

ZIMBABWE'S STRUGGLE TO BREAK THE CHAINS OF COLONIALISM: SELF-DETERMINATION, LAND REFORM, AND INTERNATIONAL LAW

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ABSTRACT

Zimbabwe—like most African Post-Colonial nation states—has been criticized and castigated for exercising its legal rights to self-determination, autonomy and sovereignty over land and resources—especially when these conflict with the economic and/or geo-political interests of the West, or white expats who once dominated these former colonies. Often, when discussing this phenomena, scholars and commentators often shorten the time horizon of causality to begin at post-independence and Robert Mugabe—minimizing or flat-out omitting the racist colonial policies which require restorative justice to remedy. Despite the long-established *jus cogens* of the illegality of colonialism, scholars and commentators often ignore the fact that the rights to stolen land are fruit that grew from the poisonous tree of oppression, racism and colonialism—or post-colonialism—in Rhodesia and Zimbabwe. This Comment looks to address these issues by exploring Rhodesian racist colonial land policies; British-imposed limits on Zimbabwe state sovereignty and autonomy; the land hungry exercising their human rights to self-determination and autonomy through their state; the impact of neo-colonialism by Britain and the West has had on Zimbabwe's maturation as a state; and support for land reform via international human rights law.

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I. INTRODUCTION

In 1979, Zimbabwe launched the Land Reform initiative intending to redistribute land from those who benefited from discriminatory colonial Rhodesian and British policies back to native Black Africans shortly after the ratification of the Lancaster House Accords (Accords) into its constitution.¹ Before Land Reform,

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1. See Sam Moyo, *Land Reform and Redistribution in Zimbabwe Since 1980*, in LAND AND AGRARIAN REFORM IN ZIMBABWE: BEYOND WHITE-SETTLER CAPITALISM 29–30 (Sam Moyo & Walter Chambati eds., 2013) (discussing how scholarship has not placed proper emphasis on how colonial practices shaped and continue to impact Land Reform in Zimbabwe). Land Reform is also a focus in other southern African states, which all emphasize “repossessing the land taken by European settlers during colonial rule” as a means to “address [] past injustices” under colonialism. See ACTION FOR SOUTHERN AFR., SOUTHERN AFRICA AND LAND: JUSTICE DENIED? 2, 7 (2010); see also Angus Selby, *Radical Realignments: The Collapse of the Alliance Between White Farmers and the State in Zimbabwe 1995-2000* 15 (QEH Working Paper Series, Working Paper No. 144), <https://web.archive.org/web/20170708185433/http://www3.qeh.ox.ac.uk/pdf/qehwp/qehwps144.pdf> (last visited July 8, 2017) (“The formal black empowerment agenda of the early 1990s made little impact on the slow pace of reform in white-controlled sectors, especially banking, mining,

Great Britain knew that 80% of arable land in what became Zimbabwe was owned by 5% of the white population, and “millions of [B]lack people scratched a living on the rest.”² The Land Reform program aimed to remedy the “displacement, landlessness, and overcrowding” of Black Africans.³ Great Britain agreed to subsidize Land Reform by initially contributing £20 million in 1980⁴ and affirmatively pledged its support for the program by signing the Accords.⁵ However, Great Britain attempted to continue its colonial domination of the means of land possession and arable production by protecting the illegitimate interest of British expats in stolen land.⁶ This phenomenon has been replicated in other post-colonial African states through the maintenance of economic control by former colonial masters, resulting in the obstruction of the internationally recognized legal right to sovereignty and self-determination.⁷

Land Reform in Africa is the process of “repossessing the land that was taken by European settlers during colonial rule” and giving it back to those who were dispossessed.⁸ In Rhodesia, Great Britain dispossessed Black Africans of their land and gave ownership to white land settlers⁹ who controlled the legal, political, and economic means of production.¹⁰ Spearheaded by Black Africans and their refusal to be under the rule of their oppressors in perpetuity, the war for liberation helped to usher in the possibility of political and economic liberty.¹¹ The post-colonial political influence of majority Black Zimbabweans created a radically different political economy than what existed previously under colonial white minority rule.¹²

and farming. Glaring disparities in the resources access continued . . .”).

2. Martin Plaut, *USA: “We Agree 100% with Mugabe’s Land Reform to Empower Black Zimbabwe Citizens”*, ZIMBABWE TODAY (Dec. 7, 2016), <https://zimbabwe-today.com/usa-agree-100-mugabes-land-reform-empower-black-zimbabwe-citizens/>.

3. Moyo, *supra* note 1, at 30.

4. IAN SCOONES ET AL., ZIMBABWE’S LAND REFORM: MYTHS & REALITIES 14 (2010).

5. See *infra* Parts II.B, III.A for an analysis of Great Britain’s interference with Zimbabwe state sovereignty; see also SCOONES ET AL., *supra* note 4, at 14 (discussing how the Lancaster House Accords set terms for the Land Reform and the British pledge to contribute financially).

6. See *infra* Part II.B for an analysis of Great Britain’s efforts to limit Zimbabwe’s state sovereignty during the Lancaster House Conference.

7. See *infra* notes 13, 17 and accompanying text for examples of this phenomenon occurring in other states.

8. ACTION FOR SOUTHERN AFR., *supra* note 1, at 2.

9. See Bernadette Atuahene, *Property Rights & the Demands of Transformation*, 31 MICH. J. OF INT’L L. J. 765, 767 (2010) [hereinafter Atuahene, *Property Rights*] (discussing how the colonial and apartheid governments seized native land and gave it to the white minority).

10. See, e.g., Richard Carver, *Zimbabwe: Drawing a Line Through the Past*, 37 J. OF AFR. L. 69, 69–70 (1993) (“A white minority government finally conceded democratic rule to the black majority after decades of political repression which had culminated in a brutal war of counter-insurgency in the 1970s.”).

11. See Norma Kriger, *Liberation from Constitutional Constraints: Land Reform in Zimbabwe*, 27 SAIS REV. OF INT’L AFF. 63, 64 (2007) (considering how the liberation movements, which sought to return land back to Black Africans during the war of liberation, were unsuccessful in doing so due to constitutional constraints).

12. See *infra* Part II.C.2–3 for an analysis of how Black Zimbabweans exercised their

Further, Land Reform is not unique to Zimbabwe and has impacted other post-colonial nation-states such as Namibia¹³ and South Africa.¹⁴ These states all share the following commonalities: (1) European colonizers victimized their Black African populations through “property theft”; (2) the majority of the politically enfranchised believe that but for racialized land policies, white landowners would not have possessed their land; and (3) if the issue of Land Reform is not settled, it could have a destabilizing impact on the health and longevity of their states.¹⁵ Furthermore, white settlers and their descendants no longer possess the political power to maintain the colonial status quo. As a result, the continued possession of that land is perceived as “illegitimate and . . . can serve as the basis for property disobedience and backlash.”¹⁶ Ultimately, postcolonial African states lack the power, capacity, and resources to prevent the Land Hungry¹⁷ from forcibly re-occupying the land of their ancestors.¹⁸

Initially, Zimbabwe elected to go the way of reconciliation.¹⁹ The new government did not address the human rights violations perpetrated by Ian Smith’s

political power to alter the political economy; *see also* Zvakanyorwa W. Sodomba, *A Decade of Zimbabwe’s Land Revolution: The Politics of the War Veteran Vanguard*, in *LAND AND AGRARIAN REFORM IN ZIMBABWE: BEYOND WHITE-SETTLER CAPITALISM* 79, 80–81 (Sam Moyo & Walter Chambati eds., 2013) (discussing the influence of the peasantry and war veterans in determining agrarian policy).

13. *See* P. Mufune, *Land Reform Management in Namibia, South Africa and Zimbabwe: A Comparative Perspective*, 6 *INT’L J. OF RURAL MGMT.* 1, 18–19 (2010) (discussing large land seizures from native Namibians to the German colonial government).

14. *See* Bernadette Atuahene, *Dignity Takings and Dignity Restoration: Creating a New Theoretical Framework for Understanding Involuntary Property Loss and the Remedies Required*, 41 *J. AMER. BAR FOUND. L. & SOC. INQUIRY* 796, 797 (2016) [hereinafter Atuahene, *Dignity Takings*] (highlighting South Africa’s attempts to remedy past paternalistic land theft).

15. *See* Atuahene, *Property Rights*, *supra* note 9, at 773 (discussing the characteristics of past property theft that can ultimately destabilize a nation and exacerbate inequality).

16. *Id.*

17. *See, e.g.*, Lincoln Towindo, *Farms Up for Redistribution: Minister Mombeshora*. *SUNDAY MAIL* (June 25, 2017), <http://www.sundaymail.co.zw/farms-up-for-redistribution-minister-mombeshora/> (referencing the redistribution of land to “land-hungry” Zimbabweans). Land Hungry is defined as “[g]reedy for the acquisition of land or territory.” *Land-hungry*, *DEFINITION.ORG*, <http://definition.org/define/land-hungry>.

18. African post-colonial states often lack the infrastructure to exert autonomy over its land because colonial powers did not spend substantial resources to build roads, ports, and cities throughout the colony. *See* JEFFREY HERBST, *STATE AND POWER IN AFRICA: COMPARATIVE LESSONS IN AUTHORITY AND CONTROL* 58, 58 (2000) (“[T]he significance of the profound changes the Europeans wrought often obscures the fact that they also developed an intricate set of responses to the problem of who to control people and territory in sparsely settled lands while devoting the absolute minimum to administration.”). Great Britain was unwilling to “incur more than a minimum financial commitment” in creating Zimbabwe and its other African colonies. *Id.* at 68; *see also* Henry Francis Morris, *Protection or Annexation? Some Constitutional Anomalies of Colonial Rule*, in *INDIRECT RULE AND THE SEARCH FOR JUSTICE: ESSAYS IN EAST AFRICA LEGAL HISTORY* 42–43 (Henry F. Morris & James S. Read, eds., 1972).

19. *See* Arnold Guy, *Zimbabwe (Rhodesia): Unilateral Declaration of Independence and Smith Regime, 1964-1979*, in *ENCYC. OF AFR. HIST.* (Kevin Shillington ed., 2004) (discussing efforts by the white minority to retain political control during the 1960s and 1970s).

Unilateral Declaration of Independence (UDI) government²⁰ and continued to practice these discriminatory colonial land policies despite Western concerns.²¹ However, after Great Britain's material breach of its agreement terms to subsidize Land Reform, Zimbabwe began to reverse course and institutionalized compulsory Land Reform without compensation.²² Ultimately, the predominant narrative from the West is as follows: (1) Robert Mugabe²³ and the Zimbabwe African National Union-Patriotic Front's (ZANU-PF)²⁴ Land Reform program is unjust; and (2) the repossession of land from white settlers without compensation is a human rights violation that should be met with substantial penalties and punishment.²⁵ This narrative is based on established legal norms suggesting that although states have the autonomy to engage in "land takings" from anyone within its territory, states should compensate a dispossessed property owner.²⁶ In theory, this legal principle appears fair and workable. However, when taken into the context of Zimbabwe's colonial history,²⁷ the illegality of colonialism,²⁸ breached international agreements,²⁹ and the unsatisfied land hunger of native Black Africans,³⁰ the Fast Track Land Reform Program (FTLRP) was an equitable option for Zimbabweans.³¹

20. See *id.* (discussing how, in an attempt to maintain perpetual white minority rule in Rhodesia, Ian Smith, as prime minister of the colony, declared Rhodesia's independence from Great Britain).

21. See generally PROSPER B. MATONDI, ZIMBABWE'S FAST TRACK LAND REFORM 7–8 (2012).

22. See *infra* Parts II.A–C for a detailed history of this process.

23. *Robert Mugabe Biography*, BIOGRAPHY, <https://www.biography.com/people/robert-mugabe-9417391> (last visited Sept. 19, 2018) (stating that Robert Mugabe became Zimbabwe's prime minister in 1980 and later became president from 1987 to 2017, when he was forced to resign).

24. See ZANU PF UNITY PEACE AND DEVELOPMENT, *Who is Zanu PF*, <http://www.zanupf.org.zw/about-us/what-is-zanupf/> (last visited Sept. 19, 2018) ("Zimbabwe African National Union- Patriotic Front (Zanu PF) is a total Political, Indigenous Economic Emancipation and a National Liberation Movement Package for Zimbabweans by Zimbabweans prepared to shed their blood in [defense] of their Sovereignty at all times.").

25. See *infra* Parts III.A.4 & III.C for an analysis of retaliatory actions by Great Britain and the West.

26. See generally William Baude, *Rethinking the Federal Eminent Domain Power*, 122 YALE L.J. 1738 (2013) (discussing whether the Takings Clause of the Constitution of the United States grants the government broad power to take land from its owner for compensation).

27. See *infra* Part II.A for a history of British sanctioned land theft and domination in Rhodesia.

28. See *infra* Part III.A for a discussion on how colonialism violated Zimbabwe's legal rights to sovereignty and self-determination.

29. See *infra* Part III.B for an analysis of Great Britain's breaches of international agreements with Zimbabwe.

30. See *infra* Part II.C for an analysis of Great Britain's postcolonial scheme to protect the property rights of its settlers despite the Black African supermajority of the young free state.

31. Zimbabwe instituted FTLRP to replace the "willing seller, willing buyer" Land Reform policy. See *infra* Part II.C for an analysis of this program. Zimbabwe created FTLRP's compulsory land takings component to speed up land redistribution from the white farmers back to its original owners. *Id.*

Zimbabwe reached its full potential by exercising its full sovereignty as a state because it de-racialized the land by redistributing it back to its Black Africans.³² Colonial land theft contradicts the legal principle of *terra nullius*³³ if taken out of its racist history of European colonialism.³⁴ In other words, the white settlers in Zimbabwe would have superior rights over the dispossessed Black Africans if they “could demonstrate that, until the arrival of [Great Britain’s] agents, that [the] land was . . . vacant and belonging to no one else.”³⁵ Without formal acquisition, Zimbabwe’s native Black African populace may “enjoy the perpetual right of ownership of their land regardless of whether they are rich and powerful enough to defend it or poor and unable to fend off invaders.”³⁶

This Comment will discuss and analyze the issue of Land Reform in Zimbabwe, focusing on: (1) colonial policies that spurred the need for Land Reform; (2) the refusal of Great Britain to honor international agreements with Zimbabwe on Land Reform; and (3) the impact that Great Britain’s meddling in Zimbabwe’s Land Reform policies has had on the ability of Black Zimbabweans to express their rights to self-determination—effectuated through the sovereignty of their nation-state. This Comment does not center its analysis on one snapshot in history, but rather engages in a multilayered analysis that focuses on colonial and post-colonial Zimbabwe. Part II focuses on the legacy of the pre-Zimbabwean past by centering on Great Britain’s racialized Rhodesian colonial policies which dispossessed Black Africans of their land in favor of white British expats. Part III concentrates on how Great Britain successfully leveraged Zimbabwe’s independence and promised to subsidize Land Reform to obtain a sovereignty limiting agreement for its “willing seller, willing buyer” policy. Part IV explores (1) the gradual degradation of Great Britain’s “willing seller, willing buyer” policy, (2) the land hunger that the “willing seller, willing buyer” policy failed to satiate, (3) Great Britain’s unwillingness to honor its agreements to subsidize, and (4) Mugabe’s decision to restore order by institutionalizing land occupations by founding the FTLRP. Part V analyzes the ways in which Great Britain’s meddling into Zimbabwe’s land policies limited the rights of Zimbabweans to self-determination and led to intrastate as well as interstate barriers to Zimbabwe’s sovereignty. Part VI examines Great Britain’s international agreements with Zimbabwe to subsidize Land Reform and its multiple material breaches of said agreements. Finally, Part VII addresses the mischaracterizations

32. See *infra* notes 374–86 and accompanying text for a discussion on justifications for Land Reform and an explanation of why charges of reverse discrimination were unjustified.

33. “‘Terra nullius,’ . . . Latin for land of no person, is a territory that has no owner . . . [and] the first sovereign whose subjects discovered and claimed *terra nullius* had a superior claim to sovereignty over those lands than other sovereigns.” *Terra Nullius*, BOUVIER LAW DICTIONARY (2012) (emphasis added).

34. See generally Mawuna Koutonin, *100 African Cities Destroyed by Europeans, part I*, CONTRAMARE.NET (Nov. 27, 2014), <http://www.contramare.net/site/en/100-african-cities-destroyed-by-europeans-part-i/> (discussing how there are few historical buildings and monuments left in various parts of Africa because they were destroyed by Europeans).

35. Benedict Abrahamson Chigara, *Incommensurabilities of the SADC Land Issue and Nozick’s Entitlement Theory*, 25 AFR. J. INT’L & COMP. L. 295, 307 (2017).

36. *Id.*

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that portray Zimbabwe's FTLRP as nothing more than a human rights violation motivated by racism from the state toward white farmers.

II. HISTORY OF RHODESIA AND EARLY ZIMBABWE

A. *British Sanctioned Land Theft and Domination in Rhodesia*

1. **Racialized Land Policies in Favor of White British Settlers over Native Black Africans**

For Black Africans in Zimbabwe, the freedom to self-govern must include sovereignty over the land. An analysis of land policies that governed colonial Rhodesia gives context to the scope, depth, and importance of the land issue to Black Zimbabweans today.³⁷ As evidenced by the disproportionate white minority rule in Rhodesia³⁸ and early discriminatory land policies,³⁹ Black Africans in Rhodesia were relegated to forced political and economic impotence.⁴⁰ On October 1, 1924, Rhodesia became a "self-governing colony"⁴¹ in which an estimated 35,900 Europeans ruled over 890,000 native Africans.⁴² Although a "self-governing colony," discriminatory legislation could not be passed in Rhodesia without imperial consent from Great Britain.⁴³ British colonial law proclaimed that "a native may acquire, hold, encumber, and dispose of land on the same conditions as a person who is not a native[;]" however, the British South Africa Company subverted this law by simply deciding not to sell land to Black Africans—creating *de facto* segregation.⁴⁴ In the event Black Africans attempted to purchase land from private freeholders, white farmers protested and even successfully petitioned London to amend the law.⁴⁵ After attaining "self-governing" status, European settlers seized political power, successfully demanded and subsequently received segregated land

37. Sabelo J. Ndlovu-Gatsheni, *Mapping Cultural and Colonial Encounters, 1880s-1930s*, in *BECOMING ZIMBABWE: A HISTORY FROM THE PRE-COLONIAL PERIOD TO 2008* 41, 75 (Brian Raftopoulos & Alois Mlambo eds., 2009).

38. ROBIN PALMER, *LAND & RACIAL DOMINATION IN RHODESIA* 132 (1977).

39. *See id.* (discussing the attack of white income earners on the African peasantry to secure their economic position).

40. *Id.* at 131. According to the editor of 1923 Native Affairs Department Annual periodical, "[t]he objects of [Rhodesia's] native [land] policy . . . [was to secure] the development of the native in such a way that he will come as little as possible in conflict or competition with the white man socially, economically and politically." *Id.*

41. "This meant that effective political power had passed into the hands of the white settlers, for the Rhodesian Civil Service and armed forces were responsible to Salisbury and not, as in other colonies, to London." *Id.* at 132.

42. *Id.* (noting that the legislature consisted of an all-white population).

43. *Id.*

44. *See PALMER, supra* note 38, at 135 (discussing the general custom among the Company and Europeans of refusing to sell to Black Africans).

45. *See id.* at 139 (discussing the success of Europeans in petitioning London to limit sales to Black Africans in certain areas).

ownership.⁴⁶ In 1925, only fourteen of the 1,939 farms belonged to Black Africans.⁴⁷

Although Great Britain originally sought to expropriate the land from Black Africans to mine for minerals,⁴⁸ Great Britain's purpose would evolve, at the behest of British Imperial directors, to diversify the Rhodesian economy for the expressed purpose of farming.⁴⁹ As the number of European farmers grew, the more the "proletarianiz[ation] [of] the peasantry" became a reality.⁵⁰ The shortage of uninhabited prime arable land led Rhodesia to determine whether to seize the "native reserves" or seize the land of "absentee [European] landlords."⁵¹ The colony decided to seize the native reserves because it proved more politically advantageous than protecting the interest of Black Africans.⁵² As a result, native populations on arable land sharply declined,⁵³ while European settler farms sharply increased, leading to a fear of competition.⁵⁴

2. The Land Apportionment Act of 1930 and the Native Land Husbandry Act as Official Colonial State Land-Expropriation Policies

Rhodesia propagated discriminatory land policies because it feared competition from Black Farmers.⁵⁵ The passage of the Land Apportionment Act of 1930 (LAA)⁵⁶—which precluded Black and white settlers from buying land from each other—highlights this insecurity.⁵⁷ This Act solidified white racial domination in Zimbabwe and complimented the previous Rhodesian policies by removing Blacks from the "rich land" onto the marginal "Tribal Trust Lands."⁵⁸ Although these Tribal Trust Lands originally had a supposed benevolent purpose—protecting Black Africans from "European acquisitiveness"⁵⁹—they became a tool used by the European farmers to create an arable market in which they only had to compete amongst themselves.⁶⁰ After profiting off the demand for Rhodesian chrome and

46. *Id.* at 131–32.

47. *Id.* at 135.

48. *See id.* at 24–25 (describing the initial motives of Rhodes and the British South Africa Company).

49. *Id.* at 81 (discussing the South Africa Company's desire to promote the expansion of European agriculture).

50. *See PALMER, supra* note 38, at 137.

51. *Id.* at 83.

52. *See id.* (discussing the political expedience of taking lands from the peasantry based on prior difficulties in compromising with "absentee landlords").

53. *Id.* at 98 (discussing the damaging effects of taking lands from the peasantry).

54. *See id.* at 91 (providing statistics on the sharp increase in agricultural production from 1904–1921).

55. *See PALMER, supra* note 38, at 195 (introducing the topic of insecurity among white settlers with a discussion on the LAA).

56. *See id.* at 195 (discussing the historical background of the period in which the LAA was passed).

57. *See JEFFREY HERBST, STATE POLITICS IN ZIMBABWE* 17 (1990) (discussing the content and effects of the LAA).

58. *Id.* at 17.

59. PALMER, *supra* note 38, at 57.

60. *See id.* at 131 (discussing the motives and historical circumstances underlying segregation

asbestos during World War II,⁶¹ the Rhodesian government took affirmative steps to enrich and subsidize the white settler farming community, in what historians have coined “Socialism-for-the-Whites.”⁶²

The LAA—which white settlers referred to as their “Magna Carta”⁶³—apportioned forty-nine million acres of Rhodesian land to white settlers, twenty-nine million to Black Africans, and left eighteen million unassigned or designated for game reserve or forestry.⁶⁴ The land set aside for the Black African populace was unsuitable for the cultivation and the farming which the colony mandated.⁶⁵ Increases in the Black African population and their cattle in the Tribal Trust Lands further exacerbated the unsuitability of the land.⁶⁶ Instead of responding to the overpopulation of the Tribal Trust Lands by expanding the allotment, the colonial government blamed Black Africans for their farming methods.⁶⁷ The blaming occurred despite idle “large tracts of useful land in European areas” that Rhodesia set aside for “speculative purposes.”⁶⁸ Soon afterward, the colonial government took further legislative action.⁶⁹

Rhodesia passed the Native Land Husbandry Act (NLH) to further the overarching policy goals of the LAA.⁷⁰ Rhodesia’s economy was undergoing burgeoning diversification that required more manual labor, but the LAA did not create urban enclaves populated with native African peasant labor.⁷¹ Thus, the NLH sought to target Black Africans who worked in these secondary labor markets and force them to live in urban enclaves.⁷² In support of the passage of the NLH, Rhodesia made the following policy arguments: (1) remedy the “ecological disaster”

policies).

61. See HERBST, *supra* note 57, at 21–22 (discussing how World War II led to economic opportunity because of increased demand for chrome and asbestos).

62. *Id.* at 22.

63. *Magna Carta*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“The English charter that King John granted to the barons in 1215 and that Henry III and Edward I later confirmed. It is generally regarded as one of the great common-law documents and as the foundation of constitutional liberties.”).

64. Victor E.M. Machingaidze, *Agrarian Change from Above: the Southern Rhodesia Native Land Husbandry Act and African Response*, 24 INT’L J. AFR. HIST. STUD. 557, 558 (1991).

65. See *id.* at 559 (discussing the shortage of land for natives and why the limited land that natives possessed was unsuitable for cultivation).

66. See *id.* at 559–60 (discussing the overpopulation of natives and their cattle on the lands designated for Black Africans).

67. *Id.* at 562.

68. *Id.*

69. *Id.* at 563 (discussing the conditions that led to the passage of the National Resources Act of 1941 and subsequent legislation).

70. Machingaidze, *supra* note 64, at 563 (discussing the desire to keep the LAA intact in passing the NLH Act).

71. See *id.* at 566–67 (discussing the economic shift to manufacturing and corresponding need to draw Black Africans into urban areas).

72. *Id.* (discussing the goals of the NLH Act as related to bringing Black Africans from agriculture to the manufacturing industry).

in the Tribal Trust Lands; (2) force Black Africans to cultivate low-value agricultural produce so that the European settlers could continue to grow cash crops; and (3) funnel Black Africans into low paying “secondary industr[ies].”⁷³ The NLH could only achieve success if the secondary economy grew and, as a result, offered mutual benefits to Black Africans and white settlers—ultimately, neither occurred.⁷⁴ Effectively, Rhodesia devised the NLH to complement the LAA by commodifying Black Africans as the *de facto* proletariat class in the colony, requiring them to farm unsuitable land to further the capitalistic goals of the white minority-dominated colony.⁷⁵

Ultimately, Rhodesia took ancestral land from the native population and gave it to the white settlers.⁷⁶ Any land that was retained by those who benefited from the racist colonial policies is fruit of the poisonous tree of the illegality of colonialism. As discussed later in this Comment, after gaining independence and after decades of racialized land domination, Black Africans were still precluded from entering Zimbabwe’s agro-economy.⁷⁷ Due to Great Britain’s interest in maintaining as much of the eco-colonial⁷⁸ status quo as possible, the NLH and LAA both protected and continued white minority land domination after the conclusion of the Accords and during the drafting and ratification of Zimbabwe’s Lancaster House Constitution.⁷⁹ Consequently, the former British colony of Rhodesia created a superclass of white farmers and granted them supreme property rights over the entire Black African population that endured for generations.⁸⁰

B. The Lancaster House Conference and Great Britain’s Success in Limiting Zimbabwe State Sovereignty and Autonomy

1. The Lancaster House Conference as a Culmination of the Black African Struggle for Post-Colonial Independence

During the Lancaster House Conference, Great Britain interfered with Black African autonomy and continued to expropriate ancestral lands. The Conference convened after a long and violent war for Zimbabwe’s liberation. On behalf of Prime Minister Margaret Thatcher, then-Minister of Foreign Affairs, Lord Carrington,

73. *Id.* at 566–67.

74. *See id.* at 588 (concluding that white politicians and administrators, in seeking capitalist economic development, falsely believed the NLH Act could absorb dispossessed Black Africans).

75. *See id.* at 571 (discussing why the “economic unit” concept of the NLH Act was ineffective).

76. *See supra* Part II.A.1 for an analysis of how racialized land policies favored white settlers over Black Africans.

77. *See infra* Parts II.C.1–2 for an analysis of racial land policies that continued after the recognition of Zimbabwe’s sovereignty.

78. *See* Tazim Jamal et al., *Ecological Rationalization and Performative Resistance in Natural Area Destinations*, 3(2) TOURIST STUDIES 143, 151 (2003) (discussing colonization of the natural world).

79. *See infra* Part II.B for an analysis of the Lancaster House Conference.

80. *See* Paul Moorcraft, *Rhodesia’s War of Independence*, 40 HIST. TODAY (1990) 11–12 (describing Rhodesia’s war for independence as an effort among white supremacists to strip Black Africans of the few rights they possessed).

invited members of Rhodesia's UDI government and the Patriotic Front to a constitutional conference in London, England.⁸¹ The overarching purpose of the Accords was to (1) broker peace; (2) officially grant Zimbabwe its independence; and (3) create a constitution that would govern the new state.⁸² After the war of independence from Ian Smith's government, on September 10, 1979, Great Britain sought to rectify the problem that it created in 1965 when white minority-ruled Southern Rhodesia unilaterally declared independence.⁸³ From 1969 to 1979, the UDI government presided over a series of violent student protests⁸⁴ and alleged state-sponsored human rights violations.⁸⁵ By the end of UDI's rule, "95[%] of Rhodesians [were] under martial law."⁸⁶ State-sponsored violence such as this, as well as other forms of state-complicit violence, were sanctioned by a "democratic" non-representative government.⁸⁷ At its height, the UDI governed approximately seven million Black Africans, and only 200,000 white settlers.⁸⁸ Pressure through civil unrest, guerrilla warfare against the UDI government, and diplomatic intervention by the United States and Great Britain achieved the eventual end of the white minority rule by violence.⁸⁹

The Salisbury delegation, the Patriotic Front, and Great Britain were the official parties and eventual signatories to the Accords.⁹⁰ Great Britain "assum[ed]

81. JEFFREY DAVIDOW, *A PEACE IN SOUTHERN AFRICA: THE LANCASTER HOUSE CONFERENCE ON RHODESIA*, 1979, 32 (1984).

82. *Id.* at 32.

83. Great Britain refused to use force to protect the African majority and crush the rebellion, despite knowledge that the Ian Smith-led rebellion against the Crown was fueled by a desire to remove what little rights the Black Africans had. Moorcraft, *supra* note 80, at 12.

84. See A.S. Mlambo, *Student Protest and State Reaction in Colonial Rhodesia: The 1973 Chimukwembe Student Demonstration at the University of Rhodesia*, 21 J. S. AFR. STUD. 473, 490 (1995) (examining the reaction of the Southern Rhodesian state, which led to imprisoning and banning the students protesting minority rule, and may have led some protestors to flee the country and join the guerilla movement).

85. See generally Carver, *supra* note 10 (discussing post-UDI Southern Rhodesian alleged human rights violations that included "disappearances" and "torture" of dissidents).

86. Moorcraft, *supra* note 80, at 14.

87. DAVIDOW, *supra* note 81, at 13.

88. *Id.*

89. See *id.* at 22–23 (discussing how the combination of both guerilla warfare and diplomatic strategies forced Smith into an internal settlement); see also Paul Scarlata, *The Military Rifle Cartridges of Rhodesia-Zimbabwe: From Cecil Rhodes to Robert Mugabe*, SHOTGUN NEWS, Aug. 2010, at 24, 24 (detailing Cecil Rhode's decision, on behalf of the British Empire to subjugate all Black Africans from "the Cape to Cairo," which led to the use of deadly force against those who fought for their land).

90. The Salisbury delegation, led by the moderate Prime Minister Bishop Muzorewa and Ian Smith, represented the interest of the UDI Southern Rhodesian government. Robert Mugabe and exiled Joshua Nkomo led the Patriotic Front delegation, which represented the interest of the Black population in Southern Rhodesia for liberation. See DAVIDOW, *supra* note 81, at 13. The UDI government was created in rejection to Britain's earlier attempts to foster peace by requiring that a proposed plan slowly increase the number of Black voters until there was a slight majority contingent on acceptance by Black public opinion. *Id.* at 19. Understanding that majority rule was imminent, Ian Smith hand-picked Bishop Muzorewa to make Southern Rhodesia into a "European-

responsibility for the colony's [past and] future" when it agreed to host the Accords and broker a ceasefire in the war for liberation.⁹¹ These acts cleared the way for its former colony to be recognized internationally as a legitimate sovereign state.⁹² The UDI delegates' interest was to maintain as much of the status quo possible, while "obtaining recognition from Britain of its legitimacy as a government . . . and the lifting of international sanctions."⁹³ The goal of the Patriotic Front at the Accords was full political enfranchisement of Black Africans by attaining majority rule and state autonomy over its people and land within its borders.⁹⁴ Incorporated into this goal was the non-negotiable need for autonomy over the land—a promise the Patriotic Front made to its Black African constituency while it fought for liberation.⁹⁵

2. Zimbabwe's Repudiation of Great Britain's Proposal that Zimbabwe Subsidize White Farmers for Stolen Land Under the So-Called Willing Seller, Willing Buyer Land Reform Program

At the Lancaster Conference, the Patriotic Front was under pressure by the Land Hungry to deliver upon the promises of full political enfranchisement and restorative justice for stolen ancestral lands.⁹⁶ The motivation behind the war for liberation was in response to (1) Cecil Rhodes's "claim to the most productive farmland" in the 1880s from the pastoralist Matabele and agricultural Shona;⁹⁷ (2)

run regime with an African façade." See Rajeshwar Dayal, *Zimbabwe's Long Road to Freedom*, 2 THIRD WORLD Q. 466, 472 (1980).

91. Dayal, *supra* note 90, at 475; see DAVIDOW, *supra* note 81, at 27–28 (discussing Lord Carrington's belief that if Britain did not intervene and proctor a workable agreement at Lancaster House, it would have led to "isolation of Britain by the rest of the world, including the [United States]," "intensified the war in Rhodesia[,] and would have opened the door to "Soviet . . . and East German involvement" in Africa).

92. See DAVIDOW, *supra* note 81, at 27–28 (discussing the political machinations between London and the United States that paved the way for a formal recognition of sovereignty). While the United States was not a signatory, it should be characterized as an unofficial party to the Accords because it played a key role over the issue of Land Reform. Henry Kissinger, the Secretary of State of the United States, wanted to stop communist expansionism occurring in the horn of Africa, as evidenced by the approximate 20,000 Soviet-armed Cuban troops in Angola's fight for independence, and the rebel-guerilla forces led by Robert Mugabe and exiled Joshua Nkomo's Patriotic Front. *Id.* at 20, 22.

93. *Id.* at 42.

94. *Id.* at 46.

95. See *id.* at 63 (describing the disdain for the Lancaster House Agreement which was reviled for further padding the pockets of the British at the expense of the Zimbabwean Land Hungry natives); see also Kriger, *supra* note 11, at 67 (discussing how the liberation movements failed to deliver on the promises made during the war of liberation to return land to the Zimbabwean natives due to constitutional constraints).

96. See, e.g., House Agreement, Zim.-Gr. Brit., Annex B, Opening Speech by Mr. Nkomo, (Dec. 21, 1979), https://peacemaker.un.org/sites/peacemaker.un.org/files/ZW_791221_LancasterHouseAgreement.pdf.

97. The Matabele or Ndebele is a tribe that is an outgrowth of the Zulu Tribe, which fled from what is now South Africa and settled into what is now North and Southwest Zimbabwe in 1823. PAUL LAGASSE & COLUMBIA UNIVERSITY, *Ndebele*, in COLUMBIA ENCYC. (8th Ed. 2018). In the

land grabs of the “rich central highlands” by white settlers wishing to establish farms and aided by the LAA; and (3) the forced removal of the native population to “native reserves.”⁹⁸ Some of the white settlers returned to Europe and forced the Matabele and Shona to pay them rent to farm the tribes’ own ancestral lands.⁹⁹ This systematic land and racial domination fueled the Zimbabwe National Liberation Army and Matabele Zimbabwe People’s Revolutionary Army to lead a successful independence struggle to regain control of their ancestral lands.¹⁰⁰ The Patriotic Front delegation knew that without delivering on these promises of Land Reform, their Black African constituents would not deem the war for liberation a success.¹⁰¹

Without the support and agreement of the Patriotic Front at the conference, the Accords may not have succeeded, and the Lancaster Constitution may not have materialized. Great Britain crafted, proposed, and supported a fair market, “willing seller, willing buyer” approach to Land Reform for the people of Zimbabwe.¹⁰² The following is Great Britain’s initial proposal and what was ultimately agreed to in the Accords:

Every person will be protected from having his property compulsorily acquired except when the acquisition is in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilisation of that or other property in such a manner as to promote the public benefit or, in the case of under-utilised and, settlement of land for agricultural purposes. When property is wanted for one of these purposes, its acquisition will be lawful only on condition that the law provides for the prompt payment of adequate compensation and, where the acquisition is contested, that a court order is obtained. A person whose property is so acquired will be guaranteed the right of access to the High Court to determine the amount of compensation.¹⁰³

wake of the British South Africa Company’s oppressive restrictions placed on the tribes in 1888, the Matabele revolted, but it was suppressed in 1896. *Id.* Subsequently, they became herders and farmers. *Id.* The Shona are the largest ethnic group in Zimbabwe, which comprises approximately 75% of Zimbabwe’s population, or nine million people. See *SHONA or Mashona*, CASSELL’S PEOPLES, NATIONS AND CULTURES (John Mackenzie ed., 2005). Together, the Shona and Matabele revolted against the British colonizers and were brutally defeated and placed in tribal reserves. *Id.*

98. Heidi G. Frontani & Justine M. Davis, *Ideologies of Land and Place: Memories from Zimbabwe’s War of Liberation*, 90 S. AFR. GEOGRAPHICAL J. 54, 54–55 (2008) (describing how the arrival of European farmers forced native Shona and Matabele tribes to relocate to make room).

99. *Id.* at 54.

100. *Id.* at 55; see also Keren S. Openshaw & Patrick C.R. Terry, *Zimbabwe’s Odious Inheritance: Debt and Unequal Land Distribution*, 11 MCGILL INT’L J. SUSTAINABLE DEV. L. & POL’Y 39, 43–44 (2015) (describing Zimbabwe’s successful independence campaign).

101. See Alois S. Mlambo, ‘Land Grab’ or ‘Taking Back Stolen Land’: *The Fast Track Land Reform Process in Zimbabwe in Historical Perspective*, 3 HIST. COMPASS 1, 7–8 (2005) (detailing the importance of Land Reform to the Zimbabwean independence struggle).

102. See DAVIDOW, *supra* note 81, at 51–66 (describing the negotiations that resulted in the Lancaster House Constitution, in which Britain took an unwavering stance against compulsory land redistribution).

103. Lancaster House Agreement, Zim.-Gr. Brit., Annex C ¶ C.V.1, Dec. 21, 1979 [hereinafter Accords].

When Great Britain first proposed this land reform scheme at the Conference, Zimbabwe's delegates "refused to budge."¹⁰⁴ Zimbabwe's Patriotic Front was not willing to concede to the idea of mandating Zimbabwe to be responsible for the compensation of stolen ancestral land.¹⁰⁵ To illustrate their resolve on this matter, the Patriotic Front announced:

If this London conference reaches no decisions, we will dispatch our military men back to Africa. This means intensification of the struggle. We can win without Lancaster House. That is a certainty. Of course, we would welcome a settlement. But we can achieve peace and justice for our people through the barrel of a gun.¹⁰⁶

Only after oral assurances from Great Britain that it would "shoulder some of the financial burden," and a pledge from the United States that it would assist financially pending the success of Lancaster House did the Patriotic Front acquiesce and feel "compelled to accept undoubtedly sincere, but still vague, promises of assistance."¹⁰⁷ Thus, the Accords would not have been a success if Great Britain had not offered to subsidize Land Reform.

Consequently, the Accords resulted in the eventual constitution of Zimbabwe.¹⁰⁸ In fact, the Lancaster House Constitution was largely shaped by British interests.¹⁰⁹ Although the Lancaster House Constitution may have reflected the interest of the Patriotic Front by bestowing upon Blacks full political agency, it fell short of truly reflecting the prerogative of the majority regarding the issue of land.¹¹⁰ For Blacks, political reform without Land Reform meant that the national liberation project was incomplete.¹¹¹ Moreover, the constraints on Land Reform imposed by the Lancaster House Constitution deprived Zimbabweans of the rights to self-governance and self-determination that other nation-states enjoyed.¹¹² As

104. DAVIDOW, *supra* note 81, at 63 (describing the Patriotic Front's insistence that Zimbabwe not force Black Africans to compensate whites for land that had been stolen from its original African owners).

105. *Id.*

106. *Id.* at 63–65. According to Robert Mugabe, Great Britain only supplied half the financial support which was agreed to at the conference table. HEIDI HOLLAND, *DINNER WITH MUGABE* 230 (2008). The U.S. Ambassador to Great Britain, Kingman Brewster, assured the secretary general of the Commonwealth that (1) "Americans wanted to assist," (2) "give the funds to the Land Reform programme in general," and (3) that what "to do with them is entirely [Zimbabwe's] own business." *Id.* at 229. The American support ended with the election of Ronald Reagan, who labeled Zimbabwe "communist who had sided with the Russians." *Id.* at 230.

107. *Id.* at 63–65; see HEIDI HOLLAND, *DINNER WITH MUGABE* 230 (2008).

108. Accords, *supra* note 103, ¶ 4.

109. See DAVIDOW, *supra* note 81, at 51–66 (describing Britain's dominant role in shaping what became the Lancaster House Constitution).

110. See, e.g., Mlambo, *supra* note 101, at 13 (discussing generally grievances over the failure to deliver land to the African majority).

111. See *id.* at 3 (explaining that without meaningful Land Reform, whatever plans the new government may have had would be deemed inadequate).

112. Compare Nick Dancaescu, *Land Reform in Zimbabwe*, 15 FLA. J. INT'L L. 615, 619 (2003) (discussing how Lancaster agreement imposed a ten-year moratorium on land seizures and constitutionally limited the Zimbabwean government's ability to take land) with Azeta Cungu & Johan F.M. Swinnen, *Albania's Radical Agrarian Reform*, 47 ECON. DEV. & CULTURAL CHANGE

witnessed in other post-colonial states in Africa, this form of “state-making” has produced a high concentration of either failed or failing states on the continent.¹¹³ To its detriment, the new Zimbabwean government relied on Great Britain to honor its agreement of financially supporting the redistribution of land from white settlers to the newly enfranchised native Africans from whom the land was stolen.¹¹⁴ Great Britain successfully executed its post-colonial agenda by writing a constitution for Zimbabwe that ceded some political autonomy to Black Africans while maintaining its stranglehold on the land and resources of its former colony—the latter being the underlying purpose of colonialism in Africa.¹¹⁵

C. Post Accords: British-imposed Limits on Zimbabwe's State Sovereignty Forced the Land Hungry to Pursue Self-Determination Through the State

Although this Comment focuses on Land Reform in Zimbabwe, it also illustrates why an enforceable international legal right to self-determination of Africans—as exercised through their democratically elected governments in their post-colonial states—must exist. This section shifts the discussion to Great Britain's postcolonial scheme to protect the property rights that its settlers enjoyed under racialized colonial policies. Furthermore, this section will discuss how Great Britain's scheme directly contradicted the political and economic realities of the supermajority Black African populace in the young, free state. This section also illustrates the tensions that exist when a state cannot be a state¹¹⁶ and the barriers that exist to relegate it to operate as a colony of its colonial master. Ultimately, the government of Zimbabwe engaged in political gymnastics, stymying the political and legal agency of its own people from the outset.¹¹⁷

Below, Land Reform is divided into three phases. In Phase I, Zimbabwe

605, 607–10 (1999) (explaining that post-communist Land Reform policies in Albania were implemented without interference from the West).

113. According to the Fund for Peace's Fragile State Index of 2015, the continent of Africa had by far the largest concentration of states in the “Warning” to “Alert” rating in the world when it comes to state fragility. See *Fragile States Index*, FUND FOR PEACE (2015), <http://fundforpeace.org/fsi/> (last visited Oct. 16, 2018).

114. See SCOONES ET AL., *supra* note 4, at 14–16 (arguing that, despite Britain's pledge to contribute money to land redistribution, early efforts at land reform mimicked colonial policies).

115. See Mlambo, *supra* note 101 (arguing that the Lancaster House Constitution has allowed Great Britain to maintain control of Zimbabwe's natural resources).

116. This assertion is made with consideration to Sociologist Max Weber's definition of a “state in mind,” which is defined as “a compulsory political organization with continuous operations . . . insofar as its administrative staff successfully upholds the claims to the monopoly of the legitimate use of physical force in the enforcement of order.” CHRISTOPHER PIERSON, *THE MODERN STATE* 7 (1996). Further, the more sovereignty a state can exercise within its territory, the more legitimacy that it can build with its people. *Id.* at 11–13.

117. By political gymnastics, this Comment refers to Zimbabwe's attempt to placate the West and Native Black African divergent views of Land Reform. See Zanu-PF Total Failure, Reverses Position on Land, ZIMBABWE TODAY (Jan. 9, 2015) (discussing how elite Zimbabwe political parties have continued to engage in political gymnastics over land reform issues since the late '90s).

honored the international agreement laid out in the Accords despite the “willing seller, willing buyer” policy’s unpopularity amongst Black Africans. In Phase II, three factors freed Zimbabwe to regain its sovereignty over its land and to implement compulsory Land Reform: intensified land hunger, British diplomatic blunders, and a breach of the international agreement by Great Britain to continue funding Land Reform. Finally, in Phase III the government of Zimbabwe exercised its legal authority to institutionalize the Land Reform policies that the polity called for two decades earlier.

1. Phase I: Zimbabwe’s Good Faith Effort to Honor the Accords and the Black African Resolve to Repossess their Ancestor’s Expropriated Lands

From the outset of the Lancaster House Agreement, Zimbabwe’s lack of autonomy and sovereignty was apparent to its Black population. The first phase of Land Reform began in 1980 and continued until around 1989.¹¹⁸ In this phase, the Zimbabwean state used the “willing seller, willing buyer” approach as a means to buy the land at market value from willing farm owners.¹¹⁹ With (1) Great Britain’s initial contribution of 20 million pounds,¹²⁰ (2) matching funds for future land acquisition,¹²¹ and (3) restrictions on compulsory land acquisition, Zimbabwe’s autonomy to redistribute the land back to the Black-African native population was obstructed.¹²² Given these factors, the willing landowners and Great Britain—not the Zimbabwean state—determined what land was to be redistributed.¹²³ Because of its interest in “neutraliz[ing] a looming crisis of expectation on the part of a land hungry population,” Zimbabwe set ambitious goals to resettle 18,000 households in 1980, 54,000 in 1982, and 162,000 in 1985.¹²⁴ In many ways, and by British design, the use of the “willing seller, willing buyer” market-based land redistribution policy shifted the power to redistribute land from the state into the hands of the farmers, and served as a barrier to meeting these ambitious resettlement goals.¹²⁵

In the early 1980s, some aspects of Land Reform saw success in Zimbabwe.¹²⁶

118. Moyo, *supra* note 1, at 30.

119. SCOONES ET AL., *supra* note 4, at 14. (describing the slow and expensive process of acquiring land through the “willing seller, willing buyer” approach).

120. *Id.*

121. Moyo, *supra* note 1, at 32 (describing Great Britain’s matching funds program as an aid project rather than as reparations for colonial land losses).

122. See SCOONES ET AL., *supra* note 4, at 14 (noting that the Zimbabweans were reliant on financial support from Great Britain to assist in reacquiring their ancestral lines stolen by the white settlers).

123. See Moyo, *supra* note 1, at 32 (implying that because Great Britain matched funds and decided how resettlement was to be done, it was making decisions on behalf of Zimbabwe).

124. SCOONES ET AL., *supra* note 4, at 15.

125. See Moyo, *supra* note 1, at 32 (explaining how the free market approach limited the amount, quality, and location of land to be acquired, resulting in rising land prices and lack of adequate resources to meet demand).

126. See, e.g., Marleen Dekker & Bill Kinsey, *Contextualizing Zimbabwe’s Land Reform: Long Term Observations from the First Generation*, 38 J. PEASANT STUD. 995, 996–97 (2011) (discussing that at the outset of Land Reform, resettled farmers grew food for themselves in addition to growing cash crops, and increased productivity over time).

However, some of the policies that fueled this success were perpetuated by the stereotype that Black Zimbabweans were “inefficient, in contrast to market[-]oriented European farmers[.]”¹²⁷ However, as the demand for good, arable land from the Zimbabwean government and private parties rose, and due to the limited number of willing sellers, the price of land rose.¹²⁸ Rising prices likewise led to a sharp decline in resettlement in the mid-1980s.¹²⁹ The program intended to target “largely resource-poor farmers”—some of whom were returning war veterans and those displaced by war.¹³⁰ However, the government put strict rules in place, such as requiring Black Africans to obtain permits to farm and occupy plots, which often disincentivized resettlement.¹³¹ Yet, the program did not operate as promised and did not transform Zimbabwe's agro-economy.¹³² Instead, it perpetuated colonial land policies.¹³³ Finally, a drought from 1982 to 1984 exacerbated the issue of food security and inhibited the government from moving Black Africans in communal areas to new, arable land.¹³⁴

In response, many Black Africans turned to squatting, poaching, and “rural-rural” migration.¹³⁵ In 1988, the British government commissioned a study to determine the viability of the “willing seller, willing buyer” program.¹³⁶ With a 21% return on its economic investment to subsidize the “willing seller, willing buyer” model, Great Britain was poised to extend and continue subsidizing the Lancaster House Agreement.¹³⁷ However, leading up to the next election, Joshua Nkomo, a challenger to incumbent Robert Mugabe, heightened rhetoric on Land Reform.¹³⁸ In turn, Robert Mugabe boosted his own rhetoric on the issue by proposing to abandon the “willing seller, willing buyer” policy for compulsory land acquisition by the government.¹³⁹ With the election over and power established, however, talk and movement toward compulsory Land Reform was quieted while the “willing seller, willing buyer” land policy remained in force.¹⁴⁰

127. Dennis Norman, former president of the Rhodesian National Farmers Union and first Prime Minister of Agriculture in Zimbabwe, created policies similar to those of the Rhodesian Native Land Husbandry Act of the 1950s. SCOONES ET AL., *supra* note 4, at 15.

128. See Moyo, *supra* note 1, at 32 (describing that the free market approach failed to meet demand needs, resulting in rising land prices); see also MATONDI, *supra* note 21, at 31 (discussing how farmers used the “willing seller, willing buyer” model to stymie the state's interest in redistributing land by only selling land to other farmers who could afford land, rather than the state).

129. SCOONES ET AL., *supra* note 4, at 15.

130. *Id.* at 16.

131. Many of the strict rules forbade “reversion back to traditional methods of agriculture,” which to many was a cultural way of life. *Id.*

132. See *id.* at 16 (describing the failures of the “willing seller, willing buyer” program).

133. *Id.*

134. *Id.*

135. See SCOONES ET AL., *supra* note 4, at 16.

136. *Id.* at 17.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

During this phase, despite an increase in Zimbabwe's agro-economy,¹⁴¹ war veterans and peasants pushed for meaningful land redistribution.¹⁴² The Land Hungry opted not to wait for the ZANU-PF to deliver meaningful Land Reform and continued its land "occupation movements" that started during the pre-independence era.¹⁴³ The state attempted to appease its Black African populace with "accelerated regularisation of land occupations" of mostly marginal, arable land.¹⁴⁴ This policy was short-lived, and by 1985 the government replaced it with policies favoring "capable small farmers," which discriminated against peasants and war veterans.¹⁴⁵ By the end of the 1980s, the war veteran-led occupation movement created the Zimbabwe National Liberation War Veterans Association (ZNLWVA), and its stated goal was to "return [the state] to the liberation agenda."¹⁴⁶

In the 1980s, Zimbabwe only resettled around 52,000 families on 2.7 million hectares of land, while the private market thrived, with one million hectares of land changing hands between the new Black Zimbabwean elite class and whites.¹⁴⁷ Zimbabwe had little authority and did not deliver on the promises made during the war for liberation, which served as the defining characteristic of Phase I.¹⁴⁸ Effectively, native war veterans, peasants, and rural farmers were living under the same arable land policies that the defunct Rhodesian racist-apartheid colony and the UDI government propagated.¹⁴⁹ These policies created an atmosphere in which land hunger would not subside, and instead intensified.¹⁵⁰ Native Black Africans in Zimbabwe—who endured colonialism, a violent UDI regime, and the war for liberation—were handed a state that its previous colonial master broke, and which further restrained them from exercising sovereignty over the land within its borders.

2. Phase II: The Fraying of Great Britain's Influence and Zimbabwe's Exercise of Its Sovereignty over Its Land and Law

Despite the many failings of the "willing seller, willing buyer" Land Reform

141. See SCOONES ET AL., *supra* note 4, at 27 (referencing figure 1.1 which displays the U.N. database for agricultural value added for per capita GDP).

142. See Zvakanyorwa Wilbert Sadomba, *A Decade of Zimbabwe's Land Revolution: The Politics of the War Veteran Vanguard*, in LAND AND AGRARIAN REFORM IN ZIMBABWE: BEYOND WHITE-SETTLER CAPITALISM 79, 80 (Sam Moyo ed., 2013) (describing how the movement for Land Reform became increasingly militant under war veteran leadership).

143. *Id.* at 81.

144. *Id.*

145. *Id.*

146. *Id.* at 81; see generally Kriger, *supra* note 11 (discussing how the Zimbabwean liberation movement never kept its promise of redistributing white farmers' land due to constitutional constraints).

147. SCOONES ET AL., *supra* note 4, at 15.

148. See *supra* Part II.C.1 for a discussion of how Zimbabwe's lack of control over the redistribution of land was the defining factor during the first phase of Land Reform.

149. See, e.g., PALMER, *supra* note 38, at 133 (discussing the policy of segregation of Africans from European settlers during 1915 to 1925 to discourage social, economic, or political competition).

150. See *infra* Part II.C.2.3 for a discussion of the exacerbation of land deficit for native Africans.

policy imposed by Great Britain, Zimbabwe was compelled by external pressures to continue this policy, even though this meant sacrificing its sovereignty and self-determination. During Phase II of Land Reform in Zimbabwe, which lasted from 1990 to 1996, land hunger intensified due to increased land occupation, political pressure on the ZANU-PF government, and street demonstrations.¹⁵¹ In response, the government wanted to show the Land Hungry that it could exercise some semblance of sovereignty and self-determination by amending Section 16 of Zimbabwe's constitution and by enacting the Land Acquisition Act (Acquisition Act) of 1992.¹⁵² In 1994, 80% of Zimbabwe's "marketed output" was "produced by commercial farmers," and most of the "fertile, better-situated and capitalized land was still owned by" white farmers.¹⁵³ Together, the racially discriminatory land policies from apartheid Rhodesia¹⁵⁴ and the "willing seller, willing buyer" market-based approach perpetuated economic apartheid and a white-controlled agricultural sector of the economy.¹⁵⁵ The so-called "black sectors" did not thrive alongside the majority white agro-sector,¹⁵⁶ and the lack of economic opportunity for Black Zimbabweans led to "a growing restlessness among the majority of people who still [felt] economically marginalized in their own land."¹⁵⁷

In the early 1990s, the recently re-elected Mugabe and the ZANU-PF did not deliver on their promise to reject the "willing seller, willing buyer" policy in favor of compulsory Land Reform because they sought to please the World Bank and the International Monetary Fund.¹⁵⁸ In 1990, Land Reform took a back seat in the government's economic policy,¹⁵⁹ despite amending the Constitution to remove the

151. Sodomba, *supra* note 12, at 81–82 (describing President Mugabe's failure to recognize or honor the liberation agenda).

152. The 1990 amendment to Section 16 of the Zimbabwean Constitution enabled the government to acquire any land if it (1) gave "reasonable notice of the intention to acquire" land; and (2) paid "fair compensation for acquisition before or within a reasonable time." However, the 1992 act also allowed acquisitions to be contested in administrative courts. Simon Coldham, *The Land Acquisition Act, 1992 of Zimbabwe*, 37 J. AFR. L. 82, 83–85 (1993). Note that the Zimbabwe Constitution was amended in 2013. See generally CONSTITUTION OF ZIMBABWE: AMENDMENT (No. 20) Mar. 16, 2013, Ch.4, 72(8), available at http://www.parlzim.gov.zw/images/documents/Constitution-of-Zimbabwe-Amendment_No_20_-_14-05-2013.pdf (stating that the new amendments will not affect previous colonial agreements to provide compensation for resettlement).

153. Selby, *supra* note 1, at 16

154. See *supra* Part II.A for a discussion of how British settlers stole land from the native Africans and maintained ultimate control over the land even after returning to the U.K.

155. See Selby, *supra* note 1, at 15–16 (discussing consequences from the lackluster British support for land transfer).

156. *Id.* at 16.

157. *Id.* (quoting *Umbrella Body Formed for Empowerment*, ZIMBABWE INDEP. (June 12, 1996)).

158. See *id.* at 32–33 (detailing how the young Zimbabwean state relied on international economic aid and framed its policies to be more attractive to the IMF and World Bank).

159. See Sam Moyo, *The Land Occupation Movement and Democratisation in Zimbabwe: Contradictions of Neoliberalism*, 30 MILENNIUM: J. INT'L STUD. 311, 314–318 (2001) (arguing that Zimbabwe's 1990s move towards neoliberalism shifted the government's focus away from

restriction on compulsory Land Reform.¹⁶⁰ Contrary to the desires of the Land Hungry, the government took an anti-nationalist, free-market, neoliberal approach.¹⁶¹ However, in 1992, the Lancaster House Agreement expired,¹⁶² and Zimbabwe passed the Acquisition Act, empowering the President to acquire land through compulsory means.¹⁶³ The state's power to confiscate land under the Acquisition Act was undermined through litigation by white landowners.¹⁶⁴ In a contentious meeting with farmers, Zimbabwean Attorney General Patrick Chinamasa warned the farmers that if they challenged the government in court, Parliament would “change the constitution.”¹⁶⁵

Eventually, the relationship between Zimbabwe and Great Britain deteriorated significantly.¹⁶⁶ Mugabe's message of economic self-determination—free from substantial interference from Great Britain—discouraged private Western business from investing in Zimbabwe, although it resonated with the Land Hungry.¹⁶⁷ By 1996, the state had run out of money to acquire available land, and Mugabe warned that if Great Britain did not lend economic support to the Land Reform program, the Zimbabwean government would confiscate land without compensation and leave the British government to compensate the landowners.¹⁶⁸ In that same year, the British Parliament promised to subsidize Land Reform, but only for a “willing seller, willing buyer” policy.¹⁶⁹

Finally, the declining power of the technocrats and neoliberals in Zimbabwe's government also contributed to the deterioration of the Zimbabwean-British

land reform).

160. Even though Zimbabwe's constitution was amended, the compensation had to be fair and delivered within a reasonable time. Kriger, *supra* note 11, at 67.

161. See Giuseppe Maio, *Zimbabwean Land Reform: Between Mugabe's Controversies and Britain's Responsibility*, PAMBAZUKA NEWS (Apr. 14, 2016), <https://www.pambazuka.org/land-environment/zimbabwean-land-reform-between-mugabe-s-controversies-and-britain-s> (discussing whether President Mugabe and the British government should share responsibility for the economic issues in Zimbabwe).

162. See *id.* (describing how the Zimbabwean government amended the constitution to permit compulsory land acquisitions).

163. Simon Coldham, *The Land Acquisition Act, 1992 of Zimbabwe*, 37 J. AFR. L. 82, 82 (1993); see also Sam Moyo, *The Political Economy of Land Acquisition and Redistribution, 1990–1999*, 26 J. S. AFR. STUD. 1, 12 (2000) (noting the Land Acquisition Act had potential to achieve massive redistribution).

164. See Moyo, *supra* note 1, at 33 (describing how the impact of the litigation caused the state to hesitate in using its newly acquired expropriation powers).

165. Selby, *supra* note 1, at 7.

166. See *id.*, at 13 (describing how the inflammatory rhetoric of race and revolution caused friction between the two governments).

167. See *id.* (citing the politicization of the land redistribution as the reason Western businesses did not want to invest in Zimbabwe); see also Peter Greste, *Why Mugabe is Deaf to the West*, BBC NEWS (Apr. 15, 2008), <http://news.bbc.co.uk/1/hi/world/africa/7349166.stm> (discussing Mugabe's distrust for the West and his belief that Africans should be in control of shaping their destinies).

168. See Selby, *supra* note 1, at 14.

169. *Id.*

relationship.¹⁷⁰ In the early 1990s, technocratic neoliberals within the government staved off the political momentum of Black farmers and war veterans who wanted to move toward compulsory Land Reform.¹⁷¹ Such Land Hungry individuals worked to maintain the status quo under which the Zimbabwean Government continued to treat white farmers as a protected class, prioritized reconciliation with the white farming community, and refused to focus on redistributive justice for the Land Hungry.¹⁷² Government agents often worked to promote initiatives that were friendly to the West.¹⁷³ However, those who took moderate stances on land acquisition were perceived by Black Zimbabweans as thwarting its success.¹⁷⁴ This observation is not without merit because, during Phase II, only 20,000 families were resettled.¹⁷⁵ Absent the leverage of British funds, keeping the Zimbabwean technocratic neoliberals in positions of power within the government was critical to maintaining British dominance over the land issue.

3. Phase III: Great Britain's Broken Promise to Re-Subsidize Land Reform, Its Diplomatic Blunder, and Zimbabwe's People-Led Movement to Full Sovereignty over Its Land

The decline in influence of the technocrats and neoliberals, the broken international agreement by Great Britain to continue paying for Land Reform, and the diplomatic blunders propagated by Great Britain caused Black Zimbabweans to increase protests against their state's inability to realize their right to self-determination.¹⁷⁶ In response, the Zimbabwean government replaced the "willing seller, willing buyer" program with compulsory Land Reform without compensation.¹⁷⁷

In 1997, the efforts of the war veteran-led peasant land occupation "forced the state and President Mugabe to the negotiation table."¹⁷⁸ The parties agreed that the state would confiscate commercial farms belonging to white owners and distribute them to the Land Hungry—with war veterans receiving 20%.¹⁷⁹ After white farmers stalled the land redistribution with litigation, war veterans led thirty land

170. *See id.* at 9 (discussing the repercussions of technocrats' waning influence).

171. *See, e.g.,* SCOONES ET AL., *supra* note 4, at 17 (discussing ZANU-PF's move from campaigning for compulsory land reform to embracing the "willing seller, willing buyer" policy after its election).

172. *See id.* at 14 (noting the history of technocratic land use planning in Zimbabwe and how Land Reform was seen in terms of these resettlement schemes).

173. *See, e.g.,* Selby, *supra* note 1, at 9 (examining how proposed recommendations that were supported by the World Bank and the British government were not implemented due to the declining power of the technocrats).

174. *See id.* at 10 (noting that moderates in the government were seen as part of the problem).

175. SCOONES ET AL., *supra* note 4, at 18.

176. *See* Sodomba, *supra* note 12, at 84 (describing how new ideologies and local orientation allowed peasants to join in the political fray).

177. *Id.* at 87–88.

178. *Id.* at 84.

179. *Id.*

occupations, “destroy[ed] the rural/urban divide,” and integrated poor Black laborers into the repossessed land.¹⁸⁰ Under the leadership of war veterans, peasants occupied farms that the government previously designated for acquisition, but no funding was available.¹⁸¹ To regain order, the state was compelled to start down a path of FTLRP.¹⁸²

Land hunger would subside, but not until after “ordinary people and War Veterans [had] resorted to vigorous protest and land occupation.”¹⁸³ By November 1998, those who occupied the farms had either been removed by the state or “moved voluntarily with promises that the land acquisition issues would be addressed in the new constitution.”¹⁸⁴ The war veteran land occupation movement was successful because of the “economic problems [of the state] and . . . the emergence of . . . the Movement for Democratic Change (MDC).”¹⁸⁵ This political landscape forced the ZANU-PF between a rock and a hard place—between the choices of losing control of the land occupation movement or losing political power to the MDC.¹⁸⁶ The ZANU-PF’s answer was to pass a constitutional amendment legalizing compulsory Land Reform, clearing the way for the FTLRP.¹⁸⁷ The institution of the FTLRP brought order to the otherwise disorganized and state-destabilizing war veteran-led land occupation movement.¹⁸⁸

1996 and 1997 were the most consequential years in Phase III of Zimbabwe’s Land Reform because Mugabe was forced to choose between policies that either maintained the status quo or delivered on the promise of Land Reform to the Land Hungry.¹⁸⁹ Mugabe was under the impression that Great Britain would continue subsidizing Land Reform.¹⁹⁰ John Major, the Conservative Party Leader and Prime

180. *Id.*

181. The government was unable to acquire land designated for acquisition “due to both litigation commenced by white farmers and to lack of will.” *Id.*

182. See *infra* notes 187–207 and accompanying text for a discussion on the FTLRP.

183. MATONDI, *supra* note 21, at 20.

184. *Id.*

185. *Id.* at 20–21; Lucky Asuelime & Blessing Simura, *The Movement for Democratic Change (MDC) and the Changing Geo-Political Landscape in Zimbabwe*, in *SELECTED THEMES IN AFRICAN POLITICAL STUDIES 71* (Lucky Asuelime & Suzanne Francis, eds. 2014) (explaining that the MDC is a political party that opposes the ways in which the ZANU-PF has implemented Land Reform). The MDC is currently the largest minority opposition party in Zimbabwe’s House of Assembly. Lynsey Chutel, *Zimbabwe’s Ruling Party Has Won a Majority in Parliament After a Historic Election*, QUARTZ AFRICA (Aug. 1, 2018), <https://qz.com/africa/1345588/zimbabwe-election-zanu-pf-wins-parliament-majority/>.

186. See MATONDI, *supra* note 21, at 21 (indicating how war veterans and peasants began to occupy land during the rise of the MDC, thereby putting the ZANU-PF in a fragile political position).

187. See *id.* at 21, 32 (describing the ZANU-PF’s struggle with disorganized land squatters, then detailing how it passed its compulsory land reform amendment).

188. See, e.g., SCOONES ET AL., *supra* note 4, at 24 (describing how the FTLRP added a new layer of process to land reform, despite being somewhat bogged down by political considerations).

189. See HOLLAND, *supra* note 106, at 230–32 (discussing how the British governmental transition impacted Land Reform in Zimbabwe).

190. See *id.* at 230 (describing how Mugabe insisted that the British continue funding the Land Reform program even though the British decided to cut off funding).

Minister of Great Britain, agreed to re-establish the Lancaster House Agreement and to subsidize land acquisition.¹⁹¹ According to Mugabe:

We hosted the Commonwealth here in 1991. We talked about [Land Reform] and he committed to review the matter. [John Major] sent a six-man team (from London) and did some great work . . . recommending that the fund be reinstated. He asked us to send a team to London to help restore it in June 1996. They made their own input and the package (offered by the British) was a very good one. We looked forward to it being implemented here. But, alas, Major was defeated by Labour.¹⁹²

The agreement died with the defeat of the Conservative Party.¹⁹³ This became evident to Mugabe when he received a letter from the Labour Party on November 5, 1997.¹⁹⁴ In the letter, Clare Short, the newly appointed Secretary of State for International Development, stated that Great Britain “d[id] not accept that it ha[d] a special responsibility to meet the costs of [Land Reform],” and that the new Labour government had no “links to former colonial interests.”¹⁹⁵ In the process of disregarding the moral and legal responsibility of Great Britain to Zimbabwe,¹⁹⁶ Short qualified her statement by saying, “[m]y own origins are Irish and as you know we were colonized not colonizers.”¹⁹⁷ The letter was widely regarded as a diplomatic blunder and contributed in aligning the moderate wings of the ZANU-PF to support compulsory Land Reform.¹⁹⁸ Tony Blair, British Prime Minister and Labour Party Leader, did not honor the agreement made by President Mugabe and former Prime Minister Major to continue the Accords, driving a diplomatic wedge between the two states.¹⁹⁹

Mugabe felt that Great Britain’s refusal to subsidize Land Reform “showed ignorance on the part of New Labour,” and that the Conservative Party was “much more mature” because they understood the international importance of “succeeding

191. *Id.*

192. *Id.*

193. See Maio, *supra* note 161 (describing how when Labour Party Leader Tony Blair became Prime Minister of Britain in 1997, he refused to carry out the agreement between Mugabe and former Prime Minister John Major).

194. See HOLLAND, *supra* note 106, at 230–31 (describing Mugabe’s receipt of the letter).

195. Selby, *supra* note 1, at 14.

196. In reference to Great Britain’s legal obligation, it is an established colonial transitional practice—as implied by international norms—that the outgoing colonial power leave its former colony in the best condition to assume sovereignty. For example, Belgium was excoriated by other European states for the condition in which it left the Congo as its outgoing colony. See, e.g., Nicole Hobbs, *The UN and the Congo Crisis*, YALE UNIV. HARVEY M. APPLEBAUM ‘59 AWARD 7 (2014) (quoting former undersecretary for Special Political Affairs for the U.N., Dr. Ralph J. Bunche, who stated: “‘No colonial people [. . .] was ever so ill-prepared for independence as the Congolese.’”).

197. Selby, *supra* note 1, at 14.

198. *Id.* at 15; see Blessing-Miles Tendi, *The Origins and Functions of Demonisation Discourses in Britain-Zimbabwe Relations (2000-)*, 40 J. S. AFR. STUD. 1251, 1255 (2014) (describing how the ZANU-PF’s interpretation of the letter laid the groundwork of justification for its subsequent land seizures).

199. See Maio, *supra* note 161 (opining that the FTLRP might never have been implemented if Blair had continued to subsidize Zimbabwean land reform).

and honouring both assets and liabilities.”²⁰⁰ Zimbabwe took the stance that “[Great Britain could] refuse their money but the land [was Zimbabwe’s] anyway.”²⁰¹ Within the same month of receiving Short’s letter, Mugabe proceeded under the powers of the LAA—he designated 1,471 farms for compulsory Land Reform under the criteria of “multiple and absentee ownership, dereliction or underutilisation and whether the farm bordered a communal area.”²⁰² Subsequently, 926 farms were signed for acquisition by the government.²⁰³ Unlike the “willing seller, willing buyer” program, the FTLRP focused on “poor, landless rural farmers from the communal areas, and potential entrepreneurial farmers.”²⁰⁴ However, Zimbabwe continued to engage in the “fair market value” approach to compensate the landowners, as it had agreed upon in the Lancaster House Agreement, to placate Great Britain and the West.²⁰⁵

In the midst of its deteriorating relationship with Great Britain and a constitutional referendum, Zimbabwe had to internally contend with the Land Hungry while undergoing wider political developments influenced by its “war veterans and empowerment leaders.”²⁰⁶ War veterans were instrumental in Zimbabwe gaining independence and had long disapproved of the “willing seller, willing buyer” land policy.²⁰⁷ They witnessed how this policy perpetuated the goals of land policies created under the defunct colonial Rhodesian state—to the point that the state considered white farmers a protected class.²⁰⁸ While those who benefited from racist colonial policies thrived in a neo-colonial landscape,²⁰⁹ many of these soldiers were relegated to live in the same marginal arable lands that they were forced to occupy in Rhodesia.²¹⁰ In 1999, war veterans began to occupy the land, and Mugabe—who was still disillusioned by the British diplomatic error of Clare Short—gave them support.²¹¹ According to Mugabe:

Our instructions (to the war veterans) were to take the farms but don’t use

200. HOLLAND, *supra* note 106, at 231.

201. *Id.*

202. SCOONES ET AL., *supra* note 4, at 20.

203. *Id.*

204. *Id.*

205. *Id.* at 22.

206. See Selby, *supra* note 1, at 22 (discussing how war veterans became more influential by dominating congressional proceedings and tipped the balance of power away from technocrats and in favor of radical alliances).

207. See Sodomba, *supra* note 12, at 80, 84, 88 (discussing how the war veterans ran a militant land occupation that President Mugabe eventually backed, causing the unification of social classes which strengthened the country as it sought sovereignty).

208. See SCOONES ET AL., *supra* note 4, at 14 (“[In the early 1980s], the new government played by the rules . . . and encourage[d] ‘reconciliation’ with the white farming community. White farmers were seen as a ‘protected species.’”).

209. See *supra* Section II.C.1 for a discussion of Zimbabwe’s racist land policies and their role in the state’s neo-colonial landscape.

210. *Id.*

211. See SCOONES ET AL., *supra* note 4, at 22–23 (discussing how the war veterans’ land invasions played a role in the Zimbabwean elections of 2000 because Mugabe supported them as retaliation against British refusal to fund Land Reform).

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anything and don't commit acts of violence. People said they should be arrested, they are trespassers, but we said no, we wouldn't arrest them . . . [W]e started . . . removing the war veterans where we felt they needed to be removed, and legalising the process. So that then became the point of departure between us and the Labour government.²¹²

Although scholars debate whether this was a laborer—or war veteran-led movement,²¹³ the government of Zimbabwe followed the lead of its people.²¹⁴ Both war veterans and landless laborers were “motivated by a genuine desire to achieve the promises of the liberation war.”²¹⁵

In January 2000, Mugabe proposed a clause that would complement previous amendments to Zimbabwe's Constitution.²¹⁶ The clause affirmed that Great Britain “ha[d] an obligation to pay compensation for agriculture land compulsorily acquired,” and if they did not pay, “Zimbabwe [would have] no obligation to . . . compensat[e]” the farmers.²¹⁷ Although this proposed clause failed,²¹⁸ in April 2000, the Zimbabwe parliament passed an amendment to section 16,²¹⁹ which would clear the way for constitutional compulsory Land Reform with compensation.²²⁰ The amendment only required the state to compensate non-native farmers who acquired land before the effective date of section 295 for improvements made to the land.²²¹ With the FTLRP as a tool, the government could “redress historical settler-colonial land dispossession and the related racial and foreign domination, as well as the class-based agrarian inequalities which [Rhodesian] minority rule promoted.”²²²

The purpose of the FTLRP was to shift the power of the land revolution from

212. HOLLAND, *supra* note 106, at 232.

213. SCOONES ET AL., *supra* note 4, at 23.

214. See MATONDI, *supra* note 21, at 19–20 (describing how pressure from the peasant and war veteran land occupations led the government to fast-track land policies in their favor).

215. SCOONES ET AL., *supra* note 4, at 23.

216. Kriger, *supra* note 11, at 70.

217. *Id.* at 70.

218. The clause failed because of low voter turnout and because white farmers had mobilized their workers against it. Additionally, those who voted had not been swayed by the ZANU-PF's attempt to pass a referendum that addressed land reform concerns but did not address overreaching presidential powers. *Id.* at 71.

219. The Amendment constitutionalized compulsory Land Reform for the purposes of defense, public safety, public order, public morality, public health, or town and country planning or in order to develop or use that or any other property for a purpose beneficial to the community. CONSTITUTION OF ZIMBABWE: AMENDMENT (No. 20) Mar. 16, 2013, Ch.4, 71(3)(b)(i)-(ii) [hereinafter Amendment 20], available at http://www.parlzim.gov.zw/images/documents/Constitution-of-Zimbabwe-Amendment_No_20_-_14-05-2013.pdf.

220. See Kriger, *supra* note 11, at 71 (“The [amendment provides] that where agricultural land is compulsorily acquired . . . the obligation to pay compensation for land lies with Britain as the former colonial power.”).

221. CONSTITUTION OF ZIMBABWE: AMENDMENT (No. 20) Mar. 16, 2013, Ch.4, 72(3)(a)–(c), available at http://www.parlzim.gov.zw/images/documents/Constitution-of-Zimbabwe-Amendment_No_20_-_14-05-2013.pdf.

222. Moyo, *supra* note 1, at 29.

the war veterans to the government.²²³ The FTLRP was not perfect in its infancy but continued to improve after it became official state policy.²²⁴ At the outset, the FTLRP was characterized by the occupation of farms by war veterans and peasants, pre-amendment constitutional challenges to land redistribution from farmers, violence between farmers and those occupying the land, and negotiations geared toward sharing the land.²²⁵ As a first step to control the FTLRP, the state created District Land Committees (DLCs) to oversee the apportionment of land.²²⁶

By mid-2008, land allocations tapered off and the FTLRP stabilized; however, some suggest that the program was “not free of corruption.”²²⁷ Although this may be true, contrary to dissenting views,²²⁸ corruption did not invalidate the overall importance and significance of the FTLRP because it “broadly benefited the masses and showed progress in terms of the numbers of people moved into the resettlement areas.”²²⁹ This accomplishment was despite a concerted effort by the West to stop the redistribution of land through the economic alienation of Zimbabwe.²³⁰ By 2009, 13 million of the 15 million hectares of land owned by the 6,000 white settler farmers in 1980 had been formally transferred to over 240,000 Black African families under the “willing seller, willing buyer” regime.²³¹

Although Zimbabwe initially succumbed to British pressure to cede some of its sovereignty away at the Accords, the implementation of the FTLRP signified that the government finally acted in accordance with the wishes of its people to actualize their rights to self-governance and self-determination—to finally be free from British interference.

223. Sodomba, *supra* note 12, at 95.

224. As Zimbabwe regained control of land redistribution out of the hands of non-state actors and formally implemented FTLRP, many who transitioned to resettlement are either doing well or have the potential to do well in creating a livelihood. The new resettlements have attracted populations of younger people with more diverse skill sets and more connections than those in older resettlements. SCOONES ET AL., *supra* note 4, at 59–64, 70, 76. Counter to the prevailing narrative that investment in the land has been negligible, the residents of resettlements have themselves invested substantially. *Id.* at 77, 91–92; see Kevin Sieff, *Zimbabwe’s White Farmers Find Their Services in Demand Again*, GUARDIAN (Sept. 25, 2015), <https://www.theguardian.com/world/2015/sep/25/zimbabwe-land-reforms-mugabe-white-farmers> (discussing Black farmers hiring white farmers to help farm the land).

225. See Moyo, *supra* note 1, at 34–35 (discussing the first phase of the implementation of the FTLRP and the responses from various social and political groups across the state).

226. *Id.* at 35.

227. *Id.* at 37.

228. See MATONDI, *supra* note 21, at 74 (discussing that those who argue that the FTLRP substantially benefited cronies are relying mostly on the media, not empirical data); see also Tendai Chari, *Media Framing of Land Reform Zimbabwe*, in LAND AND AGRARIAN REFORM IN ZIMBABWE: BEYOND WHITE–SETTLER CAPITALISM 291–329 (Sam Moyo & Walter Chambati eds., 2013) (illustrating how British media successfully diverted its country’s responsibility to its former colony by evoking sympathy from a predominate white international audience for the white farmers).

229. MATONDI, *supra* note 21, at 90.

230. See *infra* Section III.A.4 for a discussion of the ways in which Western actors imposed sanctions on Zimbabwe after its move to the FTLRP.

231. Moyo, *supra* note 1, at 42.

III. EXPLORING INTERNATIONAL AND HUMAN RIGHTS JUSTIFICATIONS FOR ZIMBABWE'S COMPULSORY LAND REFORM POLICIES

A. *Zimbabwe's International Legal Rights to Sovereignty and Self-Determination*

The issue of Land Reform is not unique to Southern Africa but is one that affects the whole world. Approximately a quarter of the world's population is landless, with 200 million people living in rural areas.²³² Generally, in Sub-Saharan Africa, many states have turned to “decentralisation [of] land management” policies—some of which predate land norms propagated through the colonialization and marginalization of native Black Africans.²³³ These policies empower “local institutions” and “customary chiefs” to be the primary nexus point for “land conflict management” and the “delivery of secure land rights.”²³⁴ This section looks to established international norms and law to analyze the role that Land Reform plays in state sovereignty, human rights, and Western aggression.

1. U.N. General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples

Although land is understood as a tool for furthering other rights, no explicit international legal right to land exists.²³⁵ The issue has been considered by the United Nations (U.N.) in many documents and instruments, as well as analyzed within the framework of established international principles.²³⁶ Great Britain breached the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (GICCP Resolution) when it decided to write the Lancaster Constitution in a way that disrupted Zimbabwe's people's “inalienable right to complete freedom,

232. UN-HABITAT & GLOBAL LAND TOOL NETWORK, *SECURE LAND RIGHTS FOR ALL* 4 (2008), <https://unhabitat.org/books/secure-land-rights-for-all/>.

233. *Id.* at 32.

234. *Id.* (internal quotations omitted). Currently, Zimbabwe's FTLRP policies are anything but decentralized land policies, but through its constitution, the rights and use of the land is facilitated by the national government. *See Moyo, supra* note 1, at 34–35 (discussing how the FTLRP was designed to seize land takings from peasants and war veterans and place them back into the hands of the national government).

235. Elisabeth Wickeri & Anil Kalhan, *Land Rights Issues in International Human Rights Law*, INST. FOR HUM. RTS. & BUS. 1 (2010), available at https://www.ihrb.org/pdf/Land_Rights_Issues_in_International_HRL.pdf.

236. *Id.* at 2–7; *see also* U.N. Conference on Human Settlements, May 31 – Jun. 11, 1976, *The Vancouver Declaration on Human Settlements*, ¶ 4, U.N. Doc. A/CONF.157/23 (Jun. 11, 1976) (“Noting that the condition of human settlements largely determines the quality of life, the improvement of which is a prerequisite for the full satisfaction of basic needs, such as employment, housing, health services, education, and recreation.”); *see also* Food and Agriculture Organization of the U.N., *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, 127th Session of the FAO Council (Nov. 2004), <http://www.fao.org/3/a-y7937e.pdf> (detailing efforts by the FAO Council to address lack of adequate food and water sources throughout the world due to lack of international rights to land).

the exercise of their sovereignty[,] and the integrity of their national territory.”²³⁷ The defense of state sovereignty in the context of the GICCP Resolution does not end with simply the granting of independence from a colonial master onto its colony, but requires the taking of:

Immediate steps . . . in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.²³⁸

With the passage of the GICCP Resolution, the U.N. intended “to bring about decolonization with the consent of the colonial powers and without prejudice to each state’s sovereignty.”²³⁹ Here, the first half of this was completed when Great Britain granted Zimbabwe its independence.²⁴⁰ However, Britain prejudiced Zimbabwe’s sovereignty by taking affirmative steps to make its independence subject to an agreement that atrophied the emerging state’s ability to control its land.²⁴¹ In violation of the GICCP Resolution, Great Britain’s actions were an “attempt aimed at the partial . . . disruption of [Zimbabwe’s] national unity and . . . territorial integrity.”²⁴² The GICCP Resolution was built upon the fundamental principles of “equal rights and self-determination of all peoples,” and any former colonial master who attempts to tacitly or explicitly subvert the resolution breaches its mandate.²⁴³

237. Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (XV), ¶ 11, U.N. Doc. A/RES/1514(XV) (Dec. 14, 1960) [hereinafter GICCP Resolution]; see Henry J. Richardson III, *Failed States, Self-Determination, and Preventative Diplomacy*, 10 TEMP. INT'L & COMP. L.J. 1, 41 (1996) (“The right of self-determination of peoples remains as authoritative as international *jus cogens*. Not only has there been no limiting of the right under law, but the right has expanded and continues to do so.”); see also Henry J. Richardson III, *The Danger of the New Legal Colonialism*, 104 AM. SOC'Y INT'L PROC. 393, 394 (2010) (discussing how the post-World War II decolonization movement fostered for post-colonial peoples the right of self-determination, which became *jus cogens*); see also Solomé Ponsin, *The Right to Self-Determination in International Law: Basics and Critics*, U.N. UNIV. FOR PEACE (2016–2017), <http://old.upeace.org/uploads/file/Salome%20Ponsin-Self-Determination%20in%20International%20Law.pdf> (discussing how the GICCP has become a right *jus cogens* in international Human Rights Law); see generally Edward McWhinney, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, U.N. AUDIOVISUAL LIBRARY OF INT'L L. (2008), http://legal.un.org/avl/pdf/ha/dicc/dicc_e.pdf.

238. GICCP Resolution, *supra* note 237, ¶ 17.

239. Nate Beal, *Defending State Sovereignty: The I.C.J. Advisory Opinion on Kosovo and International Law*, 21 TRANSNAT'L & CONTEMP. PROBS. 549, 558 (2012).

240. See Carver, *supra* note 10, at 70 (describing the formation of Zimbabwe’s independence settlement with Great Britain).

241. Dancaescu, *supra* note 112, at 619 (discussing the limits the Lancaster House agreement placed on the Zimbabwean government’s ability to take land).

242. GICCP Resolution, *supra* note 237, ¶ 18.

243. *Id.*; see Henry J. Richardson III, *Self-Determination, International Law and South African Bantustan Policy*, 17 COLUM. J. TRANSNAT'L L. 185, 191 (1978) (“The principle of self-determination has existed . . . in . . . proximity to the principle of respect for territorial integrity and national unity, especially in that both concepts were clearly stated in the [GICCP Resolution].”).

2. U.N. General Assembly Resolution on the Permanent Sovereignty over Natural Resources

Land is one of Zimbabwe's most precious resources,²⁴⁴ and Great Britain's post-independence interference with Zimbabwe's enjoyment of the land breached international law.²⁴⁵ Two years after the passage of the GICCP Resolution, the U.N. General Assembly passed the resolution on the Permanent Sovereignty over Natural Resources (PSNR Resolution).²⁴⁶ The PSNR Resolution declares that "[t]he right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned."²⁴⁷ Great Britain stripped Zimbabwe of this right once it declared the "willing seller, willing buyer" policy a constitutional condition to the Accords.²⁴⁸ Critics of the use of the PSNR Resolution to support Zimbabwe's FTLRP are likely to argue that this resolution also is critical of land takings without compensation.²⁴⁹ The PSNR Resolution declares:

Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. *In such cases the owner shall be paid appropriate compensation*, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law.²⁵⁰

The argument that the white farmers should receive compensation depends on whether they owned the land under deracialized international normative legal principles and standards. The legal principle of *terra nullius*—as it was used by

244. See *Zimbabwe: The Economy*, ENCYCLOPEDIA BRITANNICA (last visited Sept. 19, 2018), <https://www.britannica.com/place/Zimbabwe/The-economy> (discussing how agriculture is a vital productive sector of Zimbabwe's economy because it generates about 15% of its GDP and employs over half its labor force); see CIA, *Africa: Zimbabwe*, THE WORLD FACTBOOK (last updated Aug. 22, 2018), <https://www.cia.gov/library/publications/the-world-factbook/geos/zi.html#Econ> ("Zimbabwe's economy depends heavily on its . . . agriculture sector."); see also MacDonald Dzirutwe, *Zimbabwe Takes Tobacco Road to Agriculture Recovery*, REUTERS (Apr. 16, 2015), <https://www.reuters.com/article/zimbabwe-tobacco/zimbabwe-takes-tobacco-road-to-agriculture-recovery-idUSL5N0XB1N720150416> (explaining that the current revitalization of the tobacco sector of Zimbabwe's economy, which has experienced a 235% increase in sales from 2009, is aiding in the growth and health of its economy).

245. See *supra* notes 238–44 and accompanying text for a discussion of Great Britain's breach of the GICCP Resolution.

246. Permanent Sovereignty Over Natural Resources, G.A. Res 1803 (XVII), U.N. Doc. A/RES/1803(XVII) (Dec. 14, 1962) [hereinafter PSNR Resolution].

247. *Id.*

248. See *supra* Section II.B.2 for a discussion of how Great Britain used its granting of independence to Zimbabwe as leverage to coerce the Patriotic Front to agree to non-compulsory Land Reform with compensation.

249. As discussed above, the FTLRP reverses the old Lancaster constitutional policy which forced Zimbabwe to pay white farmers market value for stolen land from Black Africans. See discussion *supra* Section II.C.3.

250. PSNR Resolution, *supra* note 246 (emphasis added), ¶ 4.

European colonizers—used Eurocentrically constructed markers, such as whether native Africans “were uncivilized by European standards, meaning they lacked organized government, written language, Christian religion, and diplomatic relations”²⁵¹ to legally sanction their conquest and theft of land from natives.²⁵² Conveniently, European powers created and framed their colonial conquests on this doctrine by illustrating that they held sovereignty over African land.²⁵³ However, the illegality of colonialism erases any presumed property possessory rights that flow from colonialism.²⁵⁴ Such racialized policies were antithetical to other well-established international legal affirmations.²⁵⁵ Thus, the globally recognized illegality of colonialism has removed any alleged right to compensation under the PSNR Resolution.

Furthermore, international law recognizes the Zimbabwean right to exercise its sovereignty over the land through the Convention 169 on Indigenous and Tribal Peoples (ITP Convention).²⁵⁶ Article 14 guarantees “rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy”²⁵⁷ The ITP Convention also grants the indigenous “rights . . . to the natural resources pertaining to their lands.”²⁵⁸ Although submissions were made to their respective governments for approval, Zimbabwe, Great Britain, and the United States have not ratified the ITP Convention.²⁵⁹

In 2007, the U.N. General Assembly adopted the Declaration on the Rights of Indigenous Peoples (DRIP),²⁶⁰ which, like the ITP Convention, states that “[i]ndigenous peoples have the right to the lands, territories[,] and resources which

251. *Terra Nullius*, BOUVIER LAW DICTIONARY (Wolters Kluwer Bouvier Law Dictionary Desk Ed. 2012).

252. See generally Charles Geisler, *New Terra Nullius Narratives and the Gentrification of Africa's "Empty Lands"*, 18 J. WORLD-SYSTEMS RES. 15 (2015).

253. See HERBST, *supra* note 18, at 72 (discussing how European countries colluded to serve their colonial interests by creating the Berlin Conference using *terra nullius* ideals).

254. See Chigara, *supra* note 35, at 307 (“[I]ndigenous populations enjoy the perpetual right of ownership of their land regardless of whether they are rich and powerful enough to defend it or poor and unable to fend off invaders.”).

255. For example, due to the frequent intersection of race and land rights in states, the International Convention on the Elimination of All Forms of Racial Discrimination seeks to protect individuals from racial discrimination so that they have “[t]he right to own . . . [and] inherit” land. International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), U.N. Doc. A/RES/2106(XX), art. 5(d)(v)-(vi) (Dec. 21, 1965).

256. This convention is an international legal instrument that relates to the land rights of indigenous people. Int’l Labour Org. [ILO], *Convention Concerning Indigenous and Tribal Peoples in Independent Countries* (Sept. 5, 1991) [hereinafter ITP Convention].

257. *Id.* art. 14.

258. *Id.* art. 15.

259. Int’l Labour Org. [ILO], *Submission of C169 - Indigenous and Tribal Peoples Convention* (Jun. 27, 1989), http://www.ilo.org/dyn/normlex/en/f?p=1000:13300:0::NO:13300:P13300_INSTRUMENT_ID:312314.

260. G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/295 (Sept. 13, 2007) [hereinafter DRIP].

they have traditionally owned, occupied[,] or otherwise used or acquired.”²⁶¹ To that end, DRIP also articulates that a state has “the right to redress, by means that include restitution or, when this is not possible, just, fair and equitable compensation”²⁶² Noticeably missing from both the ITP Convention and the DRIP is specific language that speaks to the rights of native Africans in postcolonial states to land stolen by former colonizers or the rights of expats who possess stolen land. However, one of the reasons for the adoption of the DRIP was a “[c]oncern . . . that indigenous peoples have suffered from historic injustices . . . and [were] dispossess[ed] of their [ancestral] lands, territories and resources[.]”²⁶³ Thus, the DRIP gives tacit support to restorative justice furthering Land Reform.

In protecting the ancestral land rights of Black African people, the international community may look to other legal standards,²⁶⁴ which often tie land rights to more well-established rights and normative moral regimes.²⁶⁵ For example, the international community has taken steps to curtail forced evictions. The U.N. defines forced evictions as “the permanent or temporary removal against their will of individuals, families[,] and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”²⁶⁶ However, forced evictions done by a state for good cause (e.g. “protecting lives”) are permissible as long as they are “in accordance with the law and in conformity with the provisions of international human rights treaties.”²⁶⁷ The U.N. classifies forced land evictions as either direct or indirect violations of human rights.²⁶⁸ As it relates to racial discrimination, the Committee Against Torture deems forced evictions to be “cruel, inhuman[,] and degrading treatment.”²⁶⁹ Thus, a state

261. *Id.* art. 26(1).

262. *Id.* art. 28.

263. *Id.* at 2.

264. *See generally* U.N. Human Rights Office of the High Commissioner, Land and Human Rights: Standards and Applications (2015), http://www.ohchr.org/Documents/Publications/Land_HR-StandardsApplications.pdf (discussing how indigenous people have codified rights into various documents) [hereinafter Land and Human Rights].

265. *See* Convention on the Elimination of All Form of Discrimination Against Women art. 15(2), 16(1)(c)(h), Sept. 3, 1982, 1249 U.N.T.S. 13 (compelling states to grant women the same legal rights of ownership, acquisition, and maintenance of land).

266. U.N. Human Rights Office of the High Commissioner, Forced Evictions: Fact Sheet No. 25/Rev.1, at 3 (2014) <http://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf> [hereinafter Forced Eviction Fact Sheet].

267. *Id.* at 5.

268. *Id.* at 5–6; *see also* G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, U.N. Doc. A/RES/2200A(XXI), art. 6(1), 7, 17 (Dec. 16, 1996) (granting international citizens the right to life, freedom from harsh and degrading treatment, and non-interference with privacy and home); *see also* G.A. Res. 217 (III) A, Universal Declaration of Human Rights, U.N. Doc. A/RES/217(III), art 17 (Dec. 10, 1948) (recognizing the universal right to property).

269. *See* Forced Eviction Fact Sheet, *supra* note 266, at 8; *see also* Comm. Against Torture, Rep. on its 41th and 42nd Sess., Nov. 3–21, 2008 and Apr. 27–May 15, 2009, U.N. Doc. A/64/44 1, 49 (2009) (“[T]he lack of access to land, paired with other social and economic injustices [are

may include the removal of possessors of stolen land to further Land Reform for good cause.

Accordingly, Zimbabwe's right to redistribute land stolen by colonizers from its Black African populace is supported by substantial international legal rights, principles, and mechanisms. The Black African populace can assert that rights of *jus cogens*,²⁷⁰ the principle of the illegality of colonialism, and the illegality of land theft propagated by racist colonial acts and policies provide legal justification for its right to redistribute land.²⁷¹

3. The Impact of British Empowered Zimbabwean State Actors Operating to Nullify Zimbabwe's Sovereignty and Right to Self-Determination

Great Britain's unwillingness to grant Zimbabwe its independence without retaining control over land policies empowered Zimbabwean state actors to maintain Britain's perpetual colonial hold on their land and resources.²⁷² The following discussion briefly illustrates how Great Britain's attempt to limit Zimbabwe's legal right to sovereignty over its land was, for a time, successful—to the detriment of the Black African population.

For much of Zimbabwe's history, even before its founding as a nation-state, white farmers had an interest in maintaining colonial racist land policies, and their actions illustrated a concerted effort to undermine attempts at restorative justice.²⁷³ In the 1980s, Zimbabwe based its official Land Reform policy on the economic and politically advantageous market-based approach.²⁷⁴ Further, out of an unwillingness to disrupt the vestiges of colonial white settlers' state-sponsored monopoly over the land, Zimbabwe reinstated previous discriminatory policies.²⁷⁵

White farmers intended to influence the Zimbabwean government's stance on Land Reform by emphasizing its pre-independence roots and maintaining the status quo.²⁷⁶ However, white farmers did not have to exert much political pressure on the government due to the constitutional constraints Great Britain put in place and the

considered precursors] to torture and violence.”).

270. See *Jus Cogens*, CORNELL WEX LEGAL DICTIONARY, https://www.law.cornell.edu/wex/jus_cogens (last visited Sept. 19, 2018) (“fundamental, overriding principles of international law.”).

271. See *supra* note 229 and accompanying text for a discussion of the prevalence of *jus cogens* in Zimbabwe's self-determination struggle against its former colonizer, Great Britain.

272. See Selby, *supra* note 1, at 15–16 (describing how early land reforms continued to perpetuate racial disparities).

273. See, e.g., PALMER, *supra* note 38, at 136–37 (describing how white Rhodesians and European farmers pushed for segregation on the supposed basis of easing racial tensions).

274. See Moyo, *supra* note 1, at 32–33 (describing how the market-based approach was implemented for land reform during the 1980s).

275. See SCOONES ET AL., *supra* note 4, at 14–16 (describing how the market-based land reform program perpetuated discriminatory, colonial land policies).

276. The Rhodesian National Farmers Union (RNFU), which became the Commercial Farmers Union (CFU) after independence, was a powerful, resource rich, and extremely organized white farmer political group whose purpose was to further the economic interest of land domination in Zimbabwe. HERBST, *supra* note 57, at 39–40.

new state's lack of organizational capacity to resettle Zimbabweans.²⁷⁷ In the 1990s, while disregarding the political reality in Zimbabwe, white farmers often lobbied and "sought to prove their high productivity while caricaturing black agriculture as economically unviable and environmentally destructive"²⁷⁸ White farmers used this tactic to invalidate Black African native farmers and projected this message as a tool to garner international support as compulsory Land Reform gathered momentum.²⁷⁹

Land hunger, technocrats, neo-liberals, white farmers, and constitutional constraints all stood as barriers to successful Land Reform.²⁸⁰ Land Reform was designed and executed by "agricultural technocrats of the old Rhodesian institutions" in the 1980s to the mid-to-late 1990s.²⁸¹ Technocrats were responsible for the implementation of policies that were antithetical to the spirit behind the war for liberation.²⁸² The implementation of the "willing seller, willing buyer" market-based approach, infused with the principles of "capability, . . . productivity, . . . and . . . efficiency" replaced the original intent of the state to "return . . . lost lands" to the Black African populace.²⁸³ Under the guise of the neo-liberal prediction that this approach would spur foreign investment and job creation, technocrats and white farmers pushed a Land Reform agenda in which Land Reform was "perceived as almost unnecessary."²⁸⁴ The technocrats, together with farmer unions, lost influence on Land Reform policy,²⁸⁵ as the Black sectors of the economy failed to thrive.²⁸⁶

As the Land Hungry began increasing pressure on the state to further their land policies,²⁸⁷ white landowners fought to stop the tide of compulsory Land Reform

277. *See id.* at 56–57 (describing how white farmers exercised their political power by affecting the atmosphere of the land reform debate and benefiting from the relative disorganization of the government).

278. MATONDI, *supra* note 21, at 7.

279. *See id.* at 8 (arguing that the technical statements by white farmers on use of agricultural land created a perception among the international community that unfairly prejudiced Black African farmers).

280. In addition to equitable redistribution of land back to the native population, the Shona—who number approximately 80% of the population—have a spiritual relationship with the land, and the white farmers represented an extended disruption between the people, and the land. HERBST, *supra* note 57, at 41.

281. Marleen Dekker & Bill Kinsey, *Contextualizing Zimbabwe's Land Reform: Long-Term Observations from the First Generation*, 38 J. PEASANT STUD. 995, 995–96 (2011).

282. Compare Frontani & Davis, *supra* note 98, at 54–55 (arguing that the war of liberation was in response to system racialized land oppression that began in the 1890s), with SCOONES ET AL., *supra* note 4, at 14–15 (discussing how technocrat Dennis Norman, former president of the Rhodesian National Farmers Union, became the first Minister of Agriculture in Zimbabwe).

283. Moyo, *supra* note 159, at 4.

284. *Id.*

285. *Id.* at 8–9.

286. *See supra* Part II.C.2 for a discussion on the fraying of Great Britain's influence and Zimbabwe's exercise of its sovereignty over its land and law.

287. *Id.*

with legal challenges.²⁸⁸ For example, holders of rural land challenged compulsory Land Reform's momentum, albeit with mixed results.²⁸⁹ Although constitutional challenges were mostly procedural in nature,²⁹⁰ the CFU-led white farmers increasingly sought legal recourse to combat the momentum of Land Reform—eventually to their detriment.²⁹¹ Zimbabwe eventually exercised its sovereignty and passed an amendment to Section 16 of the State's Constitution in 2000 that legalized compulsory Land Reform without compensation.²⁹² Subsequently, some of the white farmers stayed and worked for the new occupants of the land, some fled, and few remained.²⁹³

As a result, the post-liberation political economy in Zimbabwe evolved so that the once-powerful white farmers would become unable to influence the government.²⁹⁴ Great Britain's attempt to maintain control of land policy during post-Zimbabwe independence buckled under the weight of the insatiable land hunger of Black Africans.²⁹⁵ In fact, English efforts to rely on the Lancaster Constitution to protect their colonial possessory right to the land, in part, hastened the implementation of the FTLRP.²⁹⁶

288. See Kriger, *supra* note 11, at 69–70 (discussing how white farmers used court challenges to stymie compulsory Land Reform).

289. See Gino J. Naidi, *Constitutional Challenge to Land Reform in Zimbabwe*, 31 CILSA 78, 84 (1998) (discussing an unsuccessful constitutional challenge to the application of the Land Reform Act of 1992); see also Selby, *supra* note 1, at 8 (noting that farmers, led by the CFU, filed 1,200 appeals against land listed for compulsory acquisition); see also, e.g., *Davies v. Minister of Lands, Agriculture and Water Development* 1996 (9) BCLR 1209 (ZS) (demonstrating an unsuccessful constitutional challenge to the Land Reform Act of 1992).

290. The procedural guarantees in the 1990 amendment of section 71 require the government to: (1) “give reasonable notice of the intention to acquire” land; (2) “pay fair compensation for acquisition before or within a reasonable time”; and (3) “if acquisition is contested,” it can be appealed to the Zimbabwean Supreme Court.” CONSTITUTION OF ZIMBABWE AMENDMENT (No. 20) Mar. 16, 2013, SR 72 (Zim.) § 71(3)(c).

291. See Selby, *supra* note 1, at 6–7 (demonstrating that despite warnings that legal challenges could cause the government to amend the constitution, the CFU, representing the white farmers, elected to pursue its grievances with Land Reform in court, rather than in the political arena).

292. Amendment 20, *supra* note 219.

293. E.g., Kevin Sieff, *Zimbabwe's White Farmers Find Their Services in Demand Again*, GUARDIAN (Sept. 25, 2015, 8:00 AM), <https://www.theguardian.com/world/2015/sep/25/zimbabwe-land-reforms-mugabe-white-farmers> (discussing how Black African farmers have begun hiring white farmers). *But see* Tinashe Mushakavanhu, *Mugabe is Asking Back the White Farmers He Chased Away*, QUARTZ AFR. (July 20, 2015), <https://qz.com/458137/mugabe-is-asking-back-the-white-farmers-he-chased-away/> (reporting that some farmers were asked to return and that fewer than 300 white farmers remain in Zimbabwe).

294. See *supra* Part III.A.3 for a discussion on the evolution and diminution of power held by white farmers in the post-liberation Zimbabwean political economy.

295. *Id.*

296. See *supra* Part III.A.1 for a discussion of the British reliance on the Lancaster Constitution and the consequences for implementing the FTLRP.

4. British and Western Punishment in Response to Zimbabwe's Move to Break the Chains of Post-Colonial Sovereignty Limiting Land Policies

After witnessing the Black African populace exercise their collective sovereignty and right to self-determination through their government, Western states engaged in a series of international acts designed to punish and dissuade Zimbabwe from continuing its FTLRP.²⁹⁷ The European Union (E.U.) took punitive measures against Zimbabwe's FTLRP by imposing an: "embargo on arms and related [material]; ban on exports of equipment for internal repression; ban on provision of certain services; restrictions on admission [to the E.U.]; freezing of funds and economic resources," all of which expired on February 20, 2017.²⁹⁸ The E.U.'s coercive measures have deleteriously impacted Zimbabwe. As of April 2013, Zimbabwe acknowledged a decline in its ability to fight preventable diseases, an increase in infant mortality rates, and a decreased ability to fight HIV.²⁹⁹ Other Western powers have also sought to use punitive measures to coerce Zimbabwe to abandon its FTLRP. In 2001, the United States passed the Zimbabwe Democracy and Economic Act (ZDER Act), "to support the people of Zimbabwe in their struggle to effect peaceful, democratic change, achieve broad-based and equitable economic growth, and restore the rule of law."³⁰⁰ The ZDER Act disallowed any "international financial institution" to grant Zimbabwe "any loan, credit, or guarantee."³⁰¹ In addition to the United States, Canada and Australia have passed coercive economic measures aimed to punish Zimbabwe's land program.³⁰²

Western punishment has also detrimentally impacted Zimbabwe's economy. According to a report by the Reserve Bank of Zimbabwe, economic, trade, financial, undeclared, and arrears triggered sanctions have had significant consequences on the economy.³⁰³ This report alleged that Multilateral Financial Institutions (MFIs), such

297. See generally Chigara, *supra* note 35, at 297–99 (discussing harmful actions Western nations took in response to Zimbabwe's FTLRP).

298. Restrictive Measures (Sanctions) in Force, 2016 O.J. 1, 113.

299. In 2013, at the U.N.'s Workshop on the Impact of Unilateral Measures in the Enjoyment of Human Rights, Zimbabwe stated that "a depletion of essential drugs in 73% of Zimbabwe's health facilities which led to an increase in infant mortality rate with at least 100 children dying every day with treatable diseases and at least eight Zimbabwean women dying every day while giving birth due to chronic underfunding of the health sector." Workshop on Unilateral Coercive Measures, *Zimbabwe's Intervention During the Workshop on the Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights* (Apr. 5, 2013), <http://www.ohchr.org/Documents/Events/WCM/Zimbabwe.pdf>. The Global Fund made it difficult and most of the times impossible for the country to scale up its HIV prevention programs by rejecting our application for funds for unspecified reasons. *Id.*

300. Zimbabwe Democracy and Economic Recovery Act of 2001, 115 STAT. 962 § 2 (2001) [hereinafter ZDER Act].

301. *Id.* § 4(c)(1).

302. See generally The Special Economic Measures (Zim.) Regulations Act, SOR/2008-248 (Can.) (detailing the special economic measures put into place regarding Zimbabwe); *Autonomous Sanctions Regulations 2011* (Cth) (Austl.) (describing sanctions and regulations promulgated by the Australian government).

303. See GIDEON GONO, RESERVE BANK OF ZIMBABWE, IMPACT OF SANCTIONS 3–4, ¶¶ 14–

as the International Monetary Fund (IMF) and the World Bank deviated from their original purpose, which was to “ensure international financial stability, through the provision of bridging finance to countries experiencing temporary Balance of Payments (BOPs) pressures.”³⁰⁴ After Zimbabwe’s shift to the FTLRP, MFIs began to stop supporting the state by way of BOPs.³⁰⁵ The IMF and World Bank would suspend “[BOPs]; . . . technical assistance; . . . voting and related rights by IMF; and [d]eclaration of ineligibility to access Fund resources.”³⁰⁶

Although the levy of sanctions alone may not have had a negative impact on direct investment,³⁰⁷ in the case of Zimbabwe, it may have stymied foreign direct investment (FDI).³⁰⁸ FDI’s influxes in the 1980s were on average \$8 million USD, to an average of \$95 million USD in the 1990s, to finally \$20.4 million USD in the 2000s.³⁰⁹ The Zimbabwe National Bank believes that Anglo-American countries have dissuaded their corporations from investing in Zimbabwe.³¹⁰ These actions created an economic shortfall, which led to shortages in fuel and imported raw materials.³¹¹ Further, non-governmental organizations (NGOs) play an important role in developing states,³¹² such as Zimbabwe. Here, the effects of these sanctions have created an environment in which NGOs have either withdrawn or stopped financing development in Zimbabwe.³¹³ Other mechanisms of the state’s ability to care for its people include agriculture, education, transportation, health sector, and child welfare.³¹⁴ Thus, Western punishment has had a substantial impact on

27, http://www.rbz.co.zw/assets/im_san.pdf [hereinafter Sanctions Report] (detailing the various sanctions levied upon Zimbabwe).

304. *Id.* ¶¶ 5–6. A BOPs is “a statistical statement that summarizes transactions between resident and nonresidents during a period.” INT’L MONETARY FUND, *What is the Balance of Payments (BOP)?*, <http://datahelp.imf.org/knowledgebase/articles/484330-what-is-the-balance-of-payments-bop> (last visited Mar. 9, 2018).

305. The IMF stopped supporting by way of BOPs in 1999, and the World Bank stopped in 2001. Up until that time, these multilateral financial institutions accounted for approximately \$1.9 billion USD in disbursements. Sanctions Report, *supra* note 303, at 5.

306. Sanctions Report, *supra* note 303, ¶ 41.

307. *See, e.g.*, Colin M. Barry & Katja B. Kleinberg, *Profiting from Sanctions: Economic Coercion and US Foreign Direct Investment in Third-Party States*, 69 INT’L ORG. 881, 906–07 (2015) (discussing that foreign direct investment substantially invests in some states, known as “sanction busters”); Farayi Gwenhamo, *Foreign Direct investment in Zimbabwe: The Role of Institutional and Macroeconomic Factors*, S.AFR. J. ECON. 211, 211–12 (2011) (discussing that FDIs can be a valuable tool of “technical progress” for developing states).

308. *See* Sanctions Report, *supra* note 303, ¶¶ 91–92.

309. *Id.* ¶ 93.

310. *Id.* ¶ 94.

311. *Id.* ¶ 95.

312. *See, e.g.*, Eric Benotsch et. al., *HIV Prevention in Africa: Programs and Populations Served by Non-Governmental Organizations*, 29 J. CMTY. HEALTH 319, 321 (2004) (discussing that NGOs play an important role in assisting African states with the prevention and treatment of HIV infections); Abigail Barr & Marcel Fafchamps, *The Governance of Non-Governmental Organizations in Uganda*, 33 WORLD DEV. 657, 659, 671 (2004) (“[I]nternational NGOs and donors are the life and blood of [domestic] Ugandan NGOs[.]”).

313. Sanctions Report, *supra* note 303, ¶ 30.

314. *See id.* ¶¶ 16–19 (detailing the other affected areas of the economy).

Zimbabwe's ability to engage in caring for the health and welfare of its people.

In sum, the imposed sanctions in response to Zimbabwe's Land Reform have crippled the state in many ways, while also exacerbating the problems it inherited from its colonial past in other ways. Furthermore, Great Britain's material breach of its agreement to subsidize and re-subsidize Land Reform urged Mugabe and the ZANU-PF to honor the promise they made to restore the land back into the hands of Black Africans.³¹⁵ Western actions have therefore played a large part in transforming Zimbabwe from the "breadbasket of Africa" to what some consider a "basket case."³¹⁶

B. Great Britain Breaches Its International Agreements with Zimbabwe

In addition to the previously discussed British intervention to limit Zimbabwe's sovereignty and its people's rights to self-determination, Great Britain also breached its international legal obligations to Zimbabwe.³¹⁷ The Accords should be considered a treaty, and the subsequent agreement by President Mugabe, on behalf of Zimbabwe, and Prime Minister John Major, on behalf of Great Britain, was a legally binding international agreement. Independence from colonialism should free post-colonial states from "European imperialist aggression, diplomatic pressures, military invasions, and . . . conquest."³¹⁸ Though independent in name, Zimbabwe is beholden to legal norms, institutions, and instruments which have constricted it from gaining autonomy, thereby undercutting its legitimacy at home and abroad.³¹⁹ Understanding this limitation on self-governance, Zimbabwe and other African states are forced to look toward established international legal norms to dole out restorative justice for their people. One such place to look is the Accords itself. One of the stated purposes of the Accords is to "discuss and reach an agreement on the terms of an Independence Constitution . . . and the parties to settle their difference by political means."³²⁰ All parties involved should have held an "expectation of performance that may not have accompanied the same commitment in a non-legal form."³²¹

315. See *supra* Part II.C.3 for discussion on Zimbabwe's response to Great Britain's broken promise to re-subsidize land reform.

316. Chigara, *supra* note 35, at 299; see also Ben Chigara, *Social Justice: The Link Between Trade Liberalisation and Sub-Saharan Africa's Potential to Achieve the United Nations Millennium Development Goals by 2015*, 26 NETH. Q. HUM. RTS. 9 (2008) (exploring the possible outcomes of WTO trade liberalization of sub-Saharan Africa).

317. See *supra* Part II.C.3 for a discussion on Zimbabwe's response to Great Britain's broken promise to re-subsidize land reform.

318. Ehiedu E. G. Iweriebor, *The Colonization of Africa*, AFRICANA AGE, <http://exhibitions.nypl.org/africanaage/essay-colonization-of-africa.html#intro> (last visited Sept. 25, 2018).

319. See *supra* Parts III.A.3–4 for a discussion on the continuing influence of colonialism on Zimbabwe despite freedom from British imperial rule.

320. Accords, *supra* note 103.

321. DUNCAN B. HOLLIS, THE OXFORD GUIDE TO TREATIES 17 (Duncan B. Hollis ed., 2012).

1. Great Britain Breaches the Accords

This subsection will discuss how the Accords were a legally binding international agreement between Great Britain and Zimbabwe, and how Great Britain breached its duty to pay for its prescribed Land Reform. Just as domestic law looks to create norms while balancing the interests of the state and the polity so that they can co-exist in a mutually beneficial space,³²² treaties and other international agreements also attempt to achieve this on a global scale.³²³ Article 2(1)(a) of the 1969 Vienna Convention on the Law of Treaties (VCLT) defines a treaty as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”³²⁴ Although international tribunals, states, and scholars widely accept this definition, it is “incomplete and underdeveloped” when discussing whether a treaty exists in all contexts.³²⁵ The VCLT created authoritative parameters, as opposed to a hard-and-fast bright-line rule for treaty formation and interpretation—giving parties the flexibility to create treaties that are not “one size fits all.”³²⁶ Like social contract theory,³²⁷ international agreements look to balance the interests of the parties concerned in a way in which the agreement is mutually beneficial.³²⁸

First, relying on the VCLT framework, the Accords were an “international agreement”³²⁹ because its creation “involve[d] mutuality” and “communication between multiple participants.”³³⁰ Here, the parties to the Accords included the Salisbury delegation and the Patriotic Front on behalf of Zimbabwe and Lord Carrington on behalf of Great Britain.³³¹ The purpose was to create a “normative

322. See, e.g., BRIAN Z. TAMANAHA, *A GENERAL JURISPRUDENCE OF LAW AND SOCIETY* 14, 20 (2010) (discussing how positive law maintains and perpetuates social order and creates the terms for the social contract between the state and polity).

323. See, e.g., CHARLES DE VISSCHER, *THEORY AND REALITY IN PUBLIC INTERNATIONAL LAW* 22–43 (1957) (discussing how the Treaties of Westphalia—which laid the foundation of the contemporary idea of nation-state—was agreed to by monarchs in order to create a sense of security and sovereignty amongst the signatories in order to create international norms); MARTIN DEDMAN, *THE ORIGINS AND DEVELOPMENT OF THE EUROPEAN UNION, 1945-1995, A HISTORY OF EUROPEAN INTEGRATION* 34–54 (1996) (discussing how post-World War II Europe opted to go the way of economic integration and cooperation through a series of agreements to promote peace and security amongst the European states).

324. Vienna Convention on the Law of Treaties art. 2(1)(a), *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].

325. HOLLIS, *supra* note 321, at 12.

326. See *id.* at 13 (discussing how treaties “vary by context” based on the purpose it is created).

327. See TOBY REINER, *Social Contract Theory*, *ENCYCLOPEDIA OF POLITICAL THEORY* 1287–93, (Mark Bevir ed., 2010) (ebook) (discussing the social contract theory as a mechanism in which individuals cede some of their freedom from the alleged state of nature for the protection of certain fundamental rights by the sovereign—or the state).

328. See, e.g., TAMANAHA, *supra* note 322 (noting that legal positivists view the “fundamental foundation of law to be the maintenance of social order”).

329. VCLT, *supra* note 324, art. 2(1)(a).

330. HOLLIS, *supra* note 321, at 20.

331. See *supra* note 97 and accompanying text for a discussion of the Accords.

commitment” or a “shared expectation of future behavior” between the participants.³³² The agreement on the eventual Constitution of Zimbabwe was central to the success of the conference.³³³ Great Britain’s interest in protecting the white settlers from compulsory Land Reform was apparent in their crafting of the Accords.³³⁴ Britain integrated its “willing seller, willing buyer” policy on its terms into Zimbabwe’s Independence Constitution.³³⁵ Although this policy was antithetical to the interests of the Patriotic Front and the Black Africans they represented, the Patriotic Front agreed to the British proposal on the condition that Great Britain promised to pay for Land Reform.³³⁶

Second, the Accords were “concluded among states.”³³⁷ The moment of conclusion is not governed by a bright line rule but “when the party adopts the treaty text or it is opened for their signature.”³³⁸ Though Zimbabwe was not yet a sovereign state on the date of signing, Britain agreed to its sovereignty, thus providing the same legal effect as an agreement among two sovereign states.³³⁹ Although “a signatory does not become a party to a treaty through signature alone[,]”³⁴⁰ Prime Minister Muzorewa and Lord Carrington, as “Head of government [and] Minister for Foreign Affairs [could] sign a treaty on behalf of the State.”³⁴¹ At best, the signatures of those parties to the conference could qualify as “simple signatures” which “creat[ed] an obligation, in the period between the signature and ratification, acceptance or approval, to refrain in good faith from acts that would defeat the object and purpose of the treaty.”³⁴²

Third, although the agreement for Great Britain to subsidize Land Reform was not “in written form,”³⁴³ and did not make it into the official constitutional conference report,³⁴⁴ international customary law may recognize oral agreements as being binding on the parties.³⁴⁵ The VCLT requires that a treaty be “governed by

332. HOLLIS, *supra* note 321, at 20.

333. See *supra* Part III.A.2 for a discussion on the aftermath of the Accords.

334. *Id.*

335. *Id.*

336. See *supra* Part II.B.2 for a discussion on the interests of the Patriotic Front and Black Africans.

337. VCLT, *supra* note 324, art. 2(1)(a).

338. HOLLIS, *supra* note 321, at 21.

339. As Secretary of State for Foreign Affairs for Great Britain and chair of the conference, Lord Carrington, along with the Prime Minister of UDI Southern Rhodesia, Bishop Muzorewa, and the representatives of the Patriotic Front, Robert Mugabe and Joshua Nkomo signed the Lancaster House Agreement. Accords, *supra* note 103, at 2.

340. U.N. OFF. OF LEGAL AFF., TREATY HANDBOOK, at 5, U.N. Sales No. E.12.V.1 (2012).

341. *Id.* at 6, § 3.2.1.

342. *Id.* at 5, § 3.1.3.

343. VCLT, *supra* note 324, art. 2(1)(a).

344. Negotiations on the Accords required forty-seven plenary sessions, which lasted from September 10, 1979 to December 15, 1979 for all three parties to come to an agreement. Accords, *supra* note 103, at 1. The record of the entire conference was only forty pages. *Id.*

345. HOLLIS, *supra* note 321, at 23–24.

international law.”³⁴⁶ This is “the most important (and most controversial) part of a treaty”³⁴⁷ This requirement is not necessarily a component of the instrument in question, but it should be read as a repercussion of doing so.³⁴⁸ Furthermore, the intentions of the parties are the essential elements to whether an agreement is a treaty.³⁴⁹ Language intended to create an affirmative duty between the parties and the surrounding circumstances should be used to determine intent.³⁵⁰ Quite simply, without intent to create a treaty by both parties, one does not exist according to well-established international law norms.³⁵¹ However, parties to the Accords did intend to create affirmative duties between each other.³⁵² Great Britain desired to constitutionally limit the autonomy of Zimbabwe from engaging in compulsory Land Reform, knowing Zimbabwe was unwilling to pay for it.³⁵³

The Accords did not record the agreement on Land Reform and the discussions surrounding it.³⁵⁴ By not recording it, Great Britain and the United States could utilize an escape hatch to avoid their responsibility to subsidize Land Reform. Although the West came to admire Robert Mugabe as one of Africa’s most capable statesmen,³⁵⁵ at the time of the Accords, he and the other delegates opposite Great Britain lacked the negotiation skills and experience as compared to Lord Carrington and his delegation.³⁵⁶ Mugabe was not a seasoned and skilled negotiator well-versed in international law, but rather a former schoolteacher.³⁵⁷ This uneven distribution of experience between the named parties—with the lion’s share housed in Lord Carrington’s delegation—created the conditions in which an agreement was not recorded or signed.³⁵⁸ In fact, it was not until 1992 that Mugabe became aware “that [Great Britain’s and] America’s offer [to subsidize Land Reform] had never been committed to paper[.]”³⁵⁹ Although it is unclear whether this was a strategic execution of sharp negotiating by Great Britain, Mugabe perceived that he “had been

346. VCLT, *supra* note 324, art. 2(1)(a).

347. HOLLIS, *supra* note 321, at 25.

348. *Id.*

349. *Id.* at 26.

350. *Id.* at 27.

351. *Id.* at 26.

352. See *supra* Part III.B.1 for an argument on how Zimbabwe and Great Britain intended the Accords to create duties between one another.

353. See *supra* Part II.B.2 for a discussion on how Zimbabwe agreed to Great Britain’s proposals only after assurances that Britain and the United States would assist financially.

354. See VCLT, *supra* note 324, art. 2(1)(a) (defining a treaty as an agreement recorded in written form); see also *supra* note 331 and accompanying text for a discussion on the establishment that the Land Agreement was not recorded.

355. See Ann M. Simmons, *The Rise and Fall of Zimbabwe’s Longtime Leader: Robert Mugabe*, L.A. TIMES (Nov. 21, 2017, 4:05 PM), <http://www.latimes.com/world/africa/la-fg-robert-mugabe-timeline-20171121-story.html> (discussing how Robert Mugabe’s rise from being considered “one of Africa’s most promising statesman” to ousted leader of Zimbabwe).

356. DAVIDOW, *supra* note 81, at 33–41.

357. *Id.* at 47.

358. HOLLAND, *supra* note 106, at 132–33.

359. *Id.* at 133.

made a fool of, [and] tricked” by them.³⁶⁰ Perhaps it was a lapse in the Patriotic Front’s judgment “as well as the subsequent amnesia of the British and the Americans” that caused this failure to record the agreement to subsidize Land Reform in Accords.³⁶¹ Nevertheless, the parties made the agreement, and Great Britain breached its duty before Mugabe and the ZANU-PF resorted to compulsory land redistribution.³⁶² Despite never receiving the total agreed upon amount of money from Great Britain during Phase I and some of Phase II, Zimbabwe honored their side of the agreement in good faith and did not resort to full compulsory Land Reform.³⁶³

Accordingly, strong evidence supports that the Patriotic Front treated and viewed the agreement as legally binding on the autonomy of all parties involved.³⁶⁴ Great Britain orally offered to pay the white settlers for land redistribution for the consideration that Zimbabwe not engage in compulsory land grabbing, which the Patriotic Front accepted.³⁶⁵ Representatives of the three delegations approved and signed the agreement into the Accords, and it became enshrined and ratified in Zimbabwe’s constitution.³⁶⁶

The object and purpose of this agreement—to create and eventually ratify Zimbabwe’s constitution—would not have been possible if it did not ensure the Patriotic Front’s central cause, returning the land to the Black majority, in its creation.³⁶⁷ Without this, the Accords would not have succeeded, and the war for liberation would have continued—a war that the Patriotic Front was poised to win.

2. Great Britain Breaches Its Agreement to Continue Subsidizing Land Reform

Great Britain materially breached a second agreement with Zimbabwe.³⁶⁸ In

360. *Id.*

361. *Id.* at 134.

362. See *infra* Part IV for an analysis discussing how Land Reform caused a rift between the government and its people, because Zimbabwe, despite never receiving the agreed amount, in good faith honored their end of the agreement; see also Tapiwa M. Mabaye, *Land Reform in Zimbabwe: An Examination of Past & Present Policy, Shortcomings & Successes and Recommendations for Improvement*, 297c ETHICS DEV. IN A GLOBAL ENV'T 1, 7 (Spring 2005).

363. See VCLT, *supra* note 324, art. 26 (recognizing that a treaty creates a legal obligation to act in good faith which is binding on all treaty parties). See *supra* notes 185–97 and accompanying discussion for an analysis reiterating that Great Britain breached another agreement with Zimbabwe to subsidize Land Reform in 1996 after the New Labour Party defeated the Tories.

364. See *supra* Part II.B.2 for a discussion on the interpretation of the agreement by the Patriotic Front.

365. See *supra* notes 96–101 and accompanying text for a discussion on the oral agreement between Zimbabwe and Great Britain.

366. See *supra* notes 102–09 and accompanying text for a discussion on the acceptance of the agreement and ratification of the Zimbabwe Constitution.

367. See Chris McGreal, *The Trail from Lancaster House*, GUARDIAN (Jan. 15, 2002, 9:42 PM), <https://www.theguardian.com/world/2002/jan/16/zimbabwe.chrismcgreal> (discussing how return of land to Black Africans was central to Lancaster House negotiations).

368. See Maio, *supra* note 161 (discussing how Great Britain’s refusal to subsidize

1996, after its original agreement to pay for Land Reform lapsed, John Major, the Prime Minister of Great Britain, agreed to re-establish the Accords and to re-subsidize land acquisition with the ZANU-PF.³⁶⁹ In accordance to VCLT-created norms of recognized international legal agreements, the two sovereign states³⁷⁰ shared mutuality in the ultimate outcome of Land Reform in Zimbabwe and concluded the agreement.³⁷¹ Specifically, by continuing to subsidize the “willing seller, willing buyer” program, Great Britain protected the status quo of its colonial domination of land policy.³⁷² Like the original Accords, Zimbabwe ceded some of its right to self-sovereignty and its people’s right to self-determination.³⁷³ However, because Zimbabwe’s liberation did not affect the balance of the agreement, Great Britain lost the leverage it had under the Accords.³⁷⁴ Attempting to conform to Western perspectives, and in good faith, Zimbabwe detrimentally relied on Great Britain holding up its side of the agreement when it continued the “willing seller, willing buyer” program—a program that was widely unpopular with its population—until it was untenable.³⁷⁵

Great Britain breached the “willing seller, willing buyer” land policy that it previously advocated for in the Accords by failing to re-subsidize it. However, Great Britain argued that it did not have any responsibility to honor international agreements made by its Conservative Party and thus should not be held responsible for the deleterious impact of the colonial land policies on Black Zimbabweans.³⁷⁶ This proclamation of non-responsibility is antithetical to well-established norms of state succession and international agreements.³⁷⁷ International agreements are made amongst sovereign states—not amongst political parties for an individual party’s sake.³⁷⁸ The state actors who agreed to re-subsidize Land Reform acted with the authority to grant consent on behalf of their state.³⁷⁹ Further, international

Zimbabwe’s land purchase constituted a violation of the agreement).

369. *Id.*

370. *See* VCLT, *supra* note 324, art. 2(1)(a).

371. *See supra* notes 307–15 for discussion explaining that according to the VCLT framework, the Accords were an international agreement.

372. *See generally* MARK CURTIS, *THE NEW COLONIALISM: BRITAIN’S SCRAMBLE FOR AFRICA’S ENERGY AND MINERAL RESOURCES* 11–12 (2016) (explaining Britain’s efforts to promote and protect their interests in several African countries).

373. *See generally* Ray Bush & Morris Szeftel, *Sovereignty, Democracy & Zimbabwe’s Tragedy*, 29 REV. OF AFR. POL. ECON. 5, 7–9 (Mar. 2002) (explaining how the political shift in the country led to issues of sovereignty).

374. *Id.*

375. *See supra* Part II.C.3 for a discussion on the “willing seller, willing buyer” program.

376. *See supra* notes 183–91 and accompanying discussion on Great Britain’s failure to re-subsidize land reform and the repercussions it had.

377. *See, e.g.*, TREATY HANDBOOK, *supra* note 340, at 69 (defining the implications of withdrawing from an accepted treaty that has been entered into force).

378. *See id.* ¶ 5.3.3, at 30 (stating that an international agreement can be made by a sovereign state or international organization with treaty-making power).

379. *See supra* notes 190–95 and accompanying discussion on the agreement made by the Prime Minister of Great Britain in 1991, which was later abandoned by Clare Short of the Labour Party in 1997; *see generally* Duncan B. Hollis, *Why State Consent Still Matters – Non-State Actors, Treaties, and the Changing Sources of International Law*, 23 BERKELEY J. INT’L L. 137 (2005)

agreements would lose all their utility if a newly-elected party or state actor could unilaterally invalidate an agreement as easily as the New Labour Party did here with Zimbabwe.³⁸⁰ The New Labour Party attempted to distance itself from Great Britain's quasi-legal obligation to right the wrong of its sovereign nation-state's conquered colonial past—a past from which Great Britain continues to benefit.³⁸¹

Accordingly, Great Britain's unilateral termination of a completed international agreement between sovereign states constitutes a material breach.³⁸² Sovereign representatives of Great Britain and Zimbabwe, Major and Mugabe, concluded the agreement with the intent to compensate farmers for confiscated land.³⁸³ British Secretary of State for International Development Clare Short's subsequent repudiation was unlawful under the treaty succession doctrine because the agreement was between two sovereign states—not merely their immediate party administrations.³⁸⁴ Thus, Great Britain owes reparations to Zimbabwe, and this material breach gives Zimbabwe options for future lawful actions under the agreement and treaty law.³⁸⁵ As a consequence, Zimbabwe is no longer bound by an obligation to compensate white farmers—as was the object and purpose of this agreement—and may, therefore, act consistently with supporting human dignity amongst its Black African populace.³⁸⁶

C. Alleged Human Right Violations Based on Racism Against Whites

1. Erroneous Claims of Reverse Racial Discrimination

Racism is not the motivating factor fueling Zimbabwe and its people's quest for redistribution of land from white settlers back to the native Black African populace. Some in the West allege Mugabe's pro-African rhetoric serves as evidence of this allegation and that "racism" motivates the Land Hungry in their quest to restore the land to its original owners.³⁸⁷ These arguments do not take into consideration that Black land hunger in Zimbabwe preceded Mugabe's rise to

(arguing that there is an increase in states consenting to non-state actors' participation in treaties).

380. See generally *supra* note 188 and accompanying discussion for an explanation of why it is common practice for the outgoing colonial power to leave its former colony in the best condition to assume sovereignty.

381. See *supra* note 187 and accompanying discussion for an explanation of Great Britain's shirking of financial responsibility for Land Reform costs.

382. See VCLT, *supra* note 324, art. 45 (explaining the circumstances under which a state can no longer terminate a treaty).

383. See *supra* Part II.C.3 for a discussion on Great Britain's broken promise to subsidize Land Reform.

384. See, e.g., Vienna Convention on Succession of States in Respect of Treaties, Aug. 23, 1998, 1946 U.N.T.S. art. 8 (discussing treaty obligations of predecessor states).

385. See, e.g., Bruno Simma & Christian J. Tams, *Reacting against Treaty Breaches*, in THE OXFORD GUIDE TO TREATIES 576, 580–81 (Duncan B. Hollis ed., 2012) (discussing responses to a material breach of a treaty).

386. See, e.g., *id.* (discussing non-performance as a remedy for material breach).

387. See Chari, *supra* note 228, at 317–19 (explaining how Western media focused on deaths of white farmers but not on violence suffered by Black African victims).

power, by decades, and the hunger is motivated by Zimbabwe's white-racist colonial past—not on recent maturations of reverse racial discrimination.³⁸⁸ The West's selective media coverage during and after Phase III of Zimbabwe's Land Reform stoked cries of racism and human rights violations sanctioned by the state.³⁸⁹ Generally, when reporting on Africa, Western media outlets are often guided by their own national interests, rather than simply reporting the unbiased truth.³⁹⁰ For example, Western media outlets such as the BBC, New York Times, and CNN advanced an agenda that distorted human rights issues while “divert[ing] attention from the indebtedness of countries like Britain to Zimbabwe since Britain reneged on its pledge to subsidize Land Reform.”³⁹¹ Western media outlets focused on “ethnicisation” and framed its coverage as having “more sympathy . . . toward white victims of the land occupations, while [ignoring] black victims” of land theft and violence.³⁹²

The Southern African Development Community (SADC) Tribunal believed that the FTLRP was motivated by state-sponsored reverse racism against white farmers.³⁹³ A class of white farmers invoked Article 6(2) of the SADC Treaty³⁹⁴ and argued, “even if Amendment 17 made no reference to race and colour of the owners of the land acquired, that does not mean that the legislative aim is not based on considerations of race and colour”³⁹⁵ The Tribunal agreed and held that Zimbabwe “discriminated against the Applicants on the basis of race and thereby violated its obligation under Article 6 (2) of the Treaty.”³⁹⁶ In part, the Committee's holding was based on the misappropriation of the Committee on Economic, Social

388. See *supra* Part II.A and II.B.1 for discussions on British sanctioned land theft and the subsequent Lancaster Conference.

389. See Chari, *supra* note 228, at 316–18 (explaining that Western media blamed Zimbabwe's government for the violence).

390. *Id.* at 317.

391. *Id.*; see, e.g., *Court Back Zimbabwe Land Seizure*, CNN (Dec. 4, 2001, 8:10 AM), <http://www.cnn.com/2001/WORLD/africa/12/04/zimbabwe.ruling/>; Agence France-Presse, *Zimbabwe Presses Its Seizures of Farms*, N.Y. TIMES (Nov. 12, 2000), <http://www.nytimes.com/2000/11/12/world/zimbabwe-presses-its-seizures-of-farms.html>; Joseph Winter, *Zimbabwe's Large Farms Face Squeeze*, BBC NEWS (Jan. 6, 2000, 12:25 GMT), <http://news.bbc.co.uk/2/hi/africa/593053.stm>.

392. Chari, *supra* note 228, at 318.

393. See Gino J. Naldi, *Mike Campbell (Pvt) Ltd et al v the Republic of Zimbabwe: Zimbabwe's Land Reform Programme Held in Breach of the SADC Treaty*, 53 J. AFR. L. 305, 315–16 (2009) (explaining that the land reform program was discriminatory because it was only directed at white farmers).

394. SOUTH AFRICAN DEVELOPMENT COMMITTEE, *General Undertakings*, in CONSOLIDATED TEXT OF THE TREATY OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY 7 (1992), http://www.sadc.int/files/5314/4559/5701/Consolidated_Text_of_the_SADC_Treaty_-_scanned_21_October_2015.pdf (“SADC and Member States shall not discriminate against any person on the grounds of gender, religion, political views, race, ethnic origin, culture, ill health, disability, or such other grounds as may be determined by the Summit.”).

395. *Mike Campbell (Pvt) Ltd and Others v. The Republic of Zimbabwe*, No. 2/2007, Southern African Development Community (SADC) Tribunal, 43 (Nov. 28, 2008), <http://www.saflii.org/sa/cases/SADCT/2008/2.pdf> [hereinafter *Judgment*].

396. *Id.* at 54.

and Cultural Rights' definition of indirect discrimination on the basis of sex to the issue of racism in the implementation of the FTLRP.³⁹⁷

As noted above, allegations of racial discrimination can trigger prohibitive internationally established norms that, in effect, dispossess land from one group to another.³⁹⁸ By using this definition in the context of returning stolen land back to the Black population, the Tribunal, like Western media outlets, charged Zimbabweans and their government with "reverse racism."³⁹⁹ The Tribunal made these accusations while ignoring Great Britain's material breach of its responsibility to subsidize Land Reform twice.⁴⁰⁰ Reverse racism "impl[ies] that societal victims of racism would amass the wherewithal to impose racist actions, attitudes, or institutional structures to subordinate" the former oppressors of the victims "in the manner that people of color had traditionally been subordinated."⁴⁰¹ The assertion that the people-led repossession of stolen land from white farmers in Zimbabwe was done *because of* insidious or bigoted beliefs propagated against the white settlers ignores Zimbabwe's colonial struggle for political and land autonomy, especially when considering the Shona and Matabele's quest to restore the land to themselves.

Allegations of reverse racism—or insidious reverse discrimination—arose when other state actors of color implemented policies that attempted to restore formerly oppressed people to conditions preceding state-sponsored discrimination.⁴⁰² In fact, in many cases "electoral success does not translate into certain economic gains for racially underrepresented groups . . ."⁴⁰³ Unfortunately, the legacy of colonialism created the conditions for former oppressed Black populations to revolt against other Black groups that colonizers installed to rule and gave special privileges.⁴⁰⁴ For example, when colonial powers relied on segments of the native population to maintain order in their colonies, they relied on "Indirect Rule" by empowering native populations whose cultural norms could be used to

397. *See id.* at 51 ("Indirect discrimination occurs when a law, policy or programme does not appear to be discriminatory but has a discriminatory effect when implemented.").

398. *See supra* Part III.A.4 for a discussion on Western responses to Zimbabwe's attempts to rid themselves of post-colonial land policies.

399. Lawrence W. Young, Jr., *Reverse Racism*, in *KEY WORDS IN MULTICULTURAL INTERVENTIONS* 223 (Jeffrey S. Mio, et al. eds., 1999) ("Racism has been defined as any attitude, action, or institutional structure that subordinates people because of their color (see RA-CISM).").

400. *See supra* notes 183–91 and accompanying discussion on Great Britain's failure to re-subsidize land reform and the effects it had on Zimbabwe.

401. Young Jr., *supra* note 399, at 223.

402. *See generally* Felix Germain, "Presidents of Color," *Globalization, and Social Inequality*, 40 *J. BLACK STUD.* 445, 447 (2010).

403. *See id.* at 451 (explaining how the wealth gap and the amount of poor Black South Africans have grown under Nelson Mandela's reconciliatory policies, yet several white South Africans still argue that Black South Africans are unfairly advantaged by these policies). *But see id.* at 452, 453 (arguing that Evo Morales, Bolivia's first native born president, is furthering racist policies through his reconciliatory measures).

404. *See generally* MAHMOOD MAMDANI, *CITIZEN AND SUBJECT: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM* 48–52 (1996) (detailing the authoritarian conditions in colonial Africa that were designed to allow Great Britain to retain power).

facilitate their agenda, which often resulted in post-colonial rivalries among different Native African ethnic groups.⁴⁰⁵

In post-colonial states, irrespective of race, this occurrence planted the seeds of distrust and violence.⁴⁰⁶ This distrust does not arise out of racism but is based on the seeds and arrangements of dissension planted by colonial powers.⁴⁰⁷ Thus, in the case of Zimbabwe, the Black population's land hunger has not been stoked by racism, but rather by a yearning to return stolen land from white farmers back to its rightful owners through the mechanisms of the state.

2. There is No Human Right to Stolen Land

Zimbabwe's colonial history of forced land dispossession had a profound impact on the cultural and social foundations of the native population. The loss of land in Zimbabwe created two different economic classes of people overnight, hierarchically ordered with the native population at the bottom and the white settlers at the top.⁴⁰⁸ Like many other native populations in Africa, the native Zimbabweans' relationship to their ancestral land is spiritual⁴⁰⁹—its place in their culture informs their cosmological outlook of their existence.⁴¹⁰ For example, the Shona, who comprise 80% of the population in Zimbabwe,⁴¹¹ believe that “self[-]reliance is the ownership of natural resources . . . the most important being the land[, and] life comes from the land and its exploitation is essential for human social advancement.”⁴¹² Professor Bernadette Atuahene labeled this phenomenon as a “dignity taking,”⁴¹³ defined as follows:

‘[W]hen a state directly or indirectly destroys or confiscates property rights from owners or occupiers whom it deems to be sub persons without paying just compensation and without legitimate purpose,’ . . . and a sub

405. Relying on this model, Great Britain and other imperial powers empowered other native populations within a colony to dominate and maintain order while other native groups were relegated to a second-class existence. *See, e.g.*, MAHMOOD MAMDANI, *Ethnicity in Rwanda: An Interpretation Examination*, in *ENCYCLOPEDIA OF AFRICA* (Henry Louis Gates Jr. & Kwame Anthony Appiah, eds., 2010) (discussing how Germany controlled the Rwandan colonial state by using “indirect rule” by first dividing and classifying the population as either Hutu and Tutsi, and then empowering the Tutsi because through the “cooperative elements of the Tutsi oligarchy”).

406. *See* DARON ACEMOGLU ET. AL, *INDIRECT RULE AND STATE WEAKNESS IN AFRICA: SIERRA LEONE IN COMPARATIVE PERSPECTIVE* 4 (2014) (explaining that indirect colonial rule creates a distrust of the government and can further fuel violence).

407. *See id.* (arguing that such colonial control stunts state and bureaucratic growth).

408. *See supra* notes 145–51 and accompanying discussion about the economic marginalization of Black Zimbabweans after loss of land.

409. *See, e.g.*, Jacob K. Olupona, *Religion and Ecology in African Culture and Society*, in *THE OXFORD HANDBOOK OF RELIGION AND ECOLOGY* 261 (Roger S. Gottlieb, ed., 2006) (“Traditional [African] ritual grounds people in the natural world, where their ancestors have lived and died for many generations before the present.”).

410. *See id.* (explaining how African culture connects natural phenomenon to cosmology).

411. Karen Mikva, *10 Things You Didn't Know About the Shona People*, *AFK INSIDER* (Sept. 17, 2014, 1:42 PM), <https://afkinsider.com/72426/10-things-didnt-know-shona-people/>.

412. Evans Mandova & Agrippa Chingombe, *The SHONA Proverb as an Expression of UNHU/UBUNTU*, 2 *INT'L J. ACAD. RES. IN PROGRESSIVE EDUC. & DEV.* 100, 104 (2013).

413. Atuahene, *Property Rights*, *supra* note 9, at 800.

person [is defined] as someone who has been either dehumanized or infantilized intentionally or unintentionally.⁴¹⁴

Despite having the right to vote, Zimbabweans, pre-FTLRP, believed that they were being marginalized politically and economically.⁴¹⁵ The FTLRP had to occur for Zimbabwe to “transform itself from the geographical expression established arbitrarily by British colonialism in 1890 and enthusiastically imagined by the anticolonial nationalists of the 1960s into a true nation with a common identity, common values and a shared vision for the future.”⁴¹⁶ This barrier to state-nationalism would persist as long as Black Zimbabweans believed that the white population retained economic privilege.⁴¹⁷

A state can use restorative justice and reparations to remedy past injustices.⁴¹⁸ According to activist John Braithwaite, restorative justice is restoring “property loss . . . injury . . . a sense of security . . . dignity . . . a sense of empowerment . . . deliberative democracy, . . . harmony based on a feeling that justice has been done, and . . . social support.”⁴¹⁹ The U.N. Committee on the Elimination of Racial Discrimination defines reparation as “the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them.”⁴²⁰

Great Britain's efforts in crafting the Lancaster House Constitution is representative of the ways in which states attempt to “strike the correct balance between defending the property rights of current owners and defending the property rights of unjustly dispossessed past owners . . . [when] facilitating land reform.”⁴²¹ This principle presumes—absent engaging in well-established human rights violations couched in its takings—that Zimbabwe, a sovereign state, should not have the authority to engage in outright restorative justice or reparations when done by way of compulsory and non-compensatory land redistribution. However, the correct legal interpretation is that Zimbabwe's freedom to engage in restorative justice—within its own borders—is supported by its *jus cogens* right of the illegality of colonialism and its people's right to effectuate their right to self-determination through their government.

414. *Id.*

415. Alois S. Mlambo, *Becoming Zimbabwe or Becoming Zimbabwean: Identity, Nationalism and State-Building*, 48 AFR. SPECTRUM 49, 62 (2013) (explaining that the 2008 elections in Zimbabwe demonstrated the political and economic marginalization many Zimbabweans felt).

416. *See id.* at 63.

417. *Id.* at 59.

418. *See generally* John Braithwaite, *Restorative Justice: Assessing Optimistic and Pessimistic Accounts*, 25 CRIME & JUST. 1, 82 (1999) (explaining that reparations are a type of restorative justice that can be used to remedy injustice).

419. *Id.* at 6.

420. Warren Buford & Hugo van der Merwe, *Reparations in South Africa*, 44 CAHIERS D'ÉTUDES AFRICAINES 2 (2004).

421. Atuahene, *Property Rights*, *supra* note 9, at 771.

3. Equitable Set-Off as an Affirmative Defense

Zimbabwe has a cognizable legal affirmative defense to white farmer claims of expropriation compensation based on the legal doctrine of equitable set-off.⁴²² Under equitable set-off, a defendant may “extinguish or diminish” a plaintiff’s claim of damages or compensation through a counterclaim alleging that the plaintiff also owes defendant damages or compensation.⁴²³ Like nationalized companies that enjoyed substantial undue enrichment flowing from political and physical domination by colonial powers,⁴²⁴ white farmers in Zimbabwe also benefited from British unjust enrichment through racist land policies.⁴²⁵

Recently, dispossessed white farmers filed claims ranging from \$9 billion to \$30 billion USD in compensation against Zimbabwe.⁴²⁶ These numbers only take into account the value of dispossessed land by using regional rates and fixed assets.⁴²⁷ However, these numbers can be equitably set-off by the illegal benefits gained by white farmers from Black Africans under colonial law. The Black African native population paid and continues to pay a substantial cost for the deprivation of the economic and cultural benefits that flowed from the use and enjoyment of their ancestral lands.⁴²⁸ For example, Rhodesia considered the native population a danger to their own ancestral heritage sites, and the passage of the LAA removed them from their land.⁴²⁹ Colonial policies such as the LAA created a historical legacy couched in the systemic loss of “cultivation, material goods, . . . communing with spirits, [and] mineral rights,” which flowed from the land formerly possessed by the white farmers who now allege damages for land expropriation.⁴³⁰

422. Susanna Maria van Deventer, *Set-Off in South African Law: Challenges and Opportunities*, STELLENBOSCH U. (Mar. 2016), <https://scholar.sun.ac.za>. (explaining the concept of set-off in South Africa and arguing it helps ensure an equitable outcome).

423. See Andrew Berriman, *Classical Equitable Set-Off*, 25 BOND L. REV. 89, 89 (2013) (explaining how set-off is based on the idea that counter-claims diminish the original claim).

424. See Francesco Francioni, *Compensation for Nationalisation of Foreign Property: The Borderland Between Law and Equity*, 24 INT'L & COMP. L.Q. 255, 279 (1975) (arguing that retroactive equitable set-off should be sanctioned when the plaintiff benefited from exploiting a country’s natural resources because of colonial domination).

425. As discussed above, white farmers retained land rights that flowed directly from racist colonial laws which included the Land Husbandry Act and the Land Apportionment Act of 1930. See *supra* Parts II.A. & II.C.1.2 for discussions on the British role in land hunger. At the Lancaster Conference, Great Britain took affirmative steps to continue white farmer dominance over Zimbabwean land by insisting on the “willing seller, willing buyer” land policy. See *supra* Part II.B for a discussion on the Lancaster Conference and Lancaster Constitution.

426. Dumisani Ndlela, *Ex-Farmers Demand \$9 Billion Compensation*, FIN. GAZETTE (Jan. 25, 2018), <http://www.financialgazette.co.zw/ex-farmers-demand-9-billion-compensation/>.

427. *Id.*

428. See generally HENRY CHIWAURA & TAPUWA RAYMOND MUBAYA, *Legislation and Management of Heritage Landscapes in Zimbabwe*, in AFRICAN CULTURES, MEMORY AND SPACE: LIVING THE PAST PRESENCE IN ZIMBABWEAN HERITAGE 41 (Munyaradzi Mawere & Tapuwa R. Mubaya eds., 2014) (detailing the lasting impact of the misuse of cultural heritage sites).

429. See *id.* at 50 (explaining that the Land Acquisition Act was used to obtain land from heritage sites).

430. Heidi G. Frontani & Justine M. Davis, *Ideologies of Land and Place: Memories from Zimbabwe’s War of Liberation*, 90 S. Afr. Geo. J. 54, 60 (2008).

Further, the cost of colonialism on the precolonial Zimbabwean economy should also be taken into account.⁴³¹ At a cost, British colonialism disconnected Native Zimbabweans from their heritage and experience as successful economic actors who possessed the freedom of self-determination that they could effectuate through the sovereignty of their precolonial states.⁴³² Thus, any claims by white farmers for compensations can be equitably set-off with the substantial cost that the native population paid through its loss of enjoyment of ancestral lands.

IV. CONCLUSION

On November 21, 2017, 93-year-old Robert Mugabe ended his 37-year control as president of Zimbabwe and gave way to political rival Emmerson Mnangagwa.⁴³³ Mugabe's rule ended by a non-violent military coup following his decision to fire Vice President Mnangagwa.⁴³⁴ Mnangagwa proclaimed that "[l]and reform is over" and that "inclusiveness" of all citizens will be the pathway forward.⁴³⁵ Under Mnangagwa, white farmers will not get land back but may receive compensation.⁴³⁶ Great Britain signaled that it welcomes Mnangagwa's more moderate approach and looks forward to a "transparent and fair and mediated process" surrounding Land Reform in Zimbabwe.⁴³⁷ On February 1, 2018, Mnangagwa and the Zimbabwean government kept their word and ended Mugabe's FTLRP.⁴³⁸ According to a

431. See, e.g., JOSHUA DWAYNE SETTLES, *THE IMPACT OF COLONIALISM ON AFRICAN ECONOMIC DEVELOPMENT*, U. TENN. HONORS THESIS PROJECT (1996) (discussing how European colonialism stymied the natural growth and viability of precolonial African state economic systems and interconnectedness in international trade).

432. See, e.g., JOHN LAMPHEAR, *Pastoralism in Africa*, in *AFRICA VOLUME 2: AFRICAN CULTURES AND SOCIETIES BEFORE 1885* 161 (Toyin Folola ed., 2000) (discussing how the Shona established precolonial states of Great Zimbabwe, Torwa, Changamire, and Mutapa, and developed complex economies based on herding, cultivation, and mining while controlling the flow of commerce in the region).

433. See Frank Chikowore, *Joy on Harare's Streets as Mugabe Exit Ends Standoff*, WASH. TIMES (Nov. 21, 2017), <https://www.washingtontimes.com/news/2017/nov/21/robert-mugabe-resignation-ends-standoff-in-zimbabwe/>.

434. See Joshua Keating, *The Fall of Mugabe: Zimbabwean Strongman Arrested by His Own Military*, SLATE (Nov. 15, 2017, 11:08 AM), <http://www.slate.com/news-and-politics/2018/01/2017-was-a-bad-year-for-democracy-everywhere-especially-america.html> (explaining that Mugabe was removed from power and arrested by his own military).

435. Peta Thornycroft, *New Regime in Zimbabwe Hands Back Land to Evicted White Farmer*, TELEGRAPH (Dec. 7, 2017, 6:54 PM), <http://www.telegraph.co.uk/news/2017/12/07/new-regime-zimbabwe-hands-back-land-evicted-white-farmer/>.

436. See Tawanda Karombo, *Zimbabwe's White Farmers Will Get Compensation—But They're Not Getting Land Back*, QUARTZ AFRICA (Dec. 9, 2017), <https://qz.com/1152276/zimbabwes-white-farmers-kicked-out-by-mugabe-will-be-compensated-by-mnangagwa/> (explaining that land reform will not be reversed but white farmers will receive compensation for the land that was taken).

437. *Britain Welcomes Mnangagwa's 'Fair' Land Reform*, ENEWS CHANNEL AFR. (Feb. 2, 2018, 6:55 PM), <https://www.enca.com/south-africa/britain-welcomes-mnangagwas-fair-land-reform>.

438. Farirai Machivenyika, *99-Year Leases for White Farmers*, HERALD (Feb. 1, 2018, 12:02 AM), <https://www.herald.co.zw/99-year-leases-for-white-farmers/>.

directive from Zimbabwe's Ministry of Lands and Rural Resettlement, all remaining white commercial farmers may apply for ninety-nine-year leases for farmland.⁴³⁹ This policy differs from Mugabe's FTLRP because it increased the lease agreement from five years for white farmers and ninety-nine years for Black farmers to ninety-nine years for all farmers.⁴⁴⁰ The state will maintain its autonomy and sovereignty over the land and continue to be the lessor, and Black African farmers and white farmers will continue to be the lessees.⁴⁴¹

These events signal that Mnangagwa is attempting to placate both Black African land hunger and the interests of white farmers in Zimbabwe—just as Mugabe did during Phase I of Land Reform.⁴⁴² Like Mugabe,⁴⁴³ Mnangagwa is vocal and understands the importance of keeping the land in the power of the Black native populace—as evidenced by his statements that the “[d]ispossession of our ancestral land was the fundamental reason for waging the liberation struggle.”⁴⁴⁴ Mnangagwa has also adopted Mugabe's⁴⁴⁵ approach of trying to appease Great Britain⁴⁴⁶ and white farmers⁴⁴⁷ in an attempt to partner with white farmers to recreate the stability of the Zimbabwean agro-economy during the 1980s⁴⁴⁸ and to encourage Western

439. *Id.*; see also, The 99 Year Lease, MINISTRY OF LANDS AND RURAL RESETTLEMENT, <http://www.cfuzim.org/~cfuzimb/images/99yearleasepam.pdf> (last visited Mar. 1, 2018) (detailing the 99-year lease program for white farmers).

440. See Machivenyika, *supra* note 438 (explaining Mugabe's new policy of giving white farmers 99-year leases instead of just 5-year leases).

441. See *id.* (explaining the new land approach of the Mnangagwa government).

442. See *supra* Parts II.C.1 and II.C.1.2 for discussions on the Lancaster Constitution. See also Joseph Lelyveld, *Zimbabwe Treads Delicate Path in Redistributing Land*, N.Y. TIMES, Nov. 2, 1980 (arguing that redistribution of land after Mugabe's election should occur slowly).

443. See A. Chilunjika & D.E. Uwizenyimana, *Shifts in the Zimbabwean Land Reform Discourse from 1980 to the Present*, 8 AFR. J. PUB. AFF. 130, 137–38 (2015) (discussing that Mugabe and the ZANU-PF utilized land hunger as a campaign theme in the run-up to the 2000 election); see also Rangarirai Shoko, *Zimbabwe: Mugabe Unveils Land Reform Election Manifesto*, AFR. NEWS SERV. (May 4, 2000), http://bi.galegroup.com.libproxy.temple.edu/global/article/GALEIA61897248/ee72c1e59d5a20ec577dd7752cf656de?u=temple_main (reporting Mugabe's characterization of Great Britain's role in Zimbabwe's Land Reform as obstructing its sovereignty to redistribute land to Black Africans).

444. Joseph Hanlon, *Land Reform is a Zimbabwe Success Story—it will be the Basis for Economic Recovery Under Mnangagwa*, CONVERSATION (Nov. 29, 2017, 9:55 AM), <http://theconversation.com/land-reform-is-a-zimbabwe-success-story-it-will-be-the-basis-for-economic-recovery-under-mnangagwa-88205>.

445. In 1980, Mugabe could not resort to compulsory Land Reform because it could frighten the “5000 white farmers” who accounted for over 90% of the “marketable farm surplus.” Lelyveld, *supra* note 442.

446. According to Mnangagwa, regarding Great Britain's departure from the European Union, “what they've lost with Brexit they can come and recover from Zimbabwe.” James Rothwell, *Mnangagwa Eagerly Awaiting Theresa May Meeting as 'Male Prime Ministers Have Not Been Good to Us'*, TELEGRAPH (Jan. 25, 2018, 8:20 PM), <https://www.telegraph.co.uk/news/2018/01/25/mnangagwa-eagerly-awaiting-theresa-may-meeting-male-prime-ministers/>.

447. According to Mnangagwa, Great Britain can recover Brexit losses from Zimbabwe. *Id.*

448. Compare MARIE-FRANCE BARON BONJAREE, 3 DECADES OF LAND REFORM IN ZIMBABWE: PERSPECTIVES OF SOCIAL JUSTICE & POVERTY ALLEVIATION, 8–9 (2013) (discussing how, in the 1980s, Zimbabwe's government's autonomy over its land was limited by a policy of

trade and investment in Zimbabwe.⁴⁴⁹ However, Mnangagwa's policies are much more reconciliatory than Mugabe's, and if he and the government are not careful, they could recreate the perception held by Black Africans before the FTLRP⁴⁵⁰—a perception that white farmers were a protected class and were the economic benefactors of policies reminiscent of those held during Zimbabwe's colonial past.⁴⁵¹ In addition, Mnangagwa's new political era is marked with two other important differences: (1) Zimbabwe has decided to maintain complete sovereignty over the ownership rights of the state's farmland, and (2) the Black African polity has over thirty years of experience in using its leverage to compel the state to effectuate their right to self-determination.⁴⁵²

Despite the change in political leadership, Zimbabwe seized its Land Reform destiny—a decision that is beginning to pay off.⁴⁵³ Land Reform policies that address the dispossession of land from Black Africans by former colonial masters in Sub-Saharan Africa have the potential to transform the post-colonial nation-states inhabiting the same territory. Any attempt by a former colonial master to interfere with postcolonial African nation-states' autonomy over land and resources should be scrutinized as a potential attempt to limit African people's rights to self-determination. Zimbabwe's inability to exercise autonomy over the issue of Land Reform serves as a barrier to the ability of the Black African inhabitant to accept the state as mutually beneficial. Zimbabwe—the nation-state—cannot exist without it. Great Britain's failure to honor its Land Reform subsidy agreements and promises to not meddle in Zimbabwe's land redistribution policies have stymied Zimbabwe's

reconciliation with the same actors who controlled the land from colonial times up through the UDI government before independence—while attempting to modernize its agro-economy), with Anthony Sguazzin & Godfrey Marawanyika, *New President Plans Zimbabwe Revival by Restoring Economy, Democracy*, BLOOMBERG (Jan. 18, 2018, 1:26 PM), <https://www.bloomberg.com/news/articles/2018-01-18/zimbabwe-s-mnangagwa-plans-billions-in-compensation-bond-sale> (reporting Manangawa's plan to revitalize Zimbabwe's agro-economy as key to Zimbabwe's economic future).

449. See Geoffrey York, *Zimbabwe's New Leader Vows to Create Jobs, Bring Back Foreign Investors*, GLOBE & MAIL (Nov. 24, 2017), <https://www.theglobeandmail.com/news/world/cheering-zimbabweans-greet-new-leader-emerson-mnangagwa/article37070951/> (reporting Mnangagwa's promise to bring back foreign investment while making the agro-sector of the economy more productive).

450. See *supra* notes 170–73 and accompanying discussion on how previous policies led Black Africans to believe the government was prioritizing white farmers.

451. See *supra* Part II.A for a discussion on Great Britain's Rhodesia colonial laws that were intended to preclude Black Africans from owning arable farm land on the basis of race.

452. For example, since their independence, Black Africans have occupied land once owned by the white farmers under the Rhodesian colonial regime. See *supra* Part II.C.1.3 for a discussion on British influences and responses to Zimbabwean Land Hunger and Parts II.C.1, II.C.2, II.C.3 for discussions on the role of Great Britain in the Zimbabwean land reforms.

453. See Hanlon, *supra* note 444 (explaining that land reform, particularly maize production, has helped lead to economic recovery); see also Jamal Osman, *Land Reform Brings Prosperity to Black Zimbabweans*, CHANNEL FOUR (Dec. 6, 2014), <https://www.channel4.com/news/land-reform-brings-prosperity-to-black-zimbabweans> (explaining the positive impact land reform has had on black Zimbabweans).

growth, evolution, and maturity. Unable to move past such a vital issue, Zimbabwe's government has been unable to focus its finite resources on initiatives that could further endear Black Africans to the potential advantages of statehood. This has also compromised Zimbabwe's ability to take its rightful place amongst all other sovereign states.

Other nation-states in Africa are not immune to this phenomenon. For example, the issue of whether to expropriate land from white farmers has been a potentially destabilizing force in South Africa's ability to move forward from its colonial and apartheid history and has always ranked high on the African National Conference's (ANC) agenda items.⁴⁵⁴ After many years of not addressing this simmering issue,⁴⁵⁵ the ANC adopted a pro-land expropriation without compensation policy from white farmers going forward.⁴⁵⁶ South Africa's new president, Cyril Ramaphosa, has promised to expropriate lands currently possessed by white farmers to benefit its Black citizens.⁴⁵⁷ The implementation of South Africa's Land Reform program appears imminent.⁴⁵⁸

Great Britain engaged in neo-colonialism—the propensity of former colonial powers to continue to control and exploit African state economies and politics for the purpose of transferring mineral and resource wealth from Africa to Europe.⁴⁵⁹ To Great Britain, white farmers in Zimbabwe were better situated to engage in the type of large-scale farming of cash crops that are correlated with “patterns of consumption in wealthy [Western] states.”⁴⁶⁰ In an attempt to continue the economic nature of colonialism, former colonial states, like Britain, look to relegate African state populations to “hack minerals out of the ground [and] grow cash crops.”⁴⁶¹ This

454. See Bernadette Atuahene, *South Africa's Land Reform Crisis: Eliminating the Legacy of Apartheid*, 90 FOREIGN AFF. 121, 123 (2011) (detailing that in both 2009 and 2010 President Zuma explained at the ANC that land reform was a top priority).

455. See *id.* at 122–23 (discussing how 85% of the Black respondents polled believe the whites stole land from Blacks, while 91% of whites in the country disagreed).

456. See Ray Mahlaka, *ANC Pushes to Expropriate Land Without Compensation*, MONEY WEB (July 31, 2018, 11:25 PM), <https://www.moneyweb.co.za/news/south-africa/anc-moves-to-expropriate-land-without-compensation/> (detailing South Africa's decision to amend the Constitution to permit expropriation of land without compensation).

457. Simon Black, *South Africa's New President Wants to Redistribute Land from White Farmers*, BUS. INSIDER (Feb. 21, 2018, 7:30 PM), <http://www.businessinsider.com/south-africa-cyril-ramaphosa-wants-to-confiscate-white-farmers-land-2018-2>.

458. On February 27, 2018, South Africa's parliament passed Julius Malema's motion by a vote of 241-in-favor and 83-not-in-favor for clearing the first step toward Land Reform with no compensation. See Siviwe Breakfast, *Land Expropriation Without Compensation: Parliament Votes in Favour of Controversial Motion*, S. AFRICAN (Feb. 27, 2018), <https://www.thesouthafrican.com/parliament-votes-in-favour-of-land-expropriation-without-compensation/>.

459. See NDIRANGU MWAURA, KENYA TODAY: BREAKING THE YOKE OF COLONIALISM IN AFRICA 5, 6–7 (2007) (explaining that neocolonialism harms Africans, yet Africans help perpetuate its existence).

460. See, e.g., *id.* at 11 (discussing how Kenya's government has succumbed to foreign international economic pressure to suppress its own people's farming interest in support of the needs of the West).

461. *Id.* at 13.

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pattern of practice by the former colonial state masters hinders self-development, self-determination, and state sovereignty and is antithetical to the purpose of the U.N. General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples⁴⁶² and the U.N. General Assembly Resolution on the Permanent Sovereignty Over Natural Resources.⁴⁶³

The international community should recognize a *jus cogens* right to be free from neo-colonialism because former colonial masters undermined the ability of former colonies to achieve sovereignty and self-determination, similar to the principle of illegality of colonialism. Otherwise, many African states like Zimbabwe will continue to toil in their inability to move past their colonial pasts and the legacies that accompany them.

462. See *supra* Part III.A.1 for a discussion on Zimbabwe's rights to sovereignty and self-determination.

463. See *supra* Part III.A.2 for a discussion on the U.N. resolution for the permanent sovereignty of Zimbabwe over natural resources.