

# Valuation for compensation of communal properties in Zimbabwe: The case of Chiyadzwa and Tokwe-Mukosi projects

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## **Abstract**

*Purpose:* This study aims to examine the statutory provisions as it concerns the practice of valuation for compensation of expropriated communal properties in Zimbabwe. The primary motivation was to have informed policies that would regulate the practice of landed property assessments for compensation purposes and further contributes to existing compensation debates.

*Design/methodology/approach:* A multiple case study approach was adopted, in which property valuation projects for Chiyadzwa and Tokwe-Mukosi, provinces were selected. These two projects were chosen because they are the most recent property valuation for compensation on expropriated communal properties. Content analysis was used to analyse the statutory provisions guiding property valuation and compensation rates adopted and used during the Chiyadzwa and Tokwe Mukosi valuation projects.

*Findings:* The study found an absence of statutory guidelines on the choice of valuation methodologies, leading to inconsistencies in compensation estimates for the communal properties.

*Research limitations/implications:* The study dwells on data from the previous assessment of communal properties that triggered discontentment amongst the people to build a framework for future valuations of communal properties.

*Practical implications:* This study reviewed the existing expropriation and compensation laws and built a comprehensive guiding framework for property valuers to choose appropriate valuation methodologies and procedures for the assessment of expropriated communal properties in Zimbabwe.

*Social implications:* The main motivation for this study is to find a lasting solution to frequent court cases and clashes between the government of Zimbabwe and the displaced people.

*Originality/value:* No study unravels the detailed property valuation processes used in determining the amount of payment for the expropriated communal properties in Zimbabwe. This study built a framework that will serve as a guide to the property valuers in the assessment of compensation for communal properties.

Keywords: communal land, compensation, expropriation, valuation.

## **1.0. Introduction and Background**

All over the world whenever land is needed for a public purpose(s), the government or the acquiring body usually approach the holders, owners or users as the case may be for a form of settlement. The settlement might be in the form of pecuniary consideration, resettlement, or other palliative forms. Of course, the bottom line has always been to follow the legal frameworks that govern acquisition exercise within the country. Therefore, a distorted framework, design favouring the government or acquiring body or people, usually breed an unsavoury relationship between the government and the displaced persons. The disconnection and dissatisfaction by the displaced persons whose landed communal properties were compulsorily expropriated in independent Zimbabwe, several years after the exercise, are concerns to this study.

In independent Zimbabwe, between 2010 and 2015, the construction of Tokwe-Mukosi dam project in Masvingo province resulted in the displacement of a multitude of communal landholders in Chivi and Masvingo districts (Chazireni & Chigonda, 2018; Zimbabwe Environmental Law Association, 2018; Vengesai and Schmidt, 2018; Mavhura, 2020). Vengesai and Schmidt (2018) and Mavhura (2020), notes that at one point, some of the displaced households lost their homes, which resulted in poverty after the dam flooded their properties before their relocation. Accordingly, Chishanga (2014), Marungwara (2014) and Mavhura (2020) reported that the displaced people during the Tokwe-Mukosi dam project were not satisfied with both the monetary compensation and alternative land offered in place of the pecuniary benefits from the expropriating authority.

Before the above, more than 1700 families were displaced in Chiyadzwa to Chiadzwa and Arda Transau (Manicaland Province of Zimbabwe) to pave the way for large scale diamond mining in 2009 (Ruguwa, 2017; Gukurume & Nhodo, 2020). Again, the affected people were under-compensated especially on their non-economic resources (Madebwe, Madebwe & Mavusa, 2011; Vengesai and Schmidt, 2018; Zimbabwe Environmental Law Association, 2018). Thus, land acquisition for the diamond project in Chiyadzwa led to the displacement and loss of the peoples' livelihood (Madebwe, Madebwe & Mavusa, 2011; Dziro, 2014; Chishanga, 2014; Gukurume & Nhondo, 2020). Some of the affected people tried to appeal against the government's

compensation amount in the Administrative Court. Still, the court's decision did not favour the appellants (Zimbabwe Environmental Law Association, 2018). This, unfortunately, was because the provisions of the Communal Land Act in Zimbabwe do not protect the displaced people (Ruguwa, 2017).

According to Gukurume & Nhondo (2020), affected people were not satisfied with the expropriation and compensation processes, which resulted in conflicts between government and the community. The leading causes of dissatisfaction were that the process was not transparent (Madebwe *et al.*, 2011; Ruguwa, 2017) and the non-consultation of the affected people, especially during the property valuation (Gukurume & Nhondo, 2020). Thus, it is argued that good governance requires the active involvement of the affected people in decision-making, including property valuation for compensation. Therefore, assessing by government valuation officers without the displaced persons' participation brings to question the legality of the entire exercise. Accordingly, the questions that comes to mind are, was the assessment carried out in line with the appropriate valuation methodologies, and does the existing legal framework provides for consultation of affected people during the property valuation? Thus, a channel is created for debate, such that, if consultations were ab initio made between the government and the affected people, resultant conflicts would have been minimised.

Previous Zimbabwean studies, including Madebwe *et al.* (2011); Gukurume & Nhondo (2020) concentrated on ascertaining the views of affected persons, without considering the technical aspect leading to the determination of compensation value. Property valuation is a specialised process guided by international property valuation standards and national statutes and not by the subjective opinions of different stakeholders. Therefore, a debate on compensation for expropriated communal properties cannot be complete without interrogating the legal framework and the property valuation framework for payment in Zimbabwe. Thus, this study aims to examine the statutory provisions relative to the level of consultation and the practice of valuation for compensation of expropriated communal properties, to point the way forward with best practice in Zimbabwe.

The next section discusses the concept of property valuation for compensation of communal properties. Further to this, a critical review of relevant literature was carried out in section three. Section four provides an overview of Zimbabwe's economic environment during the Government of National Unity. Section, five deals with the research methodology. Section six presents the results of this study, while section seven discusses the results and findings. Finally, section eight concludes the research and provides recommendations.

## **2.0. A conceptual Framework for Property Valuation for Compensation of Expropriation Communal Properties**

There is a consensus in literature that whenever a property is expropriated, the owner must be compensated for the lose(s) suffered because of the compulsory acquisition (Ambeye, 2009;

Alemu, 2012; Nikiema, 2013). However, it is important to note that the existing compensation frameworks in many countries have been found to be inadequate due to undervaluation, delayed payment, and failure to recognise other losses as compensable heads of claim in the existing laws (Kakulu, 2008; Ambaye, 2009; Alemu, 2012; Nikiema, 2013; Ndjovu, 2016; Chimbetete, 2016; Rao, Tiwari & Hutchison, 2017; Pai, 2019; Mutema, 2019).

It is a common practice in property valuation for compensation of expropriated communal properties that nontangible assets are not considered as compensable heads of claim because existing valuation models do not consider assets without economic value (Pai & Eves, 2016; Kabanga & Mooya, 2017, 2018; Makathimo, 2019; Pai, 2019). Existing valuation methods do not take into consideration the value of intangibles which include sentimental attachments, proximity to neighbours or relatives, spiritual sites, aesthetic qualities, and customers goodwill (World Bank, 2004). As such, Pai (2019) and Kabanga & Mooya (2018) challenged the fairness of compensation for expropriated communal land based on existing valuation standards. According to Muroa (1987), Nonggorr (1993) and Smith (2001), the compensation for communal land is supposed to be above market value for it to be fair, but where intangible assets are not incorporated into the valuation framework would still result in disaffection.

Pai (2019) proposed a new framework for property valuation for customary land which takes into consideration the value of intangible assets as shown in Figure 1.

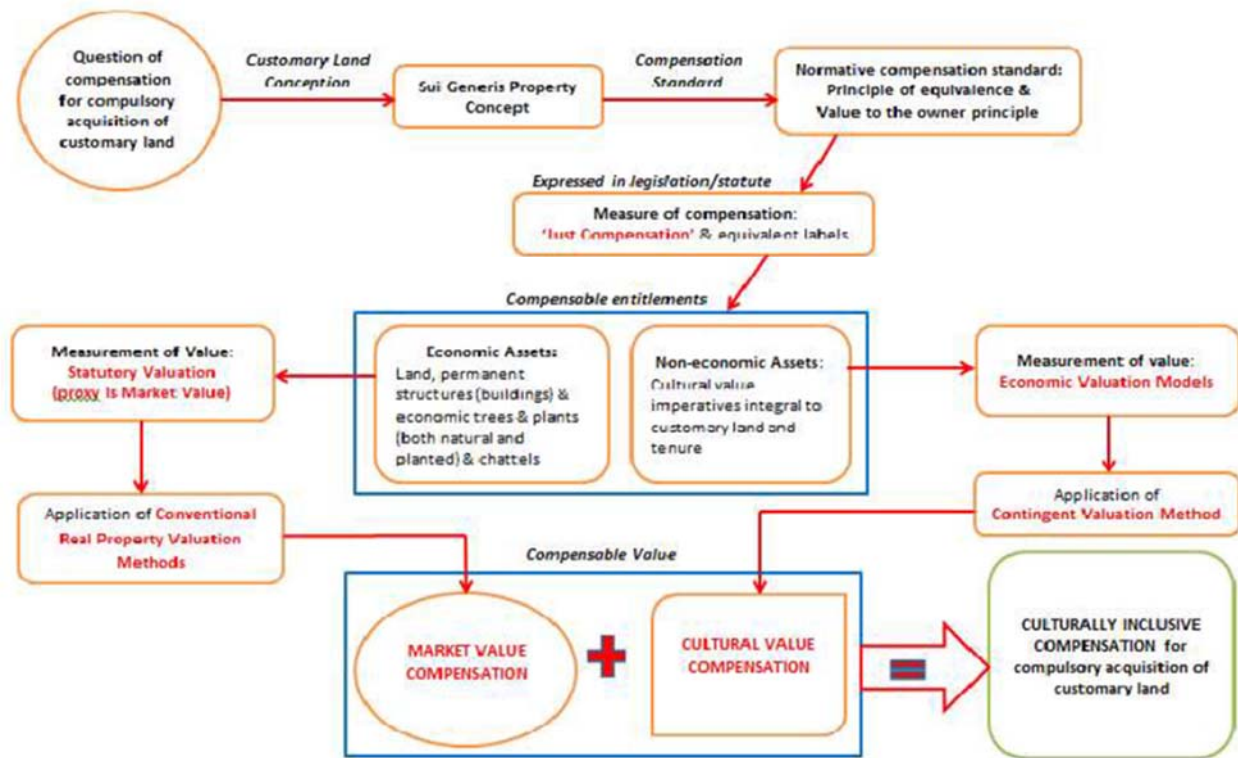


Figure 1: Conceptual framework for valuation of compensation for compulsory acquisition of customary land

Source: Pai (2019: 101).

With reference to Figure 1, Pai (2019) acknowledged that property valuation for compensation of expropriated customary land is guided by existing statutes. In the Zimbabwean case, the existing statutes include the Constitution of Zimbabwe of 2013, the Communal Land Act (Chapter 20:04) of 1982, the Regional, Town and Country Planning Act (Chapter 29:12) of 1976 and the Land Acquisition Act of (Chapter 20:10) 1992. Furthermore, in terms of the framework as presented in Figure 1, the market value principle is not adequate on its own as it leaves out what Pai (2019) referred to as cultural value (value of intangible assets). Therefore, the proposed new framework is a hybrid of market value and cultural value to give a fair value for expropriated communal properties. Cultural value can be captured adequately if affected communities are actively involved during the expropriation and compensation process (Kakulu, 2008; Alemu, 2012) since it is linked to norms and values of the communities resulting from their custom and belief systems. This paper seeks to assess the fairness of the existing property valuation for expropriated communal properties framework as prescribed by existing statutes in Zimbabwe using the conceptual framework for valuation framework of compensation for compulsory acquisition of customary land advocated by Pai (2019).

### **3.0. Literature Review**

This section is divided into three subsections including (1) the communal land tenure system, (2) valuation of expropriated communal properties and lastly (3) past studies on property valuation for expropriation in Zimbabwe.

#### **3.1. The Communal Land Tenure System, Expropriation and Compensation**

Land tenure relates to how land use rights are allocated to different people within society for socio-economic development (Kalabamu, 2019). Communal land tenure is also known as customary or tribal land tenure. Under the customary land tenure system, the land is owned by the community or a tribe, and the chiefs or king administers it with the assistance of the council of elders according to the traditional customs of that tribe (Mabikke, 2016; Kabanga & Mooya, 2017; Nsoh, 2018; Wily, 2018a; Kalabamu, 2019). Individual members of the clan of the tribe are allocated usufruct land rights by the elders, and these rights can be passed from one generation to the other through inheritance (Mutema, 2003) In most cases non-members of that tribe are not allowed to benefit from the land which belongs to another tribe (Nsoh, 2018).

According to Wily (2018), unlike in the modern land tenure systems where land rights are registered through the cadastral land registration system, in most cases, land rights in communal land are not registered. Because land ownership rights are not documented under the communal land tenure system, it is characterised by scarcity of data (Kabanga & Mooya, 2017; Makathimo 2019) and commonly perceived as insecure (Thondhlana, 2015; Tembo & Simela, 2004). However, it is observed in Tembo & Simela (2004) that any member of a tribe that owns communal land has the security of title because customary land can easily be accessed and inherited from one generation to the other.

Africa is dominated by the customary land tenure system (Wily, 2018a; Wily, 2018b; Kabanga & Mooya, 2018a). Grover (2019) noted that most land rights under customary ownership are not registered. According to Sheehan (2002) and Chimhowu (2019), over the years, customary land tenure evolved due to the influence of western legal systems. In most cases, customary land rights are undervalued as they do not fit well in the market value standards (Kabanga & Mooya, 2017; Kabanga & Mooya, 2018a; Makathimo, 2019). Pai & Eves (2016), as well as Makathimo (2019), points that market value is based on legal property rights which is different from customary property rights hence the fairness of market-based compensation on customary land can be challenged. They recommended for further research to come up with alternative valuation methods which can provide fair compensation values for customary land.

Kabanga & Mooya (2018a) observes that, when customary land is expropriated, sometimes displaced people are not well informed in time about the government's intentions. Grover (2019) reports that affected people are in most cases ignorant of laws guiding the estimation of the compensation value. When people are not aware of legal provisions, their ignorance could be exploited to their detriment. While ignorance to legal provisions could not be immediately substantiated, the case of compensation in independent Zimbabwe might be linked to it. When ignorance is joined with the inability to engage the services of a property valuer, the challenge became multifaceted for the displaced persons (Nyarko, 2019; Lakgori, Paradza & Chirisa, 2020). This was the reason Agegnehu and Mansberger (2020) advocated for technical and administrative support for displaced people.

Another dimension to the communal land tenure system in Zimbabwe is that though improvements on the land are subjects for compensation, the land is not an object for compensation (Wily, 2018b). This was also the view of Tagliarino (2017), who notes that when customary rural land is expropriated, lack of fairness emanate from failure to compensate for the land. Nearly a decade ago, Sheehan (2002), having observed the expropriation process's deficiency, advocated for compensation of expropriated customary land rights. When customary land is expropriated, compensation must consider the fact that customary land rights are not just related to communal productivity of the land but also on social connections and access to natural resources (FAO, 2002). The argument though is that until this anomalous practice is corrected there will continue to be dissatisfaction by the displaced persons.

Compensation for expropriated customary land needs to consider the customs and traditions of the local people for fairness to be achieved (Pai & Eves, 2016; Wily, 2018b). This, however, is only possible if there is a legal framework in place to guide the valuation process (Sheehan, 2009). Kabanga & Mooya (2018a); and Makathimo (2019) notes the challenge of scarcity of relevant market evidence to be used when customary land is expropriated since most of the transactions are not documented. Therefore, a good couch out framework that specify how this must be the approach to carter for lack of market evidence-based communal properties is needed.

### 3.2. Valuation for Compensation of Expropriated Communal Properties

Sule (2014) reviewed laws that guide property valuation for communal properties in Nigeria and concluded that the existing laws do not provide a detailed procedure for property valuation for compensation resulting in the arbitrary fixing of compensation rates for trees and other crops. Another study on laws guiding property valuation for compensation of communal properties was done by Kabanga & Mooya (2017; 2018) in Zambia. They noted that the Lands Acquisition Act (1971) states that compensation must be based on market value without specifying the actual method used. The two studies revealed that market value is incompatible with the communal land tenure system, and this is compounded with the use of incompetent valuers, which resulted in under-compensation of the properties of the displaced people.

The depreciated replacement cost (DRC) approach is commonly accepted when estimating communal properties' compensation value. This valuation approach indicates value of the subject property by calculating its current replacement or reproduction cost (as if new) and making deductions for depreciation (Sule, 2014). The Royal Institution of Chartered Surveyors (RICS) (2018) defines DRC as the current cost of replacing an asset with its modern equivalent asset less deductions for physical deterioration and all relevant forms of obsolescence and optimisation. The construction costs can be based on one of three assumptions: (1) Replacement cost (cost of creating or obtaining an asset providing equivalent utility); (2) Reproduction cost (cost of creating an exact replica of the subject asset); and (3) Summation method (value each of the component assets that are part of the subject asset using the appropriate valuation approaches and methods) (International Valuation Standards Council (IVSC), 2019).

However, it was noted that the DRC method is more applicable since the compensation seeks to reinstate the same utility to the affected people rather than to replicate the same improvements. Furthermore, the depreciation is in three forms, including (a) physical wear and tear, (b) functional obsolescence, and (c) economic obsolescence (RICS, 2018). Kabanga & Mooya (2018), notes the challenges of estimating depreciation rates of improvements on communal properties due to the rudimentary nature of the materials used and unavailability of data. According to Uganda's Ministry of Lands, Housing and Urban Development (2017), the involvement of knowledgeable local people in the gathering of data on labour and cost of materials during the valuation process could bridge this gap.

Existing property valuation methods' disregards communal lands' intangible value like family ties, spiritual sites, and sentimental attachments due to the subjectivity in their value (World Bank, 2004). Thus, Pai (2019) challenged traditional property valuation approaches' relevancy, which disregards cultural value in estimating fair compensation for customary properties. The author went on to develop a culturally inclusive valuation method for expropriated communal properties in Papua New Guinea.

### **3.3. Past studies on Property Valuation for Compensation in Zimbabwe**

Several studies including (Mashingaidze, 2013; Dhlakama, 2017; Vengesai & Schmidt, 2018; Chazireni & Chigonda, 2018; Mavhura, 2020; Gukurume & Nhodo, 2020) were done on compensation for expropriated customary land acquired for different spatial development projects. The studies stem from controversies and challenges that followed the manner in which the assessment of compensation were concluded. In particular, Vengesai & Schmidt (2018) study the challenges of compensation and resettlement of urban development induced displacement using three case studies from the Midlands Province. The study concluded that most affected people were not satisfied with the compensation paid by the expropriating authorities. The main issues raised include (1) undervaluation, (2) delayed or non-payment of compensation as well as (3) non-involvement of the affected persons during the expropriation exercise.

Vengesai & Schmidt (2018) reports that most development-induced displacements are characterised by conflicts between affected people and the expropriating authorities. The affected people resisted relocation to other locations because of the perceived understanding that the exercise would cripple their sources of livelihoods (Vengesai & Schmidt, 2018; Zimbabwe Environmental Law Association, 2018). For example, the case at hand occurs during the construction of the Kariba Dam. This resulted in the displacement without compensation of 57,000 Tonga people from their communal land along the Zambezi River plains to Binga between 1957 and 1958 (Mashingaidze, 2013; Dhlakama, 2017; Vengesai & Schmidt, 2018; Zimbabwe Environmental Law Association, 2018). The Tonga people depended on the natural resources as a source of livelihoods; hence the dam project affected them negatively (Mashingaidze, 2013).

Dhlakama (2017) reviewed statutes which guide compulsory acquisition and compensation of communal land in Zimbabwe. The author noted inconsistencies between the Communal Land Act, the Land Acquisition Act, and the constitution's provisions. Key areas highlighted include provisions of the Communal Land Act that deals with the notice period and the appeal procedure. Dhlakama (2017) also recommended that there is a need to amend the Communal Land Act to align it to the constitution's provisions. This includes increasing the notice period and the number of communication media to be used when notifying affected people and adding a condition on appeal against the decisions of the Minister in the Administrative Court.

The case of Chisumbanje (Manicaland Province), was another example of communal land compulsorily taken to pave the way for the Green fuel Ethanol project (Dhlakama, 2017; Zimbabwe Environmental Law Association, 2018). According to Thondhlana (2015), more than 1 700 communal landholders lost their land as the government created space for the Chisumbanje ethanol project, one of the largest privately-owned ethanol plants in Africa. The acquisition process was not transparent as most of the affected people were neither consulted, nor compensated and where compensation was made, this was delayed. As a result, most of the



affected people were not in support of the project and the displacement, hence, the resistance by some of the displaced persons (ibid, 2015; Konyana & Sipeyiye, 2015; Thondhlana, 2016).

Gukurume & Nhondo (2020) notes vast differences between the compensation offered and what was expected by affected people in Chiyadzwa. The study contends that the expropriating authority offered US\$1500, whilst the affected people requested US\$50,000. However, Madebwe et al. (2011) established that affected people were demanding for between US\$25 000 and US\$30 000. These differences in the findings of these two studies might be an indication that the compensation requested by affected people was based on subjective value. Affected people felt that the compensation was low since it was not clear if it included payment for items such as graves and shrines (Madebwe et al., 2011; Gukurume & Nhondo, 2020). Even though it might be prudent to consider the value of non-tangible assets, the World Bank (2004) observes that it is not easy to estimate such value using scientific methods.

Chimbetete (2016) and Mpfu (2019) also studied property valuation for compensation in Zimbabwe. The studies observe weaknesses in the current legal and institutional frameworks guiding property valuation for compensation. Incidentally, Paradza, Yacim & Zulch (2019) compared similar laws to the guidelines provided by the World Bank, the Food and Agriculture Organisation of the United Nations (FAO) and the International Federation of Surveyors (FIG). The comparison brought to fore the weak areas in the Zimbabwean compensation laws that needed strengthening. Even though this did not explicitly focus on happenings within the communal landholdings, it nonetheless provides a basis for this current study. In all, the reviewed related studies, the focus has been on laws guiding property valuation for compensation, and property valuation for expropriated private properties. This current study zeroed in on the valuation of communal properties and building a framework that should serve as a guide for property valuers.

The performance of the economy directly influences property valuation, so the next section discusses Zimbabwe's economic environment before and during the Government of National Unity (GNU). One might ask why the GNU period? A decision to analysis the economic environment during the GNU period was motivated by the fact that valuations in both cases were done during this period. Also, as highlighted before, the GNU era constituted a more significant period of the multicurrency system. Zimbabwe 'dumbed' its local currency and adopted a basket of currencies dominated by the United State Dollar from 2009 to 2013.

#### **4.0. Research Methodology**

A case study research approach was adopted, and two case studies (Chiyadzwa mining project and the Tokwe-Mukosi dam project) were chosen. Valuation for both projects was done by designated valuation officers (government valuers) in terms of the provisions of Section 29B of the LAA of 1992. In the Chiyadzwa mining project, government expropriated communal land to pave a way for mining by private companies and compensation was paid by the private mining

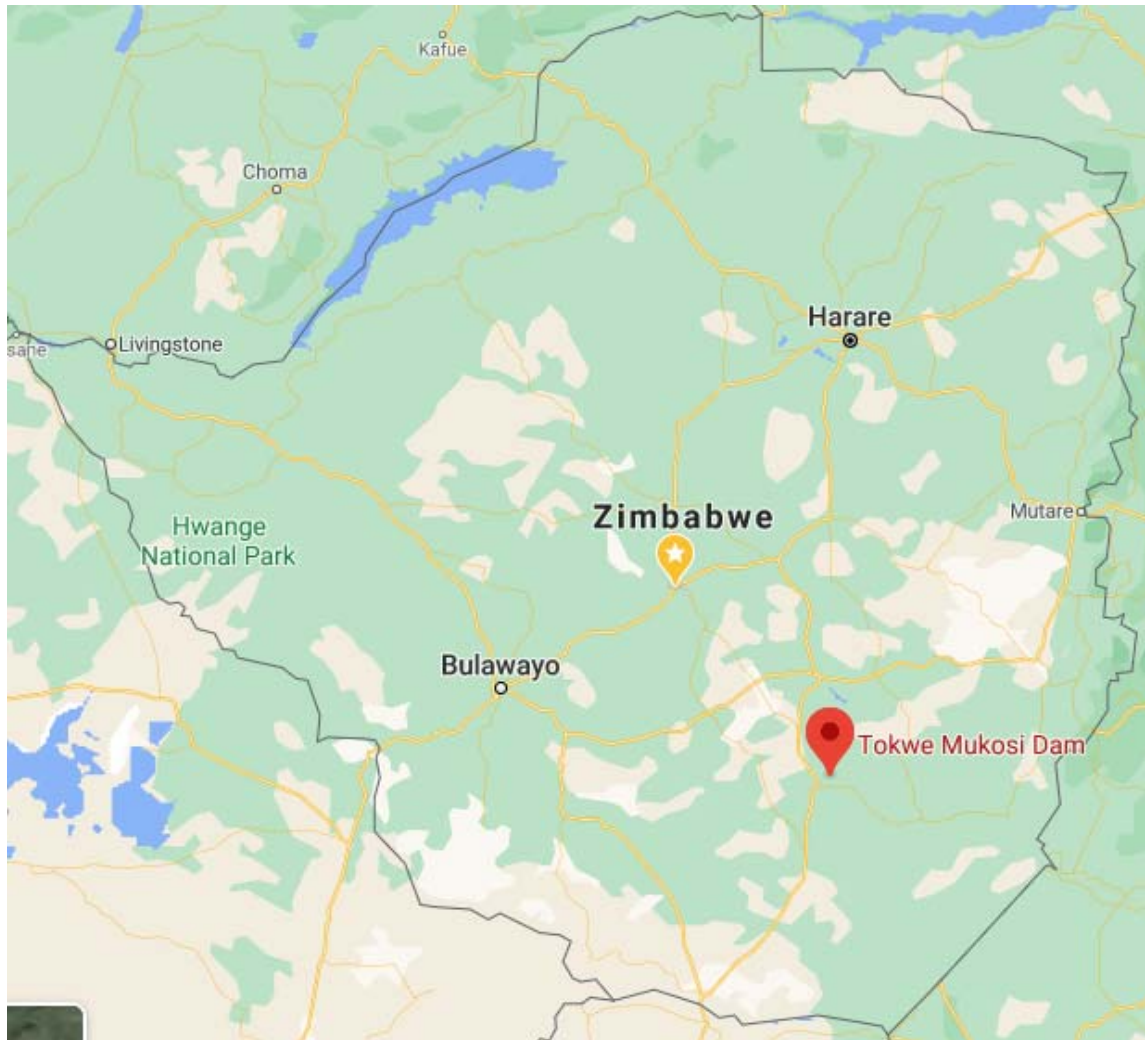
companies. This mining project is in the Manicaland Province of Zimbabwe as shown in Figure 2.



*Figure 2: Chiyadzwa/Marange locality map*

Source: Google Maps (2021) [Online] Available from: <https://www.google.com/maps/search/Chiyadzwa+diamond+fields,+Zimbabwe/@-19.2606012,27.3443061,6.75z> [Accessed: 12/04/2021]

In the Tokwe-Mukosi dam project, communal land was expropriated to pave way for the construction of the second largest dam in Zimbabwe after Kariba dam. Property valuation for compensation was done by designated valuation officers in phases between 2011 and 2014. The last phase of the property valuation exercise was done after the dam flooded in 2014 resulting in the destruction of some of the properties of affected communities. Figure 3 shows the location of the area where communal farmers were displaced to a pave way for the construction of the Tokwe-Mukosi dam in Masvingo Province of Zimbabwe.



*Figure 3: Location Map of Tokwe Mukosi Dam*

Source: Google Maps (2021) [Online] Available from: <https://www.google.com/maps/place/Tokwe+Mukosi+Dam/@-19.4057393,27.9618977,6.75z/data=!4m5!3m4!1s0x1eccdcacc4a8de505:0x8c0ea358be8963b6!8m2!3d-20.7255142!4d30.9000598> [Accessed: 12/04/2021]

The two case studies are in two neighbouring administrative provinces of Zimbabwe (Manicaland and Masvingo). As shown in Figure 4, the projects are located 350km apart.

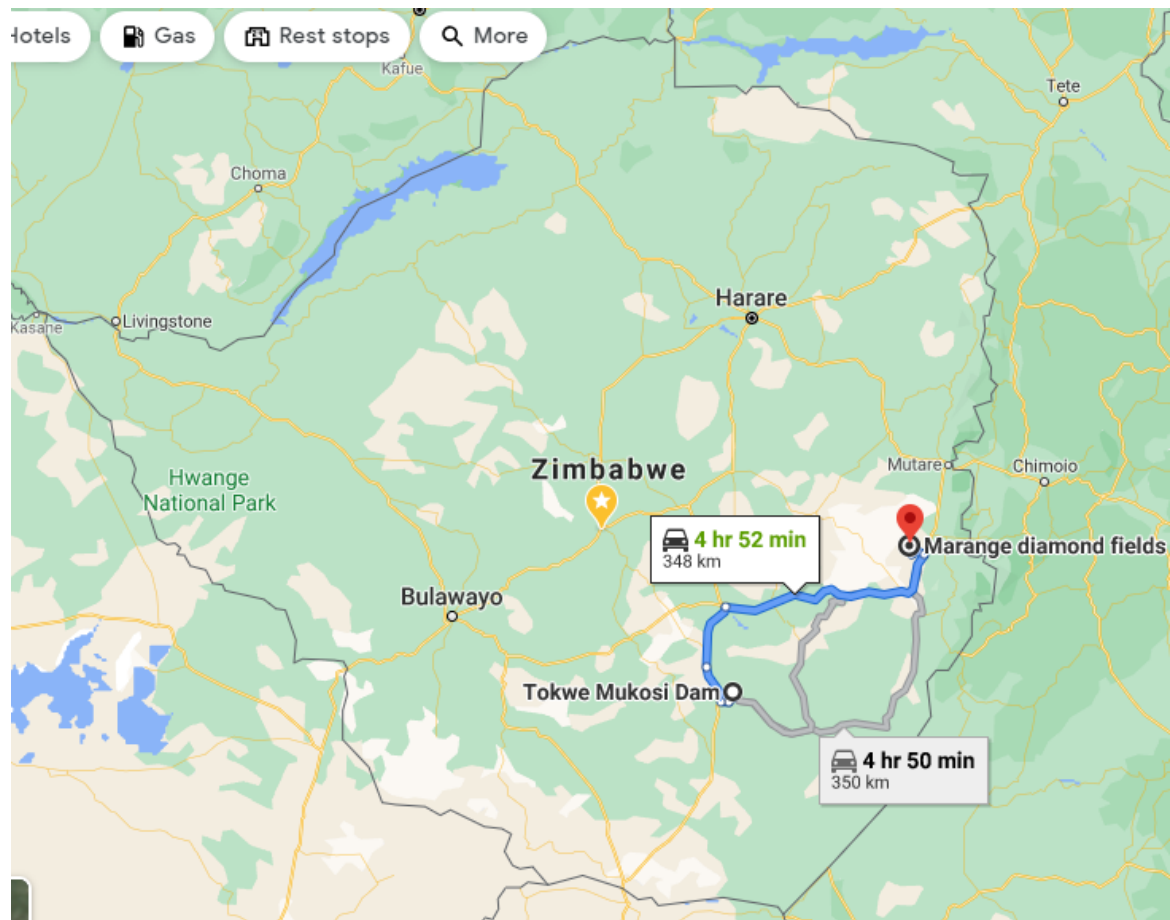


Figure 4: Locality Map of Chiyadzwa (Marange) and Tokwe-Mukosi case studies

Source: Google Maps (2021) [Online] Available from: <https://www.google.com/maps/dir/Tokwe+Mukosi+Dam,+Masvingo,+Zimbabwe/Marange+diamond+fields,+Zimbabwe/@-19.3284232,27.4335679,6.75z/data=!4m13!4m12!1m5!1m1!1s0x1ecdcacc4a8de505:0x8c0ea358be8963b6!2m2!1d30.9000598!2d-20.7255142!1m5!1m1!1s0x1ed2d8704946acd7:0x6217cb58e22364d!2m2!1d32.3464659!2d-19.5902722> [Accessed: 12/04/2021]

It is also important to note that even though they are in different administrative provinces, the two case studies falls under natural region 4 as shown in Figure 5.

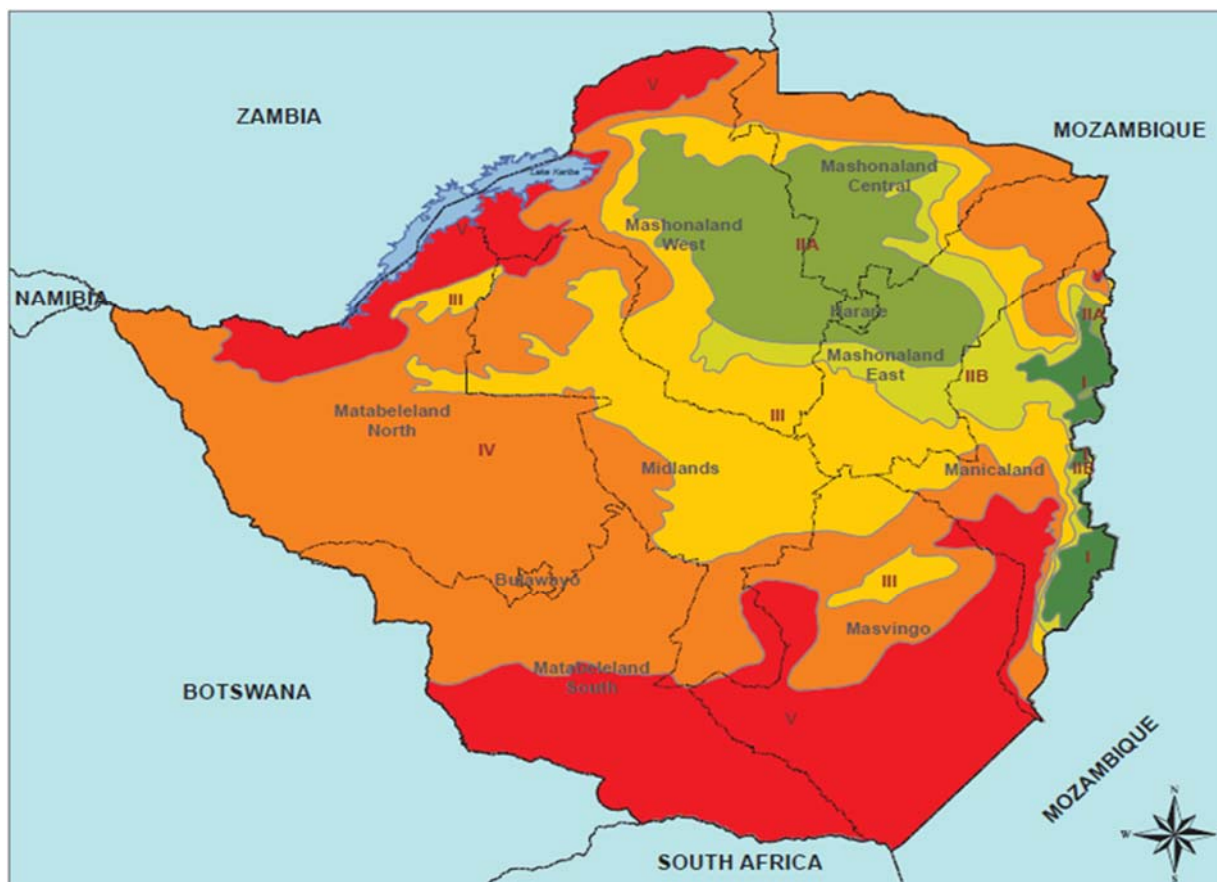


Figure 5: Natural regions of Zimbabwe

Source: United Nations Office for Humanitarian Affairs (2009)

Zimbabwe is divided into 5 ecological regions which are also known as natural regions based on the climate and dominant soil types as summarised in Table 1.

Table 1: Characteristics of Zimbabwe's Ecological Regions

Region	Dominant Soil Type	Average Annual Rainfall	Dominant Farming Type
1	Red clay	More than 1000mm	Specialised and diversified farming (plantations, forestry, and intensive animal husbandry).
2A & B	Sandy loams	Between 750 to 1000mm	Intensive farming (cash crops and livestock production)
3	Sandy, acid, low fertility	Between 650 to 800 mm	Semi-intensive farming (cash crops and cattle ranching)
4	Sandy, acid	Between 450 - 650 mm	Semi-extensive farming (livestock production and drought tolerant fodder crops)
5	Sandy, infertile	Below 650mm	Extensive farming (ranching, forestry and game farming)

Source: Government of Zimbabwe (1984); International Soil Reference and Information Centre (2005); Marongwe, Nyagumbo, Kwazira, Kassam & Friedrich (2012); Mugandani, Wuta, Makarau & Chipindu (2012)

As highlighted before, the two case studies were chosen because they share common characteristics in terms of geographic location, most importantly, they are the most recent projects involving valuation for compensation on communal landed properties in Zimbabwe. Also, property valuation for Chiyadzwa and Tokwe-Mukosi were considered as good cases for comparison of how property valuation for communal properties is done in Zimbabwe because they were both done during the multicurrency era (2009 – 2013) where valuations were based on United State Dollars. Before and after the multicurrency era valuations were based on the local Zimbabwean Dollar which has been eroded by inflation hence a comparison of valuations done based on US\$ and the ones done using local currency was going to be problematic if not impossible.

The study used the archival approach to gather relevant data. Thus, the main data sources were statutes guiding property valuation for compensation when communal landed properties are expropriated, and documents showing approved construction and depreciation rates (used when estimating the compensation amount for improvements in both cases). Content analysis was used in synthesising the data. Firstly, the study analysed the statutory provisions guiding property valuation for expropriated communal properties in Zimbabwe. Secondly, this paper analysed compensation rates adopted and used during the Chiyadzwa and Tokwe Mukosi valuation projects to establish if there is consistency between what is provided at law and what is done in practice.

## **5.0. Results**

This section is divided into two subsections, (1) focuses on legal provisions guiding property valuation for expropriated communal land in Zimbabwe, and (2) compares construction and depreciation rates used for the Chiyadzwa and Tokwe Mukosi projects.

### **5.1.Laws guiding property valuation for expropriated communal land in Zimbabwe**

It has been established that the expropriating authority is obliged by Section 71 of the Constitution of Zimbabwe of 2013 read together with Section 16 of the Land Acquisition Act (Chapter 20:10) of 1992 to compensate displaced people for expropriated properties. The President owns communal land in Zimbabwe in Section 4 of the Communal Land Act (Chapter 20:04) (CLA) of 1982. Occupants of communal land have usufruct rights, and they can use it for agricultural and residential purposes. Rural district councils administer the land in consultation with traditional leaders as guided by the customary law that community in terms of Section 8 of the CLA of 1982. The Minister of Local Government, Rural and Urban Development or any other Minister assigned by the President to administer the CLA of 1982 is empowered by Section 6 of the CLA of 1982 to acquire communal land from occupants.

Compensation for expropriated communal land is guided by Section 12(ii) of the CLA of 1982, which state that:

*“if no alternative land is available and no agreement has been reached as to compensation, Parts V and VIII of the Land Acquisition Act [Chapter 20:10], shall apply, mutatis mutandis, in respect of such dispossession or diminution.”*

In this case, Part V of the *LAA of 1992* that provides a statutory guideline on the assessment of compensation is expected to provide a detailed procedure on a property valuation of improvements on expropriated communal land. However, there is not even a single mention of communal land in the entire Part V of the *LAA of 1992*. Details of property valuation for two different classes of land are provided in Part V of the *LAA of 1992* as follows:

*“...land which is not agricultural land required for resettlement purposes...”* and  
*“...agricultural land required for resettlement purposes...”*

The *LAA of 1992* does not define the land that is not agricultural land required for resettlement purposes, but it defines agricultural land required for resettlement purposes as:

*“agricultural land required for resettlement purposes means any rural land the acquisition of which is reasonably necessary for resettlement purposes and which is identified in a preliminary notice as being required for such purposes.”*

Part V of the *LAA of 1992* does not provide a detailed procedure on the assessment of property valuation of improvements and other losses on expropriated properties. More detail is provided in Sections 29C and 50 of the *LAA of 1992*. Notably, both Sections 29C and 50 of the *LAA of 1992* are specific that property valuation procedures provided are specifically for assessment of compensation for improvements on agricultural land needed for resettlement purposes. Since communal land is not agricultural land in terms of Section 72(1) of *the CoZ of 2013* there is a missing link between the provisions of the *LAA of 1992* and the *CLA of 1982* in relation to the procedure followed when valuing expropriated communal properties. This study established that, currently, there is a dearth of a statutory guide on the procedure to be followed when valuing expropriated communal properties in Zimbabwe for the purposes of compensation.

Property valuation for expropriation is statutory in nature. Hence, the absence of a clear property valuation procedure provided by an Act of parliament can result on arbitrary compensation figures that might be the source of dissatisfaction of affected people. After all, the current practice is that property valuation for compensation is done by designated valuation officers appointed by the Minister from serving civil servants. In this case, the chances are that

designated valuation officers might be tempted to undervalue expropriated properties to save the government money. There is also no clear legal procedure for determining property valuation of communal properties for compensation purposes. There is also no guideline or written policy on how the valuation is supposed to be done and the current law does not provide for the consultation of affected people during property valuation for compensation when customary land is expropriated.

It is worth noting that even though Sections 29C and 50 of the LAA of 1992 are specific that they apply in land expropriated for resettlement which makes them not applicable in communal land, they do provide a detailed property valuation framework for compensation. In the absence of a framework for use when valuing expropriated properties, designated valuation officers might be making use of the readily available framework provided by Sections 29C and 50 of the LAA of 1992. It is important to note that in most cases, unique improvements are found on communal properties that are different from improvements on other rural properties like commercial farms such as on traditional rondavels and granaries. Table 2 shows a framework for valuation of improvements for compensation in terms of Sections 29C and 50 of the LAA of 1992.



**Table 2: Guidelines for valuation for improvements as provided by Sections 29 and 50 of the LAA of 1992**

<b>Type of improvement</b>	<b>Guiding valuation principle</b>
Buildings	<ul style="list-style-type: none"> <li>- The quality of their construction shall be assessed according to standards set by the Ministry responsible for housing standards for the types of building concerned. The age and condition of the buildings shall also be considered.</li> </ul>
Grazing veld	<ul style="list-style-type: none"> <li>- Compensation shall be payable for dams, dips, spray races, fencing and other improvements enhancing its value for grazing purposes.</li> <li>- Grazing veld shall be valued according to its carrying capacity for livestock; the highest values may be given only to fully equipped pastures with good water supplies, dips and well-fenced paddocks.</li> <li>- The same amounts shall be payable for improved pastures as for grazing veld of the same carrying capacity.</li> </ul>
Irrigated land	<ul style="list-style-type: none"> <li>- Compensation shall be payable for dams, boreholes, canals, irrigation equipment embedded in the ground and other improvements enhancing its value for irrigation purposes.</li> <li>- Land may not be classified as irrigable for the purpose of valuation unless—</li> <li>- (a) it is capable of being placed under full year-round irrigation; and</li> <li>- (b) where it can be irrigated only in terms of rights granted under the Water Act [Chapter 20:24], such rights have, in fact, been granted.</li> </ul>
Valuing perennial or plantation crops, such as coffee, tea, fruit, timber and sugarcane	<ul style="list-style-type: none"> <li>- 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.</li> </ul>
Valuing tobacco curing facilities	<ul style="list-style-type: none"> <li>- Tobacco curing facilities, such as tunnels, chongololos and Dawson systems shall be valued at a rate comparable to the values given to conventional tobacco barns of equivalent output.</li> </ul>
Valuing fencing	<ul style="list-style-type: none"> <li>- (a) lower values shall be placed on fences that are not erected to standards prescribed in terms of the Fencing Act [Chapter 20:06] or with pressure-treated poles;</li> <li>- (b) for boundary fences, only half the values shall be paid.</li> </ul>
Valuing electrical installations	<ul style="list-style-type: none"> <li>- The costs of installing any mains electricity supply and connection points on the land shall be taken into account.</li> <li>- The value of the land shall be regarded as enhanced by the availability of a mains electricity supply and regard shall be paid to the number of connection points on the land.</li> </ul>
Valuing land	<ul style="list-style-type: none"> <li>- The following factors shall be considered—</li> <li>- (a) the soil types to be found on the land; and</li> <li>- (b) the extent of cultivation carried out on it; and</li> <li>- (c) the use to that non-arable parts of the land are being or may be put.</li> <li>- For the classification of soil types, Agricultural Extension Department (AGRITEX) soil classification maps shall be used, and these soil types shall be linked to the natural regions as shown on the appropriate maps that are available for inspection at the offices of the Ministry responsible for lands.</li> <li>- When valuing cleared virgin land, consideration shall be given to the costs of clearing the land.</li> </ul>
Valuing dip-tanks and spray races	Additional compensation may be paid where the handling facilities are good.

Source: Government of Zimbabwe (1992).

With reference to Table 2, it can be inferred that the existing property valuation framework as provided by Sections 29C and 50 of the LAA of 1992 focuses on valuation of land and improvements. If the same framework is used by designated valuation officers when assessing customary land for compensation, then, it does not provide for valuation of intangible assets. In this case, one might be justified to argue that compensation for communal properties based on the existing property valuation framework in Zimbabwe is not fair and adequate when viewed using Pai (2019)'s framework.

As earlier observed, Pai (2019) framework was more specific to incorporate intangible assets but evidence from the existing statutes guiding property valuation for expropriated communal properties in Zimbabwe shows that the same intangible assets are not considered to be compensable heads of claim. Having noted the gaps in the existing laws guiding property valuation for expropriated communal properties in Zimbabwe; the next section analyses property valuations which were done at Chiyadzwa and Tokwe-Mukosi valuation projects.

## **5.2. Construction and depreciation rates used for the Chiyadzwa and Tokwe Mukosi projects**

In this section, the approved valuation rates are compared with the provisions of the LAA of 1992 to ascertain if the existing framework (which is not meant for communal properties) is the one which was used by designated valuation officers when estimating compensation value. It is important to note that the depreciated replacement cost approach was adopted in both valuation projects.

### **5.2.1. Approved Compensation Rates for Houses**

The existing law stipulates that when estimating the value of buildings for compensation purposes:

*“The quality of their construction shall be assessed according to standards set by the Ministry responsible for housing standards for the types of building concerned. The age and condition of the buildings shall also be considered.”*

In this case the Ministry of Local Government, Public Works and National Housing was the one responsible for housing standards and it is the one which determined the rates shown in Table 3. This is an indication that the designated valuation officers were guided by Sections 29C and 50 of the LAA of 1992. As shown in Table 3, there are vast differences between valuation rates used to calculate compensation for houses in 2009 and the ones adopted for similar improvements in 2013. The differences ranged between 58% and 78% depending on the type of house.

**Table 3: Rates for Compensation of Houses**

Improvement	Description	Approved Rate (US\$/m <sup>2</sup> )		Percentage Difference
		Chiyadzwa 2009	Tokwe-Mukosi 2013	
Rondavel	Pole and dagga, earth floor, thatch	80	18	-78%
	Dagga wall, earth floor under thatch	80	25	-69%
	Pole and dagga, cement screed floor, thatch	100	35	-65%
	Brick wall, earth floor and thatch, plastered and painted	150	55	-63%
	Brick wall, cement screed floor and thatch, plastered and painted	180	75	-58%
Main house	Cement block wall, rendered internally and externally, timber beams with corrugated asbestos sheets and granolithic floor	540	200	-63%
	Brick wall, rendered internally and externally, timber beams with corrugated iron sheets and granolithic floor	500	140	-72%
	Brick wall, rendered internally and externally, treated gum beams with corrugated asbestos sheets and granolithic floor	450	180	-60%
	Not plastered brick wall, the granolithic floor under corrugated iron sheets	400	100	-75%

Source: Research Findings (2020)

### 5.2.2. Approved Compensation Rates for Storage Facilities

The existing framework in terms of Sections 29C and 50 of the LAA of 1992 does not provide guidance on valuation of storage facilities. In the two case studies, compensation rates that were lower than those used in the Chiyadzwa valuation project in 2009 were approved and used in 2013 during the Tokwe-Mukosi valuation project. As shown in Table 4, the used rates range between 40% and 73% less compared to the rates used when estimating the compensation value of similar properties during the Chiyadzwa project.

**Table 4: Rates for Compensation of Storage Facilities**

Improvement	Description	Approved Rate (US\$/m <sup>2</sup> )		Percentage Difference
		Chiyadzwa 2009	Tokwe-Mukosi 2013	
Granary	Pole and dagga, thatched and suspended	80	25	-69%
	Brick wall, suspended under thatch	150	40	-73%
	Crop drying rack with mesh wire	150(maximum)	80(maximum)	-47%
	Dara suspended poles (grain)	100(maximum)	60(maximum)	-40%

Source: Research Findings (2020)

### 5.2.3. Approved Compensation Rates for Ablution Facilities

Like other buildings, the Ministry of Local Government, Public Works, and National Housing came up with valuation rates as shown in Table 5 as it is empowered to do so by Sections 29C and 50 of the LAA of 1992. It can be noted that lower compensation rates than the Chiyadzwa

compensation were used during the Tokwe-Mukosi project. Rates adopted in 2013 for the Tokwe-Mukosi valuation exercise ranged between 50% and 75% lower than those used in 2009 during the Chiyadzwa project, as shown in Table 5.

**Table 5: Rates for Compensation of Ablution Facilities**

Improvement	Description	Approved Rates (US\$/m <sup>2</sup> )		Percentage Difference
		Chiyadzwa 2009	Tokwe-Mukosi 2013	
Pit latrine	Not plastered, brick wall, granolithic floor without a roof	400	100	-75%
Blair Toilet	Standard	550	250	-55%
Bathroom	Plastered	350	100	-71%
	Not plastered	300	80	-73%
	Utensil stand	40	20	-50%
	Washing sink, brick/concrete	80	40	-50%

Source: Research Findings (2020)

#### 5.2.4. Approved Compensation Rates for Water Facilities

The existing framework (see Table 2) is silent on the valuation of water facilities. An analysis of water facilities showed that the percentage of compensation difference between rates approved and used in 2009 and 2013 ranged between 0% and 46%. Compensation rates for protected and unprotected wells were reduced by 33% and 25% respectively. The rate for bush pumps was the same for the two valuation projects at \$200/pump. However, the compensation rate for water tanks was reduced at a rate of between 33% or 46% depending on whether the tank is not mounted or mounted on a steel stand, respectively. The compensation rate for boreholes was increased from \$3,000 in 2009 to \$4,000, as shown in Table 6.

**Table 6: Rates for Compensation of Water Facilities**

Improvement	Description	Approved Rate (US\$/m)		Percentage Difference
		Chiyadzwa 2009	Tokwe-Mukosi 2013	
Well	Protected	30	20	-33%
	Unprotected	20	15	-25%
	Bush pump	200/pump	200/pump	0%
Borehole	With casing	3000	4000	33%
Water tank	PVC 5000 - 6000 litres	600	400	-33%
	Water tank steel stand	650	350	-46%

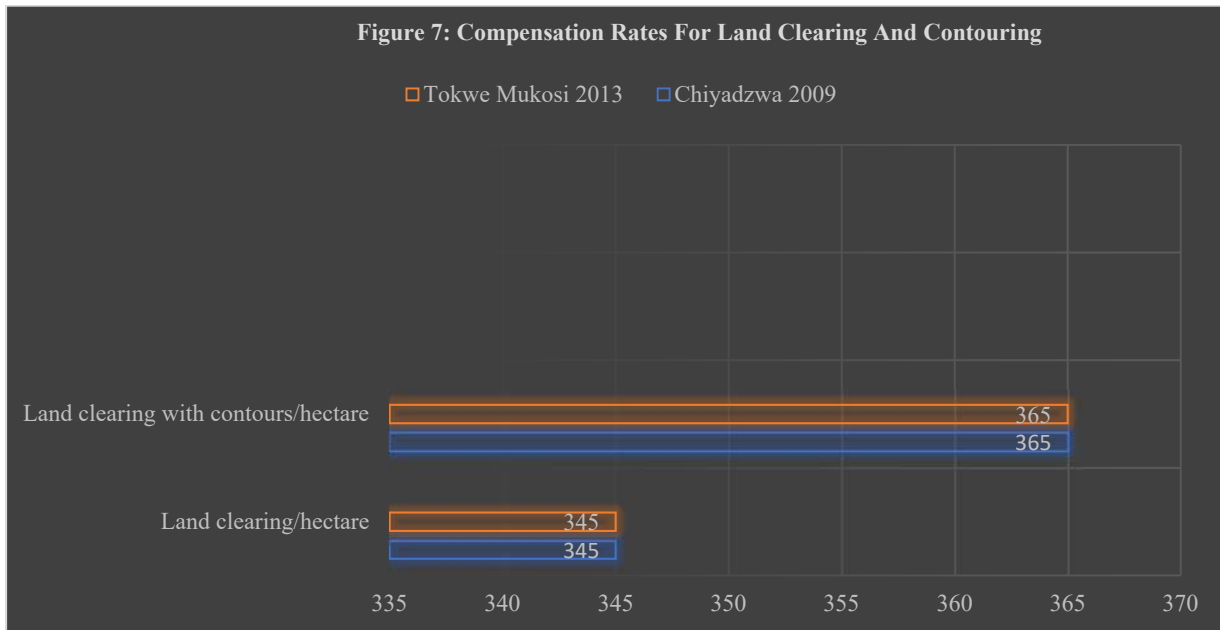
Source: Research Findings (2020)

#### 5.2.5. Land clearing and contouring

The existing law is specific that:

*“When valuing cleared virgin land, consideration shall be given to the costs of clearing the land.”*

In view of the 2 case studies, there was evidence of compensation for land clearing. Unlike the case where different rates were used to calculate compensation for improvements between 2009 and 2013, there was consistency in the rates used for land clearing and contouring, as shown in Figure 7.



Source: Research Findings (2020)

**5.2.6.** As shown in Figure 7, the rate of USD345 per hectare was used for cleared land, and the same rate was used in both cases. If the affected person went on to do contouring after clearing, the compensation rate increases by USD20 (from USD345 to USD365).

#### **Approved Compensation Rates for Fences**

The LAA of 1992 state that:

*“(a) lower values shall be placed on fences that are not erected to standards prescribed in terms of the Fencing Act [Chapter 20:06] or with pressure-treated poles;  
(b) for boundary fences, only half the values shall be paid.”*

In the case of Tokwe-Mukosi and Chiyadzwa valuation projects, uniform rates were adopted for most of the fencing improvements except for bush fencing that was reduced from a maximum of US\$100 to US\$25 maximum, as shown in Table 8.

**Table 8: Rates for Compensation of Fences**

Improvement	Description	Approved Rate (US\$/m)		Percentage Difference
		Chiyadzwa 2009	Tokwe-Mukosi 2013	
Security fencing	1.8 metres high	20	20	0%
	2.0 metres high	22	22	0%
	2.4 metres high	23	23	0%
Barbed wire	Single strand	0.50	0.50	0%
Bush branches	Boundary fencing	100(maximum)	25(maximum)	-75%
	Garden fencing	100(maximum)	25(maximum)	-75%

Source: Research Findings (2020)

### 5.2.7. Plantations and Orchards

The LAA of 1992 also provide a framework for valuation of perennial crops and it state that:

*“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.”*

In the case of the two case studies, uniform rates were used when valuing plantations and orchards. The only difference was that there was no rate for compensation of indigenous trees in 2009 that were provided for in 2013, as shown in Table 9. The compensation for indigenous trees is commendable given the fact that some if not all rural people derive their livelihoods from natural resources (trees included).

**Table 9: Approved Rates for Compensation of Plantation/Orchard**

Improvement	Description	Approved Rate (US\$/m)		Percentage Difference
		Chiyadzwa 2009	Tokwe-Mukosi 2013	
Mango	Mature	30	30	0%
	Immature (not transferable)	8	8	0%
Guava	Mature	21	21	0%
	Immature (not transferable)	8	8	0%
Orange	Mature	30	30	0%
	Immature (not transferable)	8	8	0%
Mulberry	Mature	21	21	0%
	Immature (not transferable)	8	8	0%
Nartjies	Mature	30	30	0%
	Immature (not transferable)	8	8	0%

Gum tree	Mature	42	42	0%
	Immature (not transferable)	17	17	0%
Apples	Mature	30	30	0%
	Immature (not transferable)	8	8	0%
Peaches	Mature	30	30	0%
	Immature (not transferable)	8	8	0%
Lemon	Mature	30	30	0%
	Immature (not transferable)	8	8	0%
Banana	Mature	5	5	0%
	Immature (not transferable)	2	2	0%
Avocado	Mature	21	21	0%
	Immature (not transferable)	6	6	0%
Pawpaw	Mature	30	30	0%
	Immature (not transferable)	8	8	0%
Granadilla	Mature	30	30	0%
	Immature (not transferable)	8	8	0%
Grape	Mature	30	30	0%
	Immature (not transferable)	8	8	0%
Indigenous trees	Mature	-	2/plant	

Source: Research Findings (2020)

### 5.2.8. Approved Depreciation Rates

Depreciation is also provided for by Sections 29C and 50 of the LAA of 1992 and as highlighted before, the depreciated replacement cost method of valuation was used in both cases. The depreciation rates for the Chiadzwa scheme of 2009 were absolute fixed figures while the rates for the Tokwe-Mukosi scheme of 2013 were given as ranges, as shown in Table 10. An analysis of the two schemes shows that the absolute rates for 2009 fit well within the ranges provided for 2013. The 2009 depreciation rates were just an average of the rates used in 2013. Adoption of a range of depreciation in 2013 was more of an improvement from the limitations of using a fixed depreciation rate as was done in 2009.

The valuers under Tokwe-Mukosi had clear guidelines for limits of each description of the condition (very good, good, fair etc.) while under the Chiadzwa rates, the single figures provided an allowance for valuer's discretion meaning that valuers could end up overlapping the different classifications under the Chiadzwa scheme. For example, under improvements that are very good in 2009, a fixed depreciation rate of 15% was used, but the limitation of using a fixed rate is that

even if improvements say buildings are very good, there might be a difference within the very good class. Two new buildings might differ due to the quality of workmanship and other factors. This might be the reason why the 2013 scheme made use of the range system as an improvement from the 2009 pitfalls.

**Table 10: Approved Depreciation Rates**

Valuation project	Year	Approved rates %				
		Very good	Good	Fair	Poor	Very poor
Chiyadzwa	2009	15%	30%	50%	70%	90%
Tokwe-Mukosi	2013	0 %-20%	21% - 40%	41% - 60%	61% - 80%	81% - 100%

Source: Research Findings (2020)

## 6.0. Discussion

The existing framework as provided by Sections 29C and 50 of the LAA of 1992 is to be used when estimating the compensation value of properties acquired for land reform and as noted before communal land does not fall under this type of land category. It is therefore noted that the CLA of 1982 is like a signpost giving directions to a place that does not exist. This view is based on the fact that the CLA of 1982 refers to the LAA of 1992 for further detail on how property valuation for improvements on expropriated communal properties, however, the LAA of 1992 is specific that the guidelines provided are for agricultural land acquired for resettlement purposes. In terms of the CoZ of 2013, communal land is not considered as agricultural land required for agricultural purposes. This leaves a vacuum in the laws guiding property valuation for compensation of expropriated communal land. A trajectory of compensation disputes as noted by (Mashingaidze, 2013; Dhlakama, 2017; Vengesai & Schmidt, 2018; Chazireni & Chigonda, 2018; Mavhura, 2020; Gukurume & Nhodo, 2020) can be attributed to none, existence of a clearly defined roadmap on how property valuation for compensation of expropriated properties.

Also, the existing law does not provide for the involvement of affected people during the property valuation for process. The active involvement of affected people during property valuation can help designated valuation officers to understand and capture cultural value to the satisfaction of affected people. This can help to bring fairness in the compensation process and reduce disputes between the expropriating authority and affected communities.

Evidence from Tokwe Mukosi and Chiyadzwa valuation projects suggests that designated valuation officers are making use of a framework provided in terms of Sections 29C and 50 of the LAA of 1992 which was designed for land expropriated for resettlement purposes. The fact that the existing framework was not designed for valuation of communal properties makes it inappropriate but most importantly the existing framework disregards the value of intangible assets. This also explains why affected people were discontent with their compensation since previous studies concluded that any compensation for communal land which disregard intangible assets is inadequate (Kakulu, 2008; Ambaye, 2009; Alemu, 2012; Nikiema, 2013; Ndjovu, 2016; Rao, Tiwari & Hutchison, 2017; Pai, 2019) and for it to be adequate, there is need to also compensate for the cultural value (Muroa, 1987; Nonggorr, 1993; Smith, 2001; Pai, 2019).



## 7.0. Conclusion and Recommendations

In view of the foregoing discussion, it is concluded that there is a dearth of statutory guidelines on the methodology to be used when assessing property valuation for compensation of communal properties. In view of the findings of this paper if the expropriated communal properties were valued inline with a framework proposed by Pai (201) the compensation would be fair and issues of discontent as noted by previous studies would have been minimised. It is therefore recommended that a comprehensive property valuation for communal properties' framework which factor in compensation for intangible and intangible assets must be developed for Zimbabwe inline with Pai (2019)'s framework. The new framework can be added to the LAA of 1992, which is currently the principal statute on expropriation and compensation. Alternatively, the same framework can be put in the CLA of 1982 say as a schedule in the same way the guidelines were provided for valuation of agricultural land expropriated land reform in the LAA of 1992.

The success of the proposal of this paper is hinged on active involvement of affected people and/or their representatives. These must take part in decision making throughout the expropriation and compensation process and any disputes must be handled by independent bodies timeously. Affected people must establish a strong representative committee which shall work together with property valuers at an early stage of the valuation project. The representative committee and property valuers shall demarcate the area affected by the project, develop an asset inventory (marking affected properties using spray paint), and record ownership and come up with an aerial map of the affected project area captures affected properties prior to the valuation process.

It is also recommended that there is need to carry a further empirical research with valuers and government officials to clarify some of the grey areas that were noted from the reviewed documents.

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