



To Compensate or Not To?

Revisiting the Debate on Compensation for Former Large-Scale Farmers in Zimbabwe

By Tendai Murisa

Introduction

The Government of Zimbabwe (GoZ) has since November 2017 been engaged in attempts to normalize economic relations with traditional donors, International

Financial Institutions (IFIs) and other new potential supporters. However, these efforts have not yielded the expected results and instead have been characterized by shifting donor interests and conditionalities. Prior to the elections the precondition for funding was the need for the then transitional government to hold free and fair elections. After the elections donors insisted on a turnaround strategy, they were given the Transitional Stabilization Program (TSP) and then the target moved again this time to paying off outstanding debts and compensating former large-scale commercial farmers, who are mostly of Caucasian origin.

As part of efforts to align with donor demands, the GoZ recently announced their plans to compensate former large-scale commercial farmers who lost their farms during the Fast Track Land Reform Program (FTLRP). There has been a raging debate on social media platforms following the announcement on whether it necessary to offer compensation. A poll was carried out to test the opinions of people and approximately 85% said there should be no compensation. Even Julius Malema, the Economic Freedom Fighters (EFF) leader in South Africa weighed in by threatening that President Mnangagwa will not complete his term if he goes ahead with the plans to compensate the former large-scale farmers. He is quoted saying;

“ *It's a sell-out position. The way he (Mnangagwa) is going about it, he is not going to finish his term. That country is swimming in a pool of poverty; they can't afford basic things like primary health, proper education and infrastructure. He gets money and goes to give it to people who are not deserving. He is reversing the gains of the revolution struggle. It's unsustainable.* ”

However, there are several issues that have not been adequately communicated by the GoZ, one of them is the actual position regarding the compensation of former owners and the timing of the announcement. For the record, the government policy on the subject has not changed. In the late 1990s the GoZ said they would compensate former farm owners for the improvements on the farms and several farmers have already been compensated. The timing of this latest announcement will be discussed in more detail later, but it is important to note that the Minister of Finance made known the government's intentions just prior to attending the World Bank and International Monetary Fund's (IMF) Spring Meetings. In this brief article I will explore how compensation to former large-scale farmers is central to Zimbabwe's economic recovery. Rather than seeing it as a capitulation it probably plays a bigger role for the normalization of Zimbabwe's relations with the former colonial master and with the broader donor

community, given that Zimbabwe has been in international isolation¹ for more than two decades and during that time the economy has shrunk.

Background to Compensation

The compensation process has been characterized by major disagreements between the GoZ and the former large-scale commercial farmers, represented by the CFU and a radical break-away group from the CFU called Justice for Agriculture (JAG). The areas of disagreement included the criteria to be used for compensation and the methodology of farm valuation [²]. Prior to fast track land reform in late 1999 the GoZ had taken the position to compensate displaced farmers for improvements on their land. The displaced farmers insisted on compensation for land and farm improvements. The GoZ position argued that the former colonial authority should compensate for removal from the land despite Claire Short's 1997 letter to the Minister of Lands in Zimbabwe absolving the British government of any responsibility towards land reform.

The dispute over what must be compensated for meant that even the valuation of farms remained contested and unfortunately some of the inventories on what was on the farms could have been lost. In the early 2000s the CFU estimated that fair compensation owed to displaced members was approximately US\$1.2 billion,³ while JAG sought to compel the government to pay an estimated US\$28 billion as compensation for land, improvements on acquired farms and loss of income due to disruptions on farms [⁴]. Details on the number of farmers that have received compensation remain sketchy. In an earlier research we had found that of the 7,862 farms that had been acquired by September 2005, only 1,174 farms had been confirmed as legally acquired through the courts and by consent (outside courts) and 3,380 farms had been evaluated for compensation purposes [¹]. As of September 2006, approximately 206 farmers had received full compensation⁵ for improvements on their farms (see Table 1-1 below).

¹ There are many reasons cited for the isolation; including the GoZ failure to pay off loans advanced to it in the 1990s and sanctions under ZIDERA. See our article here which discusses the impact of sanctions on Zimbabwe, <https://africanarguments.org/2018/11/08/hey-america-time-end-zimbabwe-economic-punishment-zidera/>

² World Bank (2006), Agricultural Growth and Land Reform in Zimbabwe: Assessment and Recovery Options, Report No. 31699-ZW, Washington DC: World Bank.

³ Figures presented by Trevor Gifford (CFU President) at Multi-Donor Trust Fund Seminar on Agriculture Recovery at World Bank Harare offices, March 2008.

⁴ Financial Gazette, 18 July 2003.

⁵ Official sources state that there are no official records of compensation payments to former white farmers after 2005. In 2006 the Permanent Secretary in the Ministry of Lands reported that the Ministry had paid out US\$3million to 206 white farmers.

Table 1-1: Compensation on Fixed Improvements

Progress towards Compensation	No. of Farms	% of Farms
Farms valued for compensation (August 2005)	3 380	43%
Farms confirmed in the Administrative Courts (as of September 2005)	1 174	15%
Farms on which compensation agreed, fully or partially paid for	206	3%
Farms not yet valued for compensation	3 102	39%
Total farms gazetted	7 862	

Source: World Bank, (2006)

There are also new details of progress on compensation. According to the Valuation Consortium, 1,287 farms have been legally purchased and 922 large scale farms remain operational. Table 1-2 describes in detail progress that has been made to date.

Table 1-2: Compensation on Fixed Improvements Progress

Property in Valuation Zones	Size ha	Count
Farms in Database	6 385 241	4 520
Farms still in operation	549 352	359
Farms still not registered	961 785	787
Farms not registered but received some compensation for improvements	66 116	63
Unknown	148 964	246
Farms- Legally Purchased	1173 633	1287
Plots / Small - holdings (Mostly Still in Operation)	82 607	922
State Land	2 625 101	1 331
Indeterminate	448 072	28
Total in Valuation zones	12374755	9 480

Source: Valuation Consortium, January 2016

Besides progress on compensation it is also important to note that in August 2005 the GoZ amended the Constitution through Amendment No.17 to, among other things, nationalise all agricultural land as part of an effort to circumvent the process of bargaining over the compensation. The amendment effectively removed the authority of the courts to mediate in cases of contested compensation levels between the farmer and acquiring authority (GoZ). This 'legal' move seems to have been in response to the impasse that had developed between the GoZ and the large-scale commercial farmers' representatives. The state could not formally offer any form of title to those who had been resettled as this would have been null and void in the courts of law where acquisition was being contested.

Even with these 'legal' manoeuvres, land acquisition remained contested both locally and through international law suits. The GoZ was sued by a consortium of farmers whose farms were under Bilateral Investment Protection Agreements (BIPA) and the case was lodged at The Hague. In 2008, 78 farmers from the Chegutu area appealed to the Southern African Development Community (SADC) Tribunal against their unlawful removal from their farms. The latter resulted in what is commonly referred to as the SADC Tribunal's decision on land reform in Zimbabwe. The Windhoek-based tribunal ruled in favour of the former large-scale farmers, who had petitioned the court to issue an order barring the Government of Zimbabwe from taking over their farms without compensation. The judges held that the farmers, who are facing eviction, "can keep their farms because the land reform undermined the rule of law." The panel also ruled that "fair compensation" should be given, "on or before June 30, 2009," to farmers who had already been evicted from their farms before the judgment was handed down. The court ruled that Zimbabwe's white farmers had legal title to remain on their farms and ordered the Zimbabwe government to "take all measures to protect the possessions and ownership" of the farmers' land.

The court also proceeded to render the Amendment No.17 to the constitution illegal. It ruled that 'in implementing Amendment 17, the respondent (Government of Zimbabwe) has discriminated against the applicants based on race and thereby violated its obligation under Article 6 (2) of the (SADC) Treaty'. On the 3rd of March in 2009, the High Court of Zimbabwe ruled that the Tribunal's decisions and rulings do not apply and cannot be enforced in Zimbabwe, unless Parliament ratifies the protocol that set up the Tribunal (Bell, 2009: www.allafrica.com). Legal scholars of various persuasions are engaged in debates on whether the SADC Tribunal had the right to challenge an amendment to the constitution of a sovereign country. It is indeed one of the most significant tests of the principle of national sovereignty and subsidiarity within a context of regionalism.

Evolution of Property Rights in Zimbabwe

The debate on fast track and property rights has been intense but, in some instances, it has not adequately dealt with the origins of property rights in land. When the British South Africa Company (BSAC) under Cecil John Rhodes began the process of occupation there was no single piece of land in what is present day Zimbabwe that was individually owned and had title. The appropriation and transfer of vast tracks of land which were either unoccupied or through the removal of black people to members of the pioneer column marked the introduction of a new form of tenure where land belonged either to an individual or corporate and was treated as private property. By 1920 more than half of the alienated land of some 16 million acres (6.3 million hectares, and 16 per cent of the total land area of about 100 million acres) was owned by companies and syndicates - that basic pattern persisted until 2000, with the largest holdings throughout the country still owned by various multinational companies, notably the cattle ranches of Matabeleland, the sugar estates at Triangle and Chiredzi, and the forest, tea, and coffee plantations of Manicaland (Curtin, 2008). The foundation of the entire large-scale commercial farms and estates sectors was based on dispossession or colonial theft thus creating a challenge around the legal basis of the property rights under discussion post fast track land reform.

At the core of fast track is an ambitious project of undoing a colonially derived advantage, broadening access to land as a fulfilment of the liberation agenda, reimagining a new agriculture led development pattern that promotes accumulation from below and redesigning of property rights to serve the centralization project of the state and party. The program has also been dismissed by others as a (i) regime retention strategy in the face of a growing popular opposition, (ii) characterized by rampant corruption and multiple farm ownership, and (iii) the undoing of the modernisation project and collapse of agricultural production. Even the GoZ acknowledges some of these challenges especially the problem of multiple farm ownership. However, the evidence (see for instance Scoones et al 2010, Moyo et al 2009) also demonstrates that fast track land reform program (i) radically reconfigured the agrarian structure into alignment with the broader demographic (racial) patterns in the country, (ii) created equity in terms of access and (iii) has allowed for broadening of participation in agricultural value chains previously dominated by large-scale commercial farmers who were mostly white. Fast track remains to date the only radical approach to undoing colonially embedded privileges of accumulation and creating perhaps an opportunity for broad based accumulation. However, 17 years on, one would have thought that the dust has settled but the future of fast track farms remains uncertain mostly due to the unfinished and contested business of compensation. The lack of clarity in this area has also negatively affected the normalisation of tenure regimes and prospects for the participation of financial service providers in the agricultural sector.

The United States' Zimbabwe Democracy and Economic Recovery Act (ZIDERA), amended in 2018 has also identified fast track land reform as one of the major issues that has to be addressed before the sanctions are lifted. It states that:

“It is the sense of Congress that the Government of Zimbabwe and the Southern African Development Community (SADC) should enforce the SADC tribunal rulings from 2007 to 2010, including 18 disputes involving employment, commercial, and human rights cases surrounding dispossessed Zimbabwean commercial farmers and agricultural companies (ZIDERA Amendment Bill of 2018)”

Through ZIDERA (2018) the United States (US) government and its allies is demanding that the Zimbabwean government honour the claims being made by the former large-scale commercial farmers on its own. It is important to note that during the discussion for Zimbabwe's independence at Lancaster in 1979 an agreement had been reached that Britain would be responsible for funding the land reform program but through Clair Short they reneged on their commitment despite the positive reviews of the first round of land reform. Clair Short sent a letter to the then Minister of Agriculture, Kangai. In her letter she stated that,

“I should make it clear that we do not accept that Britain has a special responsibility to meet the costs of land purchase in Zimbabwe. We are a new Government from diverse backgrounds without links to former colonial interests. My own origins are Irish and as you know we were colonised not colonisers”

The current US position (in alliance with Canada, United Kingdom and Australia) as stated through ZIDERA potentially suggests that they are abandoning a major commitment made during the Lancaster House negotiations which had acknowledged the problematic nature of the property rights of large-scale commercial farmers.

Enter the Second Republic

As already noted, the Mnangagwa led government has been aggressively trying to charm its way back into the favour of the international community with very little success. The government has also mobilized friends such as President Ramaphosa (South Africa), President Kagame (Rwanda) and SADC to lobby for the removal of ZIDERA inspired sanctions against Zimbabwe with little success. They have even hired a Washington based lobbying company to help remove the sanctions. The country remains isolated from international financial circuits and it looks like the only way out is to cobble an agreement of sorts with the former large-scale commercial farmers. In his maiden budget speech, the Minister of

Finance, Professor Mthuli Ncube announced government's intentions to compensate former farmers. In the budget the government committed \$53 million towards compensation.

However, the setting aside of funds for compensation has attracted criticism amongst Zimbabweans. Those opposed to making the payment argue that there is no need to compensate those who stole land in the first place. Instead the funds should be channelled towards the recovery of agriculture. So far so good. However, these arguments no matter how sensible, do not adequately connect with the context that the GoZ is operating under for several reasons; the need for the injection of much needed foreign capital into the economy, the need to re-open foreign markets for agriculture/livestock products and unlocking value from the land. It is important to state that most of the farmers who lost their land are still holding onto their titles which can create another round of legal contests in the near future. The majority of A1 and A2 farmers are yet to be issued with their official permits (A1) and leases (A2) and instead hold onto the land based on an offer letter. The options before government are; (i) use available resources to develop agriculture and ignore the demands for compensation OR (ii) compensate former large-scale commercial farmers for improvements made on the farms and hopefully unlock new sustainable investments into agriculture and the broader economy. The following sub-sections will explore the merits and demerits of each option.

Option One: No Compensation- Let's use available resources to develop agriculture

The former President is on record for stating that Zimbabwe is a sovereign country and is not subject to laws or judgements set by courts from outside. The government dismissed the judgment of the SADC Tribunal on the principle of sovereignty. They stuck to their position that through Amendment No.17 of the constitution they had resolved all matters to do with the transfer of land and were not going to be paying former large farmers. The foundation of the property rights under discussion as already demonstrated above is weak. It is mostly based on dispossession and theft. The signing of the Rudd Concession (1888) with King Lobengula being a good example of the deception that characterized the inception of BSAC rule. Those who were dispossessed of their land at that time never got compensation but instead were moved into areas that were unsuitable for agriculture. One of the settlers described the areas allocated to Africans this way,

“ I see no objection to making it a Native Reserve as the area in question, which is practically a conglomeration of kopjes with very small cultivable valleys in between, is infested with baboons and is only traversable with pack animals ⁶(Quoted in Phimister; 1983:258). ”

However, there was an attempt to formalize the colonially established property rights especially during the negotiations for Zimbabwe's independence. During the negotiated settlement for independence commonly known as the Lancaster House Agreement of 1979 Britain, in pursuit of the sanctity of property rights offered a compromise under which, in return for the Zimbabwean government guaranteeing existing property rights, the British government would underwrite half the cost of the resettlement program. Land was only going to change hands on a 'willing seller, willing buyer principle' except for under-utilized land urgently required for resettlement or other public purposes, however it had to be paid for promptly at full market prices or even in foreign currency if the seller made such a demand. The Lancaster House Agreement formed the basis of the first constitution of Zimbabwe, which was not to be amended until 1990.

As already stated, the British government under Tony Blair reneged on their commitment to pay for half the cost of the resettlement program. Prior to Claire Short's letter, the British government, working with local partners in Zimbabwe, had undertaken an evaluation of the land reform programme. The Cusworth and Walker (1988) ⁷report produced empirical evidence that supported land reform and showed that land beneficiaries were better off than their customary counterparts in terms of asset accumulation and food security [5]. The report concluded by urging the British government to release more funding for land reform.

Others may argue that if the second republic makes the decision not to compensate former white farmers, the GoZ will be walking the same path as the British government which reneged on its pre-independence promises. However, it is also true that the Paris Club of donors and the amendment to ZIDERA have made it clear that one of the main conditions for re-engagement will either be through compensation of former large-scale farmers or the return of their farms.

As already stated, Zimbabweans prefer this route. In a snap survey carried out on the microblogging site Twitter, close to 85% of Zimbabweans responded that there should be no compensation for former white farmers. Opinion pieces written by public journalists, lawyers and politicians argue that there should be no compensation to the former farmers and instead the said resources should be

⁶ Phimister, I. R. (1983), Zimbabwe: The Path of Capitalist Development, History of Central Africa, London: Longman.

⁷ Cusworth, J. and Walker, J. (1988), Land Resettlement in Zimbabwe: A Preliminary Evaluation, Evaluation Report No. EV 434, London: Overseas Development Administration

channelled towards recovery of agriculture. In fact, there seems to be a rare consensus amongst non-officeholders from across the political divide evoking the radical politics that characterized Mugabe's regime. The proponents of the non-compensation position also argue that resources identified by the Minister of Finance should be channelled towards developing agriculture. Indeed, the agriculture sector is currently characterized by under-investment especially irrigation infrastructure which has become urgent given the current climate change induced erratic rainfall patterns.

Option 2: Compensate former large-scale commercial farmers

The GoZ's current position is to compensate for improvements on the farm only. The proponents of the compensation position argue that there is no way Zimbabwe will be rehabilitated and accepted into international financial circuits without addressing the grievances of the former white farmers. The donors, especially the Paris Club, have made it clear that they will not release any new loans to Zimbabwe if the issue of compensation has not been resolved. The recent amendment to ZIDERA is also very clear that the government needs to implement the judgement of the SADC Tribunal. Zimbabwe's current economic challenges are a result of among other things international economic isolation. It last received a loan from the IMF way back in the 1990s and is currently undergoing phase two of a staff monitored program (SMP)⁸. The Look East policy has not adequately resolved the foreign direct investments need for the country. The country that has literally lost two decades of development. The Reserve Bank recently announced that Zimbabwe has over the past few years lost 102 correspondent banking relationships partly because of the high risk of exposure to specific persons or organisations. Several Zimbabwean banks have already been fined for dealing with individuals of organisations under the sanctions list.

It is estimated that Zimbabwe will need to grow at an uninterrupted rate of at least 11% for the next ten years in order to meet the SDGs targets. Can we afford to go it alone? The proposed compensation package could lead to the unlocking of potential inflows of Foreign Direct Investment (FDI) and normalization of relations for many of businesses based in Zimbabwe. Proponents of the compensation position see the payment as a strategic to unlocking value at two levels; external and internal. At an external level the position is to enhance Zimbabwe's profile as a safe destination for investment. For instance, it is significant that the government made the announcement just before the Minister of Finance and his delegation left for Washington to engage with the IMF/WB spring meetings. It was clearly a confidence boosting measure. Furthermore, the compensation position should not be analysed in isolation as it also feeds into the

⁸ An SMP essentially entails the IMF monitoring the implementation of economic reforms without the release of any new funds.

'*Zimbabwe is Open for Business*' mantra that the President has been pushing. It is part of a raft of measures including the dismantling of indigenization policy, the flotation of the currency and privatisation of state-owned enterprises. The government of Zimbabwe has abandoned its previous radical posture and is in a process of realigning with the demands of international capital and the most important of these is the sanctity of property rights.

Regional Dimension- It is also important to note how Zimbabwe's decision may affect the sub-region especially those countries also grappling with the land question. For instance, South Africa is currently in the midst of a very delicate debate on how to proceed with land reform via compulsory acquisition. A hard-line stance that says no to compensating former large-scale farmers in Zimbabwe may negatively affect the ongoing delicate discussion on how acquisition will pan out. The retort at this stage could be let South Africa deal with its own issues. The international community will not allow Zimbabwe to succeed without compensating white farmers as a message not only to South Africa but also Namibia. So yes, the spotlight is on Zimbabwe on how it is going to navigate.

Internal Dimension- The compensation position also serves a huge internal dimension. The resolution of the impasse on compensation should release the state to issue new tenure instruments. Market-based actors have consistently argued that they need a bankable tenure instrument [read freehold tenure] in order to unlock the desperately needed financial investments for ensuring improved production on the farms. Ian Scoones, in his various insightful blogposts published here <https://zimbabweland.wordpress.com/> has discussed in detail the challenges that the government faces in terms of issuing freehold tenure to the new farmers. He observed that there is an obsession with freehold tenure but limited understanding of what it will take to make that a reality. He argued that:

“*Currently there are serious challenges of delivery, and a full cadastral survey and allocation of title to every plot in the country as some propose would be complete madness, resulting in massive cost, and a huge escalation of disputes that there would be no capacity to resolve. For lawyers and politicians (and some who combine the two) this may seem the neat option, but for anyone who works in farming areas (or has experience of attempts at this elsewhere, then the prospects are scary.*”

Modalities of Payment- The GoZ is literally broke. It is struggling to ensure that there are adequate supplies of fuel in the country, it is taking foreign currency that was meant for tobacco farmers to pay for its bills. How are they even going to afford to compensate these former farmers? They have committed to pay US\$17 million after the completion of the valuations. But this is a drop in the ocean

when one looks at the US\$9 billion that is peddled in some quarters. For the record US\$9 billion constitutes 47% of the country's Gross Domestic Product (GDP). Others have already argued that actual payment of compensation is not the responsibility of government alone but should be based on lease revenues derived from the holders of the leases and the permits. Given the turn towards market fundamentalism within government there is no reason why land beneficiaries should not pay rental fees on the land. The payment of the rental fees charged per hectare could also contribute towards the rationalization of farm sizes.

In a 1991 study on land utilisation the World Bank recommended the introduction of a land tax on commercial farms as a way of ensuring optimal usage of land. The report argued that most farms were under-utilized and on average farmers were using only 30% of their farms productively. The proposed land tax would either encourage them to dispose of the unutilized portions of the farms or would encourage them to increase their production as a cushion. The proposed lease fee should be calculated per hectare. Fees per hectare will differ per natural regions with regions 1 and 2 being the most expensive followed by region 3, while 4 and 5 will be on the lower end. The realized fees should contribute towards the farm compensation fund. There is a possibility that government could realize US\$500 million per annum from this fund.

Conclusion

The discussion above has mapped two possible approaches to resolving the impasse on compensation. As already mentioned, the compensation issue is broader beyond agriculture, it is at the centre of Zimbabwe's possible economic turnaround. The past two decades were characterised by isolation from international financial circuits for several reasons and land reform was one of them. It was also a period of a populist radical rhetoric that sought to expose and confront the neo-colonialism. However, that came at a huge cost for the country. The economy has never really recovered, instead it has been associated with the closure of companies, loss of jobs, an unprecedented brain-drain, deterioration in the delivery of social policy. Is this the time for capitulation? Probably. It has become apparent to policy wonks in the GoZ that they can achieve very little if they do not confront the outstanding issue of compensating former white farmers. There is probably another route- give them back their farms- but we all know how impossible that is. So maybe we have really no choice but to compensate. Should it be Zimbabwe's responsibility alone or can we mobilize others (especially) Britain to honour their 1979 pledge.

About the Author

Tendai Murisa is the Executive Director of SIVIO Institute. He is a development practitioner and researcher in the areas of public policy, agency, social movements, philanthropy, NGOs, and pro-poor development across Africa. He has published extensively on agency, agrarian reforms (especially in Zimbabwe and elsewhere in Africa), citizens and civil society, financial inclusion, social entrepreneurship, and social policy in peer reviewed journals and book chapters.

About SIVIO Institute

SIVIO Institute (SI) is an independent organisation focused on ensuring that citizens are at the centre of processes of economic-political-economic and policy change. It aims to contribute towards Zimbabwe's inclusive socio-economic transformation. It is borne out of a desire to enhance agency as a stimulus/catalyst for inclusive political and socio-economic transformation. SIVIO's work entails multi-disciplinary, cutting-edge policy research, nurturing citizens' agency to be part of the change that they want to see, working with communities to mobilize their assets to resolve some of the immediate problems they face.