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ZIMBABWE

OFFICE OF THE PRESIDENT
AND CABINET
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Harare

17th June, 2008

Mr A. Chihuri
Commissioner General, ZRP

RE: CABINET DISCUSSION AND DECISION: ISSUES
ARISING FROM THE PROVINCIAL ORDERS GRANTED BY
THE SADC TRIBUNAL IN WINDHOEK ON CHALLENGES
MADE TO THE LAND REFORM PROGRAMME IN ZIMBABWE

Cabinet at its 18th Meeting held on 6th June, 2008 considered the above issue.

The Meeting "...expressed reservations on the request for compliance by Government with the SADC Tribunal's interim orders. In doing so, the Meeting took cognisance of the fact that Zimbabwe had not yet domesticated the SADC Treaty and Protocols that underpin the operations of the Tribunal. More importantly, Cabinet felt that the Tribunal's interim orders, the effect of which was to reverse the sacrosanct land reform programme, amounted to a blatant negotiation of the country's history and its liberation struggle".

"Furthermore, it was not permissible that the provisions of the Treaty should have the effect of overriding the country's laws and

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Constitution, on the basis of which the land reform programme was being implemented. In any case, the country's Supreme Court had as per its judgement handed down in January, 2008 upheld the lawfulness of Constitutional Amendment No. 17. Under the circumstances, Cabinet ruled that the country's laws relating to land should remain in force, while leaving it to the Minister of Justice, Legal and Parliamentary Affairs to manage the country's interface with the SADC Tribunal on the matter to the best national interests."

As the ZRP, you may therefore proceed on the basis of the discussion and decision of Cabinet on the matter as outlined above.


Dr M.J.M. Sibanda

Chief Secretary to the President and Cabinet

State of preparedness by the Government of Zimbabwe for the 28 May 2008.

The Government of Zimbabwe, represented by its Deputy Attorney General responsible for the Civil Division, Hon. Advocate Prince Machaya, will be appearing before the Tribunal to apply for a postponement or deferral of the hearing to a later date to enable the Government of Zimbabwe to file its defence.

Background to intended application for a postponement;

The Government of Zimbabwe has, since December 2007 at the most, and March 2008 at the least, failed to file its response or defence to the claim by the Applicants.

Hon. Advocate P Machaya, wrote to the registrar of the Tribunal seeking a deferral of the matter to a later date to enable him to file the response.

The registrar responded, after consultations with the President of the Tribunal, reaffirming the set down of the 28th of May 2008 and advising him (the Government of Zimbabwe) to make such application on the date to which the matter stands set down for.

Implications of the response by the registrar of the Tribunal

The response makes it clear that the Tribunal has reserved its right to grant or refuse the application on the 28th of May 2008.

If the Tribunal refuses the application it means that the Tribunal will proceed to hear the matter and because the Government of Zimbabwe had due notices of the matter and the date of hearing, the orders sought will be granted by default.

The Land case before the SADC TRIBUNAL in Namibia

in the matter of

Mike Campbell and 78 Others Versus The Government of the Republic of Zimbabwe. Case Nos.2/2007,2/2008,3/2008,4/2008 and 6/2008.

Nature of Order(s) sought

1. That Constitutional Amendment No.17 of the Constitution of Zimbabwe be held to be of no force and effect.
2. That the Land reform done by the Government of Zimbabwe since 2000 be set aside.
3. That the 79 white settler farmers retain the farms they are occupying.

Current status

The Tribunal granted the white settler farmers a Provisional order against the Government of Zimbabwe restraining or prohibiting it from evicting the Applicants from the acquired farms pending the determination of the main matter by the Tribunal.

Dates of the Provisional Order; December 2007 for Mike Campbell and March 2007 for the 78 Others.

Next dates of hearing; 28 May 2008.

Is the risk worth taking?

There are real and material reasons why the risk should not be taken;

1. **GOD**, represented by the **WORLD, AFRICA, SADC, THE CONSTITUTION OF ZIMBABWE**, and the **LAND REFORM AND RESETTLEMENT ACT**, has not condemned the Zimbabwean Government's acquisition of the land and its resettlement program. The **UN, AU, SADC** and the **people of Zimbabwe** through their Government accept that the Land reform program in question is **legitimate**.
2. Notwithstanding the high rising legal and moral clarity attaching to the legitimacy of the land reform program in Zimbabwe, **America, Britain, and Europe, (all being former slave masters and colonizers and declared enemies of Zimbabwe's legitimate land reform program)**, have imposed sanctions against Zimbabwe in support of the **white settler farmers** who are before the Tribunal with a case which defies and contradicts **GOD** as defined above.
3. The issues of jurisdiction, which at law must be settled before any real rights are altered by order of court, have already been ignored by the SADC Tribunal. (The land issue has been settled enough to become a purely domestic issue falling entirely under the sovereign right of the Government of Zimbabwe to determine. A SADC Tribunal is dangerously out of bounce here.)
4. The Tribunal has therefore clearly provisionally added its voice of descent to Zimbabwe's land reform program by actually daring to **and actually ordering the Government of Zimbabwe to stop enforcing its land reform laws pending whenever the matter at the Tribunal will be heard and completed.**

5. The Tribunal has clearly departed from the SADC position regarding the legitimacy of Zimbabwe's land reform program, and this is an indicator of the expansion of the declared enemies of Zimbabwe's land reform program, (the Americans, British and their European allies.) It should not surprise anyone that the provisional position can be confirmed.

EFFECTS OF A SADC TRIBUNAL ORDER AGAINST THE GOVERNMENT OF ZIMBABWE

BACKGROUND

When the provisional order was granted the resettlement of the black indigenous farmers stopped in some cases and/or slowed down quite significantly because prosecution and courts dealing with the enforcement of section 3 of the GAZETTED LANDS (CONSEQUENTIAL PROVISIONS) ACT, had to face the Provisional Order of the SADC Tribunal.

The Criminal Division of the Attorney General, *being guided by section 111B of the Constitution of Zimbabwe which posits that since the SADC Protocol in question has not been domesticated and therefore of no force and effect in Zimbabwe*, continued to prosecute and evict.

However since the 19th of May 2008, and in deference to the SADC Tribunal's provisional order, the Acting Attorney General, Justice Barrat Patel, has ordered prosecution to stop the evictions.

The Tribunal's decision offers the enemy of Zimbabwe hope and grounds a basis for the enemy to fight on because it has been proven to be worth it, at least by a SADC body.