

1-1-1987

## Economic Reform in Sub-Saharan Africa: The Changing Business and Legal Environment

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### Recommended Citation

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# ECONOMIC REFORM IN SUB-SAHARAN AFRICA: THE CHANGING BUSINESS AND LEGAL ENVIRONMENT

\*Oladele O. Akinla II

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## I. INTRODUCTION

This decade, a series of occurrences have focused the world's attention on the rapidly deteriorating economic, financial, and social conditions in Sub-Saharan Africa.<sup>1</sup> Between 1981 and 1986, the International Bank for Reconstruction and Development (World Bank) published as many as four reports, analyzing the sluggish growth in the region's already fragile economies.<sup>2</sup> Throughout 1984 and 1985, the severe famine and drought conditions in Africa captivated the Western world. In the summer of 1986, the United Nations General Assembly, at the request of African leaders, held a special session to explore possible international cooperative responses to remedy the "critical economic situation in Africa."<sup>3</sup>

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<sup>1</sup> All references to Sub-Saharan Africa and Africa, unless otherwise noted, cover all independent countries on the continent excluding South Africa and the five North African states — Morocco, Tunisia, Algeria, Libya and Egypt.

<sup>2</sup> WORLD BANK, ACCELERATED DEVELOPMENT IN SUB-SAHARAN AFRICA (1981) [hereinafter ACCELERATED DEVELOPMENT]; WORLD BANK, SUB-SAHARAN AFRICA: PROGRESS REPORT ON DEVELOPMENT PROSPECTS AND PROGRAMS (1983); WORLD BANK, TOWARDS SUSTAINED DEVELOPMENT IN SUB-SAHARAN AFRICA (1984) [hereinafter SUSTAINED DEVELOPMENT]; WORLD BANK, FINANCING ADJUSTMENT WITH GROWTH IN SUB-SAHARAN AFRICA, 1986-1990 (1986) [hereinafter ADJUSTMENT WITH GROWTH].

<sup>3</sup> *Special Assembly Session Adopts Five-Year Programme of Action for Economic Recovery of Africa*, XXIII UN CHRONICLE 7 (Aug. 1986); Sciolino, *Africans Will Ask West for More Aid at the UN Today*, N.Y. Times, May 27, 1986, at A1, col. 6. The region's Heads of States had set the pace, by devoting their attention to pressing economic difficulties at the more recent summit meetings of the Organization of African Unity (OAU). See *The OAU Summit: Will Economic Reforms Follow?*, AFRICA NOW, Sept. 1985, at 55.

The economic crisis affecting Sub-Saharan Africa covers several areas: (1) sluggish growth in output of goods and services; (2) financially strapped governments operating on rising budget deficits;<sup>4</sup> (3) burdensome debt-service obligations averaging 25% on massive external debts;<sup>5</sup> (4) persistently high inflation and an inevitable decline in living standards for millions of people.<sup>6</sup>

Africa's distressing economic situation has significant adverse, and hence "unacceptable," effects on the political and economic interests of Western industrial nations.<sup>7</sup> For example, U.S. exports to Africa exceed \$4 billion annually and are estimated to provide 160,000 jobs in the United States. British companies have equity interests valued at nearly \$1 billion in Kenya alone.<sup>8</sup> In the long run, the regeneration of Africa's economy, through increased exports of competitive goods and services and an expansion of its markets for imports, could inject a new dynamism into the world economy.

In the early 1980s, many African governments implemented major reforms in their economic structures. These reforms were intended to arrest and ultimately reverse their present deteriorating economic position. Generally, these reforms disfavor past policies of strong governmental intervention in economic activity. Instead, contemporary economic policies are shaped by market forces. Thus, emerging economic reforms have included reductions in the public sector's share of the overall national economic output, while expanding the role of the private sector. In the agricultural sector, incentives include higher producer prices and the deregulation of state agencies marketing agricultural products. Restrictions on international transactions are being relaxed gradually by providing private individuals with greater access to foreign currency. At the same

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<sup>4</sup> J. ZULU & S. NSOULI, ADJUSTMENT PROGRAMS IN AFRICA 1 (1985); Quattara, *Reflections on the Crisis*, 15 J. DEV. PLANNING 45 (1985).

<sup>5</sup> Bhatia, *Adjustment Efforts in Sub-Saharan Africa, 1980-84*, FIN. & DEV., Sept. 1985 at 19. A debt-service ratio is a technical term measuring the ratio of a country's annual payments on its external debts as a proportion of its export earnings. The problem lies not in the size of Africa's external debt, but in the inability of many countries to generate additional resources to pay off debt obligations. Between 1979 and 1984, while Africa's total external debt increased 700%, economic output was virtually stagnant and thus unable to satisfy increased debt obligations as well as Africa's consumption and investment needs. See AFRICA'S SUBMISSION TO THE SPECIAL ASSEMBLY OF THE UN GENERAL ASSEMBLY ON AFRICA'S ECONOMIC AND SOCIAL CRISIS, 66 UN DOC. A/AC.229/2\* (1986) [hereinafter AFRICA'S SUBMISSION TO THE UN].

<sup>6</sup> Browne, *Africa's Economic Future: Development or Disintegration?*, 1 WORLD POL'Y J. 793 (1984). Of an estimated 800 million people that live in absolute poverty, at least 130 million are in Sub-Saharan Africa. WORLD BANK, WORLD DEVELOPMENT REPORT (1981). For data on the region's population see WORLD BANK, POPULATION GROWTH AND POLICIES IN SUB-SAHARAN AFRICA (1986). Many countries have made significant gains in such areas as education and health, thus providing for the welfare of their citizens. In Tanzania and Rwanda, for instance, substantial public expenditure on educational programs have increased literacy rates from 10% and 16% respectively at independence in the 1960's to 80% and 50% by 1980. See *Twenty Five Years of Development Cooperation* 269 (Report of the Development Assistance Committee of the Organization for Economic Cooperation and Development 1985). Yet, these advances are threatened today unless the poor financial position of these governments improves.

<sup>7</sup> Note, *U.S. Economic Assistance Policy and the Crisis in Sub-Saharan Africa*, 18 N.Y.U.J. INT'L L. & POL. 1349, 1368-72 (1986). For a discussion on Africa's strategic and political role in international relations see Browne, *supra* note 6. See generally Young, *Human Right or Necessity*, 15 CAL. W. INT'L L.J. 441 (1985); H. KITCHEN, U.S. INTERESTS IN AFRICA (1983).

<sup>8</sup> Wolpe, *The Dangers of Globalism*, in AFRICAN CRISIS AREAS AND U.S. FOREIGN POLICY 284, 294 (G. Bender, J. Coleman, R. Sklar eds. 1985); AFRICA RESEARCH BULLETIN (ECONOMICS), June 30, 1986, at 8328.

time, the exchange rates of Africa's local currencies are undergoing revisions to reduce overvaluation. In essence, African nations have altered the economic framework which regulates business activity by pursuing these reforms.<sup>9</sup>

This article will examine the contemporary economic reforms and highlight the corresponding changes in the legal framework regulating trade and investment activity in Africa. International lawyers representing clients in transactions involving Africa must be aware of the present reforms which constitute major departures from the economic principles and policies that formerly guided African governments. This article will indicate that an external focus on the global economic environment has been replaced by a contemporary general agreement that inappropriate domestic economic strategies and policies, as well as bureaucratic weaknesses, have contributed to stifling economic growth and investment in Africa. Thus, this article will review the dismal performance of African economies from independence to date and highlight shifts in African thinking on factors identified as the sources of its developmental problems. Accordingly, this article will discuss the policy initiatives and the institutional mechanisms crafted to correct these deficiencies.

Although an understanding of new reforms and legislation is important, it is crucial for lawyers to appreciate the rationale behind current economic reforms. The specific laws and regulations reflecting contemporary economic reform are not uniform among the individual countries of Sub-Saharan Africa. Some countries, while adopting economic reforms, maintain an economic policy which differs from the overall trend. This article will highlight variations in national economic reform and evaluate the political risks and domestic opposition attending Africa's economic restructuring. This article concludes by stressing the commitment by most governments to strive for economic reform and evidences the positive economic benefits resulting from these reforms.

## II. ECONOMIC CONDITIONS IN SUB-SAHARAN AFRICA

The severity of Africa's economic problems is manifest in almost every major economic indicator wherein Africa has shown a "persistently weak performance."<sup>10</sup> Since 1980, average output of goods and services in the region, measured in terms of Gross Domestic Product (GDP),<sup>11</sup> has fallen.<sup>12</sup> A regional analysis by the United Nations Eco-

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<sup>9</sup> While this paper focuses on certain policy and institutional reforms aimed at stimulating the productive capacity of African economies, these reforms are only the more visible of a broader range of long and medium term domestic measures being pursued by African governments. Many governments are attempting to correct other areas of economic vulnerability by improving agricultural research activities, controlling rapid population growth, and diversifying their export base away from a narrow range of commodities. See e.g., Rule, *Africa Pins Hope on Agricultural Research*, N.Y. Times, Jan. 7, 1987, at A6, col. 2.

<sup>10</sup> Sanusi, *Africa's Economic Disequilibrium and the International Monetary System*, in AFRICA AND THE INTERNATIONAL MONETARY FUND 552, 553 (G. Helleiner ed. 1986).

<sup>11</sup> Gross Domestic Product (GDP) measures the total output of goods and services produced by the economy. It excludes intermediate goods (goods used in the production of other goods, such as raw cotton that goes into cotton textiles). The economy is comprised of the agricultural sector (agriculture, fishing, hunting and forestry), industry (manufacturing, mining, construction, and utilities) and all other economic activities categorized as services (banking, trading, etc.). See WORLD BANK, WORLD DEVELOPMENT REPORT 244 (1986).

<sup>12</sup> GDP decreased from -0.5% in 1981, -0.7% in 1982, -2.7% and -1.2% in 1983 and 1984, respectively. In addition per capita GDP deteriorated by 17% between 1981 and 1984. ADJUSTMENT WITH GROWTH, *supra* note 2, at 57.

nomie Commission for Africa (ECA) indicates that between 1980 and 1984, only Central Africa showed positive growth in GDP and per capita GDP.<sup>13</sup>

Economic performance indicators show the absolute poverty affecting most African nations. A great majority of the countries eligible for loans from the World Bank's affiliate, the International Development Association (IDA), a facility reserved for countries with the lowest incomes in the world, are from Sub-Saharan Africa.<sup>14</sup> The development gap between Africa and other developing countries continues to widen as Africa fails to match the superior growth rates of other developing nations. While average growth of GDP and per capita GDP for developing countries in 1970 and 1980 was 5.3% and 3.1% respectively, Africa's GDP increased by only 2.9% and its per capita GDP experienced a negative growth.<sup>15</sup> With respect to farm output, a study by the U.S. Department of Agriculture shows Sub-Saharan Africa as the only region in the world where per capita food production has declined over the past two decades.<sup>16</sup> World export markets for Africa's primary products are now dominated by other developing countries. It is estimated that between 1975 and 1980, while Africa's exports of primary commodities grew by 9.6%, other developing countries surpassed Africa's agricultural growth by more than 50%.<sup>17</sup>

For a few countries, present trends reflect a reversal from earlier years of economic health. In general, the economic troubles facing contemporary Sub-Saharan Africa, however, are a result of Africa's history. Apart from a brief period of relative progress following its independence from Britain in the 1960's, Africa has been characterized by insufficient economic growth and development.<sup>18</sup> In a review of the region's economic performance, the ECA concluded that Africa "is unable to point to any significant growth rate or satisfactory index of general well-being after two decades of independence."<sup>19</sup> Although the ECA conclusion suggests that the decline in Africa's economic performance is endemic to virtually all sectors of African economy, weaknesses in Africa's agricultural sector have had the most devastating effect on the people.

<sup>13</sup> See AFRICA'S SUBMISSION TO THE UN, *supra* note 5, at 54. A few countries in other regions performed better than the regional averages suggest. Botswana, for example, in Southern Africa, enjoyed an average growth rate and per capita growth rate of 9.7% and 5.9% between 1980 and 1984.

<sup>14</sup> Kitchen, *Africa: Year of Ironies*, 64 FOREIGN AFF. 562, 575-77 (1985).

<sup>15</sup> Wangwe, *Sub-Saharan Africa: Which Economic Strategy*, 6 THIRD WORLD Q. 1033, 1036 (1984).

<sup>16</sup> Lofchie, *Africa's Agrarian Malaise*, in AFRICAN INDEPENDENCE: THE FIRST TWENTY FIVE YEARS 160, 161 (G. Carter & P. O'Meara eds. 1985) [hereinafter AFRICAN INDEPENDENCE]; Ray, *Trade and Pricing Policies in World Agriculture*, FIN. & DEV., Sept. 1986, at 2, 3. From 1983 through 1985 a severe drought affected farm output in several parts of Africa. It is agreed, however, that in light of the sluggish agricultural performance in many of these countries in earlier years, the drought only "accentuated Africa's more pervasive and structural problems." The drought was not the *raison d'être* for poor farm production. AFRICA'S SUBMISSION TO THE UN, *supra* note 5, at 6.

<sup>17</sup> AFRICA'S SUBMISSION TO THE UN, *supra* note 5, at 58; AFRICAN INDIGENIZATION 25 (A. Adedeji ed. 1981); Lewis, *Africa's Trade and the World Economy*, in STRATEGIES FOR AFRICAN DEVELOPMENT 476-77 (R. Berg & J. Whitaker eds. 1986).

<sup>18</sup> Africa's average GDP grew by almost 4% during the 1960's but decreased in the following decade, particularly among non-oil exporting countries. FINANCING ADJUSTMENT WITH GROWTH, *supra* note 3, at 57. There is extensive literature on the state of Africa's economic development in the early years of independence. See A. KARMACK, ECONOMICS OF AFRICAN DEVELOPMENT (1967); INTERNATIONAL MONETARY FUND, SURVEYS OF AFRICAN ECONOMIES 1-6, (1968).

<sup>19</sup> Conclusion of an internal report prepared for the 1979 Monrovia meeting of the OAU, quoted in Young, *African Relations with the Major Powers*, in AFRICAN INDEPENDENCE, *supra* note 16, at 218, 239.

Generally, it is agreed that "the fortune and misfortune of the food and agriculture sectors have . . . determined the progress or non-progress of the majority of [African] countries."<sup>20</sup> Africa's agricultural sector is of vital importance because it is a source of livelihood for most Africans and dominates other economic sectors in its overall contribution to total economic output. Generally, the agricultural sector employs over 70% of the labor force and is responsible for over 40% of the region's GDP. In 1978, African agriculture provided more than 90% of the export earnings in 14 out of 31 non-oil exporting nations.<sup>21</sup> Agricultural production enjoyed a 2.3% annual increase in the 1960's, but that increase declined to less than 1.3% annually by the end of the 1970's.<sup>22</sup> This decade, Africa's agricultural output has continued to falter. Food production increased by a mere 1% in 1980 to 1981, a modest 3.7% from 1981 to 1982, and then plummeted to 0.2% between 1982 and 1983.<sup>23</sup>

Africa's manufacturing sector, with an equally poor record, constitutes a small share of the region's total output. As a result, that sector has increased nominally from an average of 7.6% of GDP in 1960, to 9.8% at the end of 1980.<sup>24</sup> In essence, during the first two "Development Decades," Africa did not attain the targets set for developing countries by the United Nations.<sup>25</sup>

#### A. *The External Factors Rationale*

Until recently, two viewpoints characterized African and non-African approaches to economic development. First, African nations evinced a sense of optimism and hope about their future economic prosperity. The continent's abundance of human, mineral and energy resources presented unquestionable opportunities for development.<sup>26</sup> Second, African leaders pointed to external factors to explain the underlying causes of the

<sup>20</sup> Statement by A. Adedeji, Executive Secretary of the ECA quoted in Pallangyo & Odero-Ogwelu, *The Persistence of the Food and Agriculture Crisis in Africa* in *ECONOMIC CRISIS IN AFRICA*, *infra* note 23, at 169 [hereinafter *Food and Agriculture Crisis in Africa*]. See also Statement of Elliot Berg, before the House Committee on Banking, Finance and Urban Affairs, Subcomm. on International Development Institutions and Finance, August 6, 1986, at 1 [hereinafter *Berg Statement*]. For oil-exporting countries sharp declines in the world prices for oil have been a dominant factor in their economic crisis. Yet, as Cameroon's record illustrates, had oil-exporters maintained a strong agricultural sector during the "oil boom," they would not have been as severely affected by decreased oil prices. See Everett, *Cameroon: Cushioning the Shock*, *AFRICA REPORT*, May-June 1986, at 77.

<sup>21</sup> Wangwe, *supra* note 15, at 1038.

<sup>22</sup> The individual record of some countries has been far worse than these averages. In Tanzania, for example, between 1969 and 1972 through 1979 and 1982, sisal production is estimated to have fallen by nearly 60%, cashew nut by more than 50% and cotton production by about 30%. Lofchie, *The Roots of Economic Crisis in Tanzania*, 84 *CURRENT HIST.* 159 (1985).

<sup>23</sup> Daddieh, *Recovering Africa's Self-Sufficiency in Food and Agriculture*, in *ECONOMIC CRISIS IN AFRICA: AFRICAN PERSPECTIVES ON DEVELOPMENT PROBLEMS AND POTENTIALS* 187 (A. Adedeji and T. Shaw eds. 1985) [hereinafter *ECONOMIC CRISIS IN AFRICA*].

<sup>24</sup> Quattara, *supra* note 4, at 52. Cf. *AFRICA'S SUBMISSION TO THE UN*, *supra* note 5, at 55.

<sup>25</sup> The UN targets required 5-6% economic growth, 4% and 8% growth for the agricultural and industrial sectors respectively. Apart from 11 individual countries in 1960-1970 and five countries in 1970-1980, African nations did not meet these targets. The UN resolutions containing these targets and which set forth a general development strategy for the developing world are Resolution 1710 (XVI) of 1961 and Resolution 2626 (XXV) of 1970.

<sup>26</sup> Patel, *Economic Transition in Africa*, 2 *J. MOD. AFR. STUD.* 329 (1964); Leys, *African Economic Development in Theory and Practice*, 111 *DAEDALUS* 99 (1982); Kamarck, *supra* note 18, at 296 (projecting a growth rate of 7 per cent annually for Sub-Saharan Africa).

region's economic problems. Accordingly, while reviewing Africa's worsening economic conditions, the ECA devoted particular attention to the impact of what it described as the "extremely unfavorable global economic environment."<sup>27</sup> For example, Africa's declining terms of trade for exports of primary commodities, coupled with increasing protectionism in major Western markets, were seen as external factors stifling African development.<sup>28</sup> Furthermore, reduced financial assistance for economic development seemed to undermine the success of several infrastructure and investment projects that had commenced under more optimistic projections of expected financial assistance.<sup>29</sup>

Africa's focus on external economic constraints shaped previous governmental policies aimed at solving the continent's development dilemma. In the early 1970's, African representatives were instrumental in prompting the United Nations to draft new rules for international economic cooperation, culminating in the adoption of the New International Economic Order (NIEO).<sup>30</sup> The NIEO does not attempt to reform economic policy in developing nations. Instead, the NIEO protects the freedom of developing nations to individually structure their own economic systems. Additionally, the NIEO encourages the international community to increase economic aid, lower trade barriers, and support programs which would improve world prices for primary products.<sup>31</sup> Similarly, the 1980 Lagos Plan of Action for Africa's Economic Development, adopted by member states of the OAU, does not endorse the need for domestic policy reforms as an important component of the region's economic development strategy. Instead, the central theme of the Lagos Plan is the integration of African economies into a common market.<sup>32</sup>

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<sup>27</sup> *Crisis upon Crisis*, WEST AFRICA, Jan. 14, 1985, at 52.

<sup>28</sup> The index "terms of trade" measures the average price of a country's exports against the average price of its imports. If the prices of imports rise relative to exports, then the terms of trade for that country deteriorates. See M. GILLIS, *ECONOMICS OF DEVELOPMENT* 420 (1983); *Poor Man's Gift*, THE ECONOMIST, Nov. 30, 1985, at 15. One study shows the terms of trade for developing countries exporting agriculture and raw materials as having deteriorated by 45% and 28% respectively, between 1957 and 1982. Singer, *The Terms of Trade Controversy and the Evolution of Soft Financing: Early Years in the U.N.*, in PIONEERS IN DEVELOPMENT 275, 289 (G. Meier & D. Seers eds. 1985).

<sup>29</sup> El-Issaway, *The Aid Relationship and Self-Reliant Development in Africa*, in ECONOMIC CRISIS IN AFRICA, *supra* note 23, at 131. The inflow of external resources or "aid" into Africa, both from private sources on commercial terms, and from governmental and non-governmental sources at concessional rates has declined. For instance, since 1985 U.S. aid to Africa has decreased by almost 50%. N.Y. Times, Jan. 9, 1987, at A3, col. 1; Greenberger, *Favored Few Allies Get Most of U.S. Aid As Struggling Democracies Receive Little*, Wall Street J., Feb. 2, 1987, at 15. For an earlier study expressing similar concern about a downward trend in the levels of development assistance see the "Pearson Report" prepared in 1969 by the Commission on International Development.

<sup>30</sup> The main elements of the NIEO are contained in the following resolutions: 1) The Charter of Economic Rights and Duties of States, UN GA Res. 3281 (XXIX), December 1974, *reprinted in* 14 I. L. M. 251 (1975); 2) The Declaration on the Establishment of an NIEO, UN GA Res. 3201 (S-VI), May 1974; and 3) A Program of Action for an NIEO, UN GA Res. 3201 (S-VI), May 1974, *reprinted in* 13 I. L. M. 715, 720 (1974). For an excellent historical account of the UN's deliberations on these resolutions, see R. MEAGHER, *AN INTERNATIONAL REDISTRIBUTION OF WEALTH AND POWER: A STUDY OF THE CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES* (1979). See also *NEW INTERNATIONAL ECONOMIC ORDER: A THIRD WORLD PERSPECTIVE* (P. Ghosh ed. 1984).

<sup>31</sup> MEAGHER, *supra* note 30, at 2-5.

<sup>32</sup> Browne & Cummings, *Prospects for Long Term African Change: The Lagos Plan of Action Versus the Berg Report*, in *FOOD IN SUB-SAHARAN AFRICA* 349 (A. Hansen & D. McMillan eds. 1986) [hereinafter *FOOD IN SUB-SAHARAN AFRICA*]. Cf. ECA 1984 Review of Africa. The recommendations

B. *New Insight: Focus on Internal Weaknesses*

The persistent economic difficulties in Sub-Saharan Africa have tainted the optimism that formerly characterized Africa's quest for economic development. Stagnated economic development has prompted the query: "[h]ow have we come to this sorry state of affairs in the post-independence years which seemed at the beginning to have held so much promise?"<sup>33</sup> The response is a sobering consensus among African governments that their deteriorating economic position is due to inappropriate economic strategies and policies pursued in the past. The OAU's Secretary-General noted in a recent commentary that: "[w]e have accepted . . . that we have been encumbered by our own errors, . . . [Africa's leaders] are responsible, in part, for what is happening on the continent."<sup>34</sup>

Certain past economic policies have been criticized.<sup>35</sup> First, many African leaders did not regard the agricultural sector as a priority and implemented economic policies that stifled agricultural output. Typically, governments determined official prices for farm products and set these prices at levels that failed to provide meaningful remuneration for farmers. Undoubtedly, depressed farm prices contributed to declining farm output as well as encouraging smuggling of agricultural products across national borders.<sup>36</sup> For example, in Zambia, farmers have smuggled products to neighboring Zaire to take advantage of higher prices for their produce in that country. In 1983, a Zambian maize farmer could obtain almost double the official Zambian price for maize by selling in Zaire.<sup>37</sup> Similarly, in Ghana it has been estimated that in 1977 about 40,000 tons of cocoa, representing approximately 12% of total output were lost through smuggling to neighboring countries. This smuggling is costly for national governments. It is estimated that the Ghanaian government lost \$100 million in scarce foreign exchange to agricultural smuggling.<sup>38</sup>

Second, in addition to controlling farm prices, many governments regulated the marketing of agricultural products through official state agencies.<sup>39</sup> Organizational and financial deficiencies limited the ability of these agencies to promise farmers an outlet for their products, provide marketing and storage services or make timely payments for purchases. For instance, because of bureaucratic inefficiencies in Zambia's National Agricultural Marketing Board (NAMBORD), a significant portion of 1985 crops could not be harvested or transported to markets within or outside of Zambia.<sup>40</sup> Similarly, the

in that report on internal measures governments should pursue to improve agricultural output center on improving water conservation and management, increasing land area under cultivation, and determining an appropriate balance between food and export crop production. Although important, these prescriptions do not promote domestic reforms aimed at providing greater incentives to farmers. *Id.* at 53.

<sup>33</sup> Quoted in Lancaster, *Africa's Development Challenges*, 84 CURRENT HIST. 145 (1985).

<sup>34</sup> AFRICA REPORT, July-Aug. 1986, at 9, 10.

<sup>35</sup> See generally AFRICA'S SUBMISSION TO THE UN, *supra* note 5, at 71-75.

<sup>36</sup> Wangwe, *supra* note 15, at 1044; Asante, *Food as a Focus of National and Regional Policies in Contemporary Africa*, in FOOD IN SUB-SAHARAN AFRICA, *supra* note 32, at 11, 16.

<sup>37</sup> Good, *Systemic Agricultural Mismanagement: The 1985 "Bumper" Harvest in Zambia*, 24 J. MOD. AFR. STUD. 257 (1986).

<sup>38</sup> See *Food and Agriculture Crisis in Africa*, *supra* note 20, at 169, 193.

<sup>39</sup> Zambia's 1969 Agricultural Marketing Act No. 30, created a state owned National Agricultural Marketing Board which had authority to control virtually every aspect of purchasing, transporting, storing, and domestic and international marketing of farm products.

<sup>40</sup> Good, *supra* note 37.



Tanzanian government has a monopoly on purchasing, transporting and marketing arrangements for the country's main agricultural products. In 1986, world prices for coffee, one of Tanzania's main agricultural exports, increased substantially. Inefficiency in the state-owned agricultural agency, however, prevented Tanzania from taking full advantage of this favorable market situation.<sup>41</sup>

Third, although seeking to accelerate industrial growth, African governments embraced exchange rate policies that, in retrospect, were counter productive. Formerly, currency exchange rates were deliberately overvalued to facilitate imports of industrial raw materials, machinery and equipment.<sup>42</sup> Cheap access to foreign exchange, however, fueled a high demand for and rapidly depleted currency reserves. As foreign currency reserves became scarce, governments imposed strict currency controls such as import licensing requirements on international transactions.<sup>43</sup> Consequently, industrial enterprises did not have the foreign exchange needed to purchase industrial materials. Hence, they were forced to reduce industrial capacity.

The maintenance of overvalued domestic currencies produced additional negative effects on African economies. Domestic industries were placed at a competitive disadvantage by a flood of inexpensive imported goods. Similarly, exporters were disadvantaged since they earned fewer units of domestic currency for each unit of export. Foreign investors received a smaller domestic equivalent for capital imported into African countries with overvalued currencies. Overall, these factors discouraged the production of goods for export and created an unfavorable environment for foreign investment.

Fourth, excessive involvement by African governments in their economies by directly engaging in productive activity or through close regulation of industrial activity is disfavored. The emerging view is that government involvement is costly and imposes financial strains on public resources. Public enterprises, generally, have not been successful commercially and have required massive government subsidies to maintain production.<sup>44</sup> For instance, Cameroon's state-owned National Investment Company has incurred significant losses in recent years because the companies in which it has a significant or controlling interest have not been profitable.<sup>45</sup>

Generally, Africa's contemporary economic attitude is that success in achieving its goal of economic development will result as much from proper attention to domestic policy and institutional weaknesses, as from redressing unfavorable conditions in the international economic environment. Accordingly, at the OAU's 1985 summit meeting, African leaders adopted an economic plan known as Africa's Priority Program for Economic Recovery, 1986-1990, (APPER), that sets forth Africa's commitment to implement domestic reforms and increase attention to agriculture as the heart of the conti-

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<sup>41</sup> National Public Radio Broadcast, August 1986.

<sup>42</sup> It is estimated that between 1970 and 1980, at least 20 African governments experienced significant currency appreciations ranging from 200% in Zaire, to 1000% in Uganda. See Berg Statement, *supra* note 20, at 9a.

<sup>43</sup> See e.g., NIGERIA: INVESTING, LICENSING & TRADING 18 (Business International Corp. 1986) [hereinafter NIGERIA: ILT].

<sup>44</sup> Nigeria, 1986 Budget Speech by President Babangida, at 14 (many state enterprises constitute "an unnecessarily high burden on government resources.") For a review of the rapid growth of public sector enterprises in Africa see Ndulu, *Governance and Economic Management*, in STRATEGIES FOR AFRICAN DEVELOPMENT 81 (R. Berg & J. Whitaker eds. 1986).

<sup>45</sup> FINANCIAL TIMES, June 3, 1986. See also AFRICA NOW, Aug. 1986, at 8.

ment's short-term economic growth.<sup>46</sup> At the recent United Nations special session on Africa, continuing support for this line of action was reiterated by African leaders to the international community. African leaders stressed that the APPER plan is "an unambiguous sign of full commitment on [their] part . . . to undertake . . . policy measures that will remedy the short-comings of past approaches."<sup>47</sup>

### III. CURRENT ECONOMIC REFORMS

Currently, African nations are attempting to correct their economic weaknesses by implementing "far-reaching adjustments and policy reforms necessary for laying the foundations of economic recovery."<sup>48</sup> The specific initiatives that individual African nations have instituted address three major economic issues. First, agricultural reforms seek to increase producer prices and to deregulate marketing to allow the private sector to purchase and export farm products. Second, exchange rates of local currencies are being revaluated and official controls on private access to foreign reserves are being relaxed. Third, governmental regulation of investment and trading transactions is being modified to increase private sector activity and to attract foreign investment.<sup>49</sup>

#### A. Agricultural Reforms

Many governments have raised official prices or allowed farmers to obtain higher market prices for their products by selling directly to private purchasers. In Nigeria, the official price for cocoa increased by nearly 25% in 1986. In Ghana, the Rawlings government in 1983 launched what was labeled the Economic Reform Program wherein a range of internal changes including higher prices for farm products were instituted. The official price for cocoa, Ghana's primary export crop, increased by over 140% between 1983 and 1985.<sup>50</sup> Similarly, the Tanzanian government announced price increases from 30% to 80% for its major agricultural products including coffee, cocoa, cotton and tobacco.<sup>51</sup> The Sierra Leonian government likewise has raised producer prices for a variety of commodities, notably ginger, cotton, cocoa and palm kernels.<sup>52</sup>

In addition to increased producer prices, many governments have provided additional incentives to farmers by liberalizing agricultural marketing. In some countries state agencies have been eliminated, leaving the marketing of agricultural commodities to private entrepreneurs. Private marketing allows farmers access to higher market prices for their produce rather than forcing them to smuggle their products across national boundaries. In other countries, state-owned marketing agencies have been restructured

<sup>46</sup> *The OAU Summit, supra* note 3.

<sup>47</sup> AFRICA'S SUBMISSION TO THE UN, *supra* note 7, at 30.

<sup>48</sup> ECA 1986 End of Year Statement, by A. Adedeji, Executive-Secretary, *reprinted in* WEST AFRICA, Jan. 12, 1987, at 57.

<sup>49</sup> Many governments have not only encouraged private sector activity but have reduced their direct involvement in economic enterprises by selling state-owned businesses to the private sector. See AFRICAN RESEARCH BULLETIN (ECONOMICS), Mar. 31, 1986, at 815C (Mali); AFRICA NOW, Aug. 1986, at 10 (Tanzania); WEST AFRICA, Nov. 10, 1986, at 2351 (Republic Du Benin); Hirschhoff, *Togo: The Privatisation Drive*, AFRICA REPORT, July-Aug. 1986, at 92.

<sup>50</sup> AFRICA REPORT, May-June 1986, at 63; FINANCING ADJUSTMENT WITH GROWTH, *supra* note 2, at 19.

<sup>51</sup> See *Mwinyi Government Launches Economic Recovery Plan*, AFRICA NOW, Aug. 1986, at 36.

<sup>52</sup> WEST AFRICA, July 26, 1986, at 1601.

to operate on a commercial basis, accompanied by measures to enhance the efficiency of their buying and marketing functions. Ghana, Tanzania and Zambia, for instance, have not abolished state trading agencies, but have reorganized them to improve their operating capabilities. The goal is to operate state trading agencies as commercial profit-oriented entities.<sup>53</sup> Senegal and Somalia, for example, allow private traders to market some products. In addition, both countries terminated their state groundnut and cereals marketing agencies in 1980 to 1981. In Mali the law prohibiting private trade in coarse grain was abolished in 1981 and, in the following year, groundnut marketing was opened to private traders. In 1984, the government of Zaire ended the state monopoly in coffee marketing by liquidating its coffee marketing board.<sup>54</sup>

An increase in domestic and foreign investment in agriculture will inevitably follow the new focus on farming.<sup>55</sup> Formerly, foreign investment in Sub-Saharan Africa was concentrated in the mining industry. In 1967, only 7.5% of foreign investment in Africa was in agriculture, compared to the 50% in mining and the 20% in manufacturing.<sup>56</sup> The statistics for individual nations such as Nigeria reflect a wider disparity. In 1977, foreign investment in Nigeria accounted for 35% share of the total capital invested in oil, 64% of capital invested in manufacturing and commerce, and a mere 1% invested in agriculture.<sup>57</sup> Thus, in light of Africa's promotion of agriculture and the resulting increase in foreign investment in that sector, attorneys will need to develop expertise within the agricultural area to enable them to give effective advice on business ventures in that sector.<sup>58</sup>

### B. Foreign Exchange Controls

Several governments, notably Zambia, Ghana, Gambia, Nigeria, Sierra Leone and Madagascar, have eased their shortage of foreign exchange by increasing the cost of foreign currency, thus, reducing the demand for it. This has been achieved principally by reducing the overvalued exchange rates of their local currencies. Overvalued currencies are reduced according to market forces. In Mauritania and Tanzania, the central banks determine the exchange rates and preside over allocation to domestic users. In

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<sup>53</sup> Berg Statement, *supra* note 20, at 10.

<sup>54</sup> *Id.* at 10; ZULU & NSOULI, *supra* note 4, at 18. See also *Gambia: Living With the Economic Recovery Program*, WEST AFRICA, Oct. 20, 1986, at 2208. Nigeria terminated state agricultural marketing boards on exports of produce under Section 3(5) of the 1986 Export Incentive and Miscellaneous Provisions Decree No. 18. Subsequently, the government reconsidered this decision and stated its intention to retain those boards as commercial entities. Private parties may nevertheless continue to purchase and sell farm products on domestic and international markets. See WEST AFRICA, Jan. 19, 1987, at 126.

<sup>55</sup> Statement by Adebayo Adedeji, before House Comm. on Foreign Affairs, Subcomm. on Africa, Aug. 7, 1986, at 14 (calling for increased private investment to Africa's agricultural sector.) [hereinafter Adedeji Statement].

<sup>56</sup> Green, *Foreign Direct Investment and the African Political Economy*, in INDIGENIZATION OF AFRICAN ECONOMIES 332, 338 (A. Adedeji ed. 1981). Within this average, a few countries, notably Cote d'Ivoire, Senegal, and Tanzania, attracted over 30% of foreign investment into their agricultural sectors.

<sup>57</sup> NIGERIA: ILT, *supra* note 43, at 3.

<sup>58</sup> Currently large multi-national corporations are negotiating investments in large-scale farms or in agri-related manufacturing enterprises in Nigeria, Zambia, and Guinea. See AFRICA RESEARCH BULLETIN (ECONOMICS), July 31, 1986, at 8330 (US company to invest in major fisheries project in Guinea); Good, *supra* note 37, at 278.

Zambia, Ghana and Nigeria foreign currency is auctioned off by the central bank.<sup>59</sup> In the latter cases, private access to foreign exchange has been enhanced.

Since the inception of the auction system in Nigeria, the external value of the local currency, the Naira, has fallen from approximate parity with the U.S. dollar to between three to four Naira to the dollar.<sup>60</sup> The Tanzanian government officially devalued its local currency, the Shilling, by 40% in its June 1986 budget.<sup>61</sup> In Zambia, the value of the local currency, the Kwacha, fell from 2.4 Kwacha to the dollar in September 1985, to 6.4 Kwacha to the dollar by February of 1986.<sup>62</sup> In its 1986-87 budget, the Sierra Leonian government, as part of a series of economic reforms, announced a reduction in the exchange rate of its currency, the Leone, from five to twelve Leones to the dollar.<sup>63</sup>

In addition to easing the domestic demand for foreign currency, a second objective of currency depreciation is to increase foreign investment in Africa. Past policies which favored overvalued African currencies discouraged foreign investment. Reductions in overvaluation are to the foreign investor's advantage because an investor will receive more local currency for imported capital. Export-oriented activities will benefit from reductions in the overvaluation of African currencies as exporters receive more money in local currency for repatriated earnings.

To further encourage exports, a number of governments have modified regulations which required exporters to surrender to their respective central banks all export earnings for conversion into local currency. Under Nigeria's 1986 Export Incentives and Miscellaneous Provisions Decree, exporters may retain a share of their export earnings in special bank accounts within Nigeria in foreign currency. Exporters are allowed to retain foreign currency earnings in order to finance their business and as an incentive for export activity.<sup>64</sup> Similarly, Zambia's 1986 Investment Act allows exporters to retain 50% of their foreign currency earnings.<sup>65</sup>

These reforms are only a partial loosening of restrictions on international transactions. By requiring exporters to deposit their retained earnings of convertible currency in local banks, exporters are not fully assured of access to their funds when needed. In Tanzania, businesses have complained about the government's inability, due to shortages of foreign currency, to make private retained earnings available upon demand.<sup>66</sup> Gov-

<sup>59</sup> See Nigeria Second-Tier Foreign Exchange Market Decree No. 23 of 1986. *SFEM (Second-Tier Foreign Exchange Market) Finally Arrives*, NEWSWATCH, Oct. 13, 1986, at 14 (Nigeria); WEST AFRICA, Sept. 22, 1986, at 169 (Ghana). The auction system works as follows: Typically, the Central Bank sells available foreign exchange to commercial banks on a weekly basis. The commercial banks submit sealed bids indicating the amount of currency they wish to purchase and at what rate in local currency. The marginal bid rate, the rate at which the Central Bank ultimately sells, is that which exhausts available supply, i.e. it satisfies all bids, at or above that rate. See also Mwananshiku, *Zambia: From Reform to Recovery*, AFRICA REPORT, May-June 1986, at 33.

<sup>60</sup> WEST AFRICA, Jan. 26, 1987, at 168.

<sup>61</sup> SOUTH, Nov. 1986, at 11.

<sup>62</sup> AFRICA RESEARCH BULLETIN (ECONOMICS), Feb. 28, 1986.

<sup>63</sup> AFRICA RESEARCH BULLETIN (ECONOMICS), July 31, 1986, at 8286.

<sup>64</sup> Section 1(1) Export (Incentives and Miscellaneous Provision) Decree No. 18, 1986. The decree allows exporters to retain 25% of their export earnings — an increase from 10% when the initiative was first introduced the previous year. See Section 4(3) Foreign Currency (Domiciliary Accounts) Decree No. 18, 1985. See also J. DOBKIN, INTERNATIONAL JOINT VENTURES 15-16 (1986); AFRICA RESEARCH BULLETIN (ECONOMICS), Mar. 31, 1986, at 8116C.

<sup>65</sup> See AFRICA ECONOMIC DIGEST, Sept. 19, 1986; Mwananshiku, *supra* note 59.

<sup>66</sup> AFRICA RESEARCH BULLETIN (ECONOMICS), Mar. 31, 1986, at 8116C.

ernments should consider allowing exporters to retain their share of export earnings, but condition this privilege on the government's ability to take existing earnings into consideration when evaluating an exporter's application for foreign currency. In this regard, lawyers could play a critical role in drafting legislation that would meet the interests of both parties.

### C. Deregulation of Trade and Investment

During the new reform era, many African countries have sought to formalize these economic reforms by enacting legislation and administrative regulations to provide an appropriate legal framework that would attract domestic and foreign investment.<sup>67</sup> Licensing requirements of imports and exports have been eased significantly in many countries to boost international trade.

Zambia, for instance, recently passed two new laws: the Export Development Board Act and the Investment Act, which set forth the legal and regulatory framework for business activity.<sup>68</sup> The Investment Act for the first time extends substantial tax and foreign exchange benefits to the agricultural sector. The Act repeals a rule which required the licensing of exports. Currently, potential exporters are only required to register pending transactions with a government agency. Senegal and Zaire also have revised their industrial investment laws to reflect the liberalization of their economies and to simplify administrative formalities that precede investment.<sup>69</sup>

New incentives for foreign investment have been introduced in Nigeria. Foreign investors in 1987 will enjoy a three year tax holiday on dividends earned on equity investments in Nigerian corporations, provided the equity interest is at least 10% of the corporation's capital share.<sup>70</sup> In addition, Nigeria has relaxed import and export controls. Unless a product is prohibited from being imported, an importer is not required to obtain an import license.<sup>71</sup> Under Nigeria's 1986 Export Incentives Decree, exporters of Nigerian products other than raw or unprocessed mineral and agricultural commodities are not required to obtain an export license.<sup>72</sup>

## IV. THE CHANGING BUSINESS AND LEGAL ENVIRONMENT

The impact of changes in the economic factors and regulatory framework that will confront international lawyers and clients while doing business in Africa extends beyond acquiring a familiarity with an emerging body of law. Certain aspects of the economic reform heighten the need for legal skills in African business transactions. For instance, although African governments agree that they must implement market oriented solutions

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<sup>67</sup> See *supra* notes 58-65 and accompanying text.

<sup>68</sup> Mwananshiku, *supra* note 59. For a summary of some of the key provisions of the Investment Act, see AFRICA ECONOMIC DIGEST, Sept. 19, 1986.

<sup>69</sup> AFRICA RESEARCH BULLETIN (ECONOMICS), Mar. 31, 1986, at 8136; AFRICA RESEARCH BULLETIN (ECONOMICS), Apr. 30, 1986, at 8170A.

<sup>70</sup> 1987 Budget Statement by Federal Minister of Finance, at 35 (Jan. 2, 1987). If the corporation paying exempt dividend is engaged in agriculture related activities, the tax holiday is extended to a maximum of five years [hereinafter 1987 Budget Statement].

<sup>71</sup> WEST AFRICA, July 7, 1986. Nigeria's requirement of import licenses for over 100 new items in 1983, for example, provides a sense of the severity of past regulations. See Faletti, *Investing In Nigeria: the Law, Good Intentions, Illusion and Substance*, 5 N.W.J. INT'L L. & BUS. 743 (1983).

<sup>72</sup> See *supra* note 64 and accompanying text for a discussion of the *Export Incentives Act*.

for their economic problems, individual countries are at different stages of economic development and pursue different policies to implement this consensus.<sup>73</sup> Therefore, it is crucial that lawyers are wary of utilizing the overall commitment to domestic reforms as a basis for arriving at generalizations about the specific economic and legal framework of individual countries. More importantly, domestic opposition and governmental indecision has decreased the momentum of some reforms, thereby risking the security of commercial transactions. As a result, there is a need for international lawyers who understand the economic rationale affecting Africa's business and legal environment.<sup>74</sup> Evaluating the nature and extent of domestic opposition to economic reform and the effect of governmental indecision will guide international lawyers representing business ventures in Africa.<sup>75</sup>

#### A. Political Risks: Domestic Opposition

Present economic reforms have not been universally popular, particularly among the numerically small, but politically significant, urban wage earner whose income is eroded through the inflationary impact of price increases for farm products on food prices. Similarly, business enterprises dependent upon imported factory materials which become more expensive following currency devaluations have expressed objections to the present reforms.<sup>76</sup> In Zambia, domestic opposition to the government's elimination of subsidies on popular food items culminated in street riots in some parts of the country in December of 1986. The government was ultimately forced to reinstate the subsidies.<sup>77</sup> Yet, forecasts of uniform domestic opposition have been incorrect. Overall, the reaction to economic reforms is characterized by a calm tolerance of attendant hardships and a willingness to undergo necessary sacrifices.<sup>78</sup> Ghana's reforms, for example, have enjoyed substantial support, particularly among the key professional and managerial classes in that society.<sup>79</sup>

Moreover, it appears that African leaders considering the interest of their nations as a whole, focus their attention on the majority of their population who depend on

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<sup>73</sup> As noted earlier, Tanzania and Nigeria have both relaxed administrative controls on exchange rates and international transactions, although in different ways. In Nigeria, the government operates a second-tier market wherein market forces largely determine exchange rates (though not exclusive of some official manipulation). The Tanzanian government, on the other hand, still sets exchange rates by administrative fiat and has not eased private access to foreign exchange quite as much.

<sup>74</sup> New business ventures have been initiated during this period of reform. Indeed, there are plans for the establishment of an African Investment Corporation, an equity company involving African and non-African investors to finance private ventures in Africa. *African Investment: Pursuit of Excellence*, SOUTH, Sept. 1986, at 97.

<sup>75</sup> For convenience, the discussion on domestic opposition to present reforms and governmental action reversing certain changes are considered separately.

<sup>76</sup> WEST AFRICA, Nov. 17, 1986, at 2427 (director of leading automobile assembly plant in Nigeria utilizing imported parts calling for abolition of currency auction system and return to previous policy of administratively determined higher exchange rates). It has been argued that the serious inflationary tendencies in many countries following higher official or market prices, is unlikely because transactions already take place unofficially at lower rates in parallel markets. Berg Statement, *supra* note 20.

<sup>77</sup> *An IMFallible Leader*, THE ECONOMIST, Jan. 12, 1987, at 69.

<sup>78</sup> WEST AFRICA, Jan. 20, 1986; *Life in the Second-Tier*, WEST AFRICA, Nov. 17, 1986, at 2391; ECA 1986 End of Year Statement, *supra* note 48.

<sup>79</sup> Rado, *Notes Towards a Political Economy of Ghana Today*, 85 AFR. AFF. 563, 569 (1986).

agriculture as their means of livelihood rather than concentrating on a small urban minority. Realizing that dissent may occur, Prime Minister Robert Mugabe of Zimbabwe recently stated that:

African governments and peoples are becoming increasingly aware that they, more than anybody else, must play a major role in their continent's economic regeneration. They are aware of their responsibility to effect and ensure the success of painful structural adjustment measures, which may not be without serious political and social consequences.<sup>80</sup>

Similarly, President Momoh of Sierra Leone in a recent speech urged his countrymen to be patient and endure the sacrifices concurrent with the policy reforms his government has undertaken.<sup>81</sup>

Nevertheless, some analysts, question the commitment of African leaders to implement promised reform. Pressure to implement reforms comes from Western donor countries and multilateral lending agencies such as the World Bank and the International Monetary Fund (IMF) who make international aid contingent upon the adoption of domestic policy reforms. Thus, some analysts view African governments as committed to embracing reforms only to the extent necessary to secure external financing.<sup>82</sup> The actual implementation of reform programs in countries like Ghana, Somalia, and Mali within the context of IMF adjustment programs lends credence to this view.<sup>83</sup>

Although external agencies have encouraged domestic reforms, "donor power" alone is not responsible for the present economic initiatives. Additional considerations have shaped domestic economic reforms. For instance, in 1985, Nigeria refused an IMF offer of a \$2.5 billion loan which was conditional upon Nigeria's implementation of a number of domestic economic adjustments, such as reductions in the exchange rate of its local currency and liberalization of its economy. Although these domestic economic adjustments are staple IMF requirements, Nigeria implemented many of these suggested reforms without IMF support.<sup>84</sup>

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<sup>80</sup> AFRICA REPORT, Nov.-Dec. 1986, at 46.

<sup>81</sup> AFRICA REPORT, Sept.-Oct. 1986, at 39. With respect to hardships that may attend present reforms, African states should temper present market oriented initiatives with some social policies aimed at alleviating the conditions of vulnerable classes of society. The potential results of failure to adapt such policies is glaring when one considers the case of Malawi. In Malawi, behind the gloss of sustained economic growth achieved largely through market oriented economic policies and a strong farming sector, are large numbers of poor people with unimproved standards of living, high mortality rates and low literacy rates. Harden, *West's Capitalist Credo Costing Lives in Malawi*, Washington Post, Dec. 31, 1986, at A1. See also *Adjusting to Recession: Will the Poor Suffer?* (Overseas Development Institute, 1986). Nigeria's example of coupling domestic reforms with increased expenditure on primary education, housing and preventive health care, is instructive. See AFRICA RESEARCH BULLETIN (ECONOMICS), Mar. 31, 1986, at 8125.

<sup>82</sup> Mosley, *The Politics of Economic Liberalization: US Aid and the World Bank in Kenya, 1980-1984*, 85 AFR. AFF. 107, 111 (1986); *Zambia: An IMFallible Leader*, *supra* note 77, at 29.

<sup>83</sup> In Kenya, despite the leverage donors exercise in terms of its pursuit of specific domestic policies, the Kenyan government was able to obtain necessary funds yet resist reforms that it was fundamentally opposed to. For a review of IMF programs in Africa, see ADJUSTMENT PROGRAMS IN AFRICA, *supra* note 2.

<sup>84</sup> See *All Quiet on IMF Front?*, WEST AFRICA, Dec. 23-30, 1985, at 2677; Gargan, *Nigeria's Economy Faces New Burden*, N.Y. Times, Jan. 27, 1986, at D1, col. 1. The previous military administration of Mohammed Buhari began negotiations with the IMF. The Buhari government signaled its determination to undertake some painful domestic reforms irrespective of the successful nego-

Moreover, African leaders, conscious of their lagging economic performance compared to other developing nations similarly affected by the vicissitudes of the international economy, are convinced of the need to undertake domestic policy initiatives to stimulate their economies. In a sense, African governments may be utilizing the involvement of external donors in their economies to deflect criticism on economic policies which they are committed to implement.

#### B. *Investment Insecurity: Rule Changes*

In the process of restructuring their economies, a number of countries have modified trading and investment rules and regulations to strengthen the rôle of the government in economic activity, rather than allowing market forces to shape economic activity. Zaire, for instance, praised for successfully implementing economic reforms, in 1986 suspended its policy of floating exchange rates for its currency in favor of a return to administratively fixed rates. Zaire also curtailed private access to foreign currency.<sup>85</sup> In Uganda, the government recently introduced new legislation expanding the control of the state agricultural marketing agency over non-traditional exports of maize, groundnuts and soybeans. Previously, private purchasing and marketing of these products had been permitted.<sup>86</sup>

These changes alter fundamental economic and legal assumptions that previously regulated outstanding business transactions. In addition, these changes introduce a degree of uncertainty into the economic and investment climate. This instability erodes investor confidence in an economy, and therefore, tends to discourage investments. In Uganda, for instance, the recently imposed governmental controls on marketing have disadvantaged parties with outstanding agreements to export previously unregulated products. Zaire's introduction of administrative controls on access to foreign currency potentially could undermine its goal of furthering international transactions in the absence of secure assurances that needed foreign exchange will be available for such transactions. It is crucial that lawyers take steps to protect their clients by anticipating similar changes in government policy.

While the foregoing examples sharpen concern about the stability of Africa's market oriented economic policy, it is important to note that trends indicate an expansion of reforms to encourage private sector activity. A study of thirty-two Sub-Saharan African states found that between 1980 and 1984 substantial currency depreciations of more than 10% have occurred in seven nations.<sup>87</sup> Since 1984, however, four additional countries have substantially devaluated their currencies.<sup>88</sup> In Gambia, the local currency was depreciated by over 50% during 1986.<sup>89</sup> When Tanzania announced in its 1984-85

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tiations with the organization. In his 1984 budget speech, President Buhari affirmed that "whether or not we are able to reach complete agreement with the IMF this country will have to rely more on its own efforts and resources to improve its economic situation. Nigerians must be ready to make sacrifices." See also SOUTH, Aug. 1986, at 11 ("the center piece of UN special session was Africa's own package of reforms, set out in the self-critical appraisal APPER adopted in 1985 by the OAU...").

<sup>85</sup> See FINANCIAL TIMES, Oct. 31, 1986; WEST AFRICA, Nov. 24, 1986.

<sup>86</sup> *Cost of Living Soars As Revenue Falls*, AFRICAN BUSINESS, Jan. 1987, at 44.

<sup>87</sup> Berg Statement, *supra* note 20, at 9.

<sup>88</sup> See ADJUSTMENT WITH GROWTH, *supra* note 2, at 15.

<sup>89</sup> *For Better or Worse, Reforms Affect All*, AFRICAN BUSINESS, Jan. 1987, at 51. In February 1987 Ghana expanded the coverage of its foreign currency auctions to include all international transac-



budget a modest 30% devaluation of its currency with increased agricultural producer prices, domestic political opposition was expected to stymie these changes.<sup>90</sup> This, however, did not occur and the government has steadily implemented new reforms, while expanding existing ones.

In light of this trend, the implementation of reforms by African countries has been described as a "movement," one which is "growing virtually everyday."<sup>91</sup>

## V. CONCLUSION

In the long run, determined leadership as well as public tolerance ultimately will depend on the materialization of positive economic results. Although firm conclusions may not be drawn at this time, available evidence justifies some measure of optimism about the success of current economic reforms. The new emphasis on agriculture was successful in 1986 when Africa's agricultural output grew by over 3% resulting in growth in farm output per person for the first time in over a decade.<sup>92</sup> Ghana has succeeded in reversing over a decade of declining economic performance and, since 1983, its strong agricultural sector has registered significant growth rates.<sup>93</sup> Ghana also recorded a large trade surplus from January to June 1986 due to expanded agricultural exports, incentives to the farming sector, and revisions in exchange rates.<sup>94</sup>

In Nigeria, economic reforms have "unleashed a wealth of domestic production activity [whereas] Nigerians previously talked mainly of trading."<sup>95</sup> The official view in Nigeria is optimistic. The government is convinced that reforms in the agricultural sector in 1986 contributed to a "substantial increase in total agricultural production."<sup>96</sup> In addition, Nigeria's industrial activity has improved because of the elimination of cumbersome currency and licensing controls as well as the depreciation in the external value of the local currency. In Tanzania, increased food production in 1985 was largely attributable to higher prices paid to farmers.<sup>97</sup> In Togo, after four years of declining growth in 1984-85, the country registered a strong 5.5% increase in GDP due primarily to expanding agricultural production and cotton production doubling from the previous levels. The country's strong growth continued into 1986, with GDP exceeding 5%.<sup>98</sup>

Zambia's economy reacted favorably following the introduction of domestic reforms.<sup>99</sup> In Zambia, cotton and maize production increased by over 20% from 1983 to 1985. The amount of maize marketed is estimated to have increased by over 55% between

tions, public and private. Henceforth, all transactions involving foreign currency will be carried out at a single market determined rate. WEST AFRICA, Mar. 2, 1987, at 404.

<sup>90</sup> Lofchie, *supra* note 22, at 184.

<sup>91</sup> Adedeji Statement, *supra* note 55, at 7.

<sup>92</sup> ECA 1986 End of Year Statement, *supra* note 48, at 57.

<sup>93</sup> AFRICA'S SUBMISSION TO THE UN, *supra* note 5, at 118. The agricultural sector grew by 0.7% in 1985 up from -6.4% in 1982, and 7.6% in 1984 and 5.3% in 1985. Agricultural output for maize jumped from 172,000 tons in 1983 to 548,000 in 1985; cocoa up from 158,000 in 1983 to 200,000 in 1985. See WEST AFRICA, Jan. 20, 1986.

<sup>94</sup> WEST AFRICA, Nov. 10, 1986, at 2378. See also AFRICA REPORT, Sept.-Oct. 1986, at 44.

<sup>95</sup> WEST AFRICA, Nov. 24, 1986, at 2442.

<sup>96</sup> 1987 Budget Statement, *supra* note 70, at 52.

<sup>97</sup> SOUTH, Nov. 1986; AFRICA RESEARCH BULLETIN (ECONOMICS), July 31, 1986, at 8289.

<sup>98</sup> Hirschhoff, *supra* note 49; ECA 1986 End of Year Statement, *supra* note 48, at 57; FINANCING ADJUSTMENT WITH GROWTH, *supra* note 2, at 20.

<sup>99</sup> Mwananshiku, *supra* note 59.

1984 and 1985, nearly meeting Zambia's domestic consumption requirements for the first time since 1976.

The successful recovery of African economies does not depend solely on domestic reforms. Substantial inflows of foreign investment and financial aid are necessary to spur development. In addition, alleviation of the external debt obligations of many countries will be necessary so that scarce resources, which may otherwise be invested in productive enterprises, are not unduly diverted towards debt servicing repayments. Indeed, at the United Nations special session on Africa, President Diouf of Senegal, on behalf of African debtor nations, warned that "it is illusory to hope that [African] economies can grow at the required rate if the debt and debt servicing questions are not resolved."<sup>100</sup> In 1986, Zaire's reversals of simplified foreign currency exchange regulations and the unilateral imposition of a ceiling on the repayment of its external debt obligations have, for instance, been linked to the failure of the international community to support its reforms with increased aid and reduce its debt burden.<sup>101</sup>

As governments and business ventures adjust to the rapidly changing business and regulatory framework in Africa, the need for lawyers cannot be overemphasized. This article is not only meant to provide information about ongoing economic reform in Africa, but also to indicate the positive contribution these reforms have had on the African economy and business opportunities in Africa. More importantly, lawyers representing clients in developing nations in Africa must understand the rationale or justifications supporting economic policy reforms. Contemporary economic reform in Africa reflects Africa's realization that economic development will result only through self-help. The challenge for international lawyers is, first, to anticipate economic reform or changes in government policies so as to effectively advise clients on business transactions in Africa. Second, developing nations, like those of Sub-Saharan Africa, need lawyers to draft legislation, contracts and business ventures which will enable developing nations to avoid the confusion and inefficiency that may hinder their first institutional steps to economic development.

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<sup>100</sup> AFRICA RESEARCH BULLETIN, June 30, 1986, at 8223.

<sup>101</sup> See FINANCIAL TIMES, Oct. 31, 1986; WEST AFRICA, Nov. 24, 1986.