

# A CRITICAL REVIEW OF PROPERTY VALUATION FOR EXPROPRIATION IN ZIMBABWE

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## **Abstract**

**Purpose:** This paper aimed at contributing to the growing academic debate on property valuation for expropriation.

**Approach/Design:** The paper was based on document analysis or archival research approach. Statutes which formed the legal framework that guide property valuation for expropriation in Zimbabwe, was critically reviewed relative to World bank, Food and Agriculture Organisation (FAO) guidelines as well as the International Federation of Surveyors (FIG), to unravel agreement and or conflicts among laws, so that limitations in the Zimbabwean laws could be remediated.

**Results/Findings:** This study established that the existing property valuation for expropriation in Zimbabwe followed the recommendations of World Bank and FAO. However, there are notable differences particularly on estimation of replacement cost value, where depreciation is deducted contrary to World Bank and FAO specifications.

**Practical Limitation:** Though there is no empirical evidence, the study assumed that guidelines provided by World Bank and FAO as well as recommendation by FIG can be considered as international best practice on property valuation for expropriation in Zimbabwe.

**Practical Implication:** Results of this study is useful to the Zimbabwean Government as it was geared towards bringing a lasting solution to the unresolved decade long land compensation disputes.

**Originality/Value of Work:** Though many studies were done on property valuation for expropriation in many countries, none of the existing literature assessed legal provisions guiding property valuation for expropriation in Zimbabwe. This study seeks to bridge this gap and

contribute to existing international debate on compulsory acquisition and compensation.

**Keywords:** *Benchmarking, compulsory acquisition, fair compensation, expropriation policy, indemnity, legal framework.*

### **Introduction and study background**

Compulsory land acquisition has been an issue of debate globally and the topical issues have been centred on dissatisfaction of the dispossessed people because of insufficient compensation offered by the expropriating authorities (Viitanen, 2002; Tagliarino, 2017; Olanrele, Alias, Said & Bello, 2017). It is observed that compulsory land acquisition has continue to increase the rate at which people is displaced worldwide to pave way for public uses like urban renewal, natural resource extraction, dam, railway and road construction among others (Langford and Halim, 2008; Saheed, 2012). Property valuation for expropriation is the techniques used to ascertain the market value of peoples landed property assets for compensation. Studies have suggested that improper use of property valuation is the chief cause of insufficient amount of compensation among other issues including delayed compensation payment devoid of interest at prevailing market rate (Asian Development Bank (ADB), 2007; Cernea, 2008; Mahalingam & Vyas, 2011; Famuyiwa & Omirin, 2011; Tuladhar & Sharma 2017; Tagliarino, 2017).

Inadequate compensation is against the concept of equity and equivalency which requires compensation to be fair and efficient. According to Olanrele Alias, Said, and Bello, (2017), expropriation has been one of the main causes of destitution as dispossessed persons are negatively impacted by government's move to promote public purpose. Inadequate compensation for expropriated land is one factor which strained the relationships between expropriating authorities and the dispossessed or displaced people (Oladapo & Ige, 2014; Shen, 2015; Ige, Akintomide & Adeola, 2016; Tanrivermiş, & Aliefendioğlu, 2019). In paying compensation, an individual, family or community are all subjects of compensation, the moment their unexhausted improvement on land is compulsorily taken. However, the practice of assessment to determine the quantum of compensation is relative to different geographic context as enshrined in the statute book. Accordingly, Kakulu (2008) expropriated properties were undervalued in Nigeria due to the use of predetermined compensation rates by government valuers which were not market related and poorly defined

property valuation guidelines. In Ethiopia, undervaluation and lack of consistency in estimated values of expropriated properties has also been poorly defined in the statutes which resulted in subjectivity by valuers (Ambaye, 2013). Therefore, it can be argued that issues with expropriation and compensation worldwide are directly related to provisions of the statutes and implementations. Thus, a well couched out statute in line with best practice provides a good framework for use in the assessment of market value of unexhausted improvement on land. Conversely, an ambiguous statute may give avenue/leeway for abuses leading to misleading value estimates, of which implementation had over the years worsen the state of claimants.

Zimbabwe has implemented the fast track land reform programme in 2000 with the aim of reversing the discriminatory land tenure system of the colonial era (Sekgabi, 2019). However, for close to two decades down the line, compensation for expropriated commercial farms remains a contentious issue. Mpofu (2019) concluded that former commercial farmers and government seem to be reading from the different page when it comes to the adequacy of the proposed compensation value. Government officials are of the view that what they are of the view that what the expropriating authority is offering is what is in-line with the existing property valuation for expropriation framework. On the other hand, former commercial farmers are of the perception that current statutes which guide property valuation for expropriation in Zimbabwe no not meet international best practice. The question therefore is, if the statute is okay, why is valuation estimates not in line with best practice in some cases? Similarly, if the statute is ambiguous a double barrel problem ensues – poor statute begets poor valuation estimates. Since statutes on expropriation and compensation are design relative to a particular context; so also, must property valuation follow, and complaints from dispossessed persons must follow statutory guidelines. It is therefore difficult to generalise and implement results from previous studies relative to expropriation and compensation of other contexts to a local market without having to understudy the Zimbabwean practice and provide contextual solution.

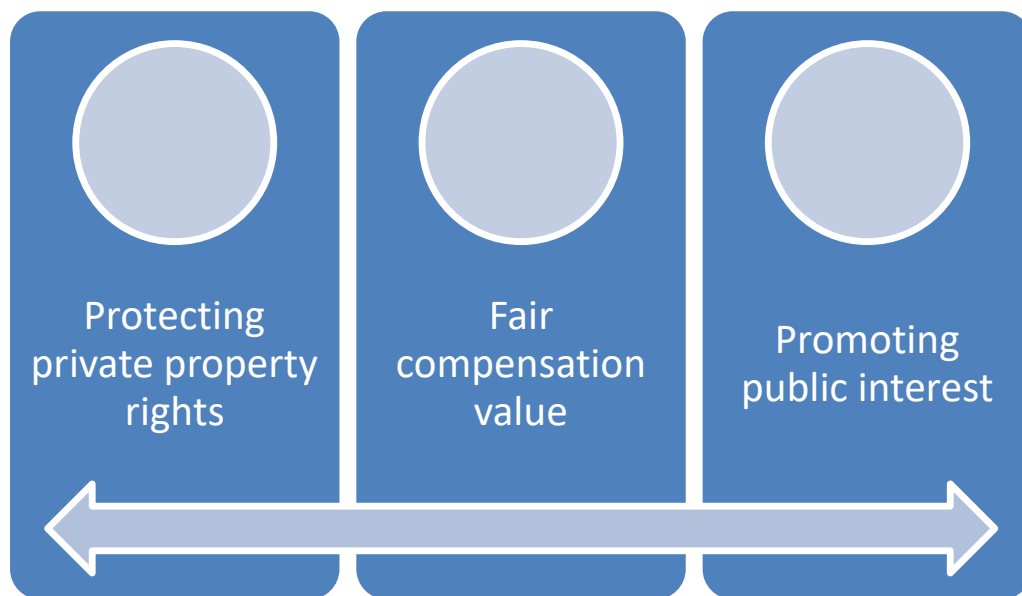
Many scholars observed inconsistency in property valuation for expropriation in Zimbabwe (United Nations Development Programme, 2002; Moyo, 2006; Kaseke, 2016; Nemukuyu, 2018; Mpofu, 2019). The United Nations Development Programme (2002) observed that there was

no consistency in valuation practice. Government valuers used different valuation methods when valuing the same or similar properties. The same problem of inconsistency was noted by Moyo (2006:153) who pointed out that there was an approximately 800% difference between the government estimated values and those estimated by private valuers. This problem of wide variances between government and private sector estimated values has persisted for decades now. According to Kaseke (2016:05), the government offered compensation value was just 10% of what has been estimated by private valuers as fair compensation value. According to Nemukuyu (2018), there was a difference of twenty-two million United States Dollars (\$22 000 000) between what government offered Interfresh (Private Limited) as compensation for the seven expropriated farms and what the company claimed to be fair compensation. Mpofu (2019) attributed gaps in the property valuation for expropriation practice to ambiguity of the legal frameworks guiding valuation for compensation.

The remaining aspect of this study is divided into six sections including section two contain theoretical and conceptual frameworks, section three discusses international best practice in property valuation for compensation and section four provides the methodology employed in this study. Section five discusses the results of this study; and section six concludes the study with appropriate recommendations.

### **Theoretical and Conceptual Framework**

Many scholars concluded that property valuation for expropriation is supposed to be guided by the theory of equity and equivalency, which states that, affected owners and occupants should neither be enriched nor impoverished as a result of the compulsory acquisition (Viitanen, 2002; Asian Development Bank, 2007; Keith, McAuslan, Knight, Lindsay, Munro-Faure, Palmer, and Spannenberg, 2008; FAO, 2009; Ambaye, 2009; Viitanen, Falkenbach & Nuuja, 2010; Mahalingam & Vyas, 2011; Pai & Eves, 2016; Deeyah, & Akujuru, 2017). The equity and equivalence principle seek to balance two conflicting interests which are protecting private property rights and promoting public interest (FAO, 2009; Johnson & Chakravarty, 2013) as illustrated in Figure 1.



**Figure 1:** *The concept of fair compensation value*

In Figure 1, fair compensation value strives to attain a balance between protecting private property rights without jeopardising public interests. If the balance within promoting public interest and protecting private property rights continuum is not achieved, compensation offered might fail the equity and equivalence litmus tests.

#### **International best practice in property valuation for compensation**

Property valuation is guided by international valuation standards set by the International Valuation Standards Council (IPVSC). The purpose of international valuation standards is to provide a framework that brings uniformity in the way property valuation is assessed across the world. Property valuation is done for different purposes which include among others valuation for tax, insurance, purchase or sale, deceased estate, compensation and accounting purposes. The basis upon which valuation is required for these different purposes is well spelt out in the international valuation standards. International valuation standards can be used as a yardstick to assess if the estimated values are of acceptable standards or otherwise. However, Kakulu (2008) noted that the Red Book which is prepared by the Royal Institution of Chartered Surveyors based on the International Property Valuation Standards (prepared by the International Valuation Standards Council) is silent on property valuation for expropriation. Thus, there are no specific international standards which guide property valuation for expropriation. The result, there are notable

differences in the property valuation for compensation across the world (Arul Vikram and Murali, 2015; Viitanen & Kakulu, 2009). This leaves a gap in property valuation for compensation which then results in lack of standardisation in statutes and practice. Kakulu (2008) also recommended that there is need to come up with international valuation for expropriation standards which can be used as a yardstick to measure if valuations meet the minimum acceptable standards.

Even though there are no globally accepted standards for compensation valuation when real estate is expropriated, the FIG, World Bank and FAO guidelines can be used for benchmarking purposes. FIG is one of the leading international institutions in terms of membership and World Bank and FAO play a key role in infrastructure financing across the world. Projects which are funded by both the World Bank and FAO are guided by their compensation guidelines. In terms of the guidelines which are provided by FAO (2008) and (World Bank, 2004), property valuation for compensation should be a summation of the value of land, valuation of improvements, valuation of standing crops, and disturbance allowance. Both the FAO (2008) and World Bank (2004) concurs that property valuation for expropriation must be based on the replacement value principle. Additionally, these two organisations provide that property valuation for compensation should be a summation of the value of land and improvements.

Property valuation for expropriation is in the statutory valuation class. This means that the valuer is guided by specific laws on how to calculate the compensation value. It is important that laws guiding property valuation for expropriation be clear so as to avoid misinterpretation or different application by valuers. Lack of standardisation in property valuation for expropriation practice has been attributed to ambiguous statutes which guides the process (Kakulu, 2008; Kakulu, Byrne and Viitanen, 2009; Vaughan and Smith, 2014; Mengwe, 2019). Fundamental issues in property valuation for expropriation include how expropriation notice is issued/served on affected people, estimating the compensation value, the valuation date, the valuation method, the valuation date and appeal. The following guidelines are however provided by FAO (2008) during expropriation and compensation exercises. Firstly, it is recommended that before compulsory property acquisition is done, a notice is expected to be given to the affected people. The notice period and the media used to

publish the notice are crucial; because if the law is not clear on how the notice should be served, it can be a source of dispute. Best practice is to publish a notice over a period of not less than three months in a local media, to all affected people and in a language, which is understood by the affected people. If the publication used is not accessible to the local people, then it might be as good as not serving the notice. Besides, circulating the notice in a local media, it is also necessary to serve notices directly to affected persons.

Secondly, as soon as the notice period has expired and all objections and reservations have been considered, the project valuers are expected to estimate the value of the expropriated property. This is based on the fact that values do change so if a lot of time is taken before inspecting the affected properties for property valuation can result in compensation disputes. Another key issue is the valuation date; statutes should clearly define the valuation date to be based on when properties are expropriated. It is recommended that a valuation date can be the same as the date of notice.

Furthermore, the law must be specific on who has the mandate of calculating the compensation value. The responsibility of calculating property valuation for compensation varies in different countries. In some countries an independent commission is used to calculate compensation value (FAO, 2008) while in other countries like Turkey the expropriating authority is also the valuer (FAO, 2008; Tanrivermiş & Aliefendioğlu, 2017). According to Kosareva, Baykova, and Polidi, (2019), and Karasek-Wojciechowicz, and Brzeski (2019), in countries like Russia and Poland property valuation for expropriation is done by independent valuers. For avoidance of doubt it is recommended that an independent commission be used since the expropriating authority is also an interested party. However, in other countries the expropriating authority is expected to estimate the compensation offer in good faith then negotiate with the affected people for the final compensation. FAO (2008) recommends that affected people must be given access to professional valuers and legal representation at very low or no cost for them to make informed decisions. The whole expropriation and compensation processes are supposed to be done in a transparent and inclusive manner.

Statutes which guide property valuation for expropriation must also be specific on the method of valuation to be used when real estate is expropriated. FAO (2008) recommended that the property valuation framework must be comprehensive but at the same time flexible to accommodate various situations. The most preferable method of calculating compensation value is the market value (World Bank, 2004; FAO, 2008). This is because the value is based on verifiable facts based on market data. Market value is used as compensation value in most developed countries which include USA, UK, Poland and Australia (Zrobek & Zrobek, 2008; Kucharska-Stasiak, 2008; Vaughan & Smith, 2014; Walters, 2019; Parker, 2019; Karasek-Wojciechowicz, & Brzeski, 2019). However, some scholars have questioned the fairness of market-based compensation (Tomson, 2009; Walters, 2019). It has been noted that the interpretation of market value differs from one place to the other hence FAO (2008) recommended that regulations must describe what is meant by market value. The appropriateness of market value when calculating the compensation value has been challenged by Kabanga and Mooya (2017), Kabanga and Mooya (2018) as well as Iyanda, (2014). Their argument is that there is no market for land and even the cost of improvements is difficult to estimate due to the fact that they are not commonly sold in the open market. In as much as property valuation for expropriation is guided by statutes, there is also need to consider customary law (FAO, 2008). The valuer is supposed to do a thorough research of the customary law and make sure that valuation method used is acceptable to the displaced people (FAO, 2008).

The World Bank (2004) recommended that when the market is weak, the replacement value is supposed to be calculated from the productive potential of the land. A detailed guideline was prepared by the World Bank (2004) on how to calculate replacement value of land and improvements as well as crops. It is also important to note that the World Bank (2004) prescribes that depreciation is not supposed to be deducted from the replacement/reproduction value of the subject property when calculating compensation value. This recommendation is based on the notion that the expropriating authority which is government in most cases is expected to improve the living standards of the affected people (betterment).

After the expropriating authority and the displaced people agreed on the compensation value, the regulations are also supposed to be specific about when and how the compensation is supposed to be paid. FAO, (2008)



recommended that the expropriating authority can only take the subject property after a substantial amount have been paid to the displaced persons. In the event that there is a delay in payment of compensation, then the law must specify how the interest must be calculated form the date of possession (FAO, 2008). In the event that there is a dispute, the law must be specific on how and where the appeal must be send (FAO, 2008).

### **Methodology**

The study adopted the archival approach, academic journals and Zimbabwean statutes on property valuation for compensation were reviewed. Journals were sourced online from Google Scholar and from the University of Pretoria Library while Zimbabwean statutes were downloaded from the Parliament of Zimbabwe website. Also, the FAO and World Bank guidelines were downloaded from their respective websites.

### **Results and Discussion**

In Zimbabwe, the legal framework guiding property valuation for expropriation has been evolving since attainment of independence in 1980. In 1979, the war of liberation in Rhodesia (now Zimbabwe) ended by signing of the Lancaster House agreement. One of the conditions of the Lancaster House agreement of 1979 which was then incorporated into Section 16 the Lancaster House Constitution of 1980 was that during the first decade after independence (1980–1990) when land was acquired, the prompt and adequate payment was supposed to be paid based on the willing-seller and willing-buyer principle (Moyo, 2004; Moyo, 2006; Njaya and Mazuru, 2010:166; Moyo, 2011a; Dabate, Jagero & Chiriga, 2014; Chilunjika, & Uwizeyimana, 2015). In terms of the willing-buyer and willing-seller principles, property owners were the ones who offer and compensation prices are determined by the market. It can be noted that there were challenges associated with this approach since it resulted in land owners offering poor quality land at inflated values (Moyo, 2004; Pazvakavambwa & Hungwe, 2009; Chilunjika, & Uwizeyimana, 2015).

Another notable development in the history of property valuation for expropriation in Zimbabwe was the passing of the Land Acquisition Act (Chapter 20:10) in 1985 (Chivandi, Fushai & Masaka, 2010). The Section 29 of the 1985 Land Acquisition Act was structured in-line with the provisions of Section 16 of the Lancaster House Constitution of 1980. Section 29 of the Land Acquisition Act (Chapter 20:10) of 1985 stipulated that whenever land was to be expropriated then a prompt and adequate compensation was

supposed to be paid on or prior to the expropriation date. Prompt and adequate compensation was based on the willing-buyer and willing-seller principles (Mutema, 2019).

After the expiry of the Lancaster House Agreement in the early 1990s, the Government of Zimbabwe amended Section 16 of the Lancaster House Constitution through the Constitution of Zimbabwe Amendment Act (Number 11) Act number 30 of 1991. The amendments changed the wording of the compensation which must be paid for expropriated properties from prompt and adequate to fair compensation which is to be paid within a reasonable time (De Villiers, 2003).

Following the Constitution of Zimbabwe Amendment Act (Number 11) Act number 30 of 1991, the Land Acquisition Act of 1985 was repealed (Moyo, 2000; Adams & Howell, 2001; Thomas, 2003; De Villiers, 2003; Moyo, 2005; Chivandi, Fushai & Masaka, 2010) and replaced by the Land Acquisition Act (Chapter 20:10) of 1992 through the Land Acquisition Act Amendment (number 3) of 1992 (De Villiers, 2003, Moyo, 2006). The Land Acquisition Act (Chapter 20:10) of 1992 was crafted in-line with the Constitution of Zimbabwe Amendment Act (Number 11) Act number 30 of 1991 which departed from market value and adapted fair value for compensation (De Villiers, 2003; Moyo, 2006). Another notable change brought by Section 29 of the 1992 Land Acquisition Act (Chapter 20:10) is that it gave the mandate of determining the compensation value to the Compensation Committee (De Villiers, 2003; Chivandi, Fushai & Masaka, 2010).

The year 2000 saw a paradigm shift in the legal framework guiding compensation for expropriation in Zimbabwe when the Constitution of Zimbabwe Amendment Act 5 and the Land Acquisition Act Amendment 15 were passed. These two amendments stipulate that compensation for expropriated agricultural land is the responsibility of British Government and the Government of Zimbabwe remained with the mandate to compensate for improvements on land (De Villiers, 2003; Moyo, 2006; Pazvakavambwa & Hungwe, 2009; Moyo, 2016). Mutema (2019) noted that expropriation which provided compensation for improvements on land only opened flood gates of critics as critics are of the view that it is against international best practice.

Land Acquisition Act Amendment 6 of 2002 introduced a property valuation for expropriation framework in the form of schedules which are used when calculating property value for compensation purposes in Sections 29 and 50. According to De Villiers (2003) the valuation criteria introduced by the valuation schedules in Sections 29 and 50 “... included vague criteria such as the history of ownership, the use and occupation of the land, the resources available to the acquiring authority responsible for implementing land reform and any other financial constraints.” In view of the foregoing discussion, one might be justified to question the reason for considering ownership history when valuing a property.

In 2004 the Acquisition of Farm Equipment or Material Act (Chapter 18:23) was passed with the sole purpose of also empowering the state to expropriate farm equipment. Section 5 of this Act gives the responsibility of estimating the value of farm equipment for the purposes of compensation to designate valuers who are also civil servants. In this case one might be justified to question the degree of fairness on the estimated property values which are offered by the expropriating authority as fair compensation value. In 2013, Zimbabwe replaced the Lancaster House Constitution of 1980 with the Constitution Amendment number 20 Act 1. This new constitution maintained that fair compensation paid at a reasonable time. Also, for land expropriated from commercial farmers who are foreigners, compensation is paid only for improvements on land. Table 1 is a summary of the evolution of provisions of key statutes which guide property valuation for expropriation in independent Zimbabwe (1980 to 2019).

**Table 1: Evolution of legal provisions guiding property valuation for expropriation in Zimbabwe**

<b>Amendment/New statute</b>	<b>Year</b>	<b>Impact on property valuation for expropriation</b>
Section 16 of the Lancaster House Constitution of 1980	1980	Prompt and adequate compensation value paid based on the open market value and paid in foreign currency.
Section 29 of the Land Acquisition Act (Chapter 20:10)	1985	In terms of this Act compensation value was determined by the Compensation Court based on the open market value.
Constitution of Zimbabwe Amendment Act (Number 11) Act number 30	1991	Fair compensation to be paid on expropriated real property.

Land Acquisition Act (Chapter 20:10)	1992	Fair compensation was paid instead of prompt and adequate and the requirement to pay compensation value in foreign currency was removed.
Constitution of Zimbabwe Amendment Act 5	2000	For land expropriated for land reform from former commercial farmers, government pays compensation for improvements on land and compensation for land was placed on the British Government as the former colonial master.
Land Acquisition Act Amendment 15	2000	For land expropriated for land reform from former commercial farmers, government pays compensation for improvements on land and compensation for land was placed on the British Government as the former colonial master.
Land Acquisition Act Amendment 15	2002	Inserting of property valuation schedules which guide estimation of compensation value. The schedules stipulate that depreciation must be deducted from the estimated compensation value of improvements on land.
Section 5 of the Acquisition of farm equipment or material Act (Chapter 18:23)	2004	Section 5 stipulates that valuation of farm equipment compulsorily acquired by the state is done by a designate valuer appointed by the Minister from the serving Civil Servants.
Sections 72 & 292 of the Constitution of Zimbabwe Amendment number 20 Act 1	2013	Fair compensation paid at a reasonable time. For land expropriated from former commercial farmers who are foreigners, compensation paid only for improvements on land.

**Source:** modified from (Moyo, 2006: pp146; Mutema, 2019)

As shown in Table 1, a number of amendments were done especially to the constitution and the Land Acquisition Act (Chapter 20:10). These amendments were a response to a paradigm shift in the political landscape in relation to the land compensation dispute between Zimbabwe and Britain (the former colonial master). The overall idea of a radical change in the political terrain was “justified” by a quest to “decolonise” Zimbabwe and empower the marginalised indigenous Africans. From the foregoing discussion, it can be noted that the legal framework guiding has been

evolving over the years. However, Moyo (2016) noted that changes in the legal terrain guiding property valuation for expropriation in Zimbabwe was meant to reduce expropriation bottlenecks but at the same time negatively impacted agricultural property rights and dented investor confidence.

The existing property valuation for expropriation in Zimbabwe stipulates that estimation of compensation value is done by the Compensation Committee based on a preliminary value calculated by designate valuers appointed in terms of Section 29B of the Land Acquisition Act (Chapter 20:10) of 2006 and Section 5 of the Acquisition of farm equipment or material Act (Chapter 18:23) of 2004. Chimbetete (2016) noted a statutory gap in the provisions of the Valuers' Act (Chapter 27:18) and the Land Acquisition Act (Chapter 20:10) pertaining to the qualifications of designate and professional valuers. As a result, most designate valuers do not qualify to be registered as professional valuers.

The main aim of this study was to examine the current legal framework guiding property valuation for expropriation in Zimbabwe relative to international best practice. Table 2 is a summary of existing property valuation for expropriation framework in Zimbabwe, in comparison to FAO and World Bank guidelines.

**Table 2: A benchmark of Zimbabwean property valuation for expropriation framework against international best practice**

Heads of claim to be valued	World Bank and FAO guidelines	FIG Compulsory Purchase and Compensation Recommendations for Good Practice	Zimbabwean current property valuation for expropriation framework
Valuation of land	Where markets are active, replacement cost of affected land, in either rural or urban areas, is based on fair market value (plus transaction costs and, in rural areas, any preparation costs). Alternatively, where markets are weak, replacement cost is calculated from the productive potential	Market value is the preferred method but in cases where it is not being determined, fair value is the second-best option. Assessment of compensation value is to be guided by the International Property Valuation Standards or any other recognized valuation standards.	For land expropriated from former commercial farmers who are foreigners, compensation is paid only for improvements on land.  Land which owned by foreigners and protected by Bilateral agreements is

Heads of claim to be valued	World Bank and FAO guidelines	FIG Compulsory Purchase and Compensation Recommendations for Good Practice	Zimbabwean current property valuation for expropriation framework
	of agricultural or commercial land of equivalent size.		<p>compensated in terms of the provisions of the agreements.</p> <p>When valuing cleared virgin land, consideration shall be given to the costs of clearing the land.</p>
Valuation of improvements	<p>Replacement cost can be calculated using the infrastructure schedule or contractors' quotes.</p> <p>Depreciation is not subtracted from the estimated replacement value.</p>		<p>Replacement value be assessed according to standards set by the Ministry responsible for housing standards for the types of building concerned.</p> <p>The age and condition of the buildings shall also be taken into account.</p>
Valuation of trees and perennial crops	<p>Where markets exist, the value of a tree of a specified age and use can be used to determine compensation rates. For timber trees, the value of a tree equals that of the lumber.</p> <p>If replacement trees are provided, good practice indicates that compensation be based on the value of the harvests lost until the replacement trees come into full</p>		<p>Regard shall be paid to the potential yield of such crops and their marketability, but only where the crops are maintained in a satisfactory condition and are well-pruned, fertilised and sprayed.</p>

Heads of claim to be valued	World Bank and FAO guidelines	FIG Compulsory Purchase and Compensation Recommendations for Good Practice	Zimbabwean current property valuation for expropriation framework
	production (typically, 7–10 years).		
Estimation of interest	Replacement cost includes a provision for inflation if payments are delayed.	Interest shall be paid on outstanding compensation from the valuation date or possession date, depending on which is earlier, till the full payment is made.	Interest shall be paid by an acquiring authority at a rate, being not less than the current rate of interest prescribed in terms of the Prescribed Rate of Interest Act [Chapter 8:09] on compensation awarded to a claimant in terms of this Part or Part VA for the period extending from the date on which the land was acquired in terms of this Act to the date the money is paid to the claimant or paid to the Master of the High Court in terms of subsection (1) of section twenty-eight.

As shown in Table 2, the existing property valuation for expropriation in Zimbabwe followed the recommendations of World Bank, FIG and FAO. However, there are notable differences especially on estimation of replacement cost value, where depreciation is deducted contrary to World Bank and FAO specifications.

### **Conclusion, Policy Options and Recommendations**

Compulsory land acquisition and compensation in Zimbabwe is provided for and regulated by a number of statutes which include: The Constitution of Zimbabwe Amendment (number 20) Act number 1 of 2013, the Regional

Town and Country Planning Act (Chapter 29:12) of 1976; Section 150 of the Urban Councils Act (Chapter 29:15) of 1997 and Section 78 of the Rural District Councils Act (Chapter 29:13) of 1988, the Forest Act (Chapter 19:05) of 1949, the Parks and Wild Life Act (Chapter 20:14) of 1975, the Land Acquisition Act (Chapter 20:10) of 1992, the Communal Land Act (Chapter 20:04) and the Acquisition of farm equipment or material Act (Chapter 18:23) of 2004. Two of these Acts which are the Land Acquisition Act (Chapter 20:10) of 1992 and the Acquisition of farm equipment or material Act (Chapter 18:23) of 2004 regulate how property valuation for expropriation is done in Zimbabwe. The Land Acquisition Act (Chapter 20:10) of 1992 (LAA) provides a valuation guideline for expropriated properties while the Acquisition of farm equipment or material Act (Chapter 18:23) of 2004 regulates valuation of expropriated plant and equipment. This study will be based on the Land Acquisition Act (Chapter 20:10) of 1992 which guides how property valuation for expropriation. These schedules were benchmarked with property valuation guidelines provided by FIG (2010), FAO (2008) and World Bank (2004).

FAO (2008) guidelines stipulates that before land is expropriated, a notice must be sent be displaced people using a local media and a language which can be understood by affected people. Section 5 of the LAA provide for a preliminary notice which must be saved to displaced persons before expropriation. The FAO (2008) guideline recommends that the notice must be circulated on a local media using a local language over a period of three months. Also, FIG (2010) recommended that the notice is supposed to be written in languages commonly used in the area. The recommended media of communication include local newspapers, letters and mobile centres. However, the LAA only states that the notice is circulated once in the Government Gazette and twice in the local newspaper. Existing statutes in Zimbabwe are silent on the language to be used when publishing the preliminary expropriation policy.

This study established that Zimbabwe used a blanket approach when calculating property valuation for compensation of land with different land tenure systems. There is no specific guideline which prescribes how property valuation for communal land is to be calculated. FAO (2008) and FIG (2010) emphasised the importance of customary law when estimating property valuation for compensation of customary land. However, the existing valuation framework in Zimbabwe is silent on the issue of whether valuers are supposed to be guided by customary law or not. Also, the



current property valuation for expropriation statutes base calculation of replacement cost on market value. However, as pointed out by Kabanga, and Mooya (2018) market-based might not result in fair compensation in markets which are dominated by the customary land tenure system. This is because land is not sold in the open market (Kabanga, and Mooya, 2018) but it is inherited by tribes and rights are passed from one generation to the other without any exchange of money (Mutema, 2003). Under the communal land tenure system “value” is in most cases intangible which comes as a result of social ties and cultural beliefs. The World Bank (2004) noted that intangible value is difficult to quantify. The point in as much as the market approach is preferred when estimating compensation value its application in markets dominated by customary land is limited due to unavailability of market evidence.

The second most preferred method of valuation in Zimbabwe study is the replacement cost method. It is also important to note that the replacement cost approach is recommended by the World Bank (2004) in markets where reliable market data is not easily available. Under the replacement method, the value of the subject property is the sum of the value of land (as if vacant) and the value of improvements (as if new) (IVSC, 2017). Iyanda (2014) as well as Kabanga, and Mooya, (2018) concurred that in as much as the cost approach seem to be the most appropriate valuation in markets where market data is scarce, it has its limitations when it comes to valuation of traditional properties. This is based on the fact that estimation of replacement/reproduction costs of improvements is to some extent based on market evidence. In some cases, materials which are used to construct traditional rural properties are difficult to quantify because they are not sold in the open market. In view of the foregoing, Kabanga, and Mooya, (2018) argued that there is need to come up with a valuation framework which can work best in areas dominated by customary land. Existing property valuation framework for compensation purposes in Zimbabwe provide a detailed guideline on how replacement value is calculated as provided by the valuation schedules in Sections 29 and 50 of the LLA. However, the existing schedules are silent on how valuation of crops is supposed to be done. Mutema (2019) noted that the current property valuation for expropriation process is shrouded in obscurity; it is not transparent how government come up with compensation values since affected people are not involved. According to Chimbetete (2016), there are shortcomings in the valuation for standing crops as Designate Valuers were not using the discounted cash flow valuation method properly. The World

Bank (2004) guidelines recommend that estimation of compensation value for unharvested crops be based on the average market value of crops for the previous three years.

Depreciation is not expected to be deducted from estimated replacement value for compensation purposes (World Bank, 2004). The whole idea for not subtracting depreciation is that it is the responsibility of the expropriation authority (government) to improve the living standard of its citizen (betterment of displaced people). If depreciation is subtracted, chances are that affected persons will not be able to find a property of the equivalent value in the open market. If this happens, then the compensation offered can be considered to have failed the litmus test of the principles of indemnification which is used as a measure of fairness in compensation. The principle of indemnification stipulates that affected persons are not supposed to be made poor-off as a result of the compulsory acquisition. However, in terms of the valuation schedules provided by the Land Acquisition Act (Chapter 20:10) of 1992 when replacement value is estimated for the purposes of compensation, depreciation is supposed to be deducted. This shows a deviation of the existing framework which guides property valuation for expropriation from international best practice. Chances are that statutes stipulates that depreciation must be calculated and deducted such that the compensation will be a true reflection of the current state of the expropriated property as at the date of expropriation. From this angle the government will be justified not to pay a compensation which is equivalent to a new structure whilst the structure is not new. However, as highlighted before it is the responsibility of government to improve the living standards of its citizens.

FAO (2008) recommends that affected people are expected to be given a chance to estimate and justify their compensation claim for negotiation with the expropriating authority. If the displaced people are not justified with the either the expropriation process or the compensation offered, the law must guarantee the right to appeal in a court of law (FAO, 2008; FIG, 2010). In terms of Section 22 on the LLA, people whose properties are expropriated are given a chance to submit their compensation claim. Also, the existing statutes provide a room for appeal in the event that the displaced persons and the expropriating authority failed to agree on the compensation value and process. Application for appeal is done at the Administrative Court in terms of Sections 24 and 29 of the LLA. Provisions for appeal are in line with international best practice. However, the LLA is

silent on who is supposed to pay the costs of the appeal. The FAO (2008) guideline recommends that the appeal is supposed to be done either at a very low cost or free of charge. According to FIG (2010), reasonable costs of appeal are supposed to be paid by the expropriating authority. The term 'reasonable' is used and can be interpreted to mean that if an appeal is made without justifiable grounds, then the affected person will have to meet the cost. This might be done to discourage those who might decide to appeal just for the sake of delaying the expropriation process. In this case chancers can be deterred from unnecessary objections and appeals. It is also important to note that in the event that communal land is expropriated, affected persons might not have the knowledge of how to appeal. The LLA, is silent on the need for the expropriating authority to provide relevant information on how affected persons can appeal and the responsibility of the government and non-governmental organisation in providing legal representation.

Other important aspects in compensation for expropriation are the date of valuation and payment of compensation. Statutes are supposed to be specific on the date of valuation and recommended the use of the date of notice as the valuation date (FAO, 2008; FIG, 2010). In Zimbabwe, one policy gap of existing statutes is that it is not specific on which date is used as the valuation date. Section 29B of the LLA simply states that the designate valuer is supposed to estimate the value of the expropriated property as soon as possible. How is as soon as possible measured? Chimbetete (2016) noted that the main source of dispute between the Zimbabwean Government and former commercial farmers is emanating from the date at which the compensation value is to be based. It took close to two decades for the Government of Zimbabwe to finish property valuation of expropriated properties and currently a lot of things have changed over the years.

Also, statutes are expected to be specific on when exactly compensation is supposed to be paid. FAO (2008) recommends that a substantial amount of the compensation is supposed to be paid before the expropriated property can be possessed. The recommendations by FIG (2010) are that a once off payment of compensation must be paid in due time and most preferably in cash. In terms of Section 16 of the LAA compensation is paid at a reasonable time and Section 29C gives the Minister the power to fix the period which compensation must be paid. Moyo (2016) criticized the fact that the existing law is silent on the definition of what constitutes a reasonable time. In trying

to interpret what is meant by reasonable time, Moyo (2016) is of the view that a reasonable time might mean a period which is not more than two years since in terms of Section 29C (3)B, the second quarter of the compensation must be paid within two years. In the event that payment of compensation is delayed, FAO (2008) recommended that interest must be paid on the compensation amount. Calculation of interest on any unpaid compensation amount is supposed to start from the date of possession. Section 29 of the LAA is structured in-line with this guideline as it stipulates that interest on any money which is delayed is supposed to be paid to the displaced people. Also, calculation of interest is to be based on interest rates prescribed in terms of the Prescribed Rate of Interest Act (Chapter 8:09).

FIG (2010), recommended that the law must take into account the issue of valuation inaccuracy. This is done to make sure that the expropriating authority will take responsibility of taking all necessary measures so that the estimated compensation is accurate. In the event that it is proven that the estimated value was inaccurate due to negligence or any other avoidable factors, the law in this case can provide room for recourse. However, the existing statutes in Zimbabwe are silent on the issue of valuation accuracy. There is no statutory requirement to hold the expropriating authority accountable for valuation accuracy.

In view of the findings of this paper, it is recommended that there is need to review the current valuation for expropriation in Zimbabwe in-line with international best practice. Issues like specification of the valuation date, calculation of the value of unharvested crops, recognition and compensation of customary land rights and deduction on deprivation on property values need to be addressed urgently. Policy makers can take advantage of the existing process of aligning statutes with the constitution to do a holistic review of the existing valuation for expropriation framework. Furthermore, there is need for synchronising the LAA and the Valuers Act (Chapter 27:18) of 1996 so that only qualified and experienced professional valuers will be appointed as designate valuers for the purposes of calculation of property valuation for compensation.

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