

## CHAPTER 4: FINDINGS AND INTERPRETATION

The chapter presents a thematic analysis of qualitative data from interview responses, organised around four key themes. First, it examines the constitutional provisions for compensating improvements on land, focusing on their interpretation and application. Second, it explores justice and fairness in land acquisition and compensation, comparing views from pre- and post-independence Zimbabwe. Third, it analyses agricultural land compensation practices in other jurisdictions, highlighting lessons for Zimbabwe's land reform. Finally, it discusses recommendations for enhancing compliance with constitutional compensation obligations. Each theme integrates participant perspectives to provide a comprehensive understanding of the issues.

Since this was a qualitative approach, the monograph used thematic analysis to analyse data and this was based on four themes that were corresponding to the objectives of the monograph. The following are the themes that were analysed and each participant's view on each theme is presented and directly on as a compounded analysis with previous participants:

- The constitutional provisions giving rise to compensation on improvements done on land
- The concept of justice and fairness with respect to land acquisition and compensation in pre-independence and post-independence Zimbabwe
- Agricultural land compensation in other jurisdictions.
- The way forward on the constitutional requirement for compensation on land improvements.

The discussion surrounding land reform in Zimbabwe highlights the impact of colonial and post-colonial legal provisions on land rights for native blacks. Participants categorized these provisions into pre-

independence and post-independence laws that facilitated land dispossession under the colonial regime.

Participant A noted that the colonial authorities exploited a legal void in pre-independence Zimbabwe through the Rudd Concession that transferred land rights from native blacks to whites without compensation. This agreement enabled the British South Africa Company to secure a charter for colonisation, leading to significant dispossession of land, livestock, and a sense of belonging for the indigenous population. The lack of a compensation scheme underscored the injustices faced by black communities.

Participants B, C, and E echoed these sentiments, criticising the use of law to strip native Africans of their property rights. They linked this to the Lancaster House Agreement that introduced a willing-buyer, willing-seller model that many viewed as flawed and exploitative. They argued that genuine compensation should address the historical injustices rooted in the Rudd Concession.

Participant E specifically criticised the Land Apportionment Act (1930) that systematically disadvantaged the black majority by enforcing legal segregation and allocating them less desirable land. This Act institutionalized racial inequalities and limited economic opportunities, contributing to the grievances that necessitated land reform.

Participant J expressed that pre-independence constitutional provisions favoured the white minority, maintaining their economic dominance while marginalizing the black majority. This perspective emphasised the need for constitutional reforms to create a more inclusive system that addresses historical imbalances and promotes social justice.

The participants collectively highlighted the class character of the law, suggesting that it serves to protect the interests of dominant groups

while marginalizing others. They argued for a legal framework that promotes fairness and justice for all, regardless of social or economic status.

Participants C and F pointed out the absence of compensation provisions for the disadvantaged in pre-independence laws, suggesting these laws primarily benefited the white minority. They noted that compensation discussions arose only in the Lancaster House agreements, reflecting a response to the white minority's concerns rather than a commitment to broader equity.

As a result, the discussion underscores the critical need for comprehensive legal frameworks that rectify historical injustices and promote social equity in land ownership and rights.

The concept of justice and fairness with respect to land acquisition and compensation in pre-independence and post-independence Zimbabwe

The debate surrounding justice and fairness in land rights, particularly in Zimbabwe, highlights the historical injustices associated with land acquisition and the need for rectification. Participants discussed the impact of colonial agreements like the Rudd Concession that facilitated the dispossession of land from native Africans by the British South Africa Company (BSAC).

Participant A argued that the actions of the BSAC represented severe human rights violations, emphasising the brutality of land acquisition processes. Many participants drew parallels to similar injustices faced by indigenous populations globally, such as the Aborigines in Australia and Native Americans in the U.S. This perspective underscores the necessity of acknowledging and addressing historical wrongs to achieve reconciliation and justice.

Participants B and C criticised the Rudd Concession as an unjust agreement that favoured British interests over native rights. They noted that it was not a legitimate treaty but rather a business arrangement that undermined the autonomy of local leaders like Lobengula, the Ndebele monarch. The concession's terms effectively granted the BSAC monopolistic control over land and resources, prioritising profit over the welfare of indigenous communities.

Participants E and H highlighted the significance of the verbal agreements accompanying the concession, arguing that their omission from the written document represented a manipulation of the treaty process. This manipulation further exemplified the power imbalance favouring the BSAC. Participant A expressed scepticism about the benefits promised to Lobengula compared to those gained by the BSAC, suggesting exploitation.

Moreover, participants criticised the Land Apportionment Act (1930) and the overall legal framework that stripped local leaders of authority and jurisdiction. The Royal Charter subsequently granted the BSAC sovereignty over the Ndebele, undermining their governance and authority. Critics noted that these agreements did not align with the principles of justice and fairness expected in legal contracts.

The Lancaster House Agreement was seen as another flawed framework that established a willing-buyer, willing-seller model that participants like A questioned, pointing out the lack of similar considerations during the Rudd Concession. This ongoing dialogue emphasises the need to address historical injustices and create equitable frameworks for land rights that respect the dignity and rights of indigenous populations.

Participant A highlights the complexities of land compensation and its political implications, noting that governments may hesitate to compensate former colonial powers for fear of losing popular support.

This political dynamic complicates efforts to address historical land injustices and find equitable solutions. In countries like South Africa and Namibia, rising opposition politics emphasises the need for equitable land distribution, reflecting ongoing debates about historical imbalances and social justice.

The land reform process in South Africa has been inadequately tracked, leading to misconceptions about its effectiveness in addressing racial disparities in land ownership. The National Development Plan set a goal to redistribute 30% (or 23.7 million hectares) of agricultural land to Black South Africans by 2030. While many believe the programme has failed to produce significant changes, the reality is more nuanced, involving various projects such as state acquisition, private acquisition, restitution, financial compensation, and redistribution.

Since 1994, when the first democratic elections were held and white farmers owned 77.58 million hectares of farmland, approximately 19,165,891 hectares have been transferred from white ownership to either the state or Black beneficiaries, or compensated in cash. This progress is nearing the 30% goal outlined in the National Development Plan that may seem encouraging. However, concerns arise from the fact that the state already owns over 2.5 million hectares of agricultural land, leading to unstable land tenure.

This instability hampers recipients' ability to secure loans for expansion or improvements, forcing them to rely on often insufficient government grants. The bureaucratic process is also fraught with excessive red tape, resulting in significant delays and inefficiencies. Overall, the situation underscores the multifaceted challenges of land reform in South Africa, highlighting the need for a more streamlined and equitable approach to land distribution that acknowledges historical injustices.

In Zimbabwe, the ongoing dispute regarding compensation for former white farmers remains a contentious issue. A recent agreement set the compensation amount at US\$3.5 billion that includes "improvements" made to expropriated land. This represents a significant advancement after two decades of discussions, although there are differing opinions and considerable miscommunication surrounding the agreement. Progress is being made with the help of the World Bank and the establishment of a joint resource mobilization committee.

The US\$3.5 billion figure was derived from careful calculations of the value of fixed improvements on the farms taken over. While this agreement marks a step forward, it is uncertain whether the full amount can be paid on time. Demonstrating the Zimbabwean government's sincerity and accelerating payments for improvements is crucial, though some argue that land will require an additional payment equal to the initial amount.

The compensation discussions between the Government of Zimbabwe (GoZ) and dispossessed farmers, primarily represented by the Commercial Farmers Union (CFU), were contentious. To expedite the rehabilitation of the land sector, the government must undertake several key initiatives, including compensating for newly acquired land, issuing legal tenure documents to new land occupiers, and reforming the land administration system for improved planning and management.

The urgency of resolving the compensation issue is underscored by legal requirements that mandate "quittance" on the acquired land before a legal lease can be issued to new occupiers. Quittance depends on compensation or a signed agreement between the government and the farmers, highlighting the need for a compensation fund as soon as possible.

Section 72(7) of the Constitution of Zimbabwe articulates the rationale for the land reform programme, supporting the African nationalist theory that is alive to the following;

1. Historical dispossession- Acknowledges the unjust dispossession of land from the people of Zimbabwe under colonial rule.
2. Armed struggle and independence- Recognises that this dispossession led to an armed struggle for land and sovereignty, culminating in Zimbabwe's independence in 1980.
3. Right to regain ownership- Asserts the right of Zimbabweans to reclaim their land.

The provision also outlines obligations regarding compensation and states that the former colonial power is obligated to compensate for agricultural land acquired for resettlement, suggesting the need for an adequate fund. It further propounds that if the former colonial power does not fulfil this obligation, the Government of Zimbabwe is not required to compensate for the land. These provisions reflect the historical context of Zimbabwe's land reform programme, aiming to rectify colonial injustices and restore land ownership to the indigenous population while placing the responsibility for compensation on the former colonial powers.

The findings from this qualitative monograph resonate deeply with the Aristotelian concepts of justice and fairness, particularly in the context of land reform in Zimbabwe. The first theme addresses constitutional provisions related to compensation for land improvements, revealing how historical injustices, such as the Rudd Concession and the Land Apportionment Act (1930), perpetuated the dispossession of indigenous peoples. Participants highlighted that these laws favoured the white minority, thereby undermining the principles of fairness and equity that Aristotle champions (Lianos, 2023). By emphasising the need for a legal framework that rectifies these historical wrongs, the monograph aligns with Aristotle's notion that true justice requires acknowledging past

injustices and striving for a more equitable distribution of resources (Etieyibo, 2020).

In examining the concept of justice and fairness, the second theme reinforces the necessity of addressing the deep-rooted historical injustices associated with land acquisition. Participants drew parallels between the experiences of indigenous Zimbabweans and other marginalized groups globally, emphasising the need for a corrective approach that restores dignity and rights (Dotsi, 2021). Aristotle's emphasis on corrective justice—restoring balance and addressing the full scope of harm—underscores the importance of recognising the psychological and social impacts of colonial dispossession, not just the material losses (Ang *et al.*, 2024). The participants' calls for constitutional reforms reflect a desire for a legal framework that embodies fairness, aligning with Aristotle's vision of a just society.

The third theme that explores agricultural land compensation in other jurisdictions, reinforces the need for an equitable approach to land reform. Participants noted the complexities and political implications of compensation mechanisms in countries like South Africa, demonstrating the challenges of rectifying historical injustices while maintaining public support. This mirrors Aristotle's belief that just governance requires transparency and accountability that are essential for fostering trust among stakeholders (Lehman, 2023). The findings suggest that a similar commitment to equitable land distribution and compensation in Zimbabwe is necessary to address historical grievances effectively.

Finally, the fourth theme highlights the ongoing negotiations regarding compensation for land improvements, illustrating the tensions between historical obligations and contemporary legal requirements. The constitutional provisions articulated in Section 72(7) reflect an understanding of historical dispossession and the need for reparative justice, suggesting that the former colonial powers bear responsibility

for compensation. This aligns with Aristotle's assertion that justice must be rooted in moral and ethical considerations (Gordon, 2024). The participants' emphasis on the urgency of resolving compensation issues further underscores the need for a framework that not only satisfies legal requirements but also promotes social cohesion and equity, thereby facilitating a more just society that acknowledges and rectifies past injustices.

In addition, the chapter looked into the presentation, analysis and interpretation of data from the interviews that were carried out in the monograph. A total of 11 interviews were carried out and the general perspective coming out of this was that there is no legal basis to compensate former white settlers for the land they illegally confiscated from native Africans without compensating them. The law should apply as it applied in the first place. The next chapter looked into the conclusion and recommendations that are derived from these findings.