

This is the situation regarding compensation for Zim farmers

Maroela Media – By Dr Theo de Jager

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Dr. Theo de Jager (Photo: Reint Dykema)

In two decades, there has not been as much unity and cooperation among Zimbabwean farmers whose farms have been seized as there is now. The year-end statement and opinion poll jointly sent to all title holders by Saai Zimbabwe, the Commercial Farmers Union (CFU) and Southern Africa Commercial Farmers' Alliance (SACFA) was more than just the first of its kind; it was an embodiment of a united front to protect and advance the interests of victims of the massive land grab.

The CFU is over 80 years old, and once the core of organised agriculture in Zimbabwe. SACFA largely represents the Matabeleland farmers in the more extensive production areas in the West of the country. When the then President Robert Mugabe indicated that he was prepared to compensate farmers, but only for improvements on farms and not for the land, this led to a division into farming classes. In the high potential lands in Mashonaland, where there are orchards, plantations, irrigation, warehouses and processing plants on farms, improvements easily account for more than 80% of the value. On grazing farms in Matabeleland it is the other way around; the improvements are limited to wire fencing, livestock handling facilities and a farmhouse. Therefore, the interests of SACFA members are different from those of the CFU.

To understand the new hope, one must understand the history of land grabs. Expropriation without compensation has always been a populist undertone in Zanu-PF's rhetoric – much like the ANC's. In the late 1990s, after 20 years in power, Zanu-PF began to lose support and threats of expropriation of white farmers without compensation increased.

In 2000, Zanu-PF lost a referendum for the first time, and realised that the writing was on the wall. However, it was not the government that decided to occupy farms, it was wild gangs of “war veterans” who took the law into their own hands, and the police, security forces and courts did nothing to stop it.

Mugabe did not want to alienate his remaining support base either, and instead of upholding the rule of law, he allowed and later even encouraged the land grabs. Senior security officers, judges and civil

servants were first given good farms, but this compromised them and to this day they are unable to take a stand against the fundamental injustice. The law has since ceased to operate when it comes to property, accommodation or land-based security or contracts.

This did not happen overnight. Many landowners won their cases in Zimbabwean courts as late as 2010, but the rulings were not respected by government officials, local police stations or gangs.



Robert Mugabe. (Photo Tsvangirayi Mukwazhi/AP)

A few visionary agricultural leaders arranged early in the occupation for a consortium of property valuers to determine a value for the majority of farms, so that in the future there would be a record of assets, improvements and losses when compensation was due. For this, title deed holders would pay a percentage of their compensation when it was realised.

The constitution was only amended in 2005 to retroactively legalize the land grabs. Some farmers were murdered, assaulted, robbed and many fled their farms with only the clothes on their backs.

Production collapsed spectacularly. Unemployment, poverty, urbanisation and emigration soon became the major social and economic realities in Zimbabwe. In 2008, Zanu-PF lost the “harmonised elections” at every level of government to Morgan Tsvangirai’s MDC, but after weeks of refusing to announce the results, an agreement was reached with the help of the Mbeki government in South Africa to form a unity government in Zimbabwe.

In practice, the MDC was merely temporarily co-opted into a government where Zanu-PF retained all the substantive power.

Inflation reached a bizarre 79,600,000,000% per month in 2008, with a year-on-year inflation rate of 89.7 sextillion percent.

A group of Zimbabwean farmers came to Centurion (in Pretoria) early in 2009 to plead for Agri-SA and AfriForum to assist them in suing their government in the SADC tribunal. There was no unanimity in the CFU, as some leading farmers felt that they did not want to engage in confrontation with Zanu-PF, but wanted to represent the interests of the farmers through soft diplomacy. The traces of that approach still lie in the agricultural community in Zimbabwe today.

A majority of Agri-SA's management voted not to get involved, but AfriForum's leadership unanimously decided to make the services of Willie Spies, of Hurter and Spies Attorneys, available.



Ben Freeth (Photo Mike Campbell Foundation)

With a formidable legal team, led by Advocate Jeremy Gauntlett SC, a group of farmers went to test the government's "fast track land reform program" before the SADC tribunal. The striking documentary *Mugabe and the White African* (currently on Amazon) tells the horrific story of Mike Campbell and Ben Freeth of the Mount Carmel farm, and the torture they endured in the run-up to the tribunal proceedings. The tribunal's ruling was damning against the Zimbabwean government, condemning the land grab as fundamentally racist, unlawful and in breach of the SADC protocol.

When the Zimbabwean government was defeated in the SADC tribunal, they (according to a finding by the Constitutional Court in SA) conspired with heads of state to dissolve the tribunal in 2010, and not appoint any more judges to it. The SADC decision was challenged by the Tanzanian and South African bar associations, and both won their cases. In South Africa, the court ordered President Cyril Ramaphosa to withdraw his predecessor's signature from the agreement.

Before the dissolution of the tribunal, the judgment against Zimbabwe was registered in South African law. There was also a costs order against Zimbabwe, which enabled the farmers to seize immovable property in Kenilworth, Cape Town, and in an epochal auction in September 2015, it was won against the Zimbabwean state.

The US already imposed trade restrictions on prominent Zanu-PF leaders in 2001 through the so-called Zimbabwe Democracy and Economic Recovery Act (ZIDERA), which was pushed by Hilary Clinton and Joe Biden. This remains the single most important lever to apply pressure on the Zimbabwean government to compensate dispossessed farmers. Without it, there is no pressure or incentive for the Zimbabwean government to pay compensation.

Zimbabwe quickly fell behind on its foreign debt payments, and was supposed to sign an undertaking in Lima in 2014 to cancel the debt. The undertaking was never honoured, which led to Zimbabwe's access to any further loans and financial assistance from the World Bank and IMF being suspended. Without

comprehensive foreign aid, Zimbabwe will not get back on its feet economically, but compensation for dispossessed farmers is key to lifting the trade restrictions.



Dr Theo de Jager addresses Zimbabwean farmers (Photo Steven de Beer)

Mugabe had already indicated in 2014 that he was prepared to compensate the farmers, and in 2015, several agricultural structures presented him with a joint plan for the restructuring and revitalization of agricultural value chains, financing, job creation and food security, which included compensation. He wanted a few amendments to the plan, but before the discussion could progress further, he was ousted.

Tensions arose in the CFU between the few white commercial farmers who still farmed, either on part of their own land or on land they rented from the occupiers, and those who were only involved for compensation. A Compensation Steering Committee (CSC) was appointed to focus on the pursuit of compensation, while the CFU was to focus on agricultural interests and policy. However, the CSC was appointed and not elected by the members, and suspicion and mistrust arose due to poor communication.

A major breakthrough was made in July 2020 when the government signed a Global Compensation Deed (GCD) with the CFU, SACFA and the Valcon Valuation Consortium. This entailed that US\$3.5 billion (less than 70% of the value of improvements) would be paid to farmers over a five-year period, and that the government would support landowners in seeking compensation for their land from the British government in terms of the Lancaster House Agreement.

The GCD enshrined in an agreement the principle that compensation was due. More than that; it set a quantum insofar as the valuation consortium's values were acknowledged, and used as a starting point.

It enjoyed wide support, even though information about the details of the agreement was scant. It created hope, especially among a growing proportion of victims who are old, sick, needy and desperate.

The average age of white landowners in 2000, when the land grabs began, was 62. Now it is 87, and many of them, once prosperous farmers, are languishing in nursing homes and hospitals in Harare, Bulawayo and other towns. For them, the signing of the GCD was an outcome they had been eagerly awaiting.

But the government never performed.



(Photo Steven de Beer)

A year after signing, the agreement was simply extended, then again, and then they unilaterally changed the payment terms. The new offer was to pay with government-backed bonds, which would mature in 10 to 12 years. The CSC and Valcon praised the offer and launched a major campaign to get landowner buy-in. They also called on the US and UK to abolish ZIDERA. Never since the land grabs began in 2000 have agricultural leaders in Zimbabwe made more effort to promote the government's interests among farmers. Their commission would, of course, be paid in US dollars, not in government bonds.

The farmers were not in favour of it. If a government can cancel title deeds on the fly, just imagine what they can do with government bonds in 10 years!

Saai was launched in Zimbabwe in February 2023 to once again be a voice for family farmers, independent of government, without its own financial interests or obligations to political masters. Within four months, Saai's membership had grown to three times the sum of the rest of the agricultural organisations.

One of Saai's first campaigns was a march in Windhoek to the SADC Tribunal, to lobby together with AfriForum, numerous traditional leaders in Namibia, Botswana, South Africa and Zimbabwe, the legal profession in Namibia, the Mike Campbell Foundation and other civil society organizations to reactivate the tribunal.

The reopening of the SADC Tribunal is one of the main focuses of Saai in 2025. This, and the G20 summit in South Africa, the launch of a SADC Economic Advisory Committee and a new, updated agreement

between dispossessed farmers and the government of Zimbabwe, which as a minimum requirement can normalise the agricultural environment, are central to the interests of family farmers in Southern Africa. When Zimbabwe sneezes, the rest of Southern Africa also catches a cold!

The war veterans in Zimbabwe were the first to engage with Saai, then the government, and eventually SACFA and the CFU. The unacceptability of conflicting financial interests among leaders of the CSC and Valcon, created the necessary pressure for a thorough restructuring of the CFU under new leadership, and of the CSC.

Dispossessed farmers who are willing to accept the government bond offer have organised themselves into a new structure, the Property and Farm Compensation Association (PROFCA). PROFCA is no longer represented on the CSC, and is making great efforts to please the government. Leaders of PROFCA include former members of the CSC and Valcon, and they are pushing with the government for the abolition of ZIDERA. Acceptance of the bond offer will bring them huge financial benefits, among other things because of the valuation fees and other commissions that will be payable. There is a group of desperate elderly people in particular who have pledged their support to PROFCA with the promise of speedy relief (before the end of December 2024). However, this has not been successful.



Willie Spies addresses Zimbabwean farmers (Photo Steven de Beer)

That is why the new collaboration between Saai Zimbabwe, CFU and SACFA for dispossessed landowners is so important. Although there are differences in style and approach, for the first time since the Zimbabwean government acknowledged the need for compensation, there is unanimity among the most representative organisations of victims of the massive land grab, on how they want to talk to the government.

For Saai's members there are three goals:

– the constitution and other laws must be amended to provide for equal citizenship, in other words, that white farmers may also own farm land.

– If this is realized, there are many farmers who still have their title deeds, and restitution cannot be stopped.

– For victims who do not want to return to their farms, there must be fair and just compensation.

One of Saai's biggest campaigns for 2025 is focused on reviving the SADC Tribunal, and based on several court rulings in SADC countries and Europe, legal action will likely be the most important lever to enforce this.

The principle is simple: If economic recovery and growth are the goal, investment will have to be attracted. Investment depends on a policy environment that creates trust, certainty and stability. This happens by putting clear and transparent rules in place. Those rules are only effective if they can be enforced by independent adjudication. The suspension of the SADC Tribunal is hampering economic growth in Zimbabwe and the region.

ENDS

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