

SADC Tribunal Rights Watch

3 September 2020

**Zimbabwe government's Global Compensation Deed:  
Response to ministers' joint statement and resulting media confusion**

Zimbabwe's ministers of land and finance issued a joint statement<sup>i</sup> on the farm compensation issue on 31 August 2020, a month after the controversial signing of the Global Compensation Deed between the government and two farming organisations on 29 July 2020.

The statement's purported objective was to clarify the situation with regards to land tenure and compensation since there is a high degree of confusion, both locally and internationally, with regards to the agreement and the actual legality of the "deed". However, the arrangements continue to remain opaque and are cause for mounting concern.

There are three categories of former farmers listed in Zimbabwe's Constitution of 2013, which itself has a number of anomalies and contradictory clauses.

1. "Non-indigenous" farmers, i.e. white farmers, even though many were third and fourth generation farmers who were totally committed to their country, had been given title to their land and had invested extensively. Furthermore, most of the farms had been purchased after independence in 1980 and had been issued with certificates of "no present interest" by the government, confirming that the government had no interest in their land for resettlement. There were approximately 4,500 commercial farmers on the land prior to 2000 when the farm invasions began. According to the constitution, they are only entitled to compensation for "improvements" on their farms and not for the land.
2. "Indigenous" Zimbabweans or black Zimbabweans, although the constitution avoids clarifying this racial distinction. The government has recently claimed that 440 indigenous-owned farms were "acquired" during fast-track land reform although no lists have been made available for public scrutiny. According to the constitution, they are entitled to compensation for both improvements and for the land.
3. "Foreign" farmers whose land ownership rights were covered under bilateral agreements signed by Zimbabwe with other countries. According to the constitution, they are entitled to compensation for both improvements and for the land.

**Bilateral Investment Promotion and Protection Agreements/Bilateral Investment Treaties**

Foreign nationals whose countries signed bilateral investment treaties (BIPPA's and BITs) with Zimbabwe include primarily Germany, the Netherlands, Switzerland and Denmark. Contrary to reports in the media, no bilateral investment treaty was ever signed with Britain.

These BIPPA and BIT properties, following high profile international court cases, have been now been categorised as being “protected” and their owners are theoretically able to claim back their land which was nationalised.

However, the fact remains that many of the invasions and take-overs of these BIPPA and BIT farms – as well as numerous other commercial farms across Zimbabwe - were executed with extreme brutality, causing severe injuries and in some cases costing the lives of farmers and their workers.

According to international law, compensation for moral damages can also apply. In the von Pezold case, which was taken to the International Centre for Settlement Disputes (ICSID), which is part of the World Bank Group, the ICSID Tribunal found in 2015 that the “settlers” (invaders) had kidnapped, threatened, and physically attacked the claimants and their employees.

The ICSID Tribunal held that, even if the Zimbabwe government was not directly responsible for these attacks, the failure of the police to prevent them over the course of several years would fall short of a state’s obligation to provide full protection under the law.

### **No assurances regarding restoration of property rights**

The ministers’ joint statement does not give any concrete assurance regarding restoration of property rights - or change anything materially to bring investment and production in the agricultural sector, which is in increasingly dire straits.

The United Nations warns that by December 2020, 10 million of Zimbabwe’s estimated 14 million population will require food aid to avoid starvation. Zimbabwe has been reliant on imports and international food aid since 2001, the year after the farm invasions began.

Furthermore, here is nothing in this statement which brings confidence that government will restore the rule of law, notably in respect of land title, unless white farmers, who were born in the country and have Zimbabwean passports, are correctly re-categorised as “indigenous” according to the internationally accepted definition.

### **International Court Judgments/SADC Tribunal**

Another key issue of contention is the fact that the government is still failing to comply with the judgment of the regional human rights court, the Southern African Development Community’s SADC Tribunal, in the Campbell case judgment of November 2008.

The Tribunal ruled in the Campbell case - Mike Campbell (Pvt) Ltd et al v. Republic of Zimbabwe - that the government violated the organisation's treaty by denying access to the courts and engaging in racial discrimination in the confiscation of land in the “land reform” programme in Zimbabwe.

Despite a statement by the minister of lands in 2016 that the fast-track land reform programme was over, farmers continue to be harassed and criminalised for the “crime” of farming.

One farmer known to SADC Tribunal Rights Watch has so far been in and out of court on 136 occasions regarding his precarious tenure on his farm. He, like many others, still has a jail sentence hanging over him for committing the “crime” of farming and producing food for the country.

The reality of the land reform programme in the 2000s was that it was “politically expedient at a time when Mugabe and his ZANU PF party were facing an unprecedented threat from the [newly formed] Movement for Democratic Change party”<sup>ii</sup> as opposed to the “colonial imbalances” narrative.

### **The US\$3.5 billion compensation figure**

Although the two farming organisations agreed to a significantly reduced compensation figure of US\$3.5 billion for improvements for the group of largely white dispossessed commercial farmers, it is important to note that the Zimbabwean government is broke and this money still has to be raised within the sceptical international community.

International lending organisations are monitoring with mounting concern the widely reported gross human rights abuses being perpetrated by the government through its armed forces, its failure to respect the rule of law and property rights, as well as the ongoing high levels of government corruption.

Given this bleak scenario, SADC Tribunal Rights Watch does not believe that money will be released from any of the major financial institutions, added to which is the fact that Zimbabwe’s outstanding foreign debt exceeds US\$8billion.

So long as laws and policies in Zimbabwe remain racial and hostile to property rights and agricultural investment - and remain in contempt of the SADC Tribunal Campbell case judgment, we will continue to see hunger and economic regression in this once thriving African state.

Funds to encourage a productive and prosperous agricultural sector are only likely to be made available once the rule of law, justice and property rights have been restored, the frequently brutal farm grabs and farm attacks have ceased, and all farmers, both black and white, are encouraged back to farm in a secure, investment-friendly environment.

Lastly, the statement reported in various media that the United States has said that compensating farmers is one of the requirements for lifting sanctions is misleading. The US will assist Zimbabwe to develop if there is adherence to property rights and respect for the rule of law - specifically landmark judgments like that of the SADC Tribunal.

The US will not pour money into helping to restore the economy and agriculture if the fundamentals are not in place according to the Zimbabwe Democracy and Economic Recovery Act (ZDERA). Too often they have seen misguided aid that has simply cemented dictators in their positions of power and not grappled with the fundamental issues that are the root causes of poverty and collapse.

Ben Freeth  
Spokesperson for SADC Tribunal Rights Watch, Zimbabwe  
Mobile: +263 773 929 138 (Zimbabwe); currently in the UK: +44 7539 070 122  
E-mail: [benfreeth7@gmail.com](mailto:benfreeth7@gmail.com)

**Further reading:** Alex Magaisa on the land compensation issue  
<https://www.bigsr.co.uk/single-post/2020/09/01/BSR-On-the-issue-of-Land-Compensation?fbclid=IwAR2XEgUaNE2LUyknRjaORN55d0z1Z-VMn1g5Az7ZZCCZWnQul4AZ5PRnQD8>

**NOTES TO EDITORS/...**

## **BENEFICIARIES OF LAND REFORM VS FARM WORKERS WHO LOST THEIR JOBS**

According to official figures, drawn from the Ministry of Lands and Rural Resettlement and considered by independent experts to be the best available, only about **169,000** families benefited directly from the “land reform” programme, and subsequent studies indicate some of those are no longer directly benefitting. <http://africacheck.org/reports/did-300000-families-benefit-from-zimbabwes-post-1999-land-reforms-official-data-says-no/#sthash.0MrW5eD7.dpuf>

In contrast, an immediate result was that **350,000** workers lost their jobs, and with their families **approximately a million people** lost their homes, health facilities, pre and primary schools and social structures. Reference: Mike Auret, Director of the Catholic Commission for Justice and Peace: letter to the Cape Times, South Africa, 12 May 2005.

According to a report in the state press published today (3 September 2020), more than 350,000 households were allocated land under the A1\* scheme, while 99-year leases were granted to more than 19,000 beneficiaries of the A2\*\* scheme.

<https://www.herald.co.zw/government-debunks-land-reform-reversal/>

However, the reality is that the situation on the farms remains deeply confusing as resettled families have frequently been forced off the land to make way for politically connected people (sometimes on more than one occasion – Grace Mugabe is a prime example). Many have been unable to survive on the land due to a lack of assistance from government: no equipment or free seed packs or other inputs such as fertiliser, drought conditions, subsistence crop failures, infestations of fall armyworm, etc. On numerous occasions it was reported that free government inputs arrived too late for the season. And often people sold free inputs just to put food on the table due to their hand-to-mouth existence.

*\*A1 settlers: Small-scale farmers, mainly landless rural people. Mostly allocated 5 hectares of arable land and 15 hectares for grazing, dependent on the natural ecological zone they are in.*

*\*\*A2 settlers: Those with means who are self-supporting. A2 farmers are on larger areas of land, usually from 50 ha to entire farms. Many have in fact been allocated entire farms. Such "farmers" included most of the cabinet in 2005; High Court judges; senior policemen; senior army officers; senior civil servants and other well connected people to the ruling ZANU PF party.*

**ZDERA** : The Mugabe administration's undemocratic practices, human rights abuses, and economic mismanagement prompted the U.S. Congress to pass in 2001 (and amend in 2018 under Mnangagwa) the Zimbabwe Democracy and Economic Recovery Act (ZDERA), which restricts U.S. support for multilateral financing to Zimbabwe until Zimbabwe makes specified political and economic reforms. /... In 2003, the U.S. Department of the Treasury enacted targeted financial sanctions against individuals and entities responsible for undemocratic practices, human rights abuses related to political repression, and public corruption. The U.S. also placed travel restrictions against selected individuals, a ban on transfers of defence items and services, and a suspension of *non-humanitarian* government-to-government assistance.

### **Sanctions Facts from the US Embassy website**

U.S. targeted sanctions apply to only 84 Zimbabwean individuals and 56 entities (mostly farms and legal entities owned by the 85 individuals) as of February 5, 2019. For an up-to-date list, please go to <http://sdnsearch.ofac.treas.gov/> and select “Zimbabwe” from the list on the Program menu.

Complete information on the U.S. targeted sanctions program is available at the U.S. Department of Treasury's Office of Foreign Assets Control's (OFAC) website. Click on the "Overview of Sanctions" link for a summary of the sanctions program.

[On 5 August 2020, US Secretary of State Mike Pompeo announced new sanctions against businessman Kudakwashe Tagwire and Sakunda Holdings.] <https://www.voazimbabwe.com/a/zimbabwe-mike-pompeo-kudakwashe-tagwirei/5531721.html>

**Note:** U.S. sanctions do not block the Government of Zimbabwe as a whole, nor do they prohibit all business with Zimbabwe or transactions involving that jurisdiction. The United States has imported goods from Zimbabwe and Zimbabwe has imported goods from the United States on an ongoing basis both before and after the targeted sanctions commenced. For current United States-Zimbabwe trade statistics, please go to: <https://www.census.gov/foreign-trade/balance/c7960.html>

---

<sup>i</sup> Zimbabwe: Joint Statement by the Minister of Lands, Agriculture, Water and Rural Resettlement and the Minister of Finance and Economic Development in the wake of the Conclusion on 29 July 2020 of the Global Compensation Deed between the Government of Zimbabwe and the former Farm Owners (31.08.2020): Full document: <https://news.pindula.co.zw/2020/08/31/full-text-ministry-of-finance-ministry-of-agriculture-joint-statement-on-compensation-of-commercial-farmers/>

<sup>ii</sup> <https://www.bigsr.co.uk/single-post/2020/09/01/BSR-On-the-issue-of-Land-Compensation?fbclid=IwAR2XEgUaNE2LUyknRjaORN55d0z1Z-VMn1g5Az7ZZCCZWnQul4AZ5PRnQD8>