

Whose Land is it Anyway? A People-Centred Approach to the Land Question in South Africa and Zimbabwe'



Executive Summary

On the 17th of September 2020, the Southern African Liaison Office (SALO), in partnership with the Norwegian Embassy, hosted a public dialogue titled *Whose Land is it Anyway: A People-Centred Approach to the Land Question in South Africa and Zimbabwe*. The dialogue aimed to unpack the recent developments in Zimbabwe's land reform program brought on by the Global Compensation Deed Agreement (GCDA). The dialogue also focused on the challenges and accomplishments achieved by Zimbabwe's Fast Track Land Reform Program as well as what lessons South Africa could draw from Zimbabwe's progress. The dialogue was co-chaired by SALO board member Miss Molly Dhlamini and senior researcher Mr Munjodzi Mutandiri; and the panel comprised of Ambassador H.E. David Hamadziripi, Professor Rudo Gaidzanwa, Emeritus Professor Ben Cousins and Dr Phillan Zamchiya.

Participants included diplomats, civil society members and government representatives.

Summary of the Presentation

H.E. David Hamadziripi, Ambassador of Zimbabwe in South Africa

In his opening remarks, the Ambassador noted that the question of land ownership in Zimbabwe had been resolved by the Fast Track Land Reform Program (FTLRP). He stated that, therefore, the issue at hand was one of compensation. This issue, he explained, is being addressed by the GCDA under which white former commercial farm owners will be compensated to the value of US\$3.5 billion for improvements to agricultural land that was expropriated under the Mugabe regime.¹

The Ambassador noted that the conclusion of the GCDA would bring closure to Zimbabwe's contentious land discourse and cast the land reform program in a better light. He argued that the GCDA shows Zimbabwe's commitment to the rule of law and its respect for property rights and that this would ultimately result in the improvement of the image of Zimbabwe's agricultural sector as an attractive and lucrative investment environment.

Whilst the GCDA represents a positive step forward, the Ambassador noted that multiple misconceptions were surrounding the agreement that he wished to provide clarity on, namely:

- That the current government decided to compensate the white farmers;
- That the GCDA represents a reversal of the Land Reform Program (LRP);
- That compensation of white farmers has been a top priority;
- That there is a lack of certainty regarding ownership of formerly white-owned agricultural land.

In response to the first misconception, the Ambassador stated that the principle of compensation was first accepted in the Lancaster House negotiations, and subsequently incorporated into the Constitution of Zimbabwe Amendment (No.20) Act of 2013. Thus, the principle of compensation precedes the current government.

In response to the second misconception, the Ambassador argued that the GCDA is indicative of the irreversibility of the Land Reform Program as it is an acknowledgement by white former farmers that they no longer own the land. He noted that this misconception likely arose from confusion between Statutory Instrument no.62 of 2020 and the GCDA.²

In response to the third misconception, the Ambassador noted that whilst compensation is not a top priority, it is certainly *a* priority. The reason it has been prioritised, he stated, is because the resolution of the compensation question is pertinent to the development of the agricultural sector and the improvement of Zimbabwe's international relations, especially in light of sanctions imposed on Zimbabwe by the European Union and the United States of America. The Ambassador explained that the resolution of the compensation question enables the government to focus its efforts on improving land productivity. He pointed to the launch of the Agriculture and Food Systems Transformation Strategy (AFSTS), as evidence of this being done.

In response to the final misconception, the Ambassador stated that whilst there are still legal challenges to land ownership, recent court rulings show that decisions made under the FTLRP are being upheld. He affirmed that once the court hands down a judgment, the decision is final, and certainty is obtained.

¹ The government of Zimbabwe is to establish a Joint Resource Mobilisation Committee which will be tasked with raising half of the funds through a sovereign bond and the remainder through development partners.

² Statutory Instrument no.62 of 2020 provides for compensation for both the land and the improvements thereon for those individuals who are indigenous Zimbabweans and those who fall into the Bilateral Investment Treaties (BITs) and Bilateral Investment Protection and Promotion Agreements (BIPPAs) categories.

Professor Rudo Gaidzanwa, Professor of Sociology at the University of Zimbabwe

Professor Gaidzanwa's opening remarks emphasised the complicated nature of land redistribution and compensation, which inevitably creates confusion and thus requires clear and transparent processes. Gaidzanwa stated that whilst many beneficiaries have certainty surrounding the process of obtaining access to communal farmland - specifically through chiefs and headmen - access to largescale commercial farms is more precarious, as it comes with unresolved baggage such as ongoing legal proceedings. The professor gave the example of the Bilateral Investment Promotion and Protection Agreements (BIPPA) farms being restored to their original owners, resulting in the new farmers being forced to start afresh on new land. She noted that this has resulted in a general mistrust around acquiring commercial farms, and a hesitancy to make investments of time or capital.

Professor Gaidzanwa further remarked that it is vital to include the voices of farmworkers in the present discourse, especially in the context of largescale commercial farms. When such farms change hands or are restored to their original owners, there is often uncertainty regarding the farmworkers' security of tenure.

Emeritus Professor Ben Cousins, founder of Poverty, Land and Agrarian Studies (PLAAS)

Professor Cousins began his presentation by noting that Zimbabwe well demonstrates the inherent politically controversial character of land reform. Reflecting on the outcomes of Zimbabwe's FTLRP, the Professor asserted that, "the glass is both half-full and half-empty, depending on how you want to see it". On the one hand, there have been many positive outcomes, namely:

- Small scale A1 farmers have generally prospered;
- Historical injustice has been addressed, resulting in a higher degree of equity in land ownership; and
- There has been a move toward "real agrarian reform" - which is essential for democracy.

On the other hand, he noted that the land reform program has also had its drawbacks:

- Export sectors have been decimated despite Zimbabwe's previously thriving export industry;
- There has been a negative impact on production;
- Whilst beneficiaries have invested in land, the decline of the economy has constrained the degree of investment that is possible;
- The land reform program has been a contributing factor to the lack of foreign investment, especially in light of the sanctions placed on Zimbabwe by the European Union and the United States of America;
- The contested nature of land reform has at times been used by the ruling party as a means of cementing their political hold, resulting in the use of authoritarian practices.

Cousins commented on the state of South Africa's land reform initiative, saying that it has been an extremely slow process that has, for the most part, focused on large scale commercial farming. The consequence of this is that those who are most in need of redress, i.e. poor populations in rural areas, are being overlooked as beneficiaries of land reform initiatives. The dominant discourse in South African land reform is that of expropriation without compensation. Professor Cousins warned against viewing expropriation without compensation as a 'silver bullet' and urged that one should rather attribute the problems with South Africa's current land reform initiative to a lack of political will.

The Professor explained that there are multiple lessons that South Africa could learn from Zimbabwe's land reform program, specifically:

- It is possible to achieve rapid and extensive land redistribution if there is political will;

- It is important to focus on small-scale farming because it can be highly productive;
- Land redistribution initiatives should take cognisance of various forms of land tenure rather than solely aiming to achieve individual titles;
- There must be an awareness of how the state relates to both international and national capital to achieve a balance between the achievement of land reform aspirations and the facilitation of investment;
- Land reform that is too rapid could destroy a state's export sector. Therefore, reform needs to be phased-in using sustainable methods designed to mitigate potential negative impacts on the agricultural sector;
- State funding and capacity is a key determinant of success;
- The state and civil society should always be aware of whose voices are being heard, and whose are being silenced. In particular, the voices of those on the margins of society and in rural areas should be amplified;
- Lastly, land reform should be seen as part of a broader structural transformation, aimed at changing the way that postcolonial capitalist society is organised.

Professor Cousins concluded his presentation by emphasising that the land reform debate must be historically contextualised within the postcolonial context. He stated,

"It's not about cementing the grasp of some interests, but about opening up the political process as a whole so that it becomes more democratic. It's in that democratic resolution of these problems that land reform will find its true home."

Dr Phillan Zamchiya, Southern African Coordinator for PLAAS

In his opening remarks Dr Zamchiya maintained that, in reality, the question of land is a political one. He explained that land reform is not an isolated struggle; it is only one aspect of the broader liberation struggle, and therefore cannot be divorced from liberation struggle ideals. However, Dr Zamchiya pointed out that such a divorce *is* currently happening in land reform discourse, in the form of land reform programs being enacted without transparency, and outside of an open and democratic process.

Dr Zamchiya argued that the agenda behind the GCDA should not only be one of reengagement with the international community and respect for property rights but rather should also include a respect for human rights. A human rights agenda would emphasise the need to hear the voices of those on the ground, specifically those of farmworkers. He stated that without this, *"there's definitely no meaningful re-engagement"*. Dr Zamchiya noted that this was a lesson that South Africa could learn from Zimbabwe's land reform initiative. He said, *"It's high time that the farmworker must not be seen as belonging to the farmer but also belonging to the nation."*

Zamchiya concluded his presentation by noting that the GCDA does not put the question of compensation to bed. Questions of security of land tenure and property rights still loom large and unresolved. He explained that the existence of expropriation means property rights are not absolute. Therefore, the security of property rights rests essentially on the sentiment of the ruling political powers. He maintained that without transparency regarding this sentiment, and without express recognition of the rights of small-scale farmers and the multiple forms of secure land tenure that exist, there will be very little certainty and security in property rights in Zimbabwe. He concluded by stating that an important lesson South Africa can learn from Zimbabwe's experience is that the *speed* of implementation of land reform processes and policies should not be the focus, but rather the *sustainability* of land reform processes and policies.

Contributions and questions from the floor

- Will matters of compensation consider the Lancaster Agreement?
- Do you think it's fair to compensate people who took the land by force because they were in a position of power?
- Has there been transparency regarding the processes behind the GCDA?
- Is there fairness and justice in the Statutory Instrument 62 of 2020 if the peasantry is not represented?

Responses from panel

Ambassador H.E. David Hamadziripi

The Ambassador agreed that it is problematic to address the issue of compensation of former white farmers before addressing the issue of compensation of the original indigenous owners who lost the land in the first place. He stated that the government is bound by the principle of compensation due to the Lancaster Agreement as well as the Constitution of Zimbabwe. However, he noted that this was somewhat resolved as the land had been taken back. He gave the assurance that no reversal of the land reform program would occur and that the GCDA compensation was merely compensation for improvements.

The Ambassador reiterated that it is important not to confuse the GCDA with Statutory Instrument no. 62 of 2020. Statutory Instrument No. 62 of 2020 provides that indigenous farmers may have their land, which was expropriated under the FTLRP, restored to them. However, this will be determined by a committee established by the Minister and should restoration not be possible, they will be given an alternative farm or compensation.

Regarding the issue of transparency behind the GCDA, the Ambassador gave the assurance that all legislative requirements set out by the Constitution and the Land Acquisition Act had been met and that Parliament has been aware of the ongoing processes behind the GCDA.

The Ambassador explained that under the Lancaster House Agreement there was no compensation for both improvements and land. However, this had been changed by the Constitution in 2013 in which the principle of compensation is maintained, but applies in the instances of former white farmers, only to improvements.

Munjodzi Mutandiri

Mutandiri commented that it was clear from the discussion that the question of land was an emotive one and that despite continuing dialogue, a consensus has not yet been reached. He noted that this could be seen by the common perception on the ground that the GCDA was a reversal of the FTLRP. Mutandiri explained that this shows that there is much work to be done to build consensus, trust and common understanding between the government and its citizens. He reaffirmed that the question at the heart of the matter is:

“How do we ... really build a proper transformative agenda, not isolated to the land question, but broadly, to the other ideals of the liberation struggle?”

Contributions and questions from the floor

- Has there been a shift in thinking from the Zimbabwean government regarding the role of farmworkers?
- To ensure that gains are sustained in the land reform process, the development of strong institutions of land governance and administration is vital. Has the Land Commission, or other related institutions, been involved in the discussion around compensation?
- What is being done to ensure that the procedure for the redistribution of land is non-partisan?
- What is the status of women in the Zimbabwean Land Reform Program?
- 15% of white former farm owners have not agreed to the GCDA, what are the implications of this for the resolution of the land question, especially if they are eager to pursue litigation in light of SADC Tribunal judgments?
- How does the presence of illegal occupiers impact the GCDA resolution?
- Do the return of white commercial farmers to Zimbabwe and their involvement in joint venture agreements not indicate a reversal of the Land Reform Program?
- What assistance, investment and skills are either contemplated or provided to new farmers and landowners?
- How does one balance the need and the pressure for redress from historical injustices like land dispossession and the need to bolster a legal framework in the country, stability, and predictability?

Responses from panel

Professor Rudo Gaidzanwa

Professor Gaidzanwa pointed out that one of the largest problems at hand is that there have been many upheavals around the land question. This creates a lingering uncertainty and fear around being dispossessed of one's land, especially in light of the controversy surrounding previously white-owned farms. She reiterated that this is especially clear in the case of those who are beneficiaries of large-scale commercial farms. The result of this is that those with informal titles to communal land have more secure tenure than those with formal titles, which impacts negatively on the productivity of the land.

Gaidzanwa stated that she hoped the dialogue would shed light on how complex the issue of land reform is and that it will not be an easy task. She concluded that there is also a need for transformation of the economic system for land to cease to be both an area of economic and historical contestation.

Emeritus Professor Ben Cousins

Professor Cousins emphasised that the question of compensation revolves around investment, as investors are unlikely to invest in an environment where property rights are insecure. In this sense, he argues that the GCDA is an attempt to rekindle investment in the Zimbabwean economy. Cousins stated, "*politics drives land reform, but it's economics that determines success or failure and then feeds back into politics.*" Thus, he argues that the discourse of land reform should focus more on economics and the intersection between economics and politics. Cousins states that the South African discourse is too focused on politics, and in particular the question of whether expropriation should occur with compensation. He argues that this is too vague a focus and that what should instead be asked is:

- In what circumstances should compensation be paid?
- What categories would compensation apply to?
- What are the criteria?
- What funds are available and are they being used effectively?

Cousins further noted that South Africa and Zimbabwe should make greater use of small-scale farming markets and that the failure to do so is indicative of a lack of support structures and policies which directs investment into the right sorts of produce.

In conclusion, Professor Cousins reiterated that “*good politics*” are vital, but that they must be grounded in strong economics.

Dr Phillan Zamchiya

Dr Zamchiya stated that a minority of the beneficiaries of the FTLRP were women, thus leaving women on the margins of land reform. He further noted that the principle of compensation could not be fully attributed to the Lancaster House Agreement, as the agreement expired in 1990. Zamchiya maintained that the theoretical discourse of compensation is rooted in the neoliberal structural adjustment programs of the 1990s. He reiterated that there has been no resolution of the land question, as many of the farmers retain their original title deeds and will do so even after they are paid compensation for improvements.

Lastly, Zamchiya acknowledged the importance of a holistic approach based on the values of the liberation struggle, which is inclusive of economic considerations. However, he stated that whilst both politics and economics are important, the question of politics should prevail as, for the most part, “*the economic question will not be resolved without the resolution of the political question.*” In conclusion, he stated that instead of speaking of land in isolation, a broader dialogue of post-colonial development should be opened up.

The analysis and recommendations included in this report do not necessarily reflect the view of SALO or any of the donors or conference participants, but rather draw upon the major strands of discussion put forward at the event. Participants neither reviewed nor approved this document. The contents of the Report are the sole responsibility of SALO, and can under no circumstances be regarded as reflecting the position of the donors who provided financial assistance for this policy dialogue session.

About the Southern African Liaison Office:



The Southern African Liaison Office (SALO) is a South African-based not-for-profit civil society organisation which, through advocacy, dialogue, policy consensus and in-depth research and analysis, influences the current thinking and debates on foreign policy especially regarding African crises and conflicts.

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