

CHAPTER 1 INTRODUCTION

The chapter provides a comprehensive overview of a monograph that examines the constitutional obligation of the Government of Zimbabwe (GoZ) to compensate former white commercial farmers whose land was acquired under the Fast Track Land Reform Programme (FTLRP). In July 2020, the GoZ reached a settlement agreement worth US\$3.5 billion with these farmers, stipulating that they were entitled to compensation solely for improvements made to the land at the time of expropriation, as outlined in the Global Compensation Deed and Section 295(3) of the Zimbabwean Constitution. This arrangement, formalised in Statutory Instrument 62 (2020) (herein referred to as SI 62 of 2020), indicates that displaced farmers would not regain their land but would receive compensation for improvements instead. The monograph investigates the implications of this constitutional framework, particularly the limitations placed on farmers' ability to seek legal recourse regarding property rights. By contextualizing the land rights issue within a historical legal analysis of colonial injustices, the monograph aims to shed light on the complexities surrounding compensation and property rights in contemporary Zimbabwe.

The chapter focuses on the historical progression of land invasions during the colonial era, the resulting displacement of African indigenes, and the introduction of foreign laws that facilitated the appropriation of land. It also explores the ongoing tensions between the GoZ and former farmers, framing these discussions within the broader narrative of justice and reparation. By the end of the chapter, readers will gain a clear understanding of the monograph's objectives, significance, and the pressing legal and ethical questions that arise from Zimbabwe's land reform policies.

The monograph examines the historical progression of the British settler land invasion during the colonial era, the brutal looting of cattle and subsequent forcible displacement of African indigenes from their

ancestral lands and how the emigrant white settlers brought an import of foreign laws into the jurisdiction and by that, assumed property rights over their loot and actions of criminality. The monograph also looks at how the white emigrant settlers protected themselves with such racially constructed restrictive and repressive laws that were detrimental to black indigenes. In examining the land question and how post-colonial independent Zimbabwe sought to address the imbalance through Constitutional amendments, the GoZ promulgated laws in tandem with the correction of the historical injustices that took place for over 100 years since 1890 to the year 2000 when the nation of Zimbabwe embarked on the FTLRP to address this imbalance. Ultimately, the monograph questions the justification of compensating for improvements on expropriated white-owned commercial farms seized by the Mugabe-led government through the Fast Track Land Reform Programme (FTLRP) since 2000.

Throughout the early settlement process, there have been substantial disagreements between the GoZ and the erstwhile large-scale commercial farmers, who were represented by the Commercial Farmers Union (CFU) and a radical breakaway organisation from the CFU called Justice for Agriculture (JAG) (Murisa, 2019). Among the topics of controversy were the compensation criteria and the approach to farm evaluation. Before accelerating the FTLRP in late 1999, the GoZ took the position of compensating displaced white farmers for improvements they made to their agricultural land. The displaced farmers were adamant about being compensated for both their land and improvements on it.

Despite the former Minister of State of the United Kingdom for Development and Africa, Claire Short's 1997 letter to Zimbabwe's Minister of Lands exonerating the British government of any responsibility for the land reform in Zimbabwe and any matter incidental thereto, the GoZ's view was that the former colonial authority

should compensate its own citizens for their removal from agricultural land in Zimbabwe. The disagreement about what deserved compensation meant that the idea was necessary, but by whom should it be made? Also, for what?

Early in the new millennium, the CFU estimated that the GoZ owed displaced members a reasonable compensation of around US\$1.2 billion, while JAG attempted to compel the government to pay an estimated US\$28 billion as compensation for land, improvements on acquired farms, and lost income as a result of disturbances on farms (Murisa, 2019). Unreasonably and unjustly, the displaced white commercial farmers claim compensation on farms that were taken from the same people who have reclaimed their land back. These farms were taken as a result of looting.

Furthermore, the displaced white farmers want compensation for the money they lost as a result of the FTLRP's interruptions on their farms yet before colonisation, African natives owned the same land and their operations were also hampered, for over 100 years, by white emigrant settlers who forcibly took their land and cattle that was their primary source of livelihood and belonging. This was before a chain of repressive racially constructed segregating laws were put in place by the white settlers to subjugate and oppress the black indigenes.

Following the resignation of former President, the late Robert Gabriel Mugabe in November 2017, Mamvura (2022) posits that the New Dispensation led by Emmerson Mnangagwa continued its predecessor's policy of not stopping land seizures that are rooted as far back as to the Liberation War. Mkodzongi (2019) avers that Mnangagwa's thrust on displaced white farmers was to compensate the displaced white farmers solely for the improvements done on the land, and not necessarily the land itself. The white community had put unrealistic expectations in President Emmerson Mnangagwa's new administration to atone for the

former leader's acts by returning the land to the displaced white farmers, but this ruined those aspirations.

Since there is no turning back on the land redistribution programme, it is critical to examine Zimbabwe government's constitutional duty to compensate for improvements made to land that was previously acquired forcefully by white emigrant farmers who displaced black indigenous people from their ancestral land during the colonial era. Although the law is explicit that compensation should only be given for land improvements done by white emigrant farmers during their "ownership tenure," there is a rising debate on whether or not compensation should be paid, or at all, and by who and for what. How ownership rights should be accorded to the new landowners is also an issue for debate. The law is dynamic, the same way constitutions lack rigidity, that is, they all can be transformed where necessary hence the need to look into the legitimacy of the justice system that calls for compensation on improvements made to the land previously seized from those who have reclaimed it back. There is limited academic literature on this emerging debate that the monograph intends to fill.

The monograph sought to achieve the following objectives:

- 1) To analyse the evolution of the land dispute in Zimbabwe through the lenses of the Aristotelian concept of justice and fairness
- 2) To examine the constitutional provisions giving rise to compensation on improvements done on land earmarked for acquisition.
- 3) To explore post-independence agricultural land compensation in other jurisdictions.
- 4) To recommend the way forward on the constitutional requirement for compensation on land improvements.

This monograph aims to inspire lawmakers and the citizens of Zimbabwe to re-examine the constitutional provisions that provide for

compensation to white commercial farmers for improvements made on their expropriated lands. The monograph emphasizes the importance of justice in the context of reclaiming land that was forcibly taken by white emigrant farmers during the colonial era. By addressing this critical issue, the research seeks to contribute to the existing body of knowledge, particularly in the areas of retributive and corrective justice. It highlights the principles of retribution, reparations, and direct reciprocal justice, thereby filling a significant gap in the justice system (Kelly, 2023).

The monograph is confined to Zimbabwe, examining the constitutional obligations related to compensation for expropriated farms. It specifically investigates the relevant provisions of the Zimbabwean Constitution that mandate compensation for improvements made to expropriated farms. The research focuses on the complexities and challenges associated with compensation, including stakeholder impacts and legal interpretations. The monograph considers the historical context of the Fast Track Land Reform Programme (FTLRP), analysing how the timing of these reforms affects compensation practices.

The monograph faced significant methodological limitations due to the politically sensitive nature of the land issue in Zimbabwe. This sensitivity restricted access to key stakeholders for interviews, as many viewed the topic as conflicting with the Government of Zimbabwe's (GoZ) re-engagement initiative. To address this limitation, the researcher utilised a diverse range of secondary sources, including academic articles, books, and media publications, to gather data and insights. Additionally, the researcher's training as a legal scholar helped to critically analyse and interpret the available information, mitigating potential biases and enhancing the validity of the findings.