

BEN FREETH'S COLUMN

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There has been extensive media coverage of the Global Compensation Agreement signed by two farming organisations in Zimbabwe with the government of President Mnangagwa. The signing has been a very contentious issue that has generated significant debate on various platforms among dispossessed commercial farmers who lost everything during the violent farm takeovers, which began 20 years ago and still continue.

Mr Mnangagwa's government placed the farming organisations under considerable pressure to sign the agreement – and within a very short time frame - stating it was their last chance to receive a compensation offer from the government. A significant number of dispossessed farmers, many of them in dire straits financially, as well as being elderly and in poor health, signed up, despite only seeing a draft agreement as the final document was withheld.

In our opinion piece in SADC Tribunal Rights Watch provides brief background and the legal context amid mounting concern among farmers regarding the agreement, the unfolding government strategy and the implications.

Zimbabwe government's Global Compensation Agreement with two farming organisations raises serious concerns

Patrick Chinamasa, acting secretary for information and publicity in President Emmerson Mnangagwa's ZANU-PF government, has announced that, through the signing of the government's "Global Compensation Agreement" on 29 July 2020, there is now acceptance from white commercial farmers that there will be no compensation for land from the Zimbabwe government.

Chinamasa emphasised that by agreeing on the amount of compensation for improvements, the time frame for payment and the modalities for raising the resources, ZANU-PF wished it to be known that it no longer considered the Commercial Farmers' Union (CFU) and the Southern African Commercial Farmers' Alliance- Zimbabwe (SACFA-Z) to be anti the land redistribution programme.

Further to these comments published in the state-owned Herald newspaper on 5 August 2020, Chinamasa stated that white farmer organisations were now no longer against the taking of their members' farms. He called for the Commercial Farmers' Union and other farmers organisations to demand the unconditional lifting of sanctions imposed by the United States.

"As we go into the future, ZANU PF expects the voice of the two organisations in calling for the unconditional lifting of the sanctions to be loud, clear and unambiguous," he said.

Chinamasa noted that the conclusion of the Global Compensation Agreement was "an acceptance by white commercial farmers that with respect to compensation for land, they should look elsewhere and not to the people of Zimbabwe nor to the Zimbabwe government.

"In terms of section 72(7) of our Constitution, the obligation to pay compensation for land was placed squarely on the shoulders of the former colonial power, the British," Chinamasa added.

As SADC Tribunal Rights Watch (SADC-TRW), we wish to distance ourselves from the Global Compensation Agreement that the CFU, SACFA-Z and the Valuation Consortium were under extreme pressure to sign – and within a minimal time frame.

However, in the government's apparent haste to have the agreement signed, even Zimbabwe's own constitution has been violated in the laid down procedure for the compensation process.

Although the reasons for the pressure were not clear, numerous legal experts and dispossessed farmers, many of them living in dire straits in Zimbabwe or scattered around the world, urged caution and highlighted legal shortcomings in the proposed draft agreement.

SADC-TRW was also concerned that dispossessed farmers were not given prior sight of the actual agreement document before being asked to vote in a referendum on whether or not to accept the agreement, which was presented to them as the last option for compensation from the government.

The reality is that the government is broke and although the parties have agreed to a sum of US\$3.5 billion, there is no money available or pledged, and the farming organisations are expected to work with the government to raise it internationally.

Chinamasa is a lawyer and was former Justice Minister during the landmark Campbell case (*Mike Campbell (Pvt) Ltd et al. v. Republic of Zimbabwe*), which was lodged with the SADC Tribunal in 2007. He has been trying to find ways to circumvent the 2008 SADC Tribunal judgment for the last 12 years.

Chinamasa has made it clear that he believes the Global Compensation Agreement is a great triumph in undermining this historic and binding judgment of the Tribunal.

SADC Tribunal judgment – key points

The Tribunal held that the Zimbabwe government had violated the Southern African Development Community (SADC)'s Treaty by denying access to the courts and engaging in racial discrimination against white farmers whose lands had been confiscated under the land reform program.

The Tribunal also held that the Zimbabwe government had violated the SADC Treaty by denying access to local courts and engaging in racial discrimination in the confiscation of the land.

With respect to the question of who should pay compensation, the Tribunal stated that in international law it is the expropriating state that should pay compensation.

Regarding compensation for the land, the Tribunal noted: "It is difficult for us to understand the rationale behind excluding compensation for such land, given the clear legal position in international law. It is the right of the Applicants under international law to be paid, and the correlative duty of the Respondent [the Zimbabwe government] to pay fair compensation."

The Tribunal stressed that [the Zimbabwe government] cannot rely on its national law and its Constitution to avoid an international law obligation to pay compensation. The Tribunal was unanimous in its decision that fair compensation should be paid by the Zimbabwe government for land it had unilaterally taken.

It is important to note that more than 75 percent of title deeds were transferred after independence in 1980, *after* the government had issued “certificates of no present interest”. This meant that government had the first option on any sale. If it did not want a farm for resettlement, it issued a certificate and the farmer could sell his land on the open market.

The Zimbabwe Democracy and Economic Recovery Act (ZDERA)

The Zimbabwe Democracy and Economic Recovery Act (ZDERA) requires that the Zimbabwe government compensates farmers fairly according to the SADC Tribunal judgments, the rule of law and international precedents, guidelines and norms.

Chinamasa claims that President Mnangagwa is leading the way in adhering to the Constitution, particularly Chapter 1, Section 295, subsection 3 (a) that obliges the State to pay compensation for the improvements that were on the land when such land was acquired.

However, the Constitutional Provisions that Chinamasa says President Mnangagwa is respecting in the “deal” are the very same Constitutional Provisions struck down by the SADC Tribunal judgment.

Indeed, if individual farmers do sign up to this “deal” over the next nine months - the time line agreed to - those farmers will be locked into a process which strips them of any further claims or rights that are derived from the landmark SADC Tribunal judgment of 28 November 2008.

This will be tragic given that everything farmers and their families had worked for and invested in over decades - some cases for up to four generations - was taken from them. They lost their entire farming enterprises and livelihoods, including expensive equipment and machinery, standing crops in the ground, livestock and wildlife.

In addition, they lost their homes, household possessions and in many cases cottages built for elderly parents for whom the farms were their source of retirement income. Even the very lives of farmers, family members and farm workers were taken during the frequently brutal land nationalisation process.

Despite the fact that the SADC Tribunal regional human rights court was shut down by the SADC heads of state in 2012 at the instigation of President Mugabe, all judgments made by the Tribunal remain in force and are legally binding.

Should farmers heed the minister’s call to lobby for the dismantling of the sanctions measures and the stipulations of the Zimbabwe Democracy and Economic Recovery Act (ZDERA), they will be siding with a government that is steeped in corruption and continues to perpetrate shocking human rights abuses and to violate the rule of law and property rights.

Ironically, the dispossessed farmers will find themselves in the invidious position of supporting the very tyranny that has left them and their fellow Zimbabweans in the dire position that the majority are currently enduring.

In closing, we highly recommend that you watch the following interview of a brave colleague and valued friend, Advocate Fadzayi Mahere, spokesperson for the opposition Movement for

Democratic Change Alliance, who has just been released from prison and speaks for the suffering people in Zimbabwe. <https://youtu.be/4Rg5AGQ6scY>

NOTES TO EDITORS

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>