**Where does compensation leave Zimbabwean farmers?**

**An article by Dr Theo de Jager**

There are no simple answers to the complex political and economic questions of our time. I realise this anew every week when I open yet another email from the Commercial Agricultural Union (CFU) announcing the passing away of yet another member, matching a name to a face; yet another infirm aged person who had been struggling in a neglected home for the aged or hospital bed to pay for medical care and make ends meet financially. Every one of them had hoped that compensation for farms, livestock, crops and implements expropriated without compensation since 2000 would become a reality within their lifetime, alleviating their distress.

Victims of expropriation without compensation in Zimbabwe every day ask: “Should we accept a less-than-ideal compensation settlement? Or should we keep fighting in Zimbabwean and South African courts, in regional tribunals and international forums until we can negotiate a fair and equitable outcome?” Questions such as these do not have simple answers.

There is no ideal settlement if one is negotiating oneself out of a deep-rooted conflict. In the hustle and bustle of give-and-take agreements all parties sacrifice more than they are comfortable with, to gain less than what they would have liked to get. The CFU has calculated that improvements on expropriated farms that the ZANU-PF government now is prepared to pay for are worth approximately 5,2 billion US dollars. The settlement value of $3,5 billion signed for in July 2020 is two-thirds of this amount.

The question is rather: should one kick for goal when the slightest gap presents itself, or is it worth one’s while to wait for another ten or fifteen years for a better opportunity while fighting for one’s rights on every possible platform? What are the accompanying financial, economic, political, social and reputational risks?

However, for Zimbabwean farmers it need not be an *or*, it could also be an *and*. Reach an uneasy compromise and maintain the moral high ground by subscribing to an imperfect negotiated settlement on compensation, while at the same time challenging the unjustness in South African and international courts and tribunals, media and policy-making bodies. Where the local agricultural structure is unable to do so because of the provisions of the settlement agreement, another representative vehicle may be used.

The option to fight is exhausting, costly, time-consuming and drains one’s resources. External assistance is required, but so far it has yielded results. In November 2008 the Southern African Development Community (SADC) tribunal handed down an epoch-making judgment against the Zimbabwean government’s land grabs. Although it resulted in the dissolution of the tribunal by the SADC summit in 2012 (following a process in which the South African government played a not insignificant role), the judgment was recorded in South African law and in September 2015 Zimbabwean property in Cape Town was attached and sold to cover outstanding legal expenses.

This week, a further case was heard in the North Gauteng High Court, testing the South African government's accountability for losses suffered because of its involvement in the dissolution of the SADC tribunal. Judgment in this case was reserved.

The confrontation route, especially in the international and legal arenas, relies heavily on Article 17 of the Universal Declaration of Human Rights, which in Washington and Brussels mostly dictates the debate on aid to Zimbabwe. During the Green Week in Berlin in January this year I facilitated a meeting between a senior official of the World Bank and the late Minister Perrance Shiri of Zimbabwe, during which the intention to pay compensation, the buy-in of affected farmers and possible access to a loan for this purpose were discussed. The official said he was representing a bank, not a charity, and that they were looking at the ability to repay, the track record of repaying previous debt, and the ability of the current policy environment to bring about growth and prosperity. He was sceptical about Zimbabwe's profile on any of those criteria.

The largest single problem regarding the Zimbabwean compensation settlement is that they do not have funds to honour it, and they do not yet know where to get it. Half of the $3,5 billion is payable before July 2021.

If land reform in Zimbabwe sneezes, South Africa and Namibia also catch a cold. The principles applying in the Zimbabwean compensation settlement become a format for the rest of the region, and this is why it is important for every South African farm owner to keenly watch developments in that country. It is important to see how, where, what and when compensation is paid and why.

Payment is made for improvements only, not for the land, except to "indigenous Zimbabweans" and farmers covered by Bilateral Investment Protection Agreements (BIPPAs) (citizens of South Africa, Switzerland, the Netherlands, Germany, Denmark and seven others). This gives more rights to foreign investors than to Zimbabwean citizens. It means saying to white Zimbabweans they are in fact "not from here", granting them second-class citizenship.

It sidesteps the Zimbabwean state's involvement in and benefitting from the establishing of the "unacceptable distribution of land ownership" by always having registered ownership in a deeds registry and levying transfer duties.

But no injustice is ever final.

Should expropriated Zimbabwean farmers accept the settlement agreement? Their average age is more than 80 years. They should accept the compensation offered, opening the door for Zimbabwe to resume its role as a highly competitive agricultural producer. They should again become the showpiece of the world's beef, tobacco, cotton and cut flower industries, creating the prosperity that can pull their country from its abject poverty.

However, in doing so they should not neglect the confrontation options!

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