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COMPENSATION FOR ZIMBABWEAN COMMERCIAL FARMERS

By Kudzai Kaseke

"Land is the only thing in the world that amounts to anything, for it's the only thing in this world that lasts. It's the only thing worth working for, worth fighting for, worth dying for, because it's the only thing that lasts."
- Margaret Mitchell.

Throughout the ages, and the world over, land has caused many armed conflicts, and displacement people. It is no wonder why, land has and continues to be a hot topic in any jurisdiction. The land issue in Zimbabwe has not gone unobserved by the international community, and for the first time the Zimbabwean government has opened discourse for the compensation of commercial farmers in Zimbabwe.

This year the Zimbabwean government represented by its Minister of announced that plans are in place to compensate farmers who lost land as a result of the land reform program. It is believed that at least 3,500 farmers lost their land under Zimbabwe's controversial land reforms. There are currently less than 300 white commercial farmers in Zimbabwe out of the 4 500 who used to farm in Zimbabwe immediately after independence.

After nearly a two decades the Zimbabwean government has invited those affected white farmers to apply for compensation for farms that were seized during the controversial land reform program. In the state-run newspaper, The Herald, the Secretary of Lands, Mr. Ngoni Masoka, issued a statement calling for dispossessed farmers to contact the lands ministry.

Nearly 80 farmers took the Zimbabwean Government to the regional Southern African Development Community (SADC) Tribunal in 2007 challenging the compulsory acquisition of their farms in the case of ***Mike Campbell (Pvt) Ltd & 78 others vs The Republic of Zimbabwe SADC (T) Case No. 2/2007.*** The Zimbabwean government did not dispute that the farmers were entitled to compensation. The government's contention was that such compensation was to be

paid by the British government in terms of the 1978 Lancaster House Agreement. The Tribunal held that under international law it is the expropriating state i.e. the Zimbabwean government which should pay fair compensation for the lands compulsorily acquired by the government.

The International Monetary Fund and the World Bank are pressing Zimbabwe to pay its huge debts and have set conditions, including the compensation of white commercial farmers who lost their land, before opening new lines of credit for the nation.

According to the Lands and Rural Settlement Minister Douglas Mombeshora, about 240 previous farm owners had been fully compensated and 17 partially paid. This means to date 3% of the land owners affected, have accepted the compensation offered by the State and have relinquished their rights to any further claims. The compensation paid in these instances amounted to about 10 per cent of the value of the properties. The remaining land owners have not accepted compensation on this basis and this is the issue that is now confronting the Zimbabwean Government.

Section 72 (3) of the Zimbabwean Constitution provides that where agricultural land is compulsorily acquired for a public purpose, including settlement for agricultural or other purposes, no compensation is payable in respect of its acquisition except for improvements effected on it before its acquisition. The section further provides that no person may apply to court for the determination of any question relating to compensation, except for improvements effected to the land before its acquisition, and no court may entertain any such application.

The Government is yet to reveal how much has been set aside thus far for the compensation exercise. Independent evaluators estimate that Zimbabwe needs to pay the farmers \$8, 6 billion for seized assets such as houses and about \$2, 8 billion for the land as the farmers argue that they bought the farms from which they were evicted by the government after independence. It is clear that whilst the affected farmers will want to be paid compensation for their farms in line with the decision of the SADC Tribunal referred to above, the Zimbabwean government seeks to restrict the compensation to payment for improvements.

In this regard it is significant to note that the Zimbabwean High Court in the case of **Gramara (Private) Limited & Colin Bailie Cloete Vs Government of The Republic of Zimbabwe & ORS HH 169/2009** refused to recognise the decision of the SADC tribunal referred to above for the purposes of enforcement in Zimbabwe. Justice Patel in dismissing the Application had this to say:

“I am amply satisfied that the recognition and consequent enforcement of that judgement would be fundamentally contrary to the public policy of this country.”

The government has undertaken to pay for improvements only on land acquired from white former farmers with the state paying for both land and improvements for acquired farms that were protected under the Bilateral Investment Promotion and Protection Agreement (BIPPA). The government has since dispatched 14 teams throughout the country that are carrying out evaluation on farms that were acquired for resettlement under the land reform programme. The teams are expected to complete their work next year after which the government would have established the total compensation to be paid.

Given that some of the developments to the land have either been demolished, vandalised, altered significantly or have depreciated to such an extent that any valuation now cannot be a true and accurate value of the affected investments of the farmers, it is not clear how government will handle such cases.

Several other difficulties present themselves and will have to be agreed and settled before closure can be said to have been achieved. These are:

1. What to do with those white farmers who have already had compensation determined by the Courts and how to avoid the inevitable precedence influence on all other claims;
2. Theoretically all freehold land has been acquired and so any land owner who currently occupies his own property and has been given a 99 year lease by the State, has to pay rent to the State every month. Such land owners have the right to claim compensation and to thereby relinquish their land rights to the

State or to claim just value of the land as this was a balance sheet item before the land reform exercise; and

3. What of interest on any claims? As even at international interest rates of 5 to 6 per cent per annum, this would have the effect of almost doubling the farmers' claims.

PAYMENT OF CLAIMS

Once the quantum of each claim has been established and accepted then the matter of how to pay such claims will arise.

The revenues from the 99 year leases and other forms of revenue being implemented right now will not generate significant income and cannot be expected to make any significant contribution to the compensation payout required. A few proposals have been raised to deal with this challenge

1. Land compensation Fund

The purpose of the Land Compensation Fund is to: *“provide resources for the payment of compensation to former farm owners whose farms were acquired by the State under the Land Reform Programme and to enhance productivity on allocated land.”*

The fund is to be sponsored by the government's plans to introduce some taxes on occupied farms in an attempt to raise money for paying for the seized farms. The government has since introduced land rental for both commercial and communal land reform programme beneficiaries mainly to raise funds to pay compensation. On average, occupants of the farmhouses will pay between \$400 and \$1,000 per annum depending on the size and condition of the houses. These new rentals are over and above the \$5 per hectare farmers are paying to the government annually as land rent. The government last year said it had set a target to raise \$22 million from land rentals aimed at developing infrastructure in the resettlement areas and also compensate white farmers who lost their land. A1 resettled farmers pay \$15 land rental per annum while A2 farmers pay \$5 land rental per hectare.

2. Selling the land to current settlers.

If the State restores title rights and demands that settlers pay for their land and these funds are then used to pay compensation, then it is likely that the compensation process might be self-liquidating. This idea faces the challenge that the farmers are unable to pay for the land and would most likely end up abandoning it, resulting in the Government being faced with the question of what to do with the land and how to revive the productivity that was sought to be achieved by the whole process

3. Floatation of land compensation bonds

Land compensation bonds can be issued and made redeemable over a long period. This will also result in the proper quantification of the compensation amount. Those suggesting this method have argued that whatever amount is raised from development partners and other donors for resolving the land question will be used to redeem the land compensation bonds thereby greatly reducing the tenure of the land compensation bonds.

Such bonds will be marketable and transferable within Zimbabwe. They can also be used to buy agricultural land by meeting the settlers' mortgage bond portion and all payments due to Government on transfer. The bonds can also be used to pay for certain obligations to Government.

There is also a proposal that the "A1" farmers should have mortgage bonds registered over their farms title deeds. The settler's mortgage bond on a farm may be for 60 % and maximum 70% of the farm compensation. Such bonds would then mitigate against undue enrichment, bring some form of equity among citizens and make settlers value their land.

Thus far it is not clear on how exactly Government plans to go about evaluating the amounts to be compensated or where the money will come from but the initial step has been made towards reaching a conclusion in the matter.