

## **Zimbabwe is offering land back to BIPPAs and black farmers. Betrayal or the law? Here are the facts**

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## **Zimbabwe is offering land back to BIPPAs and black farmers. Betrayal or the law? Here are the facts**

The Zimbabwe government has announced that it will offer land back to two categories of farmers who were dispossessed under land reform.

As is the case with all things land, the announcement was met with outrage.

“Mugabe turning in his grave,” one online headline said.

But, what are the facts? Here, newZWire details the facts around the latest announcement and regulations around compensation for this category of farmers.

### **Who is getting land back?**

Under the country’s Constitution, there are only two types of farmers that can be compensated for both land and improvements on farms. The first group are “indigenous” Zimbabweans, or black farmers. The second are farmers whose land was protected by Bilateral Investment Protection and Promotion Agreements (BIPPAs).

These are agreements between countries that protect the investments of foreign citizens. Zimbabwe has, according to the Ministry of Foreign Affairs and International Trade, ratified at least 12 such agreements. These countries include South Africa, Germany, Denmark, the Netherlands and Switzerland, all which had significant numbers of farmers operating in Zimbabwe.

It is only these two groups of farmers that are now being offered land back as compensation. Local white farmers, who account for by far the biggest number of displaced farmers, are not included. These two sets of farmers were not included in the US\$3.5 billion compensation deal for white former farmers signed in July.

### **Is it legal?**

Under Section 295 of the Constitution of Zimbabwe, farmers under BIPPAs, and indigenous farmers, must be compensated for land taken over for resettlement.

In March, the government released regulations to allow for this sort of compensation. The Land Commission (Gazetted Land) (Disposal in Lieu of Compensation) Regulations (SI 62 of 2020), provided that these farmers can apply to government “for restoration of title to the piece of agricultural land that was compulsorily acquired from them for resettlement”.

### **How many BIPPA farms are there anyway?**

It is a key question that government needs to answer. The exact number of farms under this category could not be immediately established. However, figures from the former farmers’ compensation steering committee show that a total of 5,454 farms were taken over by the government since 2000, with 4,676 of these not being covered under any bilateral investment treaty.

In 2013, a ZANU-PF policy document, presented at that year’s conference addressing compensation for BIPPA farms, showed that out of a total of 153 farms protected by the treaties, 116 farms had been acquired for resettlement.

### **How many black farmers lost land?**

Earlier this year, the late former Agriculture Minister Perrance Shiri said 440 black-owned farms had been affected by land reform. Of these farms, 350 were still held by previous owners while 90 had been resettled. These black farmers, under the law, are entitled to compensation for both land and improvements.

Shiri said: “If the indigenous farmers, former owners are interested in acquiring their farms back they can apply to a committee of officials who will consider the pros and cons of handing back the farms.”

How do black farmers see Shiri’s offer? The Former Indigenous Farm Owners Association is opposed to it. The group’s chairperson Fred Mutanda told the Independent in March: “As you know government does not have money; they will try not to pay any compensation and you are not guaranteed that you will get it tomorrow.”

### **Why giving back land under BIPPAs?**

The government says it is doing this because it suddenly respects the rule of law, property rights and the Constitution. The law demands that compensation be paid for BIPPA farms and farms owned by blacks. However, government is likely more worried by the financial bill of not compensating foreign-protected farmers.

Zimbabwe has lost several lawsuits brought against it at international tribunals. In 2013, Herbert Murerwa, then Lands Minister, said government had to revoke offer letters given to resettled farmers on BIPPA land because the lawsuits were a huge burden on the country.

“Government will abide by the provision of the agreement and at the same time we do not want to increase our liability,” then Lands Minister Herbert Murerwa said.

The biggest bill so far is for Border Timbers, owned by the German-Swiss von Pezold family and protected by a BIPPA signed in 1995. In 2015, Border Timbers won a case against the Zimbabwe government at the International Centre for Settlement of Investment Disputes (ICSID), an international appeals court backed by the World Bank.

It was ordered that Border Timbers be given the property back, or be paid US\$195 million in damages. In 2018, government lost an appeal against the ruling.

Warned the von Pezold lawyers: “Foreign investors will not return to Zimbabwe if it does not honour its international obligations.”

A group of 40 Dutch farmers, whose properties were protected by a BIPPA, were awarded a total of US\$25 million by an international tribunal in April 2009.

Earlier this year, defending the regulation to compensate BIPPA farms, Shiri told Parliament: “When we sign an agreement we honour that agreement, otherwise if we are in the habit of changing goalposts, no one in the world, no nation, no government will want to do business with us.”



Rob Smart, Lesbury Estates Photo credit: Jekesai Njikizana/AFP

### **‘This never happened under Mugabe’**

Some critics have been quick to say withdrawal of offer letters under BIPPAs would have never happened under Mugabe. Well, it already did.

In 2012, the government revoked offer letters for 55 resettled farmers allocated land at Tavydale Farm in Mazowe. Farmers who had occupied 70 hectares were evicted.

In September 2017, the Government withdrew 64 offer letters covering nearly 10 000 hectares of plantation land, all under BIPPAs, in Manicaland.

Resettled farmers, among them senior ZANU PF officials, had to vacate land they had occupied in the Lowveld in 2016. Government withdrew offer letters for land owned by Tongaat Hulett, protected by BIPPAs. There were similar evictions in 2014 from conservancies in the Save Valley, where senior ZANU PF officials had helped themselves to 25-year leases on BIPPA-protected property.

It is also not true, as widely claimed, that government never promised compensation for BIPPA land. As far back as 2005, Murerwa, then Finance Minister, said: “Where Zimbabwe has ratified BIPPAs, government is committed to honouring all its commitments and obligations as provided for by the constitution. This includes payment of compensation for the BIPPA-related farms that were acquired for resettlement.”

Similar pledges were made over the years, including by ZANU PF in its conference resolutions in 2012, in government’s Medium Term Plan of 2010, and by successive Lands ministers since then.

### **How easy is it?**

Not so easy. There are lots of ways all this could go wrong, especially for a ZANU PF government woefully lacking credibility and goodwill, and one whose voter base is on resettled land.

After occupying land for years, many will resist any eviction.

Mutanda of the Indigenous Farm Owners Association points out: “Those A2 farmers have been there for the past 20 years and it is going to be difficult to remove them. Some even buried their loved ones there.”

The government’s announcement shows that officials know that evicting people is easier said than done. So, it has tried to give itself wiggle room. According to the announcement, resettled farmers will not be moved “where the situation presently obtaining on the ground makes it impractical to restore land in this category to its former owners”.

In such cases, government will offer the former farm owners land somewhere else, but only if it is available. Shiri, earlier, suggested the farm downsizing programme would open up land for compensation.

There are many caveats in the offer, and much is left to the discretion of government officials. This means that it is unlikely that many of these displaced farmers – the white farmers under BIPPAs and the former black farm owners – will ever get their old farms back.

### **What’s ZANU PF up to?**

Government’s latest move has, typically of this government, been poorly communicated. It has also been made in a sharply polarised environment, clouding debate. Government’s own lack of credibility also casts doubt on its capacity to run the process.

Key in all this, however, is this part of Monday's statement: "Where a former farm owner under this category regains possession of the land that was previously acquired from them or accepts an offer by Government of land as restitution, this shall be in full and final settlement, or to the extent that may be mutually agreed with Government, of any claims for compensation from the State that the former farm owner may have."

In plain language, once we give you land as compensation, we're square.

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Which all comes down to this; in practice, government is hoping that offering alternative land will help it avoid a costly financial bill, avoid risky evictions, while still appearing to honour its obligations under BIPPAs.

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