

# THE SIGNIFICANCE OF LAND COMPENSATION FOR REHABILITATION OF ZIMBABWE'S LAND SECTOR

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## INTRODUCTION

The issue of compensation has been controversial and still represents an area of major disagreement between the Government of Zimbabwe (GoZ) and the dispossessed farmers, mostly as represented by the Commercial Farmers Union (CFU). In this article I will discuss the nature of the impasse, and I will review the status, legislation, and prospects for resolving the issue and accelerating rehabilitation, investment and productivity. As a general framework for accelerating the rehabilitation of the land sector in Zimbabwe, a number of important activities need to be initiated and completed by government and these include: compensation for land acquired; issuance of legal multi-form tenure instruments for new land occupiers; and reforming the land administration system to allow for better land use planning, management and production. This includes strengthening the dispute resolution systems and requisite capacity for adjudication.

As for the impasse, I will argue for pragmatic solutions. Both government and dispossessed farmers are still experiencing hard times. The government is still under-funded and many former white farmers have become destitute. It is highly unlikely that a perfect solution exists for both government and dispossessed farmers. The time has come for serious proactive engagement in search of lasting solutions.

## COMPENSATION EXPERIENCE TO DATE

The Fast Track Land Reform Program (FTLRP) was introduced in 2000 and the Government of Zimbabwe (GoZ) amended the legislation to enable compensation for “improvements only”. In all, 125 farmers accepted the offer before the scheme collapsed because of hyperinflation. The disagreement between the CFU and GoZ has been largely on valuation. The CFU maintains that compensation value should include: land; improvements; interest; and consequential damage. The legal battles between government and farmers on this issue are well covered elsewhere.

Valuations based on existing legislation are estimated at between \$1.5 and \$2 billion. Valuations along CFU lines are estimated at between \$6 and \$10 Billion. The difference is huge and a pragmatic way forward is needed. After the formation of the Government of National Unity (GNU) in 2009 the scheme was re-introduced and since then Budget Vote 31 has had a small but growing allocation.

In the "Blue Book", Budget Vote 31 is for the Purchase of Land User Rights (compensation), and allocations are as follows: 2011 (unaudited expenditure to September) = \$2,496,873; 2012 = \$6,000,000; 2013 = \$9,000,000; 2014 = \$12,000,000. According to the Ministry of Lands and Rural Resettlement (MLRR), a total of 6,422 farms were acquired, of these 1,250 were valued and 4,962 farms are still to be valued. To date 210 farmers have been compensated since the FTLRF. Individual compensation values vary from about \$200,000 to \$1.2 million. During this period priority has been given to elderly former farmers over the age of 70.

**THE PROCEDURE:** Compensation is guided mainly by two acts, the Land Acquisition Act Chapter 20:10 and Acquisition of Equipment and Materials Act Chapter 18:23. A valuation report is produced by the MLRR's Valuations Section and submitted to the Compensation Committee, which is made up of members appointed by the Minister of Lands and comprises Permanent Secretaries for Lands, Finance, Local Government, Agriculture and Labour/Social Services. The committee, according to the Act, determines the amount of compensation payable to the farmer based on the MLRR's Valuation Section report.

The Valuation Section then invites the farmer to conclude the offer. The farmer may accept or refuse the compensation value offered and has the option to go to the Administrative Court for resolution on the valuation. Farmers also have the option of bringing their own valuers to Court. If an agreement is reached on the compensation value, a contract is signed and the compensation processed. There are two options for paying out the compensation:

- **OPTION 1:** the farmer gets 25% on signing consent forms, 25% payable within a year and the balance within a 5-year period with interest.
- **OPTION 2:** the farmer gets a discounted lump sum amount, calculated at 60% of the total value of the compensation agreed.

The Minister of Lands has made several revisions to the regulations to make these more acceptable to the beneficiary ex-farmers. This includes provision for a lump sum payment; and provision for the farmer to submit a schedule of the actual improvements on the date of eviction, and that schedule can include photography. The outgoing farmer is also required to fulfill the Farm Workers Gratuity Regulations (S16). The Minister also amended these for better interpretation.

## THE NEED FOR A LAND ACQUISITION COMPENSATION FUND

The number of compensations can grow rapidly if 2 things happen: a) establish a viable Land Acquisition Compensation Fund; and b) MLRR accelerates the valuation process. I prefer completing the valuations as soon as possible because that provides more meaningful targets for the Fund; and allows for as many agreeable farmers as possible to sign-off on a compensation plan, thereby providing quittance for allotting a legal and viable lease to new occupiers. The other urgency is to provide immediate financial relief to as many former-farmers as possible. I believe that this is the best we will get in the foreseeable future for a 'willing-seller-willing-buyer' arrangement on the matter. There may well be as many who will take up the offer as those who will not. Ideally it is important for enough prior ('without prejudice' to both side) consultation and analysis to take place between the CFU, the Valuation Consortium (which represents the majority of disposed farmers) and the MLRR's Valuation Section. It is important to minimize the number of disputes that go to court otherwise that will slow down the process and defeat the whole purpose.

The significance of resolving the issue urgently is imbedded in the legislation that requires "quittance" on the acquired land before a legal lease can be issued to the new land occupier. Quittance is contingent upon compensation, or at least a signed agreement between government and farmer on the terms. This legal requirement makes it urgent that a compensation fund is established by the government soonest to compensate as many farmers as possible on the basis on existing legislation.

Another challenge according to CFU is that farmers in the drier parts of the country are prejudiced by 'improvements only' valuations. One solution is to provide for 'supplementary payments' in the Fund for special cases such as some properties in Matabeleland, Midlands and Masvingo.

**THE NEED FOR FLEXIBILITY IN PAYING OUT COMPENSATION:** Anecdotal evidence suggests that there are several permutations out there in terms of the circumstances that the former white farmers face. For my own argument, however, I have grouped them into 3:

- 1) Those who are destitute and/or desperate for financial relief and are willing to explore compensation on the basis of existing legislation;
- 2) Those not necessarily desperate but are willing to explore compensation on the basis of existing legislation—some because they want closure and need to move on; some to prioritise the time-value of money and do not mind taking discounted values, and so on;
- 3) Those who have decided to hold out for 'full' compensation for various combinations of: land; improvements; interest; and consequential damage.

The fund I am proposing would therefore cater for categories 1 and 2 for now and those in 3 would come in later as constitutional and political processes resolve the issue more

definitively. My heart goes out mostly to those in category 1 because that is the category most other Zimbabweans are in. A considerable number lost property, assets, and retirement funds and there is nowhere to turn to for compensation. Estimates of a global figure representing those losses are just as colossal as losses by white farmers. It is also politically difficult for government and donors to invest several billion dollars into a few thousand white farmers in a country and continent with millions of poor people. I know that my views here are quite contrary and unpopular with the CFU and others. But quite frankly the country needs a more proactive leadership from both government and organized farmers on this matter. It is better for government and farmers to face donors with a negotiated position than the current huge gulf in positions. Without that negotiated position, then we are left with those in category 3 who should exercise their democratic right of course; ipso facto, those in categories 1 and 2 should have the guts to self-organize and proactively work towards a solution.

My take is that the nation is quite divided on the issue of compensation for land; on land acquired through the FTLRP this divide cuts across political party lines, as well as other class lines. Compensation for land will be accommodated in future constitutions, I believe. It is just that we are still at a point where compensation for land acquired through FTLRP is still highly contested politically, with the exceptions already provided for, including BIPPA land.

#### OPTIONS FOR CAPITALISING THE FUND

In order to capitalize the Fund, we need as many contributors as possible. No one group that can take the whole burden – and there is need to share the burden. I have had opportunity in the last year to discuss the prospects of a compensation fund with various people and various groups including government officials, parliamentarians, donors, and some of the farmers who have explored compensation and/or been compensated. I have learnt a lot from these discussions and what I am presenting here is largely from all these rich contributions.

The following is just an example of how such a fund can be crafted. There are altogether 5 potential contributors to the fund:

- **NATIONAL BUDGET:** \$9 and \$12 million earmarked for 2013 and 2014 respectively; I think government should instead put up say \$30 million in 2013 as seed capital; then maintain contributions at that level and higher;
- **TRANSFER FEES FROM NEW A2 LAND OCCUPIER:** This kicks in when the land has quittance, and a transferable bankable lease offered to the new occupier. For argument's sake, the transfer fee could be equivalent to 30% of 'improvements' acquired by the new occupier; occupiers can be offered payment plans for the transfer fee payable to the fund;
- **ANNUAL GROUND RENT BY A2 LEASE HOLDER:** the lease holder pays annual rent and that goes into the fund;

- **DONORS:** contribute to the fund on behalf of A1 land occupiers; for argument's sake A1 land constitutes 60% of all compensation estimates and this would translate to say \$1 billion; donors could contribute \$100 million a year for 10 years into the fund;
- **DEVELOPMENT AND INVESTMENT BANKS:** capitalize the fund as long term investment into a viable fund with prospects of converting capital to a future Land Bank that I will discuss in a later article.

The order of commitments to the funds will probably be government first, donors next, then lease holders, and finally development and commercial banks. The worst case start-up scenario is that the fund only has \$9 million committed by government in 2013. In this case I would then suggest that negotiations on the thousand or so valuations completed to date be concluded as soon as possible. If say 500 (50%) are agreed and signed, then the \$13 million is shared among the 500 farmers. The Minister could introduce an Option 3 payment plan that commits payment of interest on capital for those signed up. Some farmers are proposing an alternative plan that each farmer receives a nominal monthly payment of say \$1,000 deducted from his/her capital account and accrued interest. The best-case scenario start-up is seed funds from government and donors, totalling say \$100 million in 2013, in which case all 3 options for payout can be available from the start. The fund will grow fast from there.

## CONCLUSIONS

The issue of compensation is urgent because it is the trigger point for rehabilitation, investment and productivity. This has to be accompanied by issuance of appropriate land rights instruments, with a tradable and fundable 99-year lease. A Land Acquisition Compensation Fund could well be the precursor for re-building the land registry and land administration system and subsequently a Land Bank that becomes a premier investment bank for land development for all sectors as the economy builds up and as the nation attains food security.