

**FARM SIZE PROTECTION, INFORMAL
SUBDIVISIONS:**

**The Impact of Subdivision Policy on Land Delivery
and Security of Property Rights in Zimbabwe**

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ABSTRACT

Beyond Phase I of Zimbabwe's Land Reform and Resettlement Program (1980-1998) and fast track resettlement, the private land market has created an important process of shadow land reform and *de facto* land redistribution. However, legal constraints on subdivision and the high costs of subdividing and defining property rights on the ground are creating a legal limbo where the current owner is *de facto* subdividing property but the new claimants are unable to secure land rights or financial capital to aid in development. This paper analyzes the legal and institutional constraints to subdivision and consolidation, the financial and time constraints to subdivision, and the contribution of subdivisions and consolidations to the expansion and/or contraction in land supply. It also presents findings of current case study research contrasting subdivision constraints with *de facto* subdivision that is nonetheless occurring on the ground, and the detrimental effects informal subdivision is having on land use management and capital investment unless current policies are modified.

(Key words: Zimbabwe, land, subdivision policy, property rights)

1. INTRODUCTION

At the time of independence in 1980, Zimbabwe inherited a dual economy characterized by skewed land ownership and white minority control over the country's land and water resources. For a decade following independence in 1980, the government of Zimbabwe made significant headway in redistributing land to the black majority population, but these efforts had substantially stalled by the mid-1980s. In 1998, the Government of Zimbabwe sought to reaccelerate the land reform and resettlement programme through a joint government-donor initiative that included a two-year implementation phase, and pilot experimentation with "improved government" and "new complementary" models of land reform and resettlement.

The redistributive land reforms implemented in Central America and Asia in the 1950s to the 1970s included coercive measures to redistribute land from landed elites to beneficiaries, including expropriations, land taxation, and limits on number and size of land holdings. The 1980s witnessed a global downsizing of land reform efforts and the beginning of the shift from redistributive land reform to market-assisted land reform (1990s) and presently to community-assisted land reform. The reasons for this policy shift are multiple and complex but a number of factors played a role: a) the after effects of the Arab Oil embargo in the late 1970s and a shift in policy focus to structural adjustment programmes to address macroeconomic imbalances; b) sagging support for land nationalizations in donor countries; and c) shrinking funds for state land acquisition and resettlement costs. In addition, according to Van den Brink (2002), redistributive reforms have proved bureaucratic, cumbersome, slow, and costly.

In contrast with state acquisition and state planned resettlement, community-driven or market-assisted land reform gives grants or subsidized loans to communities, groups, and individuals for land purchase or land development costs. In both instances of land acquisition and resettlement, land reform beneficiaries make greater use of private land markets to identify land for acquisition, and have greater ownership and choice in determining appropriate resettlement investments and land use planning. Even within market assisted approaches, however, there often remains the need for public provision of services that the private sector either does not provide or provides at a cost that exceeds the means of the poor to pay. Assistance may be needed by beneficiaries in negotiating the sales transaction, securing land rights, and planning land use and investment including the demarcation of towns and villages and improving access to electricity, schools, roads, water, sewage, and communications.

It is debatable whether the land market (even with facilitation and modest grant support) can adequately serve the needs of the poor through speedy land delivery. However, the purpose of this paper is to address a different but related question in Southern Africa. In instances where the land market can and should be used in place of or in tandem with government assisted land redistribution, is national policy on land markets and subdivision constraining the ability of the land market to deliver land to the poor?

2. SUBDIVISION (THEORETICAL BENEFITS)

The issue of restrictive subdivision regulations is particularly important to the Southern African countries of Namibia, South Africa, and Zimbabwe, countries currently embarking on large scale land redistribution exercises. These countries are pursuing varying mixes of market-based as well as government assisted redistributive schemes to avail land to both resource poor landless and to enable blacks with some resources to enter commercial agriculture. In all countries however, the pace of market based approaches has been markedly slow and restrictive subdivision regulations have been identified as one of the major limitations. Of late, the rapid decline in agricultural production in Zimbabwe, coinciding with the fast track resettlement programme, has raised concern about productivity in redistributing subdivided land.

Subdivision is the process of dividing one parcel of land into two or more contiguous sub-parcels or stands. A number of stereotypical examples help illustrate how subdivision through community or market-assisted land reform facilitates land acquisition and resettlement (see Roth, 1993 for further elaboration on market-assisted land reform options). For example, the owner of a "large-farm" or estate might subdivide the parcel and allocate subdivided portions to his or her farmworkers for the establishment of residential stands or arable land for farming. The owner of the "large-farm" in exchange for tax deferrals or relief of progressive land taxation might subdivide the land and sell-off underutilized land holdings to disadvantaged private investors or land reform beneficiaries with access to government grants. Individuals or groups in communal areas might negotiate with a potential land seller for a block (a subdivision) of land which is then sold to the community or further subdivided to individuals within the community. Or, a farm on the outskirts of a municipality might be subdivided into lots for urban real estate development or residential stands.

These and similar solutions that deliver land to the poor through market assisted mechanisms depend on "sellers" and "buyers" negotiating land transfers in the private land market with minimum government intervention in parcel or beneficiary selection, or scale of land acquisition or resettlement. As long as subdivision results in the transfer of land from "landed elites" to the poor, land redistribution by definition will in most cases enhance equity. Whether such land redistribution also improves efficiency or agricultural productivity is a separate question illustrated by the hypothetical graph in Figure 1. Consider the situation of a large farm, plantation or estate comprised of one or several parcels of land or farming units totaling M hectares in size. Curve ABC in Figure 1 depicts the long-run average costs of a firm exhibiting increasing returns to scale over farm size $0-m_1$ and decreasing returns to scale over farm size m_1-M . Assume that land throughout the farm is of more or less homogenous quality and that farm size efficiency to the right of point m_1 or B declines due to labour and capital constraints that result in land under-utilization. Assume further that any portion of this farming unit (either one farm as a parcel or a portion of one farm) might be redistributed to "n" land reform beneficiaries with identical average costs (c_1 , c_2 or c_3).

Under redistributive land reform, the government could designate one or more farms within the farming unit for redistribution, acquire these through expropriation or through "willing-seller, willing-buyer" mechanisms, and redistribute the land to beneficiaries. Subdivision constraints need not apply if the state waives subdivision regulations for smallholder resettlement, or acquires a farm and settles the beneficiaries but does not legally demarcate the sub-parcels for the new beneficiary landowners.

Under market-assisted or community-assisted land reform, low-cost subdivision is crucial to the effectiveness of the land redistribution effort if the intent is to enable one or several beneficiaries to carve off a piece of an existing farm parcel for group or individual settlement. While government could waive or ease subdivision restrictions for private land market transactions that support land reform, governments in Namibia, South Africa, and Zimbabwe have not shown a willingness to do so to date. The rationale for this reluctance is addressed shortly, but for the moment, subdivision of the large farm, plantation or estate into smaller subdivisions may offer land reform beneficiaries several hypothetical efficiency paths:

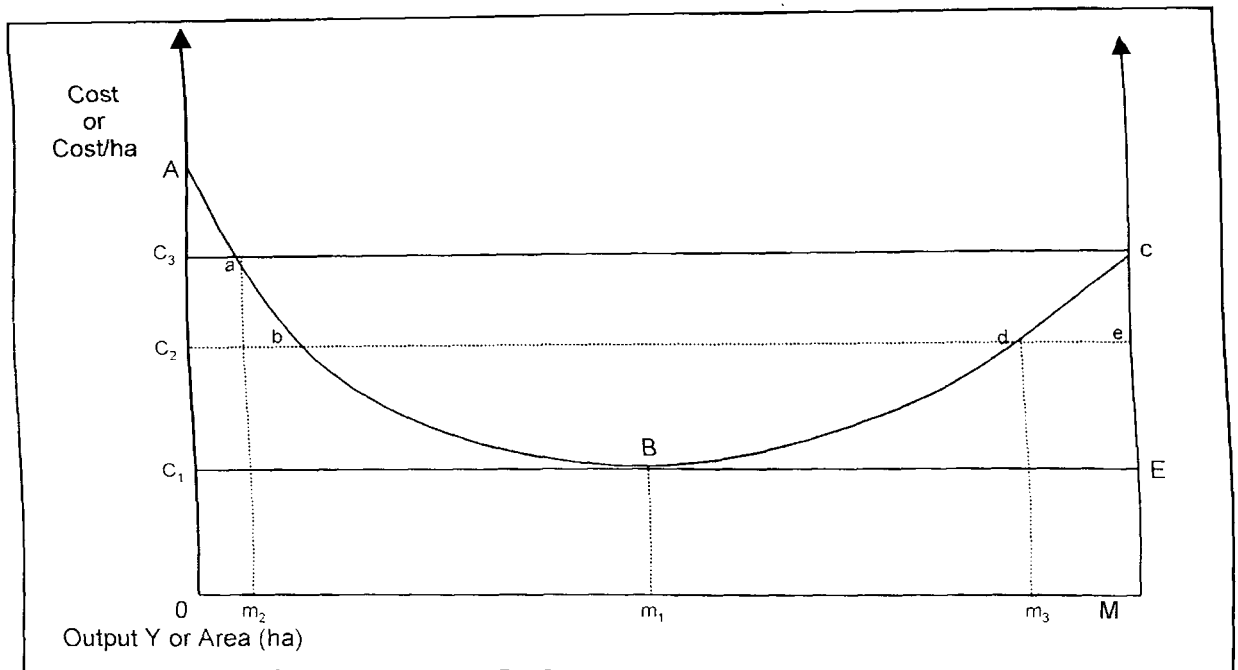


Figure 1: Indicative long-run average cost curves

a) Exclusionary Growth Subdivision. The average costs of beneficiary (land reform) households (c_3) exceed the average cost of the large farm enterprise over its domain $0M$ (with exception of total costs Ac_3a associated with farm size $0m_2$). While land reform may be justified for equity benefits, total costs of beneficiary land holdings exceed that of the large-scale farm by area aBC less Ac_3a . Higher costs from smallholder agriculture might result from different technology, limited access to markets and credit, unskilled management, or land holdings too small in size.

b) Peripheral Growth Subdivision. Any reduction in average costs from c_3 to for example c_2 would enable efficiency gains by smallholder beneficiaries. All else constant, in Figure 1 aggregate efficiency would be improved by the large-farm estate downsizing to size $0m_3$ with area m_3M redistributed to beneficiary households. Small parcels carved off from the large farm estate will tend to be dispersed and may be peripheral to the agricultural operations of the estate, but nonetheless benefit land reform through, for example, giving land ownership to workers of the farm estate. Growth is enhanced by lowering costs equivalent to area deC .

c) Growth Enhancing Subdivision. Average costs of beneficiary (land reform) households (c_1) are equal to the average cost of the large-scale enterprise at point B on the average cost curve. Redistributing m_1 to M hectares to land reform beneficiaries would reduce total costs by area BCE . Any partial reduction in the size of the large farm enterprise from m_1 to 0 would maintain average costs of beneficiary holdings at c_1 , but drive up average costs of the remaining large-scale enterprise. Land reform might thus take two forms – maintain the core estate at $0m_1$ and redistribute $0m_1$ to M to land reform beneficiaries; or redistribute the entire farm size to “n” land reform beneficiaries.

d) Integration Dependent (Core Estate + Smallholdings) Subdivision. A variant of growth enhanced subdivision above, the efficiency gains from subdivision are dependent on a core nuclear estate being maintained to reduce the average costs of land reform beneficiaries. Assume average costs of land reform beneficiaries are c_2 using small farm based technology, but decline to c_1 when beneficiaries are able to take advantage of lower marketing costs of the core estate (achieved through economies of scale or improved management) or through improved access to technology, resources or economic opportunity. The core estate or remaining large farm enterprise benefits from secure labour supply and output contracts with farm workers or new land reform beneficiaries. Beneficiary households benefit from the marketing expertise and improved access to markets, technology, financial capital and high valued-added activities provided by the core estate. An internal division of land resources is achieved with area 0 to m_1 maintained by the core estate and m_1 to M redistributed to farmworkers, tenants or land reform beneficiaries.

In all four cases, subdivision and redistribution of land from the large-scale estate to land reform beneficiaries would be equity enhancing. With reduction of average costs of the n -beneficiary households initially from c_3 to c_2 , partial subdivision of the farming unit from M to m_2 would result in efficiency gains. Further cost-reductions from c_2 to c_1 would justify further land redistribution from m_1 to m_2 and may easily justify total redistribution of m_1 to 0. There nonetheless remains the very important question whether land reform beneficiaries have the means or ability to engage in production at costs less than or at least comparable with the large-scale estate from which the land is being redistributed?

The classic inverse relationship between farm size and yield per hectare (Berry and Cline, 1979; Dyer, 1997) is often invoked to support land redistribution (and one might add support for "Growth Enhancing Subdivision" above). Large farms experience greater difficulties in supervising wage labour to control absenteeism and labour shirking, while small farms directly reap the benefits of employing their own labour in the farming enterprise (Bhalla, 1979; Feder, 1985).

However, the inverse size-productivity relationship is neither immutable nor universal (Ahmad and Quereshi, 1999). Costs or yields will not vary systematically with farming enterprises or farm size. Price distortions in factor (capital and land) and output markets can more than offset the labour advantage of small farmers, particularly if large farm estates are the beneficiaries of farm subsidies or state support. Small farmers often face higher transaction and transportation costs in accessing financial, input and output markets, and gaining access to knowledge and new technology, particularly in situations where markets are highly centralized and developed to serve large farm interests not a dispersed population of small farming units. Small farmers are further constrained in farming enterprises that require high levels of management (horticulture, flower growing) or vertical coordination between production and marketing (plantation crops) (Van den Brink, 2002).

Consequently, the global experience with smallholder productivity under land reform is mixed (El-Ghonemy, 2002) with successes observed in Asia and stagnant to low smallholder productivity gains in Latin America (Thiesenhusen, 2002). Despite Zimbabwe's maize revolution which demonstrated small farmer comparative advantage in maize production (Eicher and Rukuni, 1994; Roth and Bruce, 1994), other studies have shown muted productivity response by resettlement farmers (Bratton, 1990; Owens, Hoddinott and Kinsey, 2001). According to Roth and Bruce (1994), resettled smallholder farmers have had to contend with limited farm management skills and experience, being given only temporary permits conferring land use rights, poor access to markets and extension advice, inadequate social cohesion (because settlers are taken from around the country), and government's inability to fill the void of input distribution and marketing services that land reform has left void.

The problem with basing land reform arguments on the inverse size-productivity relationship is that it tends to aggregate all land available for redistribution regardless of land use, land quality, location, access, or management differences. Zimbabwe's government since the early 1990s has favoured the acquisition and resettlement of large tracks of designated land to enable scale economies in the delivery of schools, clinics, roads and services. The problem inherent in this strategy, as demonstrated in Figure 1, is that wholesale replacement of the large farm sector can result in efficiency losses as efficient large-scale farmers are displaced along with the inefficient ones. While the case for wholesale replacement is no doubt warranted in certain situations, it can also be argued that spinning off portions of farms (peripheral growth subdivision or growth enhancing subdivision) or retaining the core estate while transferring a portion of the farm estate to farmworkers, tenants, or contract labourers (integration dependent subdivision) is also a win-win situation for beneficiaries, the large farm estate, and the nation. But such strategies require a land market policy that enables time responsive subdivision at low transaction costs.

3. LEGAL AND ECONOMIC VIABILITY CONSTRAINTS ON SUBDIVISION IN ZIMBABWE

a) Prevailing Legal and Regulatory Framework

The Zimbabwe Regional Town and Country Planning Act 1976, Chapter 29:12 (Part VI) governs the subdivision and consolidation of any property. In terms of Section 39 of the Regional Town and Country Planning Act, the subdivision of land held under title into two or more properties requires a subdivision permit granted in terms of Section 40 (see Box 1). Such permit is required for any subdivision of the

parcel, change of ownership on any portion of the parcel, or granting of leases or rights of occupancy 10 years or longer in duration.¹ Property held in undivided shares is exempt from the permit.²

Box 1: Application for (subdivision) permit

- 1. Permit Application.** The landowner or legal representative must submit an application for subdivision according to the local planning authority in terms of Section 40 of the Act. A complete application entails: a) a TPSC 1 form; b) certified copies of the Title Deed to the property being subdivided; c) 1 Sepia copy and 18 copies of drawings of the proposed subdivision; d) letter of representation; and e) application fees. Such application should be accompanied by the consent in writing of the owner of the property, every holder of a mortgage bond registered over the property, and if required by the local authority, the consent in writing of the holder of any other real right registered over the property.
- 2. Acknowledgement.** Once an application is deemed "complete" or satisfactory by the local planning authority, it must acknowledge receipt of the application within two weeks according to Section 40 (2) Paragraph A.³
- 3. Notification.** In accordance with Subsection 3, the local authority shall require the applicant at his or her own expense to give public notice of the application, and to serve notice (and submit proof that notice is given) of the application to every owner of property adjacent to the parcel to be subdivided, and other owners advised by the local planning authority in cases where the proposal:
 - Conflicts with any condition registered against the title deed of the property concerned and which confers a right that may be enforced by the owner of another property;
 - Proposes any use which in terms of the operative master plan, local plan, or approved scheme may only be granted by the local planning authority; or,
 - Proposes any use or subdivision in an area for which there is no operative master plan, local plan, or approved scheme and the land use is materially different from, or the size of any proposed subdivision for residential purposes is smaller than, the land use or size of residential properties.
- 4. Consultation.** In accordance with Section 40 (4) Paragraph b, consultations with other ministries and government departments may be undertaken to ascertain the suitability of the proposed subdivision.
- 5. Objections and Representations.** Any objections or representations in connection with notification must be received within one month of the date of public notice of the application, or from the ministers responsible for roads and aviation. The local planning authority shall advise the applicant of the nature of any objections and provide time for the applicant to submit comments before the application is decided upon.
- 6. Granting of Permit.** (Section 40 (5)). The local planning authority may after objections or representations grant a permit subject to the relevant regional plan, master plan, local plan, or approved scheme provided that approval of the minister responsible for agriculture is obtained for land outside the jurisdiction of a municipal council or town council. In addition, any permit authorizing the subdivision of any property shall require that the survey records concerned be submitted to the Surveyor General (as required in the Land Survey Act).
- 7. Refusal and Right of Appeal.** In the event a permit for subdivision is refused, the local planning authority must provide reasons in writing for the refusal. If the local planning authority has not decided upon the subdivision application within 4 months of the date of acknowledgement of receipt of application, or by the date of any extension of that period granted the applicant in writing, the application is deemed refused by the planning authority. The applicant has right of appeal (Section 44) to the Administrative Court.

¹ According to Section 39, no person shall consolidate two or more properties into one property, or subdivide any property or enter any agreement except in accordance with a permit granted in terms of Section 40, including:

- change of ownership of any portion of the property;
- lease of any portion of the property for a period of 10 years or more or for the lifetime of the lessee;
- conferring on any person a right to occupy any portion of a property for a period of 10 years or more for his lifetime, or;
- renewal of the lease of, or right to occupy any portion of, a property where the aggregate period of the lease or right to occupy, including the period of renewal, is 10 years or more.

² There are other exemptions as well:

- land within the jurisdiction of (and owned by) a municipal council or town council;
- land within a local government area administered by a local authority which is owned by that authority or by the state;
- leases or rights to occupy any building or portion thereof where the occupation is consistent with operative master plans or local plans, or any condition registered against the title; and
- land which is alienated by the State, or land which falls within the jurisdiction of a municipality or town that is to be consolidated with other land.

³ Applications for subdivision of any land adjacent to any state road or obstacle limitation area of an aerodrome must also be forwarded to the ministers responsible for roads and aviation for advisement.

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In urban areas, the local authority – city, municipality or town council – reviews such applications and makes final decisions. For rural areas, the Department of Physical Planning processes the application on behalf of the Minister of Local Government and National Housing. If the subdivided property is to be used for agricultural purposes or a feedlot, the permit requires, in addition, an assessment of economic viability by the Ministry of Agriculture, Lands and Rural Resettlement through the Department of Agricultural Technical and Extension Services (Agritex).⁴ These procedures operate in conjunction with the provision of relevant Outline Plans or Master Plans, and Town Planning Schemes or Local Plans.⁵

Once the application is submitted, the local planning authority will seek, in writing, consent of holders with vested legal rights in land such as mortgages and will review the business plan proposed for the subdivision(s) and the remainder of the parcel. For both rural and urban land, the local authority scrutinizes the planning application for road access; availability of water for primary use; concern about “ad-hoc” subdivision; need for the subdivision or separate title; standard size of properties in the area; electricity; telecommunications; provisions of a relevant statutory plan; social facilities, schools, and clinics; agricultural viability; and water for irrigation/horticulture.

Provision of electricity, roads, telephone⁶ and water are not always critical factors in approval as these can be made available, funds permitting.⁷ The need for subdivision for schools, churches and clinics is also seldom a problem. Concerns relating to ad-hoc subdivision, however, are contentious due to lack of a clear definition of what is “ad hoc”. Operative Town Planning Schemes are binding and have “tour de force” no matter how outdated the scheme may be.⁸ As noted in Box 2, various agencies or departments may be consulted in this process.

Box 2: Agencies or departments potentially involved in the subdivision process

1. Department of Agricultural Technical and Extension Services (AGRITEX) advises on the economic viability of the proposed subdivisions for agricultural purposes or a feedlot. A permit requires the approval of the Minister of Lands, Agriculture and Rural Resettlement.
2. Department of Physical Planning. In cases where the application creates more than five new subdivisions, the Provincial Planning Officer needs to be consulted. The Director compiles overall recommendations to be submitted to the National Subdivision Committee.
3. Mines and Minerals Act. Any parcel greater than 100 hectares in size to be subdivided requires a certificate from the Commissioner of Land.
4. Surveyor General. Reviews surveying diagrams or the general plan.
5. Registrar of Deeds. Advises on title.
6. Registrar of Administrative Court. Advises on conditions of registered water rights or permits.
7. Provincial Water Engineer. Comments on availability and adequacy of water supplies.
8. Chief Hydrological Engineer. Comments on underground water resource availability.
9. Provincial Roads Engineer. Comments on any subdivision adjacent to a state road.
10. Provincial Natural Resources Officer. Comments on natural resources and environment.
11. Rural District Council. Advises on property in conjunction with local development plans.
12. Zimbabwe Electricity Supply Authority. Advises how proposals might affect power lines.
13. Ministry of Transport and Communication. Advisement is required if the application relates to any property adjacent to a state road or within obstacle limitations of an aerodrome.

⁴Rural agricultural land is defined in the Act as: “property outside the...jurisdiction of a municipal council or town which is used or to be used for agricultural purposes or feedlot.”

⁵Whereas outline plans are, in the main, more than twenty-five years old and have largely been replaced by more recent plans, one cannot say the same about rural town planning schemes that have remained in use. Regrettably, case law has ruled that provisions of Town Planning Schemes may not be overruled by new Master plan provisions but that Local Plans may replace old Town Planning Schemes.

⁶The importance of telecommunications is receding with the expansion of cellular networks.

⁷While not critical, both the Posts and Telecommunication Corporation (PTC) and Zimbabwe Electricity Supply Authority (ZESA) are regularly consulted on subdivisions to assist them with planning and managing their respective telephone and electrical networks. Subdivision proposals generally mean additional revenue to which they seldom object.

⁸This problem is exacerbated by lack of capacity and wherewithal to replace outdated Town Planning Schemes with Local Plans.

All comments are to be submitted to the Department of Physical Planning within six weeks of the request being received by the appropriate department or ministry, which forwards the recommendations to the National Subdivision Committee.⁹ In most cases the subdivision of land from the date of application to the granting of a permit should not exceed four months. In the case where an applicant makes an application and it is not acknowledged within four months, the application is considered "refused" by the Local Planning Authority.

Whereas the provisions of the relevant Town Planning Scheme are critical, there are other important considerations based on case law. The principle of *res judicata* prevents a subdivision proposal that is materially the same as an application previously rejected from being resubmitted. Proposals consistent with "more desirable land ownership" and "special circumstance" based on well articulated policy positions (e.g. indigenization and resettlement) could invoke approval from planning authorities. There is another common subdivision request – subdividing property split or severed by a road or railway. However the courts have repeatedly stated that severance cannot be used as a basis for subdivision because of the precedent this would set for thousands of similarly affected properties. Finally, many subdivision proposals are motivated by financial difficulties to dispose of property or to subdivide land for inheritance purposes. Unfortunately, neither Town Planning principles nor case law are sympathetic to these justifications.¹⁰ The result on the ground is a proliferation of land held in undivided shares, joint ownership, and *de facto* subdivisions.

b) Other Relevant Statutes

According to Section 53 of Zimbabwe's Water Act of 1998, whenever a parcel of land to which a water permit has been granted is to be subdivided, the current owner must lodge an application for the apportionment or revision of the water permit. The Land Survey Act, Part VII, Section 40 states that there will be no registration without the Surveyor General's approval. Section 42 of the Land Survey Act requires the landowner, excluding the State and Land Planning Authority, to instruct a land surveyor to prepare the consolidated title diagram in conformity with the Regional, Town and Country Planning Act. Responsibilities of the Surveyor General begin once his office is notified of approval. Time is required for the plot(s) to be surveyed by a registered Land Surveyor and for a survey diagram to be submitted for checking and recording.

The Deeds Registry Act, Section 21 stipulates that no portion of any land shall be transferred without a survey diagram being attached. Once the Surveyor General is satisfied, he/she advises the Register of Deeds who would provide the title deeds to the separate properties surveyed within six months of approval.

c) Minimum and Maximum Land (Farm) Size Constraints

Subdivision policy enforces minimum land size holdings for urban¹¹, peri-urban, and rural land consistent with prevailing land use criteria. The minimum subdivision area for peri-urban properties is 0.4 to 0.8 ha for residential use and 2 to 3 ha for agricultural plots depending on soil type, geology, and availability of adequate water (see Appendix for variants to these norms).¹² For land outside a municipal or town council used for agricultural purposes or a feedlot, minimum land size subdivision constraints are imposed indirectly

⁹ The National Subdivision Committee normally meets once a month under the chairmanship of the Ministry of Lands, Agriculture and Rural Resettlement. The National Committee comprises the following membership: Ministry of Lands Agriculture and Rural Resettlement, Department of Agricultural and Extension Services (Agritex), Department of Physical Planning, Zimbabwe Farmers Union (ZFU), Commercial Farmers Union (CFU), Indigenous Commercial Farmers Union (ICFU), Department of Natural Resources, and the Civil Division of the Attorney General's Office.

¹⁰ Refusals of these applications are unpopular with property owners and have given rise to statements that subdivision policy is "colonial", "outdated", "foreign" and "racist" in origin.

¹¹ Section 8 of the Regional, Town and Country Planning Regulations, 1976 sets the minimum area of subdivisions for residential use. The minimum subdivision for the erection of a single family detached dwelling or the land on which such a dwelling is situated shall be 4 000 m² if a water source approved by the Local Planning Authority will be available, or 2 000 m² if the applicant proposes the subdivision of an area of not less than five hectares within the jurisdiction of a municipal council, and a reticulated water supply and septic tank (with adequate sanitation) will be available.

¹² The boundaries of peri-urban areas are defined by: i) Master Plan boundaries, for example in Bulawayo, Kadoma and Harare; ii) 5 km distance from existing municipal boundaries where no master plans are in place; and iii) all townships outside the 5 km distance and outside areas defined by master plans.

through economic viability requirements. Each subdivision proposal is subjected to an agricultural viability assessment including yield or output from the proposed subdivision and earnings using the prevailing farming system norms appropriate to the agro-ecological region.

Maximum land size constraints also apply. The Rural Land (Farm Sizes) Regulations 1999 place ceilings on farm sizes according to Natural Region (NR): NR I - 250 ha, NR IIa - 350 ha, NR IIb - 400 ha, NR III - 500 ha, NR IV - 1 500 ha, and NR V - 2 000 ha. Any person or company who, immediately before the date of commencement of these regulations, owned a farm which exceeds the maximum size may continue to own that farm, but it shall not be sold, transferred or disposed of unless it has been subdivided into plots conforming to the maximum size regulations. Due to recent widespread designation of large-scale commercial farms, few applications have come in to enable one to test the comparability between agricultural viability requirements and the maximum farm size regulations.

d) Economic Viability Assessment

Two aspects of land use planning are considered when assessing subdivision applications, namely: planning considerations (e.g. access to roads, water, electricity, and size of property relative to size of adjacent properties); and agricultural viability, in particular profitability and food security.

Based on interviews with officers involved in the adjudication of subdivision applications, planning issues can be dealt with quickly by reviewing the application and making a site visit if necessary. It is more difficult to determine agricultural viability. The Government's current policy for subdivision within the Small (SSCF) and Large Scale Commercial Farming (LSCF) sectors is to ensure that all subdivisions are viable based on general farming systems of the area. Subdivision assessments are based on the potential viability of the land or land use, and not the ability of the individual owner or landholder. Potential viability is calculated on the assumption of an average investment infrastructure and availability of mechanical equipment and tools. A viable farm is defined as one capable of providing a net income equivalent to the salary of a middle manager in the financial and industrial sectors of the economy applicable at the time of the subdivision assessment. The current (2002) net farm income threshold is about Z\$1.2 million (or approximately US\$22,000 at the official exchange rate of 55 to the US dollar) for large-scale commercial farming areas (Agritex, personal communication), and 20 percent of this figure for SSCF areas and formerly freehold and leasehold sectors reserved for black commercial farmers.

Pegging target farm incomes to those of relatively affluent skilled workers in the industrial sector that occupy less than 1 percent of formally employed Zimbabweans sets a very high crossbar for profitability. Meeting such a threshold effectively pre-selects farmers/landowners with means and ability to operate larger holdings, and precludes many lower income households who lack such means (at least without substantial public grants or assistance). It further ignores cost of living differentials between urban and rural areas and fails to adjust rural income needs for non-monetary benefits (e.g. autoconsumption) that evade measurement in national income accounts. As a result, farm sizes tend to be significantly larger than their communal area counterparts in order to spread fixed costs or to accumulate sufficient per-hectare earnings over a larger land base. These thresholds further ignore off-farm earnings and the benefits of part-time farming that have become the norm worldwide.¹³ Furthermore, using a lower profit threshold for the mainly "black" SSCF sector merely perpetuates unequal land distribution between "white" and "black" commercial farming areas. Demonstrating how unrealistic these thresholds are, Chasi *et al.* (1994) showed that in 1993 only 22 percent of the then existing 8,000 SSCF sector farms met the government stipulated profit criteria.

Also problematic is the notion that farms can be neatly clustered based on the "general farming systems" of the area and that Government can assess the economic potential of land without carefully considering individuals and their resourcefulness. Forcing all farmers to work identical areas of land, whatever their levels of skill, or means, risks severe wastage of scarce management resources and land/labour and land/capital ratios that are asynchronous with intrinsic resource scarcity. As noted by John Robertson

¹³Given the tight credit conditions prevailing in Zimbabwe, part-time farming has become the only practical way of ensuring the ability to buy farm inputs through substitution of off-farm earnings for credit.

(cited in KPMG/GoZ, 2000), "A skilled strawberry grower with sufficient capital could successfully produce many tons of berries from 10 hectares in the Plumtree area, but a cattle producer in the same area might need 15 hectares for every animal."

Technocrats in the organizations managing land subdivisions tend to attribute the conservatism within Government and Agritex in creating small farms to the desire to safeguard food security. This argument is underscored implicitly by the belief that large scale farming (on a per hectare basis) is more productive than small scale farming. However, recent evidence shows that the communal sector produces nearly three times more maize, ten times more sorghum, and two and half times more cotton than the commercial farming areas (Ministry of Lands, Statistical Bulletin, 2000). Despite the existence of farm consolidation legislation, some technocrats within government believe that once land is subdivided it is difficult to 'undo' the subdivision. In principle, application for consolidation of contiguous properties for agricultural purposes is processed in the same manner as land subdivision. According to Chasi *et al.* (1994), such applications for land consolidation are rarely opposed on grounds of agricultural viability.

To compound the above philosophical problems with viability assessment, the implementation of administrative procedures to process subdivision applications are slowed by lack of resources. Agritex cites lack of personnel as part of their problem in speeding viability assessments. They lack expertise in some specialized types of farming (horticulture, wildlife, etc.) and often need to refer decisions back to the Agritex head office. In addition, due to budgetary constraints, staff is frequently unable to travel, and have to rely on subdivision applicants to come and collect them for site visits, creating the perception of lack of independence in decision making.

e) Problems of Administration

Transaction costs involved in administering subdivision policy present at times insurmountable hurdles, certainly for the land seller and buyer but perhaps as well for the implementing agencies involved, as follows:

i) Costs. The applicant is responsible for paying not only the application fees but also a percentage of the value of the stand as recompense for services used¹⁴; applications with commercial and industrial uses stipulated incur a fee amounting to 12 percent of the value of the stand, and 7-10 percent for residential uses. Most of the services required for the application/permit – surveying and registration fees – also require payment by the applicant before a certificate of compliance is issued. In instances where the subdivision application is rejected and the applicant appeals, legal fees will be required.

ii) Getting a Foot in the Door. An application cannot be processed until it is complete, and a completed application requires time, costs, and know-how that disadvantage all but the initiated. The subdivision request is held or never processed waiting for a completed application.

iii) Waiting for Approval. Approvals and evaluations required from multiple departments, agencies and ministries delay processing to the speed of the slowest common agent. The National Subdivision Committee in waiting for comments fails to make appropriate recommendations for the issuance or refusal of a subdivision permit within the application period, or within the extension granted, resulting in protracted delays.

iv) Subdivide First, Seek Approvals Later. Applicants' exchange or sell land subdivisions before applying or receiving a subdivision permit placing infrastructural investments at risk. Applicants engage in strong lobbying attempts to compel office bearers to endorse their applications, against a rigid planning infrastructure that is not kindly disposed to unplanned initiatives.

¹⁴Since a local authority may object to a subdivision on the basis it imposes undue strain on its provision of services, it has become standard for developers to grant to the authority a payment to mitigate the effects of new developments.

v) Non-Viable Stands. Most subdivision applications in peri-urban areas are either for land speculation or for payment of loans to financial institutions. The application is filed for agricultural purposes when the intended use is for residential or commercial use since change of use applications are more difficult to justify.

vi) Cash Flow and Moral Hazard. In cases where proposed land uses are novel, current subdivision policy requires that infrastructure development in proposals be put in place and a trial period under conditional permit be implemented until the applicant proves beyond reasonable doubt that the intended production is viable. In terms of underground water potential, borehole yield certificates are required before appropriate recommendations can be made. Investments (proposed in the subdivision application) must be made prior to the subdivision being approved. Many peri-urban subdivision proposals are considered non-viable in terms of general agricultural viability.¹⁵ The insistence on the installation of infrastructure and a viability track-record creates the proverbial "chicken and egg" situation for first time farmers by requiring considerable funds spent on investment without a guarantee of the permit being granted.

vii) Subdivisions Unjustified. Subdivisions are rejected because financial and family considerations do not justify subdivision, or the proposed land use according to government is not economically justifiable.

viii) Sluggish Information. The current information flow from one department to the other is slow since all stakeholder comments must be submitted to the Provincial Planning Officer of the Department of Physical Planning who in turn must compile a summary recommendation for the Physical Planning Director.

There is widespread recognition that subdivision regulations are too restrictive. In recent judgements, the Administrative Court has described the current subdivision policy and criteria as "too rigid" and has advised greater flexibility in assessing subdivision proposals. The Land Tenure Commission of Inquiry Into Appropriate Land Tenure Systems in Zimbabwe (GoZ, 1994) recognized the underutilization of land in the LSCF sector and recommended smaller commercial farms by relaxing subdivision restrictions. The Department of Physical Planning (1997) advised the subdivision of commercial farms between 3,000 and 20,000 hectares in size and the expansion of small holdings in peri-urban areas whose population would grow from 350,000 to 3.5 million. While the Rural Land (Farm Sizes) Amendment Regulations (1999 and 2000) further lowered these land size ceilings, there nonetheless is lack of practical reasoning for the chasm that separates small and large size farms in Zimbabwe.

The Draft National Land Policy Framework Document (1998) further underscores the rigidity of subdivision policy:

"...the classification of land according to agro-ecological potential has been fundamental to rural land use planning and regulation....This planning approach has been used to prescribe rigid land use and subdivision controls, which undermine dynamic land use changes." (p. 19)

The Draft National Land Policy Framework Document (1998) further laments the conflictual relations inherent in the current subdivision policy:

"The sources of statutory land use planning and regulation are poorly coordinated and conflictual as they originate from a multiplicity of sources. Such regulations are implemented by numerous authorities with scattered responsibilities and conflicting powers located in both central and local government. Most land use regulation is prescribed by central government with little regard to reality and actual land use practice." (p. 21)

And with regard to peri-urban areas:

"The existing regulatory framework of operative town planning schemes coupled with subdivision and consolidation permits is proving incapable of meeting legitimate needs and changing economies. The planning schemes are out-of-date and subdivision policies [are] rigid, inefficient and inequitable. The subdivision approaches require drastic overhaul in favour of greater flexibility, decentralization and community involvement." (p. 24)

¹⁵Initially, there was insistence that a proposed horticultural activity should be proved agriculturally viable before a subdivision permit could be granted.

The draft National Land Policy Framework concludes with two key recommendations. First, the process of land redistribution should be used as an opportunity to promote equitable access by smallholders to high quality land, irrigation and other infrastructural facilities and services, certainly not work against them. Second, the process of subdivision should be facilitated by (a) total deregulation (leave it to the market); (b) partial deregulation (e.g. subdivision is changed to accept smaller farm sizes as viable; or (c) dynamic deregulation under which the a national land board prescribes tri-annually reviewed changes of maximum and minimum farm sizes.

4. SUBDIVISION AND CONSOLIDATION OF AGRICULTURAL LAND IN PRACTICE

a) Subdivision/Consolidation and Delivery of Land

One effect of subdivision regulations has been discouragement of applications by farmers wishing to subdivide their land. According to public records, only 310 agricultural applications for land subdivision and consolidation were processed nationally between 1989 and 2000 although the rate of growth has increased in the last decade. The number of applications has increased from an average of 10 applications per year between 1990-94 to a peak of over 55 in 1998 (Figure 2). Accompanying this growth has been a growing number of subdivision proposals in peri-urban areas, particularly involving plot sizes less than 250 hectares (Figure 3).

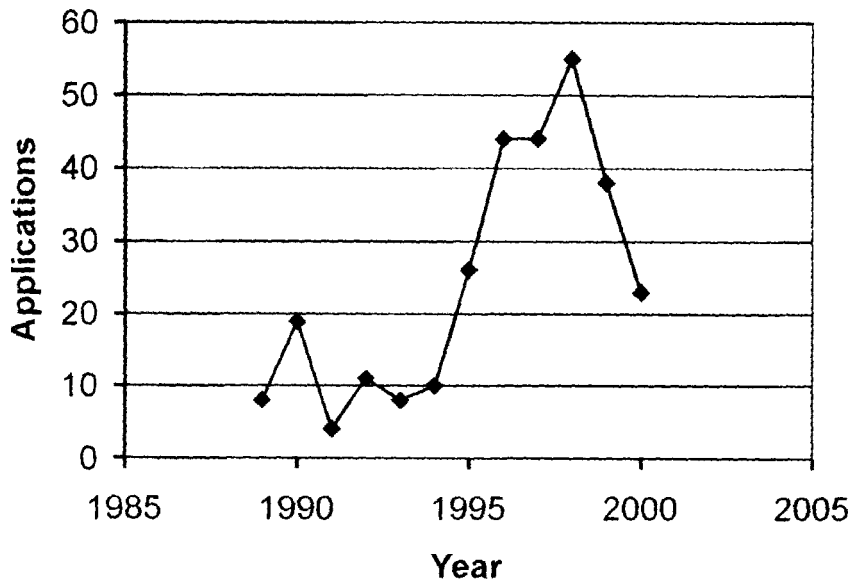


Figure 2: Subdivision applications, 1989-2000

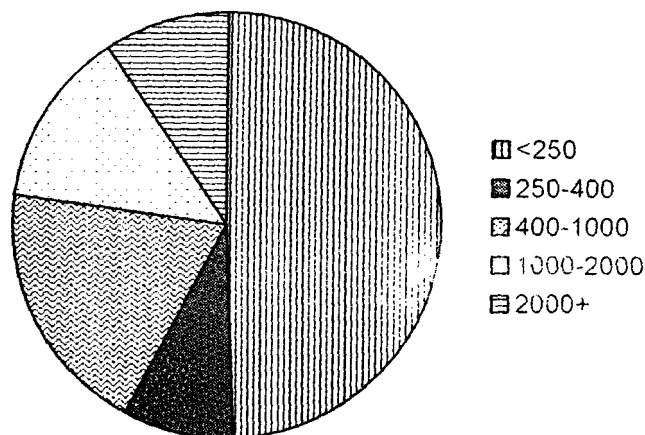


Figure 3: Size Distribution of subdivision applications, 1989-2000

Table 1 also shows that the majority of applications came from farmers in rural areas of Mashonaland East and Matebeleland North which surround the major cities of Harare and Bulawayo, respectively.

Table 1: Distribution of subdivision and consolidation applications by province, 1989-2000

Province	Subdivision and Consolidation Applications
Mashonaland East	115
Mashonaland West	53
Mashonaland Central	27
Masvingo	14
Matebeleland North	53
Matebeleland South	27
Midlands	33
Manicaland	36
TOTAL	358

This trend has been partially motivated by the boom in the horticultural industry and the demand for smallholdings as a status symbol wrote the Director of Physical Planning as far back as 1990. However, since 1998, the number of applications has declined due to disruptions in the farm economy and in the delivery of land administration services that has accompanied government's expropriation of land from the commercial sector.

Despite the long-term upward trend in subdivision applications, the success rate in approvals has been very poor. Over the period 1989 to 2000, a total of 358 subdivision and consolidation applications were processed of which 310 were subdivision applications. Of these 310 applications, only 27 percent of the applications were approved (and even fewer may have eventually been subdivided due to the inability of land sellers to survey properties or meet requirements for land improvements) (Figure 4).

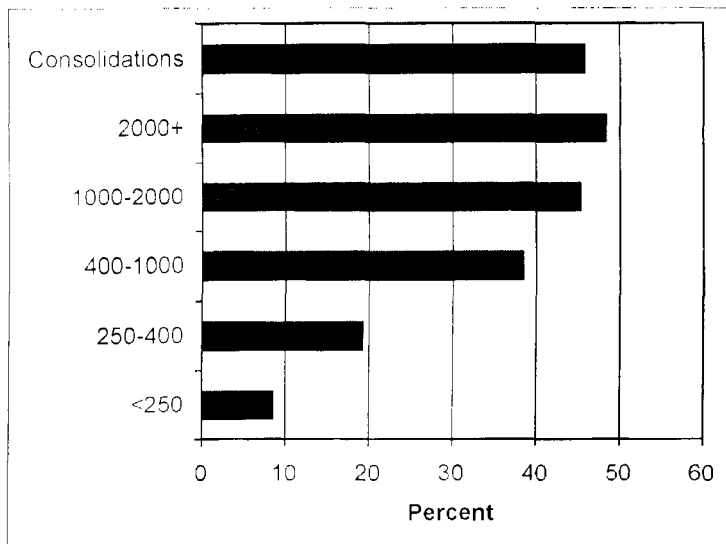


Figure 4: Success rate in subdivisions and consolidation: 1990-2000

The results of the adjudication process for applications show substantial bias towards consolidation to maintain large farm sizes, and a bias against subdivisions that reduce farm sizes below 400 hectares. The main reason given for rejection is agricultural viability. In a sub-sample of applications from Mashonaland East Province over the period 1990-2000, the National Subdivision Committee concurred with the decision of the Agritex Planning Branch in all 29 cases.

According to statutes regulating land subdivisions, the time from submission of an application to granting of a permit should be about four months. In the sample of 29 applications in Mashonaland East province, only 7 were concluded within this period. The average period, from receipt of application to the National Subdivision Committee meeting making the determination, was estimated to be nearly 7 months with a maximum time of nearly 13 months. The net result of these delays, combined with "ease" of consolidation, has been a loss in the supply of farmland for redistribution. Table 2 estimates the new farms created, and the potential new farms that could have been created, by legal subdivisions. The total applications (i.e. 310) submitted during the 1989-2000 period had proposed creating 2 022 new farms.

Table 2: Effect of restrictive subdivision regulations on supply of farms: 1989-2000

Maximum Subdivision Plot Size(ha)	No. of Subdivision Applications	Potential Farms Created Had All Applications Been Approved ^a	Farms Actually Created
<250	152	1495	113
250-400	26	58	10
400-1000	60	265	48
1000-2000	42	95	40
>2000	30	109	43
Total	310	2,022	254

^aNew farms proposed in all applications including those approved and rejected.

However, only 84 applications covering 254 new farms were actually approved. The number of approved consolidations over the same period (Table 3) led to a reduction in the number of new farms by 27 such that only a net of 227 farms was actually created.

Table 3: Loss of farms due to consolidations: 1990-2000

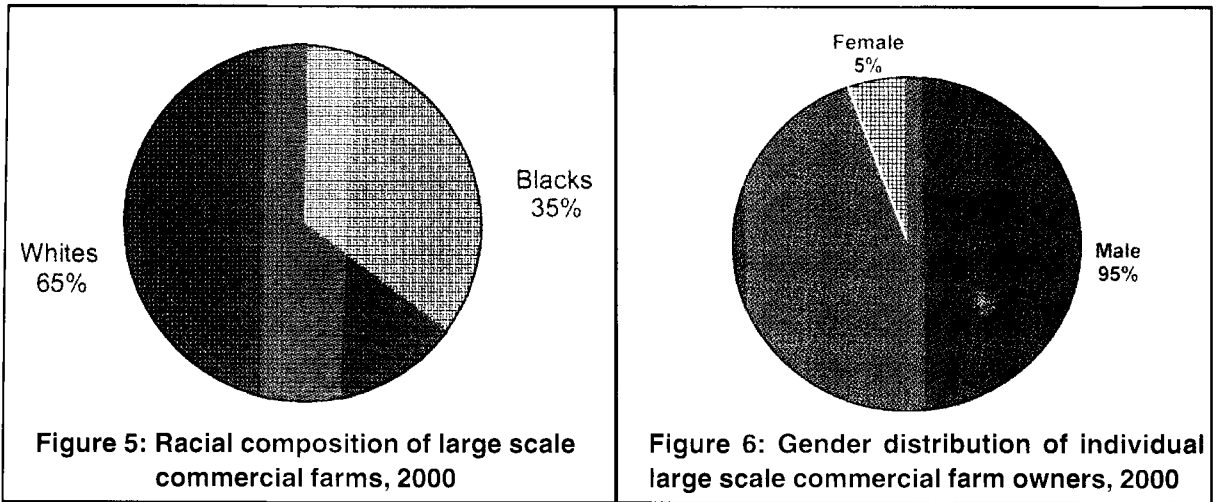
Province	Consolidation Applications	Successful Applications	Loss in Number of Farms ^a
Mashonaland East	12	5	7
Mashonaland West	1	0	1
Mashonaland Central	4	2	2
Masvingo	2	1	1
Matebeleland North	9	7	11
Matebeleland South	8	1	1
Midlands	10	6	6
Manicaland	2	0	0
TOTAL	48	22	27

^aRefers to the total number of farms absorbed in successful consolidations less the number of successful applications.

A total of 226 subdivision applications covering 1 768 farms and an area of 322 000 hectares were rejected. Thus, starting with 2 022 farms that could have been created, the land administration bureaucracy managed to deliver only 227 new farms over the 11-year period.

b) Subdivisions and Farm Structure

A central hypothesis in this paper is that too much friction in large-scale commercial farm subdivisions has constrained the transfer of land to blacks and women through private land markets. To examine this hypothesis, evidence is reviewed of large-scale commercial farm size and ownership yielded by land policy during the period up to 2000 when government embarked on "fast track" land reform. The regulatory environment has done little to broaden access to land by blacks and women. Since independence in 1980 only 1,063 blacks on 1,186 farms have managed to enter large-scale commercial farming through open market access such that, by the year 2000, this group of blacks constituted just 35 percent of farmers in the sector (Figure 5). And, by 2000 only 5 percent of large-scale commercial farms were owned by women (Figure 6).



How could liberalization of subdivision have helped? The short answer is “a lot.” A review of the types of farms taken up by black farmers reveals a greater preference for small farm sizes (Figure 7). Table 4 shows that in 2000 29 percent of black farms were in the range 0-100 hectares, 46 percent below 200 hectares, 59 percent below 400 hectares, and 66 percent below 500 hectares. Subdivision regulations have not helped the creation of farms with plot sizes below 500 hectares, the size of farms preferred by black farmers. As observed in Figure 4, the success rate of applications requesting plot sizes below 400 hectares was 20 percent, while those requesting sizes below 250 hectares was 10 percent.

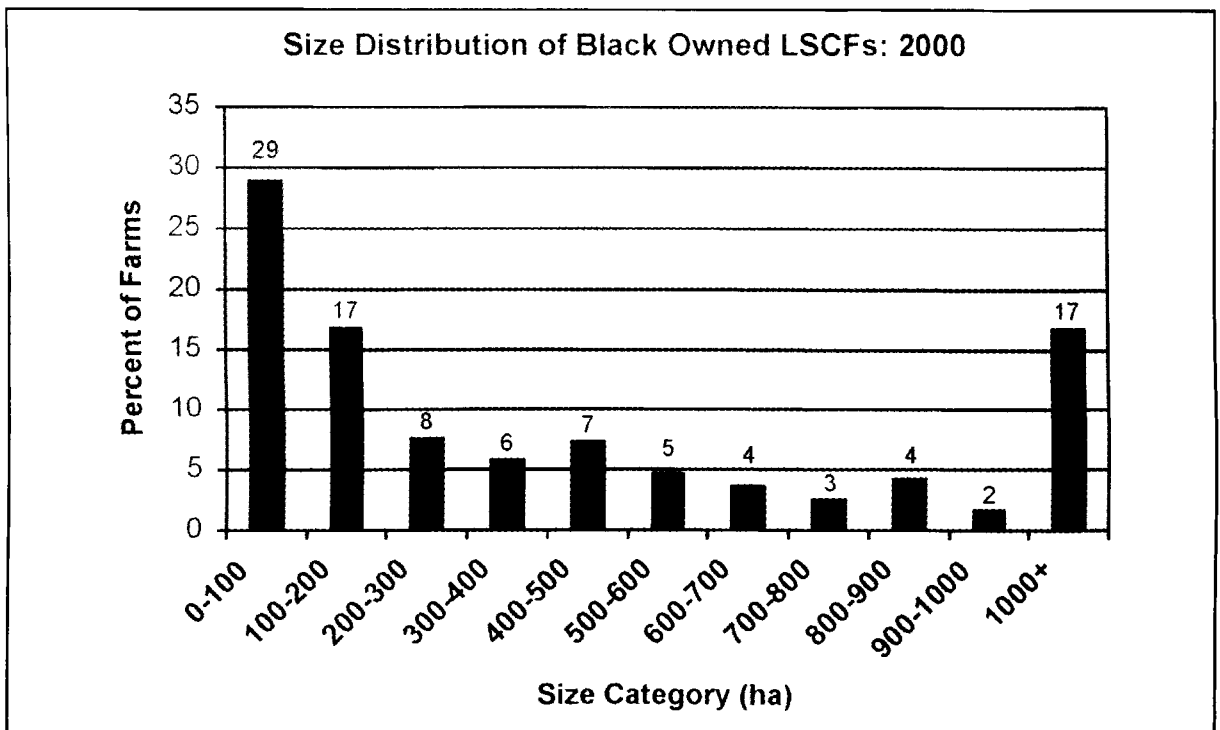


Figure 7: Size distribution of black owned LSCFs, 2000.

Table 4: Size Distribution of black owned farms, 2000

Size Category (ha)	Distribution	
	Percent of Farms ^a	Cumulative Distribution
0-100	29	29
100-200	17	46
200-300	8	53
300-400	6	59
400-500	7	66
500-600	5	71
600-700	4	75
700-800	3	77
800-900	4	82
900-1000	2	83
1000+	17	100

^aBased on the number of 1 186 "black" farms created in the LSCF sector between 1980 and 2000.

As of 2000, Zimbabwe's LSCF sector was highly concentrated with the greater portion of land in relatively large holdings (greater than 500 hectares) run by few individual farmers and corporations. Review of the Central Statistical Office (CSO) databases on the LSCF sector show that as of 2000, 54 percent of farms were owned by individuals, 44 percent by corporations, 1 percent by NGO's and churches, and the remaining 1 percent by various other forms of ownership including trusts. As indicated by Table 5, 50.0 percent of LSCF had farm sizes greater than 500 hectares. However, this statistic hides the fact that most of the land area is highly concentrated in farms that are very large – 72 percent is located on farms greater than 1,000 hectares in size, 82 percent on farms greater than 750 hectares, and 90 percent on farms greater than 500 hectares. The high concentration of land ownership is exacerbated by a high degree of multiple farm ownership. Just prior to "fast track", only 41 percent of the farms were being operated as single farms, 22 percent as two-farm operations, and 37 percent included between 3 and 29 farming units.

Table 5: Size distribution of LSCFs by province, 2000

	Manicaland	Mashonaland Central	Mashonaland East	Mashonaland West	Matabeleland North	Matabeleland South	Midlands	Masvingo	Total
Size (ha)									
>10000	0.4	0.2	0.0	0.2	1.1	1.9	0.6	7.0	0.9
5000-10000	0.3	0.3	0.0	0.7	0.6	2.0	1.9	5.6	1.1
2000-5000	3.3	5.0	2.6	4.9	6.7	13.8	6.4	8.7	5.9
1500-2000	3.0	5.6	1.9	3.4	2.6	5.2	5.6	6.1	3.9
1000-1500	11.0	16.8	11.8	19.3	7.3	14.1	13.3	9.2	13.6
750-1000	8.4	13.4	9.7	15.3	8.0	8.5	10.4	18.7	11.3
500-750	10.0	14.5	18.4	20.2	9.9	7.9	9.7	8.1	13.3
250-500	15.6	16.9	21.2	23.2	11.5	15.2	12.7	8.1	16.9
150-250	13.0	4.7	7.3	4.1	6.1	6.9	6.3	10.6	7.1
0-150	34.9	22.6	27.1	9.0	46.2	24.6	33.1	17.9	25.9
Total Farms	901	620	975	1,205	537	693	890	358	6,182

¹⁶ Registered lease under the Rural, Town and Country Planning Act(1976)

Further analysis of CSO data show very little registered leasing activity to complement open market land transfers. The histories of registered CSO farms indicates only 90 have been leased since the 1960s. Of these 42 were being legally¹⁶ leased in the year 2000.

c) Informal Subdivisions and Security of Tenure

Beyond slowing the rate of land subdivisions, the legal and regulatory environment governing land subdivisions and problems with administrative implementation have encouraged the creation of new tenure forms supporting informal *de facto* subdivisions. The block share scheme is one type of informal subdivision found in Zimbabwe near urban and peri-urban areas. Six block share properties in the vicinity of Chegutu have been created during the past few years including Sable, Bushy Park, Tetbury, Chigwell Extension, Kwabino and Drummond farms. Other variants of the scheme are found around Goromonzi, Marondera, Mutare and Nyanga areas.

Most block share schemes were started by black indigenous farmers seeking to acquire property near towns and cities for the purpose of subdividing land into smaller agricultural stands for subsequent resell. Very few if any of the farmers claimed knowledge of land use regulations prevailing in Master Plans or the Town and Country Planning Act. Most said they had assumed that since these properties were close to urban areas, they could be subdivided and sold as peri-urban plots for agricultural use. For the properties located near Chegutu, some of the farmers acquired land through the Commercial Farm Settlement Scheme while others acquired land through sales transactions. Nearly all the farmers admitted having difficulty obtaining subdivision permits from the Department of Physical Planning (on grounds that the units were not viable or lacked infrastructure, e.g. boreholes, to enable intensive commercial farming).

The first scheme in the Chegutu area was implemented on the "Remainder of Kalembo of Chigwell Extension of Railway Farm No. 14" and Kwabino farms in September 2000 (Box 3). The properties lie in Agroecological Region IIb, a high potential area suitable for intensive crop and livestock production. However, the area is vulnerable to severe dry spells and short rainy seasons.

The scheme is administered as a company registered under the Companies' Act. Each member upon completing the purchase price and fulfilling conditions of the contract is entitled to a share certificate and becomes a shareholder in the land holding company, but the controlling shares remain with the scheme developer. Lease regulations do not apply as the new member is not leasing property. As most of the scheme developers have not yet applied for subdivision permits, these *de facto* subdivisions have not been registered with the Deeds Office or the Department of Surveyor General. Once the down payment is made, the purchaser is able to occupy the property and make improvements of a residential or agricultural nature. However, they cannot change the plot's use without the consent of The Owners' Association and the Local Authority.

A shift from individual to corporate ownership of land has been a dominant feature of agrarian structure in Namibia, South Africa and Zimbabwe at least since the 1980s, if not before. However, two characteristics distinguish the block scheme from the general trend of corporate land ownership. First, the Association or Company in the block scheme does not manage land use or the agricultural operations on behalf of its members; the members/shareholders for all intents and purposes are individual farmers. Second, the companies are comprised principally of indigenous black land farmers who would otherwise prefer owning their land outright but lacking this option have turned to a land holding company model that holds the land on their behalf. In the presence of inability to subdivide the land and secure individual land ownership, such an arrangement is more permanent and secure than subleasing arrangements particularly for residential stands. But without individual ownership or control of the assets of the company, the individual (lacking ability to mortgage his or her portion of the land) is left with insecure access to financial capital for improvements.

The original landowner receives revenue from the land sale as does the land developer who assists with forming the company and selling the lots, improved or otherwise. The company retains the title. By retaining the largest subdivision, the developer has leverage in controlling or influencing the decision making of the Association. However, it is the goal of most block scheme members/shareholders that, once established,

the developer would eventually persuade the local planning department to formally subdivide the land and issue individual titles to the shareholders. Should this fail, the owner is at risk of the tenants objecting to future payments or wanting their money back.

The purchaser can immediately occupy the subdivision upon making the down payment. While the new member or landholder cannot further subdivide the land without consent of the Owners Association, shareholders, having completed their payment in full, are granted the right to sell their landholding to others within the scheme or to another willing buyer on the open market. In addition, the landholding can be sublet. But, the new members or shareholders also face a number of important challenges:

- Although the landholder engages in individual farming, she/he is unable to obtain mortgage credit or short term working capital from financial institutions for his or her individual farming operations using the land as collateral or security for the loan.
- Block schemes using company ownership remain untested in terms of secure property rights for the individual plot holders and their legal recourse.
- The scheme developer, by retaining a controlling interest in the company has leverage in decision making or control of the land holding company. Without adequate protection, the new landholders are at risk of having their land shares sold or compromised by unscrupulous land developers for land holding companies.

While, all the subdivisions are less than the stipulated maximum farm sizes for the agroecological region, satisfying current subdivision regulations will nonetheless be a challenge for most of the block schemes. Under the current land reform programme, the government is giving individuals between 6 and 15 hectares of arable land and about 20 hectares grazing land under the model A1, between 2-15 hectares for peri-urban farmers, and 30-2000+ hectares for small, medium and large scale-farming units under the Model A2 commercial farming scheme. The land units being sold under the block share scheme would qualify in terms of size under the peri-urban scheme. However, they are too small for other model A2 and A1 variants. Because the farms currently under the block share scheme are located in a rural agriculture zone, they contradict current land reform regulations. Since the area is zoned for rural agricultural use, local government will assess the subdivision in terms of economic viability which (according to local

Box 3: Case study of Railway and Kwabino Farms

The two properties (1 417 hectares combined) are located 14 kilometres west of Chegutu along the Chegutu-Kadoma highway. The block share scheme was implemented in September 2000 and is commonly referred to as Chegutu Country Village. All stands, 248 in total on the two properties, have been sold ranging in size from 3 to 8 hectares. The remainder (about 185 hectares), owned by the scheme developer, has most of the developments – e.g. water, electricity and boreholes.

In setting up the scheme, a civil engineer was hired to design and supervise the implementation of all civil works including road construction and proposed plans for the homesteads. A surveyor carried out the land survey and produced the survey diagram. A town planner developed the subdivision layouts for the entire scheme. An agricultural consultant prepared a plan of potential agricultural activities to be undertaken by the new purchasers including production, infrastructure, markets, production costs and returns. The new landholders are free to choose their own agricultural activities and land use. However, approval of the Owner's Association and the Local Authority is needed for any land use other than residential or agricultural. It is up to individual members or shareholders to make any connections to electricity and telephone networks. Each is also responsible for his or her own borehole(s) and sewage disposal through septic tanks.

The base price paid per undeveloped stand (other than access roads) was roughly Z\$ 0.5 million for a 10 hectare plot.¹⁷ Purchasers were required to either pay cash up front or make a 10 percent down payment with the balance due in equal (interest free) installments over a 5-10 year period. The purchaser could shorten the payment period by paying higher installments. Occupation can be as soon as the deposit is paid.

continued on next page

¹⁷ Actual prices varied according to proximity to urban centres and communication networks; production potential based on soil, topography and water resources; improvements on the land (e.g. dams, boreholes, electricity, farm buildings, roads and irrigation); and demand.

The landholder or member, upon full payment of the purchase price, is issued with a share certificate and becomes a shareholder of the farm's holding company and a member of the owners' association, which will be responsible for administering the scheme. The number of shares allocated to an individual depends largely on the size of the plot as a proportion of the whole property. The scheme developer maintains a significant portion of the land and voice in running the scheme.

For road upkeep, each plot holder is required to pay a levy to the scheme developer for road maintenance. Remaining improvements are the responsibility of the plot holder. Once one has paid the developer in full, he/she is free to sell their plot to other shareholders or to private individuals without notifying the scheme developer. One is also free to lease part or the whole of their plot to other individuals but the land use has to be agricultural. No other further subdivision is allowed without the approval of the Owner's Association. Scheme participants also cannot use their share certificates as collateral to finance their own farm operations.

Maps demarcating individual plot holdings exist but are not registered with any government department or the Deeds Office as the developer has not yet lodged an application for subdivision permit with the Department of Physical Planning. The reason given by the developer is that the scheme must first be made operational with investments in infrastructure made before the Department will grant a subdivision. Unfortunately, as presently developed, the scheme would not likely pass the requirements for agricultural subdivision. The property in question is in an area zoned 'rural agricultural land' where it is a requirement that any subdivisions created be economically viable for general agriculture. Water shortage is likely to be another problem; assuming that each unit has at least 2 boreholes, a serious depletion of the water table can be expected.

government officials) helps protect new farmers lacking adequate resources and technical know-how becoming engaged with specialized and diversified agriculture. The onus is therefore on the developer to provide the necessary infrastructure for intensive production before the subdivision is granted.

However, a more fundamental problem of block schemes is that they are surviving because the government has chosen not to impose sanctions on them based on provisions of the Regional, Town and Planning Act and the Rural Lands Act, No. 22 of 1976. According to this Act, a permit is required for "anything which might be an attempt to accomplish what amounts to a subdivision: an agreement for a change in ownership of any portion of a property; for a lease of any part for ten years or more or for a lifetime; a right to occupy for those periods; or for a renewal or a lease or right to occupy which take the period over ten years" (Bruce, 1990, p. 26). Block share schemes, by allowing occupation of portions of the farm to co-owners without a permit, violate this provision. Another piece of legislation which runs counter to the Block Share schemes is the Rural Lands Act (1979) which stipulates that land may not be sold or leased to two or more individuals jointly without the consent of the Minister of Lands, Agriculture and Rural Resettlement. The Block Share schemes essentially involve transforming large individually owned land holdings into co-owned properties. Section 10 of the Act also prohibits sharecropping without ministerial approval. Violations of these provisions attract criminal penalties including a two-year prison term (Section 11). These limitations on reallocation of land use rights prompted Bruce (1990) to conclude that "the sharecropping provision appears to have been intended to prevent *de facto* subdivision of large holdings among share-cropping black tenants" (p. 27).

5. CONCLUSIONS AND POLICY IMPLICATIONS

It is not a question whether subdivision policy is needed for land use management and regulation, or for regulating peri-urban expansion. The answer is yes, but within reason! The more important question is whether Government will ever have the wherewithal to implement a subdivision policy with more acumen than it does at present, or whether government regulation can do a better job than the land market in supporting agricultural growth. Granted, environmental degradation and peri-urban settlements are a serious concern, as are problems of food security. But, it ought to be possible to decouple environmental degradation and land use planning from restrictions on the land market by simply imposing certain minimum restrictions on land use husbandry to protect soil, water and the environment.

Such recommendations as annually changing maximum and minimum farm sizes in the national Land Policy Framework both grossly overestimate government's capacity to implement policy, and seek to preserve a land bureaucracy that in its current form is a relic of the past. It is frequently complained that the subdivision criteria are out of date and not in keeping with modern farming practices where technology and skill prevail over plot size. Pegging subdivision approvals to archaic concepts such as "economic viability" and "full-time farming" ignore both the dynamics of modern day agriculture and the widespread prevalence of part-time farmers in rural Zimbabwe, and globally for that matter. How much should an individual or farming household earn? In today's world of rapid technology growth, changing prices, competitive markets, part-time farming, and substitution possibilities of capital for land, the question is impossible to answer. The land administration machinery nonetheless in trying to control land sizes has constrained the ability of the land market to deliver land to formerly "disadvantaged" persons, and furthermore, is locking in land sizes that while seeming viable today will undoubtedly be wrong-sized tomorrow.

The current system is muddling along, driven by agencies that are too conservative to change, despite large cracks in the wall emerging. It is understandable that rigorous land sizes are enforced for urban and peri-urban residential and commercial development. However, it is far less clear why estates of 1000 hectares or so in size must undergo the same scrutiny in terms of economic viability. What is perhaps most ironic is that a rigorous subdivision policy can be so strictly enforced to maintain notions of "agricultural viability", while at the same time "fast track" resettlement since 2000 has resulted in massive transfer of land to smallholder beneficiary households who presently lack the means to sustainably use or develop the land resource. And, while the land bureaucracy puts on minimum farm size constraints to ensure the viability of economic (often large) farming units other sectors of government are imposing land ceilings to force redistribution. These and other contradictions only act to underscore what people have known for some time – the current system of land administration (including subdivisions) is unworkable and is not serving the needs of agriculture, real estate development, or the needs of society at large. They in turn seek to overturn subdivision rejections in Administrative Courts clogging the legal machinery with claims, or stake out informal subdivisions to build a house or engage in agriculture on the basis of very tenuous legal rights.

Will there be a need for subdivisions after the Fast Track Land Reform Programme? There are strong arguments that this will be the case. Sizes of some A2 Scheme plots distributed, at greater than 250 hectares, may need to be downsized in the future. There is also uncertainty about the status of those currently resettled under Fast Track Land Reform Programme given the high number of legal contestations involving land that has been distributed. There is a possibility therefore that some of the farms may revert to their original owners in their original large sizes. Even if the farmers are forced to downsize to the plot sizes stipulated under the Maximum Farm Size Regulations (1999), the farms will be large enough to warrant possible subdivision at future dates. Thus, subdivisions and subdivision regulations will be needed whatever the conclusion of the land reform exercise in Zimbabwe.

What might be done instead? Eliminate subdivision controls in all areas outside urban and peri-urban zones. Protect the environment and natural resource base through better monitoring and enforcement of environmental regulations, not through choice of beneficiaries or agrarian structure. Streamline subdivision procedures and requirements in urban and peri-urban areas, and focus government efforts on updating or upgrading obsolete master plans. Invest resources in private surveyors and ease surveying regulations to expand surveying services while lowering costs. Reform land legislation related to undivided shares, adopt new methods of group registration (condominium or group registration), and strengthen community based governance and group ownership models to obviate the need for minute subdivisions. Minute subdivision need not be the inevitable outcome of an unfettered land sales market, if a land rental market is supported that strengthens both rights of the lessor and lessee. Finally, ease subdivision procedures, processing time and fees, but only after the extent of subdivision policy has been limited in scope. While beneficiaries of land reform are always in need of stronger support services, in the area of subdivision policy, less not more, should be the mantra of the new land reform policy.

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REFERENCES

- Ahmed, M. and S.K. Qureshi, 1999.** *Recent Evidence on Farm Size and Land Productivity: Implications for Public Policy*, The Pakistan Development Review 34:4 1135-53.
- Berry, R. A. and W.R. Cline, 1979.** *Agrarian Structure and Productivity in Developing Countries*. Johns Hopkins Press, Baltimore.
- Bhalla, S., 1979.** *Farm Size Productivity and Technical Change in Indian Agriculture*. In: Berry, R.A. and W.R. Cline, *Agrarian Structure and Productivity in Developing Countries*, Johns Hopkins Press, Baltimore.
- Bratton, M., 1990.** *Ten Years After: Land Redistribution in Zimbabwe*, In Prosterman, R. L., M.N. Temple, and T.M. Hanstad, *Agrarian Reform and Grassroots Development: Ten Case Studies*, Lynne Rienner Publishers, Boulder.
- Bruce, John W., 1990.** *Legal Issues in Land Use and Resettlement*, Zimbabwe Agriculture Sector Memorandum, Background Paper, Southern Africa Department, The World Bank, Washington D.C.
- Chasi, M., F. Chinembiri, C. Mudiwa, G. Mudimu and P. Johnson, 1994.** *Land Fragmentation: Report Prepared for the Commission of Inquiry into Land Tenure Systems in Zimbabwe*. Government of Zimbabwe, Harare.
- Dyer, G., 1997.** *Class, State and Agricultural Productivity in Egypt: Study of the Inverse Relationship Between Farm Size and Land Productivity*, Frank Class, London.
- Eicher, C. and M. Rukuni, 1994.** *Zimbabwe's Agricultural Revolution*, University of Zimbabwe Press, Harare, Zimbabwe.
- El-Ghonemy, Riad, 2002.** *Agrarian Reform Policy Issues Never Die*. Keynote Speech Prepared for the Conference on Agrarian Reform and Rural Development: Taking Stock, Organized by The American University of Cairo, Social Research Centre, 4-7 March 2002.
- Feder, G. 1985.** *The Relationship Between Farm Size and Farm Productivity: The Role of the Family, Supervision and Credit Constraint*. *Journal of Development Economics* 18: 297-313.
- GoZ (Government of Zimbabwe), 2000.** *The Agricultural Sector of Zimbabwe*, Ministry of Lands Agriculture and Rural Resettlement Statistical Bulletin March 2000, Government of Zimbabwe, Harare, Zimbabwe.
- GoZ, Department of Physical Planning, 1997.** *Relationship Between Economics and Physical Planning in Zimbabwe*, Harare, Zimbabwe.
- GoZ, Regional, Town and Country Planning Act** [Chapter 29:12], No. 22 of 1976.
- GoZ, Rural Lands Act** [Chapter 20:18] of 1979.
- GoZ, Deeds Registry Act** [Chapter 20:05] of 1996.
- GoZ, Rural Land (Farm Sizes) Regulations** 1999.
- GoZ, 1998.** *Draft National Land Policy Framework Document*, Ministry of Lands, Agriculture and Rural Resettlement, Harare.
- GoZ, 1994.** *Commission of Inquiry Into Appropriate Land Tenure Systems in Zimbabwe* (M. Rukuni, Chairman), Harare.

- GoZ**, *Land Survey Act*, [Chapter 20:12] of 1933.
- GoZ, 1998**. *Draft National Land Policy Framework Document*, Ministry of Lands, Agriculture and Rural Resettlement, Harare.
- GoZ**, *Water Act* of 1998.
- KPMG/GOZ, 2000**. *Draft Report on Land Tax Study by KPMG Consulting*, Ministry of Lands, Agriculture and Rural Resettlement, Harare.
- Ncube, N., 2001**. *Guidelines for Procedures in Processing Applications for Certificate of Compliance to Statutory Instrument 288 of 2000 of the Rural Land (Farm Sizes) Amendment Regulations 2000* No. 1, October.
- Owens, Hoddinott and Kinsey, 2001**. *The Impact of Agricultural Extension on Farm Production in Resettlement Areas of Zimbabwe*. Working Paper No. WPS/2001.6, Centre for the Study of African Economies, University of Oxford, United Kingdom.
- Roth, Michael, 1993**. *A Critique of Zimbabwe's 1992 Land Act: Quasi-Market Versus Non-Market Options for Land Reform* In: *Beneath the Surface of Zimbabwe's Agricultural Revolution* (M. Rukuni and C.K. Eicher eds). University of Zimbabwe's Publication Office, Harare, Zimbabwe.
- Roth, Michael and John Bruce, 1994**. *Land Tenure, Agrarian Structure and Comparative Land Use Efficiency in Zimbabwe: Options for Land Reform and Land Redistribution*. Land Tenure Centre (LTC) Research Paper 117, LTC, University of Wisconsin – Madison, USA.
- Thiesenhusen, W.C., 2002**. *Land Tenure Issues in Latin America*. Paper Presented at the Agrarian Reform and Rural Development Conference, 5-7 March 2002, Cairo. Egypt.
- Van den Brink, R., 2002**. *Land Reform Policy in Sub-Saharan Africa: Consensus and Controversy*. Paper Presented at the Regional Workshop on Land Issues in Africa, Kampala, Uganda, 29 April to 2 May.



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