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AJLP & GS
African Journal on Land Policy and Geospatial Sciences

e-ISSN : 2657-2664, Vol. 8, Issue.06, Jun 2025

https://revues.imist.ma/index.php/AJLP-GS/index

https://doi.org/10.48346/IMIST.PRSM/ajlp-gs. v8i6.555946 ***Category of the manuscript : Articles***

Received in: **07 April 2025** **Revised in: 07 May 2025** ***Accepted in: 08 June 2025***

Expropriation, Valuation and Compensation of Unregistered Communal Peri-Urban Land in Zimbabwe

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ABSTRACT

Context and background

Over the years there has been an increase in studies on expropriation and compensation in Zimbabwe. However, there are limited studies on expropriation and compensation for peri-urban communal land.

Goal and Objectives:

This paper examines the existing legal framework governing expropriation and compensation for peri-urban communal properties in Zimbabwe, identifying gaps or deficiencies. By proposing potential solutions to these shortcomings, the paper seeks to contribute to developing more equitable and effective policies in this area. Given the limited research on compensation for peri-urban properties in Zimbabwe, this study also aims to expand the existing body of literature on expropriation and compensation.

Methodology:

The paper is based on the social interpretivism paradigm, the qualitative research approach and the case study research design. Data were collected through statutory reviews and key informant interviews with central government and rural district council officials, elected councillors and traditional leaders. A combination of systematic content and thematic analysis was used during data analysis and coding was done manually.

Results:

Key findings revealed inadequacies and misalignments between the legal provisions of the Constitution of Zimbabwe, the Communal Land Act and the Land Acquisition Act. The paper recommends harmonizing existing valuation laws for expropriated communal land and developing specific valuation procedures tailored to peri-urban communal properties. This would ensure that affected communal landholders receive fair and equitable compensation for their expropriated land.

Keywords

Peri-urban, Communal land, Expropriation, Compensation, Unregistered Land, Zimbabwe, Valuation

1. INTRODUCTION

Whenever land is needed for the common benefit of the people, governments all over the world compulsorily have eminent domain powers which empowers them to acquire private land without the owner's consent for uses that benefit the public (Elbortokaly et al., 2022; Kwarteng & Botchway, 2019; Syahriar et al., 2022; Yan et al., 2021). This is known as expropriation, compulsory acquisition, or compulsory purchase. These three terms will be used interchangeably in this paper. However, depending on the provisions of the law, people whose land(s) are compulsorily taken are entitled to receive compensation or some form of palliatives. The purpose of the payment or palliative is to put the displaced person(s) in a condition that they are not worse off after the exercise.

Even though there is a vast literature on compensation for expropriation in Zimbabwe (Basure et al., 2021; Moyo, 2021; Tarusarira, 2022) there is limited research focusing on the context of peri-urban customary land. The location of peri-urban properties makes them unique especially when compared to any other customary land which is a distant from the urban centres. Therefore, even if its customary land, it has market value. As such, this paper argues that it cannot be valued like any other land. Kemwita et al. (2022), concluded that there is a market for peri-urban land where value can be determined in terms of demand and supply. However, the market is informal hence there are no records to use as a reference point. This informality is created by the law, specifically the Communal Land Act which does not give ownership rights to customary land holders. Since they have just use rights, they are not allowed to sell customary land because it is owned by the state.

2. LITERATURE REVIEW

2.1 Communality

Various literature sources have described pre-colonial land tenure systems in Africa as communal ownership of rights to allocate and use land for residential, agricultural and grazing purposes by a group of people with the same lineage, history and cultural identity (Moyana, 1984, Cheater, 1990, Durand-Lasserve, 2004 and Chimhowu and Woodhouse, 2006). In this context, land is administered by a traditional leader representing the community and ancestral interests. Communal tenure reflects the African philosophy on land ownership that advances the argument that "land belongs to a vast family of which many are dead, few are living, and countless numbers are still unborn" (Channock, 1991: 64).

Communal tenure alternatively described as customary tenure is characterised by the vesting of land in existing tribal leadership based on ancestral claims through clearance and first occupation or by conquest and granting of occupation and use rights to the community members. Such rights are granted through oral agreements, inalienability of the land with same lineage background and history, and access to land by each member of the community, including vulnerable groups (Chimhowu and Woodhouse, 2006; Wehrmann, 2007). The philosophy of inalienability of customary land has been ingrained in the African communities to all generations at an early age.

However, another different perspective has been presented on the alienability of land under communal/customary tenure arguing that this tenure had individualised rights in relation to specific land. It has been argued that although land may have been communal for grazing, collection of

thatching grass, firewood and wild vegetables, arable plots were not held communally or worked communally, nor did the proceeds of these plots contribute to a communal 'pool' (Sibanda, 1979: 35). Individuals and families that had been allocated plots for their own use, could decide on the uses and any other investments on that land. Such a view is like the Western 'freehold' ownership.

It is not disputed that colonisation resulted in complexities and controversies in respect of rights to land and natural resources embodied in land under communal tenure. The experience globally of colonisation was characterised by "dispossession, forced removals and discrimination" (Barume, 2010: 11). In Africa, colonisation introduced foreign systems (including common and statute law) juxtaposed to existing legal customary law systems to manage indigenous people, their land and other natural resources that marked the origin of legal pluralism (Toulmin and Quan 2000, Wily 2001; Adams and Turner, 2005). There were however different versions of European colonial policy in their respective colonies. The British adopted indirect rule while the French applied the assimilation policy.

The British indirect rule policy was based on the argument that indigenous land rights should be respected, including the traditional land administration responsibilities of local leaders (Adams and Turner, 2005) The rationale of this British policy was their philosophy that extension of their authority to new conquered territories should be done the minimum cost to the taxpayer at home in Britain. Communal land in all British colonies was held in trust by the colonial power and designated 'Crown Land', 'Native Reserve' or 'Trust Land' (Adams and Turner, 2005). Home (2021) argues that British colonial policy designated communal areas as 'native reserves' where customary tenure was maintained, but it allowed that land to be taken away from the occupants without payment of compensation if such land was required by the state for urban development, mining or any other public uses. Thus, the indigenous African people became mere tenants of the customary land they had previously used and occupied for centuries. The colonial state sanctioned their rights to use and occupy the communal land.

The principle of eminent domain was applied by the colonial administration to manage the indigenous people and natural resources under its new rule (Wily, 2001). At the attainment of independence by most African states, the newly elected governments did not grant property rights to community groups, or private individuals in communal areas in fear of losing power and allegiance contrary to expectations of reversing the status quo on the vesting of customary land into the state (Toulmin and Quan 2000 and Wily, 2001). In this article, it is argued that the vesting of communal land in the President has been a significant of source of disgruntlement on the non-payment of compensation for communal peri-urban land excised for urban development. Consequently, land holders have engaged in rampant illegal subdivisions and subsequent disposal resulting in what Chimhowu and Woodhouse, (2006) describe as a 'vernacular' land market, a process described in literature as 'neo-customary commodification'.

Neo-customary refers to "a combination of reinterpreted customary practices with other informal and formal practices (Durand-Lasserve, 2004:3). The neo-customary land delivery system has been characterised by individuals who transact more rights than they obtain from the customary system. (Durand-Lasserve, 2004: 3 and Wehrmann, 2008). Commodification practices refer to informal subdivisions and subsequent sales of customary land to obtain monetary value (Durand-Lasserve,

2004: 3 and Wehrmann, 2008). Yaro (2010) observes that in Ghana, such land transactions have evolved into an industry involving chiefs, clan heads and individuals. Kwangwama, (2016) observes that in Zimbabwe this informal land market disposing communal peri-urban land has been code named 'garawadya' (benefit before the land is repossessed).

2.2 Peri-urban and peri-urbanisation

The term peri-urban has been defined as an intermediate zone located between rural and urban areas straddling across numerous administrative boundaries with mixed land uses and ambiguously demarcated inner and outer boundaries (Rakodi, 1999: 2). Various terms across diverse geographies of the world have been used in defining the peri-urban. The term peri-urban, originated from urban periphery, while the Dutch refer to it as halfstedig (semi-urban). In Germany, peri-urban is referred to as urban-landlichen zonen (urban-rural zones), in Afrikaans, it is known as buitestedelik (outer city or beyond the city), while in East Asia and Southeast Asia, McGee coined the term, desakota (city village) (Simon, McGregor & Thompson, 2006: 5).

The term peri-urban has also been labelled as exurban, urban tract, rurban, urban fringe and semi-urban (Iiaquinta and Drescher, 2000). Peri-urbanisation has been coined from peri-urban and defined as a process characterised by dynamic physical, economic, and social changes occurring in a piecemeal fashion in rural areas located on the boundaries of large existing cities (Webster and Muller, 2002: 5). The peri-urban area has been described as experiencing risks and opportunities, institutional fragmentation, mixed land uses, fragmented land holdings and social structures and rapid changes (Adell, 1999). Trefon (2011: 424) describes peri-urban areas in Central Africa as "characterised by proximity to a densely populated urban settlement, rapid population growth, severe environmental degradation, hybrid governance structures that juxtapose state agencies and traditional authorities, extractive and productive activities for subsistence and trade."

The peri-urban concept has manifested itself both in the developing and the developed countries. However, there are major differences in how the peri-urban area has emerged. In developing countries, the peri-urban zone is emerging amid poverty, and without a systematised institutional framework, resulting in lack of planning, inadequate provision of infrastructure and absence of service provision (Phillips, Williams, Andrews et al (1999, Chirisa, 2010 and Kwangwama, 2016). Birley and Lock (1998: 89) regard "the peri-urban as a mosaic of different land uses inhabited by communities of different status, in a state of rapid change and lack of infrastructure and deteriorating environment". Contrary to the organic, unplanned and chaotic manner, in the developed countries, peri-urban areas are well-integrated into broader urban regions through regionalisation processes (Webster & Muller, 2002). There is also adequate provision of the required infrastructure, and services are managed through a well-developed institutional framework. Thus, due to the availability of adequate financial resources, the developed countries have managed to create value in their peri-urban zones.

2.3 Compulsory acquisition and compensation

Compensation for expropriation has generated protracted debate amongst academics and policymakers. Because of its nature, expropriation cuts across disciplines that have seen diverse contributions to the existing body of knowledge from academics particularly from law, economics,

development studies, and the built environment. Existing literature has been reviewed in different geographic locations and spans across centuries (Bao et al., 2020; De Maria et al., 2023).

Compensation for expropriation is a complex subject (Barańska, 2017; Kazda et al., 2020; Magaisa, 2010) and sensitive (Faul & Cloete, 2022) due to the conflicting interests of various stakeholders involved that sometimes results in conflicts (Heryanti et al., 2023). De Maria et al.(2023) postulates that under-compensation is one of the major causes of conflicts in compulsory land acquisition. Also, Kebede et al.(2021) and Makupa (2024) concluded that expropriation erodes livelihoods of people affected by projects (PAPs).

According to Tuan (2021b), Ayamga et al. (2023), Makupa (2024) and (Manduna, 2023) , PAPs struggle to adapt to the new post-expropriation environment. Bao et al.(2020) established that over-compensation causes disruption affected people's entrepreneurial behaviour. Tuan (2021b) concluded that, instead of investing their compensation, PAPs ended up using it for non-profit purposes. PAPs lack the necessary skills to either start and manage their new businesses using part of their compensation as capital (Gemeda et al., 2023) or compete for jobs created by the new urban environment (Xu, 2023). In most expropriation projects, PAPs are "…characterised by low-paid and insecure jobs, unemployment, loss of income and poor life satisfaction" (Tong et al., 2019) that "…brings untold hardship…" (Olapade et al., 2021) to them. In conclusions, Tong et al.(2019) as well as Agegnehu & Mansberger (2020) recommended that PAPs need post-compensation support.

Adam (2019) concluded that compulsory land purchases in communal peri-urban areas of Ethiopia are characterised by a state-controlled non-voluntary and non-participatory nature. Dires et al. (2021) added that urban expansion-induced expropriation and compensation caused great concern in Ethiopia as urban areas are expanding at an alarming rate at the expense of the poor who are resident in the urban fringe. Because of this and other limitations, Adams (2019) recommended that researchers and policymakers need to be innovative and come up with more inclusive methods of land acquisition.

Adam (2019), Almeida & Jacobs (2022) and Gukurume & Tombindo (2023) concluded that the poorest members of the society are the most affected by compulsory land acquisition by the state. The authors went on to explain that the poorest groups do not have the means to defend their rights. This view seems to hold water because most of the poorest members do not have resources, for example to engage professionals like property valuers and lawyers who can help them to challenge expropriation and or compensation. In this regard, civic society can play a pivotal role in empowering the PAPs so that they can stand for their threatened livelihoods and rights. Almeida & Jacobs (2022) advocated for consolidation of the existing laws needed to guide compulsory land acquisition in Mozambique to come up with a new law that addresses the gaps in existing statutes. A similar conclusion was also arrived at by Yacim et al., (2022) whose study focused on compensation for expropriated customary land in Zimbabwe. This shows that gaps created by non-consolidated expropriation laws are not unique to Mozambique.

Amponsah et al. (2023) opine that the lack of detailed compensation standards causes inconsistency in valuation practices that, in turn, results in dissatisfaction of the PAPs. Also, Museleku (2021) concluded that, in Kenya under-compensation is caused by the exclusion of some items from the compensable heads of claim by existing laws. In this view, a valuer who is estimating compensation

cannot include anything that is not compensable at law. Epstein (2020) advocated that valuers must use the correct method of valuation to minimise compensation disputes. The use of rigid compensation models (Bokings, 2022) compounded by use of unskilled members of the expert committees (Tanrivermiş & Başoğlu, 2021) resulted in the undervaluation of the expropriated properties. Tanrivermiş & Başoğlu (2021) recommended that members of the expert committees who estimate compensation should receive proper training so that they can competently estimate the compensation to be paid to PAPs. Kurt & Kurt (2020) proposed that agricultural experts must be part of members of the expert committees to estimate compensation. The inclusion of agricultural experts is crucial especially when valuing rural properties that are mainly used for agricultural purposes.

Recent studies done in Egypt (Elbortokaly et al., 2022), Vietnam (Tuan, 2021a; Tuan, 2021b) Ethiopia (Adam, 2019; Dires et al., 2021) and China (Tong et al., 2019) established that urban expansion is one of the key causes of expropriation. Adigeh & Taffse (2021) as well as You et al. (2022) singled out the urbanisation rate as one of the major challenges experienced in peri-urban land expropriation. Expropriating authorities struggle to keep pace with unprecedented levels of urbanisation. Malatsi and Paradza (2024) also highlighted a situation where the state expropriate land for urban expansion but fail to allocate it to its intended benefeiciaries.

Obineme et al. (2021) also highlighted that delayed compensation is the main cause of disputes between PAPs and the expropriating authorities. The issue of delayed compensation was also raised by Yacim et al. (2022) whose study was based on freehold farms that were expropriated, and compensation was delayed for more than two decades. Delayed compensation complicates expropriation disputes because, according to Magaisa (2010), it creates more victims. The Zimbabwean case on compensating the former white commercial farmers whose land was expropriated f rural settlement under the Fast Track Land Reform Programme (FTLRP) was also made complex by the delayed valuation of the expropriated properties some of which were vandalised during and after the expropriation process (Yacim et al., 2022).

Bae (2023) is of the view that weak customary land rights do not adequately protect tribal landholders from unfair expropriation practices. This was also noted by Yacim et al. (2022) who explained that in communal/customary land, landowners just have use rights on state land hence the owner (state) can take away the use right easily. If customary landowners have ownership rights, maybe they could have better protection at law. Marewo et al.(2021) argued that customary landholders in Zimbabwe are exposed to the risk of poor governance. Ahmed et al. (2018) are of the view that, in Ghana traditional leaders who are supposed to protect the interest of customary landholders usually do not protect them when that land is needed for public use or public interest. Manda & Banda (2023) argue that "Whereas chiefs have been co-opted into councils as agents of development, winners are not always local." One is tempted to argue that in most cases, traditional leaders do not have a choice because they do not have political power and resources to fight government agendas. In the Zimbabwean case, traditional leaders are accused of being an extension of the ruling party, if this is true then it will be difficult for them to go against the system that they serve.

Olapade et al. (2021) argue that customary land is unique in that it is owned collectively hence compensation should consider the underaged and the unborn members of the community. They also posit that if these groups are left out, they are most likely going to try to reclaim lost heritage illegally when they become of age that results in conflicts and delayed projects.

2.4 **Theoretical framework**

According to De Maria et al. (2023), "the fair or just compensation principal dates back to at least 1215, with Clause 28 of the Magna Carta". There are two economic views guiding compensation for expropriation and these are the 'zero-compensation rule' and the 'full-compensation rule' (ibid, 2023). The authors further highlighted that the notion behind the zero-compensation rule is that human beings are selfish by nature. Hence, if compensation is paid for expropriated properties, they tend to invest in their land more than they would have done if the land was not expropriated. In other words, compulsory land acquisition can be a motivating factor for affected people to overinvest in their properties so that they can receive higher compensation from the expropriating authority.

Kieti (2021) classified compensation theories into the taker's gain and the equity and equivalence theory. Proponents of the taker's gain theory are of the view that the expropriating authority must compensate for what it has gained from the expropriated land without considering what the PAPs have lost. However, opponents of this theory who support equity and equivalence theory are of the view that compensation is only fair if it is measured using what the PAPs have lost. The thinking is the PAPs are not supposed to lose or gain from the expropriation, instead, they are supposed to be left where they were before the expropriation.

3. METHODOLOGY

The research methodology adopted in this paper is most effectively explained by employing the "peeling off the research onion" framework as proposed by Saunders, Lewis, and Thornhill (2019). Initially, the researchers adhered to the social interpretivism philosophy, thereby positing that understanding the issues surrounding expropriation, valuation, and compensation of peri-urban communality in Zimbabwe necessitates a context-specific approach. Consequently, these issues are best comprehended through the lived experiences of the stakeholders involved in the process, namely those residing in peri-urban areas and government officials engaged in the acquisition and allocation of peri-urban land. As noted by Rahman (2016), the advantage of interpretivism lies in its ability to provide an in-depth understanding of the subject under investigation within its natural setting. However, the same author highlighted a significant limitation of interpretivism, namely the difficulty in generalizing findings.

As previously noted, there is a paucity of research on expropriation valuation and compensation of peri-urban properties in Zimbabwe. Consequently, the study adopted an exploratory approach, and the researchers employed an inductive methodology for theory development as recommended by Bhattacherjee (2012). The primary focus of the research was on theory building rather than testing existing theories.

A qualitative methodology was adopted, specifically employing a multi-case study strategy. The study focused on two case studies: Domboshava and Seke communal peri-urban areas located on the periphery of Harare and Chitungwiza, respectively. These two case studies were purposefully

selected due to their proximity to Harare, Zimbabwe's capital city as they experience significant pressure from expropriation as city inhabitants seek land for housing and other urban activities (Ingwani 2015; Chiweshe, 2017; Gweshengwe & Matai 2022; Gambe, 2024).

One advantage of a multi-case study research design is its ability to provide robust evidence (Baxter & Jack, 2008). In this study, the selection of two case studies was beneficial as it offered researchers the opportunity to compare experiences across the two cases. Additionally, data was collected using diverse methods (document analysis and key informant interviews), that provided an opportunity for researchers to validate the findings obtained from both case studies. However, Baxter & Jack (2008) observed that one of the limitations of the multi-case study qualitative design is its time-consuming nature. The researchers also encountered this limitation, as the two case studies, although located on the periphery of Harare and Chitungwiza, are approximately 72 kilometres apart. Furthermore, the researchers were dealing with various stakeholders possessing differing political power and interests, necessitating engagement with multiple authorities to secure the participation of all stakeholders, that also contributed to the time-consuming nature of the research.

Key informant interviews were conducted with officials from the Ministry of Local Government and Public Works (MLGPW), the Ministry of Lands, Agriculture, Fisheries, Water, and Rural Development (MLAFWRD), Manyame and Goromonzi Rural District Councils, elected councillors, and traditional leaders. Officials from the Ministry of Local Government and Public Works included the Provincial Administrator (PA) of Mashonaland East Province, District Administrators (DAs) for Goromonzi and Seke Districts, the Chief Executive Officers for Goromonzi and Manyame Rural District Planners, and officials from the Chief Government Valuer's Office. These key informants were selected using a combination of purposive and snowball sampling. They were chosen due to their involvement in the planning and execution of expropriation and compensation within the study area.

An interview guide was utilised during the interview process. Two interview guides were employed, one in English and the other in the vernacular language (Shona). Key informants were given the option to select their preferred language prior to the interview. The interviewers were responsible for recording the key informants' responses, that were subsequently translated during data analysis for data collected in Shona.

For ethical reasons, all key informants were informed of the study's purpose, the data to be collected, and the intention to publish the findings in an academic journal. Prior to the interviews, they all signed informed consent forms. No personal data were collected, and identifiers were removed during data collection where necessary, replaced with codes. Quotations were revised without compromising the views of the key informants.

Thematic analysis was employed during data analysis. As noted by Saunders, Lewis, and Thornhill (2019), thematic analysis offers flexibility. This flexibility was evident in the present study, as the researchers were able to identify themes within the data collected from key informant interviews, document reviews, and statutory reviews. While thematic analysis is relatively straightforward, it can be time-consuming (Saunders, Lewis, and Thornhill, 2019), particularly when researchers are manually analysing large volumes of data.

Manual coding was conducted, wherein the researchers systematically reviewed the data and assigned codes to relevant segments. These codes represent key concepts, ideas, or themes emerging from the interviews and documents. Through this process, the researchers were able to identify and categorise the patterns and recurring themes within the data, providing a structured framework for analysis.

4. RESULTS AND DISCUSSION

4.1. Ownership and Expropriation of Communal Peri-urban Land

All key informant interviews with central government officials and the Chief Executive Officers (CEOs) of Manyame and Goromonzi Rural District Councils confirmed that communal peri-urban landforms part of Zimbabwe's communal land, that is vested in the State President as outlined in Section 4 of the Communal Land Act (CLA) (Chapter 20:04). The President grants authority for the occupation and use of this land as per the CLA enacted in 1982 after the attainment of independence. This section explicitly states that occupants of communal land do not own the land but rather possess mere rights of use, and their occupancy of this land is subject to the President's discretion.

CLA superseded the Tribal Trust Land Act of 1979, a colonial-era law. Importantly, the core content of the old Act persisted, raising questions about the new government's intent to maintain control over the rural population through legal means. This finding concurs with the observation in literature that new governments did not grant property rights to community groups, or private individuals in communal areas in fear of losing power and allegiance (Toulmin and Quan 2000 and Wily, 2001). The Minister responsible for the CLA holds the power to officially define communal land boundaries, modify relevant laws, and grant occupancy consent, adhering to Regional, Town and Country Planning (RTCP) Act regulations.

Sections 7 and 8 of the CLA stipulate that communal peri-urban land, like other communal land in Zimbabwe, must be allocated for agricultural or residential purposes. Rural Distrct Councils (RDCs), the governing authorities, are responsible for approving these allocations. Furthermore, Section 8(2a) of the CLA mandates RDCs to consider customary law when allocating, occupying, and using land within their jurisdiction. For instance, in Domboshava and Seke, the Goromonzi and Manyame RDCs should respect the traditions and customs of the VaShawasha and Seke people, respectively. The juxtaposition of traditional administration systems and the state system confirms the concept of legal pluralism in communal peri-urban areas as highlighted in literature (Toulmin and Quan 2000, Wily 2001, and Adams and Turner, 2005).

It was evident that communal peri-urban landholders were dissatisfied with the continued vesting of communal land in the President as was the case prior to independence. Key informant interviews with village heads particularly in Domboshava expressed the landholders' concern of disenfranchisement, arguing that their ancestral land had been forcibly taken without compensation. They had hoped for the restoration of ownership rights at independence.

Tracing the history of communal land, during the colonial period, it was known as tribal land under the Tribal Trust Land Act of 1979. Before colonisation, communal areas were owned by indigenous Zimbabweans, albeit without formal registration. Colonial rule stripped them of these ownership rights as argued by Barume (2010). Even after four decades of independence, communal landholders

still do not have ownership rights to their ancestral land. Therefore, in the perspectives of communal peri-urban holders, communal land belongs to the communities occupying it, not the State as the CLA stipulates. Therefore, it should not be vested in the president, but ownership should be transferred to the respective communities.

Zimbabwe is currently revising its land tenure system to allow beneficiaries of its land reform to transfer their rights. This development acknowledges the rights of these beneficiaries, even if they are not selling the land itself. However, communal landholders including communal peri-urban landholders, who primarily occupy agricultural land, are denied such rights. Given these circumstances, it is justified to question the fairness of not recognising communal landholders as the rightful owners of their land.

State ownership of all communal land, including communal peri-urban areas, has significant implications for compensation when land is acquired for urban development or other public uses. Key Informant 1 (KI1) highlighted that when communal land is exercised for urban development, affected individuals often receive only alternative land, if available. While land-for-land compensation is commendable, it overlooks the inherent differences between land parcels. This is particularly crucial for communal peri-urban properties, that would be ripe for urban development and offer greater opportunities due to their proximity to urban areas.

In the case studies of Seke and Domboshava, landholders benefit from easy access to markets in the capital city for their agricultural products. KI2 and KI4 highlighted that some individuals in these areas generate rental income, capitalising on the demand for housing in both Harare and Chitungwiza. Other key informants confirmed the involvement of landholders in rampant illegal subdivisions and subsequent disposal in Zimbabwe code named 'Operation Garawadya panotorwa mahara' (Enjoy the benefit before it is reversed and land is taken for free). Therefore, when communal land is expropriated for urban development, displaced individuals lose not only the land itself but also the associated opportunities linked to its location. Simply providing alternative land may not constitute fair and adequate compensation.

Given the proximity of peri-urban communal land to urban areas, particularly in the case studies near Harare and Chitungwiza, that undergo rapid urbanisation, landholders are increasingly vulnerable to displacement due to their lack of secure tenure. This vulnerability is exacerbated by the potential use of peri-urban communal land as a political tool in Zimbabwe. If those in power are dissatisfied with the political affiliations of landholders, they may face forced displacement under the guise of urban development.

The 1994 Land Commission, widely known as the Rukuni Commission, recommended preserving communal tenure while strengthening its security and improving legal and administrative frameworks. The Commission proposed transferring ownership of communal land from the state to village communities, codifying and formalizing customary law and procedures for land administration, and undertaking surveying, mapping, and registration of communal land in line with fit-for-purpose land administration principles. However, thirty years since these recommendations were made, the government has yet to implement these crucial recommendations.

According to KI5, in 2020, the Ministry of Lands, Agriculture, Fisheries, Water, and Rural Resettlement (MLAFWRR) collaborated with the Food and Agricultural Organisation to review the Zimbabwe National Land Policy. The preliminary report recommended maintaining communal tenure, among other measures. During stakeholder consultations, suggestions were made to consider transitioning from communal tenure to freehold tenure due to factors such as population growth, rapid urbanization, and urban-to-rural migration. However, the government, as expressed by the lead consultants, indicated its intention to retain control over communal land. This stance is likely influenced by the significant support base the ruling party, ZANU PF, maintains within these areas. Nevertheless, the dynamic changes occurring in communal peri-urban areas may necessitate a review of the existing communal land tenure system, as it may no longer be suitable for addressing emerging needs and challenges.

According to Section 16(1a) of the CLA, individuals who violate its provisions are liable to a fine, imprisonment, or both. Despite this, communal peri-urban landholders in Domboshava and Seke express dissatisfaction with the delays and compensation amounts offered by RDCs when land is expropriated for urban development, such as the establishment of business or rural service centres. They contend that they should benefit from the increased value of the rezoned land. Thus, they are engaging in rampant illegal subdivisions and subsequent disposal code named '*Operation Garawadya panotorwa mahara'* as a form of resistance against vesting of communal land in the President instead of their communities benefiting value appreciation of communal peri-urban land arising from the ever-increasing demand.

The Traditional Leaders Act (TLA) (Chapter 29:17) is another key piece of legislation governing communal peri-urban areas in Zimbabwe. It outlines procedures for appointing village heads, headmen, and chiefs, establishing the Council of Chiefs, and defining the functions of village, ward, and provincial assemblies. The Act also covers the process of registering villages and issuing village registration certificates and settlement permits. Section 27 of the Act addresses the rights of urban residents to maintain homesteads in communal areas, even while residing in urban areas. The researchers observed that many communal peri-urban landholders in Domboshava and Seke, who are residents of Harare and Chitungwiza, still maintain their homesteads. However, some urban-dwelling landholders have sold their homesteads and communal land to urban migrants seeking more affordable residential options in both Domboshava and Seke.

The Traditional Leaders Act (TLA) outlines the roles of traditional leaders in governing communal land, including peri-urban areas. Chiefs are responsible for ensuring land allocation aligns with Part III of the CLA, preventing illegal settlement or land use, notifying the RDC of intended homestead disposals, permanent departures, and approving new settlers based on headman recommendations. They are also expected to liaise with RDC development committees on planning and development matters. Headmen, on the other hand, manage ward assemblies, dispose of communal rights, admit new settlers, and maintain an updated register of villages and village heads. They are required to inform the chief and RDC about any changes in the register.

Section 12 of the TLA outlines the responsibilities of a village head, including considering new settlement requests. Upon receiving such requests, the village head consults the village assembly and recommends them to the Ward Assembly. The village head is also empowered to resolve conflicts

related to customary law and traditions concerning residential, grazing, and agricultural land boundary issues. In certain cases, these issues may be referred to the headman.

As the Chairperson of the Village Assembly, the village head coordinates the development of village development plans, that are then submitted to the Ward Assembly for consideration and incorporation into the Ward Development Plan. Additionally, as the Chairperson of the Village Development Committee (VIDCO), the village head coordinates and submits VIDCO resolutions and plans for consideration by the Ward Assembly. The TLA also empowers the village head to prepare and maintain an updated village register, detailing all villagers, and to keep an accurate village outline plan, for that they hold a village registration certificate. The legal provisions of the CLA, the TLA, and the Constitution intersect the statutory system with traditional systems in administering communal land in Zimbabwe, as illustrated in Figure ii.

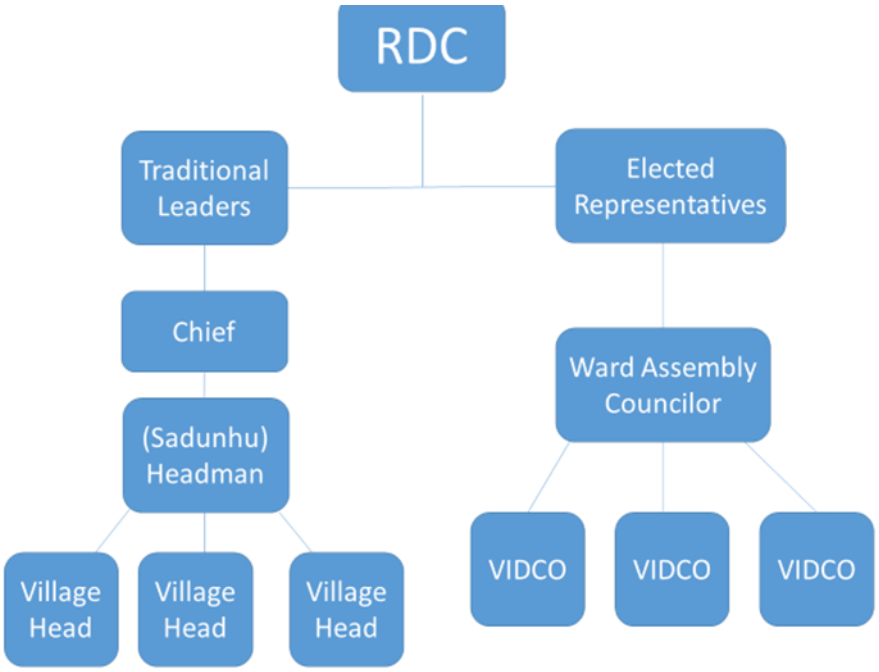


Figure ii: Communal Land Administration in Zimbabwe
Source: Designed by Authors (2023)

Key informant interviews with village heads in both Domboshava and Seke CPUAs revealed that land holders are dissatisfied with the vesting of communal land in the President. Numerous village heads in both CPUA highlighted that land holders have been dispossessed of their ancestral land twice in the history of Zimbabwe namely at colonisation and at independence. Barume (2010) argued that colonisation was characterised with dispossession, forced removals and discrimination of indigenous people from their ancestral land. The perception of ownership of communal land by the CPUA communities is that they view themselves as "freehold owners" by virtue of their ancestral occupation of the land for centuries and subsequent inheritance. They expected restoration of ownership of their ancestral land at independence, but this did not happen.

The dissatisfaction of CPUS landholders on customary land ownership has resulted in the flouting of communal land allocation procedures in both Domboshava and Seke who are now engaging in the illegal subdivision and subsequent sale of communal land. Due to the ever-increasing demand for land in the two CPUA, landholders secretly negotiate with the prospective purchasers. On average in

2016 and during the dollarisation period, plots measuring approximately half of an acre (2 000m^2) were being sold for a price range of US$1 500.00 to US$2 000.00 in both Domboshava and Seke CPUA. The prospective purchaser would pay the CPUA land holder based on verbal agreements, with no witnesses. Consequently, some unscrupulous landholders would sell one plot to several people. The disposal of communal peri-urban land in both Domboshava and Seke has been described in the literature as neo-customary commodification (Durand-Lasserve, 2004 and Wehrmann, 2008) Yaro (2010) also observed similar phenomenon in Ghana where such land transactions on communal land have evolved into an industry involving chiefs, clan heads and individuals.

Consultations with officials at both Goromonzi and Seke Magistrate Courts confirmed the increasing number of court cases on land commodification disputes. After the conclusion of the CPUA sale transaction, the seller would approach the Village Head (Sabhuku) introducing the purchaser, as his relative (usually described as a *muzukuru* (grandchild or sister's child) to whom he would have allocated a portion of his/her landholding. Customary practices allow a CPUA land holder permission to subdivide and allocate their ancestral landholding to any member of their lineage clan. The village head would enter the name of the purchaser into the village register. Thus, CPUA landholders in both Domboshava and Seke have exploited this cultural practice in their involvement in the commodification practices.

Traditionally in the administration of communal land, when a new member joins a community, it is a cultural practice for the new member to pay a token of appreciation to the village head for being welcomed into the new community. Research findings in both Domboshava and Seke revelated that communal peri-urban commodification practices have transformed this gesture into substantial charges paid to the Village Head. During the time of the research, the amount paid was equivalent to US$200.00 per transaction. After entering the new member into the village register, the village head would subsequently approach the headman and the chief to introduce the new purchaser. This second introduction also attracted higher charges ranging from US$300.00 for the head man and US$500.00 for the chief. All these charges were paid based on verbal agreements. The customary token of appreciation "mbudzi yamambo" (goat for the chief) has now been converted into a commercial charge. Prospective purchasers regard these verbal transactions as insecure. To guarantee security, purchasers take immediate occupation of the acquired plots. This has led to the rapid growth of the illegal settlements in the two CPUA.

The Regional, Town and Country Planning Act (RTCPA) (Chapter 29:12) is crucial in administering communal peri-urban areas, particularly in terms of spatial planning. Ideally, the Land Acquisition Act (LAA) (Chapter 20:10) should guide compensation for compulsorily acquired land in communal peri-urban areas for urban development or other public interests. However, this is not the current practice, as will be discussed later.

Land designated for business and rural service centres in communal peri-urban areas is first set aside and excised before being converted to urban status. This involves transferring the land to the State Lands Office for administration and disposal to purchasers. The office subsequently transfers the land to purchasers through the Deeds Office, as outlined in the Deeds Registry Act (Chapter 20:05).

According to Section 6 of the CLA, the Ministry of Local Government, Public Works, and National Housing (MLGPW) has the authority to expropriate communal land for urban development and other

public purposes without paying compensation on the land but on the improvements. This finding concurs with the observation by Home (2021) who highlighted that British colonial policy administered 'native reserves' under customary tenure where land would be taken away from the indigenous Africans without payment of compensation if such land was required by the state for urban development, mining or any other public uses. This colonial position was maintained after attainment of independence and is still operational to date.

The Rural District Councils Act (RDCA) (Chapter 29:13), in conjunction with the CLA and the RTCPA, outlines provisions for planning communal areas, including zoning for various land uses like residential, cemetery, grazing, forest, and crop cultivation. The Department of Spatial Planning and Development (DSPD) guides rural local authorities in Zimbabwe, including Goromonzi and Manyame Rural District Councils. This department is responsible for national spatial planning and administers the RTCPA. When communal land is required for urban development, rural district councils follow the excision process outlined in Section 10 of the CLA, that empowers the MLGPW to set aside land for townships, villages, business centers, or industrial areas. RDCs develop these areas in consultation with the Director of the DSPD and according to a layout plan approved under Section 43 of the RTCPA.

Rural District Councils (RDCs) play a crucial role in identifying and setting aside communal land for urban development, that involves excising these areas from existing communal land holdings. Communal landholders are notified of the excision and informed that they will only be compensated for improvements, as all communal land in Zimbabwe, including peri-urban areas, is vested in the President. While communal peri-urban landholders cannot object to expropriation for public use, they can dispute the level of compensation on the improvements. They cannot dispute compensation for the land as it is vested in the state.

Section 71(3)(c)(ii) of the Constitution mandates fair and adequate compensation for compulsorily acquired property, either before or shortly after acquisition. Section 12(1)(c)(ii) of the CLA stipulates that if no alternative land is available for relocation after expropriation and if the RDC and landholders cannot agree on compensation, Parts V and VIII of the Land Acquisition Act (Chapter 29:10) should be invoked. Similarly, Section 78(2) of the RDCA states that Parts III, V, and VIII of the Land Acquisition Act should be invoked in cases of compulsory acquisition by a rural district council. However, these provisions in the Land Acquisition Act exclude valuation for compensation in respect of expropriated communal land.

4.2. Valuation and compensation for peri-urban communal land

The Chief Government Valuation Officer (CGVO) within the MLGPW, responsible for administering CLA, is tasked with valuing expropriated communal peri-urban land for compensation purposes. While valuation officials from the CGVO confirmed this responsibility, it is important to highlight that Section 4 of the CLA vests all communal land in the President. Consequently, valuations are primarily conducted for improvements on the land, excluding the land itself.

Communal peri-urban landholders possess residential and agricultural usufruct rights, not ownership. This has been a contentious issue, with landholders arguing that they have ancestral ownership rights dating back to the pre-colonial era. However, current communal tenure practices

dictate that compensation is limited to improvements on the expropriated land. The inadequate guidance provided by the Land Acquisition Act (LAA) regarding the valuation of expropriate communal land poses a significant challenge. While Part V of the LAA outlines provisions for claims and compensation assessment, it lacks specific reference to communal peri-urban land. Section 50 of the LAA provides detailed procedures for assessing compensation for improvements on agricultural land acquired for resettlement purposes. However, Section 72(1) of the Constitution explicitly excludes communal land from its definition of agricultural land. This exclusion implies that the LAA does not provide specific guidance for valuing improvements on expropriated communal peri-urban land.

Consequently, the valuation of improvements on expropriated communal peri-urban land is left to the discretion of individual valuers, leading to potential inconsistencies and disputes. This lack of clear guidelines can result in inadequate compensation for affected landholders, particularly given the unique characteristics and challenges associated with communal land tenure. Researchers determined that improvements on communal land, including traditional structures such as roundavels and granaries, are unique and not adequately addressed by existing valuation schedules for agricultural properties. This leaves considerable discretion to valuers. Additionally, current valuation procedures often overlook intangible assets associated with communal peri-urban land, such as family ties, graveyards, and spiritual shrines. The lack of clear guidelines and the subjective nature of valuation processes have led to significant contention surrounding the valuation of expropriated communal land. Communal landholders often distrust government valuations, believing they undervalue their land and its associated intangible assets.

It was established that communal peri-urban land is often not assigned to a market value, as it is considered state-owned property. However, the fact that the land is state-owned does not render it valueless, particularly given the contested nature of this ownership. A key informant indicates a vibrant informal market for peri-urban communal land in the two case studies (see an advert from social media in Figure v). This land is actively traded, as noted by Ingwani (2015; 2019), Bhanye et al. (2023), and Mudapakati et al. (2024). Local property agents facilitate these transactions, connecting landowners with buyers and negotiating prices. These agents effectively act as unofficial valuers, providing insights into market rates. Social media platforms are also used to advertise land for sale.

The inability to expand urban boundaries between 2013 and 2023 due to constitutional constraints has further driven demand for peri-urban land. The lack of compensation for expropriated land incentivizes landholders to sell, as they fear losing their land to urban expansion without any financial benefit. Operation '*Garawadya, panotorwa mahara'* encapsulates the sentiment that it is better to benefit from the land now rather than lose everything later. To discourage illegal land deals and ensure fair compensation, it is essential to acknowledge the existence of the informal market for communal peri-urban land and consider market values in compensation calculations. Formalising land ownership and property rights would facilitate accurate data collection, aiding in valuation and minimising disputes between expropriating authorities and affected families.

Valuation officials have encountered several challenges when valuing expropriated communal peri-urban land for compensation purposes. These challenges include a lack of synchronized provisions

in relevant statutes, inadequate valuation guidance for expropriated communal land, and insufficient engagement with affected landholders during the expropriation process. The valuation process is guided by legal provisions outlined in Section 71 of the Constitution of Zimbabwe Amendment 20 of 2013, the Communal Land Act (CLA), the Land Acquisition Act (LAA), and the Rural District Councils Act (RDCA).

Key informant interviews with Valuation Officials revealed that the existing valuation schedule for agricultural properties does not adequately guide engagement with affected communal landholders. Engaging landholders from the outset of the expropriation process is crucial for fostering understanding and minimising resistance stemming from suspicions of undervaluation. Section 12(2) of the CLA mandates that compensation for expropriated communal land should be funded from central government revenue sources. However, inadequate government revenue has often led to delays in compensation payments, resulting in financial losses for landholders.

As previously mentioned, communal peri-urban landholders have expressed dissatisfaction with the lack of compensation for land expropriated for urban development, as they are only compensated for improvements. Government and RDC officials argue that state ownership of the land precludes compensation for the land itself. However, communal peri-urban landholders believe that the post-independence government should have vested ownership of communal land in individual landholders or communities.

5. CONCLUSIONS

This study has examined the complex issue of land ownership, expropriation, and compensation in Zimbabwe's communal peri-urban areas. A key finding is the tension between the state's assertion of ownership over communal land and the de facto rights exercised by local communities. While the state maintains legal ownership, informal land markets are thriving, highlighting the value placed on communal peri-urban land, particularly in areas experiencing rapid urbanisation.

CPUA land holders in Domboshava and Seke are disgruntled by the vesting of communal land into the state. At the attainment of independence, they expected divestiture of the former Tribal Trust Lands from state ownership. Denying or ignoring compensation on the value of peri-urban communal land exacerbates, rather than alleviates, the challenge of informal land deals in these areas. Therefore, it is recommended that the land rights of peri-urban landholders be recognised and that when such land is expropriated, it should be valued based on market value and included in the compensation package.

This paper recommends a robust policy on expropriation and compensation specifically tailored to communal peri-urban land, given its unique characteristics. Additionally, a detailed policy focusing specifically on communal land is necessary, as Yacim, Paradza, and Zulch (2022) observe the absence of such a policy and detailed guidelines. Such a policy could focus on the improvement of the life of the communal land holder after the exceeding of land for urban development. In the existing communal tenure system where, communal land is vested in the President, government would still be obliged to pay adequate compensation that improves the life of the communal land holder after repossession of the land.

6. ACKNOWLEDGMENT

We would like to acknowledge the participants for their valuable contributions to this study.

7. FUNDING

NO FUNDING.

8. AUTHOR CONTRIBUTIONS:

1. Kwangwama, Ndarova Audrey conceptualisation, data collection and data analysis.
2. Chirisa, Innocent editing and reviewing.
3. Paradza, Partson literature review and methodology.

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10. KEY TERMS AND DEFINITIONS

Please provide a list of 3 to 5 key terms related to the topic of your paper or study. The terms should be presented in alphabetical order and have clear, concise definitions described by yourself.

Expropriation: Acquisition of land without the owner's consent.

Communal land: land where the community or tribe has use rights and tribal leadership grant of occupation and use rights to the community members.

Land: any part of a specified area on the ground defined by its boundaries and affected by a qualified activity.

Peri-urban land: land which is located on the boundaries of urban fringe, and which is characterized by change. It has both rural and urban characteristics.