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LEGACY OF THE CONFLICT BETWEEN EUROPEAN AND INDIGENOUS AFRICAN LEGAL CONSTRUCTS OF LAND TENURE IN CONTEMPORARY ZIMBABWE

Abstract

The study focuses on the undeniable significance of the European legal traditions, brought to former Southern Rhodesia/Rhodesia by European settlers, for the legal status of land tenure in the country, the legacy of which traditions still deeply impacts the situation in present-day Zimbabwe. There are two main aspects of this influence: the aftermath of imposed land division and the prevalence of Western legal traditions in contemporary law. Numerous laws enacted unilaterally by white Rhodesians, most notably the 1930 Land Apportionment Act and the 1951 Native Land Husbandry Act, impacted the land tenure in the region. The indigenous African population was undoubtedly discriminated against by these legal actions: numerous acres of the land were taken by European conquerors and those left were of much lesser value in terms of farming and pasture. After the end of minority rule in Rhodesia in 1980, when Robert Mugabe rose to power, new land policies were imposed and numerous land allocations were awarded to the supporters of his regime in the name of removing racial injustices. The consequence was disastrous: the policy led to the demise of once world-famous agriculture and Zimbabwe became ceaselessly endangered by famine. Furthermore, laws concerning the land tenure and husbandry were (and still are) based on European legal constructs, alien to the native population of Zimbabwe. Indigenous traditions were subsequently ousted by the European law and are significantly absent in Zimbabwe today. Nowadays, after the fall of

Mugabe in 2017, the country finds itself in the defining point of its history. The question persists: Can Zimbabweans derive useful values from their past in order to shape a new land policy in their homeland that would be just for all its citizenry?

KEYWORDS

Zimbabwe, Rhodesia, land tenure, legacy of colonialism, African legal traditions, land reform

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Zimbabwe, Rodezja, własność ziemi, dziedzictwo kolonializmu, tradycje prawne Afryki, reforma ziemska

1. INTRODUCTION

This study aims to present the extent of European legal influences in present-day Zimbabwe, focusing on the land tenure aspects of this phenomenon. Moreover, the paper will reflect on the legacy of colonialism and European minority dominance for over a century in contemporary Zimbabwe in relation to land distribution. The historical context will be discussed concisely due to the fact that the subject itself is remarkably broad. Thus, the goal of the study is not to fully exhaust the topic of the history of land tenure in Southern Rhodesia, Rhodesia and independent Zimbabwe, but to show its impact on present-day situation in the state. The paper will additionally focus on how the present is deeply influenced by country's past, regarding the land tenure. Finally, the study aims to portray the conflict between the native populace and the colonisers from a different culture, and to present its effects visible nowadays.

The impact of European law and legal values on the land policy and land tenure in contemporary Zimbabwe can be defined by considering its two main aspects. Firstly, there is the land distribution during the minority rule in Rhodesia and its aftermath. Secondly, one should take into account the prevalence of European legal constructs in historical and contemporary legal regulations. The resulting analysis starts with a description of the historical division of land in Southern Rhodesia, Rhodesia and Zimbabwe. The impact of the prevailing European legal tradition over the indigenous African legal system is discussed in the following part of the study.

2. LAND DISTRIBUTION

2.1. SOUTHERN RHODESIA AND RHODESIA

This historical description should be started with the statement that European expansion can be traced back to the end of nineteenth century and the Pioneer Column, which arrived in the Mashonaland (nowadays southern part of Zimbabwe) in 1890. Its success can be mainly attributed to influential Cecil John Rhodes,¹ who was a main proponent of this expedition. This date marked the start of the rule of the British South Africa Company in Rhodesia, the name of which of course came from the impactful politician.

When describing the native populace of the Zimbabwe plateau, it has to be highlighted that it was relatively undiversified, what can be regarded as a rarity in African circumstances, since there were two main ethnic groups that accounted for almost all of the population. These groups were (and still are to this day) the minority Ndebele and the majority Shona. Despite the smaller number, it was the Ndebele group that was dominant in the region and held control of majority of the natural resources, such as fertile land, cattle, etc. It most likely coincided with the fact that this nation was created in the nineteenth century by a split from the rest of the Ndebele ethnic group from the south of the Limpopo river² and conquered large parts of present-day Zimbabwe. There was even a saying, reportedly popular throughout of the arrival of the first European settlers, that compared the Shona people to sheep and the Ndebele to wolves.³

Undoubtedly, the ideas of *civilizing* of the so-called barbaric and primitive indigenous populace of the African interior were deeply rooted in the mindset of the first settlers. This can be clearly seen in the words of a Rhodesian prime minister, Sir Godfrey Huggins: '(...) at the same time, under his [a European's – JK] influence, knowledge and care, he may raise the African to become morally and physically (i.e., in vigour) like a European.'⁴ Yet, the main goal of the European colonists was unquestionably finding precious ores and conquering land. They were quick to discover that vast native-controlled areas were of highest suitability for agricultural purposes. This collision of interest undeniably had to spark a significant conflict. Needless to say, even though the native Africans put some resistance,⁵ it was the European minority who was victorious. The European colonial dominance over the area would finally last for nearly a century.

¹ He most notably promised the natives 'equal rights for [all – JK] civilised men'.

² It nowadays forms the border between Zimbabwe and the Republic of South Africa.

³ H. Zins, *Historia Zimbabwe*, Warszawa 2003, p. 77.

⁴ B. N. Floyd, *Land Apportionment in Southern Rhodesia*, 'Geographical Review' 1962, Vol. 52(4), p. 579.

⁵ Namely, Shona and Ndebele rebellions in 1896–1897, called the First *Chimurenga*.

From the beginning, the newly arrived Europeans asserted their dominance as regards land tenure, even though Clause 14 of the charter of the British South African Company obliged it to safeguard the possession and disposition of natives' land.⁶ Africans were mostly located into reserves, namely, established in 1894 infamous Gwaai and Shangani, which totalled only about 2,490,000 acres⁷ and were thought of as waterless and unhealthy by the natives.⁸ Moreover, the Europeans began to alienate large tracts of land under the title of freehold,⁹ which land was used by the indigenous African populace for centuries. However, even if de facto discriminating, the legal system was not formally disadvantageous towards the natives, since an African could 'acquire, hold, encumber and dispose of land' on the same conditions as a European.¹⁰ Yet, the Africans evidently did not use this right, since only about 100,000 acres were bought by them in this manner until 1923¹¹ or even as little as 45,000 acres by 1925,¹² which can be at least partially attributed to the Europeans' unwillingness to sell any land to Africans.¹³ The presented legal conditions changed when the Land Apportionment Act was passed in 1930, a law that would later become a cornerstone of land allotment (cf. Figure 1) in the Southern Rhodesia and Rhodesia. It established a rigid territorial segregation,¹⁴ which settlers often justified as a necessity in order to preserve the indigenous African culture,¹⁵ without a doubt in a deceptive manner. Moreover, the natives' right to own land anywhere in Southern Rhodesia was revoked and the African populace had to move into the reserves.¹⁶ The Land Apportionment Act of 1930 granted nearly half of the colony's total land area to European settlers. The land allocated to Africans constituted only around 29% of the total area, nearly half of what was granted to white settlers. This disproportionate allotment becomes even more indisputable and somehow striking if one considers the proportion of European and African populations at the time (cf. Figure 2). As we can presume, Europeans amounted to even less than 5% of the colony's entire population. This means that effectively around 95% of the country's populace was granted less than 30% of the total arable area, while less

⁶ W. Roder, *The Division of Land Resources in Southern Rhodesia*, 'Annals of the Association of American Geographers' 1964, Vol. 54(1), p. 48.

⁷ B. N. Floyd, 1962, *op. cit.*, p. 572.

⁸ D. Goodwin, *Whatever it Takes: Tenure Security Strategies of Communal Land Right Holders in Zimbabwe*, 'Africa: Journal of the International African Institute' 2013, Vol. 83(1), p. 164.

⁹ A. C. Jennings, G. M. Huggins, *Land Apportionment in Southern Rhodesia*, 'Journal of the Royal African Society' 1935, Vol. 34(136), p. 305.

¹⁰ B. N. Floyd, 1962, *op. cit.*, p. 574.

¹¹ A. C. Jennings, G. M. Huggins, 1935, *op. cit.*, p. 297.

¹² W. Roder, 1964, *op. cit.*, p. 43.

¹³ D. Goodwin, 2013, *op. cit.*, p. 164.

¹⁴ B. N. Floyd, 1962, *op. cit.*, p. 566.

¹⁵ A. C. Jennings, G. M. Huggins, 1935, *op. cit.*, p. 298.

¹⁶ B. N. Floyd, 1962, *op. cit.*, p. 577.

than 5% had around 50% at their disposal. Needless to say, such land division was overwhelmingly disproportionate and discriminative towards the indigenous populace and resulted in overcrowding of the reserves and miserable living conditions of Africans. Furthermore, not all land granted to the Europeans was actually used for agricultural purposes. In fact, in 1958¹⁷ approximately less than 30% of total European population gained their livelihood from the land,¹⁸ which meant that vast acreages of highly fertile land lay fallow and numerous African people were denied access to them solely because of economic and political privilege of the white minority. It is incontestable that such a model of land division was extremely unfavourable for the majority of the populace. This state is even more visible if one takes into account yet another issue: the quality of the allocated land. Factors worth mentioning were namely: most crucial rainfall,¹⁹ access to water,²⁰ and the absence of mosquitos and tsetse flies²¹. Europeans were granted a significant majority of better-quality lands, which were suitable for farming specialized and diversified crops, such as: fruits, tea, tobacco, etc.²² Lands of lesser quality were usually designated for ranching purposes only, which was not that unreasonable considering the fact that the natives heavily relied on their livestock for their sustenance. However, the latter cannot be regarded as any excuse for the allotment of land, which resulted in the situation where the African majority was granted less land, of much lower quality, largely situated in areas with lower precipitation and poor soil. Yet another factor one has to take into account was the communication; areas controlled by the white minority were progressively connected to towns and cities by railway and roads. The same cannot be said about the African-controlled land. For example, in 1913 about 80% of European farms were within 25 miles of the railway, while only about 33% of African farms were in the same situation.²³ Moreover, realistically only white settlers could expect some form of aid or support from the government of the colony, e.g.: loans, subsidies, favourable taxation policy, etc.²⁴

European settlers would often justify this division by claiming that the natives did not have the necessary skills to successfully use particular types of soil, most notably the fertile red soil.²⁵ As a matter of fact, regarding the natives' knowledge of agricultural usage of different soil types, it is commonly thought that the natives not only knew how to work the light sandy soils, but also the aforemen-

¹⁷ This number did not differ drastically between the 1930s and the 1950s.

¹⁸ W. Roder, 1964, *op. cit.*, p. 48.

¹⁹ *Ibid.*, p. 46.

²⁰ A. C. Jennings, G. M. Huggins, 1935, *op. cit.*, p. 304.

²¹ B. N. Floyd, 1962, *op. cit.*, p. 578.

²² *Ibid.*, p. 568.

²³ W. Roder, 1964, *op. cit.*, p. 50.

²⁴ D. G. Clarke, *Land Inequality and Income Distribution in Rhodesia*, 'African Studies Review' 1975, Vol. 18(1), p. 4.

²⁵ W. Roder, 1964, *op. cit.*, p. 41.

tioned red clay soil of higher value for agriculture.²⁶ Nevertheless, a shifting cultivation system was widespread amid the Africans, and the periodical transfer of villages to more fertile areas, of course in the limits of a particular tribal ward,²⁷ was a common practice. Undoubtedly, the natives mostly relied on subsistence agriculture that would only meet their own basic needs, however, it is worth noting that they were also pastoralists, hunters and gatherers.²⁸

Furthermore, the newly implemented system barred Africans from buying land plots in other areas except for the Native Purchase Areas (cf. Figure 1). These areas had similar characteristics as the rest of African lands and were thought of as a space for *expansion* of indigenous populace, who would eventually contribute to the capitalistic market economy. However, these plans were defective regarding their main assumptions: since access to the market was severely limited for Africans, most of them could not amass enough funds to purchase additional lands. Thus, few residents of the reserves could afford to move there;²⁹ the total number of those who eventually settled in the Native Purchase Areas was close to 9,000.³⁰ This simple impossibility was understood by the white minority as a sign of incapacity, ineptitude and inability to adopt capitalistic Western values and law. In such a legal environment, the Africans in general could not have progressed economically, which resulted in stagnancy of their agriculture.

The Native Land Husbandry Act of 1951, another immensely important law regarding land tenure in Southern Rhodesia, was enacted in order to remediate the errors of the existing land division. The white minority government realized that the reserves were in fact overcrowded³¹ and the quality of soil there deteriorated rapidly³² due to the intensive usage of scarce acreage suitable for farming. The goal of the act was to constrain this phenomenon³³ by the allotment of small plots of land that would be sufficient for a family to live off it. The main measure to achieve it was to be introduction of individual tenure under government control in the reserves,³⁴ since the authorities thought that it was impossible to successfully enforce proper farming methods under a communal system.³⁵ However, the lawmakers did not acknowledge the importance of communal tenure of land for

²⁶ *Ibid.*, pp. 44–45.

²⁷ This issue will be further analysed in the following part of the paper.

²⁸ W. Roder, 1964, *op. cit.*, p. 45.

²⁹ W. R. Duggan, *The Native Land Husbandry Act of 1951 and the Rural African Middle Class of Southern Rhodesia*, 'African Affairs' 1980, Vol. 79(315), p. 227.

³⁰ *Ibid.*, p. 235.

³¹ I. Phimister, *Rethinking the Reserves: Southern Rhodesia's Land Husbandry Act Reviewed*, 'Journal of Southern African Studies' 1993, Vol. 19(2), p. 225.

³² B. Mbiba, *Communal Land Rights in Zimbabwe as State Sanction and Social Control: A Narrative*, 'Africa: Journal of the International African Institute' 2001, Vol. 71(3), p. 428.

³³ B. N. Floyd, 1962, *op. cit.*, p. 579.

³⁴ W. R. Duggan, 1980, *op. cit.*, p. 227.

³⁵ I. Phimister, 1993, *op. cit.*, p. 227.

Africans. They also overestimated the capacity of the authorities concerning the implementation of the policies, as well as overlooked the lack of funding and necessary land.³⁶ Due to a bureaucratic model, the natives' hostile response to the policies and lack of resources essential in order to fully execute the new law, during almost a decade only 60% of the reserves were covered by certain of its numerous provisions³⁷ and it was formally implemented in 42% of the reserves, with an actual implementation being significantly lower³⁸. One could only presume that a successful implementation of the Native Land Husbandry Act of 1951 would have effectively improved the living conditions of Africans. Nonetheless, even such reforms would have been *too little, too late*; Africans deserved equal treatment under the law and equal share of arable areas, which was not granted to an extent that would have possibly been sufficient for them. Moreover, the attempted enforcement of the act fuelled the expansion of African nationalism and opposition to the European minority in the 1950s,³⁹ with even richer peasants turning away from cooperation with the colonial government⁴⁰. Nonetheless, the individualized rights of land tenure granted under the act were recognized until the end of Rhodesia⁴¹ and would later become a substantial part of the private-held land acreages in independent Zimbabwe.

The white minority did not plan on reducing their privileges and superior position in the country's legal system, especially regarding the matter of land tenure. Ultimately, even though a minority of Europeans were working in the agricultural sector, the crops and other farming products, most importantly tobacco, maize and tea, accounted for a significant part of Rhodesian total exports. The country was even called *the breadbasket of Africa* and was proud of its status as an agrarian power in the region. Of course, at the same time millions of Africans frequently struggled to survive in the atrocious conditions that came into existence in the aftermath of the implemented land policies. For many an armed struggle seemed the only way to liberate their homeland, preserve their culture, gain equal rights and introduce social justice. Thus, a civil war called the Bush War broke out, lasting from 1964 to 1979. In the year following the beginning of the conflict, the white minority government declared independence from the British empire by the Unilateral Declaration of Independence (UDI), however the country was not recognised by the international community. The most important legal enactments during the period of Rhodesian independence were the Land

³⁶ W. R. Duggan, 1980, *op. cit.*, p. 233.

³⁷ V. E. M. Machingaidze, *Agrarian Change from Above: The Southern Rhodesia Native Land Husbandry Act and African Response*, 'The International Journal of African Historical Studies' 1991, Vol. 24(3), p. 557.

³⁸ I. Phimister, 1993, *op. cit.*, p. 236.

³⁹ V. E. M. Machingaidze, 1991, *op. cit.*, p. 558.

⁴⁰ I. Phimister, 1993, *op. cit.*, p. 239.

⁴¹ A. Cheater, *The Ideology of 'Communal' Land Tenure in Zimbabwe: Mythogenesis Enacted?* 'Africa: Journal of the International African Institute' 1990, Vol. 60(2), p. 194.

Tenure Act of 1969 and the Tribal Trust Land Act of 1979, both concerning mostly the local African and European authorities, and as such are not further discussed in this study. The land apportionment finally amended by the Native Land Husbandry Act of 1951 would remain nearly unchanged until 1980, the year when independent Zimbabwe was born.

2.2. INDEPENDENT ZIMBABWE

The Bush War came to an end when the United Kingdom, which had never recognised the independence of Rhodesia and therefore laid claims to the area as its colony, decided to conduct and moderate peace accords in late 1979. The talks resulted in the signing of the Lancaster House Agreement, which not only declared a ceasefire in the war but also laid foundations of the newly established independent state of Zimbabwe.

In the terms of land tenure, a ‘willing seller, willing buyer’ system was implemented, which was based on voluntary selling of the land by its current owners to the state, thus ushering in a policy of *accommodation*.⁴² Undoubtedly, this solution was not in the interest of the Patriotic Front⁴³ politicians, who desired a rapid land redistribution. The United Kingdom and the United States would additionally support the newly formed state financially as regards the land reform and buyouts of the land from the existing owners. The main goal of this system was to deescalate the rising tensions and save the country from continuous armed struggle. The history would, however, prove the ‘willing seller, willing buyer’ system woefully ineffective. Numerous current landowners were not eager to dispose of their land. Moreover, large amounts of financial subsidies from the UK and the USA were defrauded and spent on other sectors of the new state’s budget. Finally, the aforementioned Western powers started to withdraw from their financial obligations. These mediocre results and sluggishness of the land redistribution resulted in a revision of the country’s policy in this matter. The change was undoubtedly linked with significant consolidation of the power in the hands of Robert Mugabe, Zimbabwe’s first prime minister and second president.

It is worth noting that land tenure relations in the newly-born independent Zimbabwe could (and nowadays still can) be classified into three main types corresponding to respective areas: state, private and communal.⁴⁴ State Lands consist mostly of forests, national parks, etc., whereas Communal Lands are formally

⁴² M. O’Flaherty, *Communal Tenure in Zimbabwe: Divergent Models of Collective Land Holding in the Communal Areas*, ‘Africa: Journal of the International African Institute’ 1998, Vol. 68(4), p. 537.

⁴³ The Patriotic Front brought together more radical African nationalists and consisted of two main militant organizations: Zimbabwe African People’s Union (ZAPU) led by Joshua Nkomo and Zimbabwe African National Union (ZANU) led by, nowadays infamous, Robert Mugabe.

⁴⁴ M. O’Flaherty, 1998, *op. cit.*, p. 539.

governed by the customary law. Other areas are for the most part dominated by freehold ownership of the land,⁴⁵ the legacy of the European and Native Purchase Areas of the colonial period. It is worth noting that the majority of African population of Zimbabwe inhabits the Communal Lands nowadays.⁴⁶ Moreover, in the 1980s the Communal Lands accounted for 42% of the total country area, yet this figure rose to about 66% in 2010.⁴⁷ This increase was mostly due to the grand intensity of land pressure in former reserves in the 1980s⁴⁸ and was achieved using methods discussed below.

The Land Acquisition Act of 1992 enabled the public authorities to acquire all land they saw fit, although after paying compensation. Yet, compensating the previous landowners in a fair amount would turn out to be too costly for the public authorities. Nonetheless, as Mugabe's position and prominence strengthened, the new government would commence practising *praeter* or even *contra legem* measures in order to claim all the land needed for its purposes. A new system called the Fast Track Land Reform Program (FTLRP) was launched in July 2000, a goal of which was to redistribute more than around 12,355,000 acres.⁴⁹ It marked the beginning of what is referred to as *jambanja*, i.e. a lawless and chaotic process of state-sponsored land reform,⁵⁰ which soon turned out to be not only against the law and arrangements of the Lancaster House Agreement but also bloody and deeply violent. Farm owners and farm workers alike would be beaten, tortured or even killed by the soldiers and militias. This aggressive approach was meant to scare the remaining white Zimbabweans and ensure the takeover of all the designated land in the country. Indeed, the *white flight*⁵¹ process dynamically intensified and numerous farmlands from the freehold sector were seized by the government.⁵² Moreover, the previous owners could not have usually challenged the decisions that expropriated them, not to mention even putting up any form of successful resistance against the officials accompanied by militias.

This unjust takeover of the land by the majority government was formally thought of as a fulfilment of the promises made by the ZANU during the Bush War and subsequent struggle against the white minority. The redistribution would, however, turn out to benefit only a small number of the Zimbabwean populace: the newly formed oligarchic group, centred on Robert Mugabe. The majority of African populace was still left without the land they deserved and fought for. Additionally, many new landowners were not interested in cultivating

⁴⁵ A. Cheater, 1990, *op. cit.*, p. 188.

⁴⁶ *Ibid.*, p. 188.

⁴⁷ D. Goodwin, 2013, *op. cit.*, p. 165.

⁴⁸ B. Mbiba, 2001, *op. cit.*, p. 431.

⁴⁹ P. Zikhali, *Fast Track Land Reform, Tenure Security, and Investments in Zimbabwe*, Environment for Development Initiative 2008, pp. 1, 4.

⁵⁰ D. Goodwin, 2013, *op. cit.*, p. 166.

⁵¹ A rapid decrease in the number of white inhabitants of the country.

⁵² A. Cheater, 1990, *op. cit.*, p. 197.

their land allotments, nor had they knowledge and skills needed in order to keep the agriculture functioning on the same level as it used to during the Rhodesian period. In effect, significant acreages of land would be laid to waste over time, a dreadful phenomenon for the Zimbabwean populace, economy and international position.

The decline in agriculture would result in the transformation of the former *breadbasket of Africa* to a state in constant fear of food shortages and famine, internal instability and hyperinflation. Most importantly, the promised land redistribution would never be achieved on at least adequate level, meaning that the struggle of the majority of Africans for the equal share of their homeland continues to this day. All the aforementioned tensions erupted when Robert Mugabe was overthrown in 2017, which was a crucial moment for the present-day situation in the country. Whether any vital changes will be implemented and the country will be turned into a democracy remains uncertain; time will show how the new political conditions will affect the land tenure and land distribution in Zimbabwe.

3. AFRICAN AND EUROPEAN LEGAL CONSTRUCTS

3.1. SOUTHERN RHODESIA AND RHODESIA

The analysis of legal traditions of the native people has to be commenced with emphasizing the fact that due to a rather distinct ethnic division in the country, as has already been mentioned, the indigenous law will be presented in a homogenous manner, not accounting for small regional differences. Furthermore, the topic has not been properly researched at the time of the first contacts between the Europeans and Africans in the region, thus there is a shortage of data on this subject.⁵³ The following discussion is mostly based on Wolf Roder's⁵⁴ and Angela Cheater's⁵⁵ portrayal of the topic in their papers. In order to properly describe indigenous legal traditions regarding land tenure, it has to be highlighted that Africans evidently relied on a different system of legal values from that of the European settlers. Primarily, communal land distribution and collective cultivation of land was widespread, a custom which was absolutely confined to a tribal ward (*dunhu*). As such, the land within the ward was virtually open to use for every follower of a chief of the tribe, with the sole requirement of showing will to cultivate the occupied acreage. Moreover, land rights were inalienable; they

⁵³ M. O'Flaherty, 1998, *op. cit.*, p. 541.

⁵⁴ W. Roder, 1964, *op. cit.*, p. 46.

⁵⁵ A. Cheater, 1990, *op. cit.*, pp. 189–191.

could not have been sold or bought. Resources such as game, water or timber were open to use for every member of the tribal chiefdom. This model of African indigenous ownership was by no means unlimited. The tribal ward had its borders (*miganho*) that were well-defined, since they were usually marked by natural features, such as rivers, hills or lakes. One tribal ward was comprised of numerous villages and the ward unity was mostly based on territorial grounds, rather than a simple kinship of its members. As such, followers of the chief held a communal right over all the territory in a *dunhu*. Thus, even though the land was free to use for the tribe members, the idea of some limitation of this law was widespread. Additionally, it is generally thought that individual cultivators had rights to the crops they grew. Therefore, it is widely regarded that the natives of Zimbabwe understood at least some basic concepts of the individual land tenure model.⁵⁶

The land also held an immensely important place in spiritual beliefs of the native populace of the Zimbabwe plateau. It was most notably linked with the spirits of the ancestors and held in high regard. This religious connotation of land undoubtedly influenced the aforementioned ideas of communal land ownership. Since the land did not have a marketable value and was not thought of as property (*cinhu*), wealth was usually measured by the size of one's herd of cattle, especially since pasturing was a common usage of the land. This phenomenon was clearly visible, especially in the drier parts of the country, with difficult conditions for farming.⁵⁷ For example, takeover of the majority of the cattle herd which belonged to Lobengula, the overthrown king of the Ndebele people, had significant impact on the rest of the tribe and resulted in an unrest.⁵⁸

Western law brought by the settlers was in contrast mostly focused on individual ownership of land. It is of utmost importance to note that that law was not at all homogenous but consisted of two important legal subtraditions: British *common law* and Roman-Dutch *civil law*. The first certainly came with the British colonisers and colonial bureaucracy; the latter was mostly brought by the Boer settlers who arrived from south of the Limpopo river. Even though common and civil law were and still are contradictory in terms of numerous legal issues, the basic concept of land tenure was quite similar in both of them. A person was entitled to possess a certain plot of land, delimited by boundaries, most commonly under a freehold title. The aspect of will to use the area to cultivate was non-existent and the owner could dispose his property freely, of course within the limits set out in certain legal regulations. For example, a part of his farmland could be completely left unused and redundant, a condition almost unimaginable in the native Africans' traditional system of land tenure, thus being indefensi-

⁵⁶ A. C. Jennings, G. M. Huggins, 1935, *op. cit.*, p. 309.

⁵⁷ B. N. Floyd, 1962, *op. cit.*, p. 574.

⁵⁸ H. Zins, 2003, *op. cit.*, p. 94.

ble from their point of view.⁵⁹ As it has been already mentioned, such situations were not infrequent in the land apportionment system of Southern Rhodesia and Rhodesia. Due to that, the conflict between native and settler populaces of the country increasingly intensified and continued to shape the political landscape of the state for decades. This strife grew particularly intense during the implementation of the Native Land Husbandry Act of 1951, when European legislators tended to completely replace the traditional African agricultural model with the Western one. The stance emphasizing that the *primitive* traditions must sooner or later yield to the values brought by the settlers was widespread in the European Rhodesian society,⁶⁰ which of course provoked the African opposition, as has been mentioned.

3.2. INDEPENDENT ZIMBABWE

Since contemporary Communal Lands can be treated as a land category successive to African-held areas during the colonial period, their legal situation will be analysed first. Even though the customary law is of considerable importance in these areas, at least from a formal viewpoint, it is the Western law that is still decisive in shaping legal constructs applied there.⁶¹ Moreover, the customary law which remains in effect in the Communal Lands cannot be treated as identical with pre-colonial indigenous legal traditions of land tenure.⁶² The Communal Land Act [Chapter 20:04], a successor to the Tribal Trust Land Act of 1979, is the main legal enactment concerning these areas, therefore further commentary will be based on its provisions.

Communal Land shall be vested in the President, who shall permit it to be occupied and used in accordance with this Act [Part II, Section 4].

The foregoing section introduces the key competencies of the President in the matter of disposition of the land, what clearly contravenes the traditional rule of communal ownership of the land, since the role the President plays in the contemporary regulation is of a different kind to that which a tribal chief traditionally had. Thus, the right to administer Communal Lands is entirely rooted in legal regulations of positive law, which can be undoubtedly linked to the European legal tradition. Additionally, it can be observed that the state has ultimate power in the Communal Areas,⁶³ what can be additionally illustrated with further passages from the analysed act.

⁵⁹ W. Roder, 1964, *op. cit.*, p. 46.

⁶⁰ B. N. Floyd, 1962, *op. cit.*, p. 575.

⁶¹ M. O'Flaherty, 1998, *op. cit.*, p. 540.

⁶² *Ibid.*, p. 545.

⁶³ *Ibid.*, p. 540.

[A] person may occupy and use Communal Land for agricultural or residential purposes with the consent of the rural district council established for the area concerned [Part III, Section 8(1)].

Again, even though a prerequisite of the chief's consent was of vital importance in traditional law, the consent of the rural district council cannot be equated with it, due to its character based on positive legal regulations and limited by other legal principles. Moreover, it is important to notice that the former prerogative of the chief was passed to the district council, thus lessening the role of traditional authorities,⁶⁴ what highlights the subordination of African customs to state control.

[W]hen granting consent in terms of subsection (1), a rural district council shall –
(a) where appropriate, have regard to customary law relating to the allocation, occupation and use of land in the area concerned; and
(a1) consult and co-operate with the chief appointed to preside over the community concerned (...); and (...)
(b) grant consent only to persons who, according to the customary law of the community that has traditionally and continuously occupied and used land in the area concerned, are regarded as forming part of such community or who, according to such customary law, may be permitted to occupy and use such land (...)
[Part III, Section 8(2)].

This section is probably the most similar to African traditions of land tenure, mainly due to the fact that it includes a reference to so-called customary law. Moreover, the role of chiefs and traditions of certain regions is emphasized. Nevertheless, one has to indicate again the positive character of the legal principles presented above, which have unquestionable origins in Western law. It would not be an overstatement to point out that in present-day Zimbabwe the customary law concerning land tenure can be applied, as long as it is coherent with and based on European law. One could even say that the African custom is legitimized under a strict control of the state.⁶⁵

Western law was mostly triumphant in this clash of legal traditions and played a decisive role in shaping the contemporary Zimbabwean law regarding land tenure and ownership of land. Thus, even though indigenous traditions are nowadays found in certain areas of the legal system, as presented in the previous paragraph of the study, the topic of land is dominated by the concepts known to Western law. In what follows, this phenomenon is presented based on examples from the Rural Land Act [Chapter 20:18], a law which is determinative of land tenure in the majority of areas other than the Communal Lands.

⁶⁴ A. Cheater, 1990, *op. cit.*, p. 189.

⁶⁵ *Ibid.*, p. 202.

In this Part 'property' means any land which is described as a single piece of land in any deed of grant, transfer or other certificate of title registered in the Deeds Registry [Part III, Section 7].

As it can be seen in the foregoing section, the definition of land implies it has to be a confined area within some boundaries. Furthermore, one's right to the land is limited by a legal title to it, which is based on a registry administered by the state. These solutions are visibly in conflict with indigenous traditional legal constructs concerning the land tenure, mostly the communal ownership of the land. The role of the state in designating the land is clearly against the African traditions as well. However, the definition of 'property' presented above can undoubtedly be associated with European legal traditions.

No owner or occupier of any property shall permit any person, other than an employee of such owner or occupier in the normal course of his employment, to cultivate any portion of such property unless such portion has been clearly demarcated on the ground (...) [Part III, Section 9(1)].

In this paragraph it is distinctively implied that the communal ownership is against the provisions of the act. The prerequisite of the clear demarcation of any part of one's land in order for a third person to cultivate it directly conflicts with the rule of communal usage of the land. Also in this case, the current law is in accord with European legal traditions where a plot of land was clearly limited by some boundaries.

4. CONCLUSION

To conclude, it is undeniable that the period of the European minority's rule in the Zimbabwean history significantly affects the country's present situation as regards land tenure. The legal constructs based on Western law, which were adopted by the settlers, were doubtless immensely disadvantageous to the native populace of the country. It was not only the colonial land division that was discriminatory for the African majority in terms of the area, quality and fertility of granted land, but access to the market and economic opportunities were also limited for them. Land apportionment in Southern Rhodesia deeply impacted and continues to affect independent Zimbabwe. Its consequence was the misdistribution of land, which has led to the current dreadful situation of the country's agriculture and economy, the political unrest and disappointing living conditions for the majority of population. Moreover, the prevalence of the European legal traditions and dying out of the indigenous ones, observed both historically and in contemporary law regulating the land tenure with only a few exceptions, resulted in the decline of traditional cultures. The Africans' difficulty in adapting to the

new situation and legal values, and the demise of native legal constructs can be directly attributed to the country's colonial past. To sum up, the past of Zimbabwe unquestionably affects the country's present, which is not an extraordinary case in the African continent. The condition that makes Zimbabwe stand out is, however, the recent political turmoil that the state has been through. The important question to pose is: Can Zimbabweans derive useful values from their past in order to shape a new land policy in their homeland that would be just for all its citizenry?

5. FIGURES

Figure 1. Approximate land apportionment in Southern Rhodesia in millions of acres, rounded to tens of thousands

Year	African areas in total	Native Purchase Areas (part of African areas)	European areas	Undetermined and unassigned areas	National parks and forests
1913 ^a	21.39	-	21.95	44.00	-
1925	21.60	-	31.59	42.15	0.89
1930	29.07	7.46	49.15	17.89	0.59
1946	29.10	7.50	49.20	17.80	0.60
1950	30.40	5.70	48.00	17.50	0.80
1958	41.95	8.05	48.99	0.06	7.20
1962	44.40	4.20	36.90	5.40	9.90

a – The Crown Lands not included

Based on: W. Roder, 1964, *op. cit.*, p. 42; B. N. Floyd, 1962, *op. cit.*, pp. 567, 577, 580; A. C. Jennings and G. M. Huggins, 1935, *op. cit.*, pp. 299, 309; D. G. Clarke, 1975, *op. cit.*, p. 7

Figure 2. Approximate populations of Africans and Europeans in Southern Rhodesia in thousands, rounded to tens of thousands

Year	Africans	Europeans
1911	700	<i>No reliable data</i>
1921	850	<i>No reliable data</i>
1930	970	<i>No reliable data</i>
1940	1,390	70
1945	1,640	80
1950	1,930	130
1955	2,220	170
1960	2,890	230

Based on: W. Roder, 1964, *op. cit.*, p. 51; B. N. Floyd, 1962, *op. cit.*, p. 567

REFERENCES

- Cheater A., *The Ideology of 'Communal' Land Tenure in Zimbabwe: Mythogenesis Enacted?* 'Africa: Journal of the International African Institute' 1990, Vol. 60(2)
- Clarke D. G., *Land Inequality and Income Distribution in Rhodesia*, 'African Studies Review' 1975, Vol. 18(1)
- Communal Land Act [Chapter 20:04], No. 20 of 1982, as amended, Zimbabwe
- Duggan W. R., *The Native Land Husbandry Act of 1951 and the Rural African Middle Class of Southern Rhodesia*, 'African Affairs' 1980, Vol. 79(315)
- Floyd B. N., *Land Apportionment in Southern Rhodesia*, 'Geographical Review' 1962, Vol. 52(4)
- Goodwin D., *Whatever it Takes: Tenure Security Strategies of Communal Land Right Holders in Zimbabwe*, 'Africa: Journal of the International African Institute' 2013, Vol. 83(1)
- Jennings A. C., Huggins G. M., *Land Apportionment in Southern Rhodesia*, 'Journal of the Royal African Society' 1935, Vol. 34(136)
- Land Acquisition Act of 1992, Zimbabwe
- Land Apportionment Act of 1930, Southern Rhodesia
- Machingaidze V. E. M., *Agrarian Change from Above: The Southern Rhodesia Native Land Husbandry Act and African Response*, 'The International Journal of African Historical Studies' 1991, Vol. 24(3)

- Mbiba B., *Communal Land Rights in Zimbabwe as State Sanction and Social Control: A Narrative*, 'Africa: Journal of the International African Institute' 2001, Vol. 71(3)
- Native Land Husbandry Act of 1951, Southern Rhodesia
- O'Flaherty M., *Communal Tenure in Zimbabwe: Divergent Models of Collective Land Holding in the Communal Areas*, 'Africa: Journal of the International African Institute' 1998, Vol. 68(4)
- Phimister I., *Rethinking the Reserves: Southern Rhodesia's Land Husbandry Act Reviewed*, 'Journal of Southern African Studies' 1993, Vol. 19(2)
- Roder W., *The Division of Land Resources in Southern Rhodesia*, 'Annals of the Association of American Geographers' 1964, Vol. 54(1)
- Rural Land Act [Chapter 20:18], No. 47 of 1963, as amended, Zimbabwe
- Tribal Trust Land Act, No. 6 of 1979, Zimbabwe
- Unilateral Declaration of Independence, adopted by the Cabinet of Rhodesia on 11 November 1965
- Zikhali P., *Fast Track Land Reform, Tenure Security, and Investments in Zimbabwe*, Environment for Development Initiative 2008
- Zins H., *Historia Zimbabwe*, Warszawa 2003