning, employment fell, the real value of taxes collected from PAYE, VAT and profits virtually disappeared, many hospitals and schools stopped functioning and the Ministry of Finance no longer collected enough tax revenue even to meet the public sector wage bill.

Again showing contempt for property rights, the Reserve Bank ransacked the nation's savings and pension funds to close the funding gap and forced the banks to buy Treasury Bills at deeply negative rates of return. But the gap kept on widening.

The banks were then forced to transfer to the Reserve Bank all foreign currency accounts held by international NGOs, charities, aid organisations and exporters. From there, the foreign exchange balances were drained into accounts accessible to Zanu PF.

When all these measures had been driven to the limits of their usefulness, the Reserve Bank announced its belief that printing very much larger quantities of Zimbabwe dollars and accepting the challenge of providing the funds needed by all government ministries would solve all the problems.

This solution, however, generated the hyperinflation that wiped out the Zimbabwe dollar.

But even as Zimbabwe's economy and the Zimbabwe dollar were crashing, the Reserve Bank Governor was writing a book in which he triumphantly described the policy decisions he made. All of these, he said, he was privileged to make under the brilliant guidance of the leader of Zanu PF, President Robert Mugabe.

When Zimbabweans were permitted to use foreign currency without facing threats of prosecution for not selling it to authorised dealers, the adoption of mainly US dollars permitted the immediate disappearance of inflation. This change made the early months of 2009 significantly more comfortable than the closing months of 2008. Then the signing of an agreement to form the Government of National Unity further encouraged the population.

Zanu PF tried to claim that the dollarisation and the legal relaxations were significant achievements, but actually they were their only options after a long series of dismal policy failures. For Zanu PF, these failures were made worse by the party having to reluctantly accept the formation of a Government of National Unity eleven months after it was defeated in the 2008 election.

The surge of optimism immediately after the signing of the GNU agreement can be seen now to have greatly disturbed Zanu PF, mainly because they foresaw the possibility of this becoming a fully-fledged recovery for which the MDC would get the praise. It reacted by ensuring that, from then on, endless debate on trivia would absorb the GNU's energies. It also ensured that urgent challenges that should have been faced to establish a full economic recovery would be deliberately sidelined.

Of crucial importance to Zanu PF was the fact that the GNU agreement called for new elections that would replace the coalition government. As Zanu PF felt that any progress achieved before the election would be credited to the MDC, Zanu PF decided that on no condition should any progress be permitted and it made sure that the election date was repeatedly delayed.

But to delay any possibility of an economic recovery, the Economic Empowerment and indigenisation Act was seen to be the perfect weapon. Equipped with harsh enabling legislation, it could be used to really slow things down. In particular, it could be used to discourage all new investment in existing foreign owned companies and to prevent the inflow of new foreign investment unless the investors agreed in advance to relinquish control.

And to ensure its success, the active ingredient in the Act was again an attack on property rights. Through a legislative process, Zanu PF members made it "lawful" to demand that 51% of the shares in the targeted companies be surrendered to approved recipients.

However, by trying to decree that the board of directors of targeted companies should somehow persuade shareholders to relinquish 51% of their shares, government was assuming the directors had powers that do not exist. Shareholders are individuals in their own right, or corporate entities. None of them has an obligation to accept demands from the directors of companies in which they hold shares.

This is simply because the shares are the property of existing shareholders and, therefore, they are no longer the property of the company that sold them. To quote the opinion of Mr N M Willsmer, a lawyer with a long-established Harare firm:

> *Section 3 (of the Economic Empowerment and Indigenisation Act) is poorly-drafted. It envisages future dispositions by businesses of controlling interests therein, whereas in law businesses cannot dispose of such interests: interests can only be disposed of by the owners of such interests. A company cannot compel its shareholders to transfer their shares. Subject to whatever rights of pre-emption may apply in respect of private companies, companies cannot control share transfers, and shareholders who transfer their shares may well thereby upset the resulting ratio between indigenous and non-indigenous shareholders. This is particularly the case with public companies: it would be*

> *impossible to ensure that a company whose shares are traded daily on a stock exchange is 51%-owned by indigenous Zimbabweans.*

So far, the Indigenisation Ministry has preferred to ignore this technicality and has tried to bulldoze its demands through by threatening the directors with prosecution if they fail to force compliance from the shareholders.

There can be no escaping the claim that the implied promises of wealth transfers to faithful Zanu PF supporters have been made specifically to help this party attract greater support in forthcoming elections. But if a relatively small number of current owners is replaced by a much larger number of new shareholders, the value of the diluted holdings per person will be of no more consequence than the possibility of an occasional few dollars in dividends. In no way will this amount to the empowerment of the general population.

But Zanu PF has already exaggerated its claims that only by electing this party will all the yet-to-be created wealth of the country be kept out of the hands and beyond the influence of non-indigenous investors. A great many indigenous Zimbabweans know they are fully capable of taking up investment opportunities, but insecure property rights have also discouraged them. They cite the experiences of indigenous banks that were undermined by the party if they chose not to become dependent on party patronage.

Zanu PF's principal objective is actually the disempowerment of the country's most important productive sector investors, whether indigenous or otherwise.

These companies do presently wield influence in the market place, mainly because of their success in producing products that markets are prepared to buy. In creating and marketing desirable goods or commodities and in generating jobs, export revenues and tax revenues, many individuals have become influential and prosperous in the process.

To Zanu PF, however, all this clearly adds up to rather too much influence, and the prosperity has become the source of resentment and envy. Driven by their anxiety that this influence might be used against them, the party is now seeking to disable the influence and to consolidate its authority by sweeping the board at the next elections.

Even if the party is fully aware that the policy will be destructive, either because existing investors will lose interest in their companies and might soon permit them to start going downhill, or because new investors will be discouraged from bringing their latest technologies anywhere near Zimbabwe, the party is showing no concern over these prospects.

Unfortunately, the country is once again showing the whole world that it is deliberately undermining its own ability to recover. As this is continuing to affect its ability to service debt, lending institutions remain unwilling to grant the country access to the credit it urgently requires to carry out the development work needed to sustain a real recovery.

Since Zimbabwe's hyperinflation experience, which rendered all local currency corporate and personal savings valueless, the country has suffered an acute shortage of liquidity. Now, most banked US dollar deposits are short-term, so most borrowers are unable to secure loans for more than 90-days.

The recapitalisation of the banks is therefore essential if the money that the country desperately needs is to be found. By definition, whether it is in the form of loans or equity capital, the money inflows have to be from external sources and the owners of such funds have to be offered attractive terms and conditions.

Why, then, has Zanu PF chosen to turn the country into the least attractive investment destination on Earth? It can only be because of a probably mistaken belief that this will best serve their hopes of recovering political authority. But even if this is correct, the achievement will prove so limiting that only a few hundred people will be likely to enjoy temporary benefits.

If they are not already aware of it, the other twelve million Zimbabweans will soon be in no doubt that these are the policy choices that have most severely damaged their immediate interests as well as the longer-term interests of their children and of their country. Policy revisions are therefore urgent if more damage is to be avoided and if the country is to be placed onto a genuine recovery path.

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