

PARLIAMENT OF ZIMBABWE Wednesday, 18th March, 2020 The National Assembly met at a Quarter-past Two o'clock p.m. – extract from Hansard.

HON. T. MLISWA: It is a very important question and I hope Members of Parliament can pin their ears to this. My question concerns the inconsistency on Government policy on land. There is a section, especially Statutory Instrument 62 of 2020 which is recognising the indigenous farmer owning the land. That is in order. It also talks about compensating the BIPPA farmers – giving back farmers. Is it not inconsistent with the laws of this country, especially Section 72 which I will read out to you so that there is an understanding on this? It reads, "Section 72 (4) (a) talks about all agriculture land which was itemised in schedule 7 to the former Constitution or (b) before the effective date was identified in terms of Section 16 (b) (2) (a) cannot be taken'. What I am trying to say is, if the Minister intends to give back BIPPA farms, the Constitution has got to be amended. He cannot take land which was taken by Government without a constitutional amendment. Why are they going ahead with Statutory Instrument 62 of 2020? There seems to be inconsistency in terms of Government, in terms of the land. Already, there is an agreement that the white farmers who want to farm can go into a joint agreement and what will happen to those farmers who are already circled on those BIPPA farms if you compensate or you bring back the former farmers? Thank you.

THE DEPUTY MINISTER OF LANDS, AGRICULTURE, WATER, CLIMATE & RURAL RESETTLEMENT (HON. HARITATOS): Thank you Madam Speaker and thank you Hon. Member for the question and his passion with regards to Statutory Instrument 62 of 2020. To be very clear with everyone, all agricultural land in Zimbabwe belongs to the State. That is the first and foremost. Secondly, the Hon. Member is correct SI 62 of 2020 refers to indigenous farmers. It also refers to BIPPA. The Hon. Member mentioned that he is happy with indigenous farmers. So I will comment on the BIPA. Madam Speaker, the S.I is very clear. Former BIPPA farms that were signed prior to land reform; either farmers will be compensated or farmers will receive their land back but if the land is being utilised or Government feels it is impossible to give back that piece of land, that is when Government will go with the compensation route. We will not uproot people unnecessarily.

HON. T. MLISWA: This is a time bomb. We cannot at all give an option in the S.I. of saying that we will give them back the land when already there are people settled. We can compensate. There is no way that you can remove people who are already settled right now. Where do you take them to? It is important that Government sticks to consistency in terms of policy. Who are you trying to please anyway because this land belongs to the nation and it is for the black people? The white farmers are not excited about being compensated or being asked to come back. They even said how can I come back to a farm that I left 20 years ago. So who are you trying to please and who is your master?

HON. HARITATOS: I will go back to my first point. All agricultural land in Zimbabwe belongs to the State. Therefore if Government feel that respective piece of land was under BIPPA agreement and cannot be taken back, we will either compensate or we will find alternative land that is S.I. 62 of 2020.

HON. T. MLISWA: My point of clarity is let us admit that Government has certainly accepted – the land reform has not happened and why would it be giving land back to the whites whom we took land away from? Why would you? Have you shifted in policy because you took away indigenisation from the blacks and you have given it to the foreigners? Has Government shifted their policy of giving land back to the whites, yes or no?

HON. HARITATOS: Madam Speaker, we have an obligation; if there are BIPPA farms – [HON. MEMBERS: Inaudible interjections.] –

THE HON. DEPUTY SPEAKER: Order, order Hon. Members! – [HON. MEMBERS: Inaudible interjections.] – Order Hon. Mliswa.

HON. HARITATOS: Hon. Speaker, can the Hon. Member ask his question again – [HON. MEMBERS: Inaudible interjections.] –

HON. T. MLISWA: My question to the Minister is simple. Government policy was to take land from the whites and give it to the blacks and now you are taking land from the blacks who are settled and giving it to the whites. Has Government shifted their policy and now giving land back to the whites, yes or no?

HON. HARITATOS: Government policy is clear. We are not going back on the land reform - [HON. MEMBERS: Hear, hear.] –

HON. BITI: I believe that the Minister of Justice, as the Leader of the House, as the Minister of Constitutional Affairs, should answer this question. The native fact of S.I. 62 of 2020 is to allow the Government to take back the land it had already given in terms of the land reform programme to its original owners and there are two categories that are mentioned in Section 4 of the regulations. These are indigenous black owners – [HON. MEMBERS: Inaudible interjections.] – I need protection Hon. Speaker.

THE HON. DEPUTY SPEAKER: Order Hon. Members – [HON. MEMBERS: Inaudible interjections.] – Proceed Hon. Biti. Order Hon. Members, order! You may proceed.

HON. BITI: The Statutory Instrument identifies two categories in Section 4 of people that must get back their original land. First are indigenous black people whose farms were taken. Second are BIPPA owners- in other words land that was protected in terms of BIPPA. The S.I is saying that land must go back to its original owners but there are two problems Madam Speaker and I would like the Leader of the House to answer. Land, as the Deputy Minister of Lands said, belongs to the State. But it only belongs to the State by virtue of Constitutional Amendment No. 17 of 2005 which says that all land that was gazetted now belonged to the Government or State and the land that was gazetted was put in the 7th Schedule of the Constitution. The 7th Schedule of the Constitution puts all land that was gazetted to the State. So in order to take land that was gazetted and give it back to someone, you actually need a Constitutional amendment to take away the land from the 7th Schedule to give it. Hon. Minister of Justice and the Deputy Minister, you cannot pass S.I. 62 and purport to take away land that was gazetted which belongs to the State without amending the Constitution to actually take that land constitutionally from the 7th Schedule. Why are you doing that which is clearly and patently unconstitutional?

THE MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS (HON. ZIYAMBI): When the Constitution became effective on the 22nd of August 2013, the Constitution in terms of Section 295 lists two categories of people that are entitled to full compensation for the land and improvement, that is indigenous farmers and those that were protected by bilateral agreements between Zimbabwe and the other country. Those were entitled to full compensation. Pursuant to that, we have not been doing that. We have black people who lost their farms through the land reform programme, there was no compensation. This particular S.I. is trying to give effect or to kick-start the process of having that compensation to set it in motion. Secondly, we have those that are protected by BIPPAs. They are also

covered in the Constitution in terms of Section 295 (ii) they are covered. What has been happening is that because it is in our Constitution, where we were taken to arbitration we have lost dismally. So the Statutory Instrument is trying to say that where the land is lying idle, the best possible thing is to give them the land because it is protected under the Bilateral Investment Promotion Protection Agreement (BIPPA) but where it is not possible, we then discuss the possibility of compensating for both the land and the improvements – that is the net effect of that Statutory Instrument. I thank you.

HON. BITI: Madam Speaker, my supplementary question is that the issue of compensation on improvements does not need a Statutory Instrument because it is in the Constitution. What you are doing which you cannot do is to take away that land because the land is covered in the Seventh Schedule which is part of the Constitution. So if you are going to take away anything that is already in the Constitution, then you have to amend the Constitution. Secondly and in any event Madam Speaker, the issue of land is so important. Why are you using a Statutory Instrument instead of bringing an Act of Parliament where all Hon. Members can debate fully and where there will be public consultation in terms of Section 41 of the Constitution of Zimbabwe?

HON. ZIYAMBI: Thank you Madam Speaker, I alluded to the fact that BIPPAs were constitutionally protected and because they are constitutionally protected, we have been taken to arbitration in certain instances to court and we have lost and been told to pay compensation. Madam Speaker, if you read the S.I, the import of the S.I is actually speaking to what you are saying that, 'where it is impossible to bring that particular individual on the land, then we negotiate for full compensation'. We have realised that we went to arbitration and the compensation that we are being asked to pay is exorbitant. What we are doing is that we are honouring the agreement and provisions of the Constitution by negotiating with those who were on the farms. So there is no going back on the Land Reform. The drafters of this Constitution included them because they realised that we hope to honour our agreements with other nations. I thank you. –

[HON. MEMBERS: Vatengesa nyika varume ava!] –

HON. GONESE: I have a point of order Madam Speaker in his response. My point of order rises from this fact Madam Speaker Ma'am, Hon. Biti specifically referred to Amendment No. 17(2005). However, in his response, the Hon. Minister quoted Section 295 (ii) of the current Constitution and that subsection does not relate to what the Hon. Minister quoted. The subsection refers to compensation and does not talk about returning the land back to anyone. So in terms of his response, the Hon. Minister is actually misleading the House because his reference to Section 295 (ii) that talks about compensation is not applicable to what Hon. Biti raised which is that the land was gazetted in terms of the Seventh Schedule to that Constitution and you cannot take it back. Legally, it is impossible and this is the issue that the Hon. Minister is not addressing but instead is actually misleading us by quoting a section that is inapplicable to the point – that is my point of order Madam Speaker. – [HON. MEMBERS: Inaudible interjections.] –

THE HON. DEPUTY SPEAKER: Order, order Hon. Mliswa!

HON. ZIYAMBI: Thank you Madam Speaker. There is nowhere in the Constitution where it says, 'if the State acquires land, they cannot allocate it to anyone.'

*HON. T. MLISWA: That is what we are asking Madam Speaker, Government owns the land. The point is that Government should be clear on whether it has decided to reallocate the land to the whites. This is State land, Government is the one that has the responsibility of distributing land. So Government is saying, 'come and we will give you land', instead of saying, 'come we will compensate you'. So what are you to say when these white people return because some of the white people are saying, 'we are not returning to vandalised properties'. So it must be clear whether Government has changed its policy so that we know whether to return our land to the whites – just that. *HON. BITI: Hon. Speaker, may I have a point of clarification before the Hon. Minister responds? May I have a point of clarification Hon. Speaker before the Leader of Government Business responds? Madam Speaker, Government has the right to distribute land to anyone using an Offer Letter – this has been done using the 99 Year Leases and there is no need for any other law but Government put a new S.I. 62 last Friday which states that those white farmers who had their land repossessed are being given back the land. This is a reversal of the Land Reform Programme, so it must be clear whether there is change in Government policy regarding the repossessing of land? How does this happen without amending the Constitution of the land? I thank you. – [HON. MEMBERS: Inaudible interjections] –

THE HON. DEPUTY SPEAKER: Order, order Hon. Members! Hon. Members from the Opposition started singing the song, 'Tengesa uwone mashura!' THE HON. DEPUTY SPEAKER: Order, order Hon. Members!

*HON. ZIYAMBI: Thank you Madam Speaker Ma'am. Hon. Biti is pretending not to understand the Statutory Instrument which was enacted last week, yet he knows the laws but he is trying to misinterpret the law so that it reflects what he wants. What pleased me today Madam Speaker – [HON. MEMBERS: Inaudible interjections.] – Hon. Members broke into song: Matengesa Nyika. Hon. T. Mliswa having been speaking at the top of his voice.

THE DEPUTY SPEAKER: Hon. Mliswa! – [HON. MEMBERS: Inaudible interjections.] –

*HON. ZIYAMBI: Madam Speaker, I am pleased because the Hon. Members agree on one point that land should be given to black people across the political divide. This is an important issue because in the past we were not talking in one accord. My second point Madam Speaker is that I said that Hon. Biti spoke prematurely because Statutory Instruments are given to the House by the Executive and they go through the Parliamentary Legal Committee and after examining, the Statutory Instrument is brought to the House for debate. If there is an anomaly, then it is the Hon. Member's responsibility to identify such discrepancies between the Constitution and the Statutory Instrument. These issues will be debated after the Committee has gone through the Statutory Instrument but the mandate of the Government is to make sure that those black people who were dispossessed should be compensated because there are a lot of issues which must be addressed, particularly the Bilateral Investment and Protection Agreement (BIPA) farms that were repossessed. These are issues which can be discussed in this august House because we have the primary legislative role. Thank you. – [HON. MEMBERS: Inaudible interjections.] –

THE DEPUTY SPEAKER: Order Hon. Members.

HON. MARKHAM: Madam Speaker on a point of order. There is a lot of conversation here about white farmers. My question is very simple and the first one is: you took 300 indigenous farms away, now you want to get them back. You are now giving back BIPA farms which were protected by international law. The white people in Zimbabwe, myself being the fourth generation, I want to know clearly from the Minister of Justice, Legal and Parliamentary Affairs, am I a Zimbabwean or am I not? I will ask you why;

why are you giving other white people farms but I am only allowed to lease a farm – [HON. MEMBERS: Inaudible interjections.] – Am I a Zimbabwean or am I not– [HON. MEMBERS: Inaudible interjections.] – Hon. Matangira having mentioned Mr. D. Mutasa’s name in his exchange of words with Hon. Mliswa.

*HON. T. MLISWA: Madam Speaker, the Hon. Member is insulting Cde. Mutasa, urikutukirei nyathi. How does he feature in this debate? Why is he insulting him, you cannot insult Cde. Mutasa... THE HON.

DEPUTY SPEAKER: Oder, order! Hon. Mliswa, may you approach the Chair – [HON MEMBERS: Inaudible interjections.] Order, order!