

CHAPTER 2 REVIEW OF RELATED LITERATURE

The chapter focuses on a wide range of literature and legal instruments and frameworks that were employed in the colonial and post-colonial period regarding agricultural land in pre and post independent Zimbabwe. The chapter also looks at the concept of justice on how it was applied in the colonial and post-colonial era and philosophical underpinnings therefrom. The monograph also looked at jurisprudential theories that informed the land reform before focusing on international and regional instruments relating to the correction of racially motivated historical injustices brought about by colonialism in Africa, particularly in Zimbabwe.

A theoretical framework is an overview of fundamental theories that provides a foundation for establishing the justifications for one's own area of monograph (Vieluf & Klieme, 2023). Researchers create theories to explain occurrences, discover connections, and predict the future. One describes the current theories that underpin their monograph in a theoretical framework to demonstrate that their work is timely and based on well-established concepts (Yadav, 2023). The monograph was premised on a well-rounded theoretical foundation that is explained in greater detail below.

Aristotle defines justice as "giving people what they are owed" (Etieyibo, 2020), a principle that is crucial for analysing the complexities of land reform in Zimbabwe. This definition necessitates a critical examination of compensation claims from former white commercial farmers against the historical injustices experienced by black indigenes. Aristotle argues that a fair constitution should prioritise the most joyful way of living (Lianos, 2023), indicating that the legal framework governing land ownership and compensation must account for both historical context and the current realities of affected communities.

Central to Aristotle's theory is the distinction between "disproportionate excess" and "disproportionate deficiency," with justice found between these extremes (Dotsi, 2021). In Zimbabwe, this framework invites scrutiny of compensation demands from displaced white farmers in light of the longstanding injustices faced by indigenous populations. Achieving a balance that recognises the rights and claims of both parties within the established legal and moral frameworks presents a significant challenge for policymakers and legal practitioners.

Aristotle posits that equity is preferable to "strict justice," that adheres to rigid legal norms (Rentfro, 2019; Basil, 2021). This perspective is particularly relevant in the discourse surrounding Zimbabwe's land reform, where equity can function as a corrective measure, allowing for a more nuanced approach to compensation. Such an approach acknowledges the complexities of land ownership and the legal rights asserted by both displaced farmers and indigenous peoples that is essential for addressing historical grievances while promoting social harmony.

Ultimately, Aristotle's concept of an "equitable and fair man," who may choose to forgo rights for the sake of fairness, underscores the need for selflessness in the pursuit of justice (Tasioulas, 2023; Wagner, 2023). This viewpoint resonates strongly within the ongoing land reform debate in Zimbabwe, where discussions about compensation must consider broader historical and social implications. By applying the Aristotelian framework, the monograph aims to foster a more just and equitable resolution to the enduring challenges posed by historical injustices and contemporary compensation claims.

The relevance of Aristotle's concept of justice to the monograph of land reform in Zimbabwe lies in its ability to provide a philosophical framework for addressing the complexities of historical injustices and contemporary compensation claims. Aristotle's definition of justice as

"giving people what they are owed" necessitates a critical examination of the competing claims of displaced white farmers and indigenous populations who have suffered from colonial land dispossession (Etieyibo, 2020). His emphasis on equity over strict legal norms allows for a more nuanced approach to compensation, recognising the need for a balance between "disproportionate excess" and "disproportionate deficiency" in claims (Dotsi, 2021). This framework encourages policymakers to consider the historical context of land ownership and the moral implications of their decisions, ultimately aiming for a resolution that promotes social harmony and addresses past grievances (Lianos, 2023; Rentfro, 2019). By applying Aristotelian principles, the monograph seeks to foster a more equitable and just outcome in the ongoing land reform debate in Zimbabwe.

Understanding the land issue in Zimbabwe and the necessity for compensation to displaced white commercial farmers requires a thorough examination of the historical context of colonial dominance and segregation. A retrospective historical approach is vital for addressing the complexities surrounding compensation for improvements made on agricultural land, as the land itself is central to the discussion. Acknowledging the brutal impact of colonialism and the evolution of restrictive laws is essential to grasp the compensation issue's gravity. The political implications of land redistribution, particularly the conflict with British colonial power, reveal the multifaceted legal, economic, political, and social dimensions that have garnered global attention (Tom, 2020). Consequently, a significant body of literature has emerged regarding the land issue, especially in relation to the Fast Track Land Reform Programme (Helliker & Murisa, 2020). Scholars like Tzouvala (2022) and Mwonzora (2022) emphasise the importance of examining the historical roots of land disputes to understand current conflicts, highlighting the need to consider both national and regional efforts to resist colonialism, as similar experiences have shaped the destinies of many African nations.

Zimbabwe's colonial past can be linked to the country's contemporary issues with agricultural land rights. From 1890 to the present, the link between law and politics has been fundamental to the development of land rights in Zimbabwe (Madhuku, 2004). Significant changes in land ownership laws have characterized the history and transfer of property rights from the colonial era to present. Through the military conquest of the Pioneer Column, land ownership from the indigenous Ndebele and Shona people of modern-day Zimbabwe was brutally transferred to the minority white population who were emigrant settlers (Beinart, 2022). To reclaim the land ownership rights of the indigenous Zimbabweans who had been expelled from their own lands and forced to occupy arid, barren terrain places that could not sustain appropriate agriculture, black Zimbabweans were forced to undertake a long-lasting liberation struggle against white settler control (Manyonga, 2021). Since the era of colonisation, land-related property rights have been a significant problem. This section provides a succinct examination of the development and culmination of land rights in Zimbabwe from colonisation to the present.

The British South African Company (BSAC) secured the Lippert Concession from King Lobengula, granting rights to minerals, followed by the Rudd Concession for the Mashonaland region. Despite Lobengula's efforts to counter Cecil Rhodes' deceptive practices, the BSAC acted without his knowledge, obtaining a royal charter that conferred significant political influence and property titles to European settlers. This initiated the systematic exploitation and eviction of Africans from their lands (Murambadoro, 2022; Chipenda, 2019). The violent suppression of the 1893 Ndebele uprising and the 1896 Shona revolt facilitated further dispossession, as native Africans were forcibly relocated to less productive "reserves," while settlers occupied the most fertile agricultural areas (Lehmann, 2023; Mtapuri & Benyera, 2019). The establishment of the first reserves, Gwaai and Shangaan, under the Matabeleland Order in Council of 1894, was a direct response to these

rebellions (Morreireira & Iliff, 2021). Madhuku (2005) notes that although land was designated for Africans in these reserves, legal title was transferred to the BSAC, leaving indigenous populations without ownership rights.

This partitioning established a dual system of land ownership that continues to impact Zimbabwe today. By 1914, approximately one million Africans occupied merely 23% of largely unproductive land, while about 28,000 settlers controlled 75% of the fertile land (Rothchild & Chazan, 2019). The rapid confiscation of land resulted in two distinct categories: privately held land with legal protections for white settlers and un-alienated land with precarious rights for Africans (Makonese, 2023). Disputes over un-alienated land arose, culminating in a Privy Council ruling that declared the Crown as the rightful owner of the territory, effectively dismissing African claims to ancestral lands and leaving them with tenuous rights (Moyo, 2017). The Southern Rhodesia Order in Council of 1920 formally delineated native lands, placing them under the control of the High Commissioner and rendering it nearly impossible for black individuals to acquire land, as ownership was managed by a trustee board comprising the governor, chief judge, native commissioner, and chief.

The Land Apportionment Act (1930) established strict racial segregation in land ownership and use in Rhodesia (now Zimbabwe), making it illegal for Africans to purchase land outside designated Native Purchase Areas. Despite this restriction, Madhuku (2004) identified a legal gap that some Africans exploited to acquire property beyond the reserves. A Land Commission, formed in 1925 to investigate land segregation, contributed to the enactment of this Act that solidified the legal framework favouring white settlers while severely limiting land ownership rights for Africans. Although some Africans managed to purchase land in areas like Zowa, Gutu, and Chitombogwizi, the Act ultimately restricted their opportunities for substantial land ownership.

The Native Land Husbandry Act (1951) further restricted land ownership and use by black Africans, particularly in terms of agricultural benefits such as animal husbandry (Makonese, 2023). Both this Act and the preceding laws aimed to regulate the use and distribution of land designated for native Africans, promoting improved farming practices and land conservation. Following the Unilateral Declaration of Independence in 1965, the Smith Government introduced the Land Tenure Act (1969) in an attempt to address land issues; however, it failed to alleviate racial discrimination in land ownership. By the time of Zimbabwe's independence in 1980, most fertile land remained under the control of minority white settlers, contributing to widespread dissatisfaction that ultimately fuelled a protracted liberation struggle against colonial rule.

In response to these challenges, a thorough property clause under V. Freedom from Deprivation of Property was included in the short-lived Zimbabwe Rhodesia Constitution, aimed at protecting colonial settlers' rights to land (Hansungule, 2000). This culminated in the lengthy Section 16 of the 1980 Constitution featured complex sections that attempted to forbid land acquisition, ensure sufficient compensation when land was obtained forcibly, and require court approval for any acquisition in order to avoid any change from the status quo. Additionally, the constitutional framework only permitted the acquisition of land when it could be demonstrated that it had not been used to its full potential for the previous five years. The compensation was to be calculated as the maximum sum that could be acquired in an open market between a willing buyer and seller. Additionally, it permitted the seller's choice of nation to receive the reward without any deductions. These rules' strict restrictions were obviously designed to deter any attempt to undo the expropriation of Africans' land during colonial rule.

The Land Acquisition Act (1979) was enacted by the short-lived Muzorewa Rhodesia Government shortly before the Zimbabwe

Rhodesia Constitution was ratified in order to carry out its provisions (Kay & Colón-Ríos, 2022). To decrease the biased nature of the 1969 Act, the short-lived administration also passed the Tribal Trust Land Act number 6 of 1979. The legislation, however, retained the dual land rights throughout the nation as well as the communal tenure for land in the "reserves" and the authority of traditional leaders. The land discrepancies between European settlers and the majority of Africans who were landless were not significantly reduced by these statutory initiatives of the new government. This failure to resolve land inequities persisted until the Lancaster House Agreement, which ultimately paved the way for majority governance and independence in 1980. As Zimbabwe interrogates its constitutional obligation to compensate displaced white commercial farmers, it must grapple with the legacy of these historical injustices and the ongoing challenges of equitable land redistribution.

Discussions at Lancaster House frequently stalled over the contentious land issue (Mwonzora, 2022). This topic was so polarizing that the negotiated agreement maintained the status quo for the first ten years following Zimbabwe's independence, posing a significant obstacle to establishing a legitimate new democratic state. The Lancaster House negotiations led to the incorporation of strong property rights language in the Constitution, which established a "willing buyer, willing seller" framework for land reform. However, the concept of a forced land acquisition program became another contentious topic, as it threatened white farmers and discouraged white capital investment, ultimately hindering the agricultural sector's expansion in the post-independence era.

Evans (2007) notes that the British negotiators failed to recognize the centrality of the land issue to native Africans during the colonial transition to independence in Southern Africa. This oversight stemmed from a colonial mindset that viewed land primarily as a commodity

rather than a vital component of African identity, culture, and livelihood. The British were often reluctant to acknowledge the historical injustices and dispossession experienced by native Africans, which made them hesitant to engage meaningfully with the land question. Consequently, their negotiations were characterized by a focus on maintaining existing property rights for white settlers, side-lining the urgent need for land reform that would address the grievances of the majority population.

This reluctance manifested in a narrow definition of land rights that prioritised the interests of colonial settlers over the aspirations of indigenous people for land restitution and equity. As a result, the discussions at Lancaster House were significantly hampered by these viewpoints, preventing a comprehensive and fair resolution to the land issue. The failure to adequately address land reform not only impeded the establishment of a legitimate and stable democratic state but also sowed the seeds for future tensions and conflicts, as the unresolved land question continued to resonate in the political landscape of independent Zimbabwe. The lack of a robust framework for addressing historical injustices left deep scars, making it clear that the land issue was far more than a legal or economic matter; it was fundamentally tied to the quest for dignity, justice, and social cohesion among Zimbabweans.

According to the Lancaster House Constitution, the legislation that was in effect when the sovereign State became a nation was that which had previously been in force in the colony:

“The law to be administered by the Supreme Court, the High Court, and any courts in Zimbabwe subordinate to the High Court shall be the law in effect in the Colony of the Cape of Good Hope on June 10, 1891, as modified by subsequent legislation having the force of law in Zimbabwe, subject to the provisions of any law currently in effect in Zimbabwe relating to the application of African customary law.”

This had the effect of guaranteeing that the laws in effect at the time the Constitution took effect would remain the laws that were in effect at that time. As a result, the rules governing agricultural land rights at

independence were those in effect at the Cape of Good Hope on June 10, 1891, as amended by later colonial legislation. Thus, this governing law operated as both unrepealed legislation and common law. The legislation governing agricultural property rights in Zimbabwe was rooted in common law and existing statutes at the time of independence, as modified by court rulings (Makonese, 2023).

Real property rights pertain to land or immovable property, which belongs to the registered owner, with documentation maintained at a Deeds office. This registration serves as proof of ownership. In Zimbabwe, immovable property is owned by the individual who also holds ownership of any alterations made to that property. Under the common law in effect at independence, owners enjoyed a variety of rights, including the authority to use, maintain, alienate, hypothecate, dispose of, and rent out their property. However, Zimbabwean law acknowledges that ownership rights are not absolute. Instead, ownership establishes a fundamental right that can only be transferred in accordance with the law. Consequently, property rights, as outlined in the independence Constitution, permit land confiscation and forced acquisition only under specific conditions. These conditions include the requirement for compensation and the aggrieved party's right to seek appropriate judicial remedies concerning both the acquisition and the compensation provided (Mushore, 2023). This legal framework aimed to balance the rights of property owners with the need for equitable land reform, reflecting the complexities of addressing historical injustices in land ownership.

International human rights instruments acknowledged this essential right as early as the post-second world war period. The following is spelled forth in the Universal Declaration of Human Rights Article 17:

1. "Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property."

The African Charter on Human and People's Rights further declares on Article 14 that:

“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

The Southern African Development Community (SADC) Treaty guarantees human rights; however, its protections have been described as receiving "secondary, almost perfunctory significance" (Magliveras & Naldi, 2021). Despite this limitation, Southern African nations' constitutions typically include provisions on property rights, as noted by Thoko (2004). In Zimbabwe, the agricultural land ownership debate remains significantly influenced by the Constitution of Zimbabwe Amendment (No. 20) Act (2013) that emphasises property rights in Chapter 4 of the Declaration of Rights. The chapter outlines fundamental human rights and freedoms, mandating that all government branches and individuals adhere to these principles, including the rights to acquire, own, and dispose of property (Tsabora, 2016). However, it also allows for expropriation of property under eminent domain, with provisions for compensation when property is taken, although the jurisdiction of courts regarding compensation claims is limited.

Section 72 of the Constitution established specific regulations for the acquisition of agricultural land intended for resettlement, aligning with the framework set forth by the Fast Track Land Reform Programme (FTLRP). This program aimed to redistribute land from large-scale commercial farmers to black Zimbabweans through forced acquisition. While provisions existed for compensation related to improvements made on the land, there was no automatic entitlement to compensation for the land itself, particularly impacting white commercial farmers, as compensation was contingent upon substantial improvements made prior to acquisition. Moreover, subsection (3) of Section 72 limited the authority of the courts to hear cases concerning compensation, allowing legal recourse only in relation to improvements. It explicitly prohibited

courts from addressing claims of discriminatory land acquisition, thereby restricting individuals' ability to seek justice and redress. This legal framework complicated the compensation process for affected parties and raised concerns about fairness and equity in the ongoing land reform efforts in Zimbabwe.

The significance of Section 72 and the FTLRP lies in their critical role in shaping the landscape of land ownership and rights in post-independence Zimbabwe. By illustrating the legal mechanisms that facilitated land redistribution, the monograph highlights the historical context and implications of these policies, which aimed to address colonial injustices while simultaneously creating new tensions. The restrictions on compensation and the limited access to legal remedies underscore the challenges faced by individuals affected by these reforms, raising essential questions about equity and justice in the land reform process. This analysis contributes to broader themes within the monograph, such as the legacy of colonialism and the ongoing struggles for land and identity in Zimbabwe, emphasizing how legal frameworks can both empower and hinder efforts towards social justice.

Complementing this discussion, the Deeds Registries Act [Chapter 20:05] underpins Zimbabwe's land registration system, providing security of tenure essential for economic stability, as financial institutions rely on title deeds for lending. However, the disruption of this system due to the FTLRP has contributed to challenges in agricultural financing. Scholars such as Madzokere and Matanda (2017) have explored the intricate relationship between agricultural land rights and human rights in Zimbabwe, tracing the historical evolution of land rights from the medieval period to the present. Their analysis highlights how the imperialist eviction of indigenous peoples laid the groundwork for ongoing challenges in land ownership and rights in post-independence Zimbabwe. Together, these discussions emphasize the

interconnectedness of legal frameworks, historical injustices, and the contemporary struggles surrounding land rights in the country.

The early years of land reform in Zimbabwe were marked by organised efforts to address historical injustices and were supported by the British government that had pledged to facilitate a programme of land reform (Mushore, 2023). However, the "willing buyer, willing seller" concept faced significant challenges due to a lack of willing white farm owners. In a notable development, Claire Short, the former UK Minister of State for Development and Africa, wrote to Zimbabwe's Minister of Lands in 1997, effectively absolving the British government of responsibility for land reform and related matters, (Mwonzora, 2022). This letter came shortly before the expiration of the initial ten-year period outlined in the Lancaster House Agreement that had included provisions for compensating white farmers. The primary objective of Zimbabwe's land reform programme was to rectify the historical injustices of settler colonialism that had forcibly evicted native black populations from their lands and perpetuated class-based agrarian inequalities.

The foundational years of the land reform programme were driven by a strong commitment to address these injustices and transform the oppressive social structures within the agricultural sector (Moyo & Chambati, 2013). The initiative sought not only to dismantle economic dominance but also to promote equitable authority in land ownership. Therefore, the land reform programme must be analysed within the broader context of advancing justice through land redistribution, including considerations of compensation and its rightful beneficiaries. This perspective emphasises the necessity of understanding land reform as a means to achieve social equity and rectify past wrongs in Zimbabwe.

Only 700 000 small landowners in Zimbabwe occupied over 16, 4 million hectares of land, making the distribution of the country's land severely

uneven. This made up around 49% of all agricultural land, much of that was in arid, desolate areas with unfavourable rainfall. About 15, 5 million hectares of the fertile prime land were grabbed by white settlers. The government led the effort to resettle locals during the early stages of the land reform Programme on a willing-buyer willing-seller basis. It promoted the land reform initiative between 1980 and 1989, purchasing land on the open market and distributing it to a group of carefully chosen recipients (Makonese, 2022).

The Tribal Trust Land Act (1979) was repealed that led to the creation of the Communal Land Act (1982) (Makonese, 2023). In Zimbabwe, community lands consist of all state-managed land and indigenous land, and there are rules governing what occupants are allowed to do with the land. Additionally, according to the Tribal Trust Lands Act (1979), land that was previously designated as tribal trust lands is what is meant by the term "communal lands" in the Communal Land Act (1982). The President exercised his authority over communal lands since the Communal Lands Act affirmed the President's authority over land that had previously been held by chiefs. The Act also gave ministers the authority to decide on usufruct rights with the option of appealing to the President. The Rural District Councils had authority over the use and occupation of community land in line with section 8 of this Act. The communal land was now vested in the President and occupation was by consent of the Rural District Councils, hence the Community Lands Act of 1982 did not support freehold title in communal regions.

Since the Lancaster House Agreement, the land question in Zimbabwe has remained contentious. The 1980 land agreement that marked a compromise between Britain and Zimbabwe, aimed to end the violent liberation struggle by guaranteeing existing property rights while requiring Zimbabwe to cover half the costs of land acquisition. This arrangement allowed large-scale white farmers to retain their land, while the government's efforts to relocate landless black people were

only partially successful under the "willing buyer, willing seller" paradigm that primarily applied to underutilised farms or land for public use. The government was mandated to pay full fair market value for land, transferring funds overseas promptly. To address its constitutional obligations related to land resettlement, the government enacted the Land Acquisition Act that responded to the need for forced acquisition of land for resettling landless Zimbabweans, as stipulated in Section 16 of the 1980 Constitution (Musemwa & Mushunje, 2011).

In the landmark case *May and Ors v Reserve Bank of Zimbabwe* (1985) (2) ZLR 358(SC) the Supreme Court underscored the necessity of considering "fair and reasonable" compensation in public interest land acquisitions. This decision indicated that the value of land could be lower than its market worth depending on the circumstances. Despite provisions for the forced acquisition of abandoned and unproductive land, as noted by Roth and Bruce (1994), significant challenges persisted. These included the government's difficulty in meeting the constitutional requirements of section 16, particularly regarding the free transfer of compensation abroad, and the complexities in defining underutilisation. The lack of willing sellers further complicated the resettlement programme, leading to slow price establishment in the market. Ultimately, early attempts to reform the land tenure system in Zimbabwe were unsuccessful; the government provided permits instead of title deeds to land recipients, undermining property security and deterring long-term investment, as highlighted by the Land Tenure Commission (Masiwa & Chapungu, 2004).

To expedite its land resettlement efforts, the Zimbabwean government sought to enhance its land acquisition capabilities that had been severely constrained by constitutional provisions during the first decade of independence. The 1990 National Land Policy proposed an ambitious plan to accelerate land resettlement, prompting amendments to section 16 of the 1980 Constitution that had established property rights that

hindered the coercive acquisition of land for resettlement (Masunungure, 2020). The first constitutional amendment, enacted through the Constitution of Zimbabwe Amendment (No. 11) Act on April 17, 1991, aimed to dismantle the restrictive barriers imposed by the Lancaster House Constitution. Notably, this amendment abolished the prohibition on the remission of compensation funds abroad, thereby providing the government with greater latitude to acquire land for resettlement that had previously been limited by the constitutional constraints (Anstey, 2022).

The Land Acquisition Act, enacted in March 1992 in accordance with Constitutional Amendment No. 11, mandated the Zimbabwean government to acquire 6.9 million hectares from Large-Scale Commercial Farms (LSCF) (Makonese, 2023). This legislation introduced several reforms, notably altering the compensation framework. Under the new Act, compensation was limited to improvements on the property rather than the land itself, marking a significant departure from previous laws that covered both land and improvements. This policy shift may be partly attributed to Britain's refusal to establish a compensation fund for settlers. While parties could appeal a valuation officer's assessment to the Administrative Court, such appeals were contingent upon demonstrating that the Compensation Committee had not adhered to the guiding principles of the Act. Moreover, the government's failure to provide titles to native beneficiaries of the resettlement programme severely restricted their ability to utilise the land as collateral for credit financing from banking institutions.

The Constitution of Zimbabwe Amendment (No. 12) Act (1993) shortly after the Land Acquisition Act (1992), fundamentally revised section 18 of the old Constitution, stating that the "right to the protection of the law" or the right to a fair trial by an independent arbitrator could be overridden by other constitutional provisions (Madhuku, 2004). This amendment significantly impacted land acquisition by removing the

courts' jurisdiction over land-related matters, particularly in compensation proceedings for land acquired by the government for resettlement. As a result, disputes regarding appropriate compensation for acquired land could no longer be litigated in court. This change was crucial as it eliminated uncertainties surrounding compensation for land confiscated from large-scale commercial farmers, thereby streamlining the resettlement process and facilitating the government's efforts to expedite land reform.

Amendment No. 13 to the Constitution introduced a significant change by explicitly barring judges from hearing cases related to compensation for land acquired by the state, as stipulated in section 16(1)(f). However, it still allowed for judicial recourse in situations where the government was compelled to acquire land or property, mandating that forced acquisitions be conducted in strict accordance with statutory and constitutional requirements related to justification (Naldi, 1993). The principle of eminent domain influenced this amendment, permitting the government to seize private property for public use, potentially without just compensation, while requiring adequate notice to the land occupant prior to acquisition.

In the case of *Davies and Others v Minister of Lands, Agriculture and Water Development* (1994) (2) ZLR 294 (H), the High Court addressed the legality of designating land for acquisition. The applicant argued that such designation amounted to forced seizure without payment, but Justice Chidyausiku rejected this claim, asserting that designation merely served as a control mechanism rather than an acquisition itself, meaning no compensation was warranted as neither party had suffered losses. On appeal, Chief Justice Gubbay upheld this view, ruling that designation did not confer rights to the acquiring authority to sell or lease the rural land. This ruling indicated the courts' readiness to support the land redistribution programme, reinforcing the government's authority in the land acquisition process.

In the wake of the *Davies and Others v Minister of Lands, Agriculture and Water Development* (1994) (2) ZLR 294 (H) case, significant mistrust developed between the Zimbabwean government and the judiciary, prompting the administration to amend the constitution to eliminate potential legal vulnerabilities. The Zimbabwe Constitution Amendment (No. 14) Act (1996) repealed Section 11 that had guaranteed fundamental rights and freedoms for all Zimbabweans, replacing it with a preamble that emphasised permissible restrictions on these rights (Klug, 2022). This repeal was deemed necessary as farmers had previously utilised section 11 in conjunction with section 16 to contest designated land for acquisition, and the Supreme Court had acknowledged this provision in *Re Munhumeso & Others* (1994) as a basis for asserting rights. By removing section 11, the government aimed to prevent its use as a defence in future land disputes, thereby consolidating its authority in the land acquisition process.

From 1990 to 2000, gradual adjustments to land reform in Zimbabwe were made, but the progress was sluggish and had limited impact. The situation was exacerbated by a rapidly declining economy and increasing political pressure on the ruling party, ZANU-PF, due to factors such as substantial one-time payments to war veterans and unplanned military involvement in the Democratic Republic of the Congo. The emergence of the Movement for Democratic Change (MDC), a formidable opposition party with substantial urban support, intensified this pressure. According to Madhuku (2004), ZANU-PF sought a survival strategy by targeting land, framing opponents of the land reform programme, known as the *Third Chimurenga*, as counterrevolutionaries. Tensions escalated following the rejection of the government's draft constitution in a 2000 referendum, leading to war veterans forcibly invading commercial land on February 16, 2000, and marking the onset of a violent land reform process that undermined the rule of law in land conflict resolution.

In response to these developments, Mugabe's administration enacted new legislation to legitimise land occupations, primarily through constitutional amendments. The revised section 16A of the Constitution that allowed for land acquisition by force without compensation, signified a dramatic departure from the previous legal framework requiring payments to large commercial farmers for acquired land (Madhuku, 2004). The government also amended the Land Acquisition Act to include a clause stating "no obligation to pay compensation," aimed at eliminating perceived bottlenecks. While the new provisions stipulated that compensation would be limited to improvements on the land, certain protections were retained under the Act but were applicable only to designated rural properties. This marked a significant shift in the government's approach to land reform, prioritising political objectives over legal and economic considerations.

White commercial farmers sought judicial remedy when the Zimbabwean state began acquiring property for resettlement, culminating in the significant case *Commercial Farmers Union v. Commissioner of Police* (2000) HC 3544. In this case, Justice Garwe ruled in favour of the Commercial Farmers Union, ordering that individuals who had occupied commercial farms since February 16, 2000, vacate the premises within 24 hours. Despite the court's ruling that farm invasions were illegal, the Commissioner of Police refused to enforce the order, claiming he was incapacitated in preventing the invasions and asserting that enforcement would provoke public unrest. This refusal implicitly acknowledged the political untenability of halting the rapid land reform process. The court countered that ignoring its order constituted a violation of Zimbabwe's Constitution that mandates enforcement of judicial rulings.

In light of ongoing challenges, the Commercial Farmers Union appealed to the Supreme Court, highlighting the lack of significant improvements

in the country. In *Commercial Farmers Union v Minister of Lands* 2001 (2) SA 925 (ZSC), the Supreme Court determined that the expedited land reform process did not align with the constitutional requirements for land reform, rendering it illegal. However, the court allowed the government a six-month period to continue land reform before requiring a cessation of acquisitions, reflecting the intense political pressure surrounding the issue. In response to these judicial setbacks, the Mugabe administration enacted the Rural Land Occupiers (Protection from Eviction) Act of 2001, aimed at suppressing criticism of the land reform programme and silencing opponents who argued that the policy was unlawful (Makunike, 2019).

One of the biggest initiatives that changed who owned and occupied what land in Zimbabwe was the fast-track land reform Programme (FTLRP). Since the 1890s, when Mashonaland and Matabeleland were conquered, the land question has been a major issue. The indigenous population was driven off their productive areas at the end of the invasion of Matabeleland and Mashonaland (Beinart, 2022). One of the causes of the bloody battle of liberation that saw locals fight back to recapture the country, was the forceful confiscation of land. The Lancaster House Agreement brought an end to the bloody liberation war. The British government made promises to fund a programme for land reform, but it broke those promises. This may have prompted the FTLRP, under that native Zimbabweans were given access to fertile fields. The recipients and beneficiaries of the FTLRP were issued 99-year lease agreements and offer letters, although the land remained in the state's possession.

The Land Acquisition Amendment Act (2002) that was passed by the government in 2002, was another amendment. The change was made in direct reaction to white commercial farmers who refused to leave land that had been forcibly taken by the government. According to section 8 of the amendment, an order of acquisition and its issuance are regarded

to constitute notices to the owner to "stop to inhabit, possess, or use that land forty-five days following the date of service of the order." The occupier of the land was required to leave the property within 90 days of the notice being served. Despite extensive changes to the land laws and the constitution, the administration allowed violations of the law in order to further its political objectives.

In the case of *Commercial Farmers Union v Minister of Lands* (2001) (2) SA 925 (ZSC), the former landowners who had lost their land as a result of the land acquisition Programme in conjunction with section 16 of the Constitution sought redress from the court. According to the provisions of section 16B of the Constitution, any land the government intended to acquire must stop being inhabited within 90 days of receiving a notification. The applicants continued to live on the land despite the 90-day period having passed. This was a clear violation of the Gazetted Land (Consequential Provisions) Act's section 3(2) that stated that it is illegal for anybody to occupy land that the government has designated for acquisition. The petitioners also claimed that because it mostly affected white farmers, section 23 of the Constitution was discriminatory. The Chidyausiku CJ (as he was then known) saw that the applicants' claims of discrimination could not be upheld in light of section 16B (3) of the Constitution. Importantly, section 16B (3) of the Constitution eliminated the courts' authority to hear cases regarding the acquisition of property designated for state resettlement under the FTLRP.

The significance of this case lay in its reflection of the state's efforts to politically redress historical racialized land ownership by removing judicial authority over land acquisition. By emphasizing section 16B (3) of the Constitution, which eliminated the courts' authority to hear cases regarding property designated for state resettlement, the court effectively prioritised governmental authority in executing land reform policies aimed at addressing past injustices. This decision illustrated

how the state viewed the redistribution of land as a necessary affirmative action to rectify historical imbalances, even at the cost of individual property rights. The ruling underscored the complexities involved in balancing the need for social justice with the legal rights of individuals, particularly as it pertained to the predominantly white landowners affected by the FTLRP. Ultimately, the case served as a critical reference point for analysing the intersection of law, land reform, and efforts to dismantle the legacies of colonialism in Zimbabwe.

In *Mike Campbell (Pvt) Ltd & Ors v Minister of National Security, Responsible for Land, Land Reform and Resettlement & Anor* SC 49/07, Malaba JA (as he was then known) emphasised that the legislature, in its wisdom, had removed the courts' authority to handle cases involving land acquired in accordance with section 16B (2) of the Constitution. The petitioners were therefore unable to identify a legal solution to the law's violation of the Constitution's spirit. The court continued by declaring that a party who has been wronged may only request judicial review of compensation. The court also imposed punitive costs on the applicants after declaring that the applicant's application was driven by a desire to disobey the law. The lawsuit provided the definitive answer to the land question and further established the immutability of Zimbabwe's land reform initiative.

Following the forced land grabs, and a futile legal battle in Zimbabwe, petitioners brought their case before the SADC Tribunal, challenging the actions of the Zimbabwean government under Article 28 of the SADC Treaty that sought to prevent their eviction from properties during the ongoing application process. Central to their challenge was Section 16B of the Constitution that allowed for the acquisition of agricultural land for resettlement under Amendment 17, wherein the state claimed ownership of all agricultural land (Mutema & Chishakwe, 2014). The petitioners argued that the amendments violated the SADC Treaty by undermining judicial oversight and failing to establish clear standards for determining lands required for resettlement. They also raised

concerns about racial discrimination, noting that only white farmers' properties were targeted for seizure, and highlighted the absence of compensation for the forcibly taken land.

In response, the government contended that the Tribunal lacked jurisdiction and asserted that compensation would be provided under Amendment 17, claiming that the applicants had not been denied access to the courts. However, the Tribunal found that the forced seizure of land was racially motivated, violating the principle of separation of powers and indicating that the judiciary was restrained in favour of ZANU-PF supporters. Ultimately, the Tribunal ruled that the petitioners had not received equal access to justice and asserted that international law entitles applicants to fair compensation, thereby determining that the Zimbabwean government owed compensation to the petitioners. This ruling was reinforced by the landmark decision in *Commercial Farmers Union v. Minister of Lands*, emphasising that the government could not evade its international law obligations through domestic legislation. Additionally, the case of *Campbell and Another v Republic of Zimbabwe* (SADC (T) 03/2009) [2009] SADCT 1 (5 June 2009) underscored that discriminatory appropriations based on race are generally prohibited under international investment law. In the case of *Bernardus Henricus Funnekotter and others v. Republic of Zimbabwe*, ICSID Case No. ARB/05/6., the Tribunal awarded damages to Dutch and Italian applicants, asserting that Amendment 17 violated a bilateral investment agreement with the Netherlands, though Zimbabwe refused to comply with the ruling.

Land reform in Zimbabwe is widely perceived as racially motivated, particularly in light of Amendment 17 of the Constitution. Zongwe (2009) supports the SADC Tribunal's conclusion in the *Campbell* case, asserting that Zimbabwe's land resettlement strategy is fundamentally redistributive and includes affirmative action initiatives aimed at addressing historical injustices rooted in colonial land policies that were

segregationist and repressive. Countries like Zimbabwe and South Africa, emerging from prolonged liberation struggles, face significant pressure to rectify these injustices. Affirmative action seeks to compensate those disadvantaged by historical wrongs, promoting substantive equality by justly discriminating based on race. Jauch (1998) argues that the goal of affirmative action is to redistribute wealth previously held by the white minority at the expense of Black Africans, contending that labelling these efforts as racist ignored the context of brutal evictions during colonialism that transferred productive agricultural land and resources to the minority.

Zongwe (2009) concludes that it is misguided to label Constitutional Amendment No. 17 as racially discriminatory, given its intent to rectify past injustices. However, once the SADC Tribunal identified land acquisitions as racially motivated, it should have assessed whether such discrimination was unreasonable (Tshuma, 2022). Not all racial categorizations are inherently discriminatory; some are necessary for achieving equality. The Tribunal's failure to evaluate the legitimacy of the racial discrimination involved limited its effectiveness. The *Campbell* case underscored the resistance of many predominantly white commercial farmers to relinquish properties from that they benefitted during the oppression of black citizens. Despite this resistance, the Zimbabwean government and judiciary remained steadfast, and the SADC Tribunal's ruling was largely unrecognised within Zimbabwe. This political context indicated that the Tribunal faced significant challenges, ultimately undermining its capacity to resolve disputes between individuals and the state rather than merely between states.

The Gazetted Land (Consequential Provisions) Act [Chapter 20:28], enacted in 2000, coincided with the Fast Track Land Reform Programme (FTLRP) and provided the Zimbabwean government with legal authority to manage land reform. Section 3(2) declared it illegal for individuals to occupy government-designated property for more than 90 days without a valid permit, thereby legalizing the acquisition of

agricultural land without compensation. Justice Malaba affirmed the constitutionality of the Act, emphasising the obligation of all Zimbabweans to comply with the Constitution, including the imposition of criminal sanctions for non-compliance. However, in *Mike Campbell (Pvt) Ltd & Ors v Minister of National Security. Responsible for Land, Land Reform and Resettlement & Anor* SC 49/07 the Act was criticised as unconstitutional for barring judicial remedies and removing the courts' jurisdiction over land matters that shielded land acquisitions from legal challenges and created a divergence between domestic and international court rulings. Additionally, the Act facilitated the transition from a freehold tenure system to a state land tenure system for acquired agricultural lands, utilising leases, permits, and offer letters, thus reinforcing existing tenure systems while defining "land settlement lease" as any lease of Gazetted land granted by the state under various legislative frameworks.

In 2000, the Zimbabwean government held a referendum on a new constitution that it strongly supported, but the proposal was defeated, heightening the risk of losing power, particularly to the Movement for Democratic Change (MDC) led by Morgan Tsvangirai, who was allegedly backed by white commercial farmers (Magaisa, 2010). In the aftermath, war veterans-initiated attacks on and occupations of agricultural lands owned by white individuals. To address this crisis, the government enacted Constitutional Amendment No. 16 that aimed to expedite land reform and legitimise existing land occupations. This amendment reaffirmed sections of the proposed constitution that had been rejected in the referendum, notably relieving the government of its obligation to compensate commercial farmers by shifting that responsibility to Britain, the former colonial power. Additionally, the amendment specified that the government had no legal duty to provide fair and adequate compensation to displaced white commercial farmers, effectively undermining obligations that had already been limited by the 1990 Constitutional Amendment. Consequently, the amendment

virtually eliminated the internationally recognised right to just compensation and removed the designation process for land acquisition that Coldam (2001) argued helped to eliminate obstacles to a successful land reform initiative.

The Rural Land Occupiers (Protection from Eviction Act) (Chapter 20:26) (No. 13) Act (2001), was enacted swiftly to protect individuals who had occupied farmlands owned by white commercial farmers (Mkodzongi, 2020). While the government characterized these encroachments as peaceful, the occupiers initially lacked legal protection. The Act encouraged settlers to remain on the properties they had taken over and superseded existing laws regarding trespassing and unauthorized entry, effectively removing legal barriers to occupation and leaving landowners without recourse. It retroactively legalized all land occupied between February 16, 2001, and March 1, 2001, granting individuals on rural land as of March 1, 2001, the status of "protected occupants," making their removal illegal (Madhuku, 2004). The case of *Minister of Lands, Agriculture and Rural Resettlement & Others v. The Commercial Farmers Union* underscored the Act's implications, with the Supreme Court ruling that it rectified previous constitutional issues and legitimised the land acquisition process, thereby establishing a compliant land reform programme. However, despite the formal completion of land reform, the government failed to issue titles to beneficiaries, providing only offer letters and a limited number of 99-year leases. This lack of proper titles hinders newly resettled farmers from fully utilising their land, as offer letters cannot be used as collateral for financing from financial institutions. Consequently, the issue of land tenure remains contentious, reflecting ongoing gaps in rights within post-independent Zimbabwe, with agricultural land rights continuing to be shaped by these unresolved challenges.

The new Constitution of 2013 that arose from a strongly favourable referendum, sought to consolidate the legal provisions established

during the Fast Track Land Reform Programme (FTLRP) aimed at redistributing land to those dispossessed by white settlers over the past century. While section 71 guarantees the freedom to own, use, transfer, and dispose of property, section 72 introduces significant exceptions for agricultural land rights, aligning with customary property rights and incorporating several previously enacted laws that limit judicial jurisdiction and stipulate government land acquisition with compensation only for improvements. This section also places the responsibility for compensating white farmers on Britain, the former colonial power. Furthermore, the Constitution calls for legislative measures to ensure landowners' security of tenure under section 292, but the government has struggled to meet this obligation, thereby reinforcing the notion of a dualistic land ownership model in Zimbabwe where both private individuals and the state hold property rights. The lack of progress in enacting legislation to enhance genuine ownership highlights ongoing challenges in achieving equitable land rights within the country (Ajala, 2021).

Following a wave of pressure from former colonial farmers seeking compensation for the expropriation they suffered during the land reform programme, the compensation of former commercial white farmers was set in motion by Statutory Instrument 62 of 2020. The International Centre for Settlement of Investment Disputes (ICSID) Annulment Tribunal rejected the Zimbabwean government's attempts to overturn the ruling in von Pezold's favour in 2018, following a lengthy legal struggle in the *Bernhard von Pezold and Others v Republic of Zimbabwe*, ICSID Case No ARB/10/15, *Final Award*, 28 July 2015. The fast-track Land Reform Programme required the government to pay US\$184,915,603 in expropriation damages for the forced acquisition of land. The Global Compensation Deed (Agreement) and Statutory Instrument 62 of 2020 were subsequently enacted as a result of this. It is prudent to carefully review the Global Compensation Agreement as well

as S.I. 62 of 2020 in this respect. The now repealed S.I 62 of 2020 will be analysed first.

S.I. 62 of 2020 established criteria for individuals claiming compensation for land acquired by the state, requiring claimants to demonstrate ownership of the land prior to its compulsory acquisition and eligibility for compensation for both the land and improvements, as defined by the Constitution. While successful claimants may receive full or partial title to the land after a state evaluation, the government retains the right to reject claims and prioritise public interest factors as outlined in section 8(3) of the regulations. Section 3 of S.I. 62 of 2020 aims to allocate land to those entitled to compensation under section 295 of the Constitution, including indigenous people, former white farmers, and foreign multinationals, reflecting an alignment with the Constitution of Zimbabwe Amendment (No. 20) 2013. It is crucial to note that while the Statutory Instrument addressed land for bilateral agreements, it conveniently was silent on former commercial farmers of a British origin whose land was appropriated without compensation. While Statutory Instrument 62 of 2020 was promulgated in the first quarter of the year 2020, the subsequent actions of the government suggest that it was promulgated to provide for compensation to displaced white commercial farmers. This enactment marked a significant shift from the Mugabe administration's previous refusal to compensate former white farmers, a stance rooted in the belief that Britain had not honoured its commitments under the Lancaster House Agreement. Under President Mnangagwa, the government adopted a neoliberal capitalist approach, aiming to appease former colonialists and foreign corporations, as evidenced by Mnangagwa's assertion that "a white farmer is a Zimbabwean farmer." However, concerns arose regarding the fate of current farm occupants if compensation claims were successful, with Section 9(1) indicating that land allocation to qualifying applicants may resolve compensation claims, potentially side-lining indigenous interests. Critics argued that this undermines land tenure security for indigenous

people while favouring former white farmers, leading to uncertainty for resettled black farmers regarding their property rights, especially since resettled Africans receive 99-year leases that can be revoked, contrasting sharply with the land title applications available to former white farmers. Towards the end of the year 2024, S.I 62 of 2020 was repealed.

The Global Compensation Agreement was officially signed in Harare on July 29, 2020, following the enactment of S.I. 62 of 2020 and section 295 of the Constitution. This agreement's origins can be traced back to President Mnangagwa's inaugural speech on November 24, 2017, where he emphasised the need for positive change and the importance of addressing current actions to shape the future. A key objective of the agreement was to finalize compensation for former white farmers for improvements made on land that was compulsorily acquired to resettle indigenous black populations (Paradza, Yacim & Zulch, 2023). The President reaffirmed the government's commitment to compensating these farmers according to national laws, highlighting that resolving complex land tenure issues is essential for ownership stability and economic recovery. This initiative aligns with a neoliberal capitalist ideology aimed at attracting foreign investment, leading to the establishment of a Joint Resource Mobilization Committee tasked with raising US\$3.5 billion for compensation over five years. This shift followed the previous administration's refusal to provide compensation and occurred after the British government retracted its commitment to cover land purchase costs, as noted in a 1997 letter from the British Minister for International Development. The signing of the Global Compensation Agreement reflects the government's recognition of the need to resolve land-related issues, promote stability, and attract foreign investment, signifying a commitment to the rule of law and addressing the concerns of former white farmers affected by land expropriation, thus marking a significant step in Zimbabwe's land reform evolution.

After examining the land reform issue in Zimbabwe and the efforts made through the Global Compensation Agreement and Statutory Instrument 62 of 2020 to tackle land-related concerns, it is essential to explore how other nations have approached similar land issues. This entails examining international legal instruments as a starting point and conducting a comparative analysis of how countries within the region and beyond have addressed their respective land questions.

Article 17 of the 1948 Universal Declaration on Human Rights (UDHR) explicitly recognizes the right to property, affirming that "everyone has the right to own property" and should not be arbitrarily deprived of it. This provision has attained the status of international customary law, underscoring the global consensus on the importance of property rights as fundamental human rights. However, while it establishes a crucial principle, the article lacks a comprehensive definition of what constitutes "arbitrary deprivation," leaving room for interpretation and potential misuse. This ambiguity can lead to challenges in the enforcement of property rights, particularly in contexts where governments may prioritise land reform or public interests over individual ownership. Consequently, despite the strong legal framework advocating for property rights, the lack of clarity in defining arbitrary deprivation complicates the protection of these rights, especially in countries like Zimbabwe, where historical injustices related to land ownership continue to shape contemporary legal and social landscapes.

International law does not consistently offer the same level of protection for a state's nationals as it does for foreigners regarding property acquisition (Castellino, 2021). There are instances where national and international instruments suggest support for the deprivation of property belonging to Zimbabwean farmers in the name of public interest. Nationalization, viewed as an act of sovereignty, is a prerogative of independent states. United Nations resolutions, beginning with Resolution 1803 (XVII) of December 1962, reaffirm the

permanent sovereignty of states over their natural wealth and resources. In the case of *Certain German Interests in Polish Upper Silesia* (1926), the Permanent Court of International Justice ruled that expropriation is permissible only for public utility and similar reasons under customary principles. These principles can be summarized into four key rules: acquisitions must serve a public purpose according to national policy, must not discriminate between citizens and aliens, must avoid unjustified irregularities, and must include appropriate compensation.

Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1954) protects the right to property, allowing exceptions for public interest and under the conditions set by law and international principles. Although the right to property is not included in the main instrument adopted in 1950, this article acknowledges the state's authority to enforce laws necessary for controlling property use in the general interest.

Given these perspectives from international legal instruments on the right to land, it is essential to examine how different nations have approached the land question within their legal frameworks.

State sovereignty and equality are fundamental principles of international law that protect a state's jurisdiction from external interference (Jean Luck, 2022). Expropriation is considered an inherent right of state sovereignty, aligning with the principle of self-determination and deemed lawful when it meets established international conditions. It involves a state taking control of private property for public utility, security, or national interest (Buchelli & Decker, 2021), but must adhere to specific safeguards to ensure fairness. The 1962 United Nations General Assembly Resolution on Permanent Sovereignty over Natural Resources emphasises that expropriation should be justified by public utility, security, or national interest, and requires appropriate compensation for affected property owners

according to domestic and international laws (Dolzer, 1981). Compensation must reflect the property's value and the owner's losses while ensuring non-discriminatory treatment for both domestic and foreign owners. While expropriation is generally lawful, it must follow principles of necessity, proportionality, and non-arbitrariness to protect human rights and uphold the rule of law, thereby establishing conditions and safeguards to protect property owners' rights and ensure a fair process.

Land reform typically involves redistributing or affirming land rights to benefit impoverished populations, including tenants, farm workers, and other disadvantaged groups whose tenure is often insecure. These groups frequently occupy land owned by others, including state-registered land. South Africa shares a historical context with Zimbabwe characterized by colonisation, racial oppression, and land dispossession, resulting in the majority of agricultural land being held by the white minority. Laws such as the Native Land Act of 1913 allocated only 8% of South Africa's land for African reserves, prioritising land for white farmers (De Satgé, 2013). The subsequent Group Areas Act of 1950 enforced the forced removal of black people from areas designated for whites (Eidelberg, 1997), impacting even black farmers with title deeds. Additionally, legislation such as the Prevention of Illegal Squatting Act of 1951 empowered the state and private landowners to evict individuals and demolish homes without court orders. Thus, the struggle for liberation from colonial and apartheid oppression is intricately linked to the goal of reclaiming land taken from the indigenous population.

Given this historical backdrop, analysing South Africa's land reform efforts becomes vital, particularly in light of its shared history of colonisation with Zimbabwe. Both countries grapple with the legacies of colonial land dispossession, making an examination of South Africa's approaches to land reform relevant to understanding broader regional

dynamics. The 1993 interim constitution marked South Africa's transition to a democratic era, yet it provided limited details on land reform. Property rights and land reform emerged as contentious issues during the constitutional negotiations. Although the interim constitution did not establish a comprehensive land reform program, it included two key provisions for land restitution. Section 8(3)(b) recognized the right to restitution of property or land for individuals or communities dispossessed due to racially discriminatory laws or practices after June 19, 1913, aiming to address historical injustices and restore land rights. Additionally, Section 121 established a Commission on Restitution of Land Rights, tasked with facilitating the restitution process and providing remedies for land claimants while clearly outlining the Commission's functions and powers. Although these provisions laid a foundation for addressing land restitution, they did not create a comprehensive framework for broader land reform initiatives, such as land redistribution or tenure security. It was only with the enactment of the final constitution in 1996 that more detailed provisions regarding land reform were incorporated, reflecting an evolving understanding of the complexities involved in rectifying historical injustices while balancing contemporary needs.

The 1996 Constitution of South Africa, created by a democratically elected Constitutional Assembly, includes provisions aimed at balancing property rights through Section 25 that guarantees the right to property and protects against arbitrary deprivation while allowing the state to expropriate private property for public purposes, contingent on just and equitable compensation. This compensation, as outlined in section 25(3), considers various factors that may lead to amounts below market value but strive for fairness, considering current use, acquisition history, market value, state investment, and the purpose of expropriation. Despite these provisions, land distribution remains highly unequal, with only about 2% of land transferred nearly a decade post-apartheid, indicating a pressing need for accelerated land redistribution efforts

(Phuhlisani, 2017). To foster significant progress in poverty alleviation and equitable resource distribution, the state may need to transition from a market-based willing-buyer willing-seller model to a more interventionist, supply-led strategy. The Restitution of Land Rights Amendment Act (2003) is seen as a positive step, granting the Minister increased powers for expropriation without a court order; however, these powers should also be applied to redistribution efforts to avoid maintaining a status quo that favours former colonial powers over the indigenous population.

In Swaziland, the legacy of colonisation mirrors that of Zimbabwe and South Africa, as it resulted in the dispossession of Africans from their land. This process intensified during King Mbandzeni's reign in the 1870s when Europeans were granted rights to settle on large portions of Swazi land in exchange for gifts such as liquor and money (Gillis, 1999). Following the outbreak of the Anglo-Boer War in 1899, British control over Swaziland was established in 1902 after the territory was taken from the South African Republic, and it remained under British rule until its independence in September 1968. To address land concessions made during this colonial period, the British enacted the Land Proclamation Act of 1907, which reserved one-third of the land (37.6% of the total area) exclusively for the Swazi people, designated as Swazi Nation Land. However, much like in Zimbabwe, approximately 63% of the land—particularly areas with fertile soil and good grazing potential—was expropriated for European settler use, subsequently becoming titled and crown land. This historical context highlights the enduring struggles faced by the Swazi people in reclaiming their land and rights, reflecting broader themes of land dispossession and the challenges of post-colonial land reform in Southern Africa.

Namibia is a compelling case for comparison in the context of land reform in Southern Africa due to its shared history of colonialism and racial injustices, which resonate with the experiences of Zimbabwe. Like

many African nations, Namibia endured the injustices of racial laws under white minority rule, resulting in significant land ownership concentrated among whites while the majority of Namibians were relegated to unfertile areas. Upon gaining independence in 1990, the SWAPO government prioritised the transfer of land to "the landless majority" and adopted a constitution that ensured property could not be taken without just compensation (Kaapama, 2007). The Namibian Agricultural (Commercial) Land Reform Act of 1995 mandates that any expropriation must be accompanied by just compensation. However, a significant policy shift in 2004 allowed for the expropriation of all landholders, targeting not only absentee landlords and unproductive farms but also productive commercial farmers if their land "can be used better." This policy specifically identified certain farms owned by white landowners with a history of wrongdoing as potential targets for expropriation.

Article 16(2) of the Namibian Constitution permits expropriation in the public interest, contingent upon just compensation, although it does not define "public interest." Part IV of the Agricultural (Commercial) Land Reform Act, 1995 particularly section 20 allows for the compulsory acquisition of under-utilised agricultural land or land owned by foreign nationals, particularly if the willing-seller, willing-buyer principle fails. This raises important questions about the criteria for "public interest" and the justification for targeting land associated with worker mistreatment. The expropriation policy concerning foreign-owned land aims to benefit Namibian nationals and address historical injustices of colonisation, seeking to advantage previously disadvantaged groups (Selane, 2019). Including foreigners in potential expropriation does not constitute discrimination under international law, provided that just compensation is granted according to international standards.

Article 16(2) of the Namibian Constitution stipulates that any state expropriation of property for public interest must include "just

compensation," with the specifics delineated in Article 25 of the Agricultural (Commercial) Land Reform Act. Although the Act does not prescribe an exact compensation amount, it establishes criteria for assessment, requiring that any increase in property value attributable to its use be considered, while disregarding improvements made after the issuance of the expropriation notice. For agricultural land, compensation is limited to the combined value as if sold on a willing-seller, willing-buyer basis on the date of notice, plus compensation for financial losses incurred due to expropriation, with any outstanding amounts accruing interest from the date the state takes possession. Similar to Zimbabwe, Namibia's land reform strategy emphasises acquiring land as it becomes available rather than restoring ancestral lands that has fostered ongoing resentment among the indigenous population who lost their land without compensation; however, the issue of compensation remains open for future reassessment.

Analysing Australia is important because it provides critical insights into the complexities of colonialism and its enduring impact on Indigenous populations, particularly the Aboriginal people. Similar to the experiences in South Africa, Namibia, and Zimbabwe, the establishment of British sovereignty in Australia involved discriminatory policies against Aboriginal people, leading to lasting disparities in social, educational, health, and welfare conditions compared to white Australians. A. Markus encapsulates the prevailing attitude towards Aborigines with the statement:

"It may be doubted that whether the Australian aborigine would ever have advanced beyond the status of the Neolithic races in which we found him. And we need not therefore lament his disappearance. All that can be expected of us is that we shall make his days as free of misery as we can" (Markus, 1994, p. 48).

Despite the recognition of "native title" in 1992, which prompted some demands for land rights, land reform and the aspirations of Aboriginal people in Australia have largely been overlooked in public policy. Before this recognition, Aboriginal land claims were disregarded under

the belief that all land was "*terra nullius*," or no-man's land, which implied ownership solely by the Crown. This legal doctrine was overturned by the *Mabo v Queensland (No 2)* [1992] HCA 23 decision, wherein the Australian High Court acknowledged the existence of native title. Furthermore, the subsequent Native Title Act (1993) mandates compensation for losses affecting native title rights on "just terms," but this compensation cannot exceed what would be payable for the compulsory acquisition of a freehold estate. Due to the rural and desert characteristics of much of the land, compensation amounts are often minimal. Consequently, land reform in Australia has not advanced to the same degree as in Zimbabwe, since the former colonial power maintains control over production means. This lack of significant progress is a key reason Australia has not faced substantial international condemnation regarding its land policies.

The chapter examined the theoretical foundation of the monograph, focusing on the Aristotelian notion of justice as its cornerstone while exploring its applicability. It discussed the injustices faced by African indigenes during colonialism, highlighting laws that protected the rights of invading white settlers while reinforcing racial subjugation and segregation. Moreover, the chapter justified the Jurisprudential Mugabe Approach, which called for legal realignment and constitutional amendments to rectify colonial racial imbalances in land property rights in post-independent Zimbabwe. This approach aimed to align contemporary laws with the constitution, thereby addressing past injustices by legitimizing what had previously been deemed illegal by the courts. Additionally, the chapter reviewed land reform efforts in other countries to contextualize Zimbabwe's experience.