

**WOMEN'S PARTICIPATION IN WATER GOVERNANCE AND REFORM IN
ZIMBABWE: A CASE STUDY OF FOUR A1 RESETTLEMENT FARMS IN
MAZOWE CATCHMENT POST THE FAST TRACK LAND REFORM AND
RESETTLEMENT PROGRAMME**

By

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DEDICATION

To my husband Wilson, without whose immense moral support I would not have achieved this milestone and my mother Nherera Miria Masiyazi Ngorima Sithole, who still being sprightly at 91 years, remains an inspiration.

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DECLARATION

I, Elizabeth Lwanda Rutsate declare that the work presented in this thesis is my own and it has never been submitted for a degree at any other university. Where information has been obtained from other sources, I verify that this has been revealed and acknowledged through complete references.

Signed.....

Date.....

ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
AGRITEX	Agricultural Extension
ARDA	Agricultural Rural Development Authority
AU	African Union
BSAC	British South Africa Company
BSAP	British South Africa Police
CC	Catchment Council
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CIT	Citizen
CKGR	Central Kalahari Game Reserve
DA	District Administrator
DDF	District Development Fund
Dept	Department
DFID-UK	Department for International Development – United Kingdom
ECOSOC	Economic and Social Council
EMA	Environmental Management Agency
EPZ	Export Processing Zone
ESAP	Economic Structural Adjustment Programme
FAO	Food and Agriculture Organization
FTLRRP	Fast Track Land Reform and Resettlement Programme
GC	General Comment
GoZ	Government of Zimbabwe
GPID	Guiding Principles on Internal Displacement
GWP	Gender and Water Partnership
HDR	Human Development Report
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Convention on the Rights of the Child
IDP	Internally Displaced Person
IDS	Institute of Development Studies
IFAD	International Fund for Agricultural Development
IIED	International Institute for Environment and Development
ILO	International Labour Organization
IWMI	International Water Management Institute
IWRM	Integrated Water Resources Management
IWSD	Institute of Water and Sanitation Development
LAMA	Legal Age of Majority Act
MDG	Millennium Development Goal
MoTCID	Ministry of Transport, Communication and Infrastructural Development
NAC	National Action Committee
NGO	Non Governmental Organization

NRB	Natural Resources Board
OHCHR	Office of the High Commissioner for Human Rights
OP	Optional Protocol
RAU	Research Advocacy Unit
RCDF	Rural Capital Development Fund
RDC	Rural District Council
SADC	Southern African Development Community
SAPES	Southern Africa Political and Economic Series
SCC	Sub-Catchment Council
SEARCWL	Southern and Eastern African Regional Centre for Women's Law
SI	Statutory Instrument
SIWI	Stockholm International Water Institute
UK	United Kingdom
UN	United Nations
UNCCPR	United Nations Committee on Civil and Political Rights
UNCESCR	United Nations Committee on Economic, Social and Cultural Rights
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Fund for Population Activities (now UN Population Fund)
UNGA	United Nations General Assembly
UNICEF	United Nations International Children Fund
ViDCo	Village Development Committee
WaDCo	Ward Development Committee
WASH	Water And Sanitation Health
WATSAN	National Rural Domestic Water Supply and Sanitation Policy
WFP	World Food Programme
Women's Protocol	Protocol to the African Charter on Human and Peoples Rights on the Rights of Women
WRMS	Water Resources Management Strategy
ZA-MDTF	Zimbabwe Analytical Multi-Donor Trust Fund
ZANU (PF)	Zimbabwe African National Union – Patriotic Front
ZESA	Zimbabwe Electricity Supply Authority
ZHRC	Zimbabwe Human Rights Commission
ZIMLII	Zimbabwe Legal Information Institute
ZIMSTAT	Zimbabwe National Statistics Agency
ZINWA	Zimbabwe National Water Authority

ABSTRACT

It is now a globally acknowledged fact that there exists a human right to water for “basic needs” that allows everyone to enjoy an adequate standard of living that guarantees one the highest attainable standard of physical and mental health. What is less known however is what that right means to different people in different contexts especially poor and marginalized rural women in the developing world who use water holistically for multiple purposes that are all aimed at lifting themselves out of the endemic feminized poverty that has been associated with them. In this thesis based on an empirical study conducted on four A1 small scale resettlement farms in Mazowe Catchment I locate different social groups of women on the farms at the intersection of formal and informal norms and institutions that determine whether they are included or excluded from accessing, using and controlling water for personal, domestic, food production and livelihood purposes, from the local to national levels. Situating the international human right to water in a local context; the aim is to interrogate the extent to which this right as conceptualized at international and national levels resonates with how women within these rural communities use water in its multiplicity to ensure general social well being within their households and the community at large. Set against a legal pluralist environment, the extent, to which the different social networks within which different women are embedded impact on their capability to realize the right to water, is also interrogated.

Grounded theory research methodologies that encompass the use of in-depth individual interviews with key informants, group interviews and focus group discussions as well as case studies within a catchment study were used to unravel the complex institutional and normative frameworks associated with access to water and participation in its governance. The women’s law approach was used in the research to explore from the women’s different lived experiences, the discrimination they encountered which was intersectional as based on political, economic, social, cultural and other prohibited grounds. The findings show deep seated tensions between customarily informed norms and institutions that entitle rural women to have open access to water for drinking, sanitation, food production and livelihood purposes from common pool resources such as rivers, streams, wetlands and riparian land on one hand and formal IWRM informed laws and policies bent on cost recovery and profit maximization implemented by ZINWA officials on the other. This situation, which happens against unclear and pluralist dispute resolution frameworks that are both formal and informal have the most dire impact on women as the traditionally acknowledged major water users for reproductive and productive purposes. As drawn from the findings made in this study, my key recommendations are that the State; (i) conducts nationwide human rights and Constitution awareness campaigns focusing specifically on rural communities for the eradication of gender based discrimination and gender stereotypes that negatively impact on rural women’s realization of their human right to water and participation in its governance; (ii) adopts in its policies the broader framework of the human right to water for rural women as understood customarily; within the 2013 Zimbabwe Constitution; Article 14 of CEDAW and in accordance with the UNCESCR’s General Comment 15 of 2002; (iii) effectively strengthens and enhances local traditional dispute resolution mechanisms that deal with water conflicts through judicial training and the promotion of traditional environmental conservation methods that are pro-poor.

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CHAPTER 1

INTRODUCTION: PRESENTING THE CASE

1.0 Introduction

This thesis entitled ‘Women’s Participation in Water Governance and Reform in Zimbabwe: A Case Study of Four A1¹ Resettlement Farms in Mazowe Catchment Post the Fast Track Land Reform and Resettlement Programme,’ is based on an empirical study conducted in Mazowe Catchment between October 2010 and March, 2013. In the study, the extent to which women farmers, women farm workers and farm workers’ wives accessed, used and controlled water for domestic, livelihoods, food and productive purposes on the researched A1 farms, is interrogated. This doctoral study was linked to a regional study entitled, ‘Human Rights and Gender Dimensions of Water Governance in Africa: Actors, Norms and Institutions,’ which covered Kenya, Malawi, Zimbabwe and South Africa.² The regional study had research sites in rural, urban and peri-urban areas. Despite the link to a broader study, this study in Mazowe Catchment, however, was peculiar to Zimbabwe in that it was the only one in all the four countries that focused on resettlement farms created post to spontaneous and violent land invasions which commenced in 2000.

From a broader perspective, the thesis explores rural women’s lived experiences on small scale resettlement farms as affected by 3 sets of events in Zimbabwean history. These are (i) the Integrated Water Resources Management (IWRM) informed water sector reform³ programme of the 1990’s; (ii) the Fast Track Land Reform and Resettlement Programme between 2000 and 2003 as well as (iii) the emergence of the Human Right to Water discourse resulting in section 77 within the 2013 Zimbabwe Constitution providing for the right to food and water. Both the land and water sector reforms in Zimbabwe were aimed at redressing former colonial era racial segregationist land and water policies. While most

¹A1 and A2 farms were different models of farms created as a direct result of the Fast Track Land Reform and Resettlement Programme whose structure is explained in detail in section 1.1 through figures 1 and 2.

² The regional study was funded by the Norwegian Research Council.

³ The water reform involved changing how the nation’s water was to be shared and managed.

empirical studies on these land and water reforms have focused on whether the race issues were resolved effectively, this thesis looks at the human rights and gender aspects of these reforms vis-à-vis water access, use and control.

1.1 Background to the study: Intersecting water and land reform programmes

1.1.1 The gender dynamics of Zimbabwe's IWRM inspired water sector reform programme phase 1: 1994-2000

In the mid-1990s, Zimbabwe like several other southern African countries, embarked on water resources management reforms which were modelled in line with the 1992 Dublin Statement on Water and Sustainable Development, recognizing water as both an economic and social good (Derman et al, 2000:3; Hellum, 2001:1; Manzungu, 2001, 2002; Matondi, 2001; Mtisi and Nicol, 2003:1; Kujinga, 2004; Sithole (P), 2011:16). A key aspect of this 1990s water sector reform programme was the abandonment of privately owned water rights under the old Water Act of 1976 and their replacement by a water permit system⁴ in 1998, under a new Water Act Chapter 20:24. A new institution, the Zimbabwe National Water Authority (ZINWA) was also created to oversee the sale of irrigation water to mostly white large scale commercial farmers at commercial rates which would ensure cost recovery. Having replaced the old 1976 Water Act which regulated privately owned water rights and River Boards; the 1998 Water Act in section 20 divided Zimbabwe into 7 River Catchment areas. These were Manyame, Sanyati, Save, Mazowe, Runde, Mzingwane and Gwayi Catchments.⁵ These catchments were further divided into sub-catchment areas run by catchment and sub-catchment councils viewed as stakeholder organizations assisting ZINWA in management.

Under Zimbabwe's IWRM informed water sector reform programme, the focus was on water as an economic good rather than a social one which would be the case under a human

⁴ The permit system also incorporated Agreement water.

⁵ See Figure 1.6.2 further below in section 1.6. for the map on catchments in Zimbabwe;

right to water framework. Spearheading this water reform process was the Water Resources Management Strategy (WRMS),⁶ established in 1995. Its continued existence was assured through donor funds from Germany, the Netherlands, Norway and the United Kingdom. At the end of its mandate in 2000, its deliverables were (i) a new National Water Policy and (ii) a National Water Pricing Policy and Strategy. The WRMS group spearheaded two pilot projects, one Dutch funded, that is the Mupfure Catchment, which was later incorporated into Sanyati Catchment and the Mazowe Catchment that was also later increased in size (see Derman 2008:8).

According to WRMS (1999:10-12) and Derman (2001) Zimbabwe's water reform process had at least 9 set goals which objectives were summarized by Sithole (B), (2001:5:3:23) as being "the promotion of stakeholder participation in the decision-making processes and the decentralization of water management institutions to the catchment and sub-catchment levels." The core of Zimbabwe's water reform process in the 1990s was to increase water accessibility for the new black farmers while ensuring that the water was productively used and as such new participatory structures in the form of catchment and sub-catchment councils were created to increase the farmers' access to water management decision-making (Derman *et al* (2007:256-257); Derman *et al.*, 2001; Dube and Swatuk, 2002; Derman and Gonese, 2003; Mtisi and Nicol, 2003; Bolding *et al.*, 2004; Hellum and Derman, 2005).

Despite the second aim of the 1990s water sector reforms having been gender mainstreaming of all areas of water management; the WRMS spearheading this programme acknowledged that in reality however, "women (were) conspicuous by their absence from the whole scenario as water reform institutions and processes tended to recognize a host of fundamental sectors of society but ignored gender" (Derman and Gonese 2003:291).

⁶ This was a committee mandated to spearhead Zimbabwe's water sector reform programme.

Despite Guiding Principle 3 of the 1992 Dublin Statement on Water and Sustainable Development recognizing that, “women play a central part in the provision, management and safeguarding of water” which clearly justifies women’s inclusion and right to participate in national and local processes; women were generally excluded from the planning and piloting stages of Zimbabwe’s water sector reform programme of the 1990s.

In this study, the water sharing mechanisms on four A1 farms in Mazowe Catchment were explored to check on whether they were fair and non-discriminatory. Further to that, an investigation was done to find out how women were coping in a situation where no mechanism aimed at ensuring equal access to water or equal participation in water governance had been put in place under both reforms.

While still in its infancy, the 1990s water sector reform programme was disrupted in 2000 by violent invasions of white owned large scale commercial farms by disgruntled landless black people, a process which resulted in the further marginalization of women due to its violent nature. It has been argued in some circles that the dismantling of WRMS soon after the Fast Track Land Reform and Resettlement Programme of 2000 marked the end of Zimbabwe’s 1990s water sector reform programme.

At the end of its mandate in 2000, WRMS’ deliverables were (1) a new National Water Policy and a National Water Pricing Policy and Strategy. Nevertheless the ushering in of a new National Water Policy in 2012 reinforcing and improving on free primary water user rights as provided for under the 1998 Water Act as well as a new Constitution in 2013 containing the right to water; to some extent are indications of a continuously evolving process from the 1990s. The ‘Foreword’ as well as the ‘Executive Summary’ of the 2012 National Water Policy refers to the 1990 water sector reform programme as the backdrop to the current wave of law and policy making. Confirming this, Paragraph 3.2.2 of the Zimbabwe National Water Policy (2012:8) states;

...the Government of Zimbabwe undertook a major Water Sector Reform Programme, the 1st Phase of which was carried out from 1994 to 2002 and the 2nd Phase of which started in 2009 and is currently in progress.

1.1.2 The Fast Track Land Reform and Resettlement Programme (FTLRRP) in Zimbabwe: 2000 - 2003

The violent farm invasions beginning in 2000 that were blamed for disrupting Zimbabwe's water sector reform process phase 1 were instigated by blacks, the majority of who originated from communal lands. Nicknamed 'jambanja',⁷ the farm invasions were spearheaded by war veterans of Zimbabwe's War of Liberation which occurred in the 1960s and 1970s. The invasion of white owned farms was later formalized by government under the FTLRRP between 2000 and 2003 whereby the former large scale commercial farms were divided into A1 and A2 model farms. Figures 1 and 2 below show the two types of Model farm structures;

Figure 1: The Types of A1 Model Farm Structure

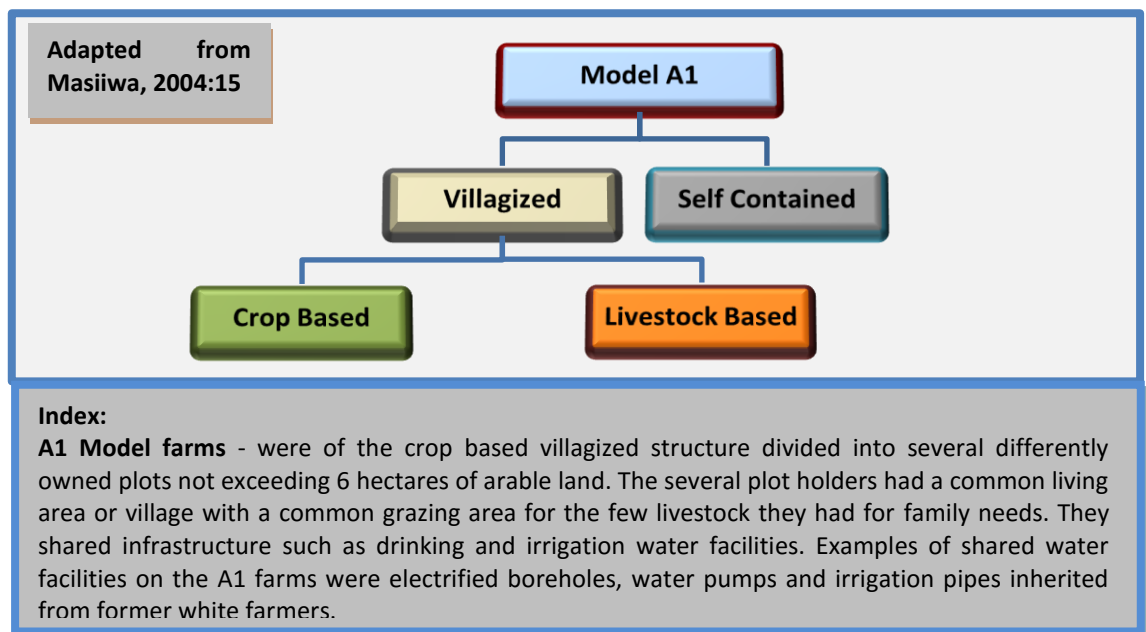
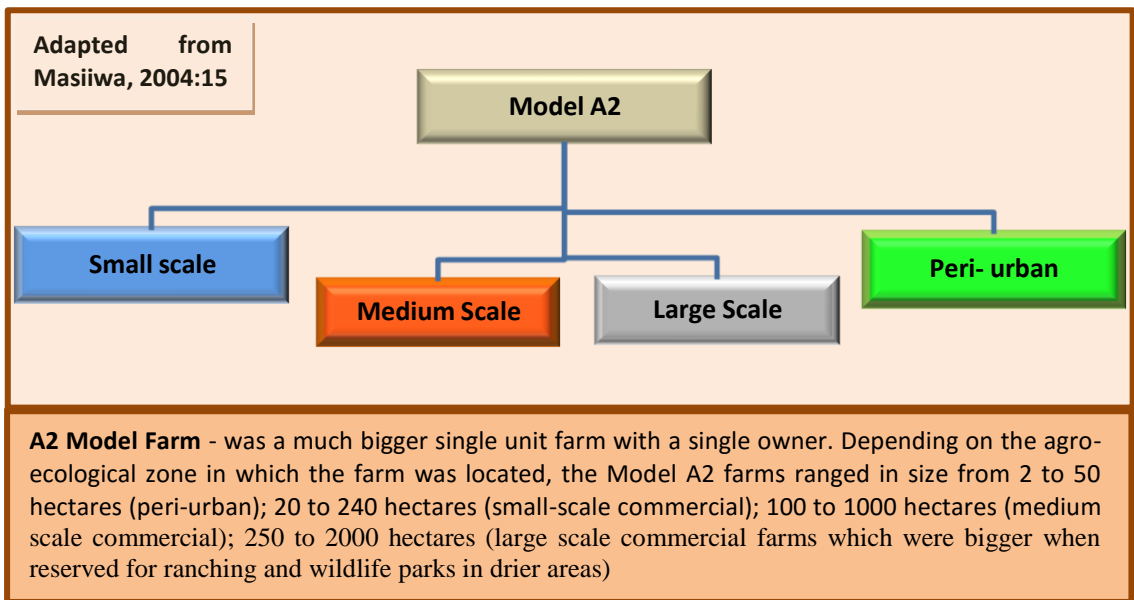


Figure 2: The Types of A2 Model Farm Structure

⁷ Literally referring to a violent and disorderly event



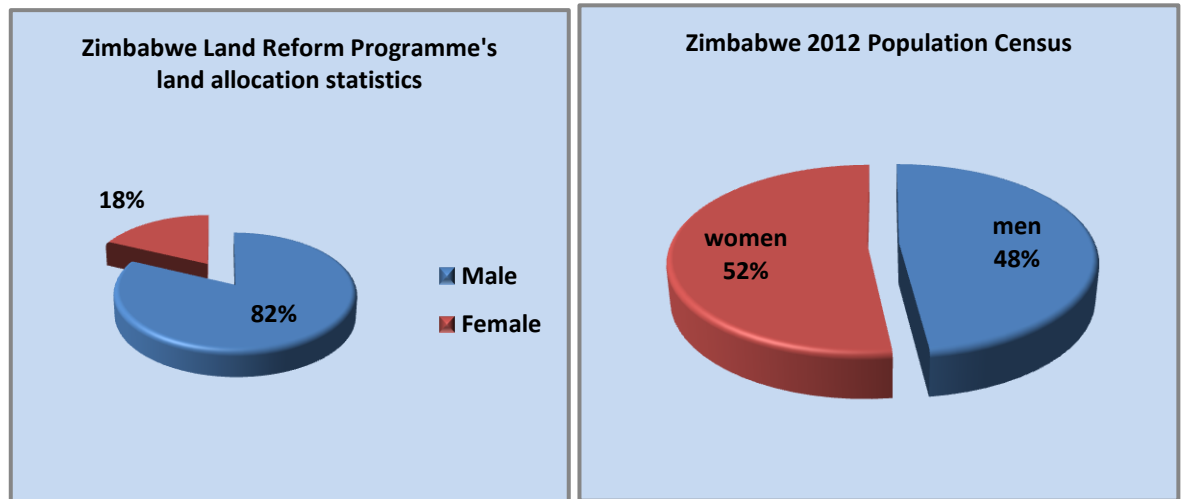
As indicated earlier in this Chapter, due to the violent nature of the FTLRRP, very few women got involved in the process and as a result even fewer women were allocated land in their own right. Despite women's dominance as subsistence farmers in communal lands and as farm workers on white owned farms prior to land reform; approximately 18 % of beneficiaries under Zimbabwe's Land Reform Programme (against the targeted 20% quota under the repealed 1980 Constitution) were female headed households.⁸

Mgugu and Chimonyo, (2004:153) have argued that emanating from the pre-colonial era through to the colonial period and post to it women have been marginalized vis-à-vis access to and ownership of land in Zimbabwe. They criticize the policy framework adopted by the Zimbabwean government in dealing with women's land rights especially its failure to acknowledge the need to mainstream gender in the land reform process. Mgugu and Chimonyo (2004) have also criticised government insensitivity to the need to allocate land to women as individuals (Munhande, 2007:353). This disparity in land allocations in favour of men has had its own ramifications on the extent to which women participate in water governance as later revealed by the findings in this thesis.

⁸ These statistics are reported in the Land Reform Report.

Figure 3 below shows sex disaggregated percentile statistics of land allocation during Zimbabwe’s Land Reform as compared to the sex disaggregated statistics in the last census of 2012. Since 2000, up to the 2012 census Zimbabwe’s population statistics have consistently shown a national sex distribution ratio of 52 % women to 48 per cent men.⁹

Figure 3: Land allocation statistics for land reform and sex distribution in Zimbabwe’s 2012 Population census



The statistics shown in Figure 3 above are a reflection of the marginalization of women from participation in mainstream political and economic activities as observed by Karl, (1995:5) quoting the 1993 UNDP Human Development Report at page 25;

Women are the world’s largest excluded group. Even though they make up half the adult population, and often contribute more than their share to society, inside and outside the home, they are frequently excluded from positions of power.

1.2 Problem statement/ Research Justification

From a global perspective, there is an ongoing debate regarding the interpretation of the right to water (See Winkler (2008, 2012); Woodhouse and Langford, 2009). In the broader regional study that this doctoral study was a part of, the right to water is conceptualized as being “constituted at the junction of two sets of human rights norms,” namely “(1) the right to water which is part of the right to an adequate living standard and to the rights to life,

⁹ For the Zimbabwe 2012 population census by ZIMSTAT see <http://www.zimstat.co.zw/dmdocuments/CensusPreliminary2012.pdf>

health and food without discrimination” and “(2) women’s right to participation in decision-making” (Hellum, 2010:1).

The key question in this debate revolves around whether the human right to water should be restricted only to drinking water and water for personal use or alternatively whether it should encompass water for food production and livelihoods? The arguments have been further complicated by the implications drawn from the IWRM framework that views water as both an economic and social good with more emphasis on the economic aspects; the Committee on Economic, Social and Rights (CESCR) General Comment No. 15 of 2002 on the right to water emphasizing on equality and non discrimination; UN General Assembly (UNGA) Resolution A64/292 of 28 July, 2010 on the human right to clean drinking water and sanitation as well as the UN Human Rights Council Resolution (HRC) 15/9 of 6 October, 2010 on human rights and access to safe drinking water and sanitation. How this global debate on the right to water has manifested itself locally in Zimbabwe became of particular interest to me, warranting further investigation.

As earlier stated, within Zimbabwean history are three major interrelated events that generally have had a profound impact on how women perceive themselves as rights holders in the access to, use of and control over natural resources such as water and land. These are the 1990s water reform process, the land reform programme and the emergence of the human right to water discourse in Zimbabwe at the turn of the millennium. Hence while the Water Act Chapter 20:24 of 1998’s provisions were largely informed by the IWRM discourse whose focus was on cost recovery and decentralization; the right to water provisions within the 2013 Constitution are informed by the International Human Rights discourse focusing on equality and non discrimination in accessing resources. A pertinent question arising therefrom is whether the two seemingly divergent discourses have a point of convergence and which approach better serves rural women’s water needs.

Empirical evidence has revealed that “in developing countries most of which have less developed water infrastructure, water has always been viewed as a women’s issue.” Hence Bai, a Rajasthani activist and grandmother quoted in Parmar (2004:124- 128) states;

Water is essentially a women’s issue. Men are not really bothered about it. They just wash their hands and sit down for food. It’s the woman who has to arrange water for all day. Women need water. And if there is no water in the house, the man will take a stick in his hand and ask- You didn’t get water? It’s the women who have to pay the price. It’s the woman who needs water for the household work and to sustain the family. It is a woman’s resource.

Considering that women are the major water users for both personal and domestic needs, it follows therefore that they are bound to suffer greater adverse impact in the event of water misgovernance whereby they are excluded from participating in decision making on how that water is accessed and used. Premised upon the realization that water accessibility,¹⁰ as well as meaningful participation in its governance are key to unlocking women’s potential to reduce poverty especially in light of its widespread feminization, research in this area became imperative as a means of achieving women’s political, economic and social advancement.

It also became important to put to the test the observation by the UN (2003) that;

Water crisis is essentially a crisis of governance and societies are facing a number of social, economic and political challenges on how to govern water more effectively.

Endorsing the above position, IFAD (2008:3) has also stated that, “most international development agencies and water managers now agree (that the) growing water crisis (is) not a crisis of resource availability but one of governance.” Wallace and Coles (2005:1) say;

Deepening understanding of the ways in which gender shapes who has control of water, who gets access, the different needs and positions of women and men, and the issue of rights, is crucial for development.

Reiterating further the significance of having gender inclusivity in development projects, the Government of Zimbabwe/UN Country Team, (2010:68) and the UNFPA (2006) have stated as follows;

women’s empowerment can be defined through the five major components of (i) women’s sense of self-worth; (ii) their right to have and determine choices; (iii) their right to have

¹⁰ For either agricultural or domestic purposes

access to opportunities and resources; (iv) their right to have the power to control their own lives within and outside the home; and (v) their ability to influence the direction of social change to create a more just social and economic order locally, nationally and internationally

It is from the above perspectives that women's participation in water governance and reform as intricately interwoven with the FTLRRP in Zimbabwe was problematized. There was need to investigate the extent to which the land redistribution exercise heavily skewed in favour of men had affected women's negotiating power for water on the A1 farms. The significance of investigating the impact of the intersecting land and water reform programmes on women living or farming on resettlement farms was clearly evident considering the significance of politics of land distribution on women's capacity to access and effectively manage water productively (see Derman and Hellum, 2005:14).

Apart from the issues outlined above, another important question which needed addressing flowed from the fact that under the FTLRRP framework, several plot holders on an A1 farm had inherited drinking water and irrigation facilities previously owned by a single white farmer and his few employees. The question was on how the A1 farmers and workers were currently sharing these facilities on a villagized farm. Finding out how women were negotiating for water under such a shared water management framework became critical.

The need to research on the impact of the intersection between land and water reforms on how natural resources and infrastructure are shared, has previously been acknowledged by some Zimbabwean researchers in the area of land and water resources management such as Nemarundwe (2003:28) who stated soon after the official end of FTLRRP that;

the issue regarding the use, control and access to shared water resources such as borehole pumps, dams and irrigation schemes situated on the said land still remain shrouded in uncertainty considering the multiple resource system rules of state, rural district councils and local institutions.

Further to that Derman, (2008:16) also contended that

Manzungu (2002), Matondi (2001), Zawe (2006), Derman and Gonese (2003) and others underscore(d) that during fast track, there was no thought given as to how existing irrigation systems, dams, and water management systems would be maintained or subdivided to take into account commercial farm resettlement.

It thus became particularly interesting that an investigation be conducted on how women were negotiating for water for their domestic and crop irrigation needs on individually allocated and villagized small scale plots from shared water sources and infrastructure. Despite belonging to a different social class from the one to which women on the A1 farms belonged, my interest in the study was heightened by the fact that as a woman with a rural background I was acutely aware of the power variables mediating water access, use and control by women in rural settings which I had experienced in the years of my youth.

The realization that findings made through such a study could positively inform government planners, law and policy makers as well as traditional water governance institutions in framing water sharing mechanisms that are user friendly to women and their lived realities, justified the study. Water sharing mechanisms, grounded in empirical research would, besides being significantly informative, help to guide the state in redressing the situation and at the same time ensuring compliance with national and international human rights obligations and expectations.

1.3 The point of departure from other previous studies on the 1990 Water Reform Programme and the FTLRRP in Zimbabwe

It is a fact that many previous studies on Zimbabwe's Land Reform Programme have focused on how women accessed land under the FTLRRP. Not many have addressed themselves to water governance under that framework. For those addressing themselves to the water reform process of the 1990s, the main focus was on whether the racial imbalances in the water sector were redressed through policies which ensured that the previously disadvantaged black people would take over and manage land and water institutions and infrastructure previously owned and managed by white farmers in a cost-effective manner (Manzungu, 2001:97). Secondly, some of the studies such as that by Chikozho (2008:27) and Kujinga (2004:ii) focused on the impact of decentralization of water governance institutions on stakeholders as well as "the applicability of global resource management

prescriptions to the developing countries” (Chikozho, 2002:17). Hence despite there being this glut of empirical studies and publications on land and water issues during and post to the FTLRRP; empirical studies focusing on the gendered and human rights aspects of water governance as reflected within newly created farming communities in Zimbabwe were not similarly widespread.¹¹ Further to that, most of the previous research-work on water resources management prior and post to the FTLRRP focused on communal areas rather than new resettlement areas in Zimbabwe (Matondi 2001; Sithole (B), 1999; Derman 1998; Zawe 2006; Nemarundwe 2003; Cleaver 1998).

Considering that women’s relevance had not been widely acknowledged in previous studies which were largely gender neutral, it then became essential that an investigation be conducted from a women specific perspective interrogating how and to what extent Zimbabwean women farmers and women farm workers were accessing, using and controlling water on A1 farms under the 1990s water sector reform programme and post the FTLRRP which started in 2000. Did the formal water regulatory and policy framework as reflected within the 1980 Zimbabwe Constitution and 1998 Water Act adequately meet women’s water needs as they migrated from communal lands into newly created A1 resettlement farms in 2000?

The above cited questions were significant considering that, for generations, the rural communities from where women had migrated had always relied on open access to common pool water resources governed by local norms, practices and institutions (Hellum, Ik Dahl and Kameri-Mbote, 2015:1). It had to be asked whether these former rural communities had brought with them to the resettlement farms the informal customary norms regulating water access, use and control as framed at places of origin or else had new norms emerged.

¹¹ Of great note since that time up to the present remains the extensive research work and writings on gender and human rights dimensions of water governance in Zimbabwe and South Africa by Professor Anne Hellum and Professor Bill Derman.

At the time the study was commenced, Zimbabwe as a state was still operating under the old 1980 Constitution. This 1980 Constitution was strong on civil and political rights while provisions on economic, social and cultural rights were practically negligible. The right to water discourse which falls within the purview of socio-economic and cultural rights was also missing from this 1980 Constitution, thereby creating a constitutional gap. Nevertheless by 2010 when this study was embarked on, a people driven Constitution making process had already started. By the time the writing stage for this thesis was reached in 2013, a new democratic Constitution was in place and for the first time in Zimbabwe, it comprehensively covered economic, social and cultural rights, inclusive of the right to water.

It still remained pertinent however that the formal gender equality introduced into the new Constitution vis-à-vis economic, social and cultural rights inclusive of the right to food and water be evaluated to see whether it would translate to substantive gender equality. Otherwise, would such equality remain as mere formal or juridical' equality? The true position could thus only be unearthed through the grounded study of women's daily experiences with water governing institutions on Zimbabwe's A1 resettlement farms (van Koppen, 2007:1-2).

1.4 Broad objectives and key assumptions

The broad objectives of this study were to (i) investigate and interrogate the extent to which women farmers¹², women farm workers (former and current) and farm workers' wives were accessing, using and sharing available water resources on A1 small scale farms for personal, domestic, livelihood and productive purposes. A second broad objective was aimed towards investigating whether women from the different social classes were actively involved in the making of decisions on how water was accessed, used and controlled. And if they were, I would seek further to find out how? Alternatively, if they were not involved, the broad

¹² In both female and male headed households

objective was to investigate why not? The investigation would be conducted using a legal pluralist and gendered lens which would also bring into consideration the historical legal aspects of women and water governance in Mazowe Catchment vis-à-vis formal and informal normative and institutional frameworks.

In order to address the broad objectives as well as specific objectives, this thesis problematizes two key assumptions or theories,¹³ from which flow the research assumptions and questions outlined in detail in Chapter 2. The first key assumption questioned the international interpretation of the right to water and reads;

- Is the way in which the right to water is formally conceptualized at international and national levels in sync with how women at the grassroots level visualize how water should be shared and managed in the interest of every water user?"

On a second level, I sought to problematize the assumption that states as follows;

- The extent to which women have capacity to access water for personal, domestic, livelihood and productive uses as well as make decisions on how it is accessed and used is largely dependent on the social networks they find themselves embedded in. As such women have to negotiate their way through these intricate social networks which are subject to a wide range of norms, values and institutions.

The two key assumptions were pertinent to the study because it is a fact that in their daily experiences, women encounter a continuous interplay between formal laws and informal norms and practices which may either constrain or facilitate women's full realization of their human rights inclusive of the human rights to water and sanitation. Under this multiplicity of normative frameworks bearing upon women, it became imperative that I

¹³ In Social Science these are referred to as hypotheses.

assessed whether what was deemed as the right to water under international, transnational, national and local normative frameworks was essentially of similar conceptualization.

My objective was to clearly show that the manner in which adequacy under the right to water is conceptualized at international, transnational and national levels may not necessarily coincide with what is perceived as adequate under informal traditional norms and practices. The study also examined the extent to which a woman's political, economic, social or cultural status may, contrary to human rights standards of equality and non-discrimination, influence her realization of the right to water.

1.5 Thematic areas, specific research objectives, assumptions and questions: A summary

1.5.1 Thematic areas and specific research objectives

Considering that the study investigated how women on A1 farms in Mazowe Catchment accessed and used water as well as their participation in decision making on how the water was to be accessed and used, the research objectives, assumptions and questions were subsumed under two thematic areas of access and participation. There were five specific research objectives of which the first two on access were aimed at;

1. Describing and giving a historical overview of the water infrastructure that is supplying women with water for multiple purposes across two sub-Catchments in Mazowe Catchment through investigating, describing, and analyzing the actors, norms and institutions which have historically mediated access and use of shared water by women within the various social groups;
2. Documenting and analyzing the intersection between formal and informal institutional as well as normative governance frameworks that influence the extent to which women from different social classes currently access and use water at different hierarchical levels, namely intra-household, inter-household and national levels.

Research objectives 3 and 4 sought to unearth the participation framework in place by

3. Examining and analyzing the extent to which women from different social groupings understood and were involved in the formulation of formal laws and informal norms and practices regulating access and use of water in its multiple uses at local and national levels;
4. Interrogating and assessing the efficacy of existing domestic regulatory and policy frameworks in facilitating women's participation in determining how water was accessed and used for primary, productive and livelihoods purposes as viewed against international legal and human rights standards;

As drawn from the findings that were to be made from the study, Research Objective 5 was aimed at making recommendations to the various stakeholders in the water sector on;

- how best the different social groups of women could easily access and use water which was culturally acceptable, affordable and in adequate quantities on A1 resettlement farms;
- as well as be involved in making decisions on the sharing of water in all its multiple uses in a fair, transparent, accountable, participatory, gender responsive and inclusive manner which respected basic human rights principles.

1.5.2 Research assumptions and questions

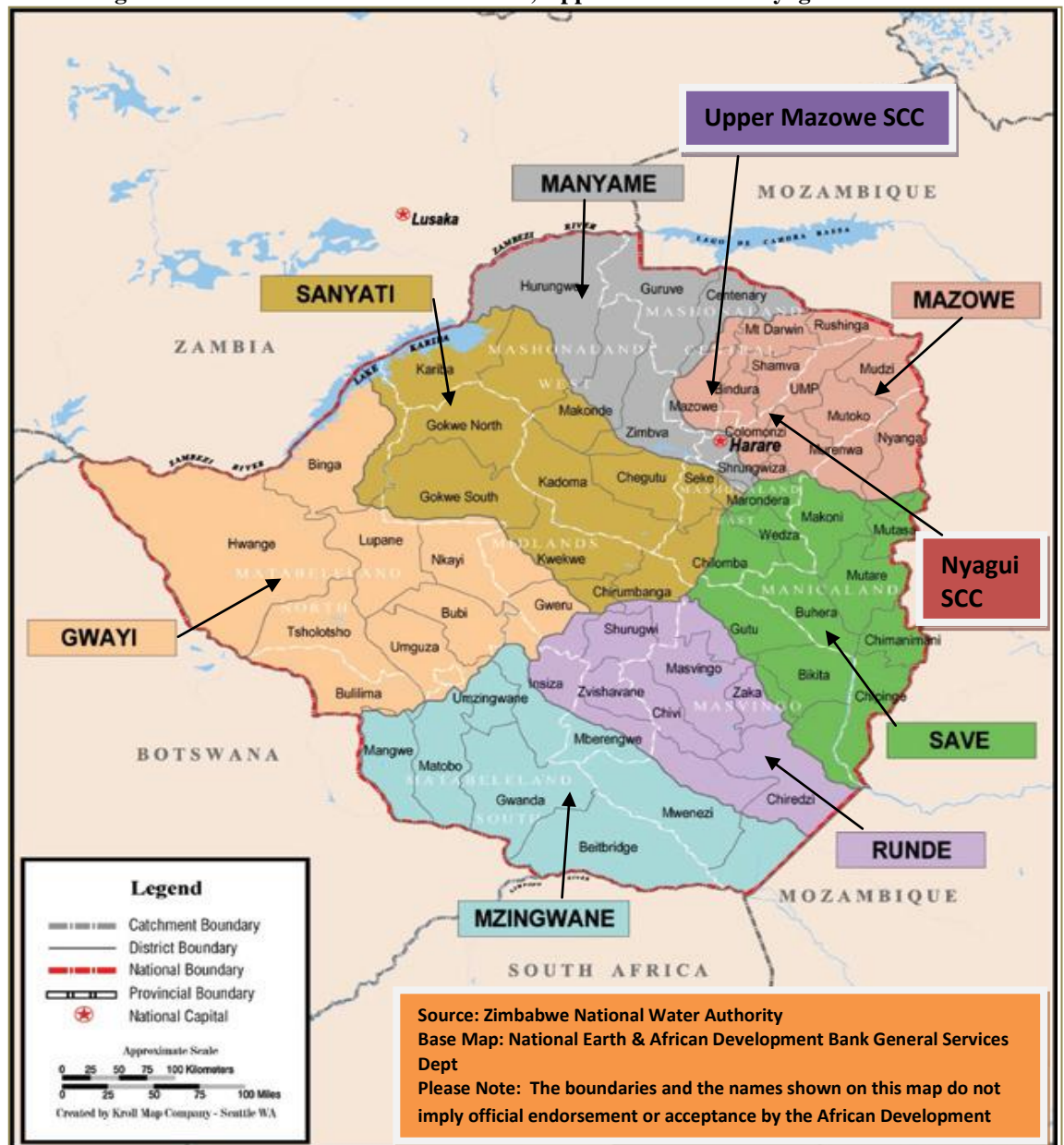
Drawn from research objectives outlined in section 1.5.1 were research assumptions and questions which are outlined in detail in Part 1 of Chapter 2 of this thesis on the methodological framework used for this study.

1.6 Location of Study

This study was carried out on four A1 resettlement farms in Upper Mazowe and Nyagui sub-catchments which in turn fall under Mazowe Catchment. Apart from Upper Mazowe and Nyagui, the other 8 sub-catchments falling under Mazowe Catchment are Middle and

Lower Mazowe; Upper and Lower Ruya; Upper and Lower Rwenya; Nyadire and Kairezi sub-catchments. Located within the North-Eastern segment of Zimbabwe¹⁴ which in turn lies on a high plateau normally referred to as the Highveld; Mazowe Catchment generally experiences good and reliable rainfall patterns. The reasons why I particularly selected Mazowe Catchment as a study location are outlined in the next section 1.7. Figure 4 below shows the location of Mazowe Catchment, described in this section.

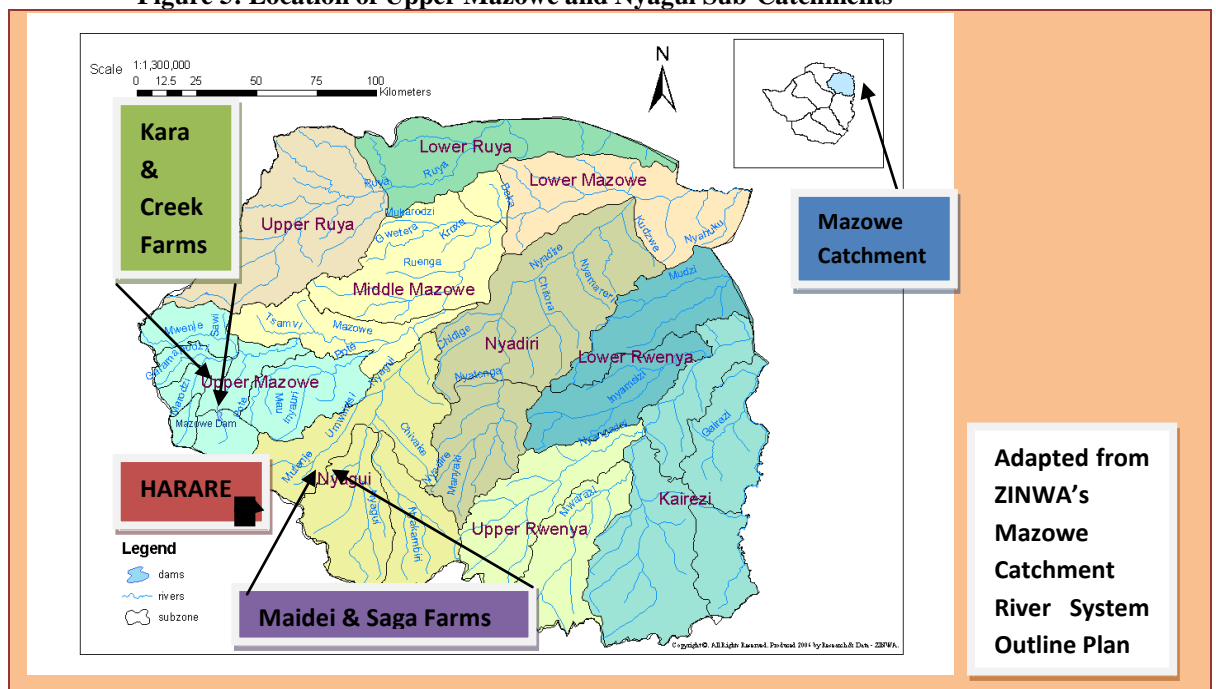
Figure 4: Location of Mazowe Catchment, Upper Mazowe and Nyagui Sub- Catchments



¹⁴ Having a largely agro-based economy, Zimbabwe is a landlocked country bordered by Mozambique to the East, Botswana to the West, South Africa to its South and Zambia to the North. It has a total land surface area of approximately 391,000 square kilometres.

The Highveld on which Mazowe Catchment is located joins with a north-south mountain range forming the eastern border with Mozambique referred to as the Eastern Highlands. Further, this Highveld forms a watershed between the Limpopo and the Zambezi River low lying basins. Zimbabwe is divided into five natural or agro-ecological regions on the basis of land potential for agriculture. Characteristic to this agro-based division is the fact that rainfall and agricultural productivity decreases from region one to five. Most of the land within Mazowe Catchment's boundaries falls within agro-ecological regions 2 and 3. Nevertheless, all the four resettlement farms subject of this research fall within natural region 2, an area characterized generally by relatively fertile soils and reliable rainfall patterns. It is an area which has always been associated with water intensive agricultural activities sustained by the numerous water bodies in the form of rivers, dams and other reservoirs. As a result the main agricultural activity is rain fed crop farming coupled with winter irrigation for those with the necessary resources. Figure 5 below shows the location of Upper Mazowe and Nyagui sub-catchments in Mazowe Catchment.

Figure 5: Location of Upper Mazowe and Nyagui Sub-Catchments



The four A1 resettlement farms selected for this study were distributed in such a manner that two, Kara and Creek Farms were located in Upper Mazowe sub-catchment while the

other two, Maidei and Saga Farms are in Nyagui sub-catchment. Kara and Creek Farms are approximately 60 km, north-west of Harare within the political and administrative district of Mazowe under Mashonaland Central Province. The other two namely Maidei and Saga Farms are located approximately 50 km north-east of Harare, in the political district of Goromonzi falling under Mashonaland East Province. Situated along the main Harare – Shamva road and at the boundary with Shamva district, the two farms in Nyagui sub-catchment’s political and social affairs are more related to those in Shamva District than those in Goromonzi District, under which they fall.

It is important to note that the four research sites fell within an area well renowned for successful engagement in diversified farming activities which included citrus farming¹⁵, tobacco, maize, wheat, barley, potatoes, soya beans, beans farming as well as market gardening. Apart from the Manyame Catchment, Mazowe Catchment used to be ranked at the top in terms of the productivity on its commercial farms. However, after Zimbabwe experienced the Fast Track Land Reform Programme in 2000, productivity on the farms plummeted after most white commercial farmers were forcefully evicted from the farms to give way to scores of landless black peasant farmers. The former white owned large scale commercial farms were subdivided into Model A1 villagized resettlement farms as well as the larger singly owned A2 farms.

1.7 Justification for Area Selection

The study location in Mazowe Catchment was selected firstly for the fact that vibrant water governance structures and institutions existed there prior to 1998. There was a very economically successful River Board in place which managed a robust irrigation and dam network immediately preceding the 2000 FTLRRP. Regardless of having lacked gender inclusivity even prior to 1998, it still remained to be established whether the structures and institutions under the former Mazowe River Board were still in place and the extent to

¹⁵ The popular Mazoe Citrus Farm is located in Upper Mazowe sub-Catchment

which women were accessing such water resources and infrastructure and participating in their management under the new frameworks. Secondly when Zimbabwe's water reform programme was initiated in the mid-1990s, the former Mazowe and Mupfure River Boards¹⁶ were selected as pilot projects to study the effectiveness of the water reform process and as such there had always been consistent interest in Mazowe Catchment from stakeholders.

Research in Mazowe Catchment was thus appealing to me considering that it was now almost 15 years post to the Mazowe and Mupfure pilot projects. This called for a review on progress in view of high expectations that Mazowe Catchment should have more advanced and well established governance structures than the other six catchments which did not undergo any internationally sponsored study or scrutiny.¹⁷ In view of the above, continuous research and reviews vis-à-vis this water reform process was still necessary for continuous monitoring and evaluation.

Another reason for choosing Mazowe Catchment for this study was because it has a high concentration of current and former farm workers (women included) who include descendants of migrant workers from neighbouring countries. It became important therefore to establish how former farm workers especially women had fared under the prevailing drinking and productive water governance frameworks post to the violent land invasions in 2000.

Being approximately 50 km equidistant from Harare, the two research sites in Upper Mazowe and Nyagui sub-catchments were also ideal as research sites due to their proximity to Harare, where I was based. I could always start out very early in the morning and reach the sites as everyone was starting the business of the day; spend the whole day there and

¹⁶ While the former Mupfure River Board is now part of the larger Sanyati Catchment; the former Mazowe River Board, which used to be comprised only of the current Upper Mazowe sub-Catchment area, has been extended to include other river basins such as Nyagui, Ruya, Rwenya and others.

¹⁷ This would exclude Sanyati Catchment which swallowed up Mupfure River Board.

return at sunset as women started to prepare their evening meals. It was the closest I could get to actually living within the researched communities.

1.8 Tackling the broader issues

Apart from the issues I focused on as discussed above, there were also broader issues within the land and water discourse which informed my research as discussed below.

1.8.1 Has FTLLRP created new opportunities for women's self-actualization and is this adequate?

The broader issues revolved around the question whether the breakdown of the state governance structures concerning land and water governance provided space for the realization of new initiatives by women settled in these areas. Alternatively, a rhetoric question was asked whether women were capable of creating space for access and participation in natural resource management within an environment which was not gender conscious or sensitive. A view held by some researchers that have studied the situation of the new resettlement farmers is that the breakdown of existing centralist state governance structures has opened up space for new initiatives on the ground and that some women are taking up that space (Mutopo, 2011; Scoones and Wolmer, 2003).

It was critical that the above assertions be tested against what prevailed in Mazowe Catchment as established through grounded research. Exploring how water had been governed in the absence of the state institutions I asked whether and to what extent the women who had settled on the A1 farms researched on had found new opportunities in the self realization of a human right to water and sanitation through their own initiatives. This has to be viewed against the general assumptions made in the area of natural resource governance with regard to water reforms. In that regard, Hellum, (2010:4) states that;

...democratic decentralization creates and makes use of new political spaces of political participation at the local level where citizens more generally and marginalized groups such as women have the opportunity to interact with leaders and public officials, organize together in communities, and influence decisions that affect their lives

The question is whether this happens in practice considering the myriad of socially induced inhibitory factors which make women practice self-censorship.

Viewed from a human rights perspective, were the opportunities and spaces self-created by women adequate in the absence of state and international institutions obligated to respect, protect and fulfil human rights which include the rights to water, sanitation, housing, food and water for livelihood? Should the state and its agents be allowed to abdicate their obligation to respect the right to water and sanitation which demands that the state restrains any third parties who might be interfering with women's capacity to enjoy the right to water on an equal basis with men; simply because women are struggling to achieve little gains, far below what they are entitled to?

It is against the above scenario that women in Zimbabwe are expected to compete for natural resources as well as accumulate real earnings which compare favourably with those of men engaged in similar productive initiatives. This thesis, albeit at a miniscule scale, seeks to generally show some of the reasons underlying women's largely less significant participation in decision making as opposed to men. As indicated by Hellum, Ik Dahl and Kameri-Mbote (eds) (2015:3) quoting Fredman (2013:218);

As a start it is necessary to recognize the distinctive nature of women's experience of poverty and disadvantage. This suggests that it is not sufficient simply to extend socio-economic rights to women. Instead, socio-economic rights need to be recast in the light of the demands of substantive gender equality. Substantive gender equality goes beyond treating women in the same way as men and requires transformative measures. This in turn entails reconceptualizing the rights themselves.

Hence in my study, one of the ultimate aims was to have the right to water reconceptualized in accordance with how it is understood locally by the different women who access and use water for drinking, domestic, food production and livelihood purposes.

1.9 Significance of the Study

Having a focus on women's access to, use of and control over water, it is anticipated that this study's findings will advance knowledge in addressing gender based contestations related to the multiple uses of water. Agarwal (2001), Cleaver (2001) and Cornwall (2003) in the area of developmental studies, observed that, "development studies have come far in

their explorations of the gendered dynamics of participatory approaches for women who are the targets of development.” The significance of similar advancements in the area of women’s legal studies can never be underestimated. This thesis therefore seeks to fill in a gap in current literature vis-à-vis women participation in development projects in so far as the extent to which gendered relations of power influence the outcomes of such participation as reflected from the perspectives of the targeted beneficiaries at village level.

In summary, through this thesis, I contribute to knowledge as follows;

- 1) The study contributes to literature on resettlement processes focusing on the intersecting issues of gender, water, land and human rights. The key contribution is on the current situation of women former farm workers and wives of former farm workers as internally displaced persons vis-à-vis their rights to water and sanitation;
- 2) I contribute to knowledge within the human rights discourse through analyzing the outcomes when human rights are viewed in context. This was achieved through situating the human right to water in a local context and finding out how the human right to water is conceptualized locally among rural farming communities. It is anticipated that the recommendations made from this study may bring to the attention of state actors, those areas of human rights observation demanding respect, protection, fulfilment and promotion, for which state accountability is seriously lacking and in need of redress while at the same time recognizing the local traditional conceptualization of what the right to water entails;
- 3) The other contribution I make to knowledge is within the area of Women’s Law studies and research methodologies in that field. As revealed in my findings; sameness and difference are shown as going beyond the man-woman dichotomy to be evident even among women within the same social group e.g. women farm workers. Related to this, is my contribution to knowledge vis-à-vis the feminist discourse on

intersectionality. Firstly, theoretical knowledge on intersectionality is advanced through empirical evidence gathered from my grounded study that in any given scenario, different women are indeed subjected to different overlapping vulnerabilities peculiar to each woman's specific contextual situation. Secondly, the grounded use in my study of intersectionality as a methodological tool, used to explore and understand the complex, varied, multiple and intersecting axes of differentiation that were peculiar to each woman's research context, contributes invaluable knowledge within the area of research methodologies and methods;

- 4) Another contribution to knowledge is made within gender, water and development studies as viewed from my analysis of data collected for my study from the perspective of gender, law and legal pluralism;

I strongly believe that the research findings in this study will contribute to the pool of empirical evidence showing that women suffer under a wide array of intersecting vulnerabilities which having gone on unchecked for a long period of time, have led to the global feminization of poverty. As a concept, feminization of poverty has been described by Sylvia Chant (2006:2) as "a phenomenon in which women represent disproportionate percentages of the world's poor." The phenomenon has also arisen not only as a consequence of lack of income, but also as the result of the deprivation of capabilities and gender biases present in both societies and governments. This includes the poverty of choices and opportunities (Fukuda-Parr, 1999:99).

The empirical findings constitute strong evidence supporting a gender inclusive approach to water governance in order to have holistic water resources management structures. The study's findings will therefore accurately advise law and policy makers on the necessity to

have a gender component at the inception stage and prior to the implementation of national development initiatives which are bound to impact differently on men and women.¹⁸

1.10 Organizational Structure of Thesis

All in all, the thesis has 9 Chapters. The broad themes permeating this thesis are ‘access and participation’ in water governance. As derived from its title, Chapter 1 is an introductory chapter setting the scene through firstly, giving an outline of the research problem. The chapter seeks to put the research problem into perspective by highlighting the key objectives, assumptions and questions underlying the research. Having set this groundwork, the task onwards is to provide evidence that seeks to prove or challenge these assertions as supported by empirical evidence drawn from grounded research.

Chapter 2 describes in depth in two parts, the methodological framework used in collecting empirical data which justifies the findings and conclusions emerging at the end. In part 1 of this chapter the choices made in opting and discarding particular research methods and methodologies as well as the reasons for choosing such options, are well articulated. In part 2 of the same chapter is the theoretical framework underlying the study namely women’s law. It is in this part that a discussion is made of the several feminist theories under women’s law such as ‘sameness and difference’ theory as well as intersectionality.

Chapter 3 outlines the conceptual and analytical frameworks underlying the study. Concepts such as equality and non-discrimination, participation and legal pluralism are articulated. Using an analytical framework which is vertical from the top down as well as bottom up the right to water for women on A1 farms is interrogated from the international and regional perspectives, through the national level down to village levels while women’s access and participation in water governance is also explored from the intra-household level to the interhousehold (local community) level to the sub-Catchment and Catchment levels up to

¹⁸ Continuous monitoring and evaluation of these gender dimensions of water governance is also a prerequisite to achieving gender equality and equity in participation in the projects’ governance.

national level. Zimbabwe's constitutional, legal and policy frameworks governing water access, use and control are viewed against international and regional human rights standards. The analytical framework also accommodates a horizontal analysis across two sub-Catchments and four A1 farms whereby women's lived experiences across the different research sites are compared and contrasted. The Chapter also clearly shows that it is not only the mainstream legal, policy and human rights frameworks that facilitate women's access to, use and control of water. Rather and more often than not, women negotiate for water through an intricate system of localized informal customary norms and practices regulated by local traditional actors and institutions; thereby creating a legal pluralist environment which is in continuous dialectical motion.

Chapter 4 is a historical overview of how the water governance in place in Mazowe Catchment has developed from the colonial era through the first decade of independence to Zimbabwe's water sector reform programme in the mid-1990s and the intervening FTLRRP in 2000. Particular focus is on the extent of women's involvement in water governance during this period as viewed from informal local customary norms and institutions on one hand, and formal state sanctioned legal perspectives and institutions on the other. The issue of women farm workers, formerly and currently employed on these farms is interrogated from the perspective of access to and use of water based on employer-employee contractual obligations prior to FTLRRP and on informal customary norms post to it.

In Chapter 5, the wide range of institutions mediating women's access to, use of and control over water in Mazowe Catchment are discussed to the extent that they have either fulfilled their roles or not. The focus is on establishing the human right to water as covering water for basic food production and to enjoy sustainable livelihoods. This is then distinguished from water used commercially under a water rights framework as argued by ZINWA.

Chapter 6 is an analysis and discussion of findings made in respect of women farm workers and workers' wives' access to and use of water in all its multiplicity as well as participation in decision making over the water, in a single chapter. The interrogation of issues arising clearly brings out how women as farm workers and workers' wives suffer under a myriad of intersecting vulnerabilities based on sex, gender, origin, employment or income status, literacy level and citizenship status that negatively impact on their full enjoyment of the right to water.

Chapter 7 is a presentation and discussion of findings made in respect of women farmers' access to water for personal, domestic, livelihood and productive purposes on the researched A1 resettlement farms. Discussed are the numerous water sources and the different access patterns even among women farmers as a social group. Based on the numerous variables, such as one's age, sex, social class, kinship ties or economic status; a gender analysis is done on women from the different social groups regarding how water in its multiplicity was accessed, who accessed it as well as who benefitted politically, socially, economically and culturally from its use. This issue is discussed in light of the 'equality and non-discrimination' elements of the international human right to water's normative content conceptualized by the UNCESCR) in its GC15/2002. Further to that, the findings are also discussed vis-à-vis adequacy of the water accessed in terms of informal customary normative frameworks that acknowledge the fundamentality of water for life.

Chapter 8 is a presentation and analysis of findings made on the extent to which women farmers participate in making decisions on how water is accessed, used and shared within and outside the household through the various water management institutions such as borehole and irrigation committees. The vertical and horizontal analyses engaged with in this chapter clearly bring out the all pervading influence of gender stereotypes women encounter as they negotiate for water on the A1 farms as conceptualized under Article 5 of

the CEDAW and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Women's Protocol).

Chapter 9 which is in two parts draws together all the conclusions made in the previous eight chapters to come up with overall conclusions on the nature of women's access to, use and control over water in Mazowe Catchment; what factors determine the nature of their access to, use and control of water. The question is asked whether the 'access and participation' standards demanded from the international, to the regional, through national to the local levels are uniform. That human rights are universal, indivisible, interrelated and interdependent once again is an inescapable reality. In the second part of the chapter are recommendations on the way forward. The recommendations are grounded in findings made in the study since the aim is to suggest grounded solutions that are targeted, practical and achievable.

CHAPTER 2

METHODOLOGICAL AND THEORETICAL FRAMEWORKS

2.0 Introduction

This chapter outlines and justifies the methodologies, methods and theoretical perspectives adopted in this study. It also outlines the constraints faced in carrying out this research. The Chapter is divided into 2 parts. While Part I focuses on the methodological framework, Part II's focus is on the theoretical framework underlying the research study. Part I also describes the research design opted for and articulates on how the grounded theory, which is the key research methodology used in this study was engaged with. Addressing key methodological issues; an account is given of how data was collected. In a brief overview, the research objectives, assumptions, questions and sub-questions which guided the whole research process are discussed. In Part II, theoretical perspectives under women's law are engaged with as a means of exploring and analyzing women's lived realities. The account reflects on the choices made as well as the strengths and weaknesses of the theories and methods used. The study, qualitative in design focused on women using an actors, norms and institutions oriented approach. The interplay between actors, norms and institutions as they impact on the lived realities of women in water governance is explored from feminist and legal pluralist perspectives.

PART I

GROUNDING RESEARCH: THE METHODOLOGICAL FRAMEWORK

2.1 Introduction

Taking heed of Yin (1984:19) who emphasizes the need to have “an action plan for getting from the initial set of questions to be answered to some set of conclusions about these questions,” I came up with a research design which ensured that between the sets of questions and the concluding answers lay a number of major steps to be taken which included the choice, collection and analysis of data.

As indicated earlier, the study revolved around problematizing two key assumptions on (i) whether the conceptualization of the right to water at international and regional levels was similar to how it was conceptualized at national level and also whether it resonated with how water users perceived a right to water as drawn from women's experiences on A1 farms and (ii) whether the extent to which women accessed, used and controlled resources (i.e. water and land) was largely determined by the various social networks they found themselves embedded in. The research objectives, assumptions and questions briefly referred to in chapter 1 are discussed in detail in the next section.

2.2 Research Objectives, Assumptions and Questions

Emanating from the thesis title outlined in Chapter 1, entitled, "Women's participation in water governance and reform in Zimbabwe: A case study of four A1 resettlement farms in Mazowe Catchment post the fast track land reform and resettlement programme," a working title was formulated to guide the research. This read, "Women's access to, use of and control over water on A1 resettlement farms in Mazowe Catchment." Drawn from this working title were two thematic areas on access (encompassing access and use) and participation (encompassing control). From the five research objectives were drawn the research assumptions and questions which fell under the two thematic areas

Further below are Tables 1 to 4 in which are outlined the research objectives, assumptions and questions on women's access to water and participation in its governance. The research assumptions and questions were progressively revised and updated from the initial ones. The research objectives, assumptions and questions in Table 1 on 'Access' sought to show the nature of the water infrastructure on the A1 farms, who built the infrastructure, the people who accessed the water, whether and how they were sharing the water and lastly the institutional and normative framework mediating this access. Tables 2, 3 and 4 have assumptions and questions aimed at interrogating the extent of women's participation in decision making on water as well as the nature of recommendations proposed.

Table 1: Research objectives, assumptions and questions on access to water

THEME: ACCESS	
Research Objective 1	
Describing and giving a historical overview of the water infrastructure that is currently supplying women with water for drinking, sanitation, livelihoods and productive purposes across two sub-Catchments in Mazowe Catchment through investigating, describing, and analyzing the actors, norms and institutions that have historically mediated access to and use of shared water by women within the various social groups.	
Research Assumption 1a	Research Questions
At the time white commercial farmers were evicted from farms during the FTLRRP they left behind intact drinking and irrigation water infrastructure.	<ol style="list-style-type: none"> i. What forms of drinking water sources and irrigation structures, if any, are situated on the A1 farms under study? ii. Who built this water infrastructure currently in place on these farms? iii. From where do women on the farms as farmers, current and former farm workers (or as spouses and other family members of these) source water for: <ul style="list-style-type: none"> • Drinking and other domestic purposes and is the water clean and in adequate quantities? • Livelihood purposes and is there no interference with traditional means of accessing water for livelihoods. • Productive purposes and is the water adequate and affordable?
Research Assumption 1b	Research Questions
Water accessed through this water infrastructure was thereafter and currently continues to be shared by women who are on these A1 farms as farmers; current and former farm workers (or kith and kin of these) with their male counter-parts for primary and agricultural commercial purposes.	<ol style="list-style-type: none"> i. Is the water supply and infrastructure shared? ii. If yes, how is it shared? iii. Are there any principles, norms and practices if any on the researched A1 farms which determine how water is shared? iv. If so, how were these principles, norms and practices of water sharing developed? v. Who developed them? vi. Do the different social groups of women on the A1 farms face difficulties in accessing water from water sources on these farms?
Research Objective 2	
Documenting and analyzing the intersection between formal and informal institutional as well as normative governance frameworks which influence the extent to which women from different social classes currently access and use water at different hierarchical levels, namely household, community and national.	
Research Assumption 2	Research Questions
There is continuous interplay between co-existing and intersecting formal and informal institutional as well as normative governance frameworks which influence who is expected to access water for each different use at individual, household, community and national levels as well as the methods used in accessing and using that water.	<ol style="list-style-type: none"> i. Which institutional and normative governance frameworks as well as values and practices inform who accesses and uses water for drinking, domestic, livelihoods and productive purposes on the A1 resettlement farms as well as the mode of access? ii. Where did these institutions, norms, values and practices originate from? iii. Are these institutions, norms, values and practices gender sensitive and gender inclusive? iv. How do these institutions, norms, values and practices compare with the status quo ante vis-à-vis the arrangement in villages or farms of origin on who accessed water in its multiplicity and how?

Table 2: Research objectives, assumptions and questions on participation

THEME: PARTICIPATION	
Research Objective 3	
Examining and analyzing the extent to which women from different social groupings understand and are involved in institutions that formulate formal laws and informal norms and practices regulating access and use of water in its multiple uses at local and national levels.	
Research Assumption 3a	Research Questions
Due to the existence of stereotypes that act as hindrances to the very few women who may wish to participate, very few women as compared to men sit on water governing institutions, councils or committees which developed the formal laws and informal norms and practices regulating access and use of water for domestic, livelihood and productive purposes at national and local levels.	<ul style="list-style-type: none"> i. Which institutions are tasked with regulating who accesses and uses water for drinking, domestic, livelihoods and productive purposes on the A1 resettlement farms? ii. Are these institutions inherited from places of origin or are they new? iii. If new, who developed them and how? iv. Are these decision-making institutions gender inclusive and sensitive or alternatively what is the proportional representation of women as compared to men who sit on the water governing institutions, councils or committees or councils which develop formal and informal laws and norms on water governance from the farm level up to national level?
Research Assumption 3b	Research Question
Due to patriarchal attitudes, women have been culturally schooled to think it is unfeminine to be a woman leader who makes decisions which bind men.	What are the normative reasons for the particular distribution of women who sit and make decisions on water governing institutions on the A1 farms?
Research Assumption 3c	Research Questions
Due to the increased burden on them from reproductive roles, women in their heterogeneity generally have no time to attend meetings where they can participate in formulating norms regulating water access, use and control on the A1 farms; as they will be attending to their reproductive roles.	<ul style="list-style-type: none"> i. At what times and how frequently do the decision making institutions meet to formulate new norms regulating water access, use and control on the A1 farms? ii. Are the meeting times gender sensitive so as to encourage gender inclusivity?
Research Assumption 3d	Research Questions
There exist alternative customary norms regulating fair and equitable water access, use and control on the A1 resettlement farms which are easier to understand than the more technical international human right to water concept;	<ul style="list-style-type: none"> i. Is the human right to water concept easily understood by women at local or community level? ii. If not, is there an equivalent system used to ensure that everyone gets water?
Research Assumption 3e	Research Questions
The treatment of water as a commodity with a market value is an alien concept to women engaged in productive farming as well as those who use it for livelihoods on the A1 farms considering that land which is commoditized in urban areas was in their rural set-up allocated to them as a free natural resource endowed to them by the ancestors;	<ul style="list-style-type: none"> i. Do women farmers on the A1 farms pay for the water they are using for domestic, livelihood and productive purposes? ii. Is the water affordable? iii. If they are paying, do they accept that they should pay? iv. If they are not paying for water for productive purposes, why is that so?

Table 3: Research objectives, assumptions and questions on participation

THEME: PARTICIPATION	
Research Objective 4	
Interrogating and assessing the efficacy of existing domestic regulatory and policy frameworks as well as informal normative frameworks in facilitating women’s participation in determining how water is accessed and used for primary, productive and livelihoods purposes as viewed against international legal and human rights standards.	
Research Assumption 4a	Research Questions
The existence of formal national laws and policies as well as informal local norms on water do not guarantee women’s participation in decision making on how water for domestic, livelihood and productive purposes is accessed and used at local levels.	<ul style="list-style-type: none"> i. What is provided for in national laws and policies as well as informal local norms regarding women’s participation in decision making on water use and access at grassroots level? ii. To what extent do these national and local regulatory norms and policies as well as informal norms guarantee women’s access to and control over water?
Research Assumption 4b	Research Question
There exists a disconnect between international legal and human rights frameworks on water and what national regulatory norms and policy frameworks as well as informal local customary norms provide on women’s participation in decision making on water for domestic, livelihood and productive purposes at local levels.	To what extent do international legal and human rights frameworks pertaining to water governance respond to national legal and policy requirements as well as informal local norms on women participation in water governance at local levels?

Table 4: Research objectives, assumptions and questions on access and participation

THEMES: ACCESS AND PARTICIPATION	
Research Objective 5	
Making recommendations to the various stakeholders in the water sector on; <ul style="list-style-type: none"> i. how best the different social groups of women can easily access and use water which is culturally acceptable, affordable and in adequate quantities on A1 resettlement farms; ii. as well as be involved in making decisions on the sharing of water in all its multiple uses in a fair, transparent, accountable, participatory, gender responsive and inclusive manner which respects human rights principles. 	
Research Assumption 5a	Research Question 5a
Women from the different social groups are not accessing water in quantities that are adequate for their different needs; of an acceptable quality and which is affordable.	How best can access to water for the different purposes be improved so that women from the different social groups can access water that is adequate, affordable and of an acceptable quality?
Research Assumption 5b	Research Question 5b
Women from the different social groups are not actively involved in making decisions on how water in all its multiple uses is shared in line with human rights principles.	What measures need to be put in place to facilitate active participation by women from the different social groups in making decisions on how water in its multiple uses is shared in accordance with human rights principles?

With a research design based on the research objectives, assumptions and questions outlined above, field work was embarked on with an ‘open mind,’ whereby the feminist perspectives I personally held were used as mere ‘sensing devices’ in understanding women’s experiences (Giddens, 1984). Using both purposive and convenience sampling, data was

collected through the in-depth interviewing of key informants, group interviews and focus group discussions held mainly with women, which interviews were highly participatory.

2.3 Grounded Theory in Research: Sifting the Grain from the Chaff¹⁹

In conceptualizing grounded theory in research in this study Bentzon et al. (1998:18)'s approach was adopted simply because it best describes the process I had to go through. This entailed collecting data, engaging with it as well as theorizing about it and interpreting it in order to emerge with new questions which required the further collection of more data, in a cyclical manner. Bentzon et al. (supra) define grounded research as;

an iterative process in which data and theory, lived reality and perceptions about norms are constantly engaged with each other to help the researcher decide what data to collect and how to interpret it.

In the North, the process was likened to the snowball which accumulates more snow as it rolls by whereas in the snowless South, the most appropriate hyperbole used has been the dung beetle's ball of dung which it pushes and in the process accumulates more dung, dust and other debris (Bentzon et. al. 1998:18).

Taking a grounded approach to research necessitated my continuous engagement with research objectives, assumptions, questions as well as research methods. As new questions emerged emanating directly from the field work, they needed to be answered by the collection of further data. The process took me to the next level where preliminary data analysis was done as well as conceptualization and theorization. This was done with a view to generating new research concepts. Through this iterative process, research objectives, matching research assumptions and questions were continuously revised and developed until their final moderation as discussed in this thesis.

¹⁹ Sifting grain from the chaff in the Shona community is work usually associated with women after the threshing is done by the whole community, whereby a winnowing basket is used to allow chaff to be blown away by wind onto the ground, while grain remains in the basket. The chaff may be gathered to feed chickens and other domestic birds at home. The hyperbole is used here to describe the manner in which a lot of data would be accumulated in the field and upon return to base and after analysis relevant data would be retained while seemingly irrelevant data would be stored away for possible future use.

2.3.1 Conceptualizing the six research tools in grounded research

In keeping with the grounded theory as defined above, the “six research skills or tools” referred to by Bentzon et al. al. (1998:178-188); Glaser and Strauss, (1967) and Robson, (2011:134) were engaged with, namely (i) an open mind; (ii) next question technique; (iii) concept building; (iv) constant comparative method; (v) theoretical selection or sampling and, (vi) limitations on theory building. The six research skills are defined in this section, while how they were applied to the study forms the subject of the rest of this chapter.

1. An open mind

As much as possible I kept an open mind and avoided proceeding into the field with this grand theory of generally viewing all women in any given situation as being oppressed victims under a non-relenting patriarchal system.²⁰ In line with the approach taken by Giddens (1984) my feminist perspectives were used as mere ‘sensing devices.’ I was quite cognizant however, of the impossibility of my possessing a “tabula rasa”²¹ Bentzon (1998:178-9). I was aware that deeply laid in my sub-conscious mind were these preconceived ideas and perceptions which I was prepared to revise, if proven otherwise. For example one commonly known fact I was aware of, which is also recorded within the UN Water Fact Sheet of 2013 on Water and Gender, states that; “In Africa, 90% of the work of gathering water and wood is done by women.” Despite that, I proceeded to design a gender analytical tool which sought to investigate on the ground who fetched water within a household; who decided on who fetched water and why. I had to investigate further beyond who fetched water to why those particular persons were assigned that duty.

2. Next Question Technique

This is a technique used iteratively to ask questions as a means of exploring and determining the underlying root cause to a particular problem. The answer to a particular question forms

²⁰ For a Critique on Gender and Feminist Theories see Gaidzanwa (1992: 92-124)

²¹ A mind not influenced by previous experiences and impressions, which may also be termed a blank mind or clean slate.

the basis of the next question. There was thus constant analysis of data collected in order to identify emerging themes and new issues which prompted me to ask more questions, thus developing my case. The field notes on the data collected were consistently reviewed prior to proceeding to the next field trip for more data collection (Bentzon et al, 1998:181). The data collected on water sharing norms in A1 resettlement farms was compared with the empirically proven Shona customary norm in communal lands which regards water as life and hence freely accessible to everyone within a community (Derman and Hellum (2003); Nemarundwe (2003); Matondi, (2001) and Sithole (B) (2001). In the process, I was on the lookout for new emerging theories and concepts on water sharing in the new A1 farming communities.

3. Concept Building

The third research tool on concept building was engaged with to emerge with new research concepts and theories. Flowing from the gradual build up of data, observations and comments on the data during research; these were subsequently classified in accordance with emerging themes as a preliminary exercise following which theorization ensued (Bentzon et al, 1998:182). There followed continuous conceptualization and re-conceptualization, through ordering and reordering of the implications of the observations under the various categories, variables or thematic areas as an ongoing exercise (Bentzon et al, 1998:183). Existing legal, methodological, human rights and feminist concepts were also reviewed with a view to develop new ones. Newly collected data was compared to data collected and theories built up in previous studies by other researchers, such as the one referred to in the previous section, as a means of identifying emerging theories and concepts.

4. Constant Comparative Method

Glaser (1969) defines the “constant comparative method” as a means of interpreting empirical data. At page 220, he outlines four stages of the method, namely;

(1) Comparing incidents applicable to each category, (2) integrating categories and their properties, (3) delimiting the theory, and (4) writing the theory

Bentzon et al (1998:185) describes the use of constant comparative methods as essential in women's law research in that "the research...automatically invokes constant comparisons between different women, different situations and the different forces that affect the outcome of events." She emphasizes that these "comparisons must always be guided by the researcher's assumptions about the connections between different influencing factors" (Bentzon et al (supra).

Glaser (1969:220) and Bentzon et al (1998:185)'s conceptualization of the constant comparative analysis method in grounded research was opted for because it puts more emphasis on interpretation and comparison of data as opposed to the approach taken by Strauss and Corbin (1990) who stress on the coding of data. Data coding used mostly for data analysis in qualitative studies involves the use of a short word or phrase to describe the meaning and context of a whole sentence, phrase or paragraph as drawn from observations, interviews or questionnaires. This differs from the approach used in this study whereby women's voices were captured in full in the manner they said it. Data coding is used mainly to bring out the essence and meaning of collected data whereby the researcher assigns values, percentages or other numerical quantities to these codes to draw inferences. Used appropriately, the key advantage of data coding is that it eliminates excessive data while summarizing it meaningfully. The major disadvantage however is that there always remains the danger that important points of the data will be lost in data coding.

As indicated in Chapter 1, through horizontal and vertical analysis of data collected across research sites and from the grassroots level through Catchment level to national level, there was progressive data analysis. The data from different research sites was constantly compared and contrasted so as to identify common threads as well as differences. The different recorded responses were placed into categories which were not pre-determined.

From this, clear patterns began to emerge which were used to explain the social processes under study.

5. Theoretical Selection or Sampling

Theoretical sampling in grounded research is primarily used for purposes of selecting additional cases to be studied so as to gain new insights, expand and refine concepts already in use. This skill became very important in my research at a later stage when through research at Maidei Farm, I felt obliged to add on another research site, a farm occupied mainly by former farm workers of foreign origin. Further sampling led me to drop the farm upon realization that the study would be too cumbersome.

6. Limitations on Theory Building

In an attempt to build up a new theory, I had to contend with limitations emanating from the question which remained at the back of my mind regarding how my research was going to contribute to the development and/or formulation of existing or new theories. This emanated from my view that since the criteria of women (subsistence farmers) researched on in communal lands vis-à-vis water use and control, in the past by other researchers, was similar to the criteria of those who had moved onto the farms, they would surely continue to use the same normative framework on sharing water.

2.3.2 Why a grounded study was opted for

The grounded research approach was preferred to a desk research since using the latter approach could easily have lead me to a false sense of comfort attained through the dispatch of questionnaires into the community through agents; visiting the National Archives or going onto the internet to get a historical background or current news about the research site respectively. It was realized that empirically obtained evidence rather than that which is theoretically obtained, held a higher potential of giving a totally different but accurate reflection of events in the field. Further to that, it was also realized that the desk research approach, though adequate in obtaining supplementary data, if solely used could result in an

inaccurate analysis arising from the lack of personal interaction with the interviewees such as speaking to them, listening to their world-views and opinions as well as observing their everyday activities.

Graham (1991:178), opines that in order for one to obtain “satisfactory explanations of social activities... requires a substantial appreciation of the perspectives, culture and (world views) of the actors involved,” rather than depending merely on statistical evidence. Drawn from the above assertion, a “women-centred” grounded approach was opted for which entailed the observation and interrogation of women’s lived experiences as drawn from actual life situations rather than mere theoretical perspectives such as the law in respect of water use and management. This gave me the flexibility to consider data collected after each visit so as to identify emerging themes which would be followed up in subsequent visits using the ‘next question’ technique.²²

Robson (2011:275) has observed that “the central aim of a grounded theory study is to generate theory from data collected during the study.” He explains at page 147 that;

A grounded theory study seeks to generate a theory which relates to the particular situation forming the focus of the study. The theory is grounded in data obtained during the study, particularly in the actions, interactions and processes of the people involved in it. (As such, grounded theory) facilitates continuous dialogue between legal concepts, theoretical generalizations as well as assumptions and an ever-growing data base of empirical knowledge obtained from men and women’s lived realities on gender relations, local practices, norms and procedures (Bentzon et al, 1998:18).

One of the research methodologies used in this study was piloting. A pilot study was conducted in Mazowe Catchment between October 2010 and March 2011. The piloting served a two-pronged purpose namely; familiarization with the research site as well as gauging the feasibility of carrying out such a study there. A pilot study has been defined by Haralambos and Holborn (2008: 821) as “a small-scale preliminary study conducted before

²² This is a technique used iteratively to ask questions as a means of exploring and determining the underlying root cause to a particular problem. The answer to a particular question forms the basis of the next question.

the main research in order to check the feasibility or to improve the design of the research.” In that respect, piloting was utilized in this study for a number of reasons.

Firstly, piloting became essential considering that this was unfamiliar territory to me. Apart from the few occasions I passed through the area on my way to Bindura town or Nzvimbo growth point in Chiweshe communal lands on personal business; I had no intimate knowledge of social events there outside of news in the print press and electronic media on the farm invasions around 2000. Having randomly selected four A1 farms namely Kara, Creek, Kilda and Galen farms as well as Rivonia A2 farm in Mazowe district, these formed the subject of a pilot study looking at women farmers and commercial water.²³ The findings from this pilot study meant for familiarization purposes with research site as well as checking on study feasibility were incorporated into the main study. It was further realized that in the process of generating grounded theory, it was not necessary that a division be maintained between the pilot study and the main study since any significant data uncovered during the pilot study was to be included in the final analysis thereby enriching the rest of the research (Bentzon et al, 1998:180).

2.4 Factors justifying the selection of particular research sites and research subjects

The initial intention was to research on women farmers on an A1 farm and an A2 farm in Mazowe District, which would also act as a comparative study. This intention to research on two farms in Mazowe District is clearly reflected on the Letter of Authority to research obtained from the ZINWA Mazowe Catchment Manager’s office annexed to the thesis as Appendix 1. After conducting a pilot study and through grounded research, it was realized that unlike on A1 farms, A2 farms did not present a wide selection of categories of women farmers for study. For example, at Rivonia A2 Farm in Mazowe District, there was one politically connected woman farmer with less than 10 full time women farm workers and

²³ For purposes of anonymity, the farm names given are not their real names.

wives of male farm workers. For this reason, research on A2 farms was abandoned in the main study.

It also became apparent, towards the end of the pilot study, that a catchment based study would provide a broader perspective of the issues under study than one which was drawn from a single political and administrative district. Since Mazowe administrative district fell within Mazowe Catchment, the latter became an automatic choice for the catchment based research. Using an actors and institutions oriented approach in the catchment based study, research was conducted on the different categories of state and non-state actors such as the women farmers, current and former women farm workers (or other kith and kin of these), the village heads and councillors.

2.4.1 Criteria used to choose and drop some farms

Considering that “it is never possible for the researcher to be able to study all the people and all the events in a social situation” (Burgess, 1984: 54), in this section, the factors which subsequently led to the selection of particular A1 farms as research sites while others were dropped, are clearly outlined. The guiding principle was the fact that this research sample had to be “representative of the universe from which it was drawn,” (Burgess 1984:53). At one point, the research sample consisted of seven A1 farms namely Kara, Creek, Kilda and Galen A1 farms in Upper Mazowe sub-catchment and Svosve, Maidei and Saga A1 farms in Nyagui sub-catchment. With a plan aimed at having a manageable research sample, it soon became clear that seven farms were too many.

How the decision to select or discard some farms from the research sample was to be arrived at formed the next question. The positive criteria used for site selection were those which satisfied my research purposes in terms of accessibility, security, variation and representativeness of a site. My own security while researching in an area became of paramount importance as well as the research site’s accessibility in terms of the state of the

access road. Other strong determinants for selecting a research site were the extent of cooperation by traditional leaders in control of a farm vis-à-vis allowing access into their areas, as well as willingness to be interviewed.

The uniqueness or variation of the research phenomenon presented by a particular farm; also acted as a positive criterion for selection. Giving examples, Kilda A1 farm was dropped for security reasons as the village head, a war veteran occupying the former white farmer's house was not very cooperative. Further, with less than 20 A1 farming families, the research sample presented was too small. Galen A1 farm was dropped for its inaccessibility due to a very bad 3 km gravel road leading to it from the Glendale-Nzvimbo tarred road. Further, the research criterion presented by Galen A1 Farm was almost similar to that presented by the more accessible Creek and Kara A1 farms within the same sub-catchment.

Svosve A1 farm in Nyagui sub-catchment was dropped for Maidei A1 farm based on both security and accessibility reasons. The village head occupying the former white farmer's house was also a war veteran who had taken most of the irrigation equipment on the former large scale commercial farm for himself. In front of the homestead the war veteran now occupied, was a heap of irrigation pipes which were rusting through non-use and yet no winter irrigation was taking place on the farm due to non-availability of irrigation pipes. Through careful screening, the final research sample was made up of four A1 farms namely Creek and Kara farms in Upper Mazowe sub-catchment and Maidei and Saga farms in Nyagui sub-catchment.

2.4.2 Choosing relevant water governance institutions

Another important decision I had to make concerned the various institutions that were directly involved in water governance from the village level up to national level. These were the informal irrigation and borehole committees as well as formally instituted state and non-state institutions. State institutions included the following, the District Development Fund

(DDF), Rural District Councils, catchment and sub- catchment councils, Environmental Management Agency (EMA), Zimbabwe National Water Authority (ZINWA) and Government Ministries. Non- state institutions were those international non-governmental organizations, non-governmental donor agencies as well as intergovernmental agencies involved in Water And Sanitation Health (WASH) activities in Zimbabwe such as UNICEF, WHO and DFID.

2.4.3 Actors and multi-purpose water: Deciding on which people to interview and category of water to investigate on?

Judging from the significance of certain categories of people, purposive sampling was used to particularly select those for interview. Purposively selected were interviewees such as the Permanent Secretary in the relevant ministry dealing with water, the district administrators, ZINWA Mazowe Catchment Manager, chairpersons of Mazowe catchment and sub-catchment councils, councillors, legislators and traditional chiefs who by virtue of their professional experience became experts and knowledge repositories within their territories of influence vis-à-vis issues concerning water supply and management as well as sanitation.

The choice of women as the key research subjects for this study was first and foremost informed by the simple practical reason that in the developing countries of the world, Zimbabwe included; women, in their endeavour to provide food on the table for their families on a daily basis, have a closer link to water than their male counterparts.²⁴ I initially felt compelled to focus on women farmers' access to, use of and control over commercial water rather than domestic water considering that the research sites were located within resettlement areas which had been officially gazetted as commercial farming areas. Naturally therefore, the assumption was that commercial water for winter crop farming would be of paramount priority among these small-scale farmers. Secondly, issues regarding clean drinking water and sanitation were excluded from the initial research plan as the

²⁴ In accordance with the traditionalist gender-based division of labour, women have to fetch water for drinking, cooking, bathing, laundry and in some instances for watering family gardens which role is regarded as feminine.

assumption was that on these farms were clean drinking water and sanitary facilities left by the evicted white commercial farmers. I soon found out however that the realities on the ground told another story.

Through grounded research, I discovered that there hardly were any fully functional winter irrigation projects since most of the irrigation systems had been vandalized. It was only after going into the field, listening to different women narrating their lived experiences vis-à-vis the drinking water situation and through observations that it soon became clear that drinking water and sanitation formed a crucial, interrelated and indispensable dimension to the whole water governance discourse in Mazowe Catchment.

Through interviewing women farmers on the selected farms, it became clearly apparent that apart from irrigation water, the issue concerning the availability of clean water was of paramount importance. This significant discovery was made through the use of the next question technique when after realizing that women farmers had problems accessing irrigation water for winter crop farming at Creek Farm, I became curious about the drinking water situation. In a group interview held on 29 January, 2011 with five women farmers at Creek Farm, some of whom were irrigation committee members; the question was asked; where do you get your drinking water from? The responses from Mrs Chingara, a widow and Mrs Makura,²⁵ a dysfunctional irrigation committee's member were to the effect that, their drinking water besides being of a poor quality was sourced from Mudzi River located 2 kilometres away. This was due to the fact that the electrified borehole inherited from the white farmer at Creek Farm had broken down three years previously as a result of which there had been a cholera outbreak at the farm in 2008. The women farmers had proceeded to fetch clean drinking water from an electrified borehole at the neighbouring Kara Farm but this had also broken down in the previous month.

²⁵ The names given for the two women farmers are pseudonyms and not their real names.

Having realized that apart from women farmers, this clean drinking water problem also affected women farm workers and farm workers' wives; the latter's access to domestic water was also incorporated into the study, which initially had focused primarily on women farmers and commercial water. The use of the next question technique thus propelled the study from one only focussed on women farmers's access to, use and control of commercial water to one using a holistic approach that was inclusive of different social groups of women's access to, use and control of water in all its multiple uses.

Considering that during the initial visit to Kara Farm in November, 2010, I had observed women small scale farmers and women farm workers freely sharing clean drinking water pumped by electrified boreholes; the news that this electrified borehole had broken down gave me the impetus to investigate how women were coping after this recent breakdown. The question was; had any new and alternative water sources emerged after the breakdown of electrified boreholes on the A1 farms? Proceeding from the perspective of formal laws under the Constitution, the Water Act Chapter 20:24, state sanctioned customary law and water policies, I sought to find out whether there were other informal water sharing norms and sharing arrangements which differed from those provided for under formal laws. This interest was also driven by the realization that the women's law approach to research recognized the fact that within a legal pluralist environment like the one prevailing on the farms, whatever is expressly stipulated by statutes and received common law, may not be what is practiced on the ground in terms of customary norms and practices as well as lived experiences.

With the study's focus now turned towards alternative water sources such as unprotected wells, rivers, springs and dams, from where women now accessed water for different purposes, water for domestic and livelihood uses became of more significance than commercial water use in this study. It was clear from grounded research that the level of

agricultural production on A1 farms could not be classified as commercial, considering the low level of production. Through grounded research it became quite evident how in accordance with the multiple uses of water, water was commoditized under one regime as an economic good while in another the same water gained social and cultural significance which brought it firmly under the commons.

2.4.4 Points of entry and negotiation with gatekeepers to access data

Upon embarking on the pilot study the first question to ask was how entry into Mazowe Catchment was going to be achieved. Subsequently ZINWA was identified as the initial point of entry. Authority to research was duly obtained from ZINWA's Mazowe Catchment Manager who ensured that on my first visit to Upper Mazowe sub-Catchment I was accompanied by a River Inspector and a Hydrology Technician.²⁶ To further legitimize my presence in the area, other letters of authority to research were requested from and duly granted by the two District Administrators (DAs) for Mazowe and Goromonzi districts.²⁷ The ZINWA River Inspector of his own volition also offered to accompany me on several of my initial visits to the area during the pilot phase. This was of great advantage considering that in his normal course of duty the ZINWA River Inspector interacted a lot with both women and men in the area and hence was familiar with the territory into which I intended to venture.

Through introductions to traditional leaders facilitated by the ZINWA River Inspector, the second point of entry into the research areas naturally became the village head on each of the A1 farms. The village head thus worked hand in hand with the local councillor and at one of the farms namely Maidei Farm was a woman councillor who was the point of contact throughout the study. Village heads' wives also played a great role in easing entry into the communities as all village heads except one were male. Taking advantage of this wide

²⁶ The Letter of Authority to research from ZINWA is attached to this thesis as Appendix 1

²⁷ The letter of authority to research from the DA for Goromonzi district was obtained at a later stage after the study was broadened from one sub-Catchment to two. The two letters are marked Appendix 2 and 3.

selection of women across a wide spectrum of social classification; an investigation was done to find out the extent to which women as councillors, village heads, farmers, farm workers or former farm workers, as well as their kith and kin, accessed water and participated in its control in the researched communities.

A particularly serious challenge faced on entering selected A1 farms was that caused by some traditional leaders and some war veterans who of their own volition served as gatekeepers to the researched communities. In defining gatekeepers, the approach taken by Burgess (1984:48) is adopted whereby he defines gatekeepers as “those individuals in an organization that have the power to grant or withhold access to people or situations for the purposes of research,” The situation compelled me to negotiate with these several gatekeepers and at times renegotiate terms of entry into their territories of influence.

2.5 Qualitative versus quantitative research methods

This study was qualitative; woman focused and grounded in design whereby data collected was used to problematize different social groupings of women’s access, use and control of water. Holloway and Wheeler (2002:30) define qualitative research as “a form of social enquiry that focuses on the way people interpret and make sense of their experience and the world in which they live.” Hence the study’s qualitative nature required that more focus be placed on women’s personal narratives on the extent of their involvement in water governance rather than on the amassing of quantitative statistical data in that respect.

Nevertheless, despite the focus being on the qualitative nature of the study; quantitative aspects were not totally absent from the study although these were, to a great extent, outweighed by the qualitative dimension. Hence the quantitative collection of numerical or statistical data was not of primary objective but was engaged with on a smaller scale to support the main qualitative ethnographically informed discussion. According to Denzin (1978) and Patton (1999:1193) triangulation of methods is used to check out the consistency

of findings generated by different data collection methods. It becomes common therefore to have qualitative and quantitative data in the same study whereby this is used to elucidate complementary aspects of the same phenomenon.

Statistics became an essential part of the bigger empirical picture in that statistical data was used to prove the veracity of what women in interviews were saying especially on their limited participation in water governance. To effectively use this statistical data enhanced approach, prominence was given to my “understanding of the actions of the participants (based on) their active experience of the world and the ways in which their actions arose from and reflected back on experience,” (Burgess 1984:3; Graham 1991:178). Hence Graham (1991:179) and Denzin (1970:301)’s views that “different (data collection) methods may be appropriate in providing answers to different research issues (and) in addition, using different methods may also offer some possibility of triangulation- that is, using different methods cumulatively to compensate for the biases of any one.” The statistics were thus used as a means of measuring levels and quality of women’s participation in water governance.

For a start, the number of women sitting on irrigation and borehole committees was only important in so far as it served to confirm gender equality or inequalities vis-à-vis representation in decision making institutions. Secondly, this quantitative data regarding the number of women sitting on irrigation and borehole committees at the researched A1 farms was used to validate²⁸ the assumption that there existed norms²⁹ determining one’s eligibility to sit on irrigation and borehole committees which acted as barriers or obstacles to women’s effective participation in decision making on water.

²⁸ To validate is to check, test or prove the validity or accuracy of a certain assumption drawn from certain results.

²⁹ The relevant norms were unearthed through qualitative interviews

Qualitative research methods helped me to understand the constraints experienced by individual women and also acted as a window through which the mechanisms that negatively influenced women's power to act could be clearly seen. From qualitatively obtained data, the position on the researched farms was such that one needed to have been allocated a plot on the resettlement farm for them to qualify for election to an irrigation committee. Hence due to the fact that offer letters for land on A1 farms were mostly in the names of men who actively participated in the land invasions, men formed the majority of the irrigation committee members. By noting the ratio of women members to male members sitting on irrigation committees, quantitative data was used to confirm or validate qualitatively obtained data as obtained from interviews with women. Unlike the mere statistics obtained through quantitative methods, the qualitative interviews provided more detailed information as to why few women as compared to men sat on irrigation committees.

Another factor limiting any engagement with in-depth quantitative analysis of data was the realization that there existed in Zimbabwe a dearth in nationally obtained statistical evidence which could support whatever result I could have eventually come up with on the selected topic. With the country's data base at ZIMSTAT³⁰ lacking comprehensive sex disaggregated data covering the area of study, there was need to hear the women's voices in order that an informed conclusion could be made on the status of their involvement in water governance. If any contribution to knowledge was to be made in this area, there was need to rely more on qualitatively obtained data as supplemented to a certain extent by quantitatively obtained statistics regarding women's inclusion in or exclusion from water governance institutions from the farm level up to the national level.

³⁰According to GOZ/UN Country Team, (2010:77), ZIMSTAT and line Ministries are the mandated "main producers of official statistics in the country (but) mainly due to limited capacity (shortage of equipment, technology and skills), low response rates and weak coordination of the national statistical system; (they) have not been able to produce current data in recent years." This is because ZIMSTAT "has suffered most from low response rates from line ministries, local authorities and business establishments as well as inadequate budgetary support for collection of primary data from households and farmers."

2.6 Qualitative Research: The use of semi-structured interview guides and other data collection methods that allow for flexibility

In summary, informants were interviewed either as individuals or as a group. In-depth interviewing on individual basis was done mostly with key informants such as Government officials, Chiefs, councilors and other prominent informants. Interviews on a one on one basis were also common with women on those farms where my movements were not restricted. Group interviews held at a central meeting place were a necessity where my movements from door to door were restricted. Focus group discussions were preferred when interviewing groups of informants with a common interest such as members of irrigation committees, women selling vegetables at local farm markets, women farm workers, as well as women and men farmers engaged in contract farming. These discussions would instigate debate on topical issues relating to access to water and sanitation.

To facilitate deeper investigation into the selected women informants' experiences on the A1 farms with respect to water; I had to listen carefully to their personal views about how things were supposed to be as well as narrations of the real experiences they were encountering as individuals and as part of a household, family or community. In order to unearth and describe data subject of this thesis and in line with the grounded nature of this study, semi-structured research interview guides were preferred rather than structured interviews more so that the former allowed more flexibility and informality. Preferring unstructured, semi-structured and open-ended interviews; each interviewee played the centre-role in any interview in that she could freely include other information not specifically asked for if she felt it to be relevant. Hence interview guides afforded me the much needed lee-way to flow with or follow the direction the interviews took in response to informants' answers, comments or demeanour.

As their name implies, guides were used as guiding tools vis-à-vis the anticipated direction the open-ended interview would take; which preconceived direction could always be

diverted from at any given point during the interview whenever the need arose depending on the interviewee's responses, as long as the issues referred to by the interviewee remained relevant to the study.

A good example of how an open ended interview using research interview guides could flow in any direction unanticipated by the interviewer arose from the group interview conducted at Creek Farm on 29 January 2011. In that interview, my main interest lay in women farmers' access to commercial water. Nevertheless, after observing many tired looking women carrying buckets and passing by close to where I sat down with five women farmers in a group interview, I asked the simple question, "Where do you get your drinking water from?" The respondent, a widowed farmer responded in an indirect manner; lamenting their water's quality, its accessibility in terms of distance as well as gender stereotypes militating against progressive gender equality principles. Had this been a rigidly structured interview, it is most probable that in answer to my query on the water source, an interviewee could simply have responded by saying, "from Mudzi River." This would have compelled me to ask further, "How far is it from here?" and the answer would have been, "2 to 3 kilometres." Using such an interrogative approach would have taken me much longer to get to the root of the problem.

The use of rigidly structured interviews would also have been highly inadequate as a means of delving deeper into women's lived realities. Used appropriately in this study, the rapport created between the interviewee and me emanating from the relaxed atmosphere whereby there was no interrogation but rather a two-way conversation allowed the widowed farmer to relax. Without any undue pressure made to bear upon her she felt free to proffer unsolicited information about the general water related problems she and others were facing on the farm. She proceeded to voluntarily reveal how men would use the water meant for drinking purposes to bath at home despite the fact that women fetched it from a river located

more than two kilometres away. Structured questionnaires would simply have revealed that x women sourced their drinking water from Mudzi River, with no details on the hardships women encountered in getting the water, which would be used for both drinking and bathing at home.

The significant role played by semi-structured interviews in qualitative research is summed up by Reinharz and Davidman (1992) when they state,

For one thing, interviewing offers researchers access to people's ideas, thoughts and memories in their own words rather than in the words of the researcher.

Semi-structured interviews fulfilled both the qualitative and quantitative research needs since they were used as a means of collecting demographic data on an interviewee's age, sex, marital and other status which data formed the background to the main discussion points on respondents' lived experiences. In contrast, the use of structured questionnaires which lack flexibility and limit any rapport between interviewer and interviewee would have compelled interviewees to answer in monosyllables on their age, sex, marital status and education level in a quantitative manner which is more focused on quantity rather than quality. The use of research interview guides allowed me to built relationships with the interviewees such that I got to know their names and life histories and lived experiences though for ethical reasons the interviewees had the choice to remain anonymous and not have their names published in the final thesis.

With research interview guides, research gaps were few and in the event of any, the informants were re-interviewed in the field in order to get clarification or explanations for the gaps unlike in an impersonal structured questionnaire where there would be too many interviews and the chances of going back and finding the actual persons for clarification would be few and in between. The several research interview guides used in this research are annexed to the end of this thesis under Appendix 4.

Spending much time being involved in women's daily experiences when fetching water for domestic purposes during the three years of fieldwork, I witnessed the different phases and levels of water availability and quality throughout the different climatic seasons in a year. To bring into better perspective the various water availability scenarios occasioned by the changing seasons, visual research methods were used to capture these. Photographs were taken of water in wells, ponds, rivers and dams or flowing from a hand operated borehole whereby the water's bad or good quality and seasonal scarcity was clearly reflected. Despite taking many personal pictures of willing interviewees, for ethical reasons, the only pictorial data considered as usable for this research, was that showing environmental water resources through the seasons.

2.7 Using an ethnographic approach to earn the community's acceptance on the four A1 farms in Mazowe Catchment

Taking an ethnographic approach compelled me to immerse myself in the particular culture of the communities on the researched A1 farms. Creswell (1998:35) describes an ethnographic study as one which gives "a description and interpretation of a cultural or social group or system," whereby "observable and learned patterns of behaviour, customs, and ways of life" become "the objects of observations or...examinations." According to Creswell (1998:35) "the inquiry process (under an ethnographic study) consists of";

- *Prolonged observation of the group, typically through participant observation in which the researcher (is) immersed in the day-to-day lives of the people*
- *One-on-one interview with members of the group*

The use of in-depth one on one interviews with key informants, group interviews as well as focus group discussions enabled me to generate data which assisted me to give an accurate description and interpretation of the culture and social structure of the A1 villages. Using the participant observant or participatory research skills, the researched communities' everyday social life was observed at close quarters. An effort was made to dress simply as well as at times eating what they ate so as to fit in. Through this approach the interviewees' trust was gained as they gradually but progressively accepted my presence within the

researched communities during the four years of study. Another means through which acceptance within the farming communities was gained was through my participation in various local social events and activities in which most local women were actively engaged, for example attending local agricultural produce shows held soon after the harvest of crops.

Despite the initial plan having been focused on my living on the farms for intermittent but long stretches of time, this was abandoned after the realization that through increased familiarity, there was always the possibility of my being identified as part of certain political alliances on the farms. This state of affairs would then result in the collection of skewed data as the interviewees (depending on which side they were aligned to) would strive to feed me with information assumed to be appropriate under the circumstances. Consequently, I preferred rather to observe events neutrally from afar under the mantle of a frequent visitor's perspective rather than that of a naturalized farm inhabitant.

As a solution to my non resident status, daily visits were undertaken to two farms in one sub-catchment for an entire week prior to going to the other two farms in the other sub-catchment to spend another week. I would go there very early in the morning and return at dusk whereby during the day, I would sometimes eat the food they offered me as long as I was comfortable with it. Regardless of these visitor's experiences on the farms, the very cordial relations between me and key interviewees on these farms, made the inhabitants consider me a part of the community. Thus I could easily come and go at will.

Spending each full day within the researched communities; 'impromptu'³¹ interviews were used to indirectly collect essential data through discussing and interacting with the informants in an informal atmosphere. Using this method, it was not necessary that whatever was observed be immediately reduced to writing since this would have created

³¹ My own word construction; this refers to instances where while in the company of local women, an inquiry about a certain topical issue related to the research would be casually made and a heated discussion would ensue which discussion would be a source of valuable data to be reduced to writing later.

some artificial responses from interviewees. The method used was such that after having made my observations, these would later be reduced to writing in my field journal as soon as I reached my home base. In doing this, effort was made to recall, as much as possible, the intent behind the words used in the conversations witnessed earlier in the field. Through participant observation, a lot of data was accumulated which was later sorted out and analyzed.

2.8 Case studies within a case study: Studying individual women and men within households on four A1 farms in two sub-catchments of Mazowe Catchment in Zimbabwe

Apart from engaging with an ethnographic approach as discussed in section 2.6, data was also unearthed using a case study framework. Case studying was found to be ideal for this particular type of qualitative study considering that Robson (2011:138) states that, "...it is relatively rare to see case studies where any quantitative component has anything other than a minor role (hence they are viewed here as flexible, rather than multi- strategy designs)." The use of case studies in this empirical research whereby the unearthing or accumulation of statistical evidence was of minor significance; also vindicated the above assertion by Robson.

In defining a case study, Bentzon et al (1998:142) cite Yin (1984; 2009:136) and describe it as;

...an empirical inquiry that investigates a contemporary phenomenon within its real life context when boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used.

Hence from a case study perspective, it is almost impossible to study a particular phenomenon divorced from the context within which it is embedded. Robson (2011:136), quoting Miles and Huberman (1984:27) indicates that "a case always occurs in a specified social and physical setting, (such that one) cannot study individual cases devoid of their

context in a way that a quantitative researcher often does.” Robson (2011:138) also states that the unit of analysis in a case study may range from;

(1) a study of specific events, roles and relationships, (2) an individual person or a set of individual case studies, (3) a social group e.g. families, (4) a community, (5) a setting e.g. a village, (6) an organization or institution, and (7) a cross-national comparative study.

Arising from the above it is apparent therefore that there can be “case studies within a case study,” a phenomenon which was present in this study (Robson, 2011:138; Yin, 2003, 2004; Hakim, 2000:63-72). In that regard, the bigger catchment based study was split into smaller units whereby selected individuals and households formed the smallest units of the bigger overall case study. These smallest units namely individual women and men within households fell under inter-household, community or farm case studies which in turn fell under sub-catchment and catchment case studies under a national framework in that vertical order.

An investigation into the various institutions from the village level up to national level such as irrigation and borehole committees as well as other state and non-state institutions was also conducted from a case study framework. State and non- state institutions as well as key actors employed by them as outlined in sub-section 2.4.3 of this chapter constituted other levels of case studying.

Using the ‘constant comparative method’ in this study, data collected from the different research sites was constantly compared and contrasted so as to identify common threads as well as differences. Continuous vertical and horizontal analyses were done leading to informed conclusions. From the actors and institutions referred to earlier were created case studies which were vertically analyzed at individual, intra or inter-household levels which fell within wider case studies as earlier stated. In this study the term ‘intra-household’ is used when referring to relationships within a household and ‘inter-household’ when referring to relations between two or several households, the latter which is often used interchangeably with the term ‘community’ at farm level.

Case study based vertical analysis was done in the study whereby cases were studied from individual to household or intra-household level; from intra-household to inter-household or community level to sub-catchment and catchment levels and finally to the national level. Giving for example the woman village head at Kara Farm who was a widow, her influence was analyzed within her female headed household, at community level as a village head and chairperson of two irrigation committees. Thereafter, her influence within the informal stakeholder groups and the formal Upper Mazowe sub-catchment and Mazowe Catchment councils, in that order, was assessed. Her situation was compared and contrasted with that of men and other women at Kara Farm. Taking one farm at a time, there were therefore several individual case studies drawn from several household based case studies which fell under a farming community case study which in turn also fell under a sub-catchment case study within the bigger Mazowe Catchment case study up to national level. This vertical case study based analysis was used with all the key informants on the four farms so as to get a general outlook on women's access to, use of and control over water from the grassroots level to national level.

Apart from vertical analyses as indicated above, parallel and horizontal comparative case studies between individuals, across households, farms and sub-catchments within the bigger catchment based study were also carried out. Referring to the example of the woman village head at Kara Farm and other women on the same farm, the extent of their access to water and participation in its governance as a farm case study was compared and contrasted with the Creek Farm case study on women's experiences within the same sub-catchment. Using the same horizontal case study analysis on respondents at Maidei and Saga farms within Nyagui sub-catchment; the analysis was subsequently extended across all the four farms in the two sub-catchments at catchment level for an overall analysis. In the ultimate several individual and household based case studies within four farm based case studies were conducted in the two sub-catchments within the bigger Mazowe Catchment case study. The

case study approach was used to unearth similarities and differences between and among individuals and households across the four A1 farms as well as across the two sub-catchments.

2.9 Other data

Apart from data collected as outlined above, there was other data collected through secondary means as discussed below.

1) Biographical and life history narratives

In compiling the historical chapter of this thesis on the history of water in Mazowe Catchment, use was made of biographical and life history narratives of those key informants who had experienced such changes in the politics of water in the catchment from the colonial era to the present. Respondents such as the ZINWA River Inspector, formerly known as a water bailiff; a middle-aged Water Pump Attendant resident at Kara Farm since 1981 as well as traditional leaders who had witnessed the different phases of water governance under successive government regimes in the colonial and post-colonial era were interviewed. This type of data collection method involving some story-telling by the informant regarding his or her personal life has been critiqued on the basis that “the content of such first-person narratives necessarily emerge from memory which is selective” (Holloway and Wheeler (2002).

Nevertheless, the use of open-ended interviews allowed me to pick on any selective narration of events by asking questions which sought clarification on pertinent issues. These interviews, a well of vital oral evidence regarding water resources management in the area prior and post to Zimbabwe’s independence in 1980, were an essential resource in recreating a picture of how daily life on the predominantly white owned farms, must have been like prior to Zimbabwe’s Water Reform. Apart from interviewees’ narrations, my

personal experiential data concerning the use of water by women in a rural set-up was used to recreate the historical aspects.

2) Library and internet based research

Besides making use of the University of Zimbabwe libraries, as well as external libraries at IWSD, British Council and Southern Africa Political and Economic Series (SAPES); the internet also became an invaluable source of electronic law journals, legal precedents in court judgments e.g. ZIMLII website and other electronic data used to complement primary data. Hard copies of law reports and other legal publications were mostly accessed from the libraries at the University of Zimbabwe. The National Archives was an invaluable source of historical data on water in Mazowe Catchment.

2.10 An analysis of the research sample

Inclusive of interviews done with key informants from relevant state and non-state institutions such as the Ministry of Water, ZINWA and UNICEF, a total of 252 respondents comprised of 195 women and 57 men were interviewed. Ten focus group discussions and 10 group interviews were held, distributed as 3 focus group discussions and 3 group interviews conducted separately at Kara and Saga Farms as well as 2 focus group discussions and 2 group interviews held separately at Creek and Maidei farms. A total of 76 individual interviews were conducted at the four research sites. The statistics for this sample are in tables in 'Appendices 5 to 7' attached at the back of this thesis. The said statistics have further been reduced to bar graphs and columns laid out as Figures 2.7.1 to 2.7.5 in 'Appendices 2a to 7.'

2.10.1 Upper Mazowe Sub- Catchment

(1) Creek Farm

Out of 30 interviews conducted at Creek farm, 14 were individual interviews made up of 10 women and 4 men. Two group interviews and two focus group discussions were conducted.

One group interview had women farmers (two of who are irrigation committee members) as participants while the other had farm workers, both men and women. Members of a male-only borehole committee were engaged in a focus group discussion while another focus group discussion was held with both female and male farmers at Creek Farm.

(2) Kara Farm

Inclusive of repeat interviews, a total of 49 interviews were held at Kara farm either as individual or group interviews as well as focus group discussions. A total of 22 individual interviews were conducted made up of 17 women and 5 men.

2.10.2 Nyagui sub- catchment

(3) Maidei Farm

Inclusive of repeat interviews, a total of 32 interviews were conducted at Maidei farm, of which 16 were individual interviews made up of 12 female and 4 male interviewees.

(4) Saga Farm

At Saga farm, a total of 128 people participated in the interviews for this study, made up of 114 women and 14 men. Out of this sample 24 individual interviews were conducted, made up of 18 women and 6 men.

2.10.3 Other Interviews

Apart from interviews done with respondents on the farms such as women farmers and farm workers, borehole and water committees' members as well as other farm employees such as pump attendants, farm managers; interviews were also held with 13 key informants. These included two traditional chiefs and professionals from governmental and non-governmental institutions namely, Upper Mazowe Sub-Catchment Council and Mazowe Catchment Council; Institute of Water and Sanitation Development (IWSD); Zimbabwe Human Rights Commission (ZHRC); Ministry of Water; ZINWA; UNICEF; Ministry of Women's Affairs,

Gender and Community Development and DFID-UK (see Appendix 5 on Occupation Based Distributions). Below is an analysis of what the research sample's total statistics point to.

2.10.4 General Observations Drawn from Statistical Data in Graphs³²

From all the four farms' research samples, there is high literacy rates among women farmers who are generally more educated than the male farmers, with most having an 'O' level education. Literacy rates are very low among men and women farm workers as well as male farmers. This is attributed mainly to Zimbabwe's educational policies prior to and after independence (see Appendix 5 for statistical data graphs on literacy levels). The majority of women farmers fall in the age groups ranging between 20 and 50 years, some of whom are married to male farmers aged above 50 years who are war veterans. Most of women farmers in the 20 – 29 age groups have secondary education and are daughters in law to the farming couples in their 50s (see Appendix 5 for statistical data graphs on age distributions). Due to the general scorn towards single or divorced persons in rural communities, 80.5% of the research sample of 239³³ is married, leaving only 3% each of single and divorced persons. In keeping with Shona patrilineal customs relating to marriage, married women on the farms fall under male headed households since in any marital union, the husband is viewed as the 'paterfamilias'³⁴ who viciously protects his decisions for fear of being labelled 'a weak man.' The remaining 13.5% is taken up by widowed persons, of whom 12.6% are women and 0.9% are widowers (see Appendix 5 for statistical data on marital status distributions). Below is a table showing the statistical results discussed above.

³² See Appendix 5 for the statistical data graphs

³³ This excludes the 13 professional interviewees,

³⁴ Refers to the male head of a household or the father of a family,

Table 5: Table Showing Total Statistical Data for the 4 A1 Farms in Mazowe Catchment

Research Site	Total	Sex		Age Range							Occupation					
		F	M	17+	20+	30+	40+	50+	60+	70+	FW		FA		O	
											F	M	F	M	F	M
Upper Mazowe SCC																
Creek Farm	30	20	10	0	4	10	6	8	2	0	10	2	9	8	1	0
Kara Farm	48	33	15	1	11	14	8	11	2	1	13	6	20	9	0	0
Nyagui SCC																
Maidei Farm	32	25	7	0	9	5	4	11	2	1	3	0	22	7	0	0
Saga Farm	128	114	14	5	46	20	27	21	6	3	31	6	81	8	1	0
ZINWA, Govt. Ministries, NGOs, Councils, Chiefs	13	3	10	0	0	0	0	0	0	0	0	0	0	0	0	0
Grand totals	252	195	57	6	70	49	45	51	12	5	57	14	132	32	2	0

2.11 Ethical Issues and Study Limitations

Going into the field, there were several constraints which required tactical manoeuvring so as to avoid any compromise on research ethics. Below is a discussion of the ethical issues and study limitations that confronted me in the field as well as the adopted solutions which suited each peculiar situation.

2.11.1 Need for Anonymity of Interviewees and Farms

Despite not having explicitly guaranteed anonymity to informants in this study, security concerns compelled me to keep their identities anonymous. Considering that housing tenure for most farm workers was not guaranteed. It was common knowledge that at the slightest opportunity, any accusation levelled against former farm workers, casual or seasonal labourers about the granting of private and frank interviews to outsiders could lead to their eviction by the A1 farmers as had happened on other A1 farms.

This threat was more real on those farms where the relations between A1 farmers and former farm workers were not cordial enough. On one such farm, the village head was reluctant to have me conduct interviews with workers in the farm compound. As a result

some casual workers had to be interviewed as they worked in the fields of a neighbouring farm away from the prying eyes of A1 farmers at their farm. Protecting their identity was thus important. Generally all interviewees' names have been kept anonymous since there were also frank responses from women farmers, farm workers and workers' wives on sensitive family issues. Further, the names of environmental features such as rivers and dams given in the thesis are pseudonyms as the use of their real names would lead to the easy identification of places named in this thesis.

2.11.2 Overcoming general constraints

Encountered during research were some general constraints for which quick solutions which did not leave me compromised had to be found. In summary below are the ethical issues which needed consideration as well as the remedies formulated for each case;

- Most of the settlers on A1 farms had their origins in communal areas. As such they exhibited the 'donor dependency syndrome'³⁵ whereby they expected me to donate something in cash or kind after interviewing them. Having encountered a few such embarrassing situations, a point was made that prior to interviewing any people; they would first be informed that no material benefit would ensue immediately following their supply of information. Rather this was research aimed at unearthing evidence which would be presented to policy and law-makers in the country and other relative institutions with the requisite capacity to materially assist the communities in the long-term.
- On some farms there were occasions when issues became highly politicized such that a few individuals would try to compel me to show some political allegiance. The solution devised for this was the flying of a miniature Zimbabwe national flag in my

³⁵ This is whereby every researcher is viewed as being on the payroll of donors and thus loaded with donor funds.

car.³⁶ To avoid being put into a spot, visits to the A1 farms were avoided on those days when there would also be scheduled political party meetings with some sloganeering taking place. Self-censorship was resorted to through openly reading one particular national newspaper that was deemed acceptable within the researched communities. Copies of such newspapers would be left with the village head or his spouse on return to Harare in the evenings.

- The use of village heads as entry points to the researched communities presented its own shortcomings. The biggest challenge faced was village heads' tendency to keep track of my movements within the farms. A good example of some serious gate keeping encountered came in the form of outside undue influence on the village head at Saga Farm,³⁷ from his friend, a war veteran on a neighbouring farm. I had steered clear of this particular farm for security reasons. This village head and war veteran from the neighbouring farm took offence when he learnt that I was a lawyer researching at Saga Farm. Being highly suspicious of me, he felt that I could be a spy for foreign media correspondents for all he knew. Despite the village head from Saga Farm standing firmly in support of me; the other village head remained visibly annoyed by my presence in the area. Through some quick thinking, the solution devised for this was to start name dropping since few of my relatives farming in the locality were war veterans and high ranking but retired government officials. This information on 'my political connections' earned me the respect of the easily offended and highly suspicious village head who eventually and reluctantly accepted my presence in the area.
- There are farms where door to door movements interviewing people individually were strictly forbidden by the village heads. This was not expressly outlined to me but rather it was subtly suggested to me that the village heads had to be first notified whenever

³⁶ Which I took to be a sign of patriotism rather than political partisanship,

³⁷ A war veteran I had directly interacted with, who had given me no problems at all regarding the need to know the nature of my political allegiance e.g. through showing him a political party membership card

interviews with villagers were scheduled for the ostensible reason that the village heads wanted to assist by calling a meeting of all the villagers on the farm who would gather at one central place for me to meet them as one big crowd. It was further suggested that this would make life much easier for me as this would save me from tiresome treks all over the farm conducting individual interviews. Needless to say, this requirement curtailed my freedom of movement on the farms for purposes of conducting individual in-depth interviews with women farm workers in their homes. Sometimes the air of suspicion from some village heads could be strongly sensed that they felt by desiring to speak to individuals in private or rather in the absence of the rest of the community I could be harbouring some other ulterior and clandestine motives (mostly politically motivated intentions).

- To counter this setback best advantage was taken from doing interviews on the village heads' terms. These restrictions presented themselves only on two farms, one in Upper Mazowe sub-catchment and the other in Nyagui sub-catchment. The gathering of people at a central place for purposes of interviewing them was notwithstanding the fact that the venue would be the same as the one used for the usual village political gatherings on other days of the week when I was not there. Taking advantage of the available options, the villagers gathered at the central place were divided into smaller groups so that with some individual in-depth interviews would be done a few metres away from the rest of the crowd. On the spot group interviews or focus group discussions would be conducted with the others. At Saga Farm, there were occasions when there would be this large group, usually of not less than 20 people gathered at a central place, which would then be split into smaller groups. During one visit, 57 women, inclusive of the village head's wife and 6 men turned up at the usual rendezvous for interviews. This large group was thereafter split into smaller groups in such a manner that there were two group interviews, one with women only and

another, a mixed group of men and women. Three focus group discussions were further drawn from the said group, of which the smaller one was composed of men only. Also drawn from this group sample was another made up of women farmers who were later interviewed individually in an in-depth manner in the presence of the village head's wife. This sample was comprised of two widows of disparate ages; two divorcees, one young and one elderly; an elderly married woman with daughters-in-law; a woman married to a man living with disability as well as a woman nursing her sister's child with multiple disabilities.

- Two exceptions to this monitoring by traditional leaders occurred at Kara and Maidei farms in Upper Mazowe and Nyagui sub-catchments respectively. This was where women were in charge i.e. a female village head at Kara Farm and a woman councillor at Maidei Farm. On those two A1 farms, I could freely move around in the community and randomly select women to speak to as long as they were willing to be interviewed. The local vegetable market at Maidei Farm and the farm workers compound and the fields at Kara farm were picked out as the areas from where prospective interviewees were randomly selected.

2.12 Conclusion

In summary, the methodological approach used to collect empirical data in this study was grounded and actor oriented. The investigation was at individual, intra- and inter-household and national levels as informed by international human rights and water management frameworks. Analysis was done from the perspective of small case studies within a broader catchment and national based case study. To unearth such data, various research tools and instruments were tested and engaged with, whereby all the different parts which helped bring out the broader picture were effectively and patiently tied together.

PART II

THEORETICAL FRAMEWORK: USING WOMEN'S LAW AS A THEORY AND METHODOLOGICAL TOOL

2.13 Introduction

The women's law approach was used as the key theoretical framework of choice in this study as it was the one best suited to a study that was woman focused. In this study, the women's law's approach was used because, despite being a theory within the law discipline, it accommodates perspectives from various other disciplines such as sociology, anthropology and development studies (Dahl, 1986; Bentzon et al, 1998; Tsanga and Stewart, 2011:31). As quoted by Stewart in Tsanga and Stewart (2011:31); Dahl (1988) "described the methodology of women's law as cross disciplinary and pluralistic and calls for a rather free use of the available material wherever it can be found."

Prior to getting into the field, a decision had to be made on which women and what type of water I intended to research on as well as why those particular choices were being made. Borrowing from feminist scholarship in writings by women in the Global North when they refer to women in the South as belonging to one big family of women, the use of the word 'we' was critiqued. Put into context, the aim was to dispel the notion supporting the existence of "a romanticized sisterhood that assumes common oppression of all women" on the A1 resettlement farms (Ann Stewart, 2011:40, Oloka-Onyango and Tamale, 1995:698). In her doctoral study focusing on women's human rights and legal pluralism, Hellum (1999) looked at the situation of different groups of women in order to explore both sameness and difference. According to the women's law theory, sameness and difference can also be intersectional. For example in my study there was sameness and difference between the two social groups of women farmers and women farm workers who both suffered under gender based discrimination as evidenced by gender stereotyping. Nevertheless, among the social group of women farm workers, existed currently and formerly employed women farm workers of Shona and foreign origin. Being placed according to these different categories of

women farm workers; they experienced different forms of intersectional discrimination based on gender, income or employment status, origin among other prohibited grounds which were specific to individual situations (see Hellum, 2013:613-615 on experiences of Norwegian women on the issue). The sameness and difference approach as well as intersectional discrimination are discussed in more detail in sections 2.16 and 2.17 respectively.

Upon realizing that on the researched farms would be different categories of women, the following questions were posed; which women do I intent to research on? Where are they located? In acknowledgement of the multiple uses of water and the manner in which water has always been divided in the Zimbabwean water laws; the ‘we’ question in relation to women was also extended to the multiple uses of water by asking the questions; which type of water am I looking at? Where is it located? Who accesses it? Having decided on the types of water to research on, the next questions were; how are women farmers accessing, using and controlling this particular type of water on the farms?

2.14 Conceptualizing women’s law

As a legal discipline, “women’s law...explores the reality of women’s lives and from that perspective ‘interrogates’ and investigates the law (Bentzon et al, 1998:26). Borne out of the need to break out of the conventional legal centralist, andocentric paradigms for the analysis of law; this approach in its many diversities, takes women and their lived realities as a starting point in dealing with law, and ultimately law reform (Stewart, 1997:58). The women’s law approach was ideal in this research because it necessitated a ‘bottom-up approach’³⁸ as developed in Scandinavian countries in the 1970’s and 1980’s and adapted to the African context under the North-South cooperation (Bentzon et al, 1998:17). As

³⁸ This is whereby I was building on data gathered on the ground in order to come up with informed conclusions or theory building directly drawn from empirical data. This is different from a ‘top down’ approach where one already has a theory or perspective in mind which they try to fit onto a situation existing on the ground thereby placing it in a black-box.

indicated by Dahl (1987), the approach creates a “more holistic picture (in that) mainstream legal methods have been supplemented with methods from the social sciences.”

Putting women’s law into practice, women’s daily experiences³⁹ had to be captured in order to contrast the de facto system in which women as farmers, farm workers or farm workers’ wives were placed as a lived reality, with the de jure system in place. One of the tests used was to ask whether women were participating at the same level with men in water governance, as provided for in the formal law and as compared to what was happening in practice on the farms. An interrogation was done of the lived realities women encountered on the ground on a daily basis, when accessing and using water as well as their participation in making decisions on that water rather than what the traditionally or officially recognized ‘knowers’ portrayed as women’s true position in society.

The woman’s law approach was also ideal for this study as it acknowledges the impact of legal pluralism on the extent to which women enjoy their freedoms and entitlements. In accommodating a pluralist perspective, women’s law takes cognizance of the fact that in their daily operations, women in their heterogeneity are faced with various informal norms, dispute resolution and mediation mechanisms, which may be far removed from the formal norms and dispute resolution mechanisms as reflected in statutes and other mainstream legal practice (Bentzon, et al, 1998).

By allowing me to embrace a legal pluralist approach, the women’s law approach enabled me to break out of the confining legal positivist approaches that are premised on several key assumptions that serve to explain law’s legitimacy. The first legal positivist assumption denies an *a priori* source of rights and assumes that all authority stems from what the state and officials have prescribed. This approach rejects any attempt to discern and articulate an idea of law transcending the empirical realities of existing legal systems. Under positivist

³⁹ In this case at grassroots level

theory, it is assumed that the source of human rights is found only in the enactments of a system of law with sanctions attached to it. Views on what the law “ought” to be, have no place in law and are considered cognitively worthless... In its essence, positivism negates the moral philosophic basis of human rights (Shestack, 1998: 209).

A legal positivist would thus treat a legal system as a closed logical system in which correct legal decisions may be deduced from pre-determined legal rules by logical means alone. Any suggestion that criteria deriving from morality can have any part in the identification of 'law' is categorically dismissed (Nirmal, 2007: 55). Legal positivism also requires that the law be obeyed, regardless of how immoral and unjust it might be or alternatively regardless of the extent to which it disregards the welfare of the individual.⁴⁰

Placing more emphasis on the supremacy of national sovereignty that does not accept the restraining influence of an inherent right above the state, legal positivism undermines an international and Universalist basis for human rights. Realizing the inadequacy and very confining nature of law in its formal construction...in terms of conceptualizing and resolving problems in a holistic and situation sensitive manner; women’s law approach became the theory of choice for this study (Tsanga and Stewart, 2011:36; Bentzon et al, 1998). The approach appreciates “the differing ways in which lived realities and their intersections with laws affect men and women and shape the outcomes of their lives” (Tsanga and Stewart, 2011:36; Bentzon et al, 1998).

In a manner similar to that adopted by Bentzon et al (1998:26), Derman, Hellum and Sandvik, (2013:133), the approach as applied to this study went beyond being merely woman focused to encompass a relational perspective, which is discussed in the next section. The combination of woman focused and gender relational perspectives was

⁴⁰ Hence under a legal positivist framework, the highly discriminatory practices that prevailed in apartheid South Africa prior to 1994 although repugnant to moral law, had to be obeyed as positive law.

necessary in analyzing “the broad based construction of the position of women and the position of men and the relationship between them” on rural A1 farm communities where individual and communal rights and obligations co-exist (Bentzon et al, 1998:26).

2.15 Relational feminism

In investigating women at individual, household and inter-household levels, relational feminism was engaged with as I tested one of its key premises to the effect that, the extent to which women can access, use and control natural resources is determined by the social networks within which those particular women find themselves embedded in. In analyzing how human rights are conceptualized and delivered to women on the ground, Derman, Hellum and Sandvik, (2013:133) acknowledge that, “women are not only individuals, as assumed in international human rights instruments, but are also embedded in social and economic relationships.” This is particularly so with rural women in Africa who are located within communal entities such as villages where natural resources as a source of livelihood are shared. In this study the approach taken by contributors to Derman, Hellum and Sandvik’s (2013:133) book is adopted whereby, to come to grips with the complex struggles of power and resources that shape the relationship between the international, national and local norms; they deconstruct the notion of shared community interests so as to uncover patterns of gender and social differentiation within local communities. Nyamu-Musembi (2002:1) speaks of “an actor-oriented perspective” which she defines as, “an understanding of human rights needs and priorities that is informed by the concrete experiences of the particular actors involved in and who stand to gain directly from the struggles in question.” By investigating the concrete experiences of women actors accessing, using and controlling water in this study; these actors were looked at as individuals as well as members of a wide spectrum of social strata within the communities under research.

2.16 Encountering sameness and difference during research

Located within feminist jurisprudence, the sameness and difference dimensions have generally been used with respect to men and women vis-à-vis the equality and non-discrimination discourse. Questions have been postulated regarding the conceptualization of equality resulting in a variety of phrases such as formal and substantive equality; direct and indirect discrimination. The debate on equality and non-discrimination is dealt with in more detail in Chapter 3 on the conceptual framework adopted for this thesis.

Through grounded research, and theoretical analysis, I encountered the ‘difference and sameness’ debate where initially my approach had been to view all women as homogenous. This homogeneous group of women would also be parallel in nature to a homogenous group of men. Noticing with ease the different social classes to whom women farmers and women farm workers belonged; a subsequent discovery I made was that there existed heterogeneity of women even among those belonging to the same social class or grouping such as women farmers. Using the case study approach as discussed in Part I of this chapter, a significant discovery I made was that having access to different social networks could determine differently, the extent to which two women within one social group accessed, used and controlled water.

In existence from as early as the early twentieth century with regard to sex⁴¹ and race,⁴² the sameness and difference debate within feminist jurisprudence is predicated upon the assertion that there essentially are similarities as well as distinctions between men and women. It is however the manner in which this sameness or difference is viewed which

⁴¹ The debate has revolved around those who view men as superior and women as inferior by virtue of their sex or alternatively biological or physiological attributes. The question has been whether men and women should in the strictest sense be treated the same in the name of equality.

⁴² This was evidenced within the racial discrimination or apartheid phenomenon where black people by virtue of their colour were regarded as inferior to white people and hence the former could not enjoy the same privileges as the latter, deemed to be superior.

distinguishes between proponents of the sameness principle and those who advocate for the difference principle.

Pro-sameness feminists focus on the similarities between men and women. Liberal feminists have generally been regarded as advocates for men and women to be viewed as similar or the same. As such, liberal feminism is associated with promoting juridical or formal equality between men and women regardless of the different circumstances they may have to encounter in grasping an opportunity. Quoted by Tong (1994:6); de Beauvoir (1949) in the “Second Sex” gives an existentialist explanation of women’s situation by arguing that;

Woman is oppressed by virtue of ‘otherness.’ Woman is the other because she is not-man. Man is the self, the free, determining being who defines the meaning of his existence, and woman is the ‘Other’, the object whose meaning is determined for her. If woman is to become a self, a subject, she must, like man, transcend the definitions, labels, and essences limiting her existence. She must make herself be whatever she wants to be.

The commonly given evidence showing woman as having been “othered” is the quote from Aristotle in which he famously describes women as “deformed males” (Borden, 2006:5).

On the other hand the proponents of the difference approach acknowledge and celebrate the existence of differences between men and women, which need to be taken into account in the implementation of equality laws so as to achieve substantive gender equality. Focusing on binary opposites, one of the better known proponents of the difference standpoint, Carole Gilligan (1982) in her book, “In a Different Voice,” proposes what she calls a “theory of moral development.” Her approach resonates with psychoanalytical feminists such as Nancy Chodorow (1991) who “find the root of women’s oppression embedded deep in her psyche” (Tong, 1994:5).

Applying the psychoanalytical perspective to my research experiences on the A1 farms; a conclusion would be made that, it was as a result of internalized cultural and religious moral standards deeply embedded in some rural women’s minds, that acted as invisible power prevailing over women to believe that only women and not men should fetch water from the

well in buckets carried on the head (see also Andreassen and Crawford, 2013:6,35-6; 225-7; Lukes, 1974:24, 2005:27; Gaventa, 2005:15; Hinson and Healey, 2003:4; VeneKlasen and Miller, 2002; Foucault, 1980). Despite their being subjected to a similar situation on a daily basis, women, through socialization regarded it as taboo for a man to carry water from the well in a bucket on his head. Forced by circumstances beyond his control however was one man from Maidei Farm, a widower, who had to carry water in a bucket on his head because firstly his wife was no longer around to do it for him and secondly the path to the well was too bumpy to use a wheelbarrow or scotch-cart for ferrying the water in.

In a commentary on the book by Gilligan; Griffin, (1991:82) portrays Gilligan as claiming that “women tend to think and speak in a different way than men when they confront ethical dilemmas.” Gilligan proceeds to “contrast a feminine ethic of care with a masculine ethic of justice,” whereby she “believes that these gender differences in moral perspective are due to contrasting images of self.” She defines her use of the word “care” as pointing to a “responsibility to discover and alleviate the real and recognizable trouble of the world;” whereby under an ethic of care, “women who allow others to feel pain hold themselves responsible for not doing something to prevent or alleviate the hurt.” On the other hand, “under an ethic of justice, men judge themselves guilty if they do something wrong.” In her commentary Griffin (1991:82) asks the following question, “What distinguishes an ethic of care from an ethic of justice?” Griffin, (1991:82-83) puts the answer as follows;

According to Gilligan it's the quantity and quality of relationships. Individual rights, equality before the law, fair play, and a square deal-all of these ethical goals can be pursued without personal ties to others. Justice is impersonal. But sensitivity to others, loyalty, responsibility, self-sacrifice, and peacemaking all reflect interpersonal involvement. Care comes from connection... Contrary to the descriptive words of attachment chosen by women, men select a vocabulary of self-reference that is clearly individualistic. The male "I" is defined by separation... Gilligan says the male image of going forth alone is consistent with masculine relationship patterns. The average adult male has a wide circle of friendly relations, but no intimate friends. Women picture themselves as part of a closely knit network of intimates; they are in the centre of a web of connectedness.

According to Gilligan, while “women tend to be concerned about our connectedness, our relations...men focus on autonomy and separateness” (Borden, 2006:3)

Gilligan's theoretical perspective was revisited when I encountered women farmers, women farm workers and farm workers' wives who felt duty bound to undertake unpaid reproductive roles of taking care of the whole family, leaving them with no time to meaningfully engage in paid productive work in the farm plots and gardens. While Gilligan confines herself to differences between women and men, post modernist feminists acknowledge that apart from differences between men and women; among themselves "...women's experiences (also) differ across class, racial and cultural lines." As such female difference is not fixed. Rather, it is contingent on social context.

Research findings from my study show that despite belonging to the same social group such as women farmers; there exist different levels of access to water and participation in its governance among women of the same social group as determined by a range of variables which include kinship status, economic and other social status. A ready example arose at Kara farm where access to clean drinking water was viewed through the lives of two women farmers (a married versus a widowed one). What I found amazing was the fact that there was this married woman farmer from a male headed household together with her two daughters who would carry heavy 20 litre buckets of clean borehole water on their heads, from a neighbouring farm 2 kilometres distant. On the other hand a widowed woman farmer, a village head and heading her household, used the social networks she had to access clean water without her having to undergo the backbreaking work of carrying 20 litre buckets of water for 2 kilometres or more. She would either enlist the services of a male neighbour's vehicle; a public commuter omnibus, a scotch-cart or wheel barrows to fetch water. The widowed farmer would send one of her workers on a commuter omnibus to fetch water with a 20 litre container from her urban home in Glendale or alternatively send her workers with either a scotch cart or wheelbarrow to fetch clean water with big containers from a neighbouring farm.

Despite the married farmer's household owning a wheelbarrow, she could not make decisions over it and so she and her daughters could not easily access it to ferry water which would have made life a lot easier for them. Nevertheless, her teenage son freely used it whenever he felt like helping them fetch water, which was not often enough! Further the widowed farmer sat on the irrigation committee by virtue of her being the sole lessee of the A1 farm plot while the married woman farmer could not sit on the irrigation committee ahead of her husband, the sole recipient of the offer letter for their piece of land. While the majority of women farmers through their own social networks established between farm inhabitants for example Kara and Creek farms coupled with a higher income status; could access clean drinking water elsewhere, women farm workers generally resorted to unclean drinking water sources.

Thus through the 'constant comparison method,' any erroneous reference to women as a homogeneous group was corrected as the interpretation of collected evidence implied otherwise. It is from that perspective that each woman or man interviewed was viewed as an individual with individual characteristics and needs but who remained a part of a household, community, sub-catchment, catchment and nation. While there existed differences and similarities between women within one social group, the differences between women farm workers and women farmers as belonging to two different social classes was even wider.

2.17 Women's subjection to intersectional discrimination or vulnerabilities

Vakulenko (2010:197); Bra and Phoenix (2004:76) have given intersectionality's academic definition as a phenomenon;

signifying the complex, irreducible, varied and variable effects which ensue when multiple axes of differentiation – economic, political, cultural, psychic, subjective and experiential – intersect in historically specific contexts.

Vakulenko (supra) interprets the above as essentially meaning that, "it is impossible to experience 'pure' gender or gender discrimination. Rather one's experience as a woman is

always formed in the context of one's broader belonging in the world." Consequently one may find that discrimination against women based on sex and gender would also be inextricably linked with other factors that affect women such as race, ethnicity or social status. Due to these intersecting grounds, the discriminatory result cannot be ascribed to one single ground.

As I conducted this study, it became apparent that the different social classes of women were subjected to intersecting and multiple forms of discrimination based on sex, gender, class (economic, social or cultural), origin, marital status and educational level which they experienced simultaneously. It thus was common to find a woman for example a woman farm worker suffering indirect discrimination based on her sex, gender, ethnicity, economic status, marital status and/or literacy level. In the book, "Worlds of Human Rights: The Ambiguities of Rights Claiming in Africa," Derman, Hellum and Sandvik, (2013:133-135) discuss their research findings whereby "women suffer hardships and injustices not only because they are women, but also because of their race, class or age." The three authors further "focus on how unequal and complex gender relations mediate the relationship between international, national and local law."

This position is also reiterated by Hellum (1999) regarding mixed norms and identities in infertility management in Zimbabwe as contrasted with women's human rights contained within CEDAW. Further in her research in Mhondoro communal lands, Hellum (2007:105) seeks to show how rural women's local experiences, problems and practices regarding water sharing in communal lands are in continuous dialogue with evolving human rights principles. Hence "in their quest for basic human rights, women and girls have to negotiate the shifting and contested boundaries between public and private rights and responsibilities" (Hellum et al, 2007: xvii).

In General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of CEDAW, CEDAW/C/2010/47/GC.2; the CEDAW Committee defines ‘intersectionality as;

...a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25⁴³

Intersectionality, a term first coined by Crenshaw (1989) “emerged in the context of feminist articulations of the limits of gender as a universal category that essentialised women, and the fact that articulations of women as a homogenous group rendered particular women’s experiences invisible” (Curran, 2014:5). By specifically referring to the discrimination rural women encounter, even in the area of access to water and other social amenities, “article 14 of the CEDAW Convention sets out an intersectional approach to gender discrimination” (Banda 2012:359; Hellum and Kamari-Mbote, 2015:16)).

The United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) also makes specific reference to intersectionality in respect of women in General Comment No. 16 of 2005 (GC16/2005), Paragraph 5 which reads as follows;

Women in particular, are often denied equal enjoyment of their human rights, by virtue of the lesser status ascribed to them by tradition and custom or as a result of overt and covert discrimination. Many women experience distinct forms of discrimination, due to the intersection of sex with such factors as race, colour, language, religion, political and other opinion, national or social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status, resulting in compounded disadvantage.

In investigating the intersectional nature of vulnerabilities different women encountered in their day to day experiences vis-à-vis water use and management on A1 farms; my ultimate aim in that respect, was to come up with findings which could be used in making appropriate recommendations to the relevant policy makers. Informed policies would

⁴³ See also Hellum et al (2015:63)

subsequently be implemented, which would be aimed at creating an atmosphere of substantive equality rather than that which fails to factor in intersectionality and hence is merely formal or de jure. The approach taken in this study agrees with that taken by Curran (2014:28) when she concludes that,

Intersectionality challenges the human rights framework and legal system that has grappled to deal with substantive equality and that has tended to address non-discrimination in terms of single categories. Crucial to intersectionality is an application of substantive equality and the ability to move beyond a single-ground or additive approach.

2.18 Sex, gender and the law as experienced during research

Flowing from the discussion on intersectional discrimination; it was important in this study that there be a clear articulation of the differences between inequalities emanating from sex differences between men and women as opposed to those flowing from gender. In that respect, Dahl, (1987:13) does not regard the existence of biological, social and cultural differences between women and men as the main problem in women's lives, but rather law and society's systematic under-valuation of female activities, values and characteristics are seen as the main source of women's subordination.

2.18.1 Conceptualizing sex and gender

It is generally acknowledged that at birth one is labelled with either the male or female sex disambiguation in accordance with one's biological reproductive features. Once one's sex is determined, one is modelled by society to act in accordance with the behaviour or social mores considered non deviant and expected of individuals of that particular sex. According to Lindsey (2005:4), "Sex makes us male or female; gender makes us masculine or feminine. Sex is an ascribed status because a person is born with it, but gender is an achieved status because it must be learned." From a similar perspective, the CEDAW Committee in General Recommendation No. 25, at paragraph 8, defined gender as the "socially and culturally constructed differences between women and men." Hence one's biological sex is used as material or ingredient to mould genders and sexualities whereby

gendered identities are often thought about in terms of what it means to be feminine or masculine (Cook and Cusack, 2011:21).

In conceptualizing the sex, gender and law analytical framework for this study, I used the approach taken by UN agencies as well as Cook and Cusack (2011) which is from a human rights perspective embracing the universality of human rights encompassing women's rights. As indicated in the "1999 UN World Survey on the Role of Women in Development," quoted in the CEDAW Committee General Recommendation No. 25 at paragraph 7, note 2 and by Cook and Cusack (2011:22), gender,

...is an ideological and cultural construct, but is also reproduced within the realm of material practices; in turn it influences the outcomes of such practices. It affects the distribution of resources, wealth, work, decision-making and political power, and enjoyment of rights and entitlements within the family as well as public life.

Considering that, the concepts of sex and gender are best described or understood through the context of opposed binary meanings, this creates a vicious cycle in that while generally most feminist ideologies would wish to disassociate from binary opposites to the extent of dismantling the distinction as essentialist; there seems to be no better way to conceptualize sex and gender than through the same cultural or social construction. The feminist perspective on dualisms or binary opposites in expected masculine and feminine characteristics or stereotypes within society revolves around the "Man>>Culture>>Reason (Science) axis" on one hand and the "Woman>>Nature>>Emotion (Arts) axis" on the other. The former axis is characterized by aggressiveness and individualism as opposed to the latter axis characterized by a nurturing, caring and empathetic disposition. The argument has been that while the former axis associated with men has been placed on a pedestal and has thus been viewed as superior; the general tendency in society has been to de-value the latter associated with women, as being inferior.

In her book, Stewart (A) (2011) argues for a new approach which views global gender inequalities not only from the perspective of women's rights, but rather from the perspective

of gender specific vulnerabilities arising from care and social reproduction. Describing these often contentiously interpreted feminist terminologies from the perspective of differences, Hess and Ferree (1987:33-34) state that;

...concepts of gender are cultural interpretations of sex differences (Oakley, 1972)... Gender depends on how society views the relationship of male to man and female to woman. Every culture has prevailing images of what men and women are "supposed" to be like. What does maleness mean? What does femaleness involve? How are women and men supposed to relate to each other?

While the general approach has been to focus on similarities and differences between men and women, in this study my analysis went beyond the inter-sexual framework to one which was intra-sexual in that similarities and differences among women were explored within and across their social groups. Applying the sex, gender and the law analytical framework to my research, it had to be checked on whether gender as a social construct was really an issue in Mazowe Catchment, vis-à-vis the sharing of available water resources among women of different backgrounds and with men?

In this study I set out to unearth the extent to which deeply ingrained social constructs' impacted on how women actively involved themselves in the access to, use and control of water on A1 farms in Mazowe Catchment. The findings showed that there were roles within these farming communities' water sharing framework which were regarded as either masculine or feminine. Proceeding from the premise that gendered relations are a social construct with a continuously evolving nature, I sought to find out their origins and how the Zimbabwe's constitutional and human rights frameworks view these.

2.18.2 Gender stereotyping

In using the sex, gender and the law framework, the social and cultural dynamics which usually underlie these gender relations such as 'gender stereotyping' could not be ignored. This was because gender stereotyping largely determined how women within the various social groupings viewed themselves or were viewed by others vis-à-vis their capacity to

make decisions on water access, use and control. According to Cook and Cusack (2011:1) stereotyping is;

...the way we categorize individuals, often unconsciously, into particular groups or types...It is the process of ascribing to an individual, general attributes, characteristics or roles by reason only of his or her apparent membership in a particular group. Stereotyping produces generalizations or preconceptions concerning attributes, characteristics, or roles of members of a particular social group, which renders unnecessary, consideration of any particular individual member's abilities, needs, wishes and circumstances.

According to Cook and Cusack (supra), gender stereotyping then involves the “social and cultural construction or understanding of men (and their sub-groups) and women (and their sub-groups), due to their different physical, biological, sexual and social functions.” A common example is whereby there exists a stereotypical belief that men are physically powerful. As a result, all men, regardless of individual physical attributes, are by virtue of their belonging in the social group of men considered physically powerful. Hence in an interview with a farmer, who is a member of an all male 10 member Borehole Committee at Creek Farm, he explained the absence of women members on the Committee as arising from the fact that women are physical weaker than men and thus would not be able to carry the heavy borehole equipment in the event that the borehole needed repairs. In his view all men were more physically powerful than women. This fact then made any female farmer ineligible to be on the Borehole Committee unlike the male farmers.

Proceeding with Cook and Cusack (2011)'s conceptualization of what stereotyping is; in stereotyping, a particular individual's characteristics are not considered. There is thus statistical or descriptive stereotyping based on generalized preconceptions for example that women are primary care-givers; are shorter than men; live longer than men and other categorical classifications. Normative or prescriptive stereotyping prescribes what is expected from a person of a particular sex for example a woman in relation to the particular attributes, characteristics or roles believed to be constitutive of women. Thus under prescriptive stereotyping, a belief arises that a woman ought to conform to certain ascribed roles and identities expected of women in general. Hence in interviews with women

farmers, women farm workers and workers' wives on the four researched farms; they were all unanimously agreed that they were well aware of what culture demanded of them as women for example that they as women and not men, were expected to fetch water for the whole family from the well.

Indicating the significance of gender in resource allocation and distribution, the UNDP (2006:10) has stated that; "gender is generally associated with unequal power and access to choices and resources." Hess and Feree (1987:22) have aptly summed up this situation by stating that;

...the imposition of an ideology of two genders and the differential evaluation of these differences has one universal outcome: systems of gender stratification in which males have greater claims on and access to the scarce resources – power, prestige and property – of a society than do females.

UNDP (supra) proceeds to opine that, "the different positions of women and men are influenced by historical, religious, economic and cultural realities. These relations and responsibilities can and do change over time" (my emphasis). Hence gender "...roles and images are not fixed; (but) ...are historically and culturally determined" (Stevens and Van Lamoen (2001:18; Varga, 2010:6).

In a view which supports that by UNDP (2006:10), Stevens et al (2001:18) and Varga (2010:6) I subscribe to the fact that, being social constructions, gender roles are equally amenable to change through the same society which constructed them in the first place. Nevertheless the findings in this study showed women farmers, women farm workers and workers' wives generally believing their gender roles to be culturally immutable. The findings reveal however that while poor women remain constrained by such culturally imposed gender roles, rich women circumvent these barriers by hiring labour to do the chores expected of them.

2.19 Conclusion

Using the women's law approach as a means of describing and understanding women's access and participation, it became essential that the actors, norms and institutions women came into contact with in their quest to access, use and control water at the various levels be explored. There was need therefore to unearth different women's lived realities when accessing water for domestic, livelihood and productive use on the researched A1 resettlement farms. The findings were strongly secured or embedded within firsthand narrative accounts of women and men's personal experiences on the ground. This approach facilitated an "inquiry from the inside"⁴⁴ rather than an "inquiry from the outside"⁴⁵ (Bryman, 1988:3; Evered and Louis 1981:385). Throughout the research process, more concern was directed towards social processes which impacted on selected actors' perspectives, culture and world views. Viewed against feminist perspectives such as relational feminism, sameness and difference approach, intersectional discrimination as well as sex, gender and the law analytical framework, the interviewees were not viewed "as objects with given properties – attitudes, norms, behavioural characteristics – which (could) be readily measured given due care but rather they were viewed as actors whose own frame of reference needed detailed investigation before their actions (could) be adequately interpreted and explained," (Graham (1991:178).

2.20 Overall conclusion on theory and methodology

With women's law as the key theoretical framework underlying this study, qualitative research methods were used to unearth data in this grounded study whereby focus was on respondents' personal narratives of their daily experiences in accessing, using and

⁴⁴ According to Evered and Louis, (1981:385) an inquiry from the inside is characterized by the experiential involvement of the researcher, the absence of a priori analytical categories, and an intention to understand a particular situation"

⁴⁵ On the other hand Evered and Louis (supra) define an inquiry from the outside as one which "calls for detachment on the part of the researcher, who typically gathers data according to a priori analytical categories and aims to uncover knowledge that can be generalized to many situations."

controlling water. Feminist theories were engaged with in order to understand the sameness and difference among respondent women who at personal levels also endured gender based discrimination which intersected with other forms of discrimination. The concepts of sex, gender and the law were also engaged with as a means of analyzing and understanding the gender stereotyping commonly encountered by women in fetching water, making decisions on what to use it for, where to use it, how to use it, when to use it and why.

Despite being a qualitative study, quantitative methods in the form of a few statistics collected in the field were used to validate and give meaning to data collected through qualitative methods. One good example is whereby statistical data collected vis-à-vis the number of women who sat on water governance institutions at farm level, catchment and sub-catchment levels was used only for purposes of investigating how many women actually sat on those institutions. This was a means of verifying qualitative data collected through in-depth interviews with key informants, focus group discussions and group interviews explaining why this was so.

In the next Chapter, the concepts underlying the water rights and the human right to water discourses are discussed focusing on equality and non-discrimination, participation and justiciability.

CHAPTER 3

SITUATING WOMEN'S HUMAN RIGHT TO WATER AT THE INTERFACE OF INTERNATIONAL, NATIONAL AND LOCAL NORMS AND PRACTICES: LEGAL AND CONCEPTUAL FRAMEWORKS

3.0 Introduction

The human right to water has been criticised for being biased towards urban areas due to its focus on water for personal and domestic uses. It has been pointed out correctly that people living in rural areas often require water not only to satisfy their personal and domestic needs, but also for other uses relating to the broader goals of poverty reduction and livelihood security, such as food production and income generation... It could be argued that the focus of the right to water on personal and domestic uses bypasses the reality of people living in rural areas, who require water for multiple uses.

The above quote by Winkler, (2008:1-2) citing Woodhouse and Langford, (2009:5-12) foregrounds the discussion in this chapter which revolves around how law and policy makers conceptualize the right to water and how water sharing is perceived by women on the ground. This should be understood against the context where rural women are the ones who mostly use water for a multiplicity of domestic and livelihood purposes which are interdependent, interconnected and equal in importance. This recognition of rural women's uses of water that are more diversified than those by urban women has also been acknowledged by van Koppen, Moriarty and Boelee, (2006:4-9,14-15) and the Poverty-Environment Partnership (PEP), (2006:31-32). My approach in this study agrees with Hellum (2010:1) when she gives a wholly encompassing interpretation of the right to water by stating that;

The right to water is constituted at the junction of two sets of human rights norms, (namely) "(1) the right to water which is part of the right to an adequate living standard and to the rights to life, health and food without discrimination" and "(2) women's right to participation in decision-making."

The purpose of this chapter is to unpack and assess the efficacy of the range of available formal and informal normative frameworks in meeting that conceptualization. A distinction is also made between the human right to water and water rights.

In this thesis a question is posed whether the *modi operandi*⁴⁶ used through formal normative frameworks to regulate water access, use and control adequately meet the needs of women on the farms who have the practical experience of using water for a wide range of purposes as regulated by formal and informal norms? In this chapter the human right to water is viewed as a social construct which is also a legally defined relationship between women as individuals or collectively as groups with respect to water in its multiple uses. How the human right to water is conceptualized in an environment that also accommodates the intersecting land and water rights becomes a pertinent issue. It is in line with the conceptual and analytical frameworks outlined in this chapter that the rest of the chapters in this thesis are framed and analyzed.

The analysis as outlined above is done from the international level in Part 1; to the national level in Part 2 and finally to the local or community level in Part 3. This is in accordance with the legal pluralist perspective adopted for the study. This pluralist perspective was drawn from the realization that the same social space and the same activities are subject to more than one body of law. As such in analyzing women's access to, use and control of water and sanitation, the fact could not be ignored that their rights are embedded in coexisting, overlapping and conflicting international, national and local norms and institutions (Hellum, Ikdahl and Kameri-Mbote, 2015:5; Griffiths (J) 1986:1-55; Griffiths (A) 2002:289-310; von Benda-Beckmann (F) 2002:37-82; Meinzen-Dick and Nkonya, 2008:12-27).

In the conclusion the interplay between the formal and informal norms which either constrain or facilitate women's access to, use of and control over water on small scale resettlement farms in Mazowe Catchment is summarized. The concluding summary also

⁴⁶ The plural form of the Latin expression '*modus operandi*' which literally translated means 'mode of operation' procedure used or way of doing or accomplishing a task

points to the intersection between international, national and local norms in water governance in a clear reflection of the existence of legal pluralism.

PART I

WATER RIGHTS AND THE HUMAN RIGHT TO WATER FROM INTERNATIONAL AND REGIONAL PERSPECTIVES

3.1 Introduction

A human rights framework does not automatically resolve difficult policy issues about financing, delivery and regulation of water and sanitation services. However, human rights can act as a compelling tool to mobilise and empower people, in particular poor and marginalised groups. They translate needs into rightful claims: Providing access to water is no longer perceived as charity, but as realising an entitlement... As such, human rights can strengthen State accountability for the delivery of water and sanitation services.

As suggested in the above quote by Winkler (2008:4) and from an international perspective, human rights have been used as basis for analysis simply because viewing access to, use and control of water from the perspective of human rights rather than needs demands accountability from duty bearers while at the same time empowering even the poor and marginalized groups within society to claim them once they have access to relevant information. As an analytical tool, a human rights-based approach offers a set of internationally agreed standards used to test non-discrimination towards women as reflected by their participation in water access, use and management. From international and national perspectives, a human rights based framework creates a legal basis for claiming resources; clearly outlining who is accountable and who is entitled thereby making it easy to conclude from practical observations on the ground whether appropriate measures are in place in line with international human rights standards.

It is important from the onset that the human right to water be distinguished from water rights or tenure as the two are conceptualized differently. This issue is discussed in detail in section 3.2 at international level and explained further in Part 2 of this Chapter at national level vis-a-vis Zimbabwe's water reform which saw the repealing of the 1976 Zimbabwean Water Act that provided for privately owned water rights.

3.2 Conceptualizing Water Rights

3.2.0 Introduction

According to Hodgson (2004:13-14);

Water rights, as the term is commonly understood, have nothing to do with the so-called "right to water", a putative human right which is claimed to exist either as a right in itself or as an ancillary aspect of the "right to food" created by article 11 of the International Covenant on Economic, Social and Cultural Rights. Nor should water rights be confused with provisions contained in progressive constitutions such as the "right of access to water" found in Article 24 of the South African Constitution. Instead water rights are concerned with the removal (and subsequent use) of water from the natural environment or its use in that environment.

Unlike the human right to water framework that demands that everyone has a right to water by virtue of being human, water rights are usually derived from statutory law and are either land based or use-based or both.

3.2.1 The legality of water rights

In essence a water right is a legal right:

- to abstract or divert and use a specified amount quantity of water from a natural source;⁴⁷
- to impound or store a specified quantity of water in a natural source behind a dam or other hydraulic structure; or
- To use water in a natural source (Hodgson, 2004:14; Chileshe et al, 2005:30-2)

Water rights are legal rights capable of being asserted against the state and third parties in a court of law. In the case of a dispute, a right holder can legitimately expect a valid right to be upheld by a court and where necessary enforced through the machinery and coercive power of the state. (Hodgson, 2004:7) Consequently the primary responsibility for the enforcement of water rights against third parties lies with the state rather than with the right holder (Hodgson, 2004:21). Loss of, or damage to, a water right is prima facie subject to the payment of compensation and the right to such compensation is enforceable in the courts (Hodgson, 2004:7). Depending on the jurisdiction, the use of water, or the undertaking of

⁴⁷ A 'natural source' includes a stream, river or lake, a reservoir created by the damming of a river, a swamp or pond as well as groundwater from a natural spring or a well.

any of these activities, without a formal right in circumstances where this is required, invariably constitutes an offence that may be punished in accordance with criminal or administrative law (Hodgson, 2004:17). Water rights serve several basic purposes as follows;

- From the perspective of society they permit the orderly allocation of valuable resources;
- From the perspective of the right holder, they confer the necessary security to invest in the resource or activities entailing its use;
- When rights are secure and tradable the holder may also be able to use them as collateral through a mortgage to raise credit (Hodgson, 2004:7).

Similar to the underlying resource itself, water rights are fluid, mobile and changing;⁴⁸ they necessarily connect people. (Meinzen-Dick and Nkonya, 2008:12) Hence, apart from a water right entitling a rights holder to a specified amount of water, the flow of the water is also an important component of a water right. The fluid or mobile nature of the water itself makes it more difficult to define water rights because of the need for so much specificity: *who can use how much water from what source, when, and for what purpose*, etc (Meinzen-Dick and Nkonya, 2008:13) It is interesting to note that the human right to water is not dependant solely on the availability of water resources.⁴⁹ Nevertheless, a water right can only be exercised to the extent that there is sufficient water available in the source. The probability of an entitlement being met at all times and eventually its security and dependability increases in keeping with flow regulation (Hodgson, 2004:23).

⁴⁸ Modern water rights are based on the concept of the hydrologic cycle, the notion that water in its natural state is in constant motion

⁴⁹ Hence one continues to have a human right to clean drinking water regardless of their being in a desert or sailing on the high seas. It has thus been conceptualized as synonymous with the right to life, peculiar to each human being on the basis of equality and non discrimination.

The exact definition of the ‘bundle’ of water rights varies, but they are often grouped into two broad categories of (i) *use* rights of *access*⁵⁰ and *withdrawal*;⁵¹ and (ii) *decision-making* rights to regulate and control water uses and users, including the rights to *exclude* others, *manage*⁵² the resource or *alienate*⁵³ it by transferring it to others (Schlager and Ostrom, 1992; Meinzen-Dick and Bakker, 2001; Chileshe et al, 2005:30-2; Meinzen-Dick and Nkonya, 2008:15). To these may be added the rights to *earn income*⁵⁴ from a resource, which Roman legal traditions have referred to as *usufruct* rights (Alchian and Demsetz, 1973; Meinzen-Dick and Nkonya, 2008:15). The use and control rights have hierarchal distinction between them in both legislative and customary rules. Actual ownership is defined as the totality of this bundle (Chileshe et al, 2005:30-2).

3.2.2 Water rights as property rights

Due to the complex nature of the interrelations between individual rights and rights-holders, water rights have been considered even as a ‘web of interests’ (Arnold, 2002; Hodgson, 2004; Meinzen Dick and Nkonya, 2008:15). Water rights are proprietary rights protected by property law (Young, 2006:68-71; De Villiers, 2001:59; von Benda Beckmann (F) et al, 2006:15; Derman et al, 2013:38). Under such circumstances, water rights are used to regulate the proprietor entitlements of individuals and organizational entities in the abstraction and supply of water from a shared source for example a river, stream or dam. Water rights have also been conceptualized as administrative use or usufruct rights.⁵⁵

⁵⁰ Refers to rights to enter a defined physical entity e.g. recreational water use (like swimming), where the main ‘use’ is simply to be in the water, and generally refer only to non-consumptive, in-stream uses.

⁵¹ This refers to the rights to obtain the benefits from that entity by taking out some of the flow.

⁵² This refers to rights to regulate use patterns, transforming the resource and potentially altering the stream of benefits from the resource. Management rights provide the ability to define access or withdrawal rights.

⁵³ This refers to the rights to sell; lease or bequest rights to the resource.

⁵⁴ Rights to earn income from a resource (even without using it directly) can be separate from the use and management of the resource, as when government departments collect revenue from water users or when individuals or communities collect a charge from others who use water in the context of water transfers.

⁵⁵ The right of enjoying a thing, the property of which is vested in another and to draw from the same all the profit, utility and advantage which it may produce, provided this is done without altering the substance of the thing. A usufruct is either granted in severalty or held in common ownership. Usufruct, use, and habitation are personal servitudes in the sense that they are “attached to the person for whose benefit they are established, and terminate with his life.” The fact that they gain their existence from an administrative

In further articulating the proprietary nature of water rights, Meinzen Dick and Nkonya (2008:14), define property rights as;

“the claims, entitlements and related obligations among people regarding the use and disposition of a scarce resource” (Furubotn and Pejovich 1972). Bromley (1992:4) points out that “Rights have no meaning without correlated duties ...on aspiring users to refrain from use.” This means that property rights are not a relationship between a person and a thing, but are social relationships between people with relation to some object (the property). Particularly in the case of water, rights also have corresponding duties that apply to the rights-holder—usually to use the water and dispose of wastes in a certain manner, and often to provide money, labor, or other resources to maintain the water supply.

3.2.3 Types of property rights in relation to water

In keeping with other types of property rights, water rights can be broadly classified as public, common, or private property, according to who holds the rights, and particularly, the decision-making rights of allocation, which lie at the heart of water rights (Bruns and Meinzen-Dick, 2000; Bruns and Meinzen-Dick, 2003; Paul, 2003, Meinzen-Dick and Nkonya, 2008:15). There exists therefore, public rights to regulate the resource, collective rights of communities to use water for basic needs, and private individual use rights under licenses. Considering that in this study, most of the women classified under vulnerable groups resorted to accessing water from common pool resources such as rivers and springs, Schlager and Ostrom’s (1992:249) assertion becomes significant where they state that;

The term common-property resource has been used by political economists to refer to varying empirical situations including: (1) property owned by a government, (2) property owned by no one, and (3) property owned and defended by a community of resource users. The term is also used to refer to any common-pool resource used by multiple individuals regardless of the type of property rights involved.

3.2.4 A Conceptualization of the different resource management regimes governing women’s access to water resources

For purposes of analysis, in this thesis I adopt the approach taken by Bromley and Cernea (1989:11-25), whereby I look at women’s access to water under four resource management regimes namely, (1) state property regimes, (2) private property regimes, (3) common property regimes, and (4) non-property regimes (open access). A quote from Bromley and

or regulatory procedure does not by itself preclude water rights from being property rights just like intellectual property rights in the form of trademarks and patents are usually acquired through an administrative procedure.

Cernea (1989:5) as outlined below clearly articulates the commonly known resource management regimes that were apparent within the localities where this research was undertaken;

A resource regime is a structure of rights and duties characterizing the relationship of individuals to one another with respect to that particular resource. Sets of institutional arrangements are continually established to define the property regime over land and related natural resources -- whether that regime be one we would call state property, private (individual) property, or one of common property. These institutional arrangements define (or locate) one individual vis-à-vis others, both within the group (if there is one), and with individuals outside the group. We can define property relations between two or more individuals (or groups) by stating that one party has an interest that is protected by a right only when all others have a duty. It is essential to understand that property is not an object such as land, but is rather a right to a benefit stream that is only as secure as the duty of all others to respect the conditions that protect that stream. When one has a right one has the expectation in both the law and in practice that their claims will be respected by those with duty.

1. State or Public Water Rights

Due to the pluralist nature of water rights, they can be derived from many sources besides the government. While in some jurisdictions, water rights emanate from the operation of common law, the most common phenomenon currently is that they are now created on the basis of a legal instrument brought by a state department or the agency responsible for water resources management or administration. By virtue of various legal processes,⁵⁶ the country's water resources are brought within the control of the state. This creates public water rights held by the state, and in which the government allocates rights to users. This is derived from some form of Public Trust Doctrine, a principle dating back to Roman law, which maintains that the state holds navigable waters and certain other water resources as common heritage for the benefit of the people. Under this doctrine, control over water is an aspect of sovereignty, which the state cannot give up (Ingram and Oggins, 1992, Meinzen-Dick and Nkonya, 2008:17).

The government can assert its rights over water by controlling the water allocation directly through government agencies, or by acting as a licensing or leasing agent for granting water

⁵⁶ The legal processes vary from (i) a declaration of state ownership, (ii) inclusion of water within the public domain of the State (iii) vesting water resources in the President of the State on behalf of its people and (iv) bringing water resources under the superior use right of the State (Hodgson,2004:18)

rights to groups or individuals who are thus given usufruct rights over such water for a specified period of time (Bromley and Cernea (1989:12; Paul 2003, Meinzen-Dick, 2008:17). The water rights created through legislation are invariably referred to in the relevant statutory instruments as “licences”, “permits”, “authorizations”, “consents” and “concessions” (Hodgson, 2004:15). The rights of use allocated by the state are therefore acquired through such water permits or licences that are issued in consideration of the needs of the applicant and the expected benefits of the proposed water use (Latham, 2000; Mtisi and Nicol, 2003 Meinzen-Dick and Nkonya, 2008:17). These water permits give their holders legal licence to use but not own water. As is the case with rights over land or trees, water rights are not usually homogeneous ‘ownership’ rights that permit one to do anything with the resource, but they may rather be considered as bundles of rights that may be held by different parties. (Meinzen-Dick and Nkonya, 2008:15) The Water Acts of Zimbabwe and Mozambique regard water as state property and a public good respectively. As such, people cannot have private ownership of water sources but can obtain rights to use water by acquiring a water permit or license (Vaz and Pereira, 2000; Meinzen-Dick and Nkonya, 2008:17).

It has to be noted however that water legislation typically provides a range of exemptions for activities that would otherwise require a water right or permit. Free water for primary use from rivers, wetlands and dams which would not require the issuing of permits would then be enjoyed at the pleasure of the state by rural inhabitants. Sometimes such entitlements are referred to in legislation as “rights.”⁵⁷ This is either done by reference to the type of activity, the volume of water used or a combination of both.⁵⁸ The uses usually regarded as being primary or basic and hence not requiring registration as a right are similar

⁵⁷ Zimbabwe’s National Water Policy (2012) refers to this as a right to primary water whereby the description of what is primary water is provided for in the Water Act Chapter 20:24.

⁵⁸ Apart from a description of the uses of water regarded as primary in the Zimbabwean National Water Policy and Water Act Chapter 20:24; section 3 of the latter’s Water (Permit) Regulations, Statutory Instrument 206 of 2001 also stipulates primary water to be that amounting to up to 5 mega litres of water.

in most countries globally. For example (i) in Spain such uses classified as “common uses” include drinking and bathing water uses and other domestic purposes inclusive of livestock watering; (ii) in Canada (Saskatchewan Province) the exemption derives from the size of the land to be watered and (iii) according to the Water Act of 2003, the exemption threshold in England and Wales is for abstractions of up to 20 cubic metres of basic needs water per day (Hodgson, 2004:18, UK Dept. of Environment, Food and Rural Affairs, 2016:7). According to Hodgson (*supra*: 18-19);

There is no great theoretical justification for exempting such uses from formal water rights regimes. Instead, a value judgement is made by the legislature that takes account of the increased administrative and financial burden of including such uses within the formal framework, their relative value to individual users and their overall impact on the water resources balance. This kind of de minimis⁵⁹ exemption has no really direct equivalent in the context of land tenure regimes...In any event such de minimis water rights are a curious type of residuary “right”.

Hodgson (2004:19) does not place much value in these *de minimis* exemptions and argues that, “while they may be economically important to those who rely on them, it is hard to see how they provide much in the way of security.” It is important to note however that it is this water falling under the *de minimis* exemption framework that has been said to fall under the human right to water framework. It is my argument in this thesis that, the water under the *de minimis* classification falling under the human right to water regime should also include that which is for basic food production and livelihoods which has generally attracted highly commercialized rates under the water rights regime. The majority of the poorer water users in rural agricultural societies globally fall within the *de minimis* exceptions to the need to hold a formal right and hence applied appropriately, the provision goes a long way in alleviating poverty among the rural poor.

2. Common property regime (res communis)⁶⁰

⁵⁹ *De minimis* is a Latin expression meaning “about minimal things” and is usually used in the popular Latin maxim, “*De minimis non curat lex*” which means “The law does not concern itself with trifles or trivial issues,” a legal doctrine by which a court refuses to consider trifling matters. In this case, the exempted water is regarded as of little value to warrant complex commercial water administration processes by the state agencies.

⁶⁰ ‘Res communis’ is a Latin expression that means ‘common property’ that is communally owned.

Common water rights refer to communal water rights where water can be used by people in ways that are specified by some community. As common property, the water rights represent private property for a group (since all others are excluded from use and decision making), and that individuals have rights (and duties) in a common property regime (Ciriacy-Wantrup and Bishop, 1975; Bromley and Cernea, 1989:12). Common property is in essence “private” property for the group and as such it becomes a group decision to determine who shall be included or excluded.

Common property is not the free-for-all of open access resources. Individuals have rights and obligations in situations of common (non-individual) property, just as in private individual property situations. The difference between private and common property is not to be found in the nature of the rights and duties as much as it is in the number to which inclusion or exclusion applies (Bromley and Cernea, 1989:14-15).

In most African customary water law, water is considered as a community property and private ownership of water is not recognized (WFP, 2001, Meinzen-Dick and Nkonya, 2008:17). The prevalent form of common water rights falls under the purview of customary water use rights which being predominantly informal do not receive their normative effect on the basis of registration. The common water use rights emanate from local traditions and religions that have precepts relating to water that can provide the basis for entitlements or obligations regarding water. Among most traditional communities are widespread notions that anyone is entitled to water for basic domestic needs which include water for household gardens as well as other productive livelihood needs. Islamic law has formalized this as a ‘right to thirst’ for people and animals. Some African societies recognize water needs of animals as well as people, an example being the Kalenjin tribe of Kenya who have a proverb which states; “Even the hyena is entitled to water” implying that no one can be denied water (Onyango *et al.*, 2008:). Among the Shona tribes of Zimbabwe are proverbs of a similar

nature with similar intent which state that, “Water is life”; “Water cannot be denied anyone” and “Water is for everyone.”

3. Water as private property

Private property rights are rights held by an individual or legal individuals like corporations (Bruns and Meinzen-Dick, 2005; Meinzen-Dick and Nkonya, 2008:17). As such under this regime, the property may be individually owned or collectively owned by a group. According to Bromley and Cernea (1989:12), “private property is the legally and socially sanctioned ability to exclude others. It allows the fortunate owner to force others to go elsewhere.” In water, it is generally use rights that are only recognized for individuals, particularly permits or licenses that give an individual a right to use water in certain ways (Paul, 2003; Meinzen-Dick and Nkonya, 2008:17).

In some cases private rights go beyond just use rights, to include the rights to allocate the water, as in Chile’s tradable water rights systems, in which a right-holder can transfer that water to others through sale or lease. The existence of privately-owned water rights has been more apparent in those jurisdictions that observe two key doctrines that focus on water rights as land and use based. These are the riparian and prior appropriation doctrines.⁶¹ Although there are individual use rights in Africa, private water allocation rights are not widespread. There are some sources such as wells or small springs which are considered private, in which the right holder has the right to allocate water from that source. However, the usual scenario is such that an individual is required to obtain land rights over the land upon which they construct a well resulting in them holding rights to both the land and water (Carlsson, 2003). Private water rights are also widely observed for groundwater in Asia, and

⁶¹ The “Riparian Doctrine” gives those land holders bordering a water source the right to use the water flowing in it. While the owner of a riparian water right does not own the water itself, the right to use it is a substantive property right which can be bought, sold and taxed as real property (see *Bonelli Cattle Company v Arizona*). The “Appropriation Doctrine” on the other hand gives a right to take or appropriate water relating only to the specific use of the water in accordance with when it was appropriated. There is no specific relation to land ownership. The latter doctrine’s fundamental principle is “first in time, first in right” meaning senior users have priority (first right to use) over junior users (those coming later in time). The priority right of senior users is termed “prior appropriation” (Young, 2006:68-71; De Villiers, 2001:59-61).

farmers under farmer-managed irrigation systems in Nepal and Indonesia have private rights to a share of the water in those systems (Meinzen-Dick and Nkonya, 2008:17).

4. Open Access regimes (*res nullius*)⁶²

In most treatments of property rights, the other types of rights are contrasted with open access situations in which anyone has unrestricted use of the resource. There are no specific rights assigned to anyone and no one can be excluded from using the resource. Bromley and Cernea (1989:19-20) define the open access regime as follows;

Because there are no property rights in an open access situation, it is logically inconsistent to assert -- as many often do -- that "everybody's property is nobody's property." It can only be said that "everybody's access is nobody's property." Whether it is a lake fishery, grazing forage, or fuel wood, a resource under an open access regime will belong to the party to first exercise control over it... Open access results from the absence -- or the breakdown -- of a management and authority system whose very purpose was to introduce and enforce a set of norms of behaviour among participants with respect to the natural resource. When valuable natural resources are available to the first party to effect capture, it is either because those natural resources have never before been incorporated into a regulated social system, or because they have become open access resources through institutional failures that have undermined former collective or private property/management regimes.

Hence in this study, while land in large scale commercial farming areas had previously fallen under the private ownership and control of white farmers; FTLRRP led to the breakdown of the management and authority system under the former colonial governance framework that had previously enforced a set of norms of behaviour among blacks and whites with respect to land as a natural resource that was also a commodity. Taken from the popular traditional perspective in communal lands that land belongs to ancestors; commercial farm land commoditized under the colonial governance framework came to the land invaders with no price tag attached to it. The rivers and other unimproved water sources on this land also fell under the open access regime similar to the situation in communal lands.

Many people are not in favour of open-access situations because of the lack of rules that is viewed as contributing to the 'tragedy of the commons', wherein resources degrade because

⁶² 'Res nullius' is a Latin expression that means 'there is no property.'

of lack of control over their use or lack of incentives for investment in their provision (Meinzen-Dick and Nkonya, 2008:17; Bromley, 1992).

Table 6 below shows the characteristics of the different common resource management systems.

Table 6: Types of property-rights systems regulating common-pool resources

Property rights	Characteristics
Open access	Absence of enforced property rights
Group property	Resource rights collectively held by a group of users who can exclude others
Individual property	Resource rights privately held by individuals (or firms) who can exclude others
Government/State property	Resource rights held by a government that can regulate or subsidize use

Adapted from Ostrom et al. (1999:279)

3.2.4 Duration of water rights

Water abstracted on the basis of a water right is mainly used for agricultural (for irrigation and livestock watering), mining, industrial, urban water supply and other commercial purposes.⁶³ Water rights are generally not granted for an unlimited duration. While rights of indefinite duration do exist in a number of jurisdictions, the trend is clearly towards time limited water rights.⁶⁴ The key issue is to strike an appropriate balance between the security needed to encourage investment and the need for flexibility as regards future allocations of water. Too short a term and the right does not confer a sufficiently long period over which to recoup a return on the value of investments. Too long a period and future re-allocation of water resources is constrained. Water rights typically last for 15–20 years in respect of ordinary activities and up to 50 or even 70 years in respect of major investments such as the

⁶³ In recognition of the economic value of water, there is a general trend in water legislation to introduce charging mechanisms for water abstraction and use and to tie these to the water rights. A number of different criteria for setting the rate of charges are specified in water legislation.

⁶⁴ There is an ongoing water abstraction management reform process in England to be implemented in the early 2020s whereby all abstraction licences will be converted to permits of unlimited duration where previously these were 12 year licences (UK Department for Environment, Food and Rural Affairs, 2016:1; 4).

construction of a new hydro-power dam. While in Zimbabwe they last for 20 years, in South Africa they may last for up to 40 years (Hodgson, 2004:20-21). It has to be noted however that, in those jurisdictions that observe the “prior appropriation” doctrine whereby the fact of use is not considered itself sufficient but rather that the water that is subject to the right must be put to “effective and beneficial use”; failure to use the water that is subject to the right for a specified period, say three years, may lead to the right being forfeited (Hodgson, 2004:26).

3.3 The human right to water: General perspectives

3.3.0 Introduction

In interrogating the human right to water at international level in this study, the following four questions were asked namely; (1) is there a human right to water in international law? (2) If it exists, how is it framed? As a clear illustration of the indivisibility, interrelatedness and interdependence of rights, the human right to water as an economic, social and cultural right derived from or implicit within the rights to an adequate standard of living and to the highest attainable standard of physical and mental health⁶⁵ enables or facilitates the enjoyment of the right to life.⁶⁶ Further to that, one of the two essential elements of the right to water is the right to participation in decision making, which falls under civil and political rights.⁶⁷ In this thesis however, I place the right to water within the realm of economic, social and cultural rights (hereinafter referred to as ESC rights).

While it is generally agreed that water for productive or commercial use is excluded from the human right to water framework since it falls under the water rights domain; there has been debate on whether or not water for livelihoods and basic food production purposes should be included under the human right to water framework as is the case with drinking water since they all contribute to the realization of the right to life. A question follows

⁶⁵ Articles 11 and 12 of ICESCR

⁶⁶ A civil and political right under Article 6 of ICCPR

⁶⁷ Article 25 of ICCPR and Article 21 of UDHR

whether the human right to water means access to an essential minimum supply of water to ensure basic survival or should it entail access to an adequate supply of water guaranteeing one an adequate standard of living which allows for the highest attainable standard of physical and mental health within a dignified environment? Where does one draw the line? Drawing from the above, what then is the normative content of the human right to water for personal, domestic, basic food production and livelihood purposes?

Building upon the questions outlined above from a grounded perspective, the following inquiry was further made namely; what constitutes the human right to water in practice? What elements, measures, values or standards need to be in place for one to say the human right to water has been substantively complied with? This enquiry emanates from the different interpretations that have been ascribed to human rights instruments related to water as espoused by various United Nations (UN) agencies. The other questions posed in this chapter that I seek to answer are as follows;

- Who were the duty bearers, rights holders in this study and what were their obligations?
- What is the legal basis of the human right to water and is it justiciable?

3.4 The human right to water: The legal basis and historical overview

Embodied within international law, human rights are the rights that humans have simply because they are human beings and independent of their varying social circumstances and degrees of merit. In his dissenting opinion in the South West Africa Cases, [1962] *I.C.J.* 248 at page 295, Tanaka J adopted a naturalist approach in defining human rights. He stated;

The existence of human rights does not depend on the will of a State; neither internally on its law or any other legislative measure, nor internationally on treaty or custom, in which the express or tacit will of a State constitutes the essential element. A State or States are not capable of creating human rights by law or by convention; they can only confirm their existence and give them protection. The role of the State is no more than declaratory. Human rights have always existed with the human being.

It is from that perspective that even prior to the emergence of the right to water discourse in the public legal domain, access to clean water for basic human need has always been acknowledged as fundamental to the existence of all life forms upon the earth. In one of her publications, Vandana Shiva (2002:24) observes therefore that,

*People have a right to life and the resources that sustain it, such as water. The necessity of water to life is why, under customary laws, the right to water has been accepted as a natural, social fact.*⁶⁸

Driven by the central role they play in the access to and use of water for domestic needs, women in 1977 gathered at the UN Water Conference at Mar del Plata in Argentina which resulted in the UN declaring 1981 – 1990, “An International Decade on Water.” For the first time an attempt was made to conceptualize access to water as a human right when delegates under Resolution II of the Action Plan on Community Water Supply declared;

Considering that, (a) All peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs. (b) It is universally recognized, that the availability to man of that resource is essential both for life and his full development, both as an individual and as an integral part of society;

The Conference’s main concerns were centred on (i) the serious health consequences emanating from the lack of a safe and sanitary water supply; and (ii) the need to give priority to the needs of the poor, the less privileged and to water-scarce areas.

Generally considered as inherent within people, Tanaka J in the South West Africa Cases (supra) at page 296 elaborated on this fact by referring to a State’s incapacity to create human rights through statutory law or to abolish them,

*Who can believe, as a reasonable man, that the existence of human rights depends upon the internal or international legislative measures, etc., of the State and that accordingly they can be validly abolished or modified by the will of the State? If a law exists independently of the will of the State and, accordingly, cannot be abolished or modified even by its constitution, because it is deeply rooted in the conscience of mankind and of any reasonable man, it may be called “natural law” in contrast to “positive law”...therefore, the guarantee of fundamental human rights and freedoms possesses a super-constitutional significance. If we can introduce in the international field a category of law, namely **jus cogens**...a kind of imperative law which constitutes the contrast to the **jus dispositivum**, capable of being changed by way of agreement between States, surely the law concerning the protection of human rights may be considered to belong to the **jus cogens**.*

⁶⁸ Clearly reflecting the universality of this fact, empirical studies in Zimbabwe have revealed that among the Shona exists a customary norm which views water as life (Matondi, 2001; Derman and Hellum, 2003, Nemarundwe, 2003; Sithole, 2001)

Although he might not have been aware at the time of the fact that he was illustrating the Universal, equal, indivisible, interdependent and interrelated nature of human rights, Tanaka J in the South West Africa Cases (supra) at page 298 proceeded to outline the sources of human rights as follows;

...the alleged norm of non-discrimination and non-separation, being based on the United Nations Charter, particularly Articles 55 (c), 56, and on numerous resolutions and declarations of the General Assembly and other organs of the United Nations, and owing to its nature as a general principle, can be regarded as a source of international law according to the provisions of Article 38, paragraph 1 (a) – (c).⁶⁹ In this case three kinds of sources are cumulatively functioning to defend the above-mentioned norm: (1) international convention, (2) international custom and (3) the general principles of law. Practically the justification of any one of these is enough, but theoretically there may be a difference in the degree of importance among the three. From a positivistic, voluntaristic viewpoint, first the convention, and next the custom, is considered important, and general principles occupy merely a supplementary position. On the contrary, if we take the supra-national objective viewpoint, the general principles would come first and the two others would follow them. If we accept the fact that convention and custom are generally the manifestation and concretization of already existing general principles, we are inclined to attribute to this third source of international law the primary position vis-à-vis the other two.

3.4.1 Protection of the human right to water under United Nations Conventions

The human right to water to satisfy basic human needs for personal and domestic uses in and around the home is protected under international human rights law through a wide spectrum of international instruments such as treaties, covenants, conventions, protocols and declarations.⁷⁰ From an international perspective, there exists a human right to water implicitly embedded within Articles 11 and 12 of the ICESCR; the exigencies of which right, are well articulated in GC15/2002 by the UNCESCR. While General Comments are generally viewed as being morally rather than legally binding, they are an authoritative interpretation of the ICESCR, which makes them legally binding upon the States Parties to the said treaty. This is especially so with GC15/2002 which derives its force from the ‘hard

⁶⁹ Article 38(1) paragraphs (a) –(c) of the Statute of the International Court of Justice (I.C.J.) on the competence of the court state that, “1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations;

⁷⁰ Despite being regarded as soft law, in this thesis much consideration is given to declarations, resolutions, MDGs, programmes and platforms of action to the extent to which they buttress the right to water within the treaties, covenants, conventions and protocols deemed hard law. Excluded from this list is the Universal Declaration of Human Rights which is recognized as customary international human rights law, from which all international human rights law has been sourced.

law' within Articles 11 and 12 of ICESCR. It follows therefore that, the legal basis of the right to water referred to in the GC15/2002 is not derived from the Comment itself per se but rather from the Convention's Articles on which the General Comment is based.⁷¹

While the earlier recognition of the right to water was anchored upon its being implicit within other rights such as the right to life, the right to health and to an adequate standard of living, latter developments have seen the progressive expression of the right to water as an explicit stand alone right. An example of this development is whereby the right to water was initially viewed as being implicitly embedded within Article 25 of the Universal Declaration of Human Rights (UDHR) of 1948 which states;

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

In the year 2000, Heads of States issued the UN Millennium Declaration which was an undertaking to "halve by 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger..." Further to that the Heads of States also undertook "...to promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease," as well as "stimulate development that is truly sustainable." Eight Millennium Development Goals (MDGs) were framed under this Declaration whereby it was recognized that water was an essential prerequisite for realizing the said MDGs. Viewed together, MDGs 4, 5 and 6 were premised upon the assertion that, "Access to safe water and sanitation contributes to improved health for poor people and communities." Despite their lack of legal force, MDGs greatly contributed to the build up to the effective recognition of water as a human right by the UNCESCR two years later when it issued its GC15/2002.

⁷¹ See footnote 67. Tanaka J in *South West Africa Cases* (supra) speaks on Article 38(1) of the ICJ Statute giving the court jurisdiction to resolve disputes as based on "a. international conventions, b. international custom, c. the general principles of law recognized by civilized nations;"

In accordance with GC15/2002, the Committee on ESC rights recognized the human right to water as being implicitly embedded within Articles 11 and 12 of the ICESCR. Article 11, paragraph 1 outlines several rights essential for everyone to realize “the right to an adequate standard of living” such as “adequate food, clothing and housing” as well as the right to “the continuous improvement of (one’s) living condition.” On the other hand, Article 12, paragraph 1 provides for the recognition of everyone’s right to “the enjoyment of the highest attainable standard of physical and mental health.” When issuing this comment, the UNESCR also made specific mention of its GC12/1999 in recognizing that the right to water is also essential for the realization of the right to food and securing livelihoods for “disadvantaged and marginalized farmers, including women farmers.”⁷² The UN Human Rights Council (HRC) has also weighed in with its Resolution 15/9 of 6 October, 2010 on human rights and access to safe drinking water and sanitation.

Drawn from the above, it becomes clear that while human rights (inclusive of the human right to water) are not bestowed on people by the State but rather are inherent in human beings, water rights are increasingly becoming the creature of statutory law. This study clearly shows how water rights are enshrined in the Water Act while on the other hand customary norms respecting each person’s entitlement to free water for personal needs, food production and livelihoods in rural areas are well known but remain uncoded.

Water rights are also hierarchical in nature depending on the significance ascribed to the different commercial uses while on the other hand the equality, indivisibility and interrelatedness of human rights such as the rights to life, water and sanitation, an adequate standard of living as well as the right to health cannot be overemphasized.

⁷² See Paragraphs 6 and 7 of GC 15/2002

3.4.2 Rights holders' freedoms and entitlements

The approach adopted for this study is one that analyzes women's access to water as individual rights holders at the household level and collectively as belonging to certain social classes such as farmers or farm workers. Similar to any other human right; for the rights holder, the right to water comprises both freedoms and entitlements. While freedoms “include the right to maintain access to existing water supplies and the right to be free from interference (i.e. no arbitrary disconnections or contamination of water supplies);” entitlements include “the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water” (Windfur, 2013:12). In this study the extent to which women farmers and workers as rights holders enjoy their freedoms and entitlements to water is interrogated.

3.4.3 State⁷³ obligation to respect, protect and fulfil the right to water

According to the UNCESCR GC15/02, Paragraph 20, nation states or states parties as duty bearers have an obligation to respect, protect and fulfil the human right to water. The obligation to respect demands that States Parties, that is, governments ratifying the treaty, “refrain from interfering directly or indirectly with the enjoyment of the right(s) to water and sanitation.”⁷⁴ Under the obligation to protect, States Parties are obliged “to prevent third parties such as corporations from interfering in any way with the enjoyment of the right(s) to water and sanitation;”⁷⁵ while the obligation to fulfil makes it mandatory that, “States Parties adopt the necessary measures to achieve the full realization of the right(s) to water and sanitation”⁷⁶ (WHO, 2003:7). The obligation to fulfil can be disaggregated further into

⁷³ While the term ‘State’ is generally used, when referring to state obligations; in some instances in this study it also encompasses those organizations, agencies, local authorities or ministries to which a state may delegate authority to manage water as its representative. The primary duty bearer is the State while other local NGOs, inter-Governmental organizations such as the UN and its agencies e.g. WHO, UNICEF; international Governmental and NGOs such as USAID, DFID, OXFAM, PLAN have an obligation to assist states in fulfilling their obligations to respect, protect and fulfil the right to water upon request.

⁷⁴ UNCESCR GC15/02 Paragraphs 21 and 22

⁷⁵ UNCESCR GC15/02 Paragraphs 23 and 24

⁷⁶ UNCESCR GC15/02 Paragraphs 25 - 29

the obligations to facilitate, promote and provide.⁷⁷ From state obligations arise both positive and negative obligations whereby from a positive outlook, the state adopts measures to achieve the full realization of the rights while negative obligations require that the state or its agents refrain from interfering with the full enjoyment of the rights.

3.5 The Competing uses of water: The human right to water for personal, domestic, livelihoods and basic food production purposes

In this study I was looking at access to, use of and control over water for domestic purposes which includes water for drinking and sanitation purposes; water for basic food production and livelihoods as well as water for productive use. I used a broad perspective of the human right to water unlike the one which conceptualizes the human right to water as being strictly confined to clean drinking water and sanitation only whereby the rest is commoditized despite its fundamentality in the realization of the interrelated right to food and a livelihood. While it is agreed in this thesis that water for commercial agricultural purposes or productive use, falls outside the ambit of the human right to water; it is referred to only to the extent that it obfuscates the difference between it and water for basic food production and livelihoods.

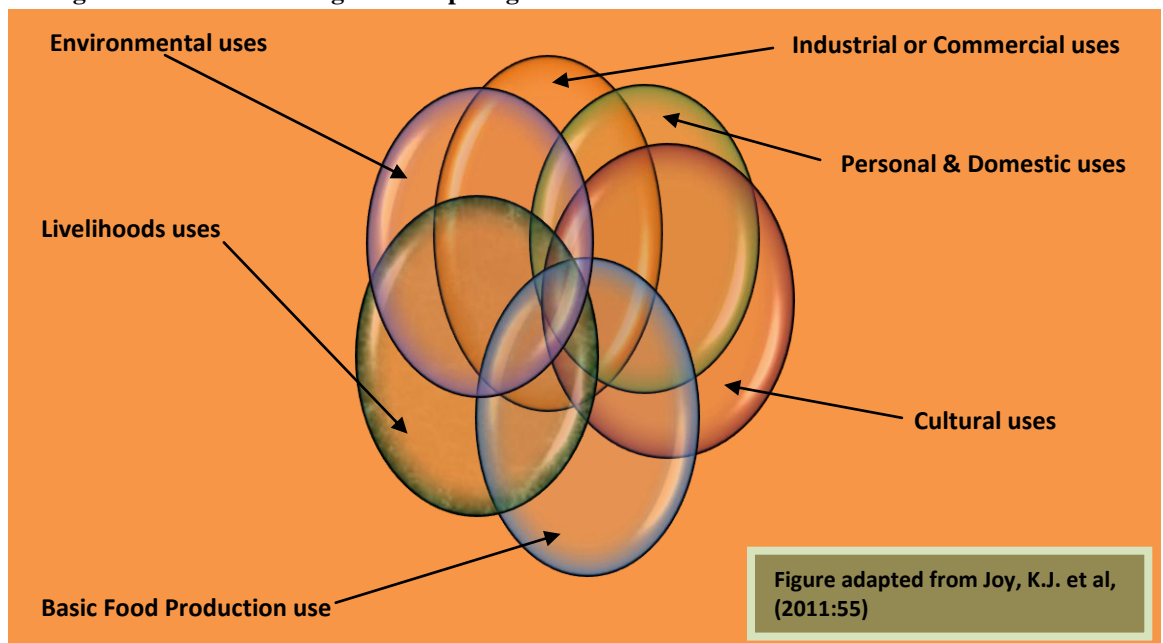
Discovered during research was the fact that these different types of water were also cause for competing interests between women and men whereby an internal conflict existed within specific needs. A good example were the conflicting uses of water for two sets of livelihoods on the A1 farms namely subsistence agriculture largely associated with women on one hand and commercial agriculture largely associated with men on the other.

It is important to note that my argument in this thesis seeks to justify the inclusion of water for livelihoods within the right to water framework in the same manner that the rights to

⁷⁷Paragraph 25 states; “The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage. States parties are also obliged to fulfil (provide) the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal.”

clean drinking water and sanitation are included under that regime. My argument finds its basis in my interpretation of Articles 11 and 12 of the ICESCR which follows the argument of the UNCESCR in GC15/2002 on the right to water and GC12/99 on the right to adequate food. Formulated from an individualist and Universalist perspective, the human right to water “entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses” Figure 6 below gives the general picture of the competing uses of water.

Figure 6: The intersecting and competing uses of water



The contentious point lies within the interpretation of the extent to which the human right to water is envisaged i.e. what is meant by sufficiency or adequacy? It is important to note that this issue has become subject to debate in relation mostly to rural women in developing countries who use water holistically for personal, domestic, basic food production and for livelihoods. The question has been; does the right to water cover water for livelihoods?

3.5.1 The UNCESCR’s interpretation of the right to clean drinking water and sanitation in (GC15/02) as viewed against UNGA Resolution A64/92 of 28 July 2010

Adopted in this study is the approach used by the UNCESCR in GC15/2002 to conceptualize the normative content of the right to water. The UNCESCR conceptualization of the right to water is summarized in Table 7 below;

Table 7: A summary of relevant issues covered by the UNCESCR in GC 15/2002

Element	Requirements	Paragraph
Availability	Water should be of a continuous supply in quantities which are adequate or sufficient for personal and domestic uses such as cooking, personal hygiene and sanitation purposes. The amount which is sufficient is not cast in stone but depends on several variables such as gender specific needs, health status, disability, age, climate or work conditions. ⁷⁸	12 (a)
Quality	Water supplied for personal or domestic use should be potable i.e. clean or safe meaning that the water should be free from any “micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health” It should also be of a culturally acceptable quality ⁷⁹ vis-à-vis colour, odour and taste ⁸⁰	12(b)
Accessibility	Water, water facilities and services have to be accessible to everyone on the basis of equality and without discrimination. Accessibility is further defined by the Committee as having four overlapping dimensions namely physical, economic and information accessibility as well as inclusivity whereby there is non-discrimination in accessing water and sanitation facilities and participation in decision-making.	12(c)
The Four Overlapping Dimensions of Accessibility		
Dimension	Requirements	Paragraph
Physical Accessibility	Water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace. ⁸¹	12(c) (i)
Economic Accessibility	Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights; ⁸²	12(c) (ii)
Non Discrimination	Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds;	12(c) (iii)
Information Accessibility	Accessibility includes the right to seek, receive and impart information concerning water issues	12(c) (iv)

The UNCESCR approach in GC15/2002 is adopted simply because in addition to defining who has the obligation to respect, protect and fulfil the right to water; the Committee extensively “defines the extent of the right regarding (affordability) quantity, quality, and

⁷⁸ While the World Health Organization (WHO) recommends 20 litres of water per person per day as the minimum amount of water necessary for basic human survival, 100 litres per person per day is ideal.

⁷⁹ Another important criterion usually considered in respect to sanitation whereby males and females are expected to have separate ablution facilities in accordance with their sex.

⁸⁰ The Committee makes specific reference to the WHO Guidelines for Drinking-water Quality (2nd Edition, Volumes 1-3, Geneva, 1993) expanded on in 2005 in a report by the UN Commission on Human Rights Special Rapporteur containing “Guidelines for the Realization of the Right to Drinking Water and Sanitation,” (Report of the Special Rapporteur, El Hadji Guisse in ‘Realization of the Right to Drinking Water and Sanitation).

⁸¹ A detailed deconstruction of the implications of the 4 overlapping dimensions of accessibility has been given by Winkler (2008:8) who states that sanitary “facilities should be constructed in a way that ensures privacy and dignity.”

⁸² According to Winkler (2008:8-9) affordability means that “water and sanitation services must ... not negatively impact on the ability to pay for other essential needs, such as food, housing and medical care. Affordability can thus be assessed by considering the percentage of household income spent on water and sanitation services. International recommendations determining the threshold that would exceed water affordability are in the range of 3 to 5 percent of household income...The human right to water does not require that water is provided free. Only if people have no income, does affordability entail that States provide a basic amount of water for free” It has to be borne in mind however that, “regardless of whether water is supplied by public or private providers, States have the responsibility to ensure that water is affordable to all people, even those who do not have the capacity to pay for water services” States parties should adopt measures aimed at making water affordable which measures should include “the use of a range of low cost-techniques, appropriate pricing policies and / or income supplements” (Windfur (2013:12-13).

accessibility” of water for personal and domestic uses⁸³ (Hardberger, 2006:539). The views expressed by the UNCESCR in GC12/99 and GC15/02 linking the right to water with the right to food are reiterated in the UN’s Fact Sheet No 34 (2005:5-6) which states that;

The right to food cannot be realized if people lack access to safe drinking water for personal and domestic uses, defined as water for drinking, washing clothes, food preparation and personal and household hygiene

This vindicates the assertion that the right to water is implicitly contained within the right to food. As an enabling right it facilitates the realization of other rights as indicated earlier and that this is in keeping with the human rights principle that all human rights are universal, indivisible, interdependent and interrelated.⁸⁴

3.5.2 Conceptualizing a right to water for livelihoods

The UNCESCR in GC15/02 recognizes the gendered aspects of water leading to its differential or multi-purpose use. Hence the Committee acknowledges the need for equality and non-discrimination in water governance through focusing on vulnerable and marginalized groups such as rural women, as also specified in Article 14 of CEDAW. Most importantly though; “because of its level of detail, the Comment commands ‘considerable state responsibility and action’ by extending the requirement beyond drinking water to include other uses;” (see Hardberger, 2006:539). Hence paragraph 7 of GC15/02 states as follows;

The Committee notes the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food (see general comment No. 12 (1999)).⁸⁵ Attention should be given to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not “be deprived of its means of subsistence,” States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.⁸⁶

⁸³ According to the UNCESCR, domestic uses would “ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.” This assertion as contained in GC15/02 ties in with the same Committee’s GC12/99 on Article 11 of ICESCR in which specific reference was made to the right to adequate food.

⁸⁴ Vienna Declaration and Programme of Action, World Conference on Human Rights, 1993: Part I, parag. 5

⁸⁵ The UNCESCR proceeded to indicate that this related to both availability and to accessibility of the right to adequate food, (see General Comment No. 12 (1999), paragraphs 12 and 13)

⁸⁶ See also the Statement of Understanding accompanying the United Nations Convention on the Law of Non-Navigational Uses of Watercourses (A/51/869 of 11 April 1997), which declared that, in determining vital human needs in the event of conflicts over the use of watercourses “special attention is to be paid to

It is this broader interpretation of the right to water by the UNCESCR which is also adopted in this study vis-à-vis what constitutes the human right to water. Thus unlike the UNGA Resolution A64/292 of 2010 which ostensibly, is limited to clean drinking water and sanitation, my interpretation of the approach taken by the UNCESCR in GC15/02 embraces other domestic water uses beyond personal ones. These other domestic uses are essential in ensuring women's right to life, health, food and human dignity, which in turn guarantees their right to the highest attainable standard of living adequate for their physical and mental health. The narrower perspective by the UNGA's Resolution A64/292 is alluded to also by Hall, van Koppen and van Houweling (2013:850) who state that;

The formal recognition of access to water as a human right in 2010 was an important milestone in addressing the lack of access to water in developing countries, especially for women. The human right to water was framed from a narrow public health perspective and prioritized the provision of safe and clean water for drinking, sanitation, hygiene, and other domestic activities. Without contesting the priority for domestic uses in human rights law, this interpretation might be seen as ignoring the range of broader socio-economic human rights for which water plays an important role.

A discussion on water for livelihoods merits a conceptualization of the term, 'livelihood.' Water use for basic needs has been conceptualized by Joy et al (2011:20) as that which includes drinking, bathing, cleaning, cooking and other domestic uses. Most importantly they view a livelihood as a means of providing for all the basic needs. Apart from the defining characteristics of a livelihood Joy et al (2011:53-54) also suggest some "aspects which can assist in distinguishing between livelihood and commercial activities, particularly in case of livelihoods based on a primary sector activity;" which said aspects are listed below in the form of questions;

- Is "the activity ...being undertaken by an individual or a family, or (does it) involve a small number of employed people as labourers?"
- What is the size or scale of the endeavour?
- Is the endeavour "...producing anything that can be classified as a basic need?"
- Is "the concerned person or family ...working on the activity (doing so) directly or 'hands on'?"

providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation"

- What is “the level of integration with the market, and the amount of production that is used or consumed by the person or family?”
- What is “the level of monetisation of the activity?”
- Does “the activity represent a ‘traditional’ occupation for the individual or family?”

Table 8 below outlines the characteristics of a livelihood which clearly distinguish water for basic needs from that needed for livelihood as distinguished also from that used for commercial purposes as defined by Joy et al (2011:53);

Table 8: The defining characteristics of a livelihood

Number	Characteristic
1	A livelihood is a means of providing for all the basic needs.
2	A livelihood goes beyond mere food security, and should ensure needs other than food, including shelter, clothing, education, health, etc. ...a livelihood does not translate to merely eking out an income irrespective of the circumstances. The individual should be able to do so in conditions that allow him or her space and dignity to fulfil the requirements for a decent means of living, while desisting from deliberate harm being caused to others such that these conditions are not met.
3	However, a livelihood cannot be a means to barely escape poverty.
4	A livelihood should allow not only for comfortable living, but a life with dignity.
5	A livelihood should be sufficient to provide for the entire family, not only for the working individual.
6	A livelihood should include monetary as well as non-monetary accruals.
7	Livelihoods do not include only agricultural related activities, but must also include industrial and service sector activities.
8	Livelihoods are often intrinsically related to a way of life. They also imply a symbiotic relationship with the natural heritage, such that this relationship as well as the ecology of production allows communities to manage a way of living that is in harmony with the fulfilment of human needs and environmental preservation.
9	It is also important to understand where the line between a livelihood and a commercial activity is crossed, for the same activity can be a livelihood for one and a commercial activity for another. For example, fishing can be a livelihood activity, while trawler fishing is a commercial activity. As we are discussing the right to water for ensuring livelihoods, this distinction becomes important. However, the situation is not always straightforward. For instance, a trawler may be supporting many fisher people.
Adapted from Joy et al (2011:53)	

It is clear from the above that water for livelihood is essential in the realization of the right to an adequate standard of living and the right to enjoy the highest attainable standard of physical and mental health which allows one space and dignity to fully enjoy the other rights inclusive of the right to life. In support of a broader interpretation of the right to water are van Koppen, Moriarty and Boelee (2006:10) who refer to “the well known understanding of human well-being as being multidimensional. To that effect, “broader and

cumulative water uses fulfil a broader range of water needs, and so contribute more effectively to people's well-being" (van Koppen et al, (supra)). A question arises regarding which water uses to prioritize among these wide ranging water uses. In response to that, Hall, van Koppen and van Houweling (2013:851) speak of the emergence of "a new approach to multiple-use water services (MUS)" whereby "domestic-plus services, which are a form of MUS, prioritize domestic uses at and around homesteads and also promote productive uses, conforming to a range of human rights laws and to the growing recognition that rights are indivisible."

It is the domestic-plus water services referred to above that I view as fully incorporating water used by women for livelihoods and basic food production. This is simply because the former takes a multiple-use approach rather than that encompassing a single-use system which is inimical to the integrated manner in which women use water for personal, domestic and livelihoods purposes. Regardless of my interpretation of the right to water as encompassing other livelihood uses; I also acknowledge that clean water for personal needs incorporating drinking, food preparation and sanitation purposes should be of first priority on the prioritization ladder of water uses viewed as a right. At the same time cognisance should be taken of the equality, universality, indivisibility, interrelatedness, interconnectedness and interdependence of human rights inclusive of the human right to water. Hence Hellum (2012:4) states that;

Cutting across the right to life, an adequate standard of living, health and food, as well as other human rights, the emerging human right to water and sanitation is a good case for examining how the application of the principle of the indivisibility of human rights by human rights treaty bodies has brought and could bring poor women's concerns as providers of food and carers for families, the sick and elderly into the mainstream of international human rights discourse. A closely related question is whether the current formulation of the human right to water and sanitation has engendered social and economic rights.

The findings in a study covering Kenya, Malawi, South Africa and Zimbabwe by Hellum et al, (2015) show how women in these countries have to be content with the gendered aspects of water governance in the countries under study whereby some water uses outside water for

basic needs, are given more prominence than the rest⁸⁷ depending on their perceived higher economic significance. In Chapter 2 entitled, “Turning the tide: Engendering the Human Right to Water and Sanitation, Hellum, Ikdahl and Kameri-Mbote (2015:43) query the position of water for livelihood uses within the right to adequate water framework when they pose the following question;

Concerning the right to adequate water, a key question from the perspective of rural and peri-urban women is whether the right to water should be defined narrowly, covering only water for personal and domestic use, or whether water for livelihood uses such as food production in kitchen gardens should be included.

Hellum et al (2015:42) also refer to the “Final Study of the Human Rights Council Advisory Committee on the Advancement of the Rights of Peasants and Other People Working in Rural Areas,” presented to the Human Rights Council in February, 2014 together with the “Draft Declaration on the Rights of Peasants and Other People Working in Rural Areas,”⁸⁸ as having “taken steps to recognize and to strengthen the protection of a wider right to livelihood encompassing both the right to land and the right to water.”

The failure of States to harness water resources for both irrigation and drinking water (for people and livestock) is viewed by the Advisory Committee as a key factor explaining the vulnerability of people working in rural areas. Besides recognizing the rights enshrined in existing international instruments; the proposed Draft Declaration on the Rights of Peasants also articulates new rights of peasants and other people working in rural areas, such as the rights to land, seeds and the means of production, including water for livelihood production (Hellum et al, 2015:42). In similar fashion to the regional study findings by Hellum et al (2015) my research findings also reflect the difficulties encountered in trying to draw a sharp demarcation between rural women’s water uses regarded as covered by the right to water framework and those viewed as falling outside its ambit to that of water rights.

⁸⁷ Even those essential for the realization of the right to food and life such as water for vegetable gardens

⁸⁸ Human Rights Council Resolution 16/27; A/HRC/19/75, Paragraphs 23 and 24

Establishing her own position in the above debate Winkler (2008:1-2) states;

Many activities that enhance food and livelihood security, including small-scale farming, gardening, watering livestock, and micro enterprises (e.g. laundry services, and small-scale manufacturing, such as brick-making and pottery) require access to water. Water security is vital to the livelihoods of a large number of people living in poverty. It could be argued that the focus of the right to water on personal and domestic uses bypasses the reality of people living in rural areas, who require water for multiple uses. This raises the question as to whether such water uses are guaranteed by the human right to water or other human rights.

Winkler makes reference to the broader approach to the right to water as argued by Hellum (2012, *supra*). While she views the UNGA Resolution of 2010 to be narrower in scope than the UNCESCR's GC15/02, Winkler, (2008:3-4) also accuses the UNCESCR of not having dealt comprehensively with the issue of water for food production in paragraph 6 of GC15/02. Despite the fact that the UNCESCR "acknowledges that water is also required for other purposes, such as producing food, and relates this use to the right to adequate food;" Winkler regards the language used by the UNCESCR in that paragraph as vague. She states;

The human right to food and the human right to water require more detailed consideration: water is one of the resources used in the production of food and food is the outcome that is produced. When analysing the General Comments on food and water by the Committee on Economic, Social and Cultural Rights (CESCR), it becomes evident that the issue is not addressed in any significant depth. General Comment No. 12 on the right to food only includes broad references to natural resources, but does not mention water at all, although it is an essential input in the production of food. (Winkler, 2008:2)

Although Winkler, (2008) accuses the UNCESCR for lack of clarity on the right to drinking water versus a right to water for livelihoods debate; her own position in the debate is also not very clear. This is because Winkler, (2012:129-131) argues that "water for irrigation is excluded from the right to water because its inclusion would result in the human right to water guaranteeing claims to large quantities of water" (see also Tremblay, 2013:265). Winkler's assertions are unjustified considering that there is water used in small-scale irrigation activities aimed at basic food production and for livelihoods whose threshold is negligible compared to large scale commercial water users and yet this water is essential in supporting sustainable livelihoods and food security for rural women. If this water would be placed under the broader outlook of the right to water rather than the water rights framework, this would guarantee access to affordable water for rural women. Since water is

viewed as enabling the right to life; where does one draw a line between water for drinking and other personal domestic uses and that earmarked for basic food production and livelihoods when they all ensure that one enjoys a decent life?

Arguing on the side of an all-encompassing approach to the right to water, Hall, van Koppen and Houweling, (2014:851, 852) state that;

...we trace how the current framing of the human right to safe and clean drinking water as a priority in international law can, and should, go together with the recognition of other water-related human rights, in particular the rights to food, work, and an adequate and continuously improving standard of living... This interpretation accounts for how rural...households actually use their water—i.e., for domestic and productive uses around the homestead... We argue that the human right to water for domestic uses to meet public health and gender objectives includes the right to water for livelihoods according to the broader human rights frameworks.

Realizing that adopting a restrictive approach to the right to water would result in indirect discrimination, given that it is mostly women who holistically use water for multiple purposes; for purposes of analysis in this study, an all encompassing approach to the right to water was adopted. The normative framework used for this study was inclusive of the right to water for drinking and sanitation or domestic use in and around the home as well as for basic food production and livelihoods. This option was taken primarily for purposes of enabling me to give body to the broader perspective of the right to water which allowed for the engendering of the human right to water as argued by Hellum, (2012:5).

Questioning “...whether the current formulation of the human right to water and sanitation has engendered social and economic rights,” Hellum (2012:5) refers to the approach taken by Sandra Fredman, (2009:10) towards ESC rights whereby she makes a distinction between formal equality achieved by merely extending existing rights to women on one hand and on the other, engendering rights in a bid to achieve substantive equality. This involves the restructuring of rights so that they don’t remain as abstract standards but rather reflect the gendered realities women experience. The key aim would be to achieve equality and non-discrimination in the enjoyment of rights.

3.6 Right to participation by vulnerable and marginalized groups: Equality and non-discrimination as essential elements

In paragraph 13 of GC15/02, the UNCESCR clearly points out that the ICESCR “proscribes any discrimination (on internationally prohibited grounds) which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water.” It also went further to state that;

The obligation of States parties to guarantee that the right to water is enjoyed without discrimination (art. 2, para. 2), and equally between men and women (art. 3), pervades all of the Covenant obligations...The Committee recalls paragraph 12 of general comment No. 3 (1990), which states that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.

In paragraph 16, the Committee reiterates that, “Whereas the right to water applies to everyone; States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum-seekers, internally displaced persons, migrant workers, prisoners and detainees.” This requirement in respect of specific groups of people is discussed below.

3.6.1 The Focus on Vulnerable and Marginalized Groups

1. Women

The Committee called on states parties to pay special attention to previously marginalized groups including women to ensure that they enjoy their right to water and “are not excluded from decision-making processes concerning water resources and entitlements. The disproportionate burden women bear in the collection of water should be alleviated”⁸⁹

Article 14 of CEDAW particularly mentions rural women’s right to water and sanitation whereby it states that;

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, ...and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas. 2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural

⁸⁹ Paragraph 16(a)

development and, in particular, shall ensure to such women the right: (f) To participate in all community activities; ... (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

While at the regional level, the African Charter on Human and People's Rights (ACHPR) of 1986 contains provisions pertaining to equality' and non discrimination, the instrument makes no explicit reference to the right to water. On the other hand, Article 15 of the Women's Protocol on the right to food security states that;

States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to: a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food; b) establish adequate systems of supply and storage to ensure food security.

Hence in keeping with the UNCESCR's approach in GC15/2002, the Women's Protocol also acknowledges the inextricable link between a right to water and the right to food.

2. Children

In this study, due to the endemic lack of clean drinking water on most of the researched farms, diarrheal diseases among children below the age of 5 years were prevalent especially during the rainy season. Under the Children's Convention, a child has a right "to enjoy an adequate standard of health in order to combat disease and malnutrition through, inter alia, provision of adequate and clean drinking water."⁹⁰ The UN Committee on the Rights of the Child in General Comment No. 7 of 2006⁹¹ interpreted Article 24 as placing upon States, a responsibility or obligation to ensure access to clean drinking water and that such access is particularly essential for young children's health. This right resonates with MDG 4's aims i.e. a one-third reduction in under-five infant mortality by 2010 and a two-thirds reduction by 2015. As at 2007, only 82 of 147 developing countries were on track to meet the goal, and 27 were making no progress or slipping into reverse (UNICEF, 2007: 17). In a similar vein to the Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child (ACRWC) in Article 14 (2) deals with issues of adequate nutrition and safe drinking water for children.

⁹⁰ Article 24(2)(c)

⁹¹ On implementing Child Rights in early Childhood, in paragraph 27,

3. Internally Displaced Farm workers

A sizable population of Internally Displaced Persons (IDPs) having been created on the researched A1 farms due to forced evictions from employer provided accommodation by new settlers during FTLRRP; issues pertaining to the right to clean drinking water and sanitation as well as housing became particularly pertinent. It is against such a scenario that apart from GC15/2002, Principle 18 of ‘Guiding Principles on Internal Displacement (GPID) and ILO Recommendation No. 115 of 1961 on Workers’ Housing became particularly relevant in as much as they relate to the right to shelter, safe water supplies and sanitation in workers’ houses as a vulnerable group. These provisions are discussed in detail in Chapter 6 on farm workers’ access to water and participation in water governance.

Within the region, Zimbabwe has ratified the African Union (AU) Convention for the Protection and Assistance of Internally Displaced Persons in Africa, informally referred to as the Kampala Convention. A Treaty of the African Union, it was adopted in October, 2009 and came into force on 6 December, 2012, 30 days after its ratification by 15 African states. Signed by 39 of the 54 member states of the AU, by 2014, 22 had ratified it.

The Kampala Convention specifically addresses issues of internal displacement arising from natural disasters such as floods, climate change; armed conflict as well as large-scale development projects in Africa. A glaring omission in the convention is that in Article 5(4), it does not specifically define the nature of “protection and assistance to be given to IDPs” which in my view should be aimed at the realization of specific rights by IDPs such as the right to food, clean potable water and sanitation, housing, health services and education.

Nevertheless in Article 1(k) it defines internally displaced persons as;

...persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border...

On the other hand, in accordance with Article 1 (l) of the Kampala Convention;

Internal Displacement means the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders...

Arising from the above, my interpretation of the status of former farm worker women, former farm workers' wives and their families evicted from farm houses during FTLRRP qualifies them to be defined as IDPs.

3.6.2 Equality and Non-discrimination

As indicated earlier, the third and fourth dimensions of accessibility are non-discrimination and information accessibility. According to the UNCESCR's GC15/2002, non-discrimination entails the accessibility of water, water facilities and services to all, inclusive of "the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds..."⁹² Information accessibility gives citizens the right "to seek, receive and impart information concerning water issues."⁹³ The significance of this requirement in the enjoyment of the human right to water is clearly reflected within the UN Common Understanding Framework which identifies the human rights principles most relevant to development interventions as being "non-discrimination and equality, participation and inclusion as well as accountability and the rule of law."⁹⁴ It is pertinent that the said principles be discussed as they are key to this study.

It is generally acknowledged that the principles of equality and non discrimination have played a central role in the development of regional and international human rights law, (Andreassen, (2004:5); Shestack, (1984:101)). A corollary exists between equality and non-discrimination such that the two concepts are generally viewed as two sides of the same coin which cannot operate effectively one without the other (Grant (2007:300); McCrudden (2004:581)). This is because they are "positive and negative statements of the same principle" (Bayefsky, 1990:5). The principles of equality and non-discrimination within the

⁹² Paragraph 12(c)(iii)

⁹³ Paragraph 12(c)(iv)

⁹⁴ Accountability and the rule of law are defined under a broader framework of 'governance'.

water sector become significant to the extent to which their observance or non-observance become a reflection of the underlying power dynamics in water governance.

Equality and non-discrimination became important in this study when assessing the extent to which different social groups of women as compared among them and with men, were actively involved in the access, use and control of water in Mazowe Catchment. The CESCR and CEDAW Committee have made reference especially to the issue of non-discrimination when referring to poor and marginalized groups as listed earlier. In this chapter I interrogate what discrimination is since it is the perspective from which CEDAW and other international human rights instruments view non-discrimination.⁹⁵

1. The Principle of Non-Discrimination

Article 1 of CEDAW states that;

discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

On a similar note, the Women's Protocol states in Article 1(f);

discrimination against women means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life;

The findings in this study clearly show the presence of direct, indirect, structural and intersectional discrimination among different social groups of women on the A1 farms and in water governance institutions nationally.

a) Direct and Indirect Discrimination

Direct discrimination occurs where a person is treated less favourably than another is, has been or would be treated in a comparable situation based on the prohibited grounds e.g. origin or ethnicity. This also includes detrimental acts or omissions on the basis of prohibited grounds, where there is no comparable similar situation (Holzleithner, 2006:10;

⁹⁵ By conceptualizing what is 'discrimination', one can safely conclude that the absence of 'discrimination' points to 'non-discrimination'.

UNCESCR GC20/2009 parag. 10). Direct discrimination is often related to gender stereotypes embedded in social, religious or cultural notions of how men and women are expected to behave (Hellum et al, 2015:58).

On the other hand, indirect discrimination refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination (UNCESCR GC20/2009 parag. 10). On the face of it, the law, policy, or practice would appear to be neutral as it relates to (both) women and men, but would have a discriminatory effect in practice on women, because pre-existing inequalities would not have been addressed by the apparently neutral measure. Exceptions would be where the said “provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (Holzleithner, 2006:11). Placed into context, indirect discrimination addresses the relationship between gender neutral-laws and the gendered uses of land and water in practice (Kameri-Mbote, 2013; Hellum et al, 2015:59).

b) Systemic or structural discrimination

The above refers to “legal rules, policies, practices or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups, and privileges for other groups” (CESCR GC20/2009, parag. 12).

c) Multiple or Compound Discrimination

Multiple or compound discrimination is reflected in a situation where “some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority” (CESCR GC20/2009 parag. 17). Examples of this type of discrimination based on several grounds are given in Articles 2(f) and 5(a) of CEDAW as “...prejudices...customary and all other practices which are based on the idea of the inferiority or superiority of either sex or on stereotyped roles.”

d) Intersectional Discrimination

Having dealt with intersectional discrimination in the Chapter 2 under the Theoretical Framework section, it is briefly reiterated that unlike other types of discrimination which flow from a single ground; this type of discrimination is based on a combination of grounds. Hence in this study, the different social groups of women suffered under intersecting vulnerabilities emanating from gender, sex, origin, economic or social status and cultural practice. Having conceptualized the different forms of discrimination, the next issue is, ‘what then is equality?’ The term ‘equality’ is often viewed as an antonym of “discrimination.”

2. Principle of Equality

Article 1 of CEDAW⁹⁶ and Article 1(f) of the Women’s Protocol, both define the non-discrimination principle. The Women’s Protocol also acknowledges the retrogressive power of some cultural practices and hence calls for the elimination of harmful cultural and traditional practices which promote gender stereotyping.⁹⁷ In 2004, the African Heads of State and Government under the auspices of the AU further reinforced the Women’s Protocol by adopting the ‘Solemn Declaration on Gender Equality in Africa.’

The legal exigencies of the concept of equality are outlined within paragraphs 23 to 27 of the UN Human Rights Committee on Civil and Political Rights’ (UNCCPR) General Comment No. 28 of 2000 (GC28/2000) on the “Equality of Rights between Men and Women.”⁹⁸ In a similar fashion, the UNCESCR has also conceptualized equality in General Comment No. 16 of 2005 (GC16/2005) in paragraphs 6 to 9 and in its General Comment No. 20 of 2009 (GC20/2009) on “Non-discrimination.” Equality has generally been conceptualized from three perspectives namely formal, substantive and transformative equality (Holtmaat (2013:95), Cusack (2013:124), Fredman (2013:217) in Hellum and

⁹⁶ Article 1 of CEDAW uses the phrase, “...on the basis of equality of men and women” to describe a non-discriminatory situation.

⁹⁷ See Article 2

⁹⁸ Comment on Article 3 of ICCPR, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000)

Aasen (2013); Cook and Cusack (2010:5); Fredman (2004:116)). Nevertheless equality has generally been viewed as meaning that everyone should be treated equally regardless of sex, gender, class, race, social status, ethnicity and any other status. It is important to note however that, CEDAW as an international human rights convention is premised on the equality and non discrimination principles initially laid down in Articles 1 and 2 of the UDHR as well as the Preamble to the UN Charter respectively as follows;

*All human beings are born free and equal in dignity and rights...*⁹⁹

*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...*¹⁰⁰

*WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war ... and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women ...*¹⁰¹

Women thus gain ‘locus standi’ to claim the enforcement of the right to water on a basis of equality with men through the aforementioned UN Charter, customary international law and human rights conventions in the international legal fora. At sub-Regional level, the SADC Protocol on Gender and Development seeks to enforce the “equality and non discrimination principle” and defines the two terms in Article 1.

a) Formal or juridical equality

Formal or juridical equality “assumes that the aim is to treat everyone on their merits, regardless of their gender. But treating gender as irrelevant merely ignores the ongoing disadvantage experienced by women. The result is to entrench disadvantage...This means that equality might demand, not identical treatment, but very different treatment.” (Fredman, 2009:12). The concept’s shortcoming is its subscription to “the basic idea that individuals in like situations should be treated alike... based on the appearance of similarity, without regard to the broader context within which such treatment occurs,” (Interights, 2011:17-20).

b) Substantive Equality

⁹⁹ Article 1 of UDHR

¹⁰⁰ Article 2 of UDHR

¹⁰¹ Article 2 of the Preamble to the UN Charter

According to Fredman, (2009:13), the concept of “engendered social and economic rights” entails that;

As a start it is necessary to recognize the distinctive nature of women’s experience of poverty and disadvantage. This suggests that it is not sufficient simply to extend socio-economic rights women. Instead, socio-economic rights need to be recast in the light of the demands of substantive gender equality. Substantive gender equality goes beyond treating women in the same way as men and requires transformative measures. This in turn entails reconceptualising the rights themselves (see also Hellum, (2014:5).

The underlying concept to substantive equality permits different treatment between individuals on the basis of objective and reasonable justification. As part of international jurisprudence on the issue, Tanaka J of the International Court of Justice conceptualized equality under international law in his comprehensive dissenting opinion in the *South West Africa Cases, (Ethiopia v. South Africa; Liberia v. South Africa)*.¹⁰² He states at pages 306 and 307;

*...all human beings are equal before the law and have equal opportunities without regard to religion, race, language, sex, social groups, etc. As persons they have the dignity to be treated as such. This is the principle of equality which constitutes one of the fundamental human rights and freedoms which are universal to all mankind. On the other hand, human beings, being endowed with individuality, living in different surroundings and circumstances are not all alike, and they need in some aspects politically, legally and socially different treatment. Equal treatment is a principle but its mechanical application ignoring all concrete factors engenders injustice. Accordingly, it requires different treatment, taken into consideration, of concrete circumstances of individual cases. The different treatment is permissible and required by the considerations of justice; it does not mean a disregard of justice...Equality being a principle and different treatment an exception, those who refer to the different treatment must prove its **raison d’être**¹⁰³ and its reasonableness.*

Explaining the fundamental nature of the equality principle such that it supercedes any national constitutional provisions that may seek to counter it, Tanaka J stated¹⁰⁴ as follows;

*In what way is each individual allotted his sphere of freedom by the principle of equality? What is the content of this principle? The principle is that what is equal is to be treated equally and what is different is to be treated differently, namely proportionately to the factual difference. This is what was indicated by Aristotle as **justitia commutative** and **justitia distributiva**¹⁰⁵...The idea of equality of men as persons and equal treatment as such*

¹⁰² Case No. [1966] I.C.J. 248, 304 – 307. Available at: <http://www.icj-cij.org/docket/files/46/4945.pdf>

¹⁰³ French expression meaning ‘the most important reason, purpose or rationale behind someone or something's existence’

¹⁰⁴ *South West Africa Cases* (see footnote 102 for citation) at pages 303-304

¹⁰⁵ “*Justitia distributiva*” or distributive justice is the view that, “*Equality is always proportionate equality – that is to say, it is a form of Justice which allots burdens according to the individual's ability to carry them and accords support in amounts which vary with the needs of the individuals...*” On the other hand “*justitia commutativa*” or commutative justice “*which constitutes the second phase of the principle of Equality or “equitable fairness,” is distinguished from “distributive Justice” in so far as it ignores the rank of the persons involved. Thus (it) requires only two factors, since its particular task is limited to the*

is of a metaphysical nature. It underlies all modern, democratic and humanitarian law systems as a principle of natural law...We know that law serves the concrete requirements of individual human beings and societies. If individuals differ one from another and societies also, their needs will be different, and accordingly, the content of law may not be identical. Hence is derived the relativity of law to individual circumstances...The reason therefore is that the principle of equality being in the nature of natural law and therefore of a supra-constitutional character, is placed at the summit of hierarchy of the system of law, and that all positive laws including the constitution shall be in conformity with this principle.

Substantive equality refers therefore “to the notion that individuals in different situations should be treated differently” thereby encompassing “two distinct ideas – equality of results and equality of opportunity.” Hence “equality of results requires that the result of the measure under review must be equal” by recognizing that “apparently identical treatment can, in practice, reinforce inequality because of past or on-going discrimination or differences in access to power or resources” (Interights 2011:17). For equality of results to succeed, “the effects as well as the purpose of a measure” must be taken into account. On the other hand, equality of opportunity suggests that all individuals must have an equal opportunity to gain access to the desired benefit, taking into consideration their different starting positions. Equal opportunity aims to provide equal chances but not equal results (Interights supra: 17).

3.6.3 Conceptualizing Participation

Participation...cannot merely be proclaimed or wished upon rural people in the Third World; it must begin by recognising the powerful, multi-dimensional and, in many instances, anti-participatory forces which dominate the lives of rural people. Centuries of domination and subservience will not disappear overnight just because we have 'discovered' the concept of participation.

(Oakley, (1995:4); Cornwall, (2008:281))

Considering that it is mostly within rural set-ups that one is bound to find community based water sharing schemes; it is also within such frameworks that the participatory models in place become pertinent in ensuring that everyone accesses water in a transparent and equitable manner. Participation has been defined as “an ideologically contested” and “very broad concept that means different things to different people thus producing a range of competing meanings and applications” (Lane, 1995:181; Hussein, 1995:170; Nelson and

proportionate ratio between two "goods" - labour and wage, damage and recovery, and the like” (Chroust and Osborn, (1942:135-136).

Wright, 1995:1-18; Kelly, 2001:34; Claridge, 2004:21). This state of affairs results in “a variety of views on how participation is (to be) defined, whom it is expected to involve, what it is expected to achieve, and how it is to be brought about” (Pelling, (1998:469); Agarwal, 2001:162-3); Claridge, (2004:21). Agarwal (2001:162) proceeds to define participation thus;

At its narrowest, participation is defined in terms of nominal membership and at its broadest in terms of a dynamic interactive process in which all stakeholders, even the most disadvantaged, have a voice and influence in decision-making.

The right to participation was initially conceptualized within the framework of civil and political rights in Articles 2 and 21 of the Universal Declaration of Human Rights (UDHR) in 1948. Equality and non discrimination are viewed as essential pre-requisites of participation. To that end, Article 3 of the International Covenant on Civil and Political Rights (ICCPR) of 1966 states;

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 1 of the CEDAW proceeds to articulate social exclusivist practices which are tantamount to denying women full participation in decision making on issues that may affect them just as Article 1(f) of the Women’s Protocol, referred to earlier also defines discriminatory practices that inhibit women’s right to participation. In Article 9, the Women’s Protocol is more explicit in articulating women’s ‘right to participation in the political and decision-making process.’ Article 14(2) of CEDAW becomes even more specific in its reference to rural women’s particular need to participate in developmental issues as outlined in sub-section 3.6.1 on women as a vulnerable and marginalized group. The World Bank (1995:3) as cited in Warner (1997:414) also focuses on the significance of involving disadvantaged groups such as women when it advocates for “the [genuine] participation of the poor and others who are disadvantaged in terms of wealth, education, ethnicity or gender.”

It has been stated that similar to other political processes, “participation in water governance (by women in this case) first requires a sense of a right to do so, a sense of capability to participate effectively and a sense that such participation will have an impact on the outcome of the process” (Gough, 1992; Lister, 1997; Abers, 1998; Hellum, 2010:4). In Paragraph 16 (a) of GC15/2002, the UNCESCR reiterates the need to include previously marginalized groups in decision making processes when it states,

...In particular, States parties should take steps to ensure that: (a) Women are not excluded from decision-making processes concerning water resources and entitlements...

3.7 The Right to Sanitation

Windfur (2013:2) observed that the then UN Special Rapporteur on the Right to water, Catarina de Albuquerque was of the view that the right to water and the right to sanitation should be addressed “as two distinct human rights both included within the right to an adequate standard of living and with equal status” (Albuquerque, 2012:27) She explained her approach as follows;

There are pragmatic reasons for this approach. All too often, when water and sanitation are mentioned together, the importance of sanitation is downgraded due to the political preference given to water. Naming both water and sanitation as separate human rights provides an opportunity for governments, civil society and other stakeholders to pay particular attention to defining specific standards for the right to sanitation and subsequently for the realisation of this right. Further separating the right to sanitation from the right to water recognises that not all sanitation options rely on water-borne systems

Considering that under this study were water borne sanitation systems and those that were not, a decision was made to take up Catarina de Albuquerque’s approach whereby the state obligations for the two rights were interrogated separately as opposed to viewing sanitation as an add-on.

At the 1994 Cairo Conference on Population and Development, 177 States endorsed the Programme of Action which in Principle 2 recognises that;

Countries should ensure that all individuals are given the opportunity to make the most of their potential. They have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation.

In a similar fashion, 2 years later, the Habitat Agenda was also adopted by the consensus of 171 States at the Second UN Conference on Human Settlements (Habitat II) in Istanbul in 1996. The Habitat Agenda states that “everyone has the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation” (refer to COHRE, 2008:20).

In existence are many definitions that view sanitation as basic, improved and environmental sanitation (COHRE et al, 2008:2). However, the definition I adopt for this thesis is the one developed by the UN Millennium Taskforce, (2000) and later adopted by Roaf and Langford (2008:6) whereby sanitation is defined as

access to, and use of, excreta and wastewater facilities and services that ensure privacy and dignity, ensuring a clean and healthy living environment for all, both at home and in the immediate neighbourhood of users.

Grounded in universally shared values of dignity and equality (Roaf et al, 2008:4), the right to sanitation requires that sanitation facilities be “safe;¹⁰⁶ physically accessible;¹⁰⁷ affordable¹⁰⁸ and culturally acceptable”¹⁰⁹ (Roaf et al, 2008:7). The right to sanitation is implicitly contained within Article 11(1) of the ICESCR on the right to an adequate standard of living. In my view it is also implicitly contained within Article 12 (1) and (2) of the ICESCR recognizing “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” whereby States Parties are required to take necessary steps necessary for “(b) the improvement of all aspects of environmental and industrial hygiene...”

According to UN Water’s Fact Sheet 1, (2014:2), on the right to sanitation; the common facts on the right to sanitation are that, “the right to sanitation does not entitle people to free sanitation.” Rather, “sanitation services need to be sustainable and affordable for all.” As

¹⁰⁶ Hygienic, secure to use by women and children

¹⁰⁷ Available day and night and used by all

¹⁰⁸ Must take account of all costs of accessing sanitation

¹⁰⁹ Must respond to cultural norms for example, separating male and female toilets in public facilities

such, “people are expected to contribute financially or otherwise to the extent that they can.” While “the right does not also entitle everyone to a household service ...sanitation facilities need to be within, or in the vicinity of the household, and can comprise facilities such as pit latrines.” The right also “requires that a state take steps to progressively realise the right, using the maximum of resources available.” Sanitation facilities should be constructed in such a way that they do not compromise anyone in their enjoyment of the interrelated right to dignity.

The right to sanitation also requires that states be involved in the effective management of domestic waste. In that respect Article 18 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa states that;

1. Women shall have the right to live in a healthy and sustainable environment; 2. States Parties shall take all appropriate measures to... c) regulate the management, processing, storage and disposal of domestic waste;

Of particular relevance to the right to sanitation are the internationally known Water, Sanitation And Hygiene (WASH) country programmes usually coordinated by international institutions such as WHO and UNICEF. These usually work on facilitating rural people’s access to improved water and sanitation facilities.

3.8 The human right to water and the concept of progressive realization

A most distinguishing feature of economic, social and cultural rights as opposed to civil and political rights is that they are progressively realized unlike the latter’s immediate realization.¹¹⁰ The *raison d’être* behind the progressive realization of economic, social and cultural rights is the realization that States parties may face limitations or constraints in fulfilling their obligations arising from the non-availability of resources.¹¹¹ Hence it becomes important that one distinguishes the State’s inability from its unwillingness to

¹¹⁰ Nevertheless issues pertaining to respecting, protecting and fulfilling the right to equality and non-discrimination are subject to immediate enforcement even under the ICESCR.

¹¹¹ See Article 2(1) of ICESCR. The Article however imposes an immediate obligation for a State to use to the maximum, the available resources, in order to take concrete and targeted steps towards the full realization of the rights in the Covenant which may include legislative measures.

comply with socio-economic obligations. The concept of the progressive realization of rights is discussed in the UNCESCR's GC3/1990 outlining the "Nature of States Parties' Obligations" in relation to Article 2, paragraph 1 of the ICESCR.

In situations where there are insufficient resources to protect and fulfil the full normative content of socio economic rights, some priority content of the right has to be fulfilled first. This priority setting applies also to those states which might not be resource poor but have failed to fully implement the normative content.

3.9 Are ESC rights enforceable at law: The 'justiciability' of the human right to water at international and regional levels

In this section is discussed the general views and attitudes that members of the public have expressed towards the justiciability of ESC rights. The question generally asked about human rights is, "What does it take to make human rights respected on the ground?" One of the biggest and most contentious debates at international and national levels is whether ESC rights are as justiciable as civil and political rights considering that progressive realization is viewed as a lesser standard to the requirement for the immediate realization or enforcement of civil and political rights.

It is however now generally accepted that ESC rights can be litigated in court. It is important to note that within a short period of time there has been a steady momentum in the development of jurisprudence on socio-economic rights within the African judicial system as well as under the European, American and Asian regional human rights systems. These increasing numbers of decisions by courts from all regions of the world covering all ESC rights bear testimony to the fact that these rights can be subjected to judicial scrutiny and enforcement.

Some of the reasons which have traditionally been given for considering ESC rights as non-justiciable are as follows;

- Considering the operation of the doctrine of separation of powers; a question has often been asked whether courts should intervene to review policies on health, water, housing and education put in place by the executive without being accused of law or policy making. The true position however is that in reviewing government policies, the judiciary would not be overstepping its Constitutional role since it is indeed a function of the judiciary to conduct such reviews in the course of their work so as to ensure that government policies are consistent with constitutional principles and state obligations under international human rights law.
- ESC rights are too “vaguely worded” to enable judges to effectively justify their decisions on the alleged violations. Questions have been raised vis-à-vis what constitute ESC rights such as adequate housing, food, adequate standard of living and freedom from hunger. This tenuous situation has been contrasted with the rich jurisprudence available on what constitutes civil and political rights such as freedom from torture, inhuman and degrading treatment, right to assembly and freedom of association etc.
- Similar to alleged difficulties in conceptualizing violation of ESC rights, questions have also been raised regarding whether it is possible for a court to assess the progressive realization of such rights. Some courts however including the South African Constitutional Court have ably assessed whether the State is meeting its obligations towards progressive realization by considering whether the steps taken by the Government towards achieving progressive realization are indeed reasonable. It has been ruled in the past that a failure to take into account the needs of the most poor and vulnerable in a housing policy suggests that the policy would most likely fail to meet the test of reasonableness.
- Since most judgments especially in South Africa are based on the reasonableness test, the best a court can do under the circumstances is order the government to

review its policies so that they conform to international human rights standards. If a citizen has filed a complaint on the right to adequate housing, one cannot expect the court to order the state to give them a house. Rather the order would impress upon the State to revamp its housing policy so that even poor people in society can expect to access adequate housing in the near foreseeable future. There is no immediate redress of the situation as is the case after civil and political rights have been violated hence most citizens fault such rights for their lack of immediate enforcement.

3.9.1 Regional cases on ESC Rights before the African Court on Human and Peoples Rights (African Court) and the African Commission on Human and Peoples Rights (African Commission)

Set up to adjudicate on complaints regarding human rights violations under the African Regional Human Rights System are the African Commission and the African Court. States parties, NGOs and individuals may bring complaints before the two adjudicating authorities. Article 56 of ACHPR outlines the requirements for Admissibility of a complaint while Article 50 requires that a complainant exhausts all local remedies prior to forwarding a complaint to the African Commission or Court. Most of the cases on ESC rights have been dealt with by the African Commission since the establishment of the African Court is a recent development. Under this African Regional system, cases such as *SERAC v Nigeria*,¹¹² have been more on environmental rights rather than specifically aimed at the right to water although some touch on water pollution. Examples of other similar cases from the region are *COHRE v Sudan*¹¹³ and *Enderois Community v Kenya*¹¹⁴

In the *SERAC* case, the African Commission found the Nigerian state in violation of Articles 2,4,14, 16, 18(1), 21 and 24 of the ACHPR as alleged. In paragraph 45 of the judgment, the African Commission stated that;

¹¹² Case No. (2001) AHRLR 60 (ACHPR 2001)

¹¹³ 296/05

¹¹⁴ 276/2003

Firstly, the obligation to respect entails that the state should refrain from interfering in the enjoyment of all fundamental rights; it should respect right-holders, their freedoms, autonomy, resources, and liberty of their action. With respect to socio-economic rights, this means that the state is obliged to respect the free use of resources owned or at the disposal of the household or the family, for the purpose of the individual alone or in form of association with others, including the household or the family, for the purpose of rights related needs. And with regard to a collective group, the resources belonging to it should be respected, as it has to use the same resources to satisfy its needs.

The African Commission called upon the Nigerian state “to ensure protection of the environment, health and livelihood of the people of Ogoniland...” (Paragraph 71)

3.9.2 Adjudication in National or Domestic Courts

The UNCESCR in General Comments 9 and 12 of 1998 on the “Domestic Application of the Covenant’s Provisions” stated that; “questions relating to the domestic application of the Covenant must be considered in the light of two principles of international law. The first principle is reflected in article 27 of the Vienna Convention on the Law of Treaties of 1969 on “Internal Law and Observance of Treaties” stating that,

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.¹¹⁵

The second principle is reflected in article 8 of the UDHR according to which “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” Considering that most progressive Constitutions globally now include ESC rights within their bills of fundamental rights, the justiciability of such rights is increasingly becoming more obvious.

1. South Africa

South African courts in the case *Lindiwe Mazibuko and Others versus the City of Johannesburg and Others*,¹¹⁶ on the human right to water reached different conclusions on whether “social and economic rights, in...(the South African) Constitution, contain a

¹¹⁵ Article 46 reads, “1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

¹¹⁶ CCT 39/09; [2009] ZACC 28

minimum core which the state is obliged to furnish, the content of which should be determined by the courts.”¹¹⁷ The three courts which presided over the *Mazibuko case* (supra) reached different conclusions on whether the amount of water for a free basic water supply at 25 litres per person per day or 6 kilolitres per household per month was reasonably adequate. While the High Court ruled 50 litres per person per day to be reasonable, the Supreme Court set it at 42 litres per day per person while the Constitutional Court set aside the two judgments by the courts ‘aquo’ and reinstated the free basic water supply of 25 litres per person per day regulated through the South African Water Act as proper since the according to them the Constitution had no minimum core content. The Constitutional Court, in contrast to the High Court and Supreme Court of Appeal, came to the conclusion that courts are not seized with the authority to determine what constitutes “sufficient water” since this is an issue over which the government or its municipal agent is better placed to address.

Just like in the *Government of the Republic of South Africa and Others v Grootboom and Others*¹¹⁸ on the right to housing and the *Minister of Health v Treatment Action Campaign and Others No. 2 case*¹¹⁹ on the right to health care services, the South African Constitutional Court’s approach has been that ESC rights as stipulated in the Constitution impose upon the state a positive obligation which is not directly and immediately enforceable. Rather it requires the state to “take reasonable legislative and other measures progressively to realize the achievement of the right of access to sufficient water, within available resources.”¹²⁰ In other words, in the *Lindiwe Mazibuko case* (supra), the

¹¹⁷ See paragraph 53 as per O’Regan J in the Constitutional judgment for the *Lindiwe Mazibuko case*.

¹¹⁸ Case Nos. CCT 11/00; [2000] ZACC 19; 2001 (1) SA 46 (CC); 2000 (11) BCLR 1169 (CC)

¹¹⁹ Case Nos. [2002] ZACC 15; 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC)

¹²⁰ As per O’Regan J in paragraph 50 of the Constitutional Court Judgment in the *Lindiwe Mazibuko case*. In the same judgment as per O’Regan J it was indicated that the same court had found that in the *Grootboom case* the right to housing did not entitle citizens to demand a house from the state which would be provided immediately while in the *Treatment Action Campaign case*, the right to healthcare services was not “a self-standing and independent positive right enforceable irrespective of...” available resources (see paras. 48 - 50)

Constitutional Court's position was that the obligation placed on government by section 27 of the South African Constitution was an obligation to take reasonable legislative steps and other measures to seek the progressive realisation of the right rather than the actual and immediate enforcement of the right. In my view taken from the 'sameness and difference' perspective, the courts failed to adequately cover the need for duty bearers to prioritize the peculiar water needs of the poor and marginalized members of the South African society taking care of bigger families as compared to the rest of the society with better income and smaller families.

2. Botswana

Since 2002, the indigenous and nomadic Basarwa (also known as the San), a minority group in Botswana, have been engaged in court battles with the Botswana government contesting their eviction from the Central Kalahari Game Reserve (CKGR) in central Botswana, their traditional hunting ground. At one point the government destroyed their homes, closed their school and health posts in addition to destroying their water supplies. In two judgments in the case *Matsipane Mosetlhanyane v The Attorney- General of Botswana* (unreported);¹²¹ passed in 2006 and 2011, the Botswana High Court ruled that the government's refusal to allow the Basarwa into the CKGR without a permit was unconstitutional and they were allowed access to a borehole they had previously used, directly nullifying a law passed earlier by the government, prohibiting the Basarwa from using boreholes in the reserve and preventing them from drilling new ones. This had resulted in them travelling for up to 30 miles outside the reserve to access water. As observed by Tanaka J in the *South West Africa cases* (supra) which approach I subscribe to; the human rights inherent within the Basarwa as contained in the Botswana Constitution and in line with international human rights law ruled the day over state created statutory provisions on water rights.

¹²¹ See Botswana Unreported Cases, Court of Appeal, Case No. CALB-074-10 (unreported);

3.10 Arguments for and against the Minimum Core Content and Reasonableness Test Review standards

When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant.

The above quote from Article 8(4) of the Optional Protocol to ICESCR (OP-ICESCR) puts into perspective the current debate on whether courts of law in determining cases on ESC rights should adopt the reasonableness test review standard or should they just enforce a minimum core concept. The debate has extended to the right to water for food and livelihoods as discussed in subsection 3.10.1. It is pertinent that that the two concepts be deconstructed.

1. Minimum Core Content/ Obligation

The term minimum core content/obligation has been used to clarify what can be expected from a State immediately, and that which it can be expected to achieve progressively. As defined in the UNCESCR's GC3/1990 under a minimum core obligation framework, a state party has "to ensure the satisfaction of, at the very least, minimum essential levels 'of each of the rights spelt out in the Covenant'" (see also A. von Bogdandy and Wolfrum (2007:403). I subscribe to A. von Bogdandy et al's observation that 'core obligation' is the more appropriate term to use in identifying what States Parties have to do as a minimum, while the term 'core content' seems to reduce the scope of the right as it has often been equated with specific amounts of water as a basic minimum under the human right to water framework.

The term 'core content' as discussed above can thus be viewed as reducing to a very basic minimum, a broader understanding of steps or action required to ensure adequacy or sufficiency of water or food. A core obligation on the other hand sets out a concrete requirement on what governments are expected to focus on. It has to be acknowledged

however that the minimum core content can be used positively to overcome obstacles in the demand for accountability since minimum standards are very useful in creating indicators and benchmarks of progress.

It is my argument however in this thesis that the minimum core content approach is inadequate in facilitating rural women's realization of the human right to water because despite providing for a basic minimum amount of free or affordable water, this is more often than not, restricted to drinking and domestic uses only. Consequently, it does not envision the wide range of uses that rural women put water to in order for them to realize an adequate standard of living. Some of those crucial water uses are for basic food production and livelihoods. The minimum core obligation is also inadequate as it just provides guidelines on what States should focus on and hence does not translate to the immediate or reasonably quick realization of ESC rights.

2. Reasonableness Test Review/Standard

On the other hand, the reasonableness review mechanism has been utilized effectively by courts to test and assess the level of State programmes' and policies' 'progressiveness' in realizing ESC rights. The reasonableness test has sometimes been used to countercheck the appropriateness of the minimum core content in place. In other words, the question is asked; 'Considering a state's economic development and national priorities, is the minimum core in place commensurate with that state's economic status and the resources available to it?' Secondly, 'for how long has that particular minimum core content been in place?' A case in point is the South African *Lindiwe Mazibuko*¹²² case discussed earlier.

Considering that in this study, a broader perspective on the human right to water is adopted; I argue in favour of the reasonableness review standard. This is because unlike the minimum core concept, the reasonableness review standard is not limited by set basic minimum

¹²² Case Nos. CCT 39/09; [2009] ZACC 28

amounts of water which may be inadequate to meet the needs of different social classes of women especially those living in rural areas as envisaged under Article 14 of CEDAW.

3.10.1 Minimum Core Content versus Reasonableness Test: Serving the best interests of the rural woman

For purposes of making an empirically informed choice, an investigation had to be made regarding, under which approach (the minimum core or the reasonableness review standard) an argument to include water for basic food production and for livelihoods within the human right to water framework would be accommodated and thus be justiciable as a right?

In a debate convened by Crossfire, two academics Melvin Woodhouse and Malcolm Langford debate on the topic; “There is no human right to water for livelihoods, because the law can only protect a human right to basic needs” (Woodhouse and Langford, 2009:5). But then my question is, ‘What is conceptualized as basic human needs?’ In his argument in favour of the minimum core approach to the right to water Woodhouse states;

As it stands the ‘human right to water’ only concerns basic human needs and these are defined as water for drinking, personal hygiene and sanitation. The argument is that having this minimum protected by law is a huge leap forwards from today’s situation for many people in the world...My concern therefore is that a human rights approach to water for livelihoods would be unworkable, firstly because it may be physically impossible to recognize this right for every human being...We can only protect this right if it is based on an established minimum quantity that is applicable to all people in all circumstances...¹²³

In support of his argument, Woodhouse suggests a minimum quantity of 50 litres of water per person per day. Any use of water above the agreed level would then be deemed to be beyond basic human need and hence not protected by human rights law.

On the other hand, Langford basing his argument on empirical research conducted by Hellum et al (2007) over several years in Zimbabwe on rural women’s use of primary water argues for the reasonableness review standard approach. He disagrees with Woodhouse’s call to have a universally fixed amount of water to meet basic domestic needs as he views this as a “singular approach (which) represents a misunderstanding of the science, the law

¹²³ At pages 6 and 9

and, more deeply, the way in which human rights are claimed in practice.”¹²⁴ Langford accuses the minimum core approach of failing to take into account the different needs of different people placed in different contexts. He therefore views quantity debates as glossing over discrimination and equality rights when qualitative analysis demands that equality and difference must be factored in.¹²⁵ In support of his argument he states as follows;

Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights (UNCESCR GC15/02, paragraph 6). In determining “vital human need”, special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation.”¹²⁶

In my view Woodhouse’s argument for a universalized right to a basic minimum amount of water which he puts at 50 litres falls short of guaranteeing an adequate standard of living to the majority of rural women in developing countries who use water holistically to meet all their basic drinking, sanitary, health, food and livelihood needs. Woodhouse’s minimum core approach is in line with the UNGA Resolution A64/292 restricting the right to clean drinking water and sanitation, which amount in reality may be adequate for a big margin of urban populations or those in developed countries who have the economic resources to financially cater for the difference in water needs but is inadequate for rural women.

3.10.2 Putting the Reasonableness Test Review Standard to the test? Academic debates on the South African Constitutional Court’s Judicial Review Approach on ESC rights

It is also important to note Pieterse’s (2007) contribution to the debate between the minimum core and the reasonableness test review approaches to adjudicating on ESC rights. The debate is a critique of the approach taken by the South African Constitutional Court in reviewing cases on ESC rights. Pieterse represents those who argue against the “reasonableness inquiry” approach taken by the South African Constitutional Court and advocates for an approach which holds the State to immediate account vis-à-vis its minimum core content obligations. Pieterse, (2007:798;799) states;

¹²⁴ At page 6

¹²⁵ See page 7

¹²⁶ ‘Statement of Understanding’ to the Watercourse Convention at page 11

But the jurisprudence has also attracted significant criticism, particularly for its denial that socioeconomic rights embody immediately enforceable individual claims and its resort, in the alternative, to an abstract and procedural mode of ascertaining state compliance with the obligations imposed by the rights...

Pieterse, (2007:810-811) appreciates what he views as progressive South African scholars who have acknowledged the positive impact of the Constitutional Court’s socioeconomic rights judgments on the formulation and implementation of socioeconomic policies. The “progressive South African scholars” have commended the manner in which the Constitutional Court’s judgments have lent credibility to the state’s social reform efforts. The scholars, however, have largely expressed disappointment with the failure of the Constitutional Court’s jurisprudence in this area to live up to the transformative potential of the rights it claims to vindicate. Below is Table 9 summarizing the criticisms levelled against the South African Constitutional Court according to Pieterse (2007:810-811);

Table 9: Criticisms levelled against the South African Constitutional Court’s Approach

No.	Nature of Criticism
1	Court’s ‘reasonableness’ inquiry” approach is accused of being of a “...seemingly ad hoc, abstract and context-dependent nature” such that it “fails to prioritize the satisfaction of certain basic and urgent socioeconomic needs over others and to set consistent standards against which the adherence of government policies to constitutional obligations may be measured.”
2	Courts are criticized for “focus(ing) on procedural and technical issues related to the content and implementation of socioeconomic policy rather than on the satisfaction of the survival interests of poor and vulnerable sectors of society.” This approach by the South African courts is viewed as being “of limited use to citizens who seek to secure access to those goods and services which they are entitled to (or) have by virtue of their inherent human dignity.”
3	The Court’s socioeconomic rights judgments that shy away from awarding mandatory, structural, and tangible relief are viewed as lacking remedial fervour.
4	The Court is accused of failing to subject state assertions of resource scarcity to sufficiently rigorous scrutiny.
5	The Court conceives of socioeconomic rights not as separately enforceable rights to particular goods or services, but rather as a single, overarching guarantee that socioeconomic policies may be abstractly reviewed for their adherence to certain principles of good governance.”

The arguments raised by the South African scholars as outlined in Table 8 above may be expressed more fully by the question; “Are poor people expected to eat progressive socioeconomic policies in the absence of tangible relief such as immediate access to food and water?” (Pieterse, 2007:816-817). This debate as discussed above is relevant to my thesis to the extent that the reasonable review standard approach may be used to broaden the right to water by including water for livelihoods. The minimum core approach to the right to water

deals with fixed quantities of water viewed as the bare minimum for survival. In my view, the only foreseeable challenge to using the reasonableness test review standard is on interpreting ‘reasonableness.’ How and what is to be adjudged as reasonable vis-à-vis the basic water uses to include in the right to water framework as well as how to test progress made by States in the realization of this right. The issue of context then comes into play as reflected more fully in this thesis’ chapters on findings.

3.11 Conclusion

In this Part I of Chapter 3, the aim was to (i) conceptualize the human right to water as compared to water rights from an international perspective; (ii) interrogate whether a human right to water exists at international law (iii) how it is understood or formulated and whether (iii) it is indeed justiciable. The various principles underlying the human right to water have been deconstructed namely, (a) State obligation to respect, protect and fulfil the human right to water; (b) rights holders’ freedoms and entitlements; (c) equality and non-discrimination; (d) participation, (e) progressive realization of ESC rights, (f) the minimum core content and reasonableness test under the framework of the justiciability of the right and (g) interrelated rights such as the right to livelihood, right to food and right to sanitation.

Drawing from Article 25 of UDHR and Articles 11 and 12 of the ICESCR, I problematize the term, “the right to a standard of living adequate for the health and well-being of himself and of his family, including food ...and necessary social services, and the right to security in the event of unemployment ...or other lack of livelihood in circumstances beyond his control.” What do the terms “adequate standard of living” and “enjoyment of the highest attainable standard of physical and mental health” entail in terms of the right to water which the UNCESCR in its GC15/02, paragraph 2 interprets as entitling “everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”

Arguing from a legal and human rights perspective especially the sameness and difference debate discussed in Chapter 2; I find the use of the Universalist term that “everyone is entitled to water which is sufficient...” or ‘adequate’ as problematic. The water requirements necessary to meet the basic needs of rural women on A1 farms, who have to also irrigate small vegetable plots for personal and family nutritional and livelihood needs, differ from one woman to the next and at the same time differ from those of men who irrigate large plots of commercial crops on the same farms. The key question I posed in this study sought to problematize the following, “Where does the right to water begin and end?”

Being focused primarily on the human right to water in the study rather than water rights, the latter only become significant to the extent to which water used by women for basic food production and for livelihoods is being classified under the water rights regime thereby making the water unaffordable to the majority of rural women. My argument is that, the fact that this water is being classified under the water rights framework is erroneous since it rightly belongs under the human right to water framework considering that it is essential for the realization of the rights to an adequate standard of living, the highest attainable standard of physical and mental health, the right to food, the right to life, livelihoods and a host or other interconnected rights.

PART II

ACCESS TO WATER, USE AND CONTROL AS FRAMED WITHIN ZIMBABWE’S NATIONAL LAWS AND POLICIES

3.12 Introduction

As indicated earlier, this study’s focus was on the human right to water simply because it provided a broader framework for access to water that was more affordable and presented better opportunities for participation in its management by rural women on A1 farms since it was not primarily land use based.

The questions requiring answers at national level were as follows;

- Does the human right to water and sanitation, as currently framed in national laws, adequately meet the aspirations of women on the ground?
- To what extent are national policies understood and actualized by women at the local level?

Armed with a new and progressive Zimbabwe Constitution in 2013 which provided for a right to food and water in section 77 as one composite entitlement, the next logical step for me was to contextualize the situation of women on A1 resettlement farms in Zimbabwe to find out whether there was substantive realization of these provisions in section 77. Another pertinent issue which needed empirical verification was the fact that the Water Act Chapter 20:24 and National Water Policy of 2012 formally provided for a wider entitlement to free water for domestic use in and around the home in rural areas through the access to primary water framework. This free primary water use framework also resonated with the Shona customary norm entitling everyone to free access to water in communal lands as initially indicated in other researches conducted by various academics nationally.

3.13 Legal developments on the human right to water discourse within Zimbabwe's Constitutional framework

The legal and institutional framework is crucial for the implementation of the right to water at national level considering that human rights at the international level may appear too abstract and far removed in the eyes of a woman farming in a poor rural community like Mazowe catchment. Considering that Zimbabwe is party to most international and regional human rights instruments, an obligation is placed upon it as a State Party to have a legal system which complies with the international and regional human rights frameworks speaking to water governance.

3.13.1 The nature of Zimbabwe's legal system

Zimbabwe has a dualist legal system inherited from the colonial era whereby received law (Roman-Dutch common law), statutory law and African customary law operate side by side. Under this dualist system, provisions of international human rights conventions have to be domesticated first prior to their application and/or operationalization within the domestic legal system (See section 327 of the 2013 Zimbabwe Constitution). The formal customary law in Zimbabwe is not coded but rather any informal customary norm or practice which becomes subject to judicial enquiry becomes official once traditional leaders confirm that it is indeed part of the customary practices within their respective tribe. In the case of Mazowe Catchment, the relevant tribe is called the Shona, as discussed in more detail in Chapter 4. Despite there having been empirical studies by Sithole (1999), Matondi (2001), Nemarundwe (2003), Derman and Hellum (2003) on water sharing customs among the Shona; these have not yet been subjected to judicial enquiry.

3.13.2 A brief historical background to the human right to water within Zimbabwe's Constitutional provisions

Primary water user rights have existed as a Constitutional provision from as far back as the first colonial Constitution namely section 81 of the 1898 British South Africa Company (BSAC) Order in Council which reads,

The Company shall from time to time assign to the natives inhabiting Southern Rhodesia, land sufficient for their occupation, whether as tribes or portions of tribes, and suitable for their agricultural and pastoral requirements, including in all cases a fair and equitable proportion of springs or permanent water.

This was however, the first and last time that access to primary water was a Constitutional provision during the period preceding Zimbabwe's independence. The right was subsequently relegated to a statutory provision with effect from the 1913 Water Ordinance covering water for agriculture, whose "essence (was) to protect the interests of the occupants in the Native Reserves" (Wurzel 1987:266). From then on, provisions relating to free primary water have been located within statutory law other than the Constitution.

The situation was even more incongruous with the 1980 Zimbabwe Constitution which did not contain ESC rights and yet within both the 1976 Water Act (repealed) and the current Water Act, Chapter 20:24 which was enacted in 1998, there existed an entitlement to free primary water for residents of communal lands. There thus existed an apparent disconnection or mismatch between the 1980 Zimbabwe Constitution and water legislative provisions. The 2013 Constitution has however changed this position since the right to food and water is now contained therein as section 77. The only question begging an answer is whether the provisions located within 2013 Constitution, the Water Act Chapter 20:24 and the 2013 National Water Policy all speak on the same type of water freedoms and entitlements.

3.13.3 The 1980 Zimbabwe Constitution: A brief look at the status quo ante

While section 23(1) and 23(2) of the 1980 Zimbabwe Constitution guaranteed non-discrimination on several grounds which included gender, the dualist nature¹²⁷ of Zimbabwe's legal system remained its proverbial Achilles' heel. Further to that, section 23(3)(a) of the repealed 1980 Zimbabwe Constitution amounted to a "claw back clause" as it allowed discrimination through the application of African customary law to issues of personal and family law. This which was a highly discriminatory situation to which Zimbabwean women were subjected in clear violation of international and regional human rights instruments the Zimbabwe state had ratified.

The concept of equality and non-discrimination was reinforced within the 1980 Constitution through a quota system in the allocation of land in Zimbabwe. Then outcome as discussed in Chapter 1 of this thesis, however fell below the anticipated 20% quota.¹²⁸ Why I discuss the

¹²⁷ Referring to the co-existence of officially recognised customary law on one hand and the received law and statutes on the other hand

¹²⁸ A 2005 amendment added section 23(3a) requiring equality in the allocation and distribution of land under the land reform programme as supported by a policy provision which required women to form at least 20% of total beneficiaries under the programme. Due to a host of other politically, gender, socio-economic and culturally related constraints, only 18 % of beneficiaries were women.

seemingly unrelated matter of land reform is because the low percentage of women beneficiaries during Zimbabwe's land reform has had a direct impact on the extent to which women participate in agricultural water governance as it is predominantly determined by one's land leasehold, usufruct or ownership status.

The most serious shortcoming bedeviling Zimbabwe's 1980 Constitution was absence of ESC rights in its Bill of Rights, an essential component in creating an environment reflecting the rule of law.¹²⁹ ESC rights having been declared as being of equal importance as civil and political rights, in accordance with the universality, indivisibility, interdependence and interrelatedness of human rights;¹³⁰ this automatically obliges "the international community (to) treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."¹³¹

3.13.4 The Human Right to Water under the 2013 Zimbabwe Constitution

Section 77 is the key provision with regard to the human right to water for personal, domestic and livelihood purposes in Zimbabwe. Section 77 in the new Constitution states;

Every person has the right to— (a) safe, clean and potable water; and (b) sufficient food; and the State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right.

The section is similar to its equivalent in the South African Constitution namely Section 27 (1) (b) and (2), but goes a step further by referring to the quality of the water to be supplied unlike the South African provision which speaks only about sufficiency of the water. While it is laudable, that the drafters explicitly recognized the indivisibility of the right to food from that of water, strangely missing however, is reference to a right to sanitation, which internationally is considered a corollary of the right to water and not an add-on in the

¹²⁹ The then UN Secretary General in 2004 defined the 'rule of law' as, "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards..."

¹³⁰ See part I, paragraph 5 of the Vienna Declaration and Plan of Action, adopted by the World Conference on Human Rights in Vienna in 1993.

¹³¹ See the above footnote.

realization of a healthy minimum standard of living.¹³² Nevertheless, in this study, it is included within the right to a healthy and sustainable environment.

3.13.5 Equality and Non Discrimination in the 2013 Zimbabwe Constitution

By guaranteeing principles of equality as well as non-discrimination section 56 sub-sections (1) to (3) as well as section 17(2) of the 2013 Constitution resonate with Article 2(f) of CEDAW providing for the removal of harmful cultural and social practices which discriminate against women. Section 17(2) states that, “the State must take positive measures to rectify gender discrimination and imbalances resulting from past practices and policies...” The 2013 Constitution also declares all persons to be “equal before the law with a right to equal protection and benefit of the law.” Further, “women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres” as well as “the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality...”¹³³ While Section 56(4) outlines examples of situations regarded as discriminatory, sub-section (5) gives an exception to the rule and sub-section (6) is on affirmative action for previously marginalized groups.

Section 46 on the “Interpretation of Chapter 4” which is the Bill of Rights exhaustively outlines the factors to be taken into account by a court of law, tribunal, forum or body when interpreting the meaning of Chapter 4. This guarantees formal equality and non-discrimination for everyone.

Sections 34 and 327(2) of the 2013 Zimbabwe Constitution provide for the domestication of all international conventions, treaties and agreements to which Zimbabwe is a party through Acts of Parliament. Section 326(1) recognizes customary international law as part of Zimbabwean law except where it is inconsistent with Constitutional or statutory provisions. As such, when interpreting legislation, it is imperative that every court or tribunal in terms

¹³² Consider the UNGA Resolution on the International Right to Water and Sanitation of 2010.

¹³³ See section 56 subsections (1) to (3)

of sections adopt any reasonable legal interpretation consistent with the said customary international law as opposed to an alternative interpretation inconsistent with that law.¹³⁴

3.14 The inter-related right to sanitation, a healthy and sustainable environment in the 2013 Zimbabwe Constitution

As indicated in the previous section, the 2013 Zimbabwe Constitution does not contain a right to sanitation. Instead there are environmental rights which to a certain extent could be related to the proper handling of any domestic or toxic waste which may pollute the environment including water thereby impinging on one's full enjoyment of the right to a healthy and sustainable environment. Article 73(1) of the 2013 Zimbabwe Constitution on Environmental Rights provides that;

Every person has the right (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting economic and social development.

The approach I take in equating the right to a safe and sustainable environment to the right to sanitation resonates with that expressed in a Human Rights Watch Report (2014:9) indicating that; "Although sanitation is not specifically protected in the new constitution, sanitation issues clearly fall within "environmental rights" that have appeared in Zimbabwean law for several years... While these rights do not directly address sanitation, a healthy environment includes an environment in which human waste is properly disposed of and people's lives are not compromised by waterborne disease."

3.15 Legal developments in the water sector relating to Zimbabwe's statutory provisions

There currently is no explicit reference to a human right to water within Zimbabwe's statutory provisions on water. However, what is explicitly referred to in the Water Act Chapter 20:24 is a water rights framework that provides for a *de minimis* or residual water

¹³⁴ See section 326 (2); 327(6) and 327(7); While it may be a long process for international laws to be domesticated, sections 326(2) and 327(6) give judges presiding over cases in courts and tribunals enough room to exercise judicial activism at any time in the determination of cases.

provision referred to as '*primary water*.' It is important to point out however that this access to free primary water¹³⁵ for rural households has been a feature of Zimbabwean statute law since 1913 with the Water Ordinance of the same year, the 1927 and 1976 Water Acts. Since the human right to water does not mean access to free water¹³⁶ but rather to that which is affordable; it is from that perspective that I view the legally protected exemption clause primary water within the Zimbabwean context as affording rural Zimbabwean households a better and broader framework for realizing the right to water inclusive of the rights to health, sanitation, livelihood and food.

Unlike in most developed jurisdictions where the human right to water is strictly confined to drinking water and sanitation while any agricultural use is viewed as a commercial venture; the broader approach to the right to water as defined in General Comment 15/2002 is more relevant in developing countries with less developed economies. This is so because it is within such developing countries, Zimbabwe included, that you find the majority of the female population in rural areas where they are involved in agricultural activities for both their families' subsistence as well as to earn a basic livelihood.

In my study the clear demarcation between commercial farming areas deemed to use commercial water and communal lands largely deemed to use free primary water became obfuscated when the majority of rural women previously located within communal lands migrated to former commercial farms. Once there, these former subsistence farmers persisted with their usual farming practices whereby apart from the main household based farming activities, they also engaged in small scale gardening activities for family food and livelihood purposes. This state of affairs has created a host of problems vis-à-vis how to

¹³⁵ This is defined in more detail in this Chapter under the section on the Water Act Chapter 20:24 and refers to water used for domestic purposes in and around the homestead. It has always been linked more to rural households than urban ones until the National Water Policy of 2013 which speaks of a right to primary water in urban areas.

¹³⁶ Except in exceptional cases where special concessions are made for the poor and marginalized sections of the society who don't have any income to pay for water and also in respect of the internationally protected basic minimum 20 litres per person per day of free water.

draw the line between what is considered as free primary water and agricultural commercial water use that requires a permit.

3.15.1 Dispute Resolution and water regulations during the colonial era

For the period running from the 1890's and up to 1980, successive colonial governments adopted water laws and policies which fulfilled their deeply ingrained key policy of racial segregation. As such it was only white farmers who could access large volumes of water for commercial purposes on white owned large scale commercial farms while the majority of blacks were confined to clan or tribal based communal lands¹³⁷ where they were allowed to have collective access to free water for primary purposes in and around the homestead, which primary use also accommodated their domestic nutritional and livelihoods needs. This statutory provision of free primary water for black rural households has been inherited through successive Water Acts starting with the 1913 Water Ordinance. In defining primary water, section 2(1) of the repealed 1976 Water Act reads;

“primary purposes”, in relation to the use of public water, means the reasonable use of water- (a) subject to the definition of "institutional purposes" for human use or in or about the area of the garden or grounds or both of a dwelling-house or for cleansing purposes in a place of business or (b) for the support of animal life, other than fish in fish farms or animals or poultry in feedlots; or (c) for the making of bricks for the private use of the owner, lessee or occupier of the land concerned; or (d) for dip tanks;

The same section also stated that public water referred to “all water found on or below the bed of a public stream, including marshes, springs, swamps or vleis forming the source of or found on the course of the public stream.” On the other hand, private water meant “all water, other than public water and underground water which - (a) rises naturally on any land; or (b) drains or falls naturally on to any land; so long as it remains on the surface of the land and does not visibly join a public stream.”¹³⁸

A common factor running through these colonial Water Acts was that water used on farms in whites-only areas could be privately owned. Under the repealed 1976 Water Act, water

¹³⁷ Then successively referred to as native reserves and tribal trust lands

¹³⁸ According to the same section 2 (1), public stream meant “a watercourse of natural origin wherein water flows, whether or not - (a) such watercourse or any portion thereof is dry during any period of the year; or (b) the conformation of such watercourse has been changed by artificial means.”

could be privately owned by land owners under its provisions which were based on Roman-Dutch and English common laws encompassing the public-private water divide, prior appropriation and riparian doctrines. A land owner could apply for water rights once they owned land. The 1976 Act entrenched a private water rights system informed by Roman-Dutch common law based on the premise, “Water is free for the taking for those who get to it first,” (Wilkinson (1992); Berry and Mollard, 2010:7). As such water rights were issued on a “first in, last out” basis i.e. prior appropriation or priority basis discussed earlier in this chapter under the section on water rights. The water rights under the 1976 Water Act framework were generational and could be owned in perpetuity regardless of non-use.

Under the colonial legal framework, institutions administering how commercial water was to be used were put in place. River Boards were created to oversee the sharing of commercial water which flowed along major rivers traversing several commercial farms as well as flowing into private dams. Membership to these River Boards was restricted to commercial water rights holders only. This restriction ensured that primary water users and emerging black owned businesses and farmers, the latter of whom aspired to use water commercially, were excluded. Prior to 1998 and the enactment of a new Water Act, Mazowe River Board was considered very vibrant such that when Zimbabwe’s water reform process was embarked on, it naturally became a popular choice in piloting the new water project.

The Water Court

During the colonial era when the 1976 Water Act was still in place and up to 1998 when a new Water Act was enacted; whenever conflict arose regarding the use and sharing of water, such disputes’ resolution was always the preserve of the Water Court. This was an administrative court focused on resolving disputes between white commercial farmers vis-à-vis water sharing between upstream and downstream users, usufructs and the maintenance

of boundaries in relation to water. In keeping with centralized governance, the court was located in the capital city, Harare (then known as Salisbury).

With the advent of independence in 1980 and adoption of new policies aimed at removing the notorious racist policies in the land and water sectors; the Zimbabwean government embarked on land and water reforms starting from the 1980's and the 1990's respectively. Set on ushering in a new democratic dispensation through such land and water reforms; the Zimbabwe government in 1998 repealed the colonial 1976 Water Act and replaced it with the Water Act Chapter 20:24. While the state switched from the river board system to catchment based water management, the Water Court became subsumed under the Administrative Court, which now had a broader mandate covering a host of other administrative issues beside water conflicts.

3.15.2 Water regulations birthed during Zimbabwe's water reform process: 1995 - present

The 1998 Water Act, Chapter 20:24 revolutionized the water sector in that privately- owned water rights became non-existent as all water in Zimbabwe became vested in the President who presumably holds it in trust for the whole nation. As such everyone else requiring water for commercial purposes accesses it through a permit system. An important fact to note is that the statutory provision on free water for primary purposes emanating from the colonial era was given a new lease of life within Chapter 20:24 as section 2, normally read with sections 32 and 34 of the same Act. Section 2 as read with sections 32 and 34 of the Water Act Chapter 20:24 define primary purposes in the use of water as;

the reasonable use of water— (a) for basic domestic human needs in or about the area of residential premises; or (b) for the support of animal life, other than fish in fish farms or animals or poultry in feedlots; (c) for the making of bricks for the private use of the owner, lessee or occupier of the land concerned; or (d) for dip tanks.

While the relevant provision on primary water uses in the 1976 Water Act specifically mentioned water for gardening purposes and for cleansing places of business, the new provision simply referred to “water for basic domestic human needs in or about the area of residential premises.” Considering that both Water Acts (1976 and 1998) in their definition

of the reasonable use of water include brick-making; this gives the provision a much broader outlook encompassing the right to housing.

The 1998 Water Act also provides that, subject to certain provisions; “any person has a right to abstract water for primary purposes” and that this does not require a water permit. Section 3(1) of the Water Act Chapter 20:24’s Water (Permits) Regulations Statutory Instrument 206 of 2001 (attached to thesis as Appendix 10) gives the maximum amount of free water for primary purposes as 5 000 cubic metres.¹³⁹ The regulations do not however specify for how long this amount of water is expected to last and whether it is for a household or individual. A ZINWA official interviewed on 08 July, 2014 indicated that the 5 000 cubic metres of water was for a household for a season. ZINWA officials interpret a season to be equivalent to half the year or 6 months.

In practice, primary water is not restricted to drinking water only but is viewed as an integral part of livelihood necessities such as food and housing in the communal areas. Despite this provision emanating from a water rights framework, the *raison d’être* behind it has increasingly been associated with the human right to water framework as discussed earlier from an international perspective. It goes without saying that the primary water provision in the Water Act resonates with section 77 of the 2013 Constitution that provides for a combined right to food and water in the same section. The state has an obligation to respect and protect this right to food and water which in the 2013 National Water Policy is referred to as the ‘right to primary water.’

There is also need to conceptualize the differences between the water permit and water agreement permit systems used by ZINWA sub-catchment councils as this impacts on the affordability of irrigation water. According to a ZINWA official interviewed on 08 July, 2014 the water permit system is commonly found on A2 farms while Agreement water is

¹³⁹ Equivalent to 5 000 000 litres or 5 mega litres

largely implemented on A1 farms with respect to shared water in ZINWA managed dams. According to a report dated 20 August, 2014 by ZINWA entitled, “Understanding the water permit and agreement systems in Zimbabwe;”

Water permits and agreements give their holders a right to use raw water from either a river or dam. Water permits are issued to people intending to use water from rivers while those wishing to draw water from ZINWA managed dams enter into an agreement with the Authority allowing them to enjoy rights to the water. Holders of water permits and agreements are required to pay for water use.

This issue is discussed in detail in Chapter 5 on institutions which mediate women farmers’ access to and use of water on A1 farms in Mazowe Catchment.

Apart from the 1998 Water Act, to regulate the water reform process, the government enacted a raft of other new statutes aimed at sustainable water use and management. These were the ZINWA Act Chapter 20:25 in 1998 as well as the Environmental Management Act Chapter 20:27 enacted in 2002. A new parastatal, the Zimbabwe National Water Authority (ZINWA) created through the ZINWA Act Chapter 20:25, was assigned responsibility for the management of water resources. The water reform is discussed in detail in Chapter 4.

Prior to Zimbabwe’s independence, the traditional or spiritual role of traditional leaders as custodians over natural resources such as land and water was also officially recognized by successive colonial governments who allowed them to preside over minor cases involving tribal or clan land. Nevertheless, white Native or District Commissioners were the ultimate authority over these customary processes. While for some time after independence, traditional leaders lost this power, it was however restored in 1998 through the Traditional Leaders Act Chapter 29:17, which Act was later modified by SI 22/2001. Through section 29 of the Traditional Leaders Act, communities in resettlement areas were placed under the jurisdiction of a local Chief as gazetted by the Minister of Local Government. As such traditional leaders such as chiefs, headmen and village heads became empowered to monitor and adjudicate on water management and other environmental issues in rural areas such as

stream bank cultivation in conjunction with officials from the Environmental Management Agency.

3.15.3 Other statutes linked to water supply and use

Subject to the Water Act Chapter 20:24, section 71(1) of the Rural District Councils Act on councils' powers and duties, as read with the First Schedule paragraphs 28(1) to 28(5), outlines the roles and functions of a rural district council. Section 64 of the Public Health Act Chapter 15:09 also speaks to local authorities' duty to provide clean drinking water in adequate quantities to inhabitants within their districts. These institutions' roles are further discussed in Chapter 5.

3.15.4 Statutory provisions on the right to sanitation

In terms of section 59 of the Public Health Act Chapter 15:09, administered by the Ministry of Health, Zimbabwe has been party to International Sanitary Regulations since as far back as 1953. In accordance with section 83 of the Public Health Act Chapter 15:09, local authorities are tasked with the duty "to maintain cleanliness and prevent nuisances" by taking "all lawful, necessary and reasonably practical measures" to maintain "its district at all times in a clean and sanitary condition." Regarding what constitutes a nuisance, this is defined in section 85 (a) to (n).¹⁴⁰ Further to that, the Public Health Act criminalizes non-compliance with the Act's provisions regulating sanitation.

As indicated earlier in this section, in this thesis environmental rights are co-joined with sanitation as the two rights are closely interlinked. Responsible for environmental rights, the Environmental Management Agency (EMA), falling under the Ministry of Environment, Water and Climate, has the responsibility for enforcing water pollution control. Under section 10 of the Environmental Management Act, EMA has two key functions which are discussed further in Chapter 5.

¹⁴⁰ Any dwelling or premise, which is of such construction or in such a state or so situated or so dirty or so verminous as to be injurious or dangerous to health... (section 85(a))

3.16 Developments within Zimbabwe's Policy provisions governing the supply and management of water and sanitation

While in previous sections, I have dealt with the rights to water and sanitation separately, in this section on policies dealing with the same rights I am compelled to regard them as one since that is the approach taken by Zimbabwean policy makers when drafting the 2013 National Water Policy document. It is generally accepted that government policies just like declarations and resolutions at international level, are not as legally binding as statutory provisions. Nevertheless they are of strong moral value and are crucial as reference tools to be used in demanding accountability from the policy makers who formulate them. The 2013 National Water Policy covers a statutory gap where it refers to water supply and sanitation services throughout, even in reference to a “right to primary water,” which provisions on sanitation find no corresponding provision within the Water Act and Constitution.

The 2013 National Water Policy also makes reference to the term, “a right to primary water,” when referring to free water for primary purposes. Paragraph 6.7 of the National Water Policy hence makes reference to “a right to primary water” for both rural and urban water users although the plan is to make urban primary water more affordable rather than free as is the case with rural water users. Apart from declaring that access to primary water is a right for all Zimbabweans, paragraph 6.7 also demands that the water be in sufficient quantity and adequate quality to sustain life. Further, “equity ...that takes into account the different needs of different communities and inclusion of disadvantaged communities is...” given as being “integral to realising the human right to primary water.” While in urban settings, a proposal is made to provide 10 cubic metres of free lifesaving water per household per month¹⁴¹ for those who cannot afford lifeline tariffs; the minimum core content set for rural households at 5 000 cubic metres of free water per household clearly factors in water for food production and livelihoods. As drawn from the above, an

¹⁴¹ This then amounts to 60 cubic metres or 60 000 litres of water per household in 6 months. In a household with 6 people this translates to 10 000 litres of water per person for 6 months.

assumption may be made that water for commercial purposes is that which exceeds the primary purposes amount of 5000 cubic metres of water per household per season. This is confirmed by section 3(1) (a) and (b) of SI 206/2001 that prohibits the storage of surface water that exceeds 5 000 cubic metres in any storage works in a public stream.

It is important to note that paragraph 1.3 of the National Rural Domestic Water Supply and Sanitation Policy of 2008,¹⁴² a basic water supply is defined as “the provision of a minimum quantity of 15 litres of potable water per person per day within 1000 meters and meeting the minimum health standards defined under the Public Health Act and WHO standards.” The supply should not be interrupted for more than seven continuous days.” The above amount falls far short of current provisions.

The National Water Policy (2013) is categorical in stating that water for purposes other than to meet basic human needs is not a right and that primary water should be given the first and highest priority in the provision of Water Supply and Sanitation services. Being more comprehensive at conceptualizing primary water than the 1998 Water Act, it defines it as including “water for direct personal consumption, personal household hygiene, food preparation and for household productive purposes such as gardening and household stock watering, (but) not for commercial purposes.”

Acknowledging the central role played by women in water use and management, the National Water Policy in paragraph 6.16 on “Stakeholder Participation,” envisages their full involvement in the decision making processes at all levels. Acknowledging “the disproportionate burden placed on women and the girl child when fetching water and taking care of the sick,” the policy calls for “targeted programming and implementation of WASH activities (which are) ...gender sensitive.” Besides advocating for “gender based budgeting,” affirmative action through the use of quotas is also viewed as an option where it provides

¹⁴² Which has been superseded by the 2013 National Water Policy,

that, “at least 30% of the Catchment and Sub-Catchment Councils positions will be reserved for women and the youth. At least 3 board members in the ZINWA board will be women, youth or worker representatives.” It should be noted however that both quotas in catchment councils and on the ZINWA Board are shared with youth or worker representatives and hence the quotas for women in reality are less than 30% and 3 representatives respectively.

While it is not in doubt that formal equality is clearly portrayed through these gender inclusive policy provisions, the question is on equality of results. Whether or how substantive equality will be achieved through same, remains an open question? It is also clear that having been formulated in 2013, at the same time with the 2013 Constitution, the National Water Policy is more in sync with the Constitution, unlike the Water Act passed in 1998. Nevertheless, the Water Act Chapter 20:24’s provisions need to be more compatible with the right to food and water and the gender provisions within the 2013 Constitution.

In a glaring omission, the 2013 National Gender Policy; apart from having a goal “to eradicate gender discrimination and inequalities in all spheres of life and development;” refers only to gendered implications of environmental and climate change issues thus excluding the area of gender and water from this very important policy which otherwise could have radically changed women’s lives in the area of water governance when viewed synchronically with the 2013 Constitution and the 2013 National Water Policy.

3.17 Justiciability of the human right to water and sanitation at domestic level

3.17.0 Introduction

Jurisprudence on the human right to water has not yet developed significantly in Zimbabwe. For the period running from 1976 and the repealed Water Act up to 1998 when the Water Act Chapter 20:24 came into effect, the discourse on water as a human right had not yet fully developed and the water disputes the Water Court in Harare dealt with prior to 1998, mainly concerned privately owned commercial water rights and water usufructs. The main

cases which the Zimbabwean courts have dealt with post to the enactment of the 1998 Water Act which are related to the human right to water concern water disconnections by the Harare City Council (which supplies water to residents on behalf of the State) for alleged non-payment of water bills or rates in its urban environs.

3.17.1 Precedents on the justiciability of the human right to water in urban areas

The two High Court cases, namely, *Tracy Maponde v City of Harare*¹⁴³ and *Farai Mushoriwa v City of Harare*¹⁴⁴ were by way of application. In the *Tracy Maponde case*, the City Council sought to disconnect water supplies to Tracy Maponde based on a consolidated bill for water and rates as well as other charges for the demolition of an unlawful building on her premises. In a consent judgment, the High Court ordered that the City Council reconnect Applicant's water supply without charging any reconnection fee and that the City Council was barred from disconnecting applicant's water supply without any cause other than that Applicant had failed to pay charges for such service. In the *Farai Mushoriwa case*, the High Court referred to section 77 of the 2013 Constitution on the right to food and water and declared section 8 of the City of Harare by-law 164 of 1913 on arbitrary water disconnections to be unconstitutional. Justice Bhunu stated;

It is a basic principle of our legal policy that law should serve the public interest. As we have already seen, every person has a fundamental right to water. It is therefore, clearly not in the public interest that a city council can deny its citizens water at will without recourse to the law and the courts.

The above cases though relating to urban water, have laid the groundwork for the development of the human right to water jurisprudence in Zimbabwe.

With regard to sanitation, any person who causes a nuisance, the owner of the building or land upon which the nuisance is being committed, or the local authority which should ensure compliance but fails, may be prosecuted in a court of law for non-compliance. It becomes my argument therefore that despite its lack of explicitness within the Constitution,

¹⁴³ Case No. HC-H 5948/05

¹⁴⁴ Case No. HH 195-14; HC 4266/13

from this statutory level, the right to sanitation in Zimbabwe becomes very justiciable with the possibility of criminal sanctions for non-compliance.

3.17.2 The formal dispute resolution framework for water disputes from farm level up to national level

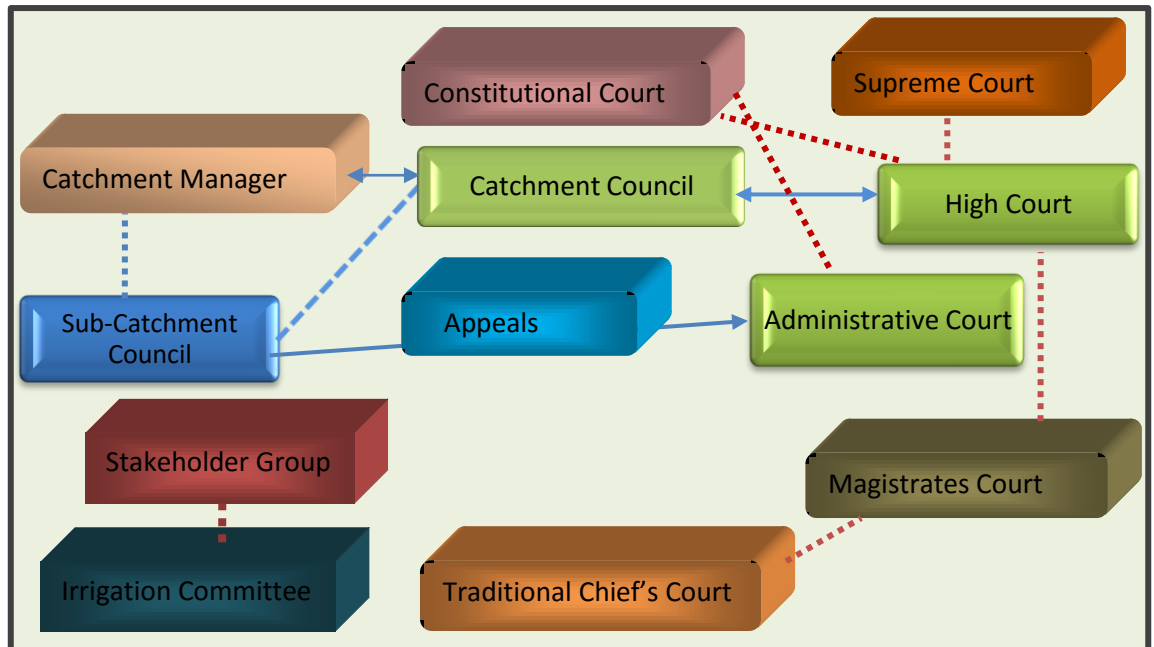
Sections 22, 24 and 29 of the Water Act Chapter 20:24 sets out the dispute resolution functions of sub-catchment councils, catchment councils, catchment manager, the administrative and high courts of Zimbabwe vis-à-vis water disputes. Officially, the first court of instance should be the sub-catchment council, to the catchment council or catchment manager or alternatively appeal to the Administrative Court. The Catchment Council, Catchment Manager and the High Court are at the same jurisdictional level. As drawn from the empirical study, at the lowest level of this hierarchical set-up are informally constituted irrigation committees and stakeholder groups who may seek to resolve issues between disputing parties prior to sending them to the officially recognized sub-catchment council.

Looking for alternatives, it was found that sections 5, 9 and 12 of the Traditional Leaders Act Chapter 29:17 relate to the duties and functions of traditional chiefs, headmen and village heads respectively. The provisions authorize these traditional leaders to discharge any functions conferred upon them in terms of the Customary Law and Local Courts Act, Chapter 7:05, which functions include dispute resolution on matters involving land and other natural resources in their locality. This means disputes would be resolved from the local village head's court to the headman's court to that of the Chief before it reaches the Magistrates Court, then to the High Court onwards.

Shown below is Figure 7 outlining the dispute resolution framework as interpreted from the way it is provided for in the Water Act, Chapter 20:24 and the Traditional Leaders Act, Chapter 29:17 as well as averments made by the Mazowe Catchment Coordinator in respect of the informal stakeholder groups and irrigation committees (See Appendix 7). Madhuku

(2010:61-83) in the book, 'An Introduction to Law' gives a detailed account of Zimbabwe's Courts Structure.

Figure 7: The Two Channels of Dispute Resolution for water disputes from the farm level to the national level in Zimbabwe



3.18 Conclusion

Considering that the 2013 Zimbabwe Constitution provides for the right to food and water in combination, it is my view that with the two interrelated rights combined; this provides a broader framework for women to realize the right to water for personal, domestic, basic food production and livelihood purposes. This is because for the realization of the right to food, it follows that one would need more water to realize the right through irrigation of food crops for family consumption and to earn a livelihood. With the right to access free water for primary purposes under the 1998 Water Act also providing a broader framework for realizing the human right to water; the assumption would be that this allows rural women to access water adequate or sufficient for their needs. This depended however on whether what was within constitutional, statutory and policy provisions on the right to water would be freely embraced by women on the ground.

PART III

LOCAL NORMS, SANCTIONS AND PRACTICES REGULATING WATER ACCESS, USE AND CONTROL BY WOMEN

3.19 Introduction

In this study, I problematize the manner in which legal and human rights frameworks are understood and conceptualized at international and national levels so as to check on whether whatever interpretations are made would coincide with how the right to water was understood by rural women farmers, farm worker women and farm workers' wives at local levels. The results would be drawn from how the women themselves assessed the extent of their involvement in accessing, using and making decisions on how water was to be shared for the multiple uses. In doing this I do not lose sight of the fact that generally speaking, at these local levels, most of these women found their entitlements to water being determined by the relationships in which they found themselves embedded. The relationships were in turn largely subject to a wide range of informal norms, values and practices.

3.20 Locating unofficial norms sanctions and practices regulating water access, use and control within a legal pluralist environment?

In the discussion above on the international, regional and domestic legal and policy provisions on water rights and human right to water provisions it is clear that the focus has been on a legal centralist perspective which only recognizes formal or state sanctioned laws and institutions governing women's access to, use and control over water. Nevertheless what discovered through empirical research is that in reality these international and state sanctioned laws and policies do not exist in a vacuum but rather they operate and intersect with other informal institutions, norms and practices which mediate women's access to, use, and control over water and sanitation.

The research questions asked sought to unearth whether any informal norms and practices existed within the realm of water use and management on the researched farms and if they

did, what were those norms and practices. Further to that, it became pertinent to find out the origins of such norms and practices, who had introduced them and why. Did the local people recognize the said norms as binding on them? The extent to which any informal norms facilitated rural women's human rights to water and sanitation as compared to international and state sanctioned laws was also of key interest.

The investigation was done knowing fully well that in any rural society in developing countries such as Zimbabwe formal laws and policies tend to intersect with informal norms and practices to create a mixture or hybrid of normative expectations in a way that is truly legal pluralist. "Legal pluralism raises important questions about power. Where it is located, how it is constituted, what forms it takes, in ways that promote a more finely tuned and sophisticated analysis of continuity, transformation, and change in society" (Griffiths (A), 2002:289). But then what is legal pluralism?

3.20.1 Conceptualizing Legal Pluralism

Griffiths (J) (1986:1) has instigated debate within the legal pluralism discourse regarding what he refers to as 'weak', 'juristic' or 'classic' pluralism associated with legal perspectives and on the other hand what he terms 'strong', 'deep' or 'new' legal pluralism linked to the social scientist view (see Griffiths (A), 2002:90). The former which is also termed old school, deals with local indigenous laws as juxtaposed against European or Western style law while the latter is viewed as "that state of affairs, for any social field, in which behaviour pursuant to more than one legal order occurs" (Griffiths (J), 1986:2; Griffiths (A), 2002:290). Weak, juristic or classic legal pluralism is that which views legal systems as separate and autonomous whereby it takes a legal centralist approach like that taken by Hooker (1975) who defines legal pluralism as "circumstances in the contemporary world which have resulted from the transfer of whole legal systems across cultural boundaries" (Griffiths (A), 2002:291). Griffiths (A) (2002:292) in summing up the characteristics of 'weak' legal pluralism states that it;

...reflects a legal centralist or formalist model of law...It is too statist in its conception of law which has consequences for the ways in which we perceive law...It promotes a uniform view of the law and its relationship to the State; (Griffiths (J) page 3) one which places law at the centre of the social universe and which endorses normative prescriptions for interpreting society...Authority becomes centralized in State represented by government...In this model legal norms are set apart from and privileged over social norms (Roberts, 1979:25; Galanter, 1981:1) and used to determine outcomes where conflict arises (Roberts (supra) at page 20; Comaroff and Roberts, 1981:5)...

Emanating from the 'old' legal pluralism perspective, what is to be considered as law and what is to be disqualified from being viewed as law is problematized. The key questions are should customary norms be classified together with state sanctioned legal precepts which are legally binding? At what stage should customary norms be recognized as law or expected to graduate into law? Who determines what is to be considered as law and why? Are these customary norms self-actualizing?

In questioning the role of law in the politics of land during land reform, Madhuku, (2004:124) observes that dating from 1890 and throughout the colonial era up to the FTLRRP characterized by violent and illegal seizures of white owned land by land hungry Zimbabweans, the law has been allowed to play second fiddle to politics. According to Ncube et al (1997:56; Chakona, 2011:37), the criteria and principles governing allocation and granting of resettlement land were never specified in any law and neither were the rights and obligations of resettled people set out. Madhuku (2004:124) then poses the question, "Does law follow politics? Or is it the reverse?"

On the other hand, Griffiths (A), (2002:302) speaks of 'strong' or 'deep' legal pluralism. She says strong and deep legal pluralism;

Recognises that legal pluralism exists in all societies that is, that there are multiple forms of ordering that pertain to members of a society that are not necessarily dependent upon the State for recognition of their authority...It acknowledges (as the other pluralism does not) what Santos (1987:279) has termed 'porous legality' or 'legal porosity' that is "the conception of different legal spaces, superimposed, interpenetrated and mixed in our minds as much as in our actions (that constitute) legality..."

Griffiths (A) (2002) cites scholars such as Pospisil (1958) and Smith (1971) as having contributed to the development of the new legal pluralism. Merry (1988:872) refers to "new legal pluralism" as clearly showing a "shift from seeing legal pluralism as a colonial or post-

colonial phenomenon in the non western world to one that exists equally in industrialized, largely western contexts.”

In this study I embrace the new legal pluralist perspective after it became clear during research that as rural women farmers and women farm workers went about their daily tasks of accessing water for domestic and productive uses, intersecting influences in the realm of international, national and local laws and practices were all made to bear upon them and what emerged was a curious mix whose source could not be easily identified or classified as being formal or informal customary law, common law or international human rights law. With most of the customary law based discriminatory practices protected under section 23 of the repealed 1980 Zimbabwe Constitution having gained root in rural communities, it was clearly apparent that the birth of a new Constitution in 2013 has not led to the automatic eradication of such practices considering that they have been in operation over a very long period of time. To protect their male hegemony, patriarchy has gone to great lengths to point towards religion and other culturally based norms and practices as the basis for perpetuating gender based discrimination against women even in the area of water access, use and control in rural communities. This is despite the current unconstitutionality as well as extra-judicial nature of such informal norms and practices.

As conceptualized further by Griffiths (A) (2002:300) citing Long, (1996:37) and Griffiths (J) (1986:1) ‘new’ legal pluralism demands

an examination of how power operates in different places, how it gets transformed and an exploration of the complex ways in which “local forms of knowledge and organization are constantly reworked in interaction with changing external conditions” so that the knowledge produced is both simultaneously local and global but not universal...In this way, there is recognition of a reciprocal interaction between the global and the local in ways which do not essentialize, either in terms of the ‘other’ but rather acknowledge the ways in which the local appropriate and transforms the global for its own needs.

Some of the informal institutions and norms in operation on researched A1 farms were inherited from the A1 settlers’ places of origins in both communal lands and urban areas while others emerged from new social networks created on these farms. Thus apart from

legal and human rights entitlements, how a woman was customarily viewed within the household, community or working spaces as well as from other societal perspectives also served to determine the extent to which the said woman was capable of accessing water for domestic, productive and livelihood purposes. This multiplicity of extra-judicial norms and institutions operating alongside or intersecting with state sanctioned frameworks and generally referred to as legal pluralism was thus found to permeate the interactions between women and water supply, management and sanitation institutions. Hence as the different women attempted to assert their right to water in its multiplicity as well as sanitary facilities on these resettlement farms, their lived experiences clearly reflected the existence and gendered nature of plural norms, practices and institutions which impacted on whether or not they had capacity to freely access, use and control water resources for reproductive and productive purposes.

Apart from formal laws the influence of informal norms and practices which Moore (1978:55) refers to as “semi-autonomous social field” had to be considered. This is because these fields may exert a stronger regulatory influence on women on the ground than laws in books which they may not even be aware of. Despite the fact that Sally Falk Moore (1978) “does not explicitly locate her work” within the discourse of legal pluralism, “the concept of “semi-autonomous social field” has provided a framework for pursuing this type of pluralism. She developed the term...to indicate a social unit that generates and maintains its own norms” (Griffiths, (A) 2002:302). A “semi-autonomous social field” is one that;

...can generate rules and customs and symbols internally, but that...is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. The semi-autonomous social field has rule making capacities and the means to induce or coerce compliance but it is simultaneously set in a larger social matrix which can and does affect and invade it, sometimes at its own instance. (Moore, 1973:720; A. Griffiths, 2002:303)

While the ‘new’ approach to legal pluralism opens spaces for women; the ‘old’ legal pluralism which is state centric is limiting for women (and men) because informal laws, norms and practices sometimes afford better protection of human rights than those that are

formally recognized. For example in their different research work, Sithole, (B), (1999), Matondi (2001), Nemarundwe (2003), Derman and Hellum (2003) found that there existed local practices recognizing a right to clean drinking water as well as water for livelihood purposes. These norms and practices are however not reflected in official state or court recognized customary law. It is agreed that in some cases informal laws, norms and practices may also act as barriers to the realization of women's human rights.

Zimbabwean customary law is not coded but rather whatever oral evidence the traditional leaders of a particular tribe give regarding a local customary practice which the court subsequently endorses in a judgment will build upon what is regarded as the customary law of that particular tribe. Nevertheless no judicial precedent vis-à-vis the customary practice of water sharing exists. What is in place are the ever evolving norms and practices which are usually in sync with the political, economic, social and cultural changes within society. The evolving customary norms and practices are collectively referred to as local 'living customary law.'¹⁴⁵ In common with most rural African societies, not much dispute warranting court interference has risen in the past in Zimbabwe vis-à-vis the sharing of water resources which have always been viewed as part of the commons.

While in the past, there were only a few of these social fields outside a nation's substantive laws, with the passage of time, there continues to develop new norms emanating from modern political, social, economic and cultural development e.g. globalization, human rights and the emergence of related institutions such as international and transnational corporations. Such institutions may demand that a community which is a recipient of its financial assistance or donation observe certain norms and tenets as a condition for receiving the donation. The developer's norms may then intersect with the community's

¹⁴⁵"Living customary law" are those customary norms and practices which are characterized by non-codification such that they freely evolve and change in accordance with changing living circumstances unlike codified customary law which is static. An example is whereby a customary norm codified 100 years earlier in a colonial legal system would still be regarded as applicable and enforceable a century later despite an obvious change in living circumstances which may warrant such norm obsolete.

local norms to create a new and emerging practice. Hence during the first two decades after Zimbabwe's independence it was a common practice in communal lands that international donors would drill boreholes after which they would demand that there be created a borehole committee, 50% of whose membership should be women in line with the human rights core principles of equality and non-discrimination in development initiatives.

One's attention is drawn to the existence of legal pluralism upon realizing that "the same social space and the same activities are subject to more than one body of law" as evidenced by the "co-existence of statutory law, human rights law and principles and customary norms and practices" (see Hellum, 2012:8). Thus a legal pluralist environment is apparent where one finds international NGOs, inter-governmental organisations such as UN agencies, transnational corporations e.g. Coca Cola Company, state and non-state actors such as government ministries and departments, local authorities, parastatals¹⁴⁶, churches, mosques as well as traditional leadership co-existing in one society and exerting different pressures on the members of such a society.¹⁴⁷

According to Griffiths, (A) (2011:174) central to the current legal pluralism discourse is increased "recognition of the importance of transnational forms of law and ordering, derived from diverse sources," whereby "law and legal institutions cross local, regional and national boundaries" to create a plurality of laws scenario. (See also von Benda-Beckmann (F) et al. 2009a, 2009b; Hellum et al. 2010). The end result is one "in which the 'local' is embedded in and shaped by regional, national and international networks of power and information that have increasingly engaged with discourses on international human rights," (Griffiths, supra).

¹⁴⁶ A parastatal e.g. ZINWA in Zimbabwe is an independent administrative and/or service delivery institution created through statute that has quasi-governmental functions.

¹⁴⁷ Griffiths, (A) (2011: 174) has given examples of institutional sources of such transnational laws as including the World Bank, the European Convention on Human Rights, the World Trade Organisation, the World Health Organisation, the International Monetary Fund, the African Union as well as religious movements.

3.20.2 Approach taken towards legal pluralism in own study

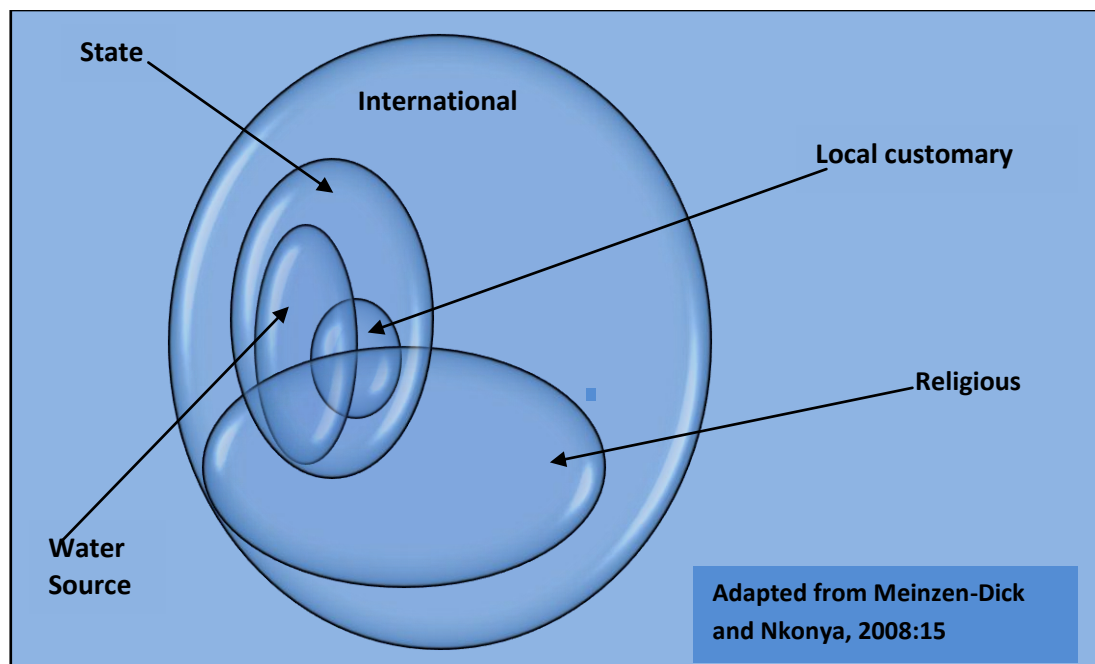
This study is set against a very interesting legal pluralist backdrop of Zimbabwe's Water Reform process whereby legal and international human rights informed water laws and constitutional provisions have nationally coexisted with politically informed water and gender policies as well as other customary practices. Thus the common trend has been that, in national development initiatives such as Zimbabwe's IWRM informed water reform process in the mid-1990's, revolutionary laws on decentralisation have tried to meet international notions of democracy and human rights and, at the same time, accommodate local claims for more self-determination with regard to political representation, culture and resource use (Bräuchler, 2010:2). The same can be said of the human right to water discourse whose application is expected to be equal and universal in line with international notions of the universality of human rights. But the human right to water does not operate in a vacuum since there exists on the same social plane, local cultural norms and practices which may or may not be state sanctioned. That is where CEDAW from an international universality approach, goes a step further by calling upon states parties to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women..." (Article 2(f))

The challenge I faced within the context of legal pluralism was whether the water sharing mechanisms on A1 farms were in accordance with, on one hand, international human rights law; water rights law; sanctioned state laws and policies; formal or official customary law (which is uncoded); or with on the other hand, existing or emerging informal norms, customs and practices on the ground in accordance with the concept of living customary law. A further question was on whether these different normative frameworks were operating as parallel entities or rather did they intersect? In her doctoral research work, whose findings are condensed in the book, "Women's human rights and legal pluralism in Africa: Mixed norms and identities in infertility management in Zimbabwe," Hellum (1999)

documents the complex social networks that are pluralist in nature, which women find themselves embedded in and how they have to navigate through them to realize their rights.

The approach taken in this research revolved around the new school in that I recognized the existence of both formal and informal norms in the same social space. Although informal norms were not placed at par with the official law, it was realized that to a great extent, unofficial norms could either facilitate or inhibit women in their enjoyment of the right to water. Secondly, with regards to living customary law, the fact was appreciated that once an issue concerning a certain practice in community based water use and management from a rural perspective were to enter the Zimbabwean courts, traditional leaders would be forced to testify on how it was viewed within Shona customary law. Once a judicial precedent was created on that issue then the said informal customary norm on water would become formal customary law in accordance with the Zimbabwean approach to customary law making. Below is Figure 8 showing the legal pluralist dimensions surrounding rural women's access to, use and control of water.

Figure 8: Overlapping legal orders relating to water



3.21 Conclusion

At national level the human right to water is interpreted under two different normative systems, state sanctioned and informal customary norms. The approach adopted for this study was one that fully recognized official state sanctioned laws as well as international human rights law in the area of water while at the same time embracing unofficial and informal norms and practices to the extent to which they impacted on whether or not different social groups of women accessed, used and controlled water on A1 farms. This was done with the realization that under the Zimbabwean legal system, what may be termed unofficial today may tomorrow become official once it had been subjected to judicial scrutiny and passed on as part of local customary practices.

As indicated earlier, every Zimbabwean court or tribunal is required under sections 326 (2) and 327(6) of the 2013 Constitution when interpreting legislation,

...to adopt a reasonable interpretation (that is) consistent with, customary international law (or) any international convention, treaty or agreement which is binding on Zimbabwe, in preference to an alternative interpretation inconsistent with that customary international law, convention, treaty or agreement;

It follows therefore that any discriminatory customary law or practice which is found to be inconsistent with international law e.g. Article 2(f) of CEDAW, would automatically be modified or abolished even after being formalized as part of a judicial precedent. Hence as the situation currently stands under the 2013 Constitution, the chances of a discriminatory customary norm being formalized and perpetuated through judicial precedent as the customary practice of a certain section of the Shona tribe are highly minimized.

In accordance with Shona customary law and practice, water is a God-given resource to which all have free user rights (IWMI, 2005:30-31; Nemarundwe, 2003; Derman and Hellum, 2003; Matondi, 2001; Sithole 1999; Bolding et al. 1996; Mohamed-Katerere, 1996). The Shona customary norm however resonates with principles surrounding the international human right to water as falling under the right to life as well as primary water

or basic needs water which falls under the exemption or *de minimis* water framework in international water laws related to water rights. The *raison d'être* behind both primary water as residual water under an international water rights framework and water for drinking and food production under Shona customary law being free can only be assumed to be arising from ancient customs premised upon humans not owning water and hence lacking capacity to sell it one to the other. Under such circumstances, humans can only enjoy user rights.

3.22 International, national and local perspectives on water rights and the human right to water: Overall concluding summary

As clearly reflected in this Chapter, the right to water is viewed differently at international, national and local law levels. The overall question emanating from this is; under which framework are rural women's interests best served and under which framework are they currently accessing water? Is it under the international and national right to water or under the national Zimbabwe specific right to primary water framework? What about the informal customary norms on water sharing as experienced by women in communal lands at the lowest local level? Are these also at play on A1 resettlement farms? What is the efficacy of each of these legal normative regimes in ensuring that rural women on A1 resettlement farms access water which is adequate for their realization of an adequate living standard that also safeguards their enjoyment of the best attainable physical and mental health? The following Chapters on findings help answer these topical issues.

Having outlined the legal frame work used for this thesis, in the next Chapter I look at the historical background to the current politics of water within Mazowe Catchment.

CHAPTER 4

THE POLITICAL, SOCIAL, ECONOMIC AND CULTURAL HISTORY OF WATER IN ZIMBABWE: THE INTERFACE BETWEEN FORMAL AND INFORMAL NORMATIVE AND INSTITUTIONAL FRAMEWORKS

4.0 Introduction

In this chapter, a historical overview is outlined that highlights the politico, socio-economic and cultural dynamics of water governance in Mazowe Catchment prior to and during Zimbabwe's water reform process starting in the mid 1990s and the subsequent FTLRRP at the turn of the millennium. In a quote from Moore (1988:1-11) cited in Schmidt (1992:1);

The structures of women's subordination in both the domestic and social spheres are negotiated, disputed and transformed over time. An analysis of a given society over time that neglects the arena of domestic , the lives of women, and their critical contribution to production and biological and social reproduction misconceives the society as a whole and presents a distorted view of the entire historical process.

It is from the above perspective that in this thesis, I interrogate the historical processes from the purview of the domestic arena where women's lives act as a mirror through which each community may be understood. Using biographical and life history narrative accounts of key women informants such as farmers and former farm workers, a rich historical account of water governance at local, catchment and national levels was obtained as seen through the eyes of key informants on the four sites which were under study. Viewed together with the accounts of other interviewees who were traditional leaders, ZINWA and catchment council employees as well as a white commercial farmer still farming in the area, a holistic picture was created. Consequently, my objective in this chapter is to show the extent to which past historical policy and legal decisions have contributed to the shaping of current water governance frameworks in the catchment. Further outlined in this chapter is the intersecting nature of formal and informal norms and institutions within water governance from a historical perspective. Overall for the whole thesis, this historical overview is used to conduct an analysis of currently existing and emerging trends in women's access to water and participation in its governance in Mazowe Catchment.

The chapter is framed in such a way that water governance is initially conceptualized, followed by the informal water governance history. From the informal water governance history, the position of traditional leaders who have always occupied an interesting position in traditional Zimbabwean society is discussed. Interesting to note is the fact that, as a social group, they are identified with both informal and formal water governance processes. From this intersecting formal and informal water governance framework, the history of formal water governance set ups is discussed. The history of women farmers, women farm workers (former and current) and the wives of farm workers settled on the four A1 farms under research is also analyzed. As a last step, the history of water access and use on the four researched farms as well as the communal lands neighbouring these farms, from where most of the women farmers originated from is interrogated.

The key objective in this chapter is to give a historical overview of the water infrastructure that was supplying women in the different social groups with water for drinking, sanitation, livelihoods and productive purposes across two sub-Catchments in Mazowe Catchment at the time of research. A description is also given vis-à-vis the actors, norms and institutions that have mediated access and use of shared water by women from the colonial era to the post colonial era until the time of the FTLRRP in 2000.

4.1 Understanding Water Governance and its Framework of Analysis

4.1.0 Introduction

This section is an outline of governance conceptualized in general and in reference to water. Governance as currently perceived and interpreted is a much broader concept that involves a broad range of actors within society. In other words, governance is about the processes of making choices, decisions and trade-offs (Tropp, 2007:21). Previously defined as being synonymous to government and the act of steering society, specifically with regard to authoritative direction and control; this old interpretation of governance falls short of what

happened in practice as it tends to focus on how effectively the bureaucracy and government branches enforce political decisions.

4.1.1 A legal pluralist interpretation of governance versus a government and state law focused one

In light of the foregoing introduction, the approach used in this thesis is that which views governance from a legal pluralist perspective rather than just government and state sanctioned actors, laws and institutions. This is because governance encompassing a legal pluralist approach is a broader, more inclusive and society-centric concept embracing “the broad social system of governing, which includes, but is not restricted to, the narrower (state-centric) perspective of government as the main decision-making political entity” (Rogers and Hall, 2003:7). In that respect government and state laws would be included in the broader governance framework which “embraces the formal and informal institution by which authority is exercised” (Rogers and Hall (supra). Governance is not limited to “government” but also includes the private sector and civil society. The character of relationships (and the formal and informal rules and regulations guiding such relationships) between different social actors and organisations is an important feature of governance (Tropp, (supra)). According to Rogers and Hall, (2003:4; Tropp, 2007:21);

Governance generally involves mediating behaviour via values, norms, and, where possible, through laws. The concept of governance of course encompasses laws, regulations, and institutions but it also relates to government policies and actions, to domestic activities, and to networks of influence, including international market forces, the private sector and civil society. These in turn are affected by the political systems within which they function.

The above quote clearly foregrounds my discussion in this chapter on water governance. It clearly shows that the extent to which resources (inclusive of water) can be accessed; is linked to the normative, institutional and regulatory environment in place. The extent to which such an environment is inclusive of all relevant actors or stakeholders in decision making is also significant as indicated by the International Women’s Rights Project (2010:7) when they state;

Governance refers to decision-making by a range of interested people, or ‘stakeholders, including those in formal positions of power and those who are ordinary citizens. These decisions have a huge impact on the ways in which women and men lead their lives, on the

rules they are expected to abide by, and on the structures that determine where and how they work and live. In theory, stakeholders articulate their interests; influence how decisions are made; who the decision-makers are; and what decisions are taken. Decision-makers are expected to be guided by this input, and accountable to the stakeholders for the decisions they make and the way they are implemented through the management of public affairs and public spending.

Hence it is being increasingly acknowledged that the problem currently facing the world in accessing natural resources such as water is not about scarcity but rather resource governance.

4.1.1 Defining water governance

The UNDP (2000) has defined water governance as referring “to the range of political, social, economic and administrative systems that are in place to regulate development and management of water resources and provisions of water services at different levels of society” (Tropp, 2007:22; Global Water Partnership (GWP) 2002; Rogers & Hall, 2003).

Tropp’s (2007) definition of water governance was summarized by SIWI (2014) at the 2014 World Water Week conference in Stockholm as follows;

- *Governance in water is about how we as individuals and as a society use and allocate a common and shared resource;*
- *It’s about politics, power and decision-making on who gets what water, when and how!*
- *Governance can be seen as the quality of institutions and inter-actions between stakeholders;*

The UNDP also emphasises governance as a process through which citizens and various groups can “articulate their interests, exercise their legal rights, meet their obligations and mediate their differences” (UNDP, 2004; Tropp, 2007:22). Most importantly, governance in a sector like water must be perceived as a subset of a country’s general governance system of how various actors relate to each other (Rogers & Hall, 2003). In a definition that is more specific to my study, Franks and Cleaver (2007) define water governance as “the system of actors, resources, mechanisms and processes which mediate society’s access to water.”

Principles of good water governance following those of good governance in general build on core concepts of equity, efficiency, participation, decentralization, integration,

transparency and accountability (UN, 2003). Added into the water governance framework used for this thesis, is a legal pluralist perspective as described in Chapter 3.

4.2 The historical overlap between formal and informal water governance systems in facilitating women's access to, use and control of water for food production and livelihoods

While a formal statutory framework for governing water access and use among black people in Zimbabwe was in place through successive colonial Water Acts; these operated in tandem with local customary norms mediating water access and sharing in communal lands. These intersecting historical aspects to water governance in Zimbabwe are discussed below.

4.2.1 Political history

The rural areas within Mazowe Catchment, from where most of the new farmers originated from during FTLRRP, are predominantly populated by Shona speaking people, a term used to describe an ethnic grouping made up of smaller ethnic minorities or tribes who speak slightly different dialects of the Shona language. These are the Zezuru and Korekore (covering most of the Mashonaland provinces except some parts of Mashonaland East), the Manyika and Ndau in Manicaland, the Karanga in Masvingo and Midlands provinces as well as the Kalanga in the extreme north-western parts of Zimbabwe around Plumtree.

Historically, the administrative districts of Mazowe and Goromonzi, under which the two research sites fall, have always been hotbeds of politics especially on land, water and Shona traditional religion from the time of the First Chimurenga. Even in today's traditional history, the Chitungwiza area¹⁴⁸ is more popularly known than Harare, as the place of origin of Chaminuka, one of the greatest Shona spirit mediums in Zimbabwean history. On the other hand, the spirit medium Nehanda Nyakasikana, famous for her leading role in the First Chimurenga war¹⁴⁹ and subsequent execution by the colonial regime; hailed from the

¹⁴⁸ An area close to present day Harare, the capital city of Zimbabwe,

¹⁴⁹ While the 1896-1897 Shona-Ndebele uprising was referred to as the "First Chimurenga;" the war of liberation in Zimbabwe conducted between the late 1960's and 1980 was named the "Second Chimurenga." Lastly, the violent invasion of white owned farms by blacks in Zimbabwe between 2000 and 2003 during the

Mazowe area, near Alice mine from where she commanded forces together with the equally renowned spirit medium, Kaguvi, who lived in Goromonzi area. As stated by Waterhouse (1972: 7-8);

Nehanda (a woman spirit medium) together with Kagubi were operating from Nehanda's kraal in a granite stronghold, three or four miles South-East of Alice Mine.

According to Schmidt (1992:28), Nehanda was “the daughter of Mutota and “mother” of the Korekore people (whose) supra-ethnic spirit was believed to possess the powers of making rain and war; of giving and taking life.” Among the Zezuru, Nehanda was considered to be one of the two most important supra-ethnic spirits, with her domain extending throughout much of central and western Mashonaland (Schmidt, 1992:28). Schmidt (supra) as supported by other anthropologist researchers namely Bourdillon (1982:263-264, 1978:239); Lan, (1985:6, 72, 74); Ranger, (1967:207-210); Garbett, (1977:57, 80-88); Beach, (1979:399-401, 407-418) and Daneel, (1970:30-32) stated as follows;

Such supra-ethnic spirits possessed a much greater sphere of influence than did simple 'mhondoro,'¹⁵⁰ whose power was linked to the territory of a single chiefdom. Because chiefs as well as commoners were judged by the moral standards prescribed by supra-ethnic and territorial mediums; mediums such as that of Nehanda circumscribed the powers of chiefs and executed important political as well as ritual functions. During the Shona-Ndebele uprising of 1896-1897...the Kagubi and (Zezuru) Nehanda mediums helped to inspire rebellion over large portions of central Mashonaland...Throughout the course of the uprising, lesser mhondoro, some of whom spoke through female mediums were in regular communication with the Nehanda medium. The mhondoro mediums in turn influenced the chiefs of their clans. In this way, numerous chiefs in central Mashonaland were influenced by Nehanda to take up arms against the Europeans.

It comes as no surprise then that the local Chief Chiweshe and a local spirit medium appeared in a local newspaper¹⁵¹ holding an eagle which they alleged was the famous spiritual Hungwe bird (Zimbabwe's national symbol) associated with rain and rain making. The two traditional leaders alleged that the landing of this rarely seen traditionally symbolic bird in the legendary Nehanda's home area was symbolic and also a message from the ancestors. What I have discussed above, serves to portray the Shona world view that, events in a person's everyday life are interlinked with events within the cosmos. It follows

Fast Track Land Reform and Resettlement Programme (FTLRRP) nicknamed 'jambanja' was also generally referred to as the “Third Chimurenga.”

¹⁵⁰ A Shona word which when literally translated to English means 'spirit medium.'

¹⁵¹ Sunday Mail, 07 October, 2012

therefore that issues to do with water governance have also been viewed from the traditional religious perspective. The challenge is to reconcile this traditional approach with that portrayed within purely legalistic, mainstream political or economic approaches. While women such as Nehanda were actively involved in the colonial politics of the day on land from a religious perspective, it became a pertinent research question for this study, to find out the extent to which women have been involved in modern day politics of water governance in Mazowe Catchment.

The political spotlight on the areas falling within Mashonaland East, Central and West as earlier stated continued with the water reform in the mid-1990s whereby Mazowe River Board was selected as one of two sites to pilot the new catchment based water resources management project. Again, when the FTLRRP or 'Third Chimurenga' was embarked on between 2000 and 2003, the Mazowe area witnessed intense political contestations as political heavy weights fell over each other to get A2 resettlement farms in this particular area of the Highveld. This attraction can however be attributed to the area being richly endowed with fertile loamy soils, excellent weather patterns, numerous surface water sources as well as its proximity to Harare, the denizen of political power in Zimbabwe.

Writing on Zimbabwe's FTLRRP, Sachikonye (2003:36) observed;

The timing of the scramble for land by the elite was almost impeccable... However, because most of this land was in the prime agro-ecological areas and had good infrastructure, competition for it was intense (Sunday Mail, 9 March 2003; Sunday Times, 2 March 2003). Some prime farming areas which witnessed disputes of ownership included Mazowe, Goromonzi, Chinhoyi, Shamva, Marondera and Beatrice. It is no coincidence that these areas are situated in the three Mashonaland provinces.

In an interview with one Enock Toringepi, a young farmer at Kara Farm for this study, he said that after he and many other invaders had initially settled at a very fertile farm in the Stapleford area close to Gwebi Agricultural College, they had been unceremoniously removed by government trucks and resettled at Kara Farm because a very high ranking woman politician desired that particular farm for herself. With such stiff competition for fertile land, it became doubly difficult for ordinary women to compete with powerful

politicians for land in the area. This explains why, even in my preliminary study visits in the area, I discovered a very high incidence of politically connected women A2 farmers as opposed to those who had claimed land in their own right. This also explains why unlike A1 farms, A2 farms have largely remained outside the jurisdiction of local or neighbouring traditional chiefs since the majority of the A2 farmers are politically more powerful than the traditional chiefs.

In 2001, soon after the FTLRRP, traditional chiefs closest to the newly created A1 farms sought to informally extend their territorial powers to cover the new resettlement farm holdings. In a move to avoid a cultural disconnect between the A1 farmers and their rural cultural origins, the traditional chiefs' self-initiated move to extend their jurisdiction to A1 farms was formalized through Amendment 22/2001, inserted as section 29 of the Traditional Leaders Act Chapter 29:17 of 1998. In interviews held with them, the general view from Chiefs Chiweshe and Chinhamora as well as the village heads at Maidei and Saga farms was that they have not gained any new powers but rather have had old powers previously wrested from them by the colonial regime, rightfully restored to them¹⁵² (see also Derman and Hellum, 2006). This traditional power encompasses authority over their ancestral lands since they are familiar with many sacred places¹⁵³ on these farms, from which the younger generations of chiefs had been alienated from through colonization. In keeping with tradition, the traditional holy days (chisi in the vernacular) observed at the end of each lunar month, are strictly adhered to on A1 farms and neighbouring communal lands unlike on A2 farms. A1 farmers are also actively involved in rain making ceremonies unlike A2 farmers.

¹⁵²In interviews with Chief Chinhamora on 26 March, 2013 in Harare; Chief Chiweshe at Glendale on 05 April, 2013 and the village heads at Maidei and Saga Farms at their farms on 30 and 31 March, 2013.

¹⁵³ Some of these sacred places are related to rainmaking ceremonies.

4.2.2 The political, economic, social, cultural and religious inter-linkages: Women's spiritual role in ensuring water security in Zimbabwe.

In Zimbabwean history, rivers, pools and springs have played a central role in the smooth running of any chieftainship as they are viewed as sources of life. In pre-colonial dynasties, spirit mediums, rainmakers and rain-making ceremonies were largely viewed in awe as crucial players in ensuring an abundant supply of rainfall and water in the rivers and springs. Water was treated with care such that people drank clean water from rivers since no one could dare pollute them for fear of punishment from ancestors. The population was still small and there were commonly held traditional conservation methods, beliefs, norms and practices aimed at keeping water sources clean¹⁵⁴ (see Chiwome, 2000:148). This was because these water sources were believed to be the repositories of ancestors and water spirits who ensured the continuous supply of abundant rainfall. Apart from the use of 'dambos' or wetlands to grow crops which needed a greater supply of water, there is no evidence however, of any practice related to irrigation since rainwater was abundant such that crops were almost always rain fed. Nevertheless up to Zimbabwe's independence in 1980, the water infrastructure in communal lands remained largely unimproved and was characterised by shallow unprotected wells, springs and river sources.

Taken from the perspective that during the First Chimurenga war Nehanda played an equally important spiritually informed leadership role as her male peers such as Kaguvi, it can thus be safely interpreted that for issues regarding the spiritual realm, one's sex was not of primary concern (Schmidt, 1992:25, 91). This arises from the fact that from time past female spirit mediums always commanded as much respect as that accorded to male spirit mediums (Hay and Stichter, 1984:91; Lewis, 1971). Schmidt, (1992:91) states as follows;

However, during the pre-colonial period, there was no clear distinction between the political and religious domains. If women assumed such important roles as spirit mediums-key mediators in local disputes who were also consulted about disasters such as drought and famine...the nature of their involvement in public life was clearly political.

¹⁵⁴ There existed sacred pools where certain taboos were observed which ensured the water remained clean and unpolluted such as the use of clean clay pots (not used for cooking) and gourds.

Hence one finds that there existed a special group of female rain mediums who were supposed to remain virgins, who committed their whole lives to working with the spirit mediums at rain making shrines. These were traditionally known as ‘mbonga’. The beer brewed for purposes of rainmaking was brewed primarily by elderly women of post-menopausal age who no longer engaged in sexual activities¹⁵⁵ (Schmidt, 1992:25-26; Lan, 1985:40, 94, 110; Gelfand, 1959:25-26, 56-58, 69; 1962:28-33, 37-39; 1966:60; Bourdillon, 1982:250, 1978:245, 1972:113). As such one finds a very close link between women and the religious politics related to securing an enduring supply of water.

In an empirical study, Ranger (2003:86) made a finding that “despite the dominance of patriarchy in Zimbabwean land ownership, inheritance, politics and ritual; women mediums, priestesses and prophets still play a major role in ecological religion.” During a study in rural Zimbabwe, Fontein (2004:7) found that arising from the gender restrictions placed by the very patriarchal rural societies vis-à-vis the sex of the traditionally acknowledged connoisseurs of local history and tradition; he was not expected to consult women on that topic. He discovered however that, a very significant exception to that ‘rule’ existed regarding traditional religion as evidenced by his finding more female ‘masvikiro’ (spirit mediums) and ‘n’anga’ (traditional healers) than male ones in the study area. Fontein (supra) ended up interviewing a lot of women spirit mediums one of whom was very senior and traditional healers. From my experience, this scenario also obtains in most of the African indigenous religious formations such as the Zionist and Apostolic churches, prevalent in Zimbabwe today where you find women prophetesses commanding awe and respect from male members of the congregation, a situation inconceivable in other African gender social relations.

¹⁵⁵ This point was also made by Chief Chinhamora in an interview held at Harare on 26 March, 2013. Water being associated with purity, only virgins and elderly women who no longer engaged in sexual activities were regarded as pure enough to touch offerings meant for God and ancestral spirits. The desistance from engaging in sexual relations by post-menopausal women also explains the prevalence of polygenic marital unions in this era since the man though equally old would still enjoy his conjugal rights from other younger women of child bearing age whom he would subsequently marry.

4.3 The informal customary water governance framework

4.3.1 Shona traditional world views on water and rainmaking

The commonly held Shona world view on water in the pre-colonial era was that water was a free gift from Mwari Musikavanhu (God the Creator of Humans) granted after supplication or appeasement by way of communally held rainmaking ceremonies. This commonly held belief informed the manner in which water was shared within traditional Shona communities. Since the supplication was a communal effort using grain collected from everyone to brew ceremonial beer; it then followed that everyone was entitled to the free enjoyment of the abundant rain water subsequently supplied to all and sundry by God in answer to their supplication.

This Shona world view on water is vindicated by empirical research findings made among the Shona in Zimbabwe on clean drinking water. From their own empirical research among the Shona in three villages in Mhondoro Communal Lands, in 2003, Derman and Hellum recorded a common view among respondents in interviews that “one can’t deny water to anyone.”¹⁵⁶ In a related study by Matondi (2001) among the Shona in Shamva district this Shona world view on water was expressed as, “drinking water should be for everyone.”¹⁵⁷ Nemarundwe (2003), in her own study among the Shona in Romwe Catchment in Southern Zimbabwe, heard it expressed as “water is life.”¹⁵⁸ Drawn from their study in Mhondoro Communal Lands, Derman and Hellum (2003:34-35) thereafter reported;

Water cannot be denied to anyone, for good rains or poor rains were understood as indicators of social well-being or social conflict (Bourdillon, 1987; Lan, 1985; Maxwell, 1999 and others)... In general it was believed that water could not be individually owned, and that everyone had a right to use it as they saw fit within the norms and practices of the different cultural groups.

Hence the general situation in Zimbabwe has been such that even when the state and international donors drilled boreholes in communal lands in the 1980s and early 1990s, the rural community saw no need to attach any economic value to such clean piped water as

¹⁵⁶ Literally translated to mean, “mvura hainyimwi munhu” in Shona,

¹⁵⁷ Literally translated to mean in Shona, “mvura ndeyemunhu wese,”

¹⁵⁸ Literally meaning in Shona, “mvura hupenyu”

they still viewed it as God's water.¹⁵⁹ The fact that the majority of black women and men in communal lands continued to enjoy free primary water up to the onset of the FTLRRP and water reform process in the late 1990s meant that they remained largely cocooned in a welfarist economy, blissfully unaware that an economic value could be attached to water for their productive use.¹⁶⁰ As drawn from the above, when I set out to research on water governance among the Shona on A1 resettlement farms in Mazowe Catchment I was on the lookout for this customary practice considering that most of the A1 farmers had originated from neighbouring communal lands predominantly occupied by the Zezuru tribe of the Shona ethnic group. A significant fact to emerge from the interviews held in Mazowe Catchment was that traditional life among the Shona has always been intricately interwoven with the spiritual realm or religion as epitomized by continued and vibrant communication with ancestral spirits. There is strong belief in an overall deity in the form of 'Mwari Musikavanhu' (God, the Creator), who is higher than the ancestral spirits.

The common view, as supported by interviews conducted with traditional leaders in the study areas was that fresh drinking water as well as that used for farming is a renewable natural resource which is non-expendable. This is because God is expected to continuously replenish it through rainfall as long as people within a community consistently supplicated him through rainmaking ceremonies. Hence for every occurrence among the Shona, there is a spiritual dimension to it. For one then to have a better understanding of the traditional Shona world view on water governance, it follows that one needs to grasp how this intricate web between the 'living alive' and the 'living dead'¹⁶¹ operates, as well as relate it to the happenings on the ground, inclusive of water. According to Kugler et al, (157-158);

¹⁵⁹ This traditional view towards water coincided with the free primary water provisions within the Water Act which existed outside the water rights regime demanding payment for larger amounts of water.

¹⁶⁰ This use of free primary water excluded black farmers involved in irrigation schemes or farming in African Purchase areas who had to pay for any water used commercially.

¹⁶¹ The 'living alive' is a terminology I use in reference to people who are alive and currently living on the earthly world today while according to Shona religious world views about death, those who have died

Among the Shona, predominant religious rituals, therefore involved those targeted at initiating communication with the living-dead, the family ancestors. Ancestors were consulted regularly, at every stage and about every development within the households. It is not an overstatement to argue that the ancestors were key elements for the survival of the families. They were usually summoned to off-set problems orchestrated by nature on humanity, such as pestilences and diseases, droughts, and other natural calamities.

It comes as no surprise therefore that in defending the abolition of the concept of private water, the then Attorney General Patrick Chinamasa also asserted the common Zimbabwean understanding of water by referring to the spiritual realm (Derman, 2007:257). Presenting the First Reading of the Zimbabwe new Draft Water Bill to Parliament in 1998, he stated;

Water is a public resource. It is a gift from God. None of us here are rainmakers, and that includes commercial farmers. The rainmaker is God. He provides His people and that water forms part of the hydrological cycle. (Zimbabwe Parliamentary Debates, p.1562-63; Derman, 2007:257)

Chiefs Chinhamora, Chiweshe, Chikwaka and Musana, who are Zezuru rule the traditional lands where the research sites for this study are located and as expected they rule in accordance with what they term the Zezuru version of Shona cultural norms and customs. In an interview held in Harare on 26 March, 2013, Chief Chinhamora explained how he and other chieftainships which include Chief Musana (Murehwa/Shamva/Bindura), Chief Zimunya (Mutare), Chief Chikwaka (Goromonzi) and Chief Rusambo (Mt. Darwin) as well as other Chiefs, mainly of the Soko totem in the Wedza area, share a common lineage through one great ancestor who once lived at Great Zimbabwe in present day Masvingo. He traced their ancestors' origins to a place called 'Guruuswa' (land where the grass grows tall) in the East Africa Rift Valley.¹⁶² In the same interview Chief Chinhamora stated;

Our Progenitor¹⁶³ was called Tingini. He came from Guruuswa and at some point; his children lived at Great Zimbabwe. His children then moved to Wedza and from there was born the various chieftainships namely, those of the Soko Murehwa totem (Wedza); the VaShawasha clan, to which the Chinhamora chieftainship and I belong (Chishawasha and Domboshawa); Soko Murehwa totem of Murehwa and Musana; Chief Zimunya of Mutare (went there from Wedza) and Chief Rusambo in Mount Darwin of the Gumbo Madyirapazhe, Mukuwapasi totem.

traditionally known as the 'living dead' are believed to be living in another spiritual realm as ancestors who still communicate with those on the earthly world through spirit mediums.

¹⁶² Some historical books identify the place as west of the Great Lakes region, spreading to the coastal regions of southeastern Kenya and north eastern Tanzania. During its colonial era Tanzania used to be known by the traditional name, Tanganyika, which when literally translated, means 'where the earth/world or mankind began or started.'

¹⁶³ This terminology he expressed in English as I give it here.

Oral history as given by Chief Chinhamora seems to tally with the recorded African History of the Bantu Migration from the North of Africa into sub-Saharan Africa. This shared or common ancestry of the Shona people becomes very important when tracing the background to water management practices in the traditional customary realm in that the Mwari (God) rainmaking cult in Zimbabwe, is said to be the same as the 'Mwali' (Swahili for God) rain cult in Tanzania.

The local rainmaking cult has its main shrine at the Matonjeni hills also known as Mabweadziva, at Matopo hills in present day Matabeleland, which was also the centre for rainmaking for the areas falling under Chief Chiweshe and Chief Chinhamora in pre-colonial and early colonial era. However, apart from conducting local rain making ceremonies, even up to today many Shona chieftainships from Mashonaland, Matabeleland (the Kalanga) and Masvingo provinces, still send their spirit mediums as emissaries to pay tribute to the more nationally encompassing Mwari at Matopos in a bid to get good rains each rainy season. According to Machoko, (2013:289);

Matonjeni was called the Stone of Pools (Mabweadziva or Mbedzi) from whom rain comes, and from whom mist arises when one stirs the water (Ranger, 1999; Rennie, 1979). The perennial pools in the shrine caves were identified with the uterus and the amniotic fluid of a pregnant woman, and as the source of life (Ranger, 1999). When people in the Matonjeni prayed for fertility, the seed was sprinkled with the water from the cave. It was water of life, they said, for it came from the rock, and also from God (Ranger, 1999).

Empirical studies have also revealed that most of the Mwari shrines at Matopos have women spirit mediums as the traditionally recognized custodians. Ranger (2003) says;

Female participation in positive rituals of the natural environment did not work in hidden opposition to patriarchy. Instead, women occupied public religious roles, either within the patriarchal system, or in the cult of the Creator God (Mwali) which operated above patriarchy.

The roles of being a wife or messenger or spirit medium of the Mwari cult uplifted the status of wives of Mwari (mbonga), messengers of Mwari (manyusa/hossanah), and female spirit mediums higher than males. For even chiefs obeyed the instructions given to them by the female spirit mediums of the Mwari and mhondoro cults. Some chiefdom in Zimbabwe, like Seke, Nyakusenga, Rusambo, Masunda, Makoni, and Mutasa, were founded by women

ancestors and had chieftainesses (Machoko, 2013:291; Ranger, 2003). Citing Ranger (2003), Machoko (2013:291), argues further that rainmaking was always a feminine role which was later masculinised as other tribes invaded pre-colonial Zimbabwe. He states;

The Dziva culture was strongly feminized, its totem was pool and its ritual experts were recognized as great rainmakers. The central figure of what later came to be called the Musikavanhu cult was, in these early days, the virgin priestess Chapo, possessor of rain charms.' Ranger (2003) argued that just as in Malawi, women in Zimbabwe controlled the central shrines of the original Zimbabwean eco-religion, before the shrines were conquered by incoming rulers who were legitimated by male ancestor spirits and that resulted in a masculinisation of eco-religion.

This commonly shared history on water related traditional norms and customs in sub-Saharan Africa becomes important in this study. This is because it points to the need to refer to the more cosmopolitan cultural practices which women in sub-Saharan African countries, Zimbabwe included, encounter. These cultural practices, to a certain extent, determine women's response to the mainstream state regulations and globalization.

Due to the religious significance of rainmaking within Shona folklore, one finds that even today on the A1 resettlement farms, all farmers are expected to contribute some grain used in brewing traditional beer for rain making ceremonies annually held during the months of August and September. Sub-Chief Gwindi who escorts Chief Chinhamora explained the procedures followed in preparing for rainmaking ceremonies within his area. He said;¹⁶⁴

When Svisva mountain burns, we know that the rains are about to fall but before this happens, the Chief sits down with his 'makurukota' or sub-Chiefs to formally remind them that the time for mukwerera (rain-making) has come. Each sub-Chief then sits down with his village heads who are thereby instructed to collect the grain (zviyo or rapoko) from all villagers, to be used in brewing traditional beer to supplicate Mwari and vadzimu (ancestral spirits) to send us rain. Elderly women past child bearing age brew the beer. All this is done in consultation with the spirit mediums. The overall svikiro is Nyamande and svikiro Bandama is the one in charge of the farming areas. All these processes are done between August and September. If we wait until October, it will be too late.

As indicated earlier, according to Shona world views, a person's death is not viewed as the end but rather the beginning of a new life where one, be they male or female, is promoted to a higher level in the spiritual world as an ancestor with power over those still remaining on earth. There is continuous communication between humans living on earth and those in the

¹⁶⁴ In an interview at Harare on 26 March, 2013

spiritual realm through spirit mediums. This was reflected in views expressed by Chief Chiweshe on how ancestors would still provide food to the living in pre-colonial times;¹⁶⁵

Have you ever wondered over the fact that, apart from Israel and the Jewish nation in the desert, who were fed with manna by God directly from heaven; we as a nation have a proud religious history whereby our ancestors when hungry would crouch under a Muhacha (also known as Muchakata tree) ask for food from the ancestral spirits or Mwari Musikavanhu while clapping their hands. Then, Lo and Behold, wooden plates full of sadza (the staple food) and sour (fermented) milk (it was never meat) would appear from thin air and land before them. The ancestors would eat the supplied food after which the empty plates would disappear again into thin air!

Reflecting further on the religious dimension of water and food provided by God and ancestors Chief Chiweshe also made reference to how in the Christian Bible rain is attributed to God as reflected within Bible verses such as Genesis Chapter 1 verse 9 and Isaiah Chapter 44 verse 3.¹⁶⁶ Similar to this religious allegory between the Shona and the people within the Biblical lands of Israel as drawn up by Chief Chiweshe, some academics such as Vengeyi, (2013:20-21) have also sought to draw up comparisons between the Shona and Jewish way of life.¹⁶⁷ As evidence that this religious perspective on water is prevalent in developing countries, empirical research in the Arab region has shown communities also viewing it as emanating from God. AbuZeid and Elrawady (2008:12) refer to such a religious perspective among those of the Christian and Muslim faiths in the Arab region.

They state;

From the religious perspective, water is a gift from God. Some communities interpret the lack of rainfall they suffer as a wrath from God; others see it as a test of their faith and endurance. Another group sees it as the need and/or the cause that supports knowledge, wisdom, exploration and inventions.

I refer to the traditional religious perspectives as outlined above to clearly show that unlike the mainstream IWRM approach which also views water as an economic good, a traditional humanitarian approach resonates with the human rights based approach to water use and management that views water primarily as a social good. The Shona traditional and

¹⁶⁵ He said this in a conversation with him as I drove him in my car from his court venue in Glendale to his farm in Mvurwi area on 05 April, 2013.

¹⁶⁶ See note 165 above

¹⁶⁷ Vengeyi compares the struggle of the under-classes (especially domestic workers) in Zimbabwe to a long tradition of struggle between the under-classes and the elite oppressors (slaves and masters) in the biblical times.

religious perspective views water as bestowed on mankind by God after supplicating him in rainmaking ceremonies. After these ceremonies, God makes it rain upon the fields of witches and good people alike. The rain fills up natural springs, dams, rivers and wetlands whose water is viewed as incapable of being commoditized just like sunshine.

4.3.2 Reasons for the general exclusion of farm worker households from rainmaking ceremonies

An interesting observation made in this study however was the exclusion of farm workers from the traditional rainmaking ceremonies conducted in Shona villages. The farm workers who were descendants of immigrant workers who flocked into the then Southern Rhodesia (now Zimbabwe) from neighbouring countries,¹⁶⁸ during the colonial Federation of Rhodesia and Nyasaland between 1953-1961, were generally excluded on the basis that they belonged to a different traditional world view with different ancestors who demanded different types of ceremonies. Despite belonging to different ethnic groupings such as the Chewa, Tumbuka, Yao and Nyanja from Malawi; the Nyanja, Bemba, Lozi and Tonga from Zambia as well as the Tonga, Sena, Ndaou, Shangaan and the Venda from Mozambique, the locals tended to group them all into one group of ‘aliens.’ This significant population of immigrant workers willing to take up menial jobs on commercial farms and mines shunned by local Shona men due to the very low wages were generally regarded as inferior.

While most of the locals remained in communal lands and urban areas; farming and mining areas became the preserve of descendants of these immigrant workers. Ultimately there was a clash of cultures, with locals viewing immigrants with disdain such that they were given derogatory names such as “the people with no totems.”¹⁶⁹ The workers continued to live on farms and mines within cultural islands of their own whereby they would still follow some

¹⁶⁸ Such as Northern Rhodesia (now Zambia), Nyasaland (now Malawi) and Portuguese East Africa (now Mozambique),

¹⁶⁹ A totem is an animal or its organ revered and respected by a clan or family as its symbol of identity and it should never be eaten by members who has it as a totem. Within the Shona tribes, much cultural value is attached to totems such that it is considered as taboo for a man and woman sharing the same totem to marry. However, most of the immigrants had totems but the locals were not familiar with the foreign languages used to describe these totems, similar to theirs.

cultural norms and other traditional practices inherited from their countries of origin such as the popular Nyau traditional dance and ‘Chinamwari’ initiation ceremonies. Consequently the majority of immigrant families in farm and mine compounds were generally suspected of dabbling in witchcraft and sorcery especially the herbalists and ‘Nyau’ traditional dancers. Since a significant number of the immigrant workers on farms were not actively involved in Christian activities, this heightened the locals’ suspicions of sorcery regardless of the fact that there were no church buildings for workers on most of the farms.

The social and cultural dichotomy between the local Shona and farm workers of foreign descent has existed up to the present day life on A1 resettlement farms as confirmed during research for this study when it was discovered that farm workers of foreign descent and their families were excluded from Shona rain making ceremonies for a number of reasons outlined below. At a first level, almost all interviewed farm workers did not own farming land and hence were presumed not to be in real need of much water except that used for drinking and other domestic needs. Hence there was an assumption that it was not necessary to involve them in ceremonies beseeching ancestors for rain to water crops. On the other hand it was generally agreed that farmers who held farming land needed adequate rains each year for their crops, to water their livestock and gardens as well as for other household purposes. As such, circumstances compelled them to hold rainmaking ceremonies as a means of supplicating God and ancestral spirits so that they could be guaranteed of abundant rains each year.

At a second level it was assumed that since most of the farm workers were of foreign descent with different ancestors and traditional ceremonies, including them in Shona traditional ceremonies would be time wasting. This could even anger the Shona ancestors since being largely unfamiliar with Shona norms and traditions, the workers could inadvertently break some taboos which would invite curses such as drought. Hence

according to Hellum et al, (2007:116, 2003:34; Bourdillon, 1987; Lan, 1985; Maxwell, 1999);

Droughts were said to be caused by serious breaches of conduct both in general and in people's dealing with water. Good communication needed to be maintained with the ancestors to ensure good water supply and rainfall.

The traditional separatist arrangement between locals and farm worker families of foreign descent dramatically changed with the onset of the FTLRRP when members of both urban and rural village communities in Zimbabwe descended onto the white owned commercial farms dominated by descendants of immigrant workers to form new communities. Those of local origin and descendants of immigrant farm workers were thus forced by circumstances to co-exist in the new A1 resettlement farms where traditionally they had perceived themselves to belong to two different social classes based on origin.

Having been largely excluded from local politics, it comes as no surprise therefore that during Zimbabwe's land reform programme a majority of farm workers did not get any land since only 0.03% managed to secure land nationally for small scale farming.¹⁷⁰ Hence on all the four farms in this study, apart from access to land along river banks for family gardens on a few farms, farm workers who were descendants of migrant labourers were generally excluded from benefitting from the Land Reform Programme. An exception at Kara farm was this middle aged couple, Mr and Mrs Badu, both descendants of immigrant farm labourers, who previously were resident on a farm in Bindura area.

4.4 Gender exclusive policies of a colonial government

The defeat of the Shona and Ndebele tribes in the First Chimurenga wars led to the official displacement of the un-codified traditional customary norms governing water use and management as the new colonial regime ushered in new water laws which sought to override whatever traditional norms and practices had been in place with respect to water.

¹⁷⁰ Government of Zimbabwe National Land Audit, 2006

Through its first Constitution, the Southern Rhodesia Order in Council of 1898, the British South Africa Company (BSAC) brought a system of water governance whose policy was based primarily on race. All water in the colony was divided between primary water and commercial water. Classified under commercial water was water used for agricultural purposes on commercial farms, predominantly owned by white commercial farmers since blacks were barred from owning any agricultural land in white commercial areas.

As the legacy left by famous women like Nehanda, who had participated on an equal level with men in the First Chimurenga war, slowly receded into the echelons of a faded historical past, the new colonial dispensation promulgated the Land Ordinance which saw the allocation of prime fertile land to white settlers while the black population resident on these fertile plains which they considered as their ancestral lands were moved to less fertile areas and sometimes to barren or rocky areas with sandy soils. These black enclaves were firstly named Native reserves, then Tribal Trust Lands and lastly Communal Lands after independence in 1980.

This race based approach to land apportionment also ensured that blacks could only access water for primary use in and around their rural homes from communal sources such as rivers, dams and streams. This water would meet their household rather than commercial needs. Thus section 81 of the Southern Rhodesia Order in Council of 1898 stated that;

The Company shall from time to time assign to the natives inhabiting Southern Rhodesia, land sufficient for their occupation, whether as tribes or portions of tribes, and suitable for their agricultural and pastoral requirements, including in all cases a fair and equitable proportion of springs or permanent water.

The tribal based resettlement exercise for blacks became possible because during the pre-colonial era in Zimbabwe, people settled in cluster communities in accordance with one's clan or tribe. Looking at the research sites in this study the relevant communal lands created were Chiweshe, Masembura, Chinhamora, Musana, Chikwaka as well as other more distant areas in present day Seke, Murehwa and Mutoko which areas provided pools of cheap

labour for the burgeoning Rhodesian economy. As the country was divided into urban and rural administrative districts, several chiefs within different tribal trust lands could fall under one rural administrative district. Research sites for this study fell under Mazowe and Goromonzi rural administrative districts.

The colonial government appointed traditional leaders such as ‘kraal heads’¹⁷¹ and chiefs to represent each tribal trust land. While appointment to chieftainship was supposed to follow the ruling elite’s lineage, some chiefs were not appointed for being rebellious to the colonial government and as such were replaced by docile leaders who initially were not part of the indigenous ruling elite. Women were not part of this governing structure since succession to traditional leadership was through male lineage. Nevertheless, the role played by these traditional leaders was more symbolic or ceremonial than substantive.

The colonial government also appointed District Commissioners to administer rural districts. These district commissioners would often double as magistrates to try cases and also conduct registered customary marriages as marriage officers. The district commissioners would liaise with agricultural demonstrators (current Agritex officer) who worked on the ground on the allocation of land to household heads in consultation with local kraal heads. The household heads were invariably male in accordance with a patriarchal system which ensured that inheritance and succession was attained only through the male lineage.

Despite land being allocated primarily to male household heads, the men in accordance with the more gender inclusive traditional norms and practices, would give a small piece of land off the main family land and donate it to their wives for the latter’s personal use in accordance with their personal choices. This piece of land called ‘tseu’ and ‘isivande’ in the Shona and Ndebele vernacular languages respectively, went a long way in ensuring food

¹⁷¹ A derogatory term used by the colonial government equating blacks with cattle which would be penned in kraals rather than villages.

security. Allocated “for the purposes of crop production...these pieces of land were within the vicinity of the homestead, to which the woman was closely tied to. In the event of widowhood, the woman would still be entitled to using the piece of land for crop production” (see Shumba, 2011:238; Pasura, 2010:4)

Another customary norm which ensured food security for a family was whereby women would be allocated land for gardening purposes close to natural water sources such as rivers and springs in which they grew different types of vegetables inclusive of the leafy types. Under the Natural Resources Act of 1941 was established the Natural Resources Board (NRB) which played a supervisory role to black rural peasant farmers on good conservation practices.¹⁷² Mandondo (2000:8) describes the NRB as a “national conservation watchdog comprising state appointed members” which the “Act vested...with broad and sweeping powers of intervention in the area of environmental conservation.” He goes on to state that;

...in native areas these powers were exercised in a capricious and arbitrary manner: forced soil conservation works often relying on forced labour; restrictions on grazing; compulsory destocking; restrictions on cultivation, e.g. within 30 metres of water bodies; restrictions on cutting of trees; and forced controls on excavation and building (Scoones and Matose, 1993).

The disruption of traditional governance structures and means of livelihood saw many black men moving into the newly created urban areas to work as domestic and factory workers. As indicated earlier in this chapter, only a few local black men sought jobs on the white owned commercial farms and mines since they looked down upon those types of jobs. The labour shortage on farms and mines was then filled in by immigrant workers from neighbouring countries (Schmidt, 1996:43; Palmer, 1977:228-229).

The local women largely remained in the communal villages looking after the children, tilling the land and running vegetable gardens to feed the family. With time it is these early black urban workers as well as successful rural farmers who then sought to improve their

¹⁷² It is important to note that the Natural Resources Act and the NRB remained in place until the enactment of the Environmental Management Act Chapter 20:27 in 2002 which saw the creation of the Environmental Management Agency (EMA).

children's economic future by sending them to school. However, the colonial educational policies in place at this point in time did not favour the education of black children as a result of which the church run mission schools largely came in to fill the gap though at a cost. For the black girl child however, the discriminatory colonial education policy added to the Shona customary practice which favoured the education of boy children rather than girls amounted to a double tragedy for black women.¹⁷³ These discriminatory policies confined women to menial unpaid domestic work as full time housewives who effectively used water and land to produce food for the whole family (see Schmidt, 1996:122-154).

As the colony advanced more into a cash economy, black women sought to join the labour market in urban areas. Black women's potential in the labour market was not fully realized since the colonial labour policies promoted gender stereotyping such that women in general were expected to be in charge of work in the private sphere as housewives. Thus in common with black women, white women on commercial farms were not visible vis-à-vis water governance issues as they spent most of their time entertaining and having tea parties at the local country clubs. As such they took care of the family with the help of black domestic workers while the men managed the affairs of the farm. The few black women from the communal lands (with little or no education) who ventured to work in urban areas were usually single, and got employed as domestic workers. As the number of educated black women¹⁷⁴ increased, these were still confined to jobs regarded as feminine such as typing,¹⁷⁵ teaching and nursing. Despite the fact that, work as waiters and chefs in hotels was a direct transference of the unpaid domestic work in the private sphere into the public sphere, it was dominated by men (mostly black waiters and white chefs) and thus handsomely paid.

¹⁷³ The customary practice was premised on the belief that girls were only good for the lobola their marriage brought. It would simply be wasting time educating girls so they would enrich the family they married into and yet male children would remain in the family and inherit the family lands, making them duty bound to make the family prosper.

¹⁷⁴ These originated mainly from communal lands and African townships since farm and mine workers of foreign descent did not send their children to school beyond employer provided primary education.

¹⁷⁵ At this time jobs in the area of secretarial and clerical work were still regarded as largely belonging to the male domain and were highly paid.

Some men who remained in the villages and excelled in farming were declared ‘Master Farmers’ by the colonial government, which was a passport to being allocated land in the African Purchase Areas. A few emerging successful black peasant farmers through this ‘Master Farmer’ scheme acquired land in the African purchase areas. Use of the sexist term ‘Master Farmer’ clearly shows for which sex, the position was designated. As regards the women who remained in the villages, these improved their farming skills (including vegetable gardening) through the help of Land Development Officers or Agricultural Demonstrators (current Agritex officials) such that due to the nature of their proximity to the slowly burgeoning metropolis of Harare (then known as Salisbury) they identified a market for their vegetable produce. Thus began the popular trade in fresh vegetables spearheaded by women in areas such as Domboshawa,¹⁷⁶ Chiweshe, Murewa, Shamva, Goromonzi and Mutoko. They would supply vegetables to the African vegetable market in Harare African Township, now known as Mbare.¹⁷⁷ The women in Harare would then order these vegetables for resale to the urban residents.

The important fact to note is that the women running these highly productive vegetable gardens in communal lands were using water at no cost since the water laws in place provided for free water for blacks for primary use in rural areas. Through these primary water user rights respected by the colonial government coupled with traditional customary water governance frameworks, enterprising rural women prospered in their market gardening ventures and managed to raise money to send their girl children to school; an opportunity denied them by patriarchy (see Hellum and Kameri-Mbote, 2015: 384) regarding their Zimbabwean study in Domboshawa peri-urban area where some of the women A1 farmers at Maidei Farm, originated from).

¹⁷⁶ This is a peri-urban residential but villagized area, created by the colonial government for African domestic workers working in the then Salisbury, who used part of the land acquired for vegetable gardens.

¹⁷⁷ The poorest high density residential area in Harare with slum conditions in the crowded flats close to the inter-city and rural long distance buses’ terminus.

4.5 The Formal and Informal Water Governance Frameworks between 1980 and 2000

4.5.0 Introduction

With assistance from state funded loans, grants as well as cheap loans from agricultural banks, during the colonial era, most of the white commercial farmers progressively improved water infrastructure on their farms such that there was piped water for irrigation and domestic needs (see Manzungu and Machiridza, 2005:22-3). Enjoying an advantage over their black counterparts in communal lands, the majority of whom did not have access to clean piped water between 1976¹⁷⁸ and 1980,¹⁷⁹ farm workers exclusively accessed clean piped water on white owned commercial farms for their daily nutritional and sanitary needs. These benefits flowed largely from their employers' contractual obligations towards their social welfare.

4.5.1 National Action Committee on Water Supply and Sanitation (NAC) during the first two decades after independence

At independence in 1980, the new Zimbabwe government adopted a socialist- welfarist approach, popularized globally in the 1970s. Hence with the assistance of international donors there was a countrywide borehole drilling project which saw the majority of rural women having access to clean potable water. The project also covered sanitation issues resulting in the state assisted construction of Blair toilets at each homestead. Heavily involved in the administration of these water projects were Rural District Councils and the District Development Fund (DDF) which were introduced through progressive statutory changes within the local government sector. Thus relying on funds from Treasury, officers from the DDF would maintain and repair boreholes. Borehole water committees whose membership was supposed to be composed of two-thirds (2/3) women were put in place to

¹⁷⁸ When the old 1976 Water Act was enacted,

¹⁷⁹ At independence,

manage the communal boreholes in communal lands during this early phase post to Zimbabwe's independence.¹⁸⁰

An inter-ministerial committee, NAC was established in 1987 to oversee the overall management and coordination of “the implementation of the Integrated Rural Water Supply and Sanitation Project (IRWSSP)” within the water sector. NAC “was largely funded from bilateral aid.” With the onset of Zimbabwe's FTLRRP marked by violent land invasions in 2000, donor support was withdrawn and hence NAC's activities collapsed due to lack of financial resources (see the Zimbabwe Report on Water Supply and Sanitation Development and Management, 2010:7).

4.5.2 The First decade after independence: Changes within the local courts system and the officially sanctioned stripping of traditional leaders' judicial powers.

Apart from changes within central and local government structures, the new government also introduced changes within local courts structures as signified by the enactment of the Customary Law and Primary Courts Act in 1981 which was subsequently followed by the Chiefs and Headman Act Chapter 29:01 and the Communal Lands Act Chapter 20:04 in 1982 which impacted on traditional leaders' formally recognized roles in water governance. According to Coldham (1990:163), prior to Zimbabwe's independence, Tribal Courts were created through the African Law and Tribal Courts Act, 1969 as a way of bolstering chiefly authority in response to growing (war) activity in the rural areas. Nevertheless, by the time the war ended most of these tribal courts had either been discredited or had collapsed altogether such that they had been replaced by liberation war party political courts, (widely known as “kangaroo courts”).¹⁸¹ In the first two years after Zimbabwe's independence, local traditional chiefs, were stripped of their traditional power after being suspected of having connived with the colonial administration during the liberation war (Matyszak, 2010:4).

¹⁸⁰ The role and duties of Rural District Councils with regard to rural water supply and sanitation are discussed in detail under Chapter 5 on 'Institutions mediating women's access to, use of and control over water.'

¹⁸¹ A derogatory term used to describe their informal nature and lack of official recognition or credibility

Under the 1981 Customary Law and Primary Courts Act, the determination of customary law cases was moved from Tribal Chiefs' courts to new local institutions appointed by the then Minister of Justice, Legal and Parliamentary Affairs. Hence traditional chiefs and headmen's judicial functions were removed thereby leaving them as mere ceremonial leaders. This meant that officially, they could not deal with local disputes relating to conflicts on natural resources management. Under the Chiefs and Headman Act Chapter 29:01 of 1982, the only significant role, a traditional Chief remained with was his recognition "...as the traditional head of his community;" (section 6(a)) and that in appointing him "the President (would) ...give due consideration to the customary principles of succession, if any, applicable to the community over which such chief is to preside" (section 3(2)).

On the other hand, the Communal Lands Act Chapter 20:04 of 1982, divested traditional chiefs of their traditional role of allocating land in communal lands.¹⁸² Under this Act, control over all state land was vested in the President while the administration of land in rural areas was devolved to rural district councils and district administrators under the then Ministry of Local Government, Rural and Urban Development (see Ncube, 2011: 91). The new Government of Zimbabwe's act of "removing the application of customary law regarding access to and use of land from customary institutions (chieftaincy) to newly elected local government institutions (the rural district councils)," amounted to its "effectively vesting the application of customary law in non-customary institutions" (Nyambara, 1997; Ncube, 2011:91). Further, according to Ncube (2011:91), "rather than incorporate and co-opt traditional institutions into state institutions, the Government sought to marginalize them by denying them, among other things, the power to allocate land." The message to be clearly deciphered from all these developments was that the new

¹⁸² Under the colonial regime, traditional chiefs had power to preside over customary law cases and also allocate clan land to male household heads in keeping with local customary law practices.

Zimbabwean government's policy on rural local governance favored elected representatives as well as civil servants rather than traditional leaders.

The enactment of the of the Customary Law and Primary Courts Act and the Communal Lands Act in 1981 and 1982 respectively was also viewed as serving several functions namely that; (i) this was a legal move from a tripartite court structure to a single hierarchical court structure operating from the village courts (at the lowest level), to the community courts; the magistrates courts (district courts), the High Court and the Supreme Court; (ii) the Acts signified a policy shift from indirect to direct rule and (iii) This marked "a transfer of authority in judicial matters from traditional leaders to presiding officers whose appointment in the case of village courts often involved a measure of popular election" (see Coldham, 1990:163; Ladley, 1982:109; Cutshall, 1991:12-56).

4.5.3 First Decade after Independence: The creation of a gap between the State sanctioned local government and dispute resolution frameworks and the informal traditionally recognized governance practices

Prior to reforms within the local government structure and local courts system as discussed in the next section; a gap had been created between the formally recognized and informal local government and dispute resolution frameworks. This was whereby traditional leaders at grassroots level were viewed by the majority of people in their local communities as having more legitimacy than appointed civil servants. Traditional leaders were viewed as spiritually anointed custodians over natural resources, who had the traditionally given mandate to lead communities in conserving natural resources as well as resolve disputes on wide ranging family issues as opposed to the appointed local government officials, elected councillors, Village Development Committee (ViDCo) members and appointed officials manning village and community courts. In reference to this disconnect between formal and informal institutions within land governance, Ncube (2011:89) states that;

This confusion at the local administrative levels was characterized by a lack of clarity on roles and functions between the traditional institutions of chief, headman and village head, and the elected leadership of village development committees (VIDCOs) and ward development committees (WADCOS) in land matters. It precipitated a crisis of communal

leadership in the communal areas of Zimbabwe, whereby, on one hand, elected rural institutions had little real legitimacy according to traditional grassroots perspectives, while traditional leaders were not always acknowledged or respected by the formal state's modernization initiatives.

4.5.4 The second decade after Zimbabwe's independence: Changes within local government structures and the restoration of traditional leaders' powers

Before the end of the first decade after attaining independence however, the Zimbabwe government reviewed its policy on local government as it was realized that direct rule centralized too much power in central government while excluding traditional leaders and the grassroots. This was similar in nature to how decentralization within the framework of the 1990s water reform process was aimed at bringing about participation by all stakeholders from the grassroots level in the use and management of natural resources mainly water and the environment in order to achieve racial balance as well as sustainable development. Hence with a related motive, the Zimbabwe government restructured local government through the replacement of colonial District Commissioners with Provincial and District Administrators whose offices were located within the local Provincial and Rural District Council offices. To achieve this, the government amalgamated the former white run Rural Councils with District Councils to form Rural District Councils.

While Rural Councils had administered small town, country and large-scale commercial farming areas, District Councils had previously fallen within Communal Lands occupied predominantly by blacks. The Rural District Councils (RDC) Act Chapter 29:13 merging the two Council types was passed in 1988 but only became effective in 1993 (see Matyszak, 2010:4). Borrowing a Marxist- Socialist oriented norm commonly practiced during the liberation war, council wards with WaDCos and ViDCos were created in districts and villages under the RDC Act to oversee local development issues.¹⁸³ Nevertheless the majority membership of WaDCos and VidCos were men with liberation war credentials who still wielded more power than the local traditional chiefs.

¹⁸³ These provisions on WaDCos and ViDCos were later also incorporated within the Traditional Leaders Act Chapter 29:17.

In a clear reflection of the othering of women from such crucial administrative structures, the chairperson of a ViDCo or WaDCo is referred to in section 59(i) of the RDC Act and the Traditional Leaders Act as ‘chairman’ resolutely banishing from the mind, any expectation of the chair ever being occupied by a woman. This may be understood when viewed from the fact that it is a statutory requirement that the ‘chairman’ of the ViDCo should be the village head and that of the WaDCo, the local ward councilor, where a negligible number of women occupy these posts. It is therefore through mere chance that on two of the four farms researched on for this study; there was a female village head and a female ward councilor.

Concurrent with the time the FTLRRP was embarked upon in 2000, the State, in a conciliatory move, restored traditional leaders’ power. The chiefs, headmen and village heads’ powers were largely reinstated through the enactment of the Customary Law and Local Courts Act Chapter 7:05 in 1992, the Traditional Leaders Act Chapter 29:17 of 1998 as well as an amendment to the 1988 RDC Act in 1998. Their function, roles and duties were clearly spelt out in the Traditional Leaders Act. The question to ask was whether these changes translated to positive developments in the lives of rural women who fell within their sphere of influence vis-à-vis access to, use of and control of water?

1. The formal duties of a Traditional Chief

Section 5 of the Traditional Leaders’ Act outlines the formal duties of a traditional Chief, which includes the following, considered key to this study as they relate to the Chief;

(a) performing his functions as the traditional head of the community under his jurisdiction; (b) discharging any functions conferred upon him in terms of the Customary Law and Local Courts Act [Chapter 7:05]; (c) preventing any unauthorised settlement or use of any land; (d) notifying the rural district council of any intended disposal of a homestead and the permanent departure of any inhabitant from his area, and, acting on the advice of the headman, to approve the settlement of any new settler in his area and lastly (e) ensuring that the land and its natural resources are used and exploited in terms of the law and, in particular, controlling— (i) over-cultivation; (ii) over-grazing; (iii) the indiscriminate destruction of flora and fauna; (iv) illegal settlements and generally preventing the degradation, abuse or misuse of land and natural resources in his area; (v) ensuring that no public property, including roads and bridges...and related establishments, is damaged; destroyed or misused by the inhabitants or their livestock; (vi) adjudicating in and resolving disputes relating to land in his area; and (vii) notifying the rural district council for the area concerned...of the outbreak of any epidemic or prevailing disease, flood or other natural or unnatural disaster affecting the inhabitants, livestock, crops, the land, flora or fauna in his area; and (viii) liaising with and assisting development

committees established in terms of the Rural District Councils Act [Chapter 29:13] in all matters relating to the planning and implementation of local development programmes; (ix) taking charge of traditional and related administrative matters in resettlement areas; (x) maintaining up-to-date registers of names of villages and their inhabitants and of land certificates; (xi) promoting the maintenance of good standards of health and education in his area...In the exercise of his functions, a chief shall have the powers of a justice of the peace in terms of any law.

Due to their invisibility on A1 farms under research, I do not address myself to the duties of headmen as outlined within the Traditional Leaders Act Chapter 29:17. Section 12 of the same Act lays out the formal duties of a village head. The ones relevant to this study are outlined below as excerpted from the section.

2. The traditional role of a Village Head

It shall be the duty of a village head— (a) to assist the chief and headman in the performance of their duties; (b) to lead his village in all traditional, customary and cultural matters; (c) Subject to the Communal Land Act [Chapter 20:04], to consider, in accordance with the customs and traditions of his community, requests for settlement by new settlers into the village and, in consultation with the village assembly, to make recommendations on the matter to the ward assembly; (d) to the extent that such matters are not subject to the general law of Zimbabwe, to settle disputes involving customary law and traditions, including matters relating to residential, grazing and agricultural land boundaries and, where necessary, to refer these matters for settlement by the headman; (e) to ensure that all land in his area is utilized in accordance with any enactment in force for the use and occupation of communal or resettlement land; (f) to preside over the village development committee, to co-ordinate its work and to submit the resolutions and plans of that committee to the village assembly for consideration, and where appropriate, implementation; (g) the security of schools, clinics, contour ridges, water points...and any other public property and, where necessary, to report any damage or potential damage to any such property to the police; (h) to maintain an up-to-date register of names of the inhabitants of his village, and their settlement permits; and, (i) to maintain an accurate outline plan in respect of which he holds a village registration certificate.

What I would point out is that, emanating from the changes effected within local government and the legal system in Zimbabwe, traditional leaders have continued to be recognized formally and informally as the key actors in water governance in rural areas at the village or grassroots level. In my study, a question arose regarding the capacities of local village heads as well as chiefs in facilitating women's access to, use and control of water on the four A1 farms.

4.5.5 Locating women at the intersection of Rural District Councils' and Traditional Leaders' intersecting roles in natural resources governance

As indicated earlier, the restoration of traditional leaders' power in 1998 has not translated to an end to the conflict between traditional leaders duties which are both formal and informal with those of elected and appointed local government officials. I say this because,

embedded within the enactment of the RDC Act and the Traditional Leaders Act lies the source of multiple, compound, parallel and often intersecting contestations which have always dogged local government and traditional leadership institutions as they vie for control over natural resources such as land and water. These male dominated divergent and convergent power dynamics are often brought to bear on women as they work the land and fetch water on a daily basis in order to provide food for their families. D. Matyszak (2010:4) thus states;

The local government in Communal Lands is characterised by a multi-tiered and hierarchical two-strand administrative structure. One strand comprises democratically elected local government councils; the other is that of appointed traditional leaders and appointed officials imposed by central government. There are thus two loci of power in local government running parallel to each other, one democratic and one appointed, with some formal linkages between the two established by statute. The result is that numerous tentacles of power emanating from different sources in this bifurcated system touch upon and control the lives of the inhabitants of rural areas.

While the above observation by Matyszak is in respect of people in communal lands; I argue that this applies equally to the situation of women on A1 farms. This is so considering that, traditional leaders' power vis-à-vis water access and use is exercised in tandem with that of elected rural district councilors, catchment and sub-catchment council officials as well as appointed central and local government officials from the Ministry of Environment and Water, ZINWA and the District Development Fund (DDF).

4.5.6 Conclusion

Similar to the Indonesian decentralization experience mentioned earlier in Chapter 3 and as reported by Birgit Bräuchler (2010:2) a need arose to reconcile international democratic values and human rights principles with homegrown cultural values; during Zimbabwe's land and water reform programmes, it became imperative that there also be a "nationwide trend to revive local traditions, political units and institutions, and traditional leaders" as a way of attracting a community buy-in of the whole process. In the Zimbabwean experience, this has however resulted in a legal pluralist environment where the global, national and local formal and informal institutional and normative frameworks intersect and influence each other in a continuously evolving manner that in turn impacts on women's capacity to

access, use and control water for personal, domestic, livelihood and productive purposes differently.

4.6 The farming communities in Mazowe Catchment prior and post the FTLRRP. A brief historical overview of the four research sites in Upper Mazowe and Nyagui sub-catchments

Heavily influenced by the violent farm invasions which occurred throughout Zimbabwe between the years 2000 and 2003, under the auspices of the FTLRRP, the four A1 farms Kara, Creek, Maidei and Saga, all falling under Agro-ecological Region 2, were also invaded during the same period by people of various social and economic backgrounds. As explained earlier in this chapter; prior to FTLRRP and the invasion of white owned large scale commercial farms by blacks, the large scale commercial farming areas as well as all water on them, were generally classified as commercial.

UPPER MAZOWE SUB-CATCHMENT

4.6.1 The history of water governance at Kara Farm prior to the FTLRRP and soon after

Kara Farm is located in Ward 14 of Mazowe Rural District Council. The main supply for all irrigation water at Kara Farm came from Mudzi dam, a dam constructed prior to 1980 by a cluster of white commercial farmers who included Jack Sellers. On 26 March, 2013, the Chairperson of Upper Mazowe sub-Catchment and Acting Chair of Mazowe Catchment, who is very familiar with the history of water use in the Mazowe area had this to say on the history of water in Upper Mazowe sub-Catchment;

Jack Sellers and the other white farmers in the area had water rights on Mudzi River as well as Mudzi Dam and their rights superseded everyone else's rights. Prior to 1998 and enactment of the new Water Act Chapter 20:24, even if as a black farmer you happened to own a farm upstream of these farmers and the dam they constructed was on your farm, you were forced to release water to them prior to you using it as what they possessed were prior generational rights, inherited through the generations. So now, if I may ask, once you release water downstream before using it yourself, how do you get it back?

In an interview held on 3 November, 2011, the water pump attendant at Kara farm, who is of Mozambican origin and has worked at the farm since 1981, gave a historical account of both drinking water and irrigation water availability on the farm as compared to the present;

There has never been a problem with irrigation water on this farm since the supply dam, Mudzi never runs dry. Currently it is almost full... When the former white owner, Carl Harvey left for Mozambique, he left 8 irrigation lines which irrigated the farm fields... When I arrived in this area in 1981, it was green throughout the year. The major crops on this farm were wheat, cotton .and roses.

On the same day, a former water bailiff who is now a ZINWA River Inspector said;

The major winter crops which were farmed in the current Upper Mazowe sub-Catchment area which needed water for irrigation were green maize, wheat, potatoes, sugar beans, soya beans as well as roses. Jack Sellers has up to today always focused on horticulture which does not need a lot of water since he would use drip irrigation.

The above statements were confirmed by a woman who is a former farm worker living at the nearby Creek Farm compound who happened to be working in the fields at Kara Farm on the day I interviewed her on 05 November, 2011;

There used to be very successful irrigation going on at this farm. The commercial farmer here used to produce a variety of crops which included maize, potatoes, soya beans and wheat. Currently, irrigation of crops is being done on a small piece of land as compared to the past.

According to Allen Botha, the farm manager of the commercially run A2 subdivision of Kara Farm; the smallscale A1 farm subdivision of Kara Farm was created after the bigger farm holding which had been within the Sellers family for a period in excess of 40 years, was subdivided. Jack Sellers was based at Harvest farm while Carl Harvey was based at Kara commercial farm up until the beginning of the farm invasions in 1999 when he left for Mozambique. Jack Sellers then took over the operations at Kara farm. However shortly thereafter in 2001, a period marked by countrywide farm invasions, Kara farm was invaded by land hungry people with a variety of backgrounds.

During interviews with resettled women and male farmers, they indicated their places of origin covering a wide range of districts such as Muzarabani, Chiweshe, Nyanga, Buhera, Chipinge, Bikita, Masvingo, Zhombe, Chitungwiza, Harare, Domboshawa, Glendale, Mvurwi, Concession, Bindura, Mutorashanga, Mukumbura, Mt. Darwin, Murewa, Mutoko and Mbembesi near Bulawayo. According to the woman village head at Kara A1 Farm, Chipu Mugadza, the farm was invaded at the height of the FTLRRP in 2001 by men and women originating from the four corners of Zimbabwe. She had settled on the farm in 2001

from Glendale, a growth centre approximately 10 kilometres away where her husband had been a police officer.

Case Study 1: Chipo Mugadza

Chipo Mugadza, the woman village head at Kara Farm was born in 1962. She and her late husband had been born in two different districts of Manicaland. She went to school up to Form 4. She was a widow with 3 children, two of who were majors studying at local universities in 2011. During his lifetime, Chipo Mugadza's husband, who died in 2006, had been a police officer at Glendale. She was involved in the land invasions at Kara Farm in 2001 after which she and her husband were allocated 6 hectares. She occupied a three roomed house which used to belong to a farm worker. The garden besides her house was uncultivated due to the erratic raw water supplies being supplied through a tap at her homestead. In 2011, Chipo Mugadza was aged 49 years and had been a village head for 9 years.

During the interview with her at Kara Farm on 13 October, 2011, she explained further,

At the time of invasion, 20 women were actively involved in the 'jambanja' either accompanying their spouses or as self representatives. There were also 7 young men who at the time were unmarried but all have since married. Currently the farmer population here is made up of 45 families. Of the 45 families, at least 27 are male headed. There are 18 female headed households headed by 2 divorcees and 16 widows. Most of the widows took over their husbands' plots after the spouses had died between 2001 and now.

Nevertheless, Enock Toringepi, a young male farmer, interviewed on 04 November, 2011 clarified the issue further. He explained that no actual invasion had taken place at Kara Farm but rather the settlers had been moved from elsewhere. Having been unceremoniously removed from another farm by a powerful woman politician, the new settlers sought to secure their occupancy of Kara Farm by forcibly evicting some of the farm workers from their 3 roomed brick and iron roofed houses after which they gained occupancy. Enock secured for himself a former worker's homestead, which being a corner stand measuring 1 200 square metres in area, was double that of the other A1 farmers' newly invaded homesteads. At Kara Farm the settlers found a robust water supply infrastructure built by the former white commercial farmer which was comprised of electrified boreholes and pipes. The boreholes pumped both underground water and ground surface water from Mudzi Dam and River for drinking and irrigation purposes, respectively. Jack Sellers, the white commercial farmer then paid the electricity bills emanating from pumping this water from

underground water reserves to taps dotted around workers' compounds for domestic needs which included drinking water.

Case Study 2: Enock Toringepi

In 2011, Enock Toringepi was aged 30 years. He was married with two minor children. In early 2001, Enock had been an unemployed 20 year old ZANU PF youth living in Chitungwiza where he cultivated a very small kitchen vegetable garden next to his house. He then heard that he could also acquire land on the farms only if he joined in the ongoing 'jambanja.' Initially they invaded and settled at a farm near Gwebi Agricultural College. Since the farm was close to Harare most of the settlers who descended on this farm had either been working or living in Harare but originated from a wide range of villages across the country. The invaders were however unceremoniously removed from there to Kara Farm by government officials after the very fertile farm caught the eye of a very powerful woman politician who claimed it for herself. She was duly allocated the farm and it was gazetted as an A2 farm soon thereafter. At Kara Farm, Enock was allocated 6 hectares of which he was irrigating 5 hectares. In winter he grew sugar beans while in summer, he grew maize and soya beans. At the height of 'jambanja,' he evicted a farm worker from his house to accommodate himself. He also had a kitchen vegetable garden in front of his house where he grew onions, popcorn, and sugar beans. Enock was a member of one of the Irrigation Committees and also engaged in contract farming as a cooperative with other Kara farmers.

Considering that the drinking water supply at Kara Farm was tapped from underground water reserves, it was not further purified or treated with water purification chemicals as it was deemed to be clean. While the farm workers employed by Jack Sellers did not pay anything towards the electricity bills emanating from the electrified borehole pumping clean water into the compound's taps, this was deemed to be part of their employment benefits package.

Due to the fact that he employed a staff complement of approximately 200 workers; the majority of whom were women, Jack Sellers could afford to install such electrified boreholes which ensured the availability of clean drinking water from taps located approximately 100 metres from the workers' three roomed houses. He had also constructed brick walled Blair pit toilets next to the houses which were also used as bathrooms. In building and allocating brick houses to his workers, Jack Sellers had also ensured that next to each of them was a small kitchen garden in which each worker could plant leafy green

vegetables as well as tomatoes and onions for their families' nutritional needs. At Kara farm therefore, women farm workers faced no challenge in the access and use of clean drinking water as well as water for their nutritional and sanitation needs prior to FTLRRP.

Since he ran a successful rose project on the farm which fell within the Export Processing Zone (EPZ);¹⁸⁴ after the invasion in 2001, Jack Sellers was allowed by government to retain a sub-division of the former large scale Kara commercial farm as an A2 plot where he continued to grow roses for export in greenhouses. Nonetheless, faced with the dilemma of having a workforce with no proper accommodation after their eviction by invaders in 2001, Jack Sellers had to build new dormitory type blocks of one-roomed accommodation for some of his workers. Communal toilets and shower rooms as well as laundry tubs using the water system were also built to cater for those inhabiting these blocks of workers' flats.

4.6.2 Drinking water, sanitation, food and housing at Creek Farm prior to FTLRRP and soon after

Situated approximately 2 km away from Kara Farm, Creek Farm is also located in Ward 14 of Mazowe Rural District Council. According to Allen Botha, Creek farm used to be owned by Benny McCray. Prior to FTLRRP, Benny McCray was engaged in successful winter crop farming with a focus on food crops such as maize and potatoes which ensured national food security. These were irrigated in winter through electrified boreholes as well as pipes which drew water from Mudzi River and Dam. In the words of a former farm worker interviewed on 05 November, 2011;

There always used to be more women workers than men workers at Creek farm. I would say the ratio of men to women was approximately 3:4. (i.e. for every 4 women there would be 3 men). This was because women were considered to be more reliable and hardworking than men and yet they were content with lower wages than men. At Creek farm, prior to the invasion, the white commercial farmer would grow maize, wheat, soya beans, potatoes, peas, paprika throughout the year. He used to grow cotton as well. There was balanced agriculture.

On the same day in the fields at Kara Farm, another woman farm worker who used to be employed by the white commercial farmer at Creek Farm also chipped in saying;

¹⁸⁴ Most of which had commercial farms which fell under the the Bilateral Investment Promotion and Protection Agreement (BIPPA) which Zimbabwe had signed with some European countries such as Germany and the Netherlands.

I am also a former worker at Creek farm, which used to specialize in maize farming. As workers we would be rotated in the fields. Either one would weed the maize, or would plant, weed, pick up and grade potatoes. There were more women than men then and even now with the lower population of workers who remain on the farm, women still outnumber men.

After invading the farm, the new farmers settled at Creek farm in 2001 whereby each farmer acquired 6 hectares of land. They evicted some of the farm workers from their iron roofed brick houses and took over their properly built toilets. The magnitude at which former farm workers were evicted was lower than what happened at the neighbouring Kara Farm since there were fewer invaders. Most of them originated from local areas such as Chiweshe communal lands, Bindura, Glendale, Concession, Mvurwi, Centenary and Nzvimbo. Nevertheless, despite having this rural background, the majority of the new settlers had been working and living in the high density suburbs of Harare at the time of invasion, a good example being the village head at Creek Farm, Mr Samson Mudzimu.

Case Study 3: Mr. Samson and Mrs. Sossanah Mudzimu

Born in the neighbouring Chiweshe Communal Lands, Mr. Samson Mudzimu, a war veteran, was the village head at Creek Farm. He was closely related to Chief Chiweshe. Aged 56 years in 2011, he had an 'O' Level education. Mrs. Sossanah Mudzimu was relatively younger than her husband. Similar to many young women A1 farmers on the researched A1 resettlement farms, she had 'O' Level education. Mr. and Mrs. Mudzimu cultivate 6 hectares of land allocated to them in 2001 during the FTLRRP. At the time of the FTLRRP, the couple lived in Chitungwiza, Harare, from where they proceeded to Creek Farm in 2001 to get involved in the land invasions that were ongoing.

At Creek Farm were approximately 75 farming households and 350 farm worker households made up of 300 former farm worker households and 50 other farm worker households who came to the farm after the farm's invasion in 2001. In a trend common to most farms, most of the former farm workers were descendants of immigrant workers from neighbouring countries. Since the majority of farm workers did not get any land during FTLRRP, most of them chose to remain on the farm or drifted off to other un-invaded farms as they had no rural homes to return to in the communal lands. Out of the 75 farming households, 4 were headed by women who acquired plots in their own names.

In a situation similar to that obtaining at Kara Farm, when new A1 farmers settled at Creek Farm, they found that there was clean drinking water supplied by three electrified boreholes built by Benny McCray. He had been sharing this clean drinking water supplied by electrified boreholes with his farm workers who accessed it from taps situated in the farm compound. Clean borehole water had thus been accessible within 200 metres of each house soon after the FTLRRP. There were toilets in the farm compound built by the farmer and some of the farm workers' 3 roomed brick houses were electrified.

Situated close to the farm workers' compound was an area reserved for gardening for the workers. Consequently, the majority of women as farm workers and as wives of farm workers had kitchen gardens where, like their neighbours at Kara Farm, they also grew leafy green vegetables, tomatoes, onions and green maize for their families' nutritional needs. The water was free and there was no limit as to how much a household could use for these domestic purposes. Water for winter crop irrigation was also pumped by electrified boreholes from Mudzi River and Dam and fed into pipes running for approximately 2 km.

NYAGUI SUB-CATCHMENT

Ranked slightly lower than Upper Mazowe sub-Catchment, Nyagui was one of the more successful sub-Catchments in Mazowe Catchment, with its members holding meetings at Goromonzi. By virtue of their location within Agro-ecological Region 2, Maidei and Saga farms, the two research sites in Nyagui sub-catchment experience a good supply of seasonal rainfall which is dammed in numerous dams on the Munanga and Muvhunzi rivers. Similar to what obtained on farms in Upper Mazowe sub-catchment referred to earlier, the commercial farmers provided clean drinking water to their workers through electrified boreholes scattered all over the farm. In the several farm compounds were areas reserved for farm workers to grow vegetables for their families' consumption. The farm workers would use the same borehole water to irrigate these kitchen gardens while the farmer would foot

the bills. It is also important for purposes of analysis that the history of water use on these farms for commercial as well as drinking purposes be outlined.

4.6.3 A historical overview on water governance at Maidei Farm prior to FTLRRP and soon after

Maidei Farm is in Ward 8 of Goromonzi Rural District Council and the current local councillor Mrs Muchena is an A1 farmer at Maidei Farm. Between 2011 and 2013, when fieldwork was done for this study, Mrs. Muchena was also the Acting Councillor for Ward 9 where Saga Farm is located, after the Ward 9 councillor had died.

Case Study 4: Mrs. Muchena

Mrs Muchena, the woman councillor for Ward 8 and her husband settled at Maidei Farm in 2001. Their original home was in Domboshawa in the neighbouring Musana Communal Lands. Since she had had a small garden in Domboshawa that was less than a half acre, she got involved in the farm invasions because she required more land to develop her horticultural activities. She felt justified in her quest for more land since she had the requisite experience in market gardening, the common livelihood activity in Domboshawa area. Mrs Muchena had 'O' Level education. Like most people at Maidei Farm, Mrs Muchena and her husband were allocated 6 hectares of land to farm. At the time of research, she was irrigating about 3 hectares. In the 2011 farming season, she irrigated 2 hectares of potatoes. She however expressed her worry at the lack of clean drinking water on the farm.

Most of the new farmers who settled at Maidei Farm in 2001 came from surrounding communal areas such as Musana, Goromonzi, Domboshawa, Murehwa, Uzumba-Maramba-Pfungwe and Mutoko. Due to their origins from areas renowned for successful market gardening; at the time the study commenced in 2011, the women farmers at Maidei Farm were engaged in successful small scale irrigation of vegetables for family consumption as well as small scale sale of excess vegetables at local road markets and at Mbare Musika.¹⁸⁵

The irrigation infrastructure at Maidei Farm was put in place by the former white commercial farmer, Mr Capri who owned the farm. Since the large scale commercial farm from which Maidei was sub-divided is located in a very fertile and wet area of Nyagui sub-

¹⁸⁵ A very busy central vegetable market in Harare where rural farmers sell fresh farm produce at wholesale prices to local urban market women who in turn resell the farm produce to Harare residents at a higher market price which gives them a reasonable profit margin as a means of livelihood. This market has been in existence since the Rhodesian colonial times when it was referred to as Harare Musika (Market).

Catchment, the white farmer was engaged in maize farming as well as horticulture. Apart from a prolific ground water supply, there was an abundant supply of water for irrigation from Gulf Dam, a ZINWA dam which guaranteed successful winter crop irrigation year upon year. In the words of Mrs Muchena in an interview with her on 17 December, 2011;

When we initially got here, the white commercial farmer allowed us to use water for both irrigation and drinking purposes from the mainline he had constructed from the Munanga River. This whole farm was green then and passengers aboard vehicles passing by along the Harare-Shamva Road couldn't help envying us whenever they passed through this area. The white commercial farmer would pay the electricity bills arising from the electric pumping of water into the mainline and everything was fine, no problem at all.

Prior to its invasion in 2001, Maidei Farm had no farm dwellings or workers' houses constructed by the former white commercial farmer since it was just an arable portion or sub-division of a very extensive large scale commercial farm out of which were officially carved four A1 farms and four A2 farms. Hence upon invasion in 2001, the farmers did not displace any workers, but rather proceeded to build their own homes and Blair toilets on land that was close to the main irrigation pipeline running from Gulf Dam through their fields on its way to the four A2 farms downstream across the valley to their south.

For a period of almost 7 years, the white commercial farmer as well as other government parastatals which came after him such as ARDA, SeedCo and Dairiboard continued farming on the A2 subdivisions of the bigger commercial farm. The parastatals and the white commercial farmer were thus sharing irrigation water pumped from Gulf Dam by an electrified pump with the A1 farmers. The white farmer and the parastatals would pay the electricity bills emanating from this electrified borehole. Further to that there was a prolific electrified borehole in the A1 fields near the main irrigation pipeline, around which most of the A1 women farmers and their families proceeded to build their homes. Apart from using the water from the prolific electrified borehole for drinking purposes and other domestic uses, some of the women A1 farmers with land immediately next to the borehole also used the borehole water to irrigate crops in their plots. Nevertheless the former white commercial

farmer supplied clean drinking water to his workers housed in brick houses located on other sub divisions of the former large scale commercial farm through electrified boreholes.

4.6.4 Drinking water, sanitation, food and housing at Saga Farm prior to the FTLRRP and soon after

Prior to 2001 and invasion under the FTLRRP, Saga Farm was owned by a Mr. Stodart. This former small game park cum tobacco farm was located in an area renowned for its tourist values since the Mwaanga Lodge and Game Park is located in the same area. This is a forested area with beautiful kopjes as well as abundant water sources namely a dam called Dombotaura. The dam's real name literally means 'The Rock that speaks.' Together with the other water source Makoronyera Dam on the Muvhunzi River, the two dams stand in stark contrast to seasonal water sources located within the neighbouring deforested and drier Musana Communal Lands. However, the soils at Saga Farm, being sandy loam soils, are not as fertile as those at Maidei Farm, approximately 5 – 10 km away, which explains the land use pattern it was being used for prior to FTLRRP.

Located approximately 50km from Harare along the Harare- Shamva road, in Ward 9 of Goromonzi Rural District Council, Saga A1 farm was created out of a subdivision of a larger farm holding which was a game park. Most of the new A1 farmers settled here in 2001 and came from surrounding and neighbouring areas and districts such as Musana, Goromonzi, Domboshawa, Murehwa Uzumba-Maramba-Pfungwe and Mutoko. Prior to the FTLRRP, commercial water supplied through electrified boreholes at Saga Farm was primarily used for winter irrigation of tobacco crops. There were also windmill driven boreholes meant to feed troughs watering game animals during the drier parts of the year, seeing that this was partly a game park. The former farmer engaged in very successful tobacco farming as evidenced by the several big barns he built on this farm for curing tobacco. In a trend similar to that which obtained in Upper Mazowe sub-Catchment, Mr. Stodart had built for his workers, two to four roomed houses whose sizes depended on the seniority of the occupant employee. Some of these houses had running water inside them

while some external water points for the other junior workers were within 200 metres of their houses. Once again this water was supplied through electrified boreholes, whose bills were solely met by Mr. Stodart. Located close to workers houses were both single and communal toilets, used in accordance with one's seniority. Situated just in front of the workers' houses was land reserved for their use as kitchen gardens to meet the dietary needs of each family. The workers or their spouses were free to use borehole water to irrigate these gardens with the electricity bills being paid by Mr. Stodart. The employer and employees were thus sharing clean drinking water from taps located indoors for some or within very short walking distance for others accessing water from outdoor water points.

The current village head, Obert Chimboza is a war veteran who was actively engaged in the land invasions.

Case Study 5: Mr Obert and Mrs. Beulah Chimboza

Mr. Obert Chimboza, a war veteran was born in neighbouring Chikwaka Communal Lands in Goromonzi District. He went to school up to Form 3 when he left for Zimbabwe's liberation struggle. At the time of land invasions at Saga Farm, he had been living with his first wife and 3 children in a medium density suburb in Harare since there was no land for him to farm in Chikwaka Communal Lands. He got involved in the land invasions and got the 6 hectares on which he was farming at Saga Farm. Having grown up in the locality, when it came to the appointment of village heads on the A1 farms; the local traditional leadership appointed him village head since they wanted their 'sons' born in the area to be local leaders on resettlement farms. Despite being a renowned war veteran ¹⁸⁶ he neither occupied the former white commercial farmer's house nor evicted any former farm worker from their house so as to accommodate him. Instead he built for himself a 3 roomed brick and iron roofed house, a round grass thatched kitchen hut and a Blair pit toilet at his homestead. Since his first wife chose to remain in Harare, he married a second wife with whom he had one child in 2011. Mr. Chimboza's second wife, Beulah is very young. She went to school up to Form 3 before dropping out due to lack of school fees.

¹⁸⁶ In January, 2013, an account of Mr. Chimboza's war record appeared in one of the local weekend news papers.

4.7 Conclusion

A very important fact I raise in this Chapter is that due to Zimbabwe's pluralist legal, institutional and normative frameworks which were more peaked before the land and water reform processes, women farm workers and women farmers (when still at places of origin) operated under different formal and informal institutional, legal and normative processes. Women farmers, the majority of who are Shona mostly lived in communal lands under the jurisdiction of traditional leaders and local customs while farm workers, mostly of foreign descent working on white owned large scale commercial farms lived outside the parameters of such customary law frameworks. On the other hand, prior to FTLRRP, farm workers at the four researched farms, the majority of who were women, had access to free clean drinking water supplied by their employer, which they also used to irrigate their kitchen gardens. The workers had decent accommodation with culturally acceptable sanitary facilities.

While in this chapter, I have focused on the historical backdrop to institutions and water governance in Mazowe Catchment, in the next chapter the discussion on water governance in Mazowe Catchment is advanced by articulating fully on the institutions which currently mediate and facilitate women's access to, use and control of water in the catchment. The discussion in the next chapter will also act as a backdrop to a discussion on how women as actors in different social contexts, navigate their way through these social and political networks which are experienced formally and informally at household, inter-household and catchment levels.

CHAPTER 5

ACTORS, NORMS AND INSTITUTIONS THAT MEDIATE WOMEN FARMERS' ACCESS TO WATER AND PARTICIPATION IN WATER GOVERNANCE IN MAZOWE CATCHMENT

5.0 Introduction

Good governance means creating well-functioning and accountable institutions – political, judicial and administrative – which citizens regard as legitimate, in which they participate in decisions that affect their daily lives and by which they are empowered.

Kofi Annan¹⁸⁷ (1997)

Flowing from the previous chapter where the historical background to water governance in Mazowe Catchment was discussed from a formal and informal perspective; the discussion continues in this chapter as water governance as currently experienced by women post FTLRRP and the 1990s water reform process is problematized. From the perspective of the above quotes by Kofi Annan and Joanna June Fatch, in this chapter, my focus is on interrogating the formal and informal institutional frameworks in place that mediate women farmers' access to, use and control of water as well as participation in its governance.

In this study, different institutions played a pivotal role on the ground in ensuring that women in their heterogeneity accessed water for drinking or domestic purposes; livelihood and productive purposes. My aim is to show how the various institutions rural women come into contact with at the local and national levels conceptualize adequateness vis-à-vis water that is essential to meet rural women's basic needs in order for them to enjoy an adequate standard of living. The analysis is done from a human rights perspective in a situation where Zimbabwe's 1990s water reform programme was IWRM informed and as a result gave birth to institutions such as ZINWA, Catchment and Sub-Catchment Councils whose main focus was on water as an economic good. I sought to explore the extent to which the said institutions included women as stakeholders in decision making processes as required under both a human rights based approach requiring equality and non-discrimination and IWRM principle requiring that women be involved in water management as the major water users.

¹⁸⁷ Former Secretary General of the United Nations at the International Conference on Governance for Sustainable Growth and Equity in 1997

Some academics working within the IWRM discourse have expressed their dissatisfaction with the non-inclusive nature of IWRM especially regarding key stakeholders (Manzungu and Machiridza, 2009, Moench et al., 1999, Malzbender et al., 2005). Hence Fatch (2009:8) has stated as follows;

IWRM-led water reforms in southern Africa have emphasised the creation of new institutions with little guidance offered regarding how the institutions can engage with stakeholders at different levels, especially at the local level. It is also significant that these new formalised institutions have tended to ignore informal traditional management arrangements (Manzungu and Machiridza, 2009 cf. Moench et al., 1999). Such introduced institutions tend to lack legitimacy at the local level, and consequently fail to facilitate widespread stakeholder participation (Malzbender et al., 2005). To this end it is doubtful whether existing international and national policy, legal and institutional frameworks can be said to have created space for decentralised and broader stakeholder participation in water management.

This analysis on institutions is very important considering that access to resources has been described by the Institute For Agricultural Development (IFAD) (2008:12) as “an outcome of the institutional environment, which either facilitates or hinders inclusion of poor people and restricts access to a privileged few (usually urban).” Winkler (2012:2) has also noted that, the lack of access is not about scarce resources as much as it is the neglect of human needs in the allocation of water. As such those invested with the responsibility of allocating water generally disregard the “human dimension of water – in particular the neglect of basic human needs in the allocation of water resources” (Winkler, supra).

In interrogating women’s access to water; this has to be viewed within the broader context of systemic and institutional biases which militate against women’s capacity to act. The patronizing perception has been to generally view women as a homogenous social class characterized by dependency and physical weakness necessitating patriarchal protection. As such a perception flowing from that believes that women can never be equal to men in their citizenship. Apart from analyzing the expected roles of the institutions themselves, I also explore the actors and norms that influence the operation of these institutions in their facilitation of access to, use and control of water for personal, domestic, sanitation and livelihood purposes for women in Mazowe Catchment.

This chapter is a layout of the institutions that focus on what they perceive as commercial water rights as well as those whose interests lie more in governing water for personal, domestic, food production and livelihood uses. This holistic approach is used in order to find out where the confusion lies in the different institutions failing to reach consensus on the type of water that falls under the human right to water framework. Of paramount importance in my analysis, are issues of governance and legal pluralism as reflected by a multiplicity of norms; institutions (both formal and informal) as well as actors at international, national and local levels which all impact on women farmers in their access to and use of water as well as participation in its governance. An investigation is done to find out whether there are commonalities and intersecting characteristics between the formal, state sanctioned approach demarcating water as being for commercial or primary purposes on one hand and the holistic way in which water is used by the different social groups of women on the ground for productive and primary purposes encompassing sanitation and livelihood needs. Further explored is the extent to which formal institutions' roles intersect with those representative of informal customary governance enforced through traditional leaders such as chiefs and village heads.

The approach adopted in this chapter is in line with the analytical framework used for this thesis, that is, the international to the national then to the local grassroots level. Hence in this chapter I conduct a three-part analysis whereby the first and second parts deal with formal institutions and actors at international and national levels that are involved in availing water for domestic, sanitation, productive, and livelihood purposes. The third part deals with informal and emerging institutions mediating access at the community or inter-household level. In conducting this three-pronged analysis, my aim is to compare and link the roles expected of formal legal institutions to the practices actually happening on the ground at the four A1 farms. I seek to show the existence of a disconnect between the

perspectives of predominantly women water users on the ground towards water, as opposed to those prevalent within the law and policy making domain dominated by men.

5.0.1 Research questions related to national and local government: The norms and practices

In this investigative study, an approach was used which progressively sought answers¹⁸⁸ to questions raised as a build up to arriving at a conclusion informed by evidence drawn from both primary and secondary sources. In line with this approach, questions as outlined below were asked aimed at establishing who determined whether or not women farmers at the farm level accessed water in all its multiplicity and how this arrangement was effected;

- How is the water supply and infrastructure shared at farm level?
- Have any new institutions, principles, norms and practices which determine how water is shared emerged on the four A1 farms after FTLRRP?
- How have these institutions, principles, norms and practices which determine how water is shared developed?
- Who has developed them?
- Do women farmers on the A1 farms face difficulties in accessing water from water sources on these farms or alternatively are any women farmers excluded from accessing water?
- If so, who determines who is included or who is excluded from freely accessing water?
- How and why is the exclusion perpetuated?

In the next section the term ‘institution’ is defined in accordance with how it was conceptualized during research.

5.1 Institution: A legal and pluralist conceptualization

In conceptualizing the term ‘institution’ in this thesis I adopt the legal approach taken by Rogers and Hall (2003:7) who interpret “institutions” as to “include both the formal

¹⁸⁸ That are informed by evidence drawn from both primary and secondary sources,

(codified and legally adopted) and the informal (traditionally, locally agreed and non-codified)” institutions. The term ‘institution’ is commonly used in the legal field when referring to organizations while the term, ‘structure’ is more commonly used within the social sciences for the same entity. In the legal field the term ‘norm’ is used to refer to a law, rule or practice while within the social sciences the term institution is used to describe such (see Anthony Giddens, 1984:24,31 on the social science definitions). Hence, the manner in which institutions and norms are conceptualized in this thesis is from a legal perspective. Viewed from a legal pluralist perspective, the term ‘institution’ may refer to a formal or informal entity or organization.

5.2 The role of international donor organizations in respecting, protecting and fulfilling the rights to water and sanitation

At the international level, institutions that are seized with an obligation to respect, protect and fulfil the right to water in countries they operate in are, to mention just a few, donor states parties and their international organizations; inter-governmental organizations such as the United Nations and its various agencies as well as international and regional development banks such as the World Bank, African Development Bank¹⁸⁹ as well as multilateral organizations and other international NGOs. In terms of the UN Charter these institutions are generally viewed as international stakeholders who have an obligation under human rights law to refrain from interfering in the ability of States to fulfil human rights. In fulfilling their national obligations; it is the obligation of states parties that cannot fulfil their responsibilities vis-à-vis the right to water and sanitation to seek international assistance and cooperation from international stakeholders as referred to above.

In paragraphs 30 to 36 of GC15/02 the UNCESCR comprehensively outlines the international obligations of member states on the right to water. Paragraph 30 requires States parties to be involved in international cooperation and assistance programmes as well

¹⁸⁹ These may provide assistance in the form of expertise, funds for infrastructural development and research projects.

as taking joint and separate action to fully realize the right to water. This is achieved when economically developed states facilitate the realization of the right to water in poorer developing States through for example, provision of water resources, financial and technical assistance,” as well as “providing the necessary aid when required...to refugees and displaced persons (paragraph 34).

Clearly supporting the above position, the United Nations General Assembly through Resolution 64/292 on the international human right to clean water and sanitation called upon States and international organisations “...to provide financial resources, help capacity-building and technology transfer (in) countries, (particularly) developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all. Hence in paragraph 36 of GC15/02, the UNCESCR, urges states parties to “ensure that their actions as members of international organizations take due account of the right to water” such that those who “are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.”¹⁹⁰

As a member of the Zimbabwe country study team which interviewed the then Chief of the WASH programme within UNICEF as well as two officials¹⁹¹ from the British Embassy’s Department for International Development (DFID) in Harare on 01 August, 2011 and 13 March, 2013 respectively; we sought to establish the extent of international organizations’ involvement in Zimbabwe’s water governance structures. Apart from questions on international organizations’ involvement in urban water governance, I also asked them about the existence of any internationally driven plan to assist women and children on A1

¹⁹⁰ In a country study conducted in Zimbabwe, the researchers discovered that the World Bank was coordinating donor funds from 8 donor states through an entity called the Zimbabwe Analytic Multi Donor Trust Fund (ZA-MDTF) (Hellum, Ikdaahl and Kameri-Mbote, 2015: 331-2).

¹⁹¹ The Infrastructure Advisor and the Social Development Advisor

resettlement farms who had no access to clean drinking water and adequate sanitary facilities. From the UNICEF official's point of view, his organization did not have its own Development Assistance Fund¹⁹² but was simply managing donor funds on behalf of international donor countries and organizations. That being the case, the international donor entities had the prerogative to decide on the recipients for the donated funds. As things currently stood, resettlement areas were excluded from the list of recipients of such donor funds.

On the other hand the DFID officials were of the view that the lack of DFID's active involvement in resettlement areas could be attributed to the highly political nature of Zimbabwe's land redistribution exercise as well as the fact that, unlike those in communal lands, those on resettlement farms were viewed, even by the Zimbabwean state, as having the requisite financial resources to fund their own water projects. There was also no record of the State having sought international assistance in meeting its obligation to respect protect and fulfil the right to water in resettlement areas. Needless to say, no one seemed to consider the plight of internally displaced women farm workers and their children who happen to be one of the most vulnerable groups in Zimbabwe, whose needs in respect of the right to water needed to be prioritized.

In interviews with women farmers in Mazowe Catchment, questions were posed to them regarding the existence of any international donor organizations or UN agencies that were operating on the A1 farms that were involved in infrastructural development assistance in the water sector. Focus was on assistance in the area of clean drinking water supplies and basic sanitation since productive or commercial water supplies fell outside the ambit of the right to water.¹⁹³ Apart from an inconspicuous United States based NGO called Koaba

¹⁹² That is Multi-Donor Trust Funds (MDTF) similar to the ZA-MDTF,

¹⁹³ My expectations were that there would be state institutions actively involved in commercial water infrastructure as part of the IWRM framework adopted during the 1990s water reform process while

which had drilled a borehole at a farm school on Maidei Farm in fulfilment of international obligations on children's right to water, education and health; I could not locate any other international donor presence anywhere else on the researched farms. This was in stark contrast to what was happening in neighbouring communal lands such as Chiweshe and Domboshawa where the presence of international donors in the water sector was quite evident.

The general non-inclusion of resettlement farms from international donor assistance inclusive of UNICEF WASH programmes was apparent even to the women themselves on the A1 resettlement farms. A farm health worker who is also farming in Upper Mazowe sub-catchment and covers Creek and Kara farms in her work was interviewed on 10 May 2012. She commented in part as follows;¹⁹⁴

Tell me, why are we being marginalized? I know very well that those we left back in the communal lands are still having boreholes drilled for them by international donors, are given free pills of various kinds, get free mosquito nets upon production of their children's health cards and we on the A1 farms get nothing at all!

While conducting preliminary interviews in Nyagui sub-catchment in the very early days of this study; a farmer who is also a war veteran was part of a group interview held at Saga Farm on 25 March, 2011. He had this to say;

I often think those relatives of ours who remained in the communal lands, are far better off than us. At least most have communal boreholes, schools and clinics within walking distance, most of which facilities have been built through international donor assistance.

Subsequent to the interview with the UNICEF official on 01 August 2011 but before the interview with DFID officials on 13 March, 2013; an interview was also held at Maidei Farm in Nyagui sub-catchment on 17 December, 2011 with the local woman councillor. Expressing her disappointment with the lack of international donor assistance on resettlement farms vis-à-vis boreholes supplying clean drinking water, she commented;

international donor organizations would be active in providing assistance for improving domestic water supplies essential for the realization of the human right to water in line with their international obligations.

¹⁹⁴ In an interview held on 10 May 2012

The whole problem revolves around the fact that NGOs do not want to drill boreholes in resettlement areas. It's all political. Look at the Pote scenario.¹⁹⁵ One NGO (it should be from the Lutheran World Service) drilled 16 boreholes in the ward such that now each homestead is approximately 100 metres from the nearest borehole. It's a question of too much in one area and none in the others... People in the communal areas are much better than us in terms of water infrastructure and general services. We have no water to successfully farm in winter, let alone clean water for drinking purposes.

The empirical findings made on the resettlement farms in Mazowe Catchment were vindicated by the fact that in July, 2012, DFID launched a US\$50 million Rural Water, Sanitation and Hygiene (WASH) Programme, managed and coordinated by UNICEF that was aimed at communal lands in the most under-served districts of Zimbabwe. The programme implemented in 30 districts in 5 provinces in Zimbabwe over five years was expected to result in close to 2.5 million people having year-round access to safe water supplies and sanitation facilities. This programme implemented through the Zimbabwean Ministry of Education was meant to be most active in rural schools “focusing on drilling new boreholes and rehabilitating broken down boreholes in 33 rural districts.” According to WASH reports, “the objective (was) to reduce by 25% the proportion of people without access to safe water and sanitation through rehabilitating 7,300 dysfunctional boreholes, drill 1,500 boreholes in 10,000 communities, and construct 15,000 latrines in 1,500 rural schools” (DFID, 2012). A1 farms were excluded from this national programme.

5.3 National institutions mediating women's access to and use of water for personal, domestic, productive and livelihood purposes at national, district and local levels

The institutions dealing with water in Zimbabwe are such that even though they may be national institutions, they will mediate water supply and management at all levels. In that case the levels of engagement are of more significance rather than whether the institution is national or local. Since most of the institutions are national with a mandate to facilitate access to, use and control of water at district and local level, their role is interrogated vis-à-vis their obligations towards the different women on A1 farms.

¹⁹⁵ Pote is a very small ward in rural Domboshawa district where there had been a proliferation of NGOs drilling boreholes.

In this section the term productive water is preferred rather than commercial water as the magnitude of production realized from the farming activities being done on A1 farms cannot really be considered as commercial.¹⁹⁶ With regard to productive water, the main actors include the Ministry of Environment, Water and Climate (as currently named) which is responsible for water resource management policy and development, a function it delegates and implements through its parastatal arm, ZINWA and other national state organs such as catchment and sub-catchment councils.

Examined is the extent to which these institutions are facilitating or constraining women's access to, use and control of water on A1 resettlement farms for personal, domestic, productive and livelihood purposes. How each institution perceives its role in that regard is interrogated as well as how it interprets water as that reserved for either primary or commercial purposes, in line with Zimbabwe's Water Act Chapter 20:24. Alternatively, does the way in which each of the institutions interpret the different uses that rural women put water to, resonate with how women perceive these different uses as holistic and serving one main purpose- the attainment of an adequate standard of living for them and their families that is dignified?

5.4 National Level: The National Action Committee on Water Supply and Sanitation (NAC)

The NAC was re-launched in October 2010 during the tenure of Zimbabwe's Government of National Unity (GoZ, 2012:7). At least nine government Ministries are currently involved in water governance in Zimbabwe through NAC.¹⁹⁷ Hence in an interview undertaken by the Zimbabwe Country Research Team (referred to earlier) with the then Permanent

¹⁹⁶ This is so considering that each settler was allocated 6 hectares and so can only effectively farm on land not exceeding 5 hectares. This has to be contrasted with the maximum size of medium scale A2 commercial farms in ecological region IIA and IIB measuring between 200 and 250 hectares.

¹⁹⁷ These are the Ministry of Water, Ministry of Agriculture, Ministry of Health, Ministry of Local Government, Ministry of Mines, Ministry of Women, Gender and Community Development, Ministry of Transport, Ministry of Education and the Ministry of Finance.

Secretary in the Ministry of Water at Charter House in Harare on 26 October, 2011, he stated as follows;

Being such a strategic resource, you will not find a ministry not involved in water. Zimbabwe is a large country and water is involved in almost everything, so no single ministry can deliver that single-handedly. To deliver water the government operates through a number of institutions – for example city councils and rural district councils. Zimbabwe National Water Authority (ZINWA) is also charged with providing water – it steps in where other institutions fail...

Initially NAC's mandate was confined to rural areas only but with the 2008 cholera outbreaks in urban areas such as Harare, urban water resources management including the rehabilitation of water and sanitation facilities in urban areas, soon became its key priority.

As a result coverage of rural areas by NAC has remained very low. Thus there is need for NAC to revert to the status quo ante 2000 as marked by the reprioritization as well as the refocusing of most of its activities to rural areas because that is where one finds most of the poor and marginalized members of Zimbabwean society. Since NAC at the time of research was focusing on urban water supply and sanitation, none of its agents was encountered during the research and so its role is not discussed in detail in this Chapter. The only striking thing about NAC's move from rural water supply to urban water supply is that; in direct conflict with the requirements of international human rights law requiring focus on the vulnerable and marginalized members of society such as rural women¹⁹⁸ they have moved from focusing on mostly poor, vulnerable and marginalized groups of women water users in rural areas to urban areas populated by mostly more advantaged people who can afford to pay for water supply and infrastructure.

Having shown that the NAC has not been actively involved in water governance in rural areas since the cholera outbreak in Harare in 2008; I will proceed to look at those institutions directly tasked with supplying both productive and domestic water on the researched A1 resettlement farms. Based on evidence gathered in this study, my analysis is

¹⁹⁸ See Article 14 of CEDAW on rural women's right to water as a vulnerable group which often experiences marginalization.

focused on whether the said institutions are fulfilling their mandate to provide water for personal, domestic, food production and livelihood purposes for rural women on A1 farms.

5.5 Institutions working under the Ministry of Environment, Water and Climate at national level

The Minister of Environment, Water and Climate has to fulfil the following duties in terms of section of the Water Act, Chapter 20:24;

1. *To ensure the availability of water to all citizens for primary purposes and to meet the needs of aquatic and associated ecosystems particularly when there are competing demands for water; (section 6(1) (b)).*
2. *To ensure the equitable and efficient allocation of the available water resources in the national interest for the development of the rural, urban, industrial, mining and agricultural sectors; (section 6(1) (c)).*
3. *To ensure that water resources are managed, utilized and conserved in a manner consistent with national environmental approaches provided for in any enactment; (section 6(2) (b)).*
4. *To encourage participation by consumers in all the sectors referred to in paragraph (c) of subsection (1) and catchment councils in the development, exploitation and distribution of water resources; (section 6(2) (c)).*
5. *To secure the provision of affordable water to consumers in underprivileged communities; (section 6(2) (d))*

There are various water supply and management institutions working under the Minister of Environment, Water and Climate whose different roles I explore and discuss in this chapter.

5.5.1 The Zimbabwe National Water Authority (ZINWA)

Established at the advent of Zimbabwe's water reform process in the mid-1990s, the legal basis for ZINWA's existence is section 3 of the ZINWA Act Chapter 20:25. It is designated a body corporate, commonly referred to as a parastatal agency responsible for water planning and bulk supply. It also plays advisory roles and technical assistance to the Minister of Water, Rural District Councils, and Catchment Councils. In keeping with the ethos of decentralization and devolution of power, at its inception, ZINWA was meant to spearhead the management of water resources on a catchment basis while at the same time involving all stakeholders in each catchment (see sub-section 5.4.4 of this chapter). This also entailed devolving responsibility for river systems management and the enforcement of laws and regulations to the local level.

Section 39 of the ZINWA Act established a Water Fund, whose revenue was to be sourced from national budgetary allocations; levies charged on water permit holders; donations, loans or other financial assistance from development banks or international donor states and agencies. ZINWA was designated as the administrator of this Fund on behalf of the Minister (section 42). The cessation of active international donor participation in the water reform process at the time of FTLRP in 2000 also led to a cessation in loans, donations and other financial assistance to this Water Fund. The donations and low-interest loans from international funders having generated a large chunk of incoming funds, this explains in part why ZINWA as an institution has been economically hampered in its operations.

ZINWA's wide ranging functions which are subject to the same Act, the Water Act and any other relevant enactments are outlined in section 5(1) of the ZINWA Act. Section 5 (1) encumbers ZINWA with the function to (a) advise the Minister on the formulation of national policies and standards on water quality and pollution control and environmental protection; dam safety and borehole drilling as well as water pricing. ZINWA is also mandated to;

(c) exploit, conserve and manage the water resources of Zimbabwe with the object of— (i) securing equitable accessibility and efficient allocation, distribution, use and development; and (ii) providing, in both the short and the long term, adequate water on a cost effective basis” as well as “(d) to promote an equitable, efficient and sustainable allocation and distribution of water resources...

The key question is whether ZINWA has been fulfilling its role of supplying productive water to women farmers on A1 farms at affordable prices?

From the onset, ZINWA was seized with executing its roles in conjunction with Catchment Councils, especially regarding the “managing (of) the water permit system, the pricing of water, operating and maintaining existing infrastructure, and executing development projects” (Zimbabwe Report on Water Resource Management and Supply, (2010: 1)). Thus under section 5(1) (h) of the ZINWA Act, the Authority is expected to;

(h) operate and maintain any water works owned or managed by the Authority and to sell any water there from, to dispose of waste water, to construct boreholes and to provide design and construction services...

Apart from selling bulk water to farmers, industries, local authorities and mines, the reality on the ground however, is that ZINWA has not been actively involved in the construction of boreholes in A1 resettlement areas which may be used to provide both productive and potable water that is affordable. Under section 5(1) paragraphs (f) and (g) of the ZINWA Act, ZINWA is mandated to;

(f) ...ensure that catchment councils discharge their functions in accordance with the Water Act [Chapter 20:24]" as well as "(g) ...encourage and assist catchment councils to plan and co-ordinate the development and management of water resources in areas under their jurisdiction...

In that respect, ZINWA through the Catchment and sub-Catchment Councils has created new posts in the name of sub-catchment and catchment coordinators. While the Catchment Coordinator is employed by ZINWA and has an office within each relevant ZINWA Catchment Office,¹⁹⁹ sub-Catchment coordinators are employed by Catchment councils and are based at sub-catchment council level.²⁰⁰ Both help in the coordination of catchment and sub-catchment councils' business in each area as well as monitor water use and coordinate council meetings.

5.5.2 Catchment and Sub-Catchment Councils

Catchment and sub-catchment councils are institutions which were created through sections 20 and 24 of the 1998 Water Act Chapter 20:24 during Zimbabwe's water reform process. As such, the two institutions fall under the administration of ZINWA. The functions of a sub-catchment council which are purely administrative are set out in section 24 of the Water Act as read with section 11 of SI 47 of 2000. The relevant section reads;

11 (1) ...a sub-catchment council shall— (a) regulate and supervise the exercise of permits for the use of water including ground water within the area for which it was established; (b) monitor water flows and water use in accordance with allocations made under permits; ... (e) promote catchment protection... (g) report as required to the catchment council on the exercise of water permits within its area; (h) assist in the collection of data and participate in planning; (i) collect sub-catchment rates, fees and levies in accordance with section twelve; (j) perform any other duties the catchment council may assign to it.

¹⁹⁹ The Mazowe Catchment Coordinator had an office at the ZINWA Mazowe Catchment Offices in Harare.

²⁰⁰ In Nyagui sub-Catchment, the sub-catchment coordinator was based at Musiyiwa Business Centre.

The key questions asked are on the ambit of the official functions of catchment and sub-catchment councils in facilitating the supply of affordable productive water to women farmers on A1 resettlement farms and the extent to which the said institutions are playing their role in protecting, respecting and fulfilling women's right to water for food and livelihood? According to the current Chairperson of Upper Mazowe sub-Catchment Council as well as a former Mazowe Catchment Manager employed by ZINWA, the current state of sub-Catchment Councils is one marked by poor financial status even at catchment level as well as general apathy on the part of irrigation committee members who do not attend meetings and cite lack of transport money as a reason for not attending meetings.²⁰¹

This past history of well supported sub-Catchment Council business both morally and economically is vindicated in Sithole (B)'s (2001:5, 3, 25) study whereby after attending a Nyagui sub-Catchment Council meeting on 06 October, 1999, she discovered that despite the white commercial farmers' dominance, traditional leaders were also well represented and attended the meeting until close of business, unlike the former who left during tea time. The Catchment Councils as of now are also not meeting as frequently as they would require to, due to their poor financial status. It is against this scenario that they are expected to facilitate rural women's access to productive water that is affordable.

In terms of section 28 of the Water Act, a catchment manager employed by ZINWA sees to the "day to day management and administration of the affairs of a catchment council". Section 28(3) of the Water Act authorizes a catchment council to "delegate to the catchment manager any of its functions (as) imposed upon it in terms of section 21 or 22." The result has been that ZINWA has literally taken over the role of catchment and sub-catchment

²⁰¹This state of events was narrated in two separate interviews held with the ZINWA Manyame Catchment Manager (who, up to September, 2011 had been the Mazowe Catchment Manager and had worked within Mazowe Catchment since May, 2003) as well as with the Chairperson of Upper Mazowe sub-Catchment Council and Acting Chairperson of Mazowe Catchment Council, on 27 January, 2012 and 26 March, 2013 respectively.

councils who should deal with issues of water permits as well as the pricing of commercial water on the A1 and A2 resettlement farms. I say this because river inspectors employed by ZINWA²⁰² are the ones who directly engage with women farmers on A1 resettlement farms as they do on-spot assessment of whether water used can be classified as commercial or primary water. The problem has been that these billing officers have generally viewed all productive use of water in resettlement areas as commercial regardless of the water consumption scale since the A1 resettlement farms are located within former large scale commercial farming areas.

It is my view that since most of the catchment and sub-catchment councillors are elected stakeholders within the water sector as A1 or A2 farmers and other water users from different industries as well as special interest groups,²⁰³ they are better placed than ZINWA officials to understand women's holistic uses of water that include livelihood uses under primary water. ZINWA officials such as river inspectors and billing officers are just appointed employees focusing on water as an economic good. They are therefore out to make as much profit as possible from the sale of water for their employer, ZINWA, which profits will also be reflected in their salaries.

It is not surprising therefore that ZINWA has created the posts of catchment and sub-catchment coordinators to add to the manpower monitoring water use on the ground so as to classify it as commercial or primary. Some women A1 farmers using thick hosepipes and a small diesel engine to irrigate a half acre of leafy vegetables, carrots and cucumbers with water from Muvhunzi River at Saga Farm have already had a conflict with the Nyagui sub-catchment coordinator based at a nearby growth centre. This is because he has sought to classify this water use as commercial and has ordered the women farmers at Saga Farm to go to the ZINWA Mazowe Catchment Office in Harare to pay for water permits.

²⁰² When they are not in the field, these river inspectors have offices in respective ZINWA Catchment offices

²⁰³ Such as those representing women's interests

In an interview held with the Catchment Coordinator at the ZINWA Mazowe Catchment Office on 08 July, 2014, he indicated that the Sub-Catchment Coordinators within Mazowe Catchment were employed by the Catchment Council in terms of section 13(1) of SI 33/2000 to the Water Act Chapter 20:24 which states;

For the better exercise of its functions in terms of section 21 of the Act, a catchment council may— (a) employ, upon such terms and conditions as the catchment council may think fit, such consultancy services in such fields as it considers necessary to facilitate the effective discharge of its functions; (paragraph (a) substituted by SI 242/00 with effect from the 15th September, 2000)

5.5.3 Interrogating ZINWA's interpretation of its role in the provision of water and its conceptualization of what is water for primary purposes

On A1 resettlement farms I researched on, there is general classification of all water used to irrigate garden plots as commercial by ZINWA officials. There is no water which is classified as that reserved for livelihoods which would require that its cost be affordable. Hence from free primary water or water for domestic uses in and around the homestead, there is a great jump to costly water that is classified as commercial. This has created problems for women A1 farmers who use water for both domestic and livelihoods purposes such that there is no sharp division between these various water uses.

Partly to blame for the inconsistent classification of water use by ZINWA officials is the fact that, there is no longer any reliable water measuring equipment in the ZINWA managed dams and rivers. From the interviews conducted on the four A1 farms, the women farmers indicated how in the absence of reliable water use measuring equipment, ZINWA billing officers simply estimated a farmer's water use.²⁰⁴ They did this by calculating the average water needs of the crop under irrigation as well as the size of the land being irrigated. The ZINWA officials have resorted to these inaccurate water consumption measuring methods due to the fact that all the water measuring devices in place prior to the FTLRRP in 2000

²⁰⁴ This information was obtained during interviews with (i) the woman village head at Kara Farm on 13/10/2011; (ii) 5 women farmers in a group interview at Creek Farm on 29 January, 2011 and lastly (iii) on 27 January, 2011 with 3 women farmers at Saga Farm who in the past had used small diesel engines and big hosepipes to irrigate small plots next to Muvhunzi River. Maidei Farm was an exception since A1 and A2 farmers contributed to the bills generated by a bulk water meter at Gulf Dam recording all water used by the farmers in irrigating individual plots regardless of their size.

and the wholesale displacement of white commercial farmers have since broken down and have not been repaired. Further, any water use measuring device which could have been in any dam was for a single large scale commercial farmer before the farm's subsequent division into smaller 6 hectare A1 plots. For accurate measurement of water use by each A1 farmer, each should have installed at their point of water abstraction, a water consumption gauging machine. Considering that most A1 farmers engage in low income generating small scale farming they generally lack capacity as well as technical expertise to install such sophisticated water use measuring equipment.

The above scenario occurs against a situation where an ambiguity exists within the statutory provisions stipulating the responsible authority tasked with installing and keeping water use measuring equipment in good working order. According to two of a sub-catchment council's functions in section 11(1) (b) and (c) of SI 47/2000 as read with section 24 of the Water Act; the sub-catchment council is expected to

(b) monitor water flows and water use in accordance with allocations made under permits..." as well as to "(c) ensure that such water measuring devices as may be required to enable the sub-catchment council to discharge its functions under paragraph (b) are in place and operating...

My reading of section 11(1) (c) of SI 47/2000 clearly shows that the burden is on ZINWA and the relevant sub-catchment council to ensure that water flow and water use measuring devices are in place and functional. An ambiguity is created however when reading section 24(8) of the Water Act which provides that;

In the performance of its functions, a sub-catchment council may require any holder of a permit within the area for which it was established to take such steps as it may specify to maintain in efficient repair any water works connected with his permit.

The requirement that a water user install the water measuring equipment is further reiterated under section 43 of the Water Act. However, the use of the word "may" makes the requirement on the part of the "permit holder" not preemptory. Section 43 states that;

(1) A catchment council may require the holder of a permit issued in terms of this Part— (a) to provide and install a meter or other measuring device for measuring and recording the amount of water abstracted; and (b) to submit to the catchment council in the prescribed form at such intervals as the catchment council may require, returns indicating

the amount of water abstracted. (2) Any officer or other person authorized by a catchment council may inspect any meter or other measuring device, take readings there from and seal such device in order to prevent interference with its working.

Going back to section 24, subsections (9) and (10) go further to state that;

(9) Any holder of a permit who is aggrieved by a requirement of a sub-catchment council in terms of subsection (8) may, within thirty days of the requirement, appeal to the Administrative Court in terms of Part X. (10) If any person fails to comply with a requirement in terms of (8) which has not been set aside in terms of subsection (9), the sub-catchment council may itself take the steps concerned and recover the cost of doing so from such person in any court of competent jurisdiction.

In my own interpretation section 24(10) shifts the burden back to the sub-catchment council which in the case of A1 farms should install the requisite water use measuring devices in the ZINWA dams and recover the cost from the A1 farmers in staggered instalments considering the economic status of the A1 farmers. Further, since the human right to water principles require states parties or their agencies to focus on and pay special attention to the needs of the poor and marginalized members in society; ZINWA and sub-catchment councils should fund the installation of the water measuring devices and recover costs from the large consumers of water. This would result in affordable water for livelihoods for rural women A1 farmers.

The use of water measuring devices improves ZINWA's transparency in that women A1 farmers would be billed for actual consumption rather than estimates classifying water use on 1 hectare as commercial. It seems ZINWA is not in any hurry to repair or install new water measuring devices since on the face of it they stand to gain from this estimated billing system. Continuously shifting the onus to install water use measuring devices on the water users, ZINWA, in a website report dated 19 August, 2014 referred to earlier, posits;

Most farmers have been asking how ZINWA comes up with raw water bills for water from dams or rivers. The same Act requires all irrigating farmers to have meters or other measuring devices at their points of abstraction for both billing and statistical reasons. Once abstraction is measured, farmers can have proper water budgets and can also understand their bills...

In my view the above interpretation by ZINWA of section 11(1)(c) of SI 47/2000 is a gender insensitive interpretation which views all farmers (A1 and A2) as homogeneous and possessing similar financial capacity and the technical expertise to have such water use

measuring gadgets installed. My next question is on what amounts to maximum primary water use but prior to interrogating that issue, I will discuss the manner in which ZINWA officials estimate water use on A1 farms. Why I raise this issue is because it has serious ramifications on the extent to which women A1 farmers can access and use water for livelihoods at an affordable cost.

In an interview with a ZINWA River Inspector held at ZINWA offices in Harare on 08 July, 2014, a question was posed to him concerning how ZINWA water billing officials estimated A1 farmers water consumption in the absence of operational water measuring equipment, to which he responded as follows;

In assessing whether water used in irrigating any piece of land should be classified as commercial water use or not; the size of the land under irrigation should be one hectare and above. However we have since developed our own way of doing things in that we use the approach that water used to irrigate land measuring up to a hectare in a commercial area should be billed as commercial water as a way of encouraging resettlement farmers to irrigate larger pieces of land which are more than a hectare so as to benefit from the rising block tariff regime. So if the land under irrigation is less than a hectare, we round it off to the nearest hectare. We are allowed to use our own discretion in making these determinations. Another factor we look at to determine whether water is being used commercially is the type of irrigation, whether it is hand or manual using cans and buckets as opposed to mechanized irrigation through pipes immersed in dams and rivers or diesel/petrol powered pumps which pump water to the field or garden plot.
(See also Derman et al, 2007:258)

The river inspector went on to state that;

The water bill is also estimated after looking at the water needs of the crop under irrigation that is the number of times it needs to be irrigated and the volumes of water needed, as well as the size of the land under irrigation. Hence winter tobacco needs 4 mega litres²⁰⁵ of water until harvest; maize and any horticultural product needs 6 mega litres of water per hectare until ripe; barley and wheat which require the most water use 7, 5 mega litres per hectare.

During the same interview, the river inspector indicated the cost of irrigating agricultural crops where water used for other commercial or industrial use costs US\$9.45 per mega litre. While subsistence farmers irrigating in communal lands are charged a flat rate of US\$4.50 per mega litre, A1 small scale farmers are charged US\$5.00 per mega litre and A2 commercial farmers US\$6.82 per mega litre. While ZINWA claims that at an average commercial rate of US\$9.45 per mega litre, the cost of its raw bulk water is the cheapest in

²⁰⁵ A mega litre is equivalent to 1 000 000 litres or 1000 cubic metres of water.

the region²⁰⁶ I dispute the assertion based on my research findings. In a group interview with five women farmers held at Creek Farm on 29 January 2011, the women told a different story. Mrs Mudzimu, the village head's wife had this to say;

We have to share these pipes and sprinklers. ZINWA charges us for irrigation water. It depends on the number of sprinklers one is using. We share the water bills among those who are involved in winter farming...Regarding the A1 farmers at Kara Farm who farm under contract with Mr. Jack Sellers of Harvest and Kara flower farms, they farmed 30 hectares of wheat in winter last season and only got US\$400 per person as profit. Most of the money was deducted by the contractor for tillage, farming inputs and machinery repairs. As A1 farmers we pay more to ZINWA for irrigation water than white commercial farmers. So Mr. Sellers pays less to ZINWA but when making deductions for his input costs, he inflates the irrigation costs to the level charged to A1 farmers. So you find him deducting total costs ranging between US\$3 000 and US\$6 000. Even after harvest, the Kara farmers have nothing to show for it.

When the ZINWA River inspector who was present at this initial group interview with women farmers at Creek Farm was asked to comment so as to shed more light on discrepancies in the cost of water, he responded thus;

To a certain extent the women have a point because Mr. Jack Sellers had shares in several dams which he helped build such as Jumbo, Mudzi and William Leuw. After the changes in water rights brought about by the 1990s water reform, ZINWA, still classified his water permit as a dam shareholder by virtue of the usufruct he held over the dam's construction. ZINWA would thereafter charge water he used at US\$1 per mega litre. The new farmers as non-shareholders however were charged US\$17-10 per mega-litre.²⁰⁷ One would need 6 to 7 mega-litres to water a hectare. Since the farmers at Kara Farm had farmed 30 hectares of wheat, this would amount to 210 mega-litres costing more than US\$3 000. If as they say, Mr. Sellers contracted them, ZINWA would be charge him around US\$210 for the 210 mega litres used on the same hectarage. Consequently, irrigation water is much cheaper if new A1 farmers farm under contract with a former commercial farmer with shares in the dams. The only problem arises if the commercial farmer decides to profiteer from the big difference in the costing of water.

While productive or commercial water falls outside the human right to water framework, the above situation becomes relevant only in so far as ZINWA officials are failing to appreciate the need to classify water for livelihood as falling under primary water which is free in rural areas. When one talks of 30 hectares of wheat under winter irrigation, as is the situation described above; that clearly is commercial use of water. Nevertheless, in this thesis I am arguing for water used by women to irrigate garden plots ranging from half an acre to 2

²⁰⁶ See a ZINWA report entitled 'Irrigating farmers should budget, pay for water,' dated August 19, 2014 and posted on its website) I dispute the assertion based on my research findings. It has to be noted however that these charges given as lowest in the region were recently reduced.

²⁰⁷ With the passage of time, this amount has been reduced to US\$7, 60 per mega litre made up of US\$5, 60 water charge, US\$1 for water levy and US\$1 which goes to the Sub-Catchment Council. So Jack Sellers only pays the US\$1 water levy but is not charged for the water and Sub-Catchment Council fee.

acres on A1 resettlement farms to be classified under primary water which is free. This would then cater for water for livelihood. Thereafter irrigation on land exceeding a hectare (2.47 acres) up to 5 hectares would attract a minimal cost which is not commercial. I suggest the use of the term, “productive water” for any water used to irrigate land more than a hectare but less than 5 hectares, considering that it’s only a few A1 farmers who are irrigating land that exceeds 5 hectares. I also say this in view of the fact that A1 farmers in Mazowe Catchment generally got plots with an average maximum size of 6 hectares. I would then propose that irrigation on land that exceeds 5 hectares should then be regarded as commercial and this would mostly be the case on A2 farms and other commercial agricultural projects.

Considering that no significant developments have been done in the area of new dam construction and general waterworks infrastructural development projects on A1 resettlement farms at the instigation of ZINWA, I view the current commercial rates of irrigation water exorbitant. In essence I would say the farmers are literally buying raw unimproved water from ZINWA since there haven’t been any new water works installations, repair or maintenance; or any water related improvements in accordance with one of its statutory functions. In interviews done with women A1 farmers at Kara farm in upper Mazowe Catchment, they indicated that, apart from factoring in expensive farming inputs such as seed and fertilizers, during the dry season they are forced to hire irrigation pipes from a neighbouring commercial farmer at US\$150.00 for three months which cost has to be added to that of the raw water.

I will proceed to interrogate the issue of the maximum volume of water regarded as that reserved for primary purposes. As indicated earlier in Chapter 3 of this thesis, SI 206 of 2001 stipulates the maximum cut off point for primary water as 5 000 cubic metres as shown in Appendix 7. ZINWA confirms this position through its website report dated 20

August, 2014 entitled, ‘Understanding the water permit and agreement systems in Zimbabwe,’ where it is stated, “any abstraction or storage of water for primary purposes exceeding 5000 cubic metres²⁰⁸ also requires a water permit.” It is however not clear for what duration one is entitled to the 5 mega litres of primary water although ZINWA officials on the ground state that it is for a season i.e. 6 months.

Considering that most of the women A1 farmers engaged in market gardening for livelihoods purposes have plots hived off the main family fields ranging from 1 acre to 2 acres,²⁰⁹ the water used to irrigate such plots for a season added to that for other primary purposes in total does not exceed the 5 mega litre allowance for water for primary purposes. It thus becomes important that women farmers’ water use be actually measured. It is usually male A1 farmers who focus on irrigating cash crops such as wheat, barley or tobacco on plots which may go up to 3 hectares and thus use more water.

While ZINWA in practice has confined itself to selling bulk commercial water to big industries and local authorities and refrains from directly dealing with potable water supplies on farms, the ZINWA Act provides otherwise as the Authority is also tasked with assisting rural district councils in the supply of clean potable water and waste water management. Section 5(1) (e) of the ZINWA Act outlines one of ZINWA’s most pertinent but ignored functions, which is;

to encourage and assist local authorities in the discharge of their functions under the Rural District Councils Act [Chapter 29:13] ...with regard to the development and management of water resources in areas under their jurisdiction and in particular, the provision of potable water and the disposal of waste water...

While ZINWA river inspectors check the quality of river and dam water for any pollution, it is not clear whether any reports are made to Rural Districts Councils on the issue for purposes of follow ups. Hence a River Inspector in Mazowe Catchment had this to say;

²⁰⁸ This is equivalent to 5000 000 litres or 5 mega litres

²⁰⁹ It is to be noted that 1 hectare is equivalent to 2.47 acres and hence it is rare for women farmers to grow fresh farm produce on land which is more than a hectare.

*My duties are to check on dam levels as well as monitor dam maintenance. As ZINWA, we supply commercial water to farmers and I collect data on the crops they water as well as the size of the land watered. I also monitor rivers whereby I take samples of river water to check for siltation and quality. Cooperating with EMA, we supervise our hydro-observers based at water gauging stations whereupon each river has one gauging station. At the stations is Mazowe Catchment machinery which records river flows, which data is sent to ZINWA data research department.*²¹⁰

If ZINWA was fulfilling its role of ensuring active engagement in the supply of potable water as well as water for other primary and productive purposes then this would reflect a gender inclusive approach to water supply considering that when using water, women generally do not distinguish the multiple uses of water. Rather they view it as one entity covering one's social, cultural, health, environmental and economic needs in an interlinked manner.

Having realized that ZINWA was not fulfilling its role of assisting Rural District Councils in supplying potable water to women A1 farmers in accordance with section 5(1) (e) of the ZINWA Act referred to earlier; I proceeded to ask more questions. The next question I asked was “Despite ZINWA’s failure to actively involve itself in the supply of potable water to A1 farmers; are Rural District Councils on the other hand effectively discharging this statutory obligation imposed upon them to supply potable water to A1 farmers especially women?” I will address that issue in the next section. Prior to doing so, I will show that ZINWA’s dereliction of duty with regard to the supply of clean potable water to resettlement areas in conjunction with rural districts councils and the District Development Fund, was informally acknowledged by the Permanent Secretary in the then Ministry of Water Resources Development and Management in an interview held with him on 26 October, 2011, conducted by the Zimbabwe country research team.²¹¹ He stated as follows;

Primary water is not with ZINWA. It was and still is with DDF regarding rural water. The principle of subsidiarity implies that water must be managed at the lowest possible local level. As you know, throughout this country, people look after their own water sources... all commercial use requires permits – people should be forced to apply for permits – also those in the communal areas.

²¹⁰ In an interview at ZINWA Mazowe Catchment offices on 08 July, 2014

²¹¹ For the Regional Study referred to earlier

As drawn from my preliminary research findings in the pilot study, the above statement by the then Permanent Secretary appeared far removed from reality on the ground considering that the amount of water being used for irrigation by women farmers on A1 farms could hardly be regarded as commercial, let alone that used by most of the women subsistence farmers in the neighbouring communal lands.²¹² Further to that, it was also not clear to me why ZINWA was being unofficially excused from dealing with primary water and yet in accordance with sections 5(1) (e) and 5 (1) (h) of the ZINWA Act, as indicated earlier in this chapter; ZINWA was expected to, “assist local authorities...in particular, (in) the provision of potable water and the disposal of waste water...” and “ operate and maintain any water works owned or managed by the Authority and...to construct boreholes and to provide design and construction services...” The argument raised by the Permanent Secretary about the need to adhere to the principle of subsidiarity as birthed during the decentralization process under Zimbabwe’s 1990s Water Reform Programme did not convince me considering what was happening on the ground. As the research findings ultimately revealed, ZINWA officials were in reality engaged in confrontations with women water users on the A1 resettlement farms. The confrontation ensued from the fact that ZINWA officials sought to classify river or dam water used to irrigate garden plots on A1 farms as commercial, which water the women viewed as primary water as drawn from their experiences in villages of origin in communal lands. In determining whether this water used by rural women farmers in garden plots on A1 farms was commercial or primary, ZINWA through its officials was in actual fact dealing with primary water issues at grassroots level.

5.5.4 Stakeholder Groups

Stakeholder groups are defined under section 2 of the Water Act Chapter 20:24, Water (Sub-Catchment Councils) Regulations of 2000, Statutory Instrument 47 of 2000 (SI 47/00) whereby the following groups are listed as stakeholders namely, (1) communal farmers; (2)

²¹² At the time we interviewed the Permanent Secretary in the Ministry of Water on 26 October, 2011, I had already conducted my pilot study between October, 2010 and March, 2011.

resettlement farmers; (3) small scale commercial farmers; (4) large scale commercial farmers; (5) indigenous commercial farmers. Hence as explained by the Mazowe Catchment Council Coordinator, small scale commercial farmers would form their own stakeholder group within a sub-Catchment. The small scale commercial farmers' stakeholder group will then elect a stakeholder representative, as defined under section 2 of SI 47/00, to represent their interests in the sub-Catchment Council. A stakeholder is defined under the same section 2 as;

...any person residing within the area of jurisdiction of a sub-catchment council who has an interest in water resources

It is interesting to note that the determining factor for one to be recognized as a stakeholder is just a mere interest in water resources. In my view, women farmers, women farm workers and workers' wives have stronger bases upon which they have a right to be classified as stakeholders than male farmers and male farm workers. This is because the former have far much more interest in water resources considering that they use water for a wide range of purposes covering personal, domestic, food production and livelihood uses. On the other hand, the majority of the few male farmers encountered in this study used water solely for commercial irrigation of crops such as wheat, barley and tobacco since married male farmers and male farm workers' bath water and water for laundry was mostly fetched by their wives.

It is also important to note that, for one to be elected to sit in a sub-catchment council (as constituted by stakeholder group representatives) section 4(2) of SI 47/00 provides;

A person does not have to be a permit holder to be eligible for election as a member of a sub-catchment council.

The eligibility requirements for one to be recognized as a stakeholder who may be elected to represent a stakeholder group in a sub-catchment council is to have an interest in water resources and does not necessarily require one to be a permit holder. When these formal eligibility requirements are compared with the informal eligibility requirements necessary

for one to be elected to an irrigation committee on an A1 small scale farm, it becomes clear that the latter requirements for a lower position are more stringent than the former. I will discuss this issue in more detail in sub-section 5.9.1 further below. According to the dispute resolution framework in place a Stakeholder Group is expected to initially resolve water disputes between water users within their stakeholder group e.g. for small scale farmers, before the matter is referred to the sub-catchment council if resolution fails. While stakeholder groups have been incorporated informally into the dispute resolution framework, the Water Act does not assign them that role as dispute resolution should start at sub-catchment level.

Below the stakeholder groups are the informally constituted irrigation and borehole committees at farm level. It is representatives from the borehole and irrigation committees who form stakeholder groups for each group of specific water users in a sub-catchment. The irrigation and borehole committees have developed their own norms and practices which regulate how water is accessed, who accesses and uses it and who is excluded from accessing it as well as determining who participates in local water governance at farm level as discussed further below in section 5.9.1.

5.6 Formal institutions at district level dealing with water for personal and domestic and livelihood purposes

5.6.0 Introduction

In this section I discuss those formal institutions mandated to provide primary water which includes clean drinking water as well as that used for other domestic purposes such as sanitation, watering gardens and livestock. Having asked a question in the previous section on whether at district level, rural district councils were fulfilling their role in supplying water for domestic and irrigation purposes to women on A1 farms in accordance with the RDC Act; I will proceed to address that issue.

5.6.1 Rural District Councils

Rural district councils which fall under the Ministry of Local Government are tasked with supplying clean and affordable potable water to anyone residing within a particular district. Apart from managing rural drinking water supply and sanitation in rural areas, the local authorities' mandate also extends to resettlement areas. Subject to the Water Act, the roles and functions of rural district councils are outlined in section 71(1) of the RDC Act on councils' powers and duties, as read with the First Schedule paragraph 28(1) to 28(5). The pertinent functions are;

To provide and maintain for domestic, irrigation, industrial or mining purposes a sufficient supply of water for any inhabitants of the council area (paragraph 28(1))

To establish, provide, carry out, carry on and maintain all the necessary waterworks inside or outside the council area for providing and maintaining and, if necessary, augmenting and improving such supply, and, for the said purposes, by agreement to take over or purchase from any person any existing waterworks and take over and exercise all or any rights, powers, duties and liabilities legally exercised by and possessed by such person in connection with such waterworks (paragraph 28(4)).

To enter into and fulfil agreements with any other local authority or any person whatsoever for the purchase or sale of water, whether such water be required for domestic, irrigation or industrial purposes, and to lay down or extend outside the council area, subject to the terms of any such agreement, such water-mains and other works as may be necessary for conveying the water to the required point of distribution (paragraph 28(5)).

From the above, it is clear that the Mazowe and Goromonzi Rural District Councils, have a mandate to maintain domestic and irrigation waterworks and supply clean potable water as well as irrigation water to inhabitants within their council areas who include women farmers, women farm workers and wives of farm workers on the four researched A1 resettlement farms namely Kara, Creek, Maidei and Saga farms respectively. Further to that, paragraph 28(4) as outlined above gives the rural district councils power by agreement, to take over or purchase any existing water works for the continued supply of water to the concerned water users. To my mind then came the waterworks left behind by white commercial farmers on A1 resettlement farms post to FTLRRP. In my view, it would have made more sense if rural district councils had taken over the operation of such waterworks so as to guarantee their maintenance in terms of section 71(1) of the RDC Act referred to above. The reality however, as drawn from my research findings, is that Mazowe Rural

District Council and Goromonzi Rural District Council are more concerned in supplying treated potable water to growth centres within their districts such as Glendale and Concession on one hand; then Goromonzi and Juru centres on the other. It is important to note that section 64(1) of the Public Health Act Chapter 15:09 also recognizes Rural District Councils' role to provide clean water wherein it speaks about the duty of a local authority to furnish water supplies. Section 64 states that;

Every local authority, when required to do so by the Minister, shall provide and maintain, or cause to be provided and maintained as far as may be reasonably possible, a sufficient supply of wholesome water for drinking and domestic purposes, whether such supplies be derived from sources within or beyond its district...

Since ZINWA is the institution vested with the authority to sell bulk water, it is the one which provides rural district councils with bulk raw water which the latter then purifies and treats for domestic consumption by rural dwellers which should cover agricultural farms as well. Prior to FTLRRP, the common arrangement on farms however was such that white commercial farmers would provide their workers with underground borehole water supplied through electrified boreholes. There is thus no history of rural district councils supplying former large scale commercial farms with treated clean drinking water through their waterworks or alternatively the District Development Fund (DDF) (discussed in the next section) doing the same through boreholes constructed by the latter institution. As such white commercial farmers were self-sufficient and did not look up to these state institutions for efficient drinking water supply systems on their farms. This is regardless of the ZINWA Act, the Water Act, the Public Health Act and the Rural District Councils Act mandating them to do so.

5.6.2 The role of the District Development Fund (DDF) in the supply of clean drinking water on A1 resettlement farms

As indicated earlier, the DDF, falling under the Ministry of Transport, Communications and Infrastructure Development (MOTCID)'s Department for Infrastructure Development, is another institution encumbered with the role of supplying clean water through the construction of boreholes in rural areas. The key question I asked was regarding the extent

to which DDF had facilitated the supply of clean drinking water to women farmers on A1 resettlement farms. As the findings show; DDF's presence on A1 resettlement farms was largely non-existent save for two exceptional cases at Creek and Saga farms where they converted electrified and windmill driven boreholes at the farmers' financial cost.

The Department for Infrastructure Development under whose control DDF falls supervises rural infrastructure investment. Being a technical parastatal, DDF is in turn encumbered with responsibilities for rural water supply and maintenance. In accordance with its enabling Act, No. 58 of 1981, the DDF's responsibilities include, the development and maintenance of non-commercial water supplies in communal and resettlement areas as well as research and development of appropriate technologies. DDF has the mandate to provide and maintain such services as water, roads, bridges etc to such development areas as defined by the Act with a focus on rural water supply and maintenance. Development funds for water and sanitation are channelled to the RDCs through the Rural Capital Development Fund (RCDF) for minor activities, while major capital items are funded through the Public Sector Investment Program (PSIP). The DDF as provided for in the DDF Act and mandated by the NAC for RWSS is responsible for developing the technical capacity of local artisans in the maintenance and repair of pumps as well as well sinking.

In its normal course of duty DDF is contracted by Local Authorities to site and drill new boreholes and rehabilitate (mechanical, flushing) non-functional water points; support the Local Authorities in Community Based Management initiatives, through technical training of village pump mechanics and major water points repair services, through the District Maintenance Team (DMT) (2008 National Rural Domestic Water Supply and Sanitation (WATSAN) Policy in paragraph 4.5.4 at page 29 and the Zimbabwe Report on Water Resources Management, Supply and Sanitation Chapter 7)). Thus the Zimbabwe Institute (2005:5-6) describes DDF as "not strictly speaking a part of local government, but it is an

institution created by central government to assist in the provision of infrastructure and is one of the main sources of public finance for the development of rural areas, especially the communal lands.”

My research findings reveal that due to the financial constraints it is currently facing, DDF cannot effectively carry out its mandate to supply technical assistance in the drilling and sinking of boreholes and wells which would be used mostly by women farm workers and women farmers. Further it cannot provide repair and maintenance services to existing but broken down boreholes on A1 farms. At best, they ask the local farmers to contribute money which goes towards the purchase of cheap spares as well as fuel for DDF vehicles to enable DDF technicians to repair any such boreholes as what occurred at Saga Farm in Goromonzi Rural District Council. At Saga Farm, DDF repaired a windmill driven borehole for animals and livestock drilled by the former white commercial farmer in 1961 which DDF modified and converted to a hand operated bush pump. A similar attempt made by a woman village head at Kara Farm in Mazowe Rural District Council to enlist the services of the local DDF officials in drilling a hand operated borehole at the A1 farm, did not meet with similar success. Her request made in 2011 was never responded to by the local DDF office up to the time of writing this thesis in 2014.

5.6.3 The Role of Ministry of Women's Affairs, Gender and Community Development district offices in facilitating rural women's access to, use of and control over water for livelihood purposes

To a certain extent, the Ministry of Women's Affairs, Gender and Community Development is involved in water for livelihoods when they fund women subsistence farmers' small-scale irrigation projects in communal lands. Despite its mandate to deal with women's issues, which in my own opinion include women's right to water; in an interview with an official from the Ministry's Office for Mazowe Rural District at Concession on 27 October, 2010, the response was that;

As a Ministry we focus more on women's income generating water projects in communal lands rather than resettlement areas where the women farmers there are expected to be self-sufficient in terms of the financing of any such water projects.

In interrogating this policy position of the Ministry of Women's Affairs; I ask the following questions;

- Should the key issue really be about where women are located, i.e. communal or resettlement area, for them to benefit from income generating water projects funded by the Ministry of Women's Affairs?
- Rather, shouldn't the key determining factor be different women's capacity to access and use water for livelihood, domestic purposes in both communal areas and on resettlement farms?
- Was the Ministry's assumption correct, to say that all women on A1 farms were financially self-sufficient as compared to women in communal lands to the extent that the former could self provide clean drinking water and water for livelihoods with no intervention from state institutions as the primary duty bearers?
- What about former women farm workers and wives of former farm workers' access to, use and control of water for domestic and livelihoods purposes?

My own approach therefore would have been to carry out a grounded study of the income levels of subsistence women farmers in communal lands as well as women farmers and women farm workers on resettlement farms in order to come up with a database of vulnerable women who need state assistance in income generating projects inclusive of water related ones such as market gardens.

5.7 Formal institutions responsible for the facilitation of women farmers' right to sanitation; a healthy and sustainable environment

Analyzed in this section are those institutions under obligation to facilitate women farmers' access to improved sanitation facilities as well as a healthy and sustainable environment.

5.7.1 The Ministry of Health and Child Welfare and Farm health workers

The Ministry of Health and Child Welfare (MOHCW) has the responsibility for rural sanitation, environmental health education and public health. There are health inspectors,

village and farm health workers within its structures whereby health workers are engaged on a voluntary basis. Farm Health workers falling under the Ministry of Health are part of the institutions implementing sanitary health on A1 farms. In interviews held with four farm health workers in Upper Mazowe and Nyagui sub-catchments,²¹³ they were all agreed that their duties included;

- Encouraging farm settlers to build Blair latrines²¹⁴ so as to eradicate open defecation on the farms;
- Depending on the availability of funds, they distributed water purification tablets to women farmers, their families as well as farm worker families which they would put in their drinking water accessed from unprotected sources;
- Counselling women and men on the farms on reproductive health issues;
- Monitoring child health and nutrition issues on the farms.

The farm health workers indicated that international donors would donate water purification tablets; elementary drugs e.g. pain killers, food supplements and mosquito nets to the Ministry of Health which in turn distributed them mostly to rural clinics in communal lands. Since those on farms would often visit the same rural clinics as those patronized by villagers from neighbouring communal lands, the A1 farmers and farm workers as well as their families would sometimes get some water purification tablets distributed to them directly by the local clinic staff or through the allocation given to the farm health worker. According to the farm health workers' reports, the water purification tablets supplies were sporadic and they could go for months without any supplies coming.

Having taken over Blair toilets built by white commercial farmers for their workers, some women A1 farmers continued to use them for their sanitary requirements while others built

²¹³ Two from Upper Mazowe and two from Nyagui sub-Catchment

²¹⁴ The Blair Latrine is a pit latrine that uses a screened vent pipe to control odours and flies (Hillum et al, 2015:310)

for themselves new houses and new brick and mortar pit latrines. According to UNICEF Zimbabwe Rural Water, Sanitation and Hygiene (WASH) website, (2011) the water and sanitation hygiene sector is one replete with most disparities. Hence;

...although nationally, 73 per cent of the population has access to safe water and 60 per cent to improved sanitation facilities, more than 60 per cent of the rural water supply infrastructure is in disrepair and 40 per cent of Zimbabweans in rural areas practise open defecation.

The question was how the Zimbabwe government as a state institution was tackling this issue critical to national development and poverty reduction? In February, 2013, a Farm Health Worker from the nearby Ada Farm Clinic under the Ministry of Health took a sample of the water from Seke's well at Kara Farm for testing and the results showed that it was unsafe for human consumption. This act was done in accordance with section 67(1) of the Public Health Act on the 'powers to inspect water supplies.

5.7.2 The Environmental Management Agency's role in facilitating the right to a clean and sustainable environment

In this study, EMA officials in conjunction with those from ZINWA and the Forestry Commission patrolled river banks to check on stream bank cultivation in communal lands and resettlement areas. The monitoring role which EMA inspectors and other officers are seized with, is in accordance with section 36 of the Environmental Management Act Chapter 20:27, which reads in part;

36(a) The Director-General, inspectors and other officers shall exercise their functions under this Act to ensure, through monitoring, that— (a) the State and any other person or Agency that is vested under any enactment with functions aimed at promoting a healthy, clean and safe environment duly exercises those functions;

On EMA's functions, section 10 of the Environmental Management Act stipulate that;

Subject to this Act and any other enactment, the functions of the Agency shall be (a) to formulate quality standards on air, water, soil, noise, vibration, radiation and waste management; (b) to assist and participate in any matter pertaining to the management of the environment; and in particular... (vii) to regulate and monitor the management and utilisation of ecologically fragile ecosystems; (viii) to make model by-laws to establish measures for the management of the environment within the jurisdiction of the local authorities...

Despite section 10 placing obligations on EMA to formulate quality standards on soil, water and waste management; during research I discovered that EMA officials were more inclined

towards soil and water management and neglected their role in regulating the management of waste on the A1 farms. As a result, some rivers such as Mudzi River which flows a few metres behind the workers' compound at Kara Farm was heavily polluted with waste from the compound such as bottles, plastics, and papers. This compromised the well being of children and families who used the same river water as their drinking water source.

On the other hand, section 5 of the ZINWA Act Chapter 29:13 gives the ZINWA the mandate to, “advise the Minister on the formulation of national policies and standards on; ... water quality and pollution control and environmental protection” (section 5(1) (a) (ii)). The Forestry Commission, a parastatal under the Ministry of Environment, Water and Climate, derives its mandate from the Forest Act (Chapter 19:05 as amended in 1999) and the Communal Lands Forest Produce Act (Chapter 20 of 1987). According to section 8(1) of the Forest Act Chapter 19:05, one of the key functions of the Forestry Commission is to see to “(b) the control, management and exploitation of State forests, plantations and forest nurseries belonging to the State and such other land as may be acquired by the State for forestry purposes...” Their main focus therefore is on preventing deforestation on the farms. Apart from their collaboration with ZINWA and Forestry Commission's officers; EMA officials also cooperated with traditional leaders such as chiefs and village heads in the areas where they would fulfil their monitoring mandate as discussed in more detail in section 5.8 below.

5.8 The intersecting formal and informal roles of traditional leaders on A1 resettlement farms

The institutions I have discussed above as mediating women's access to, use of and control of water could be clearly classified between those that were formally recognized and those that were informal. Nevertheless, occupying an invidious position of neither being classifiable as fully formal nor informal were traditional leaders such as chiefs, headmen and village heads. As fully discussed in Chapter 4 on the history of water governance in

Zimbabwe; from a formal legal perspective in Zimbabwe, since colonial times, there has been a history of enactment of laws which regulate the office of traditional leaders namely Chiefs, Headmen and Village heads²¹⁵ whereby their role in land allocation in conjunction with local government officials is well documented. (Alvord, 1958) Traditional leaders derive their formal mandate from the Traditional Leaders Act and the Customary Law and Local Courts Act as discussed earlier in Chapter 4.

Taken from a cultural perspective as discussed in Chapter 4, traditional leaders have also been locally and informally regarded as the custodians of natural common pool resources such as land and water, which they try to allocate according to the dictates of local customary norms. They also lead people in their communities in conducting traditional rain making ceremonies and other cultural events. Traditional leaders have also been viewed as the natural resolvers of local disputes or conflicts relating to wide ranging family issues; natural resource governance issues and making appropriate decisions to punish those who break local cultural taboos. It is from this perspective that even when traditional leaders were stripped of their administrative and judicial powers by the newly appointed government of Zimbabwe at independence; they still commanded much respect from local village communities as the natural spiritually appointed custodians of customary traditions and norms rather than the government appointed civil servants and members of ViDCos and WaDCos (Ncube, 2011:89; Matyszak, 2010:4).

As indicated earlier in this thesis, traditional Chiefs in communal lands neighbouring A1 resettlement farms now have jurisdiction over the A1 farming area by virtue of section 29 of the Traditional Leaders Act as modified by SI 22/01. These traditional Chiefs appointed by the Minister have in turn appointed village heads on the A1 farms. Unlike in communal

²¹⁵ Known as Kraal Heads during the colonial era

lands, the village heads on A1 resettlement farms liaise directly with the Chief and not through a headman or sub-Chief, which latter institution is invisible on the A1 farms.

The next issue I address is the state sanctioned roles of chiefs and village heads who have directly interacted with women on A1 farms as they seek to access, use and control water on the said farms. Having discussed the duties of chiefs and village heads in Chapter, I will proceed to discuss how this institution has evolved. It is a commonly known fact that through patriarchal norms that dictate that succession to chieftainship or other traditional leadership positions such as headman or village head should be through the male lineage; very few women in the past have managed to inherit chieftainship or village headship. This position actually received constitutional sanction in Zimbabwe through section 23 of the repealed 1980 Constitution. When I set out to research for this study in 2011, those discriminatory practices against women under customary law still enjoyed full constitutional protection up until the 1980 Constitution was repealed and replaced by a new one in 2013. It is therefore not until 2013 that traditional leadership has stopped being a constitutionally closed space for women in Zimbabwe.

5.8.1 The role of Traditional Leaders and the informal principles, norms and practices mediating women farmers' access to water for irrigating family gardens for family basic nutritional needs and for livelihood

In accordance with traditional custom, on two of the four A1 farms in this study, women farm workers and workers' wives were allowed to create family gardens along river banks for purposes of producing food for their families. Unprotected shallow wells and rivers were also a common feature on all the four A1 farms. The water from these common property resources was shared among all in accordance with customary norms that demand that water from natural resources should not be denied anyone. My findings on the two A1 farms vis-à-vis traditional leaders allowing women access to land near water sources for purposes of family gardens resonate with what Hellum (2007:116) discovered from her study in Mhondoro communal lands that;

Water from rivers was considered a resource to be shared among the villagers. Furthermore, those who needed it were allocated land for gardens in areas with available water sources...We did not come across a single incidence of anyone being denied access. The sabhuku confirmed that he had not denied anyone land for gardens. The gardens, he said, were an important source of livelihood and self reliance. That was why he had not taken action when people allocated themselves gardens without his permission...

5.8.2 The role of Traditional Leaders as custodians of the environment

The traditional leaders' role in environmental management is in accordance with section 5(1)(l) of the Traditional Leaders Act which states that a traditional chief shall be responsible for "(l) ensuring that the land and its natural resources are used and exploited in terms of the law and, in particular, controlling— (i) over-cultivation; (ii) over-grazing; (iii) the indiscriminate destruction of flora and fauna; (iv) illegal settlements and generally preventing the degradation, abuse or misuse of land and natural resources in his area;" Further to that, in terms of section 9(1) (k), traditional leaders should "...enforce all environmental conservation and planning laws, including local field boundaries..." Both Traditional Leaders and the Environmental Management Agency, from their different social contexts, are thus formally seized with the role of monitoring the integrated sustainable use and conservation of natural or environmental resources (which includes water in all its multiple uses) for present and future generations. From my research findings however there have been conflicting approaches to fulfilling this role by traditional leaders and officials employed by EMA. While EMA employees strictly sought to enforce the '30 metre rule'²¹⁶ within the framework of the Environmental Management Act, some of the local Chiefs and village heads took an informal traditionalist approach that sought to perpetuate old, tried and tested conservation measures such as contour ridging of river banks, planting sugarcane, banana plants and bamboos along river banks so that their roots would hold in the soil. The traditional leaders were more familiar with the hardships women faced in trying to secure food for their families and hence did not adopt a harsh stance like the one adopted by state officials against stream bank cultivation.

²¹⁶ This is a rule which demanded that vegetable gardens be located at least 30 metres away from a river bank as anything closer was deemed to be stream bank cultivation which was strictly forbidden attracting sanctions in the event of violation.

5.9 Emerging informal institutions, norms and practices mediating women's access to, and use of water for personal, domestic and livelihood purposes in Mazowe Catchment

A key question to be answered in this study, vis-à-vis the formal institutional framework, was firstly whether post to FTLRRP in Mazowe Catchment, any old institutions governing water supply, use and control were still in place? Secondly, it had to be asked whether any new institutions had been birthed and why? What was the modus operandi of these institutions and did they further the interests of women in accessing and managing their water needs? Also demanding analysis were the reasons behind the perpetuation of old institutions and the emergence or creation of new ones.

5.9.1 Informal institutions regulating women A1 farmers' access to water for livelihoods: The emergence of irrigation committees at farm level

Through grounded research on the four farms it became evident that there are some institutions, rules, norms and practices in operation which are not part of official state sanctioned policy or law which determine the extent to which women farmers can access affordable water for livelihood. These informal norms and institutions have been generated through practice. The informal institutions discussed in this section are irrigation committees which are increasingly being consulted by formal state institutions such as sub-catchment council stakeholder groups in their regulation of women farmers' access to what the formal institutions term commercial water.

1. Irrigation Committees

Soon after settling on the former large scale commercial farms, small scale farmers set up irrigation committees which came up with informal regulations on the sharing of irrigation water on A1 farms for productive use, which ZINWA chose to classify as commercial water. As indicated earlier, one of the key rules was that eligibility to membership or election to these irrigation committees should be open to persons in whose names the land offer letters or land settlement permits were registered. As a result, more men got elected to

these committees even in instances where more women than men were utilizing productive water.²¹⁷ Some of the farms such as Kara and Saga even had 2 irrigation committees, all dominated by men. This state of affairs, heavily skewed in favour of male farmers, did not surprise me considering the past history of male dominated invasions of white owned commercial farms which resulted in offer letters and land settlement permits being predominantly in men's names. This was the case even where women were the active irrigating farmers. With their names missing on most land settlement permits the majority of women in marital unions found themselves not recognized as effective irrigating stakeholders as they missed opportunities to make inputs on gender sensitive prioritization of certain water and affordability of productive water.

The above cited position has however formally changed with the enactment of the Agricultural Land Settlement (Permit Terms and Conditions) Regulations, Statutory Instrument 53 of 2014 which seeks to regulate farm ownership²¹⁸ status post facto the issuing of new land settlement permits to A1 farmers replacing the old permits. The cited regulations automatically recognize women in marital unions on resettlement farms as joint permit holders. Section 10(1) of SI 53 of 2014 provides that;

If a permit holder is married to one or more spouses at the time the permit is signed, his or her (spouses) shall be deemed to hold an equal joint and undivided share in allocated land:

I still argue however that, the state sanctioned formal laws on farm lessee-ship may have changed but in reality, men as the traditionally recognized A1 farm permit holders still dominate the informal institutions determining the use and management of water at farm level. This occurs against a situation where these informal institutions determine one's membership to formal water governance institutions from the stakeholder groups to sub-catchment and catchment levels.

²¹⁷ An example would be at Maidei farm where even though it was mainly women who engaged in market gardening, only one woman sat on the 7 member Irrigation Committee.

²¹⁸ Ownership here is referred to from the perspective of the Zimbabwean system of land permits and leases.

From the study, it became apparent that access to water for productive use was heavily linked to officially recognized land possession since the assumption was that one had to firstly have access to land to grow crops on before requiring water to irrigate the crops. This position which lacked gender inclusivity failed to realize that there existed a significant number of widows, divorcees and other female household heads irrigating land registered in the names of former or pre-deceased husbands. These farming female household heads similar to their male counterparts who were heading households needed to be represented on irrigation committees. This was because irrigation committees facilitated recognized irrigators' access to shared irrigation water pumps and pipes at an affordable cost.

There was also stiff competition for the few shared pipes such that those households involved in contract farming had more chances of accessing shared pipes as the turns to irrigate were per household. Hence before having their turn to use shared pipes, irrigating women farmers who were not part of the contract farming group had to wait until the 8 households farming by contract had irrigated their cooperative combined plot of 48 hectares. Consequently the irrigating males from male headed households who were also largely represented in the irrigation committees would depend more on the shared irrigation equipment which was cheaper and only hired a few extra pipes as a supplementary measure. Realizing the untenability of this situation that impacted negatively on their prospects of success, the women irrigating singly were forced to opt for the more expensive irrigation pipes for hire from neighbouring white commercial farmers. Taking Kara Farm for example, there were 8 male headed households who had combined forces to irrigate and share irrigation pipes under a farming contract. On the other hand only three women heading three households were engaged in single family winter crop irrigation. While more women irrigated i.e. 11 in total against 8 men amounting to 58% it was more costly for women to irrigate since the three women from female headed households had to hire irrigation pipes at US\$300 per each winter season of 6 months. They also had to pay other irrigation costs for

the maintenance and repair of the shared water pump and wages for the pump attendant. This issue is discussed in detail in Chapters 7 and 8 on access and participation.

5.9.2 The emergence and role of ZESA²¹⁹ Committees in facilitating women farmers' access to clean drinking water and irrigation water at an affordable cost

It is important to note that at the time of Zimbabwe's FTLRRP; on the large scale white owned farms were electrified pumps supplying irrigation water through pipes from the nearby rivers or dams as well as electrified boreholes supplying drinking water from underground water resources. The first informal institution created by the A1 farmers soon after the departure of white commercial farmers were ZESA Committees mandated with safeguarding ZESA installations against vandalism and having responsibility over electricity bills emanating from the electrified pumps and boreholes which bills were to be paid through contributions from farmers.

Similar to irrigation committees, ZESA committees were dominated by male farmers as it was believed that anything to do with electricity was masculine. One male farmer at Creek Farm had this to say when asked about the exclusion of women from the farm's ZESA Committee;

*Kana nemiwo. Makamboona vakadzi vangani vanoshanda kumagetsi? Zvemagetsi izvi ndezvedu isu varume. Chavo chavanoziva vakadzi kutungidza magetsi. Akafa kugara murima. Saka sevarume vari muCommittee zviru nyore kuti titauriranevo nevarume vanoshanda kuZESA kana taita problem.*²²⁰

Similar patronizing sentiments were expressed by male farmers interviewed across the two sub-catchments on why there were no women farmers who were sitting on the ZESA committees while they existed.

²¹⁹ ZESA as an acronym stands for Zimbabwe Electricity Supply Authority, officially called ZESA Holdings Ltd., a state-owned company whose task is to generate, transmit, and distribute electricity in Zimbabwe.

²²⁰ Even you, from your own experience, how many women have you seen working as electricians or electrical engineers. Electrical issues are for men. What women know about is switching on and using electricity in the homes. If there is an electrical fault, they will certainly stay in the dark. So as men it's easier for us to communicate with male engineering personnel from ZESA when we have an electrical fault with our electricity transformers.

Consequently on all the four researched farms, there never had been a ZESA Committee which had had a woman as its member.²²¹ Despite such male dominance in ZESA committees, they generally failed to collect monetary contributions from farmers to service the huge electricity debts that had accumulated such that by 2010 when this study was embarked on, electrified boreholes on three of the four researched farms had been disconnected for non-payment of electricity bills. This had the greatest adverse impact on women farmers with regard to access to clean drinking water as they now lacked access and sought alternative but unsafe drinking water sources. If women farmers had been represented in ZESA committees they could have prioritized the payment of electricity bills for the electrified boreholes supplying clean drinking water. At the time this study was commenced however, such ZESA committees were no longer that visible except at Maidei Farm where A1 farmers shared electricity bills with A2 farmers for electricity used to drive borehole pumps at the local dam.

5.9.3 The emergence of borehole water committees mediating women A1 farmers' access to clean drinking water

At the time A1 farmers settled on former white owned commercial farms with electrified boreholes, they did not see any immediate need to create institutions governing the supply and management of water from those water sources and infrastructure. This was rather surprising to me considering that the majority of settlers originating from communal lands had a history of electing borehole or water committees to oversee the operations of communal boreholes in communal lands. The matter could have been compounded by the fact that water committees in neighbouring communal lands had been historically renowned

²²¹ ZESA Committees were generally no longer functional on the A1 Farms except at Creek Farm where the 10 member Borehole Committee also dealt with electricity. This committee at Creek Farm dealt mainly with electricity for domestic use. At Kara Farm, Jack Sellers dealt with domestic use electricity for his workers from whose wages, US\$10 was deducted per month for such expenditure. Since the houses at Maidei Farm are self built, there never was any electrified house in the past necessitating the formation of a ZESA Committee. A 7 member Farm Committee at Saga Farm had also acted as a ZESA Committee in the past. In total for the three farms, there had been at one point 24 men in ZESA Committees with no woman member.

for being dominated by women water users since issues to do with drinking water were regarded as feminine. Further, it had been one of the requirements insisted upon by donors who had funded the drilling of boreholes in communal lands that women as major water users be well represented on each water or borehole committee. In a clear indication of where the new A1 farmers' interests lay, new irrigation committees were quickly created instead, to oversee the sharing of irrigation water and infrastructure while no borehole committees for drinking water were put in place.

The lack of interest in drinking water affairs may also be partly explained by the fact that for a considerable period of time, some former white commercial farmers were allowed to continue farming as A2 farmers on subdivisions of the erstwhile large-scale commercial farms. This was the position at Kara and Maidei farms in Upper Mazowe and Nyagui sub-catchments respectively. These remaining white A2 farmers voluntarily continued to solely pay the electricity bills for water supplied through electrified boreholes as well as see to the boreholes' maintenance and repair.²²² This sole responsibility imposed on white farmers was there despite the fact that they shared this clean water with the new A1 farmers and farm workers, some of whom were employed by the new A1 farmers.

Where any such borehole committees were subsequently created like what happened at Creek farm, this happened against a situation whereby there were no clear-cut rules of water management such that women A1 farmers were as a rule of thumb generally excluded. Thus the Creek Farm Borehole Committee created in 2011 had 10 male A1 farmers on it and no single woman A1 farmer. The reason given for this highly irregular state of affairs was that managing and maintaining a borehole required those with physical brawn (men) capable of lifting heavy borehole machinery whenever the borehole broke down. This is despite the

²²² As for Kara Farm, the white commercial farmer continued paying electricity bills for domestic water supply for the whole farm community until the time this study commenced in 2011 when the electricity transformer was struck by lightning thus rendering the borehole dysfunctional.

fact that women were tasked with cleaning the area around the borehole and had a male member of the borehole committee supervising them in this seemingly feminine task!

5.10 Conclusion

5.10.1 The extent to which relevant institutions seized with the duty to mediate women farmers' access to, use and control over water on A1 farms, are fulfilling their roles

It is clear from the afore going situation prevailing at the four research sites that the national government views farmers on both A1 and A2 farm models as having financial capacity to cater for their own water and sanitation infrastructure such that they are excluded from government assisted programmes in that regard, as the focus continues to be on the rural population in communal lands. Consequently, national state institutions formally mandated to deal with drinking water and sanitation on A1 farms such as ZINWA, DDF, Mazowe and Goromonzi Rural District Councils were also highly conspicuous by their absence from the A1 farms researched on. It is only those institutions primarily dealing with commercial water such as ZINWA, Mazowe Catchment Council; Upper Mazowe and Nyagui sub-catchment councils as well as ZESA whose presence on the A1 farms was highly visible and strongly felt by women A1 farmers who used water to irrigate gardens, their primary source of livelihood. Needless to say, water to realize a livelihood, is not catered for under the Water Act, Chapter 20:24.

Obviously reading the signals emanating from the state policy considering A1 farmers as self-sufficient; international donors and other non-governmental institutions which should, upon request, assist national governments in safeguarding the international human right to water, have also steered clear of resettlement areas, focusing instead on communal lands.

At the informal level, irrigation committees focusing on commercial irrigation water were also very visible unlike borehole committees entrusted with the role to deliver and manage clean drinking water to households on A1 farms. Some village heads informally allowed women to have gardens close to rivers and dams, which they irrigated for domestic

consumption and to earn a livelihood; yet again a cause for conflict with ZINWA and EMA officials on commercial and environmental basis respectively. Building on my earlier conclusion, ZINWA has primarily been engaged in supplying bulk commercial water to local authorities and big industries in a manner that ensures cost recovery but ignores the basic water needs of poor and marginalized members of society.

Small scale water users such as women A1 farmers who apart from productive purposes, use water in dams and rivers for domestic and livelihood purposes, occupy the lowest rung of the water supply prioritization ladder. Rather as reflected by my research on the ground, ZINWA in practice portrays itself as an entirely commercially inclined entity whose key goal is to sell bulk water at commercial rates ensuring cost recovery and yet there is a provision within the ZINWA Act, section 5(1) (e) mandating ZINWA to also mediate women A1 farmers' access to potable water. ZINWA's economic goal does not factor in the human right to water, food and health as reflected in international human rights instruments, the 2013 Zimbabwe constitution and other statutory requirements. Its policies are drawn primarily from the IWRM informed water rights framework that has no room for poor and vulnerable groups within society.

As discussed earlier in this chapter it is as a result of water billing officials' gender insensitive approach that women farmers on A1 farms are on a collision course with ZINWA as an institution. The tendency by ZINWA officials to classify as commercial use any mechanized conveyance of water for irrigating vegetables on plots as small as an acre, simply because they are located within an area classified as a commercial farming area, smacks of ignorance about how women have always holistically used water in its multiplicity to realize their personal and family needs in the area of food production, personal hygiene and earning a livelihood.

The situation at all the four farms researched on is such that there is no water which ZINWA is classifying as falling under productive use for sustainable livelihoods and family nutritional needs²²³ as what was obtaining in the communal lands from where these A1 farmers originated from. The current scenario is such that any irrigation of gardens through the use of pipes running from local dams and rivers or alternatively the use of small diesel pumps to pump water from such sources is classified under commercial agricultural use by ZINWA regardless of the small scale production and the fact that a significant proportion of the garden produce would be reserved for family consumption. Regarding those pieces of land carved off the main fields and used for market gardening varying in size from ½ an acre up to 1 hectare; ZINWA demands that women apply for water user permits if they intent to irrigate such plots using the local dam and river water.

This gender insensitivity has to be viewed from the context that mechanization makes life easier for women in their different social groups who irrigate with the primary aim of putting food on the family table as well as earn a little extra income to help support their families. With a history of using primary water in communal lands be it in the dry or wet season to irrigate maize and other food crops in gardens; production has generally been at so small a scale that it has often been referred to as subsistence farming.

The question to ask is should women continue to suffer under back breaking manual irrigation carrying heavy buckets and watering cans, for the sole purpose that their water use may be classified as primary water use? In the ultimate it is the institutional framework coupled with the governance matrix in place which creates an environment determining whether or not women's free access to water and participation in its management is guaranteed. Using evidence drawn from the four research sites, in the next Chapter, I advance my case by outlining the various means through which women A1 farmers access

²²³ Which in turn would fall under primary water

and use water for personal, domestic, livelihood and productive purposes. How and where they access the water from, its quality and its affordability are of paramount importance.

5.10.2 Institutions mediating access to water for sanitation purposes

The majority of women A1 farmers on the four farms use Blair pit toilets they took over from farm workers. Hence there is no dire need for water to flush toilets. Some have built new Blair pit toilets for themselves which double up as bathrooms whereby river water is accessed for bathing with no limitations. At Kara Farm where the white commercial farmer built new water based flushing toilets, laundry and shower rooms close to the workers' hostels, there are no restrictions vis-à-vis access to them. As a result some women farmers at Kara Farm do laundry and bath in these communal showers built for workers. For those who choose to bath in the rivers, there is free access to water there.

In the next chapter I look at women farm workers' and workers' wives' access to, use of and control over water for drinking, family food production and sanitation. In the Chapter an analysis is done of issues pertaining to women farm workers' and worker'wives' rights to equality and non discrimination as well as their right to participate in decision making processes on that water.

CHAPTER 6

MAZOWE CATCHMENT: A CHANGING LANDSCAPE, A LAND OF CONTRASTS? LOCATING WOMEN FARM WORKERS AT THE JUNCTION OF PAST AND PRESENT WATER GOVERNANCE FRAMEWORKS

6.0 Introduction

When those who have the power to name and to socially construct reality choose not to see you or hear you ... when someone with the authority of a teacher, say, describes the world and you are not in it, there is a moment of psychic disequilibrium, as if you looked in the mirror and saw nothing. It takes some strength of soul — and not just individual strength but collective understanding — to resist this void, this non-being, into which you are thrust, and to stand up, demanding to be seen and heard.

(By Hinson and Healey, 2003:5; IDS, 2011:12)

The above quote best describes the social status of internally displaced women former farm workers and wives of former farm workers who have been generally excluded from most of the resettlement small-scale farms' mainstream political, economic, social and cultural life, as drawn from findings in my study. While male farm workers have suffered discrimination based on their educational level, employment or economic status, origin or descent status; women farm workers have encountered discrimination on those grounds as well as based on other intersecting grounds such as their sex and gender.

The onset of Zimbabwe's FTLRRP at the turn of the millennium heralded profound changes on the former white owned large scale commercial farms which impacted heavily on farm worker families as a social group. This impact was felt more acutely by women farm workers and wives of farm workers as they had to protect and provide for their children in the face of widespread internal displacements which affected their capacity to access clean drinking water and decent housing with sanitary facilities. According to Sachikonye, (2003:34) "it would appear that the 'occupations' triggered a movement of some farm workers who had lost jobs and livelihoods, and those who had been coerced by the 'invaders' into moving off the farms." With regard to farm workers' loss of livelihoods, he states at page 39 that; "However, if the household data is broken down by gender, it becomes clear that job losses have been greater among both permanent and seasonal female

workers. Some 51 per cent and 55 per cent of permanent and seasonal female workers respectively have lost their jobs. This may be compared with 30 per cent and 33 per cent respectively for permanent and seasonal male workers.”

Emanating partly from assertions such as the above flowing from earlier empirical research conducted soon after the official end of FTLRRP by Sachikonye (2003); in this study I interrogated the lived realities of women farm workers and workers’ wives²²⁴ vis-à-vis their right to clean drinking water and sanitation, food and water for livelihood on A1 small scale farms in Mazowe Catchment. Through grounded research what I discovered was that post to FTLRRP women farm workers suffered under intersecting vulnerabilities ranging from gender, ethnicity and patriarchy induced constraints which all served to constrain them from the full enjoyment of their rights to drinking water and sanitation, food and water for livelihood.

In this chapter, I discuss current and former women farm workers’ access and use of water in its multiplicity as well as their level of participation in decision making on the said water. In this discussion I also take cognisance of the fact that there were farm workers of different ethnicity, largely divided between the Shona and those who were descendants of immigrant workers from neighbouring countries.

Prior to FTLRRP, clean water and sanitation facilities were provided to farm workers as part of the labour contract between them and their employers. This also included kitchen gardens next to employer provided accommodation which the workers irrigated using the same tap water used for drinking purposes. Since all these facilities were free, this enabled women farm workers or wives of male farm workers to equally enjoy the free use of water for domestic use like their womenfolk in communal areas. The situation as briefly explained

²²⁴ Where it’s not essential for purposes of specificity to repeat the phrase “women farm workers and wives of farm workers,” I use the term “women farm workers” as being inclusive of both women farm workers and wives of farm workers.

above soon changed with the onset of the FTLRRP between 2000 and 2001 and the emergence of black small scale farmers as the new employers.

The three key focus areas in this Chapter are women farm workers and wives of workers' access to, use of water and participation in decision making on the same water. To enable me to get a clearer picture of how the different nature of relations between farm workers (male and female) on one hand and A1 farmers (both male and female) on the other affected how women farm workers and their families accessed, used and made decisions on clean drinking water and sanitation facilities; interviews were conducted. During interviews, the nature of women workers' status vis-à-vis their access to, use of and decision making on water from shared facilities was also observed. The research questions asked on access to and use of water are as outlined in Chapter 2 in Table 1 on access and use while the questions on participation in decision making are outlined in the same chapter under Tables 2 and 3 on participation.

6.1 Ethnicity, gender and occupation based social exclusion of women farm workers and their families post to the FTLRRP in Zimbabwe

As indicated in Chapter 4 of this thesis, a significant fact not to be ignored is that the majority of internally displaced former farm workers, inclusive of women former farm workers previously employed by large scale commercial farmers prior to FTLRRP were mostly descendants of immigrant workers from neighbouring countries. The fact that they are of foreign origin have had serious ramifications on these women farm workers' capacity to fully claim their rights to water and sanitation at the same level as those of local origin due to a general feeling of exclusion instilled in them formally and informally. As found by Chiweshe (2011:220) in his own study on emerging institutions in Mazowe after FTLRRP, "farm workers were, in large, losers in the land reform process in that their lack of citizenship (often being born of foreign migrants) ensured that they could not qualify to access land." Assuming that the women farm workers who were going to be interviewed for

this study might have encountered similar grounds of limitation; this compelled me to raise related questions about the effect of one's citizenship and nationality on one's capacity to access water and participate in making decisions over it.

According to Sally Engle Merry (2013:2), "Law defines identities such as citizen or alien, allocates who can use which spaces, provides belonging through mechanisms such as birth registration, offers security of ownership to land and houses, and serves as an authoritative source for creating knowledge and history." Although often used interchangeably or viewed as synonymous, nationality and citizenship are two distinct concepts, from which flow different entitlements. One's nationality usually refers to the country of birth. On the other hand citizenship denotes a legal status attained through formal registration with a country's government. While both social and biological nationality can change it is a long social process. On the other hand, one can change their citizenship status from that of one's birth e.g. a Zimbabwean national may change their citizenship to South African. While honorary citizenship may be conferred on an individual, it is impossible that one is conferred with honorary nationality. While citizenship is a legal concept, nationality is a political phenomenon. It is also important to note that one of the identifying factors of nationality is one's membership of a group of people having the same history, traditions, culture, language and other commonalities. Conversely speaking citizenship may refer to people from different national groups within one country e.g. a Malawian national with Zimbabwean citizenship and another who is both a national and citizen of Zimbabwe.

Having an identity is a universal right protected under international human rights norms. Clearly denoting the need for one to have an identity, the UDHR states in Article 6;

Everyone has the right to recognition everywhere as a person before the law.

It becomes an inarguable fact therefore that "without identity the process of claiming one's legal rights (becomes) excessively difficult" (see Dube, 2012:3). The 2013 Zimbabwe

Constitution in section 36(1) recognizes a person as a citizen by birth if “...they were born in Zimbabwe and, when they were born, (a) either their mother or their father was a Zimbabwean citizen; or (b) any of their grandparents was a Zimbabwean citizen by birth or descent.” Section 43 proceeds to outline the grounds upon which the “continuation and restoration of previous citizenship” is recognized. On the other hand citizenship by registration is acquired by way of application under section 38 upon marriage to a Zimbabwean citizen for 5 years or more or alternatively if one has been permanently resident in Zimbabwe for at least ten years. Nevertheless, for one to register as a citizen in Zimbabwe has been a daunting task for former farm workers due to the bureaucratic red tape one has to go through renouncing foreign citizenship of countries where their parents or grandparents were born and to which the majority have never been in their lifetimes.

Despite having been born in the country, this state of affairs leads to non enjoyment of crucial rights accorded to others by virtue of being citizens. According to section 35(3) of the 2013 Constitution, “all Zimbabwean citizens are entitled to the following rights and benefits, in addition to any others granted to them by law,” namely, “(a) to the protection of the State wherever they may be; (b) to passports and other travel documents; and (c) to birth certificates and other identity documents issued by the State.” Considered a serious challenge by most women in Zimbabwe (even the well educated ones) are the bureaucratic bottlenecks placed in the way of a woman of foreign descent seeking to establish her Zimbabwean identity or that of her child.

A fact I could not ignore in this study is that most women farm workers and their school going children did not have any identity documents emanating from the indicated challenges which resulted in many of them failing to sit for the basic primary certificate exams which require that one have a birth certificate. This caused the majority of women farm workers to lose the vital self-esteem essential in driving them to involve themselves in local water

governance issues on the A1 farms as they generally viewed themselves as outsiders or spectators watching from a distance. In the end they could not hold anyone accountable for the realization of their rights to clean drinking water and sanitation.

According to Chiweshe (2011:218);

Identity is at the heart of belonging and an important marker of “who is and who is not a farmer,” Zimbabwean or ZANU-PF supporter on the fast track farms. As such, restructuring of gender and class configurations are important in understanding how various social actors relate and interact at farm level. Everyday interaction on fast track farms is shaped by identities which are always under negotiation. Such identities define inclusivity and exclusivity when it comes to group formation and definition of a farmer. For example, former farm workers resident in most farm compounds in Mazowe are seen as non-citizens with no rights and are thus excluded from most forms of associational life.

Drawn from the above perspective and as a consequence, women farm workers in that predicament always suffer a double jeopardy emanating from their sex, gender roles as well as ethnicity issues.²²⁵ Chiweshe (2011:221-222) states further that “female farm workers face the double barrel of class and gender exclusion which intersect to leave them vulnerable to many forms of abuse and violence. Their social position excludes them from important networks which can improve their livelihoods. In other words they do not possess the necessary social, political or economic capital to ensure access to land or services.”

Drawn from interviews with women farmers, women farm workers and workers’ wives who witnessed the land invasions, in my study the majority were agreed that, as women, chances of their competing for land with men during “jambanja” were next to nil due to gender stereotyping and secondly those of foreign descent who were viewed as ‘aliens’ felt disqualified from accessing land largely reserved for ‘citizens.’

Having acquired no land in their own right women farm workers were subsequently deemed to have no need to sit on committees making decisions on productive water used to irrigate farm plots or market gardens as this role was reserved for plot holders. Having no rural

²²⁵ In an interview at one farm in Upper Mazowe sub-Catchment, regarding new farmers and farm workers’ relationships, one young woman farm worker of foreign descent, now married to a farm worker who is also a descendant of immigrant workers, related how 3 years back her long term Shona boyfriend, a farm worker had been forced by his relatives not to marry her since she was regarded as highly unsuitable due to her ethnicity.

homes where they could claim access to at least small pieces of clan land or family gardens, this section of the Zimbabwean population, remained largely landless and invisible. Under such circumstances whereby women farm workers lacked a sense of belonging, it became difficult for them to claim their freedoms and entitlements since firstly one requires the feeling they belong prior to having the confidence to claim rights. According to Chiweshe (2011:220), “the lack of citizenship by most workers is problematic in that the state has left them at the margins of agrarian society.” It is against such a background that women farm workers and wives of farm workers were interviewed with regards to their right to water and sanitation for this study. Sensing this strong feeling of “Us” versus “Them” between A1 farmers and former farm workers of foreign descent on some of the researched farms, I proceeded carefully with my research whereby women farm workers were classified as belonging to one of the most marginalized and vulnerable social groups on any A1 resettlement farm, requiring heightened or particular attention by the state.

6.2 The eviction of women farm workers and workers’ wives from employer provided housing: Implications for their right to housing

6.2.0 Introduction

Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment or other threats. State Parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.

The above quote from the UNCESCR situates my discussion in this section whereby findings relating to the widespread eviction during FTLRRP of former farm workers by A1 farmers from employer provided housing are presented. The UNCESCR has defined forced eviction as, “the permanent or temporary removal against their will of the individuals, families and/or communities from the home and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” As discussed earlier in this thesis a direct consequence of Zimbabwe’s Land Reform Programme, especially the FTLRRP, was that a large number of former farm workers and their families

were forcefully evicted either from employer provided accommodation or the farm itself. This has created a sizable population of internally displaced persons (IDPs).

The IDPs have neither been provided with, nor have they had access to appropriate forms of legal protection or retrenchment benefits. As such the majority of these IDPs generally have no access to proper housing, clean drinking water and sanitation. This flies in the face of several international human rights conventions, to which Zimbabwe is party and which oblige it as a State Party to respect, protect and fulfil workers' right to an adequate standard of living which includes the right to housing/shelter, water, food and sanitation as well as health-care facilities. Below is discussed the lived experiences of women farm workers and workers' wives vis-à-vis the right to housing or shelter as their eviction from their homes also implied loss of water and sanitation facilities.

6.2.1 Forced Evictions: The different contextual situations

1. Kara Farm

Faced with the dilemma of having almost half of his 200 person workforce with no proper accommodation after evictions following the 2000 – 2001 land invasions, the white farmer had to take quick remedial action through the construction of at least four blocks of one roomed flats with fireplaces for cooking in the verandas for these displaced workers' rooms. Two blocks have 20 rooms each and the other two blocks have 16 rooms each, making a total of 72 rooms. Each of the evicted families occupies a room and cooks outside using firewood or alternatively the room doubles as a bedroom/kitchen if one uses either an electric stove or paraffin/ gel primus stove to cook. The local farming community has since nicknamed these blocks of accommodation 'dormitories,' due to likening them to dormitories at mission boarding schools in Zimbabwe.

2. Creek Farm

At Creek Farm, some of the farm workers were also evicted from the electrified brick houses. Some of the evicted former farm workers remaining on the farm and casual

labourers who drifted in from other surrounding farms built for themselves round grass thatched pole and dagga huts as well as make-shift grass walled pit toilets which are not decent at all.

3. Maidei Farm

Since there was no workers' accommodation in the division of the large scale commercial farm where Maidei Farm is located, no women farm workers and wives of farm workers were evicted since they resided at the big workers compound in another division approximately 3 km away. Some still live in the old compound and come to Maidei Farm as casual or seasonal workers. For those who have settled at Maidei Farm, they have built for themselves grass thatched pole and dagga round huts with earthen floors.

4. Saga Farm

At Saga Farm in Nyagui sub-Catchment, the new A1 farmers evicted a small number of farm worker families from their employer provided accommodation. A war veteran who is also the local ZANU PF base commander occupies the former white commercial farmer's house. A fact unique to this farm is that unlike what happened in Upper Mazowe sub-Catchment, a considerable number of farm workers were not evicted from their houses. This could be explained by the fact that most of the invaders who staked out plots for themselves at Saga Farm were from the immediately surrounding communal areas under Chiefs Chikwaka, Chinhamora, Musana, Murehwa and Rusambo in Goromonzi, Shamva, Murehwa and Mutoko districts. Some A1 farmers such as the village head, Mr. Chimboza was personally known to some farm workers who either had been born or lived for years on this farm. This was because the village head had attended a local school whereby on his way to and from school he would pass through Saga Farm exploring the area. It is from that perspective that I began to understand from observation why some of the new A1 farmers inclusive of the village head had therefore elected to build temporary makeshift homes for themselves rather than evict former farm workers. This is to be differentiated from a

situation whereby the land invaders were totally unknown by farm workers on an invaded farm such that their conscience would not bother them as they evicted farm workers from their houses. This was the situation at Kara and Creek Farms.

Therefore, unlike most A1 farmers on neighbouring farms in the area, the A1 farmers at Saga Farm have continued to accommodate former farm workers on the farm with a sizable number still occupying their employer provided houses. This is in contrast to the common trend in the locality whereby soon after invading a commercial farm most of the A1 farmers on neighbouring farms evicted all former farm workers, forcing most of them to move off and settle en-masse at Chizanza and Gamanya squatter compounds on A2 farms in the same sub-catchment. This was because most of these evicted workers had no rural homes to go to, being of foreign descent.

This has created a humanitarian crisis whereby these IDPs have formed huge squatter compounds with no proper water and sanitation as well as health facilities. It is under such an atmosphere that on my first arrival at Saga Farm for purposes of research, I discovered that there was good rapport between A1 farmers and former farm workers on this farm. This also explains why the farm workers at Saga Farm even had the courage to report the A1 farmers to the local traditional Chief for illegal dispossession of gardening land when their counterparts on neighbouring farms had been totally evicted from the farms they had previously been employed at.

6.2.2 Forced evictions: The legal and human rights implications

For those women farm workers who were evicted from employer provided accommodation, there was notable regression from living in iron roofed brick houses with clean piped water in the vicinity to living in pole and dagga huts with earthen floors located a considerable distance away from the nearest unprotected water source. Article 25 of the UDHR becomes very pertinent in that regard when it requires that everyone has an adequate standard of

living for themselves and their family, including food, clothing, housing and medical care, the necessary social services, as well as the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control.

The other significant human rights implications arising from the forced evictions emanates from Article 11(1) of ICESCR which also recognizes the right to housing as part of the right to an adequate standard of living. Considering that issues of ethnicity have played a part in the manner in which A1 farmers from neighbouring rural and urban areas summarily evicted former farm workers, Article 5 of the International Convention on the Elimination of All forms of Racial Discrimination (ICERD) also becomes pertinent where it states as follows;

States Parties undertake to prohibit and to eliminate racial discrimination ... and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law... in the enjoyment of... the right to housing....

The right to housing is also fully recognized under several other international human rights conventions, the most relevant being CEDAW (Art. 14) on rural women, CRC (Art. 27) and International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPRAMW) (Art. 43). In its General Comment No.4 of 1991 on ‘adequate housing,’ the UNCESCR authoritatively interpreted the right to housing in legal terms under international law where it stated, “. . . the right to housing, should not be interpreted in a narrower restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head . . . Rather it should be seen as the right to live somewhere in security, peace and dignity... (Paragraph 7) On numerous occasions, the Committee has found that certain States parties have violated Article 11 of ICESCR especially with regard to forced evictions.”

It is when viewed against such a scenario that Principle 18 of Guiding Principles on Internal Displacement (GPID) and the International Labour Organization (ILO) Recommendation No. 115 of 1961 on Workers’ Housing become even more pertinent in as much as they

focus on the right to shelter, safe water supplies and sanitation in workers' houses. Principle

18 of GPID states;

1. All internally displaced persons have the right to an adequate standard of living. 2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (a) Essential food and potable water; (b) Basic shelter and housing; (c) Appropriate clothing; and (d) Essential medical services and sanitation. 3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

ILO Recommendation No. 115 of 1961 on Workers' Housing states under *II. 'Objectives of National Housing Policy;*' states that;

2. It should be an objective of national policy to promote, within the framework of general housing policy, the construction of housing and related community facilities with a view to ensuring that adequate and decent housing accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent. 3. Attention should also be given to the upkeep, improvement and modernisation of existing housing and related community facilities.

Important to note from the above is the right to "the continuous improvement of living conditions," (Art. 11) and "to the upkeep, improvement and modernisation of existing housing and related community facilities" (ILO Recommendation 115/1961), which under the "obligation to protect" place on Zimbabwe a duty to prevent third parties such as A1 farmers from interfering in any way with the enjoyment of the right(s) to housing, water and sanitation by farm workers. In the absence of such protection, what has occurred is serious regression or retrogression in the realization of the right where a significant number of farm workers have moved from iron roofed brick houses with cement floors and easily accessible clean water and sanitary facilities, to grass thatched round huts having earthen floors²²⁶ with no suitable sanitary facilities. The size of employer provided family accommodation at Kara Farm has also shrunk from 3 rooms to 1 room, provided as a contingency measure following displacement.

All this happened at a time when Zimbabwe's rural communities, inclusive of the neighbouring Chiweshe, Domboshawa, Musana, Murehwa and Chikwaka communal lands

²²⁶ A source of frequent chest infections due to the dusty earthen floors and dagga plastered walls.

now had improved accommodation i.e. brick under iron/asbestos roof main dwelling houses with cemented floors, next to which were brick under thatch kitchen huts with cemented floors similar to gazebos in urban areas as well as brick and mortar Blair toilets. The majority of these communal area villagers also shared water from publicly drilled boreholes as well as privately dug and covered deep wells.

According to Section 74 of the 2013 Zimbabwe Constitution on ‘freedom from arbitrary eviction,’ “no person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances.” This Constitutional provision has however been enacted more than a decade after the farm worker evictions of 2000 to 2003. Under sections 19(2) (b) and 28, provision is also made for a social right to adequate shelter for all persons, adults and children dependant on the availability of resources. Nevertheless these lack weight considering that they are placed under ‘National Objectives’ rather than ‘Fundamental Rights.’ Section 51 on the ‘right to dignity’ and section 57 on the ‘right to privacy’ which are both within Chapter 4 on the ‘Declaration of Rights,’ may also serve to protect persons from arbitrary interference with one’s enjoyment of the right to housing.

Apart from press reports by human rights organizations such as Human Rights Watch (HRW) and employment organizations such as GAPWUZ on these mass evictions of women farm workers from employer provided accommodation, no meaningful response came from the State.

In its 2002 report on “Human Rights Violations,” HRW reported that;

In June 2000, the National Employment Council for the agricultural industry (a tripartite body of government, employers, and unions) published a report noting that, as a result of the farm occupations, at least 3,000 farm workers had been displaced from their homes, twenty-six killed, 1,600 assaulted, and eleven raped. The majority (47.2 percent) were supporters of the MDC; nearly as many (43.6 percent) had no political affiliation; a few (4.7 percent) were Zanu-PF supporters. Farm workers have continued to be the victims of violence during farm occupations: the Zimbabwe Human Rights NGO Forum documented the deaths of four farm workers (including security guards and game scouts) and numerous assaults during 2001. The CFU reported twenty farm workers killed as of May 2001.

There is no known record of any court action having been instituted against anyone who committed crime or violated workers' rights to socio-economic entitlements during the FTLRRP nor has there been any civil action by the aggrieved parties as represented by their trade unions let alone any payment made as compensation for injury suffered through the loss of livelihood and basic amenities such as housing, clean drinking water and sanitation. Yet economic, social and cultural rights are equally justiciable as civil and political rights.

6.3 Breakdown of the water and sanitation infrastructure post to FTLRRP: Implications for women farm workers and farm workers' wives' access to and use of clean drinking water and decent sanitary facilities.

6.3.0 Introduction

Interrogated in this section is farm worker families' access to clean drinking water as well as to decent sanitary facilities focusing on the women and children in such families. In doing so, the evidence which supports my comparative analysis of the status of water and sanitary facilities on the four farms is outlined. It is important at this juncture, to also point out the pivotal role of the right to dignity in the realization of a right to sanitation. The right to sanitation demands that sanitary facilities accord women the necessary dignity or decency in accessing them especially privacy and hygienic conditions. Just like water, issues revolving around the quality and accessibility of sanitary facilities, in terms of distance, are still paramount.

Upon settling on all the four resettlement farms subject of this study, the new A1 small scale farmers shared clean drinking water supplied through electrified boreholes with women farm workers, former and present with no conflicts at all since both the farmer and farm worker groups were not paying anything for the water. Hardships for women farm workers arose after the break down or disconnection of these boreholes as they now fetched unsafe water from unprotected sources. In the next sections, an analysis is done on findings made

on the rights to water and sanitation on the four A1 farms. A case study approach is adopted in the analysis.

UPPER MAZOWE SUB-CATCHMENT

6.3.1 Access to clean drinking water at Kara Farm

After the breakdown of the electrified borehole at Kara Farm, women farm workers and wives of farm workers drank unsafe raw water from Mudzi River supplied through taps while others went in search of alternative water sources such as open shallow wells in the fields and unprotected springs on the banks of the same local river. For a while, there were no problems regarding the quantity of raw water available from the taps at Kara Farm. Nevertheless, with time, the quality of the water deteriorated as conditioned by the seasonal changes. Further still, issues of availability became of primary concern as the tap water supplies became erratic such that women farm workers began to rely more on Mudzi River, located about 200 metres away from their compound for their drinking water and water for other domestic uses. Attributed also to the increasingly irregular water supplies from the taps was a marked increase in the number of women farm workers fetching drinking water from unprotected shallow wells such as Seke's well located in the fields and 'Chitubu.'

Case Study 6: Julia Jackson

Julia Jackson is a widowed farm worker of foreign descent aged 47 years who occupied one room in the 'dormitories' at Kara Farm. Her parents and parents in law who were all deceased had been immigrants from the then Nyasaland (now Malawi). She had given birth to six children, the eldest of whom was aged 32 years in 2011. This meant that she had had her first child at the age of 15 years. Her youngest child, a daughter was aged 12 years old. She also had four grandchildren. She was however living with 2 of her grand children aged 6 and 4 years old.

From interviews held at Kara Farm on several occasions during the month of November, 2011 to determine the quality of this water, women farm workers graphically expressed their personal experiences with un-potable water. In an interview held with her on 21

November, 2011, Julia Jackson was asked about the water situation at Kara Farm, to which she replied;

Yes drinking water is a problem sometimes. We drink tap water which is being pumped direct from Mudzi Dam. This water is dirty especially after the rains when it has a brownish colour. If available we also use the same tap water to do laundry at the sinks located at the dormitories' ablution blocks. If unavailable we do our laundry at Mudzi River although the water is muddy. If you live here, you are forced by circumstances to choose your clothes (wardrobe) wisely when purchasing same. Apart from being dirty, the water supply has since become irregular. When the taps in the compound run dry I often get drinking water from my workplace in the green houses which is also raw water. Sometimes Mr. Sellers restricts the use of that water too since there won't be enough to water the roses. In such a scenario I then get water from a shallow well in the fields dug by one Seke called "Tsime raSeke."²²⁷

In another interview held earlier on 04 November, 2011, Netai Chaseka, a young 28 year old farm worker who is divorced with 2 minor children had also indicated how like Julia Jackson, she and her family drank raw water from Mudzi River erratically supplied through the taps in the workers' compound. When the taps ran dry she would often get raw water from the green houses reserved for roses which Mr. Jack Sellers would often restrict for fear that there would not be enough water to irrigate the roses.

Amai Junia Manyowa,²²⁸ a married farm worker aged 25 years whose husband worked in Harare and had one 5 year old child was interviewed on 04 November, 2011. She indicated how they were drinking raw water from taps but surprisingly was not falling sick. She was of the opinion that she might have built resistance against any waterborne disease due to continuous drinking of the dirty water. She dared me to drink the same water as she was sure I would fall sick. Continuing with her narrative, she indicated how during the rainy season, they would sometimes harvest water from their rooftops. Weighing in with her own views, Jacinta Tom, a farm worker's wife of foreign descent aged 27 years with 2 minor children stated as follows;

We drink tap water which is actually raw river water from Mudzi Dam. The water is bad just by looking at it and in its taste. We can't avoid drinking it since that's all that is available here but I can assure you we are drinking human waste contaminated water since the river is downstream of us just next to our compound.

²²⁷ Literally translated to mean 'Seke's Well'

²²⁸ The prefixed term Amai means 'mother of'

Below is a picture collage showing the quality of water in Mudzi River and Dam and raw dam water from taps in the compound; ²²⁹

Figure 9: Water Quality at Kara Farm- Mudzi River and Dam water



6.3.2 Access to decent sanitary facilities at Kara Farm for women farm workers and workers' wives

From the interviews held with young and elderly women farm workers at Kara Farm, they all agreed that the sanitary facilities at Kara Farm were adequate. This was a combination of Blair pit toilets next to the older singly built workers' brick houses and communal shower, laundry and toilet blocks at the workers' 'dormitories' which used piped water and the water based flushing toilet system. These communal water taps, toilets, shower rooms and laundry tubs situated within a 100 metre radius from each block of workers' flats were also easily and freely accessible to casual labourers, seasonal workers and the new settlers' workers living in self-provided grass thatched pole and dagga huts in a squatter workers' compound named 'KwaSisk'²³⁰ by the locals. None of these casual labourers as well as the A1 farmers'

²²⁹ The first two pictures show water in Mudzi River less than 100 metres south of Kara Farm Compound while the third one shows Mudzi Dam upstream approximately 500 metres north-west of the same compound. The last picture shows a tap in the compound supplying raw dam water.

²³⁰ This literally means 'at Sisk houses' in a euphemistic reference to an international building construction company of Irish origin called John Sisk and Son Construction Company, which was popular during the

own workers had ever dared to ask the A1 farmers to share the Blair toilets located at A1 farmers' single family occupied homesteads. Figure 10 below shows sanitary facilities at Kara Farm. In the last picture women farm workers are doing laundry at sinks next to the communally shared shower rooms and toilet blocks.

Figure 10: Sanitary Facilities at Kara Farm



6.3.3 Dirty water sources: Implications for children's rights to clean drinking water and sanitation at Kara Farm

During the interviews cited above, the majority of interviewees referred to the drinking water sources as dirty, unclean, a health hazard and unsafe for human consumption. Another related issue they spoke about which was close to their hearts was how they were experiencing an increase in diarrheal diseases especially among the children. This also increased their nursing care burdens for the whole family. In further interviews held with women farm workers and farm workers' wives at the so called 'dormitories' in November,

Rhodesian colonial era and post to Zimbabwe's independence, after it had on a nationwide basis built the first decent four roomed houses for officially married African couples in colonial Rhodesia's African townships. In the colonial Fort Victoria (now Masvingo) these houses built in a separate section in Mucheke Township were referred to as 'dzimba dzekwaSisk' meaning 'Sisk houses.'

2011, during which 14 individuals from farm worker families were interviewed, 12 of whom were women; almost 50% of them i.e. 6 spoke of problems of diarrhoea on the farm.

Case Study 7: Epina and Pilate Bhotosek

Epina Bhotosek also known as Amai Consider is a farm worker aged 28 years who is married to another farm worker aged 38 years. Having been born on the farm of parents of foreign descent, both work for Jack Sellers, like their parents before them. While her husband had worked in the rose green houses at Kara Farm for 21 years at the time of interview; Epina being much younger, had worked for 11 years. Epina got married to Pilate in 1998 and the couple had 4 children, of which the eldest born in 1999 was aged 12 years in 2011. This implied that she had had her first child at the age of 16 years in 1999 after having completed Grade 7 at a school on Kara Farm in 1997.

Pilate Bhotosek, Epina's husband divorced his first wife in 1992 after having had 2 children who were now married with their own families. He remarried in 1998.

On 04 November, 2011, Epina Bhotosek explained the water situation at Kara Farm as follows;

As for drinking water, we are drinking dirty river water which comes via taps but it's unclean. I don't boil the water as it would take a lot of my time for me to ensure there is always boiled water even when I am at work. The same water is for laundry and bathing as well. There are a lot of diarrhoea cases but we don't know if it's the water. As mothers we do fear for our children but what is the option? The toilets are pit toilets.

I have a garden where I grow vegetables and tomatoes. It was originally a forest and we just allocated ourselves a plot. The plots are small. Water in the river for irrigation is not a problem. When vegetables are plenty we sell them to other farm workers and even farmers but now the sun is too hot and so we currently are not selling.

On the same day Pilate Bhotosek also chipped in saying;

We have always had clean drinking water until the transformer was struck by lightning last year this time. My wife fetches water from the taps and it is raw water from Mudzi River which often has some foreign objects floating in it. Alternatively, she draws it from Seke's pond which looks clean viewed with the naked eye. I bath in the showers or at Mudzi River. The water coming from the taps and which we drink is unclean and a health hazard to us and our children. I really fear for my children's health with this dirty water we drink.

Also commenting on the quality of drinking water and water for laundry purposes at Kara Farm vis-à-vis children's needs, Julia Jackson in Case Study 1 who lived with her two minor grandchildren also said;

As I have indicated earlier on we drink raw water from the Mudzi Dam which comes through taps. White clothes and nappies are a problem and most have turned khaki in colour. Due to erratic water supplies we also wash them often in Mudzi River which is also our drinking water source. It's a miracle that there has not yet been a cholera outbreak on

this farm given the unhygienic water we drink. The children get diarrhoea often and it's worrying us a lot.

6.3.4 Intervention by Health Officials

In May 2013, Jack Sellers, the white farmer at Kara Farm constructed a water filtration and purification plant at the farm which feeds treated water into tanks which in turn feed into pipes supplying water to taps located inside the rose greenhouses. Despite this apparent improvement of water facilities at Kara Farm, a ZINWA official resident on the same farm who was interviewed on 4 January 2014 still expressed some reservations about the quality of the supposedly treated water accessed by workers from the rose green houses. His sentiments are discussed in detail in Chapter 7. Despite this intervention, the rest of the farm compound's taps still supplied untreated water from Mudzi Dam and River. Since the entrances to greenhouses were guarded it was mostly the current workers employed by Jack Sellers who accessed it. Former farm workers and other casual labourers on the farm felt intimidated by the presence of the guards and hence continued to fetch untreated water from the other taps scattered around the farm compound.

6.3.5 Farm workers' wives and women farm workers' rights to water and sanitation at Creek Farm

Following grounded research at Creek Farm, the lived experiences of women farm workers and workers' wives as a social group, presented me with very interesting phenomena. In a curious twist to what would be the socially accepted or assumed mores in any rural based communal setting, ethnicity and occupation based bias prevailed over humanitarian or need based considerations. After 3 boreholes inherited from Benny McCray the former white commercial farmer all broke down a few years after the 2000 invasion, the A1 farmers in 2011²³¹ contributed money to have one of these electrified boreholes repaired by the DDF technicians. As a result, the DDF technicians from Nzvimbo Growth, under Mazowe Rural District Council repaired it. Apart from repairing it, they also converted it to a manually operated bush pump which was cheaper to maintain.

²³¹ The contributions were collected from A1 farmers only, to the exclusion of farm workers, from whom they never solicited for any contribution due to the tenuous relationship between them and workers.

An interesting development arose as a direct result of this conversion of the borehole into a hand operated one. Prior to this repair and conversion of the electrified borehole; A1 farmers had felt obliged to share water from electrified boreholes with former farm workers considering that they had been constructed by their former employer. The electrified boreholes were thus considered state or public property to be enjoyed by both the farmer and worker groups at the benevolence of the state. Further to that, with the white farmer gone,²³² no one was paying the electricity bills arising from the use of electrified boreholes and so to them it was free water for all. ZESA had however subsequently disconnected the electrified boreholes from the National Electricity Grid long before they fell into disuse.

So after converting this borehole, the A1 farmers at Creek Farm viewed it as their common property considering that they as farmers had contributed money for its repair. The A1 farmers formulated norms and rules to make sure water from the repaired borehole would not be accessible to former farm workers and their families who had not contributed any money to its repair. They saw this as an opportunity to charge former farm workers money prior to accessing the clean borehole water on the pretext that it covered general maintenance and repair costs for the borehole. Nevertheless the charges fixed by the farmers were generally unaffordable to the former workers who were no longer in full time employment. Outlined further below are some of the comments elicited from Creek Farm former women workers and wives of farm workers with regard to this fixed water charge.

This course of action taken by A1 farmers was viewed by many former farm workers as the farmers' own ingenious way of hitting back at them for generally withdrawing their labour from Creek A1 farmers in favour of A1 farmers on neighbouring farms due to the former's tendency to offer workers wages which were very low and unfair. Very often, the farm workers especially women were paid in kind whereby they would be coerced into some

²³² Who had footed the electricity bills emanating from the use of electrified boreholes to pump water for his farm workers' domestic use,

form of barter trade deal under which they would offer their labour for a whole day in return for half a bucket of maize (10kg), or a 2 kg packet of beans, sugar or rice.²³³ Having known from data drawn from colonial history that even during the Rhodesian colonial era, agricultural workers have always been the lowest paid on the wage conundrum;²³⁴ investigations were made to find out what had changed for the former farm workers to be suddenly resistant now.

Case Study 8: Amai Ishmael Ruzawi

Amai Ishmael Ruzawi together with her husband, were former farm workers who used to work for Benny McCray prior to FTLRRP. Born on another farm in Mazowe area in 1957, Amai Ishmael Ruzawi was aged 54 at the time of interview in 2011. Her late parents had been of Malawian origin who also had many children and so she never went to school. Nevertheless Amai Ishmael was married to a Shona husband with 12 children, 3 of whom were deceased. She also had 11 grandchildren. She had lived at Creek Farm from the time of her marriage and was not evicted from her employer provided 3 roomed iron and concrete dura-wall slab house during FTLRRP. She opines that her non-eviction could have been due to the fact that her husband was Shona from Chiweshe Communal Lands and most of the land invaders at Creek Farm had originated from Chiweshe although in 2001 most of them were coming from their urban homes in Chitungwiza. Having lost her job as a result of FTLRRP, Amai Ishmael worked as a part-time labourer in the A1 farmers' fields, mostly weeding crops and harvesting. Despite the measly wages in cash or kind offered by Creek A1 farmers, Amai Ishmael could not dare withdraw her labour for fear of losing her decent accommodation in revenge. So although she got better wages in surrounding farms, once in a while she had to offer her services to some of the A1 farmers at Creek Farm at the lower rates, as security for accommodation on the farm.

An interview was held with Amai Ishmael Ruzawi as she worked in the fields at Kara Farm on 5 November, 2011. In response to a question whether the A1 farmers were paying wages which were at a lower rate than the white commercial farmers before them, she replied;

While in monetary terms there isn't much difference between what we get now and what we used to be paid by white commercial farmers but then in real value the package we got

²³³ In the farming areas under research, a 20 kg bucket of maize costs anything between US\$3 and US\$5 depending on the time of the year such that during the harvest season maize would be cheaper but prices rose between October and March prior to the next harvest season. A half bucket would relate to a monetary cost of between US\$1-50 and US\$2-50 depending on the season, for a full day's toiling in the fields. A 2kg packet of beans, sugar or rice was worth US\$2.00.

²³⁴ Which was the major reason why local Shona men shunned such jobs forcing white farmers to import immigrant labour from neighbouring countries;

from white farmers was far much better. This is because besides the monetary wage we used to receive a lot of employment benefits from white farmers such as decent housing, gardens next to our houses where we grew vegetables for relish and on most farms one would also receive a packet of mealie meal, a bottle of cooking oil and beans every month. Now we spent all the meagre earnings we receive from AI farmers on basic food which we received as fringe benefits and the AI farmers have also taken away our gardens from us. So in actual fact we are in a far much worse position than when working under white farmers.

Nevertheless there are academics who have researched in the same area who attribute this resistance to an increasing awareness among farm workers about their employment rights. Chiweshe (2011:220) in his own Mazowe study also views this turn of events as empowerment of farm workers by the FTLRRP. He states;

The programme however empowered them to negotiate for the price of their labour unlike when they still worked for white farmers. Under the governance of the white farmer and his wife, workers suffered from low pay and poor conditions without representation of complaints. With the new farmers, workers now can decide not to work and withhold their labour if the price is not right. They can choose who to work for and when to work. This is the source of conflict with new farmers who feel that if the farm labourers are not willing to work for them, then they should leave the compounds so that the farmers can find their own workers. Farmers complain that labour has become prohibitively expensive. Writers such as Arrighi (1973) and Van Onslen (1976) have shown that white colonial settler agriculture was partly successful in then Rhodesia because of the presence of a cheap, abundant labour force. It will be interesting to see how this labour conflict evolves over time in Mazowe.

From my observations however, I interpreted this withdrawal of labour as a basic survival tactic by desperate workers placed between two equally invidious positions. The threat of eviction from farm compounds was not of consequence to them considering that most had been evicted from decent housing with gardens only to occupy pole and dagga grass thatched houses or shacks they had built and which if evicted from they could always rebuild elsewhere on other farms with better paying employers. The better option for such workers was to antagonize those paying low wages by withdrawing their labour while working for those offering better wages which would enable them to feed their families. It is only for a few like Amai Ishmael Ruzawi still occupying brick houses that the threat of eviction held consequences ominous enough to keep her chained to employers perpetuating unfair labour practices.

With regard to the availability of clean drinking water at Creek Farm, Amai Ishmael Ruzawi proceeded to say;

The availability of clean drinking water is a problem here. Sometimes you periodically have borehole water at Creek Farm i.e. 2 months with water then 3 months without etc. The borehole was repaired and started working yesterday. You have to pay US\$2 per family for one to access water from the borehole. As a result we as workers get our drinking water from Mudzi River.

Case Study 9: Fatima Phiri

Fatima Phiri is a 23 year old married woman farm worker from Creek Farm who has 2 minor children 8 and 4 years. She was born at Kara Farm of farm worker parents who were both of foreign descent. When the land invasions happened in 2001, she was a 13 year old girl living at Kara Farm with her parents. Fatima's parents still lived at Kara Farm at the time the interview was done in 2011. As a teenage girl, she worked in the flower green houses at Kara Farm prior to her getting married to Alufandika, born at Creek Farm of a father of Zambian origin. Fatima moved to Creek Farm to join her husband upon marriage in 2003.

An interview was held with Fatima Phiri on 05 November, 2011 as she was working in the Kara Farm village head's field on short term contract. Speaking on her experiences at Creek Farm as a young married casual farm labourer, she said;

My own mother at Kara Farm has access to tap water for drinking but the water is raw from Mudzi River and it is not treated. At Creek Farm, we have a borehole whose operation is very unreliable. Mostly I fetch water from Kara farm or I go directly to Mudzi River. It makes no difference since the water is of the same quality i.e. unclean. Whenever the borehole at Creek Farm is working, the borehole committee asks for US\$4-00 per person if one wants to fetch water from the borehole and so if you don't pay, you get no water from that source. A member of the borehole committee sits next to the borehole, vetting people who are entitled to fetch water after having paid the dues. So to avoid any embarrassment, indigent residents who mostly are former farm worker families at Creek Farm simply trek to Mudzi River and back to fetch drinking water. We can't afford to pay the US\$4-00 because on average we get paid US\$7-00 after having worked in the fields for 3 days. For example; to weed a 400m long and 30cm wide row between these beans, one is paid US\$1-00 and so I can only weed 7 rows in 3 days at two to two and half rows per day.

I found Pauline Chimera weeding rows of sugar beans at Kara Farm on 5 November, 2011.

She also painted a gloomy picture about the water situation at Creek Farm;

We usually fetch drinking water from Kara Farm but since their borehole broke down, the water is now being directly pumped from Mudzi River with no treatment and so it is not clean. We do our laundry at Mudzi River from where the drinking water at Kara Farm is being drawn. The borehole at Creek Farm was repaired only yesterday but for one to get water from there the borehole committee requires US\$2-00 per family. When I have the money I pay because clean drinking water is precious. They say the money is for repairs. Some irrigation by a women farmers' club is going on at Creek Farm though at a very small scale. I prefer working here at Kara Farm as the wages they offer are better. We do often work for the A1 farmers at Creek Farm but they are very difficult when it comes to paying up.

Case Study 10: Pauline Chimera

Pauline Chimera is a seasonal farm worker aged 25 years. She is married with 3 children, the eldest of whom is aged 8 years. Considering that there is not much winter crop irrigation taking place at Creek Farm, Pauline does seasonal work at Creek Farm mainly during the rainy season. During both the dry winter season and the rainy season she does casual jobs at Kara Farm where there are irrigated and rain fed crops throughout the year. She and her husband, who is also a casual farm worker at Creek Farm, occupy two pole and dagga grass thatched huts which they built for themselves when they married in 2002 a year after the farm's invasion. Pauline went to school up to Grade 6.

Below are pictures showing women farm workers from Creek Farm, one of them with a child on her back, weeding sugar bean crops planted in extremely long rows at Kara Farm;

Figure 11: Women casual workers weeding long rows of a bean crop at Kara Farm



Clearly indicating bias in the manner in which the farmers calculated the water user charge, some, especially A1 farmers from Kara Farm were allowed access to free clean drinking water while others, especially workers from both Kara and Creek farms, were asked to pay between US\$2 and US\$4, in a manner which was clearly inconsistent. As explained by Amai Ishmael Ruzawi (Case study 8) in the interview of 5 November, 2011, discussed earlier in this chapter;

...there are some people here who don't pay anything but still they access some privileged services. That includes electricity because if a farm worker wants to be connected to the electricity grid to get electricity supplies in the home, the ZESA Committee which deals with that dominated by A1 farmers demands that they pay US\$100-00 connection fee prior to paying the monthly charges for actual electricity consumption. Can we afford that? I may not be educated but by the way, are these not bulk meter points for which we should share costs, be they connection fees or monthly bills. Mr. Jack Sellers' current employees

at Kara Farm have US\$10 deducted from their monthly wages for electricity and I think that is a fair price.

Further some A1 farmers from the neighbouring Kara Farm were exempted from paying this water levy despite their being more economically endowed than the very poor former farm workers at Kara and Creek farms. As discussed in detail in Chapter 7, the woman village head at Kara Farm classified her exemption from payment as an act of reciprocity since for 3 years, the A1 farmers and farm workers from Creek Farm had fetched clean drinking water supplied by an electrified borehole at Kara farm at no cost. The village head could not however explain why this act of reciprocity in water sharing was not extended to the farm workers at Kara Farm since they had also allowed Creek Farm farmers and farm workers to fetch clean drinking water supplied by their employer, Jack Sellers at no cost. Further the borehole at Creek Farm had been inherited by both A1 farmers and former farm workers from the latter's previous employer, Benny McCray.

From my own point of argument, the former farm workers already had a stake in the borehole as part of their employment benefits while A1 farmers' contribution was only the money spent in repairing and converting the former electrified borehole. Despite it being viewed as common property for the A1 farmer group who had paid for the borehole's conversion, former farm workers had a stake in the borehole and hence should not have been excluded from accessing water from it.

As I dealt on these issues, the question arose whether the exclusion of farm workers from both Kara and Creek farms from such reciprocal favours in their access to water was not a discriminatory practice against farm workers as a social group, considering that the clean drinking water at Kara Farm had been facilitated by the white commercial farmer who was paying the electricity bills alone without restricting access to the water to his workers only. Rather clean drinking water was freely and easily accessible to his workers and A1 farmers

at Kara Farm as well as workers and A1 farmers from surrounding farms which included Creek Farm.

The findings made with regard to the immediate impact of FTLRRP on former farm workers resonate to some extent with other empirical findings made in other post FTLRRP studies which have shown that after the land invasions, farm workers had to resort to various self-help coping strategies. These included “the itinerant search for piece-work jobs at different farms at different times, informal trade, gold panning, fishing and hunting...A few farm worker households received remittances from relatives working elsewhere. Some farm workers have created or joined ‘informal settlements’ on which they have access to a small piece of land and to basic, often-rudimentary social services.” (Sachikonye (2003:7)

In my study however, there was no evidence of any former farm workers engaged in gold panning, fishing and hunting since these activities were prevalent on farms close to Mazowe River. Although on a few occasions, I encountered a few former farm workers (mostly male) fishing in Mudzi, Dombotaura and Makoronyera dams, this was purely for family consumption and sale to neighbours was at a very negligible level. The most prevalent self-help coping strategy was for former farm workers to move around surrounding farms seeking casual work from the highest bidder as most A1 farmers sought to take advantage of former farm workers’ desperation by paying measly wages which were less than US\$2 for a full day or in the form of food handouts.

6.3.6 A Borehole so near and yet so far! Women former farm workers’ lack of access to a borehole within the vicinity of their homes

While clean drinking water was easily accessible in terms of distance from their homes, for the majority of farm worker families at Creek Farm, the reality was that it was inaccessible to them due to its cost. In interviews held at Creek Farm with the male A1 farmers in the Borehole Committee, they were at pains to justify the charging of tariffs payable by former farm workers who sought to fetch clean drinking water from the converted borehole. It was

argued that there was need to pay such amounts to cater for any eventualities such as routine borehole maintenance and repair in the event of breakdown which would require spares. The situation made life extremely difficult for women farm workers and women married to male farm workers, who were tasked with fetching dirty drinking water from a river, 2 km away and yet the borehole was less than 300 metres from their homes.

The question arising from this turn of events was “Where was the Shona customary norm governing the free sharing of clean drinking water located within this unique Creek Farm scenario?” Could they not ask the farm workers to pay in kind through for example keeping the area around the borehole clean and chipping in with their labour during the borehole’s servicing and repair? It seems an exception to the customary norm requiring a community to freely share clean drinking water without discrimination existed at Creek Farm as male A1 farmers dominating the local borehole committee²³⁵, bestowed on themselves the prerogative to flout this customary norm by denying women former farm workers and their families at the farm access to clean borehole water unless they paid a certain non-negotiable levy solely determined by the male farmers themselves.

I say the above in light of findings made by Hellum and Derman (2003); Nemarundwe (2003) and Matondi (2001), which findings I have discussed in detail in Chapter 4 which point to the existence of a customary norm among the Shona recognizing that (1) drinking water is a ‘God given’ natural resource which should never be denied anyone; (2) it should be for everyone because (3) water is life. The study findings also show that former women farm-workers, most of whom were of foreign descent suffered under intersectional discrimination. One of the grounds for discrimination was ethnicity, descent status or country of origin; a basis used for their exclusion from accessing clean water from the

²³⁵ This male dominance in the borehole committee exists despite the fact that women farmers and women farm workers and workers’ wives are as expected, the major primary water users.

borehole at Creek Farm. Nevertheless, the few women farm workers then employed by the same A1 farmers, most of who were Shona, were allowed access to clean borehole water.

6.3.7 We can't share toilets! Implications for women farm workers' access to decent sanitary facilities at Creek Farm?

Another pertinent issue at Creek Farm was that despite the former white commercial farmer having built Blair toilets for farm workers, these were no longer accessible to most of the farm workers evicted from employer provided accommodation. The new A1 farmers were not sharing the inherited toilets with farm workers who have had to build grass walled shallow pit toilets with tree logs as floors. While women farmers did their laundry at the borehole, most former farm workers evicted from their former accommodation in the compound had no proper laundry facilities forcing them to bath and do laundry at Mudzi River approximately 2 km away, which was also their drinking water source. Meanwhile, there were no toilets in the fields forcing women farm workers to relieve themselves in the bushes around the fields since their makeshift toilets in the compound were distant and they feared to lose a lot of work time going to and fro. Figure 12 below shows on the left, a Blair pit latrine built by a former commercial farmer and on the right, a grass walled combined toilet and bathroom (professionally built).

Figure 12: The Old and the New Toilets for Former Farm Workers at Kara Farm



In an interview on 17 November, 2011, Chimwemwe Masauso, a woman casual labourer who is a former farm worker from Creek Farm, drew a vivid picture of a farm worker's experience when she stated;

That morning when I first heard the war songs and chants from the marching group of land invaders, I had no idea that my life was going to be dramatically changed. I had always taken for granted everyday basics like clean drinking water, good housing and toilets. But the new farmers unceremoniously evicted us from the houses the white farmer had built for us. Now as farm workers we view brick houses and clean water as a luxury which we can only dream of having maybe in the distant future with future generations.

NYAGUI SUB-CATCHMENT

6.3.8 The rights to water and sanitation at Maidei Farm for women farm workers

Maidei A1 Farm presented a different scenario in that the new settlers settled on an arable subdivision of the former large scale commercial farm which had no farm dwellings or workers' houses constructed by the former white commercial farmer in the vicinity. The A1 farming families rarely have permanent workers but rather rely on seasonal or casual labourers who assist during the tobacco and maize growing season. Most of the women A1 farmers who are mostly engaged in market gardening of fresh farm produce rely more on help from family members rather than workers. Most farming households therefore worked in their fields as a family since most of them had married sons, employed in Harare and other urban areas, whose wives lived and farmed together with the in-laws on the A1 farm plots. They often joined forces when it was time to irrigate, weed and harvest crops in their respective family plots.

A few former farm workers from neighbouring farms have however, sought for opportunities at Maidei Farm through renting some plots on which they also do market gardening during the rainy season when A1 farmers concentrate on other cash crops such as tobacco and maize. For approximately 7 years after the FTLRRP, the A1 farmers at Maidei Farm and a very small population of women farm workers and seasonal workers had access to clean drinking water from a prolific electrified borehole at no cost to themselves since Arthur Capswell, the former white commercial farmer and other A2 tenants paid the

electricity bills. This borehole having been switched off from the national grid by ZESA in 2009 for non-payment of an electricity bill in excess of US\$4000; the women farm workers now shared with A1 farmers unclean drinking water from unprotected wells dotted around the farm's homesteads and fields.

Only a few women farm workers were interviewed at Maidei Farm vis-à-vis the drinking water situation because most were seasonal casual labourers who did not live on the farm but lived at the workers' compound for the former large scale commercial farm located 3 km away. Drawn from the interviews held with women farm workers at Maidei Farm, it was quite evident that there were reasonably good relations between women farm workers and women A1 farmers such that water from unprotected shallow wells was shared amicably among them as reflected in an interview with Ennia Muzambi a 40 year old woman farm worker resident at Maidei Farm who said;

My homestead being located in a wet area closer to Munanga River, we dug a shallow well near the river's southern bank. We get our drinking water from there and even some A1 farmers also get their drinking water from there because the water is relatively clean and cool as there are trees shielding it from the weather elements. Most people here have their own privately dug unprotected wells.

When asked whether she made anyone pay for the water from her well, she retorted;

No, it is God's water; we cannot make people pay for it. They only help us to keep the area around the well clean.

A casual labourer, Selina Chonzi living at the workers' compound 3 km away went to school up to Grade 5. Aged 30 years, she is a single mother of four minor children. She was interviewed on 17 December 2012 whereby she commented;

When we come to work here during the day, we drink water from the same water sources that A1 farmers have in their fields and at homesteads. Most of these are unprotected wells and the water is not that clean especially during the rainy season when a lot of runoff water washes off rubbish into the wells. The situation is worsened by the fact that when working in the fields, one doesn't want to waste time by going to the contractor's homestead to use the toilet; hence we simply relieve ourselves in the thickets dotted around the fields which creates another health problem as this human waste is washed into wells during the rainy season.

In an interview held with Petunia Limbe on 17 December, 2012 on the drinking water situation at Maidei Farm, she had this to say;

We fetch drinking water from a well at the Chaurura homestead. They don't ask for anything from us in return. The Chaururas are good people because some of the people with wells demand that all who fetch water from their wells make contributions to maintain and repair the wells or buy new small buckets used to draw water from them.

The issue concerning demands from well owners that those using their privately dug wells contribute money towards the buying of buckets was unique to Petunia's situation because with the other interviewees, the only contribution demanded of them was helping in cleaning around the well as well as draining it when too muddy.

Case Study 11: Petunia Limbe

As a former farm worker couple, Petunia Limbe and her husband secured land at Maidei Farm. Petunia Limbe aged 34 years is a former farm worker who with her husband managed to secure 4 hectares of land at Maidei Farm during the land invasions. She and her husband were former farm workers at the bigger commercial farm from which Maidei Farm was hived. Since the Maidei A1 Farm division is located about 3 km away from the former large scale commercial farm's workers' compound, during the invasions, Petunia's husband could afford to sneak away and stake out his own piece of land 3 km away unbeknown to his employer and the other workers. The problem however, is that Petunia's plot is at the periphery of Maidei Farm, far away from the irrigation pipeline and so although she does market gardening, she does it on her field during the rainy season. During the dry season she either does casual jobs on the other A1 farmers' fields or if she is fortunate, she rents land close to the irrigation mainline if the holder happens to have no interest in winter crop irrigation.

6.3.9 Women farm workers' access to clean drinking water and acceptable sanitary facilities at Saga Farm

At the time the new farmers settled at Saga farm, there was an operational infrastructure for both drinking and irrigation water whereby there was a water piping system in some of the senior workers' houses and other taps dotted around the workers' compound. However, through lack of maintenance of the electrified boreholes, non-payment of electricity bills, as well as theft of borehole equipment and irrigation pipes,²³⁶ no functional system existed for both drinking and irrigation water at the time this study was commenced. Consequently, women farm workers as well as farm workers' wives no longer had access to clean drinking water on the farm as most of them resorted to unsafe and unprotected shallow open wells

²³⁶ It is alleged that some members of the former irrigation committee stole the said pipes and equipment, a case which has been reported to the police with no arrests having been made.

located in family vegetable gardens and at the rivers as drinking water sources. Water from these unclean water sources was however, freely shared among women farm workers, wives of farm workers and women farmers with the exception of a few women farmers who had dug covered deep wells at their homesteads. The village head's wife who owned a deep well shared water with only a few other farmers and not women farm workers.

Interviews were conducted with 33 women comprising of women farmers, women farm workers and workers' wives during the period running from September 2011 and June 2012. A question was asked regarding where they accessed their drinking water from. From the responses given the most popular were Mrs Mutema and Mrs Toriro's unprotected wells. These wells were freely accessible although they were located within the two women's family vegetable gardens in the wetland south of Harare- Shamva Road. Out of the 12 women who accessed drinking water from Mrs Mutema's unprotected well, 5 were former and current women farm workers while 2 of the 9 women accessing it from Mrs Toriro's well were current women farm workers. These wells in family gardens had been privately dug by women A1 farmers since the village head at Saga Farm had not allocated any land to former farm workers to create gardens for family food production.

At one point during this study, the women farm workers, workers' wives as well as women farmers at Saga Farm were being given water purification tablets by the Health worker sourced from the local Rural District Council Clinic. The supply had however since stopped due to lack of financial resources on the part of government to purchase the tablets in light of many donor organizations who had previously supplied them at national level during the 2008 nationwide cholera epidemic having stopped soon after. In 2013, through the assistance of a local donor, clean and safe borehole water became available to both women farm workers, and workers' wives at Saga Farm after Goromonzi DDF personnel converted a former windmill driven borehole on the farm to a hand operated one at little cost for the

cheap spares purchased and fuel for the DDF truck. This water was shared amicably among women farm workers, workers' wives and A1 women farmers. This could be explained by the fact that unlike at Creek Farm where A1 farmers had contributed money to repair their borehole; repairs to the borehole at Saga Farm had been financed by a donor and as such the feeling was that the donation of a functioning borehole had been made to everyone.

6.3.10 Women farm workers' right to sanitation at Saga Farm

Prior to FTLRRP, the white commercial farmer at Saga Farm, Mr Stodart had constructed single Blair pit toilets at senior farm workers' homesteads as well as communally shared pit toilets for the rest of the junior workers. Nevertheless, at the time this study was conducted, the communally shared pit toilets mostly used by women farm workers and workers' wives were almost full and overflowing. Up to four farm worker families shared one communal pit toilet. The same toilets were also used as bathrooms but most women farm workers and workers' wives preferred to bath at the river. Most A1 farmers had built their own Blair toilets next to their homes which they did not share with farm workers. This also applied to those A1 farmers who evicted senior farm workers from single unit brick houses which had Blair pit toilets next to the houses which the former also did not share with farm workers although they now also needed replacement.

Due to the filthy condition of the almost overflowing toilets, farm workers' children were resorting to open defecation and during the rainy season, this faecal waste would be washed into local streams, rivers and unprotected wells which were also their source of drinking water. As a result cases of diarrhoea were common on the farm especially among infants and children below the age of 5 years.

In group interviews held with women A1 farmers and women farm workers as well as wives of farm workers at Saga Farm, I asked them why as women they were not cooperating by contributing money to buy cement for building following which male A1 farmers and farm

workers would chip in with labour to mould bricks and build new pit latrines. A suggestion was made to them that as women farmers, women farm workers and workers' wives they were expected to be at the forefront in addressing this issue considering that they were the ones encumbered with nursing children suffering from diarrhoea due to the unhygienic sanitary conditions. The village head's wife, who had privately constructed her own family toilet at her privately built homestead, quickly shot down the idea of such co-operation among the two social groups when she responded thus;

Working as a cooperative for communal toilets is impractical because as farmers each of us has their own stand or plot which needs to be developed. We cannot afford to contribute to such communal toilets used mostly by farm worker families.

Meanwhile Mphepo Zhuwao, a woman farm worker had this to say;

In the workers' compound, houses are too close together and hence there is no space to put up communal toilets. After all an attempt was once made in the past among farm worker families to cooperate and contribute money to this project, but accessing enough water for the toilet construction was a headache. The building project's members also largely failed to regularly pay the set monthly contributions due to widespread poverty among former and current farm workers.

The discussion on that particular aspect thus reached a natural dead end as continued discussion would have entailed delving into the touchy issue that A1 farmers were farming up to workers' doorsteps leaving no space even to build new toilets for the workers.

Figure 13: Pit toilets built at Saga Farm, prior to and post to FTLRRP



6.3.11 Overall Conclusion: Women farm workers' and workers' wives access to clean drinking water and sanitation in Upper Mazowe and Nyagui sub-catchments

The findings made in respect of this section clearly show different water access patterns for women farm workers and wives of farm workers. While generally water from unprotected

sources was freely shared among workers and their employers on three of the researched farms, Creek Farm was an exception as the A1 farmers there denied former farm workers clean drinking water. The A1 farmers who shared this clean water with their own farm workers and A1 farmers from the neighbouring Kara Farm demanded exorbitant water levies from the former farm workers. This could be explained by the fact that most of the A1 farmers on this farm had originated from an urban area, Chitungwiza and hence were familiar with commercialized drinking water and water rights attendant thereto.

6.4 Equality and non-discrimination: Gender stereotypes and women farm workers' access to and use of water

Similar to the investigation conducted for women farmers, whose findings are discussed in Chapter 8, an investigation to find out the gender division of labour among male and female farm workers and their spouses was also carried out. The findings obtained in respect of women farm workers and workers' wives are equally interesting in that most farm workers are married to women who are also either permanent farm workers, casual or seasonal workers. They do similar jobs in the public productive sphere but still at the end of the day it is the women farm workers who have to do most if not all the household chores in the private domestic sphere such as fetching water, firewood, cooking and taking care of small children. They also gave cultural and religion based reasons for this unbalanced sharing of domestic work responsibilities which they felt powerless to change unless the government intervened. An exception to the rule however, was that most male farm workers did not particularly insist on their wives fetching their bath water for them and heating it. Rather after working hard in the fields, they, like the women, would bath at the river or the communal showers in the case of Kara Farm.

The majority of worker families do not pool their resources as most women accused their husbands of misplaced priorities as male farm workers tend to spend most of their earnings on other women and beer. As such women farm workers budget whatever little income they

get to cater for the general welfare of the family. In interviews with women farm workers and workers' wives I discovered that similar to women A1 farmers they generally would prefer to invest more on clean drinking water and better sanitary facilities so that the family enjoys an adequate standard of living but are inhibited by inadequate income. The women farm workers and workers' wives at Saga Farm were eager to contribute money to build a new communal block of pit latrines but failed to do so due to the general poverty among farm workers.

6.5 Women farm workers and farm workers' wives' access to water for livelihood in Mazowe Catchment

A common practice in colonial Zimbabwe prior to independence and the FTLRRP, as revealed also by the empirical data collected for this study and as discussed earlier in Chapter 4, was for white commercial farmers to reserve land close to or next to the workers' compound for kitchen gardens²³⁷ cultivated by the workers' households. These small vegetable gardens usually located at the front, side or back of their houses in the compounds, were irrigated with water sourced from electrified boreholes and accessible from taps dotted around the workers' compounds. On the farms researched on in this study, the taps were located within an average radius of 200 metres from workers' houses.²³⁸ The commercial farmer would just pay the electricity bills emanating from pumping this water for domestic needs i.e. water for drinking, gardening, cooking, laundry and bathing. Within the kitchen gardens were planted various leafy green vegetables as well as tomatoes and onions and green maize which were crucial in meeting the nutritional needs of these workers' households. Meanwhile with the bulk of the permitted water the commercial farmers concentrated on the national production of main crops which included wheat, barley, cotton, maize, beans, potatoes and fruits, thus ensuring national food security.

²³⁷ Kitchen gardens are distinguished from family gardens in that the former are viewed as those located next to houses in an urban or farm setting while the latter are primarily those found next to rivers or in wetlands or dambos in communal lands.

²³⁸ At Kara Farm, water taps were located within 50 metres from each farm worker's house.

Thus at the beginning of the millennium, farm workers at the researched farms, the majority of who were women, had access to free clean drinking water, which they also used to irrigate their kitchen gardens and for other domestic uses. With no limit as to quantity, this could be viewed as part of their employment benefits package. Nevertheless this scenario should also be understood from the perspective that these water facilities were supplied to staff complements which rarely exceeded 200 workers on each farm. While the bulk of water used in irrigating crops came from large dams, perennial rivers and weirs on the farms, the erstwhile large scale commercial farmers could afford the extra expense to install electrified boreholes pumping smaller volumes of drinking water from underground water reserves on the farms.

Based on the labour contracts they had with their workers white commercial farmers catered for the provision of free water supplies to farm worker families for domestic purposes which included the watering of vegetables for family consumption. This guaranteed farm worker families an adequate living standard. From my own perspective this water used by farm workers prior to FTLRRP would have been classified under free primary water, had it been sourced from state owned hand operated boreholes, local rivers and dams, considering that the farms were located within a rural area.²³⁹ Nevertheless since the boreholes used to supply that water were electrified rather than hand operated, the farmer as the employer had to take the responsibility to pay the electricity bills for the boreholes in order to allow the workers to enjoy the use of free water just like those in communal lands who after 1980 had hand operated boreholes, drilled by the new Zimbabwe Government's DDF with the assistance of international donors as well as self-built deep covered wells and common pool

²³⁹Practising natural conservation methods under the Natural Resources Act and as enforced by the Natural Resources Board, EMA's predecessor, white commercial farmers discouraged farm workers from using water directly from local rivers and dams for gardening purposes like what happened in communal lands since stream bank cultivation would lead to rapid land and river degradation through soil erosion and river siltation.

resources in the form of unprotected wells and natural springs providing free primary water for drinking, food production, housing and sanitary purposes.

The family gardens in communal lands were distinct from clan land or fields,²⁴⁰ and were primarily worked on by women, who as the major family food providers, became associated with them. As indicated in Chapter 3 on Zimbabwe's domestic legal framework, this practice regarding the use of free water for domestic purposes and in meeting the right to food within rural communities (excluding commercial farming areas) has been specifically provided for under Zimbabwe's successive Water Acts inclusive of the current Water Act Chapter 20: 24 as 'water for primary purposes.' Discussed in the next section is how women farm workers have, since the FTLRRP, productively used the commons to produce food for their families although in some instances, the use of such commons has been inaccessible due to contestation from powerful actors, mainly village heads on the A1 farms.

UPPER MAZOWE SUB-CATCHMENT

6.5.1 Water for women farm workers and workers' wives' livelihood and nutritional needs at Kara Farm

After having been dispossessed of their kitchen gardens located beside their 3 roomed brick houses and as a way of mitigating their losses, the displaced farm workers at Kara farm,²⁴¹ created new family gardens along the banks of Mudzi River. They started using Mudzi River water to hand irrigate these newly staked out vegetable gardens. An interesting development at Kara Farm emanated from the manner in which farm workers were given free reign by the woman village head to carve out new vegetable plots by the river to replace those that had been wrested from them by the new A1 farmers. The woman village head was not concerned by the fact that the farm workers did not consult her prior to creating gardens for themselves close to the nearby Mudzi River.

²⁴⁰ The main family fields were inheritable only through the male progeny of a clan or tribe upon marriage which automatically transformed him into a household head. This explains a colonial successive reference to such rural land as Native, Reserved lands and Tribal Trust Lands.

²⁴¹ now occupying dormitory like accommodation with no space for family gardens,

In a situation clearly reflecting the customary norm upholding the free utilization of riparian land for family gardens by whosoever needed it and regardless of the location being in a commercial farming area; the woman village head allowed farm workers to self-allocate riparian land for gardens. Finding explanation in Shona customary norms and practices, she explained how everyone had a right to have a garden by the river to meet families' nutritional needs. She had thus looked the other way when her authority as traditional leader was apparently flouted by farm workers carving out gardens for themselves without so much as a cursory 'May I?' directed at her. Yet the common practice in communal lands is that one routinely asks or informs the village head prior to carving out a family vegetable garden in the dambos or next to local streams and rivers. The question is, had she been a man, would he have allowed such a situation to prevail? Admittedly, it is rare for one to be denied authority by the village head to create such a garden in communal lands (see Hellum et al, 2007:117). In an interview, the woman village head had this to say;²⁴²

Some settlers and farm workers here have gardens at the river. In our tradition, practised even now in the communal lands, land adjacent to rivers has always been considered communal property whereby anyone in the community can have a piece allocated for a family garden after asking the village head. However, on this farm, I was not strict on requiring to be asked first as village head and so anyone could just go and stake out a piece of land for gardening. As a result, the land close to Mudzi River here is mainly used for family gardens belonging mostly to farm workers who largely were not allocated land for farming under the Fast Track Land Reform Programme. We are not allowed by the Environmental Management Agency in conjunction with the Forestry Commission and ZINWA (who carry out patrols) to have gardens too close to the river due to soil erosion and siltation. Gardens are supposed to be at least 30 metres from the river bank. However, on this farm we have the predicament of having some homesteads in the compound falling within that 30 metre radius from the Mudzi River bank so it ends up being close to impossible to garden within the stipulated distances.

6.5.2 The gender and environmental politics of creating a garden near Mudzi River

Nevertheless, for Julia Jackson, the 47 year old widowed farm worker from Kara Farm, the subject of Case Study 1, the process of staking out land for herself at the river for use as a garden was too competitive, despite the gendered classification of vegetable gardening as a feminine occupation. With her full time job within the flower green houses coupled with domestic parenting roles and chores at home, for which she was solely responsible, she had

²⁴²In an interview at Kara Farm on 13 October, 2011

no time to spare to fully engage in the riparian land grab. Hence, while on the face of it, all farm workers at Kara farm supposedly had unfettered access to riparian land for cultivation through self allocation; the terrain in terms of capability was not so level.

Women farm workers from female headed households, just like their women farmer counterparts (also from female headed households during FTLRRP), had failed to keep up with the cut throat competition for riparian land. The brawny male household heads had to use pangas or bayonets to cut through the thick mangrove bushes bordering Mudzi River in a ‘slash and burn’ process in order to access the virgin land for gardening. As she put it, the whole process, highly gendered in favour of men made no provision for widows like her;

As a farm worker, I don't have access to any land on which I could irrigate. I don't even have a vegetable garden on which I could, like everyone else, use free water from Mudzi River. This is because I have no husband and it was mostly men (including farm workers) who staked out land near Mudzi River for their wives to garden. However most of those women who settled here earlier than me have gardens. There is no more land to have gardens. Chero pokuisa muboora handina!²⁴³ Others are fortunate enough to still have their husbands, who ensured that they got these self allocated gardens. With no one having the mandate to allocate gardens by the riverside one simply went into the forest bordering the river and cleared a piece of land. They would then fence it off with the branches of the felled trees and bushes. I am talking about a small area near the river but there is no longer any such land for gardens. We, like many people here, buy vegetables from others. If you don't have US\$1 that's it! When vegetables are plenty, a bundle of vegetables usually costs 5 South African rand or 50 US cents but in times of scarcity a bundle costs on average, US\$1.²⁴⁴

It was quite apparent though that with some of these vegetable gardens being as close to river banks as 2 metres, an environmental disaster was in the making through rampant environmental degradation accompanying stream bank cultivation which would ultimately result in soil erosion and siltation of the local river. The woman village head was aware of legal provisions within the Traditional Leaders Act placing a traditional role on traditional leaders who include the Chief and village head to protect the environment in conjunction with employees from the Environmental Management Agency (EMA) which is the national enforcement agency under the Environmental Management Act, the Forestry Commission

²⁴³ This is translated to mean that she has no gardening space even for purposes of planting ‘muboora’, African spinach, normally planted in the backyard and commonly used as relish by poor rural women during the rainy season.

²⁴⁴ In an interview held at Kara farm on 21 November, 2011

and ZINWA. Despite this, for the woman village head, the immediate need to adhere to customary norms guaranteeing everybody water for food, prevailed over the long term need to ‘sustainably manage the environment for present and future generations’ under the more globalized sustainable development discourse. In the opinion of another traditional Chief in Nyagui sub-Catchment, these customary norms allowing women to have gardens next to rivers had the added advantage of being governed by other customary conservation norms or measures aimed at preventing land degradation.

Hence through customary norms, women farm workers and wives of farm workers were afforded an opportunity to once again place food on the table for their families in a harsh economic climate. Apart from providing vegetables for their families’ nutritional needs, a few others who are more enterprising have been selling some of the excess vegetables to fellow women farm workers and A1 farmers, thereby filling a gap on the farms where vegetable markets are rare except at Maidei Farm in Nyagui sub-Catchment.

Nevertheless, reflecting a vicious cycle, had the women farm workers not been summarily dispossessed of their kitchen gardens, they would have felt no need to practice stream bank cultivation. As a matter of fact, the allocation of kitchen gardens to farm workers by white commercial farmers had been aimed at preventing stream bank cultivation by the former as was the case in communal lands. The commercial farmers were therefore on the forefront in guarding against any land use practices such as streambank cultivation that contributed to rapid land degradation in the commercial farming areas. The white commercial farmers’ zealotry in this respect is partially attributed to the fact that they were paid handsomely by the Natural Resources Board (NRB), EMA’s predecessor, for playing this natural conservation watchdog role. Mandondo (2000:8) says;

In European areas, the enforcement of the provisions of the Natural Resources Act relied on voluntary regulation and the investment of large-scale grants, loans, machinery and other incentives to assist white settlers in implementing conservation measures (McGregor 1991, Scoones and Matose 1993). Voluntarily constituted conservation fraternities in European farming neighbourhoods received the designation of Intensive Conservation

Areas (ICAs), which entitled their members to enhanced subsidy, land tax exemptions and pricing bonuses on agricultural produce (McGregor 1995).

While the Natural Resources Act of 1941 was repealed in 2002 after 25 post-colonial amendments, (see Scoones and Matose, 1993) the provisions relating to rewards for observing good conservation practices were not retained in the new Environmental Management Act which succeeded it. Hence despite the looming rampant environmental degradation occasioned by uncontrolled stream bank cultivation on the A1 resettlement farms urgently requiring a well funded holistic approach to effecting sustainable environmental management practices by stream bank cultivators in conjunction with traditional leaders, EMA, ZINWA and the Forestry Commission; no such financial support currently exists nor is it forthcoming. This has resulted in a general lack of strong collaboration or coordination of activities between the said institutions largely known for their invisibility on most A1 farms.

There are exceptions however to the stance taken by some traditional leaders such as the woman village head at Kara Farm since in some communal lands like Domboshawa there are some traditional leaders who are strict about stream-bank cultivation such that anyone who cultivates within the forbidden 30 metre radius from the river bank, is heavily fined at the village head or Chief's court (Hellum et al, 2015:11). In summary therefore, the women farm workers at Kara Farm have been availed the opportunity to have access to water for family gardens in line with MDG 1 for food security but this has been at the expense of environmental sustainability as envisioned under MDG 7. There is great need therefore to balance these competing interests.

6.5.3 Access to water for livelihood and food at Creek Farm for women farm workers

The situation at Creek Farm is different from that obtaining at Kara Farm in that after taking over the land that Benny McCray had reserved for farm workers to have gardens close to their homes in the workers' compound; the new A1 farmers did not allow the former women

farm workers and wives of farm workers to have new family gardens along Mudzi River. Instead women A1 farmers were the ones predominantly having vegetable gardens close to Mudzi River, downstream of those belonging to Kara farm workers. Unlike the woman village head at Kara Farm, the male village head at Creek Farm who is a war veteran is not prepared to allow access to riparian land for family gardens to current and former farm workers. In the words of Arufonzo Zhuwakinyu, a male farm worker aged 33 years with 4 minor children;

The village head here at Creek Farm has been very explicit about the fact that he doesn't allow any gardens near the river. In any event gardening in the farm compound is out of question because settlers' goats, cattle and chickens roam all over the place and hence destroy any cultivated crops.

Speaking on their experiences in separate interviews held in the fields at Kara Farm on 5 November, 2011, Pepukai Matambo and Kaporoma Mavhuto who used to live and work at Creek Farm prior to the FTLRRP and are now casual labourers competing for the scarce piece jobs in the surrounding farming areas had different experiences to relate. Pepukai Matambo then aged 26, born at Creek Farm who was now married but still living in the same workers' compound had this to say;

Prior to invasion, we had vegetable gardens which we no longer have. The new settlers occupied every piece of land. There is no water since the water engine broke down. Previously we used to have tapped water in the compound. When we used to have gardens in the compound at Creek farm, we would grow vegetables, tomatoes, onions and green maize. We led a self-sustainable life. As farm workers, the current situation is that we have neither gardens nor farm plots. We sometimes do barter trade to get maize from the new settlers e.g. working in the settlers' fields so as to be paid in kind i.e. given maize. We buy vegetables from those with gardens. Often as relish, we eat traditional vegetables found in the fields and in the wild but this is only during the rainy season.

On the other hand, Kaporoma aged 49, born at Creek Farm, who is married with 6 children and 6 grandchildren, had her own story to relate. She said;

My parents are former workers who have since left the farm and secured a rural home in Mt. Darwin communal lands where they are doing subsistence farming. I have neither a field or garden of my own here. Prior to 'jambanja,' my parents and the other workers had gardens in the farm compound, which land has been converted to grazing lands by the new farmers. As regards sanitation, we have since dug up pits which we cover with tree trunks over which we put mud flooring. These pit toilets' walls are made up of sticks and grass.

Several other interviews conducted at Creek Farm with other farm workers, mostly women on the same day elicited a wide variety of interesting responses that spoke of rampant

human rights abuses through eviction from and dispossession of farm workers of their shelter and garden plots by the new A1 farmers. Senior both to Pepukai and Kaporoma in age, Amai Ishmael Ruzawi, (Case Study 3) narrated her personal experience on the issue;

I haven't asked for a piece of land to garden since there is a lot of politics involved. Our life at Creek Farm is hard. Currently I have no vegetable garden. If I were to be allocated a garden, I would use it successfully since I have been a farm worker for years. Further when the white man, was still around we as workers had our own family vegetable gardens in our compound and so we had no problem with relish. I haven't asked for a piece of land to garden from the village head since there is a lot of politics involved. Our life at Creek Farm is hard. Some people don't pay anything but still they access some privileged services.

Fuvai Kombo aged 23 years, married with 2 minor children the eldest of whom is aged 5 years also stated;

My mother who works at Kara Farm has a garden near the river where she plants vegetables, onions and tomatoes. The garden does not have enough space for me to also grow my own vegetables. Despite workers at Kara having access to brick walled and iron-roofed 3-roomed or 1-roomed accommodation, my mother occupies 2 round huts. She has worked among the roses at Kara farm for many years. Maybe this can be attributed to the fact that my mother is a widow who cannot stand up for her rights. My father died long back when I was still very small. However a single worker, widow, divorcee or those with very small children are entitled to stay in what they call 'dormitories' but then my mother required some privacy and a relaxed home sphere and hence she opted to build these round huts for herself. The village head has advised us not to cultivate close to rivers since we would destroy trees and other vegetation and this would result in soil erosion of river banks and siltation.

Adding male voices to the discussion were Mario de Souza and Milton Chinyuku (not their real names). Mario a 34 year old married farm worker with 3 minor children said;

Prior to the fast track land reform programme, my parents, the other farm workers and I had gardens in the farm compound here, which land has been converted to grazing lands by the A1 farmers. My wife and I live in the farm compound where we have 2 round huts but we have no garden. Although as labourers we have tried to talk to the village head about him allocating us small patches of land to enable us to do gardening for family consumption, the village head is too busy and has no time for us.

Milton is aged 51 years, married with 5 children, the eldest of who is married and 3 grandchildren. He went to school up to Standard 3 (Grade 5). He said;

My wife and I have no garden near Mudzi River. We and a few other farm workers had started gardens near the river but the Chief on advice from the village head fined us US\$5 each for doing so saying we had cultivated close to the river. We were 12 people who were fined and so we have since stopped the gardens. I am not aware how far from the river we are supposed to operate gardens.

NYAGUI SUB-CATCHMENT

6.5.4 Women farm workers' access to water for livelihood and food at Maidei Farm

As indicated earlier, there are a few farm workers here although there are other workers who are innovative who rent some pieces of land from the new farmers so as to engage in the seemingly lucrative market gardening ventures taking place on the farm. Nevertheless, the departure of the white farmer also led to both women farmers and women farm workers to create gardens near the nearby Munanga River since free water from the electrified borehole and irrigation pipeline was no longer available. Currently therefore, there are women farm workers' gardens located along rivers and dambos at Maidei Farm. When asked about this, Chief Chinhamora who was also the traditional chief for Domboshawa area indicated that from time immemorial, the Shona would cultivate along rivers and dambos, compelling him not to be strict with the practice. He indicated that he would simply advise women farmers and farm workers to plant sugarcane, bamboos and banana plants at the edge of the river bank, whose close knit roots and stems would serve to prevent rain from directly hitting the loose soil hard and also hold in the soil during the rainy season.

6.5.5 Saga Farm: Women farmers' access to water for livelihood and food

No former farm worker was allocated any land on the farm. Instead the new farmers encroached onto the workers' homesteads and are growing crops on the land formerly reserved by the white commercial farmer for workers' gardening purposes as a way of meeting their nutritional needs. Post to their being dispossessed of land for kitchen gardens by the new A1 farmers, five former farm workers at Saga farm who included one Tumbalu Henderson lodged a complaint with the local Chief Chikwaka about the new A1 farmers' encroachment onto their compound vegetable gardens. The Chief had ordered in early 2011 that the village head at Saga Farm re-allocate pieces of land to former farm workers for them to grow crops for food in family plots. By end of 2014, that order remained unheeded

as the 20 farm worker households in the farm compound remained practically landless, with no means to enjoy an adequate standard of living.

Case Study 12: Tumbalu Henderson

A widow aged 59 years in 2011; Tumbalu Henderson was a former farm worker at Saga Farm. Having been born on this farm, she only went to school up to Sub A simply because she had to assist her farm worker parents by taking care of her smaller siblings as her parents worked in the farm fields. Her parents had both emigrated from Malawi when her older brother was a mere toddler. Tumbalu had married on the farm, given birth to three daughters who had since died due to HIV and AIDS conditions leaving her to take care of their five minor children. Tumbalu is one of the brave former farm workers who reported the village head at Saga Farm to Chief Chikwaka for dispossessing them of their kitchen gardens and failing to allocate them other land near water suitable for family gardens. Despite Chief Chikwaka having ordered the village head to allocate such land to former farm workers, the order was not complied with. Throughout the research period, Tumbalu would often be seen at the village head's homestead making follow-ups on the issue to no avail. She however never lost hope that one day she would be allocated a family garden.

In a preliminary interview held at Saga Farm on 14 December, 2010 during the piloting stage, Tumbalu Henderson was part of a group interview when she revealed the pent up frustrations bottled up inside most women farm workers on the farm when she burst out;

The issue you talk about on drinking water is a good issue and we don't have much of a problem with that. We are happy on this farm; we all share drinking water from the same unprotected sources without considering who is who. The issue which is bothering us as farm workers who were born on these farms, my own parents were MaBhurandaya²⁴⁵ and I was born in this farm's compound. The issue bothering us is lack of land for us to have vegetable gardens for family consumption. Like me, I have grandchildren, who are orphans, left by my children who died of the pandemic disease. Where am I expected to find money to buy both mealie- meal and vegetable relish? If only they could also give us land to till.²⁴⁶

In support of the above assertions, another woman farm worker at the same farm stated;

In the compound, we always had land next to our houses reserved by the white farmer for us to have vegetable gardens which we watered using borehole water coming from the taps. But now with these new farmers, they plough their fields right up to our door steps.²⁴⁷

With new A1 farmers eager to utilize every little piece of land in light of the fact that the average maximum hectarage of such small scale farming plots was 6 hectares, farm workers

²⁴⁵ When translated this means 'Blantyres', a somewhat derogatory term used during the Federation of Rhodesia and Nyasaland, when referring to the nationality of people originating from Malawi, whose capital city then was Blantyre

²⁴⁶ In a group interview held at Saga farm on 14 December, 2010 for the pilot study

²⁴⁷ In a group interview held at Saga farm on 14 December, 2010 for the pilot study

on all the researched farms have found themselves stripped of even the little gardening plots they used to have next to their houses. This has had serious ramifications for women farm workers who have always grown vegetables in small kitchen gardens in realization of their right to food.

However, one characteristic in the A1 farmers' favour at Saga farm is that unlike most A1 farmers on neighbouring farms in the area, they have continued to accommodate former farm workers on the farm with a sizable number still occupying their employer provided houses. This is in contrast to the common trend in the locality whereby soon after invading a commercial farm most of the A1 farmers on neighbouring farms evicted all former farm workers, forcing most former farm workers to settle en-masse at Chizanza and Gamanya farm compounds in the same sub-Catchment, since they had no rural homes to go to being of foreign descent.

6.5.6 Conclusion on women farm workers' and workers' wives' access to water for livelihood

In keeping with the Shona customary norm which views water as life thereby warranting that women be allowed to have gardens close to rivers for the production of food to feed the family and for livelihood; two of the four village heads in this research allowed women farm workers to create gardens close to rivers and dams. The other two at Creek and Saga Farms did not give such concessions giving as a reason the statutory requirement that no cultivation should be done within 30 metre distance from a river bank. There was thus conflict between the right to a livelihood and environmental rights under the Environmental Management Act. Nevertheless the denial of access to riparian gardens for former farm workers was despite some women A1 farmers having been allocated such gardens close to rivers by the same village heads at Creek and Saga farms.

6.6 Women farm workers' right to participation in decision making on water for personal and domestic uses, sanitation, water for food production and livelihood

Recognized as one of the major tenets in the realization of the human rights to water and sanitation, participation “must be active, free and meaningful.” Hence “any plan or decision-making that” seeks to achieve “the realisation of the rights to water and to sanitation must be developed through a participatory and transparent process” that “...must go beyond mere information-sharing and superficial consultation, and involve people in decision-making; providing real opportunities to influence the planning process,” if it is to succeed. (de Albuquerque, 2012;162) While findings clearly point to the social exclusion of women from local decision making institutions on water and sanitation; women farm workers and workers' wives occupy the worse position as they are generally viewed as a social group of paid wage labour who simply wait for decisions to be made on their behalf by A1 farmers (both men and women) as their employers. In next sections I look at institutions mediating women farm workers' access to water on the four A1 farms.

6.6.1 The role played by women farm workers in borehole and irrigation water committees

Since women farm workers and workers' wives were actively involved in the gender roles of fetching drinking water for family use, the expectation was that they would be involved in how this water was shared and managed. Of the total number of 10 members sitting on one borehole committee at Creek Farm, none were women, let alone women farm workers. It is this same borehole committee which specifically discriminated against women farm workers by demanding that they pay a levy towards the borehole's maintenance which the A1 farmers themselves as a social group were not paying.

Of the 6 irrigation committees on the four A1 farms with a total membership of 30 men and 8 women, all the women members were A1 farmers. This was attributed to the fact that one of the eligibility requirements demanded that one be a plot holder who carried out winter crop irrigation. Since the majority of the women farm workers had not been allocated any

land during FTLRRP, they were automatically disqualified from participation. My argument however, would be on the devaluation of hand irrigation since a marginal proportion of women farm workers were engaged in irrigation of family gardens near rivers and dams which required that they be actively involved in the sustainable use and management of water resources used for producing their family food requirements. There should have been another irrigation water committee in which women farm workers and workers' wives fully participated to ensure sustainable natural resource governance.

6.6.2 Women farm workers' role in ensuring healthy and acceptable sanitary facilities

Despite their gender specific role of ensuring cleanliness around the homes so as to guard against water borne diseases among minor children such as diarrhoea, women farm workers and workers' wives were generally emasculated from making any decisions on sanitary facilities. An example is what happened at Saga Farm where a noble project to construct new communal pit toilets suffered a still birth simply because it was the women farmers who were in control. With most of the women farmers having constructed private Blair toilets at their homesteads, they saw no need to proceed with the project meant specifically for farm worker families. Further, the project required land and yet neither the women farm workers, workers' wives nor their husbands had access to any land on which this communal toilet project could be constructed. Meanwhile children continued to suffer from diarrheal diseases unabated due to unsanitary conditions which included open defecation.

6.7 Conclusion: A summary of issues on women farm workers' and workers' wives' right to clean drinking water; sanitation; housing and water for food and livelihood

The invasion of former white owned large scale commercial farms resulted in a dramatic change of circumstances for farm workers and their families. While they had generally enjoyed access to free and clean drinking water and sanitary facilities while accommodated in brick houses with adjoining kitchen gardens; their summary and forced eviction from

these houses by new settlers had a spiralling effect on all their other interconnected rights in keeping with the interconnectedness, indivisibility and interrelatedness of human rights.

Consequently, when new A1 farmers came on the scene, the water infrastructure broke down and sources of food and livelihood for farm workers' families in the form of kitchen gardens disappeared in most cases. Either the gardens were confiscated together with the houses by the new farmers, like what occurred at Kara farm or where these kitchen gardens bordered a line of workers houses in the compound, the new farmers simply extended their fields to include these gardens in their main fields, like what happened at Saga farm. In another scenario which obtained at Creek farm; this land, previously reserved for workers' gardens, was peremptorily and without any prior consultation with the workers, left fallow and converted to grazing lands for the new farmers' livestock which roamed the area.

Another method used in displacing farm workers from the land previously used for gardening was simply to inform them that water from the taps and boreholes was no longer adequate to allow for the irrigation of vegetables after which the new A1 farmers' livestock would be let loose on the mostly unfenced backyard kitchen gardens. With no water available to regularly irrigate them, the gardens next to workers' houses slowly receded back into either the now dry and dusty communal courtyards or communal grazing lands.

Hence apart from being excluded in the allocation of land on the new A1 farms, most former farm workers were shocked to find themselves dispossessed of even the little garden plots allocated to them by their erstwhile employers to cater for their families' nutritional requirements. It is therefore a finding in this study that the majority of women farm workers were dispossessed by the insatiable small scale farmers even of the small kitchen gardens, allocated to them by white commercial farmers prior to FTLRRP thereby impacting heavily on their right to food and an adequate standard of living.

CHAPTER 7

WOMEN FARMERS' RIGHT TO WATER: HOW WOMEN FARMERS ACCESS AND USE WATER FOR PERSONAL, DOMESTIC, LIVELIHOOD AND PRODUCTIVE PURPOSES ON A1 FARMS IN MAZOWE CATCHMENT

7.0 Introduction

In this Chapter, findings regarding women farmers' perceived roles in accessing and using water within the household up to catchment level are discussed. An analysis is carried out on how a woman's position within a household, community or working space as well as other societal influences go a long way in determining the extent to which a woman has capacity to freely access water for reproductive, livelihood and productive needs as well as managing it. In carrying out this exercise, the first aim is to provide evidence showing that, the extent to which women access, use and control water is determined largely by the range of political, social, cultural and economic networks they find themselves embedded in. The second aim is to show the circumstances under which women on the ground perceive their basic water needs as having been met in all their multiplicity.

From an international human right to water perspective, the nature of rural women farmers' access to and use of water in its multiple uses is analyzed. The findings are also interpreted as drawn from the national perspective and lastly from local perspectives vis-à-vis how water should be shared so that everyone gets adequate amounts for the entire multiple ranges of water uses that enable one to live a life of dignity. Adopted from the international human right to water perspective, is the UNCESCR's approach in GC15/2002 whereby the key pointers followed in my analysis are contained within statements made by the UNCESCR in paragraphs 2,²⁴⁸ 3,²⁴⁹ 6²⁵⁰ and 7²⁵¹ of GC15/2002. My analysis at that level

²⁴⁸ Directed at drinking water; water for sanitation; personal hygiene and other domestic uses whereby the right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

²⁴⁹ The right to water viewed as inextricably related to the right to the highest attainable standard of health, rights to adequate housing and adequate food as well as the right to life and human dignity.

seeks to establish the nature of access and whether this facilitates women's unencumbered access to water in adequate quantities that enable them to enjoy an adequate standard of living as well as the highest attainable standard of physical and mental health.

Making an analysis from the national legal and policy perspective, the findings are interpreted in terms of section 77 of the 2013 Zimbabwe Constitution on the right to food and water; free access to primary water in the Water Act Chapter 20:24; the right to primary water within Zimbabwe's National Water Policy as well as other provisions relating to sanitation and environmental health. An analysis from the local perspective, seeks to explain those findings as drawn from informal institutional frameworks and normative understandings that are locally grounded and which may or may not intersect and resonate with the national and international perspectives.

7.1 The Water Sources on the Four Farms

7.1.0 Introduction

The key issues interrogated in this section relate to findings made on the different water sources from which women farmers and their families sourced water and the mode of access on the four resettlement farms.

7.1.1 Clean drinking water sources on the four A1 farms during the first five years after FTLRRP

As indicated earlier in Chapter 4, when the new settlers or A1 farmers settled on the four A1 farms, they inherited from white commercial farmers robust drinking and irrigation water infrastructure in the form of borehole pumps, irrigation pipes as well as perennial rivers that fed into reasonably big dams. In the beginning, both women A1 farmers and women farm

²⁵⁰ Outside personal and domestic uses, water viewed as essential to produce food (right to adequate food); ensure environmental hygiene (right to health); for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life).

²⁵¹ Need to ensure sustainable access to water resources for agriculture so as to realize the right to adequate food. Attention to be given to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Note to be taken of duty in article 1, paragraph 2, of the Covenant, providing that a people may not "be deprived of its means of subsistence." As such, states parties are to ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.

workers across the four A1 farms shared clean drinking water supplied through the electrified boreholes inherited from white commercial farmers. Women farmers and farm workers would then source water from taps placed at a central point in the compounds or alternatively these would be at each former farm worker's house as was the case at Kara Farm. Across the four farms clean drinking water was sourced by women farmers and women farm workers from these electrified boreholes within an average distance of 500 metres. The use of electrified boreholes to supply clean drinking water prevailed for the first few years after settlement on the A1 farms.

7.1.2 Irrigation water sources on the four A1 farms in Mazowe Catchment

On the four researched A1 farms, raw water from local dams and rivers was reserved for the irrigation of winter crops since summer crops were rain fed due to the fact that the four A1 farms are located within Ecological Region 2 with rainfall patterns averaging between 750 mm and 1000 mm per annum. In Upper Mazowe sub-Catchment is Mudzi River, whose water was shared by Kara and Creek Farm occupants. Mudzi River feeds into Mudzi Dam, whose water was shared primarily between Jack Sellers, the white A2 farmer at Kara Farm and the A1 farmers farming on the A1 division of Kara Farm. In Nyagui sub-Catchment is Munanga River which feeds into Gulf Dam. The water from Munanga River was shared among A1 farmers and their workers at Maidei Farm while that from Gulf Dam, used for irrigation was shared between A1 farmers at Maidei Farm and four A2 farmers with farms across the valley. In the same sub-catchment is Saga Farm whose A1 farmers sourced water from Muvhunzi River which feeds into Makoronyera Dam as well as several streams that feed into another dam called Dombotaura, to their North. The farmers at Saga A1 Farm did not share irrigation water from the two dams with any neighbouring A1 or A2 farmers. This was because despite being downstream of the A1 farmers at Saga A1 Farm, the A2 farmers at Saga A2 Farm have their own dams fed by the same perennial Muvhunzi River.

7.2 The changing water resources management regimes on A1 resettlement farms

When this study commenced in October, 2010, the electrified boreholes on three of the four A1 farms had fallen into disrepair either through vandalism, theft, lack of maintenance and repair after disconnection from the national electricity grid by ZESA due to non-payment of electricity bills. The situation was such that women farmers and farm worker families were accessing drinking water either from common pool resources such as dams, rivers, wetlands and streams; communally owned boreholes or privately dug shallow or deep wells. It is from that perspective that the different patterns of access to water as observed on the farms are discussed as well as the different resource management regimes under which women accessed water.

Despite being fully aware of the fact that the Water Act Chapter 20:24 of 1998 removed privately owned water rights; the fact could not be ignored that there existed water infrastructure such as improved dam structures, deep wells or boreholes that had been privately built or renovated by individuals or groups of people. There also were dams and rivers that were state property as represented by ZINWA who managed them. Consequently, there was bound to exist rules or norms regulating access to the infrastructure holding that water. The conceptual framework of the different property regimes governing water use on the farms has been discussed in Chapter 3. Discussed in Chapter 4 is the empirically proven Shona customary norm in rural areas which views water as belonging to God and thus free for the taking by anyone within the community who requires it for drinking, cooking and livelihood purposes (Sithole (B), 1999; Matondi, 2001; Nemarundwe, 2003; Derman and Hellum, 2003). The question was whether this Shona customary norm on water sharing was being applied also on A1 farms, given the cosmopolitan nature of A1 farmers who had settled on these farms.

With the Water Act having removed privately owned water rights the question to ask was, “To what extent does this new state driven water resources management framework resonate with the Shona customary norm facilitating access to water for everyone within a community?” As referred to earlier in Chapter 4, Derman et al (2007:257) report that in 1998, Patrick Chinamasa, “in defending the abolition of the concept of private water,” from a national legal and policy perspective also asserted the common Zimbabwean understanding of water when he referred to it as a public resource that was God-given. The import of the above is that, while Chinamasa clearly stated the resource management regime regarding access to water, no reference was made to the closely related and equally important issue of the property relations governing the use of the improved infrastructure holding that water on farms. This omission is however to be understood against the fact that these statements by Chinamasa were made prior to 2000 and FTLRRP. The only problem arose after the violent takeover of white owned commercial farms during FTLRRP which resulted in privately constructed dams and irrigation and drinking water infrastructure such as boreholes attached to this land being taken over as well.

Ownership of dam, irrigation and drinking water infrastructure on former white owned farms was not clearly spelt out by the policy and law makers. That is the reason why Nemarundwe, (2003:28); Derman, (2008:16); Manzungu (2002), Matondi (2001), Zawe (2006), Derman and Gonese (2003) stated in their own way that the issue concerning the proprietary status of water infrastructure such as borehole pumps, dams and irrigation systems as well as other water management systems, was not dealt with during both the water reform process in the mid-1990s and the FTLRRP in 2000. In an interview held with a ZINWA River Inspector at ZINWA Mazowe Catchment offices in Harare on 08 July, 2014 referred to in Chapter 5, he spoke about officially gazetted ZINWA managed dams; public rivers and streams that fell under ZINWA management as distinguished from privately managed small dams which had not yet been gazetted as public resources under ZINWA.

Drawn from the above as well as observations made on the A1 farms under research, the view from ZINWA officials was that the dams and rivers were state property as represented by ZINWA. Nevertheless, since Jack Sellers at Kara A2 Farm had contributed to the construction of Mudzi Dam and assisted ZINWA in its maintenance, it was acknowledged by ZINWA that he held a usufruct over it. This is clearly shown by the fact that Jack Sellers unlike A1 farmers was allowed by ZINWA to pay a nominal water charge of US\$1 per mega-litre of commercial water used as discussed in Chapter 5. The next issue I had to deal with was how the different women on A1 farms were accessing water from these water sources for purposes of domestic uses, drinking, sanitation and other domestic uses; livelihood and productive uses.

7.3 Women farmers' access to water for drinking, sanitation and other domestic uses amid evolving resource management systems on A1 farms in Mazowe Catchment

7.3.0 Introduction

Soon after FTLRRP when A1 farmers, former farm workers and current farm workers were sourcing clean drinking water from electrified boreholes; they were sharing this clean water freely with no conflict as the infrastructure was viewed as falling within the common-property resource regime. Trouble cases only arose when, for one reason or another, the electrified boreholes broke down on the four A1 farms. With the electrified boreholes broken down; the majority of the women on the A1 resettlement farms turned to traditional sources of water such as rivers, dams, unprotected wells in vegetable gardens located within wetlands or next to streams, rivers and springs. Among the different social classes of women and male farmers were those who either accessed or failed to access water on the four researched farms and hence their varied experiences are analyzed and discussed in this Chapter using a case study approach similar to the one used in Chapter 6 on workers.

7.4 Women farmers accessing unclean drinking water from water infrastructure privately constructed by an A2 farmer for his workers

This situation of dirty water coming from taps located within the women A1 farmers' compound was peculiar to Kara Farm. The Kara Farm scenario is discussed here.

7.4.1 Women A1 farmers accessing unclean tap water at Kara Farm

In November, 2010; almost 10 years after the 2001 commercial farm invasions, women A1 farmers at Kara Farm still had access to clean tap water pumped by electrified boreholes from underground water reserves. The drinking water infrastructure built by Jack Sellers for his workers was also freely available to women A1 farmers from taps located next to the farm workers houses they had forcibly taken over during 'jambanja.' The women A1 farmers used this clean tap water for both drinking and sanitation purposes as well as for other domestic uses. Hence when asked about the availability of water for drinking and domestic purposes at Kara A1 Farm during a group interview held at the farm on 01 November, 2010, Mrs. Mazvo, one of the participants, had this to say;

There are 3 boreholes here and we have many taps. We have unlimited free tap water which we use for both drinking and laundry purposes. We share this water with the white farmer's workers, former farm workers and our own workers.

There was therefore peaceful sharing of clean water among women farmers and women farm workers, both current and former. Jack Sellers, the white commercial farmer on the adjoining Kara A2 Farm paid the electricity bills emanating from pumping this water to his workers' compound as well as the A1 farmers' houses through electrified boreholes.

In December, 2010, a month after holding the group interview at Kara Farm, tragedy struck. At the peak of the rainy season, lightning struck the transformer which generated electricity driving the electrified borehole supplying Kara Farm residents with clean drinking water. Technicians from the Zimbabwe Electricity Supply Authority (ZESA) indicated that the spare parts to repair the transformer had to be imported from South Africa and ZESA at the time did not have the financial capacity to import the required spares.

As a solution to the problem, the white commercial farmer resorted to drawing raw water directly from Mudzi River dam and pumping it into pipes which in turn fed tanks supplying the water taps on the farm. This raw water whose quality was unsatisfactory for drinking purposes was shared between the white farmer's workers, former farm workers, casual and seasonal labourers and the women A1 farmers as discussed in Chapter 6. While for some time, there were no problems regarding the quantity of water available from the taps at Kara Farm, as time moved on, the water supplies became erratic such that women A1 farmers sought alternative sources of drinking water of a quality they deemed acceptable. One of this alternative sources was Seke's well which is discussed in sub-section 6.3.2.

The woman village head at Kara Farm, Chipu Mugadza was one of the very few people who did not drink the dirty water from unprotected wells. Although she did not drink the dirty river water coming out of taps within the farmers' compound, she consistently commented on progress on the problem in interviews with her between 2011 and 2012. In progressively held interviews with her, Chipu Mugadza commented on the regularity and quality of drinking water supplies at Kara Farm. On 03 November, 2011, she said;

There remains a huge problem here with regard to clean drinking water as the transformer remains unrepaired. People here are still drinking raw water from Mudzi River and it is erratic in supply. In fact as we speak there was a diarrhoea outbreak this week.

Six months later on 07 May, 2012 Chipu Mugadza commented further;

Raw river water is still coming from the taps and when it's not coming out, people fetch water directly from Mudzi River or Chitubu on the river's bank, while others go to Seke's pond in the fields.

By referring to 'people', Mrs. Mugadza was clearly excluding herself from those who were drinking raw river water from the taps, Mudzi River or unprotected wells and springs. This could be explained by the fact that unlike other women farmers at Kara Farm, Mrs Mugadza was using other social networks to get clean drinking water from outside the farm environs.

In February, 2013, after testing the water in Seke's well and finding it to be unsafe, a Farm Health Worker for the area from the nearby Ada Farm clinic approached the white

commercial farmer and asked him to address the water problem at Kara Farm since he had an obligation as an employer, to supply his farm workers with clean drinking water. In compliance with the order from this Ministry of Health official, in May 2013, Jack Sellers constructed a water filtration and treatment plant, from which treated water was pumped into pipes supplying taps at Kara A2 Farm.

Nevertheless, realizing the cost involved in supplying this water to the whole community at the A2 and A1 farms namely the A1 farmers, their farm workers and his own farm workers alike; Jack Sellers constructed new pipes ferrying this treated water to taps located within his rose fields, which fields were located next to the workers' dormitories. Raw river water was still being pumped to the A1 section of Kara Farm compound through the old pipe system, which supply continued to be irregular. While there was an assumption that women A1 farmers could access treated water from the taps located within Jack Sellers' flower greenhouses; most of them did not go there as they felt intimidated by the guards who menacingly stood guard at the gates leading to the greenhouses for 24 hours a day. It was therefore mostly women farm workers and wives of farm workers currently employed by Jack Sellers who accessed drinking water from the green houses in May, 2013.

In an interview held with a ZINWA official resident at Kara Farm on 16 January, 2014, he however harboured some reservations about the quality of the purportedly treated water supplied to taps in the rose green houses. He stated;

As far as I am concerned, this supposedly clean water available from Mr Sellers' rose green houses is not clean at all. The treatment process they use is questionable such that the water's quality is bad. It still looks brownish in colour and sometimes it would have sediment and some unknown micro-organisms floating in it especially now that it is raining. As a result most farm workers including myself prefer drinking water from 'Chitubu', the natural spring at the bank of Mudzi River.

7.5 Women farmers' access to water in privately dug deep wells, unprotected shallow wells and open access to common pool resources

7.5.0 Introduction

Access to drinking water by women farmers from privately dug unprotected shallow wells within other women farmers' gardens, fields or at their homesteads as well as from deep covered wells was evident on three of the farms, namely Kara, Maidei and Saga farms. The unprotected shallow wells and springs despite being privately built were to a certain extent all treated as common pool resources since access to them was open with no restrictions. The only restrictions were attached to privately dug deep wells for different reasons as outlined in this section. The phenomenon of unprotected wells was not common among farmers at Creek Farm because for the most part of the research's duration, women farmers at Creek Farm were sharing clean water from a common property borehole with their farm workers. There was a time women farmers at Creek Farm had accessed unclean water from taps, Mudzi River and Seke's well at Kara Farm as well as from an uncovered deep well at the neighbouring Kilda Farm. At Kara Farm the Creek Farm women farmers had enjoyed open access to the natural water sources while at Kilda Farm, the A1 farmers there had not excluded them from accessing water from the common property deep well ostensibly because this particular well had been inherited from a white commercial farmer who had left in 2001. The varied access patterns at Kara, Maidei and Saga farms are discussed in this section.

7.5.1 Kara Farm

Due to the irregular water supplies from the taps as well as its poor quality, most women A1 farmers at Kara Farm were now sourcing drinking water from privately dug unprotected shallow wells the most popular being Seke's well in the fields. Seke's well in the fields is located approximately 1 km from the women farmers' homesteads. In interviews held between January 2011 and December, 2013 with several women A1 farmers on the accessibility, availability, affordability and quality of the drinking water they accessed at

Kara Farm; they gave a wide range of responses. The replies all pointed to the water sources at Kara Farm as being either dirty or unclean or alternatively unsafe and a health hazard. Commenting on the water from their well Mrs Seke, in an interview held with her on 03 November, 2011 said;

Mudzi River water and water from Seke's well is dirty. The water here is not safe at all.

Case Study 13: Mr and Mrs Seke

Seke's well had been named after a male A1 farmer called Seke who dug it in his field at Kara farm. Seke was a war veteran and soldier who spent most of his time in Harare at his workplace while his wife would be farming the land at Kara Farm. The couple had 3 minor children. Everyone at Kara farm was free to access this water from Seke's well.

In the same interview of 03 November, 2011, Mrs Seke was asked whether she charged water users for the water from her well, to which she replied in the negative. Asked why, she responded as follows;

We cannot charge people money for getting water from the well my husband dug because it is unheard of in our culture. In the past we were all sharing clean water from taps supplied by the white farmer but he never charged anyone any money. Now if a white man was not charging us for water supplied to us through an electrified borehole, whose electricity bills he paid on his own; what more of water from a well for which we didn't incur any financial cost apart from the labour input? We simply ask those fetching water from the well to keep the well's surrounds clean by occasionally weeding the area and scooping out mud which would have clogged the well after a season. We also don't allow water users to do laundry at the well since the used soapy water will seep back into the well and contaminate the drinking water.

Probing further on the uses to which she put her water; Mrs Seke revealed that she only used the water from her unprotected well for other domestic uses while she accessed clean drinking water from Mrs Gurundoro, a neighbour who had had a deep protected well dug at her homestead. When Mrs Gurundoro was asked in an interview with her on 03 November, 2011, why she denied everyone else access to water in her privately dug deep well except for her immediate neighbours, she replied;

If everyone were to get water from my well it would quickly dry up due to over-extraction of water supplies. I allow my immediate neighbours to my left and right to fetch their drinking water supplies from my well but for other domestic uses, they have to get it from elsewhere, for example, Mudzi River.

Case Study 14: Mrs Gurundoro

Mrs Gurundoro, a widow aged 51 years in 2011 was the vice Chairperson of one of the two Irrigation Committees at Kara farm. She used to live in Glendale prior to moving to the farm in 2002. She occupied a house, from which she evicted a farm worker who worked in the rose fields at Kara A2 Farm. When in mid-2011, the water situation deteriorated at Kara Farm, Mrs Gurundoro had a deep well dug at her homestead. The situation however, was such that Mrs Gurundoro only shared water from her well with her immediate neighbours while excluding the rest.

In the same interview she was asked whether she charged water users anything for the water from her deep well, to which she replied;

No I don't, otherwise they will feel they have a right to demand endless supplies of water from my well at any time they want which may be inconvenient to me.

On whether those who fetched water from her well contributed any labour in maintaining the well, she responded;

No, it's not really necessary as I have paved the area surrounding the well and the twine rope I use does not easily fray so as to require frequent replacement. I also use a cheap plastic bucket costing less than US\$2 that needs replacement only once in a year. I am still using the first one.

On 07 November, 2011 an interview was held with Rodia Kavhuru, whose case study facts are outlined below, I asked her about the drinking water situation at Kara Farm. She replied;

We drink tap water which is being pumped directly from Mudzi River and as a result it is dirty. I boil the water prior to drinking it. Mr. Jack Sellers, the rose farmer often allows both workers and farmers to fetch water from the rose gardens. However, he sometimes limits access to the water indicating that we will finish the supply necessary to adequately water his flowers. The water is not coming out regularly because there is one pump and it is overwhelmed...We also get water from a shallow well in the fields known as Seke's well. Everyone is free to get water from there, even from surrounding farms without paying anything. In my opinion, water from Seke's well is clean since it is a spring with underground water seeping into the well. While other women on this farm also fetch water from a spring called Chitubu, I don't go there because it is dangerously located on the Mudzi River Bank.

Earlier on 03 November, 2011, Rodia Kavhuru's opinion had been sought on why women were freely accessing water from Seke's privately dug well in his field without paying any tribute to him. She responded as follows;

He can't do that. It's an open well which has no cover and is not locked. If he charges for the water, people can be mischievous and put poison there. "Zvinoera, mvura haitengeswe!"²⁵²

²⁵² Literally meaning, "It's taboo. Water can never be sold!"

Rodia Kavhuru's case study is rather unique because she qualified for both social groups of women A1 farmers and currently employed women farm workers at Kara Farm and hence her sentiments from the perspective of farm workers are also cited in Chapter 6.

Case Study 15: Rodia Kavhuru

Born in 1957 in Bindura town, Rodia Kavhuru is a divorcee with 5 children and 8 grandchildren. Prior to settling at Kara Farm, she was living at her brother's house in Bindura where all she had was a small kitchen garden next to the house. She settled at Kara Farm in 2001 after her sister, a teacher at a school in the Mazowe area died soon after being allocated a plot at Kara Farm. Rodia inherited the 7 hectare plot allocated to her sister since she became guardian over her late sister's children. She lives in a 3 roomed house which once belonged to one of Jack Sellers' farm workers. After evicting the farm worker from the house, Rodia however, soon secured full-time employment in Jack Sellers' flower green houses. She, like the other farm workers, would report for duty at 5 am to irrigate the roses and finish at 12 noon. She soon gave up her plot and donated it to her son.

Rodia gave several reasons why she registered her eldest son as the lawful occupier of her A1 farm plot. Firstly, since she was now in full time employment at Kara A2 Farm, she had little time to concentrate on farming and her son born in 1975 was still young and strong to be a successful farmer. The son was however married with two children. Secondly, Rodia felt it only fair that she register her son as the plot holder since he was the one who had participated in the violent farm invasions on her late sister's behalf. Since Rodia had been a member of a cooperative at Kara Farm which shared irrigation pipes and engaged in winter crop farming as well as contract farming; she felt her son was the best person to take over her position in the cooperative. During her spare time and often engaging casual labourers, Rodia continues to grow rain fed maize, sugar and soya beans on a half hectare of the 7 hectare plot for her family's consumption.

Mr and Mrs Badu were initially interviewed on 04 November, 2011 with follow up interviews with them subsequently held in 2012 and 2013. As part of her daily chores, Mrs Badu would sometimes fetch drinking water from either Seke's well or Chitubu (water spring) which though closer in terms of distance than the borehole at Creek Farm, had water of questionable quality. According to Mr Badu, the quality of water from Mudzi River, Seke's well and Chitubu worsened as it got wetter during the rainy season. Interviewed at Kara Farm on 14 March, 2013, Mr Badu had this to say;

As we speak now the water is clean but come the rainy season in summer, the water will be dirty and unsafe to drink...KwaSeke the water is very dirty. Speaking from personal experience, we mainly use it for bathing and laundry purposes because since Seke died, no one has been tending the well. Seke used to drain it. The water from that well has also been sent for testing by the Farm Health worker, Mudzamiri based at Ada Clinic, under the Ministry of Health and found it to be unclean and unfit for human consumption.

Case Study 16: Mr. and Mrs. Badu

In 2011 Mr. and Mrs. Badu were aged 55 years and 50 years respectively. While Mr Badu was of foreign descent, Mrs Badu originated from Mt. Darwin. The couple had a rural home in Mount Darwin although at the time they settled at Kara Farm in 2002, Mr. Badu had been working on a farm closer to Glendale for 25 years. The 6 hectare A1 Farm plot at Kara Farm belonged to their son who was involved in the land invasions in 2001. He had allowed them to use it until such a time that he had the time to work on it on full time basis. In 2011, Mr. and Mrs. Badu were irrigating all the 6 hectares. The couple together with 7 other households were working together as a cooperative engaging in contract farming with Delta Company to farm barley as well as Jack Sellers, the A2 farmer at Kara Farm for the farming of wheat and maize. Both the couple and their son, in whose name the plot is registered, occupied two neighbouring houses which used to belong to two farm workers employed by Jack Sellers. Next to the couple's house was a flourishing garden in which they grew vegetables and onions for family consumption. Mr. and Mrs. Badu had 6 children and 8 grandchildren.

Chitubu, the natural spring had been discovered by an elderly former farm worker of foreign descent who was living in makeshift huts with his son, a seasonal worker at Kara Farm. Although everyone knew that it was this 80 year old man from Malawi who had discovered the spring, it was not named after him. Neither did he and his family enjoy any exclusive rights to it although he would maintain the area around it, digging and creating steps to the spring to prevent women from slipping on the slippery bank as they fetched water (see Figure 13). Chitubu spring and Mudzi River were within a 400 metre radius from women farmers' homes. The old man who discovered the spring lived within 50 metres of the spring, just next to the river bank.

In the follow-up interviews held with Rodia Kavhuru (case study 11) as well as Mr and Mrs Badu (case study 12) on 14 March, 2013, they all raised a very pertinent issue about the dangerous nature of Chitubu spring on the banks of Mudzi River.

Rodia expressed her opinion of the spring as follows;

The spring at Chitubu is very dangerous. I have strictly warned my two grandchildren, Tayedzwa and Ellen that if they ever step their feet near that place; I will beat the daylight out of them. It is extremely dangerous even for adults let alone children. Even me, an adult, I never go there because it is too dangerous. Hebert's mother recently slipped there and injured her leg badly when she slipped on the slippery path leading to the spring.

Figure 14: The dangerously sited Chitubu spring on the banks of Mudzi River;



During an inspection of the spring with Mr. Badu on 14 March, 2013, he indicated to me that most of the women A1 farmers shunned this spring because apart from viewing the water as unclean, they unanimously agreed that it was dangerously located. In the 14 March, 2013 interview, Mr Badu had this to say;

Water from the Chitubu (spring) on Mudzi River bank is bad. Even Allen Botha, the white Farm Manager saw it and realized its hazardous nature. Apart from the fact that people stand in river water while fetching water from the spring thereby raising health concerns about bilharzias, there is also the danger of being bitten by a crocodile. Thirdly, there is a hippopotamus which lives in Mudzi dam and sometimes moves up and down the river. There is also a deep pool next to the spring in which people may easily slip into and drown.

From my own observations at the spring, Chitubu presents a lot of hazards for women. Besides being dangerously positioned on the bank of Mudzi River with a slippery path leading to it, there is a deep pool below it in the river itself (see Figure 13 above). At the edge of the deep pool, some people stand in the still shallow waters while fetching water from ‘Chitubu,’ which poses a health hazard of contracting bilharzias. The still water in the pool is also a breeding ground for mosquitoes which cause malaria. As such Chitubu has unsafe water. During interviews with both women farmers and women farm workers, they

had also spoken of reports having been made on the sighting of both a hippopotamus and a crocodile in Mudzi River. Generally speaking, most women in the compound at Kara Farm have warned their children never to venture anywhere close to the dangerous spring although access to it is open to anyone who wishes to draw water from there.

7.5.2 Maidei Farm

For the period immediately prior to 2010, the former white commercial farmer and other corporate companies²⁵³ which had leased part of Maidei Farm and hence sharing water supplies from Gulf Dam with A1 farmers, solely footed the electricity bill arising from the energy used to pump the water. This bill was also combined with that incurred from water sourced by A1 farmers from the electrified borehole close to their homesteads. After the commercial farmers left, an electricity bill amounting to US\$4 000 remained unpaid up to the time of writing this thesis. As a result the electrified borehole supplying drinking water at Maidei Farm compound had been disconnected from the national electricity grid by the Zimbabwe Electricity Supply Authority (ZESA) in 2009 for non payment of bills by the A1 farmers. Having lost this access to clean borehole water, women A1 farmers searched for alternative sources of clean drinking water. With assistance from the male farmers, some women farmers dug shallow wells at their homesteads, in the fields and on the banks of Gulf Dam and the Munanga River. As a result, at the time research was commenced in November 2010, women farmers at Maidei A1 Farm were accessing drinking water from such unprotected sources at little or no cost. The water's quality was generally bad. Since the majority of women farmers were accessing drinking water from unprotected shallow wells, I set out to find out women farmers' opinions with regard to the quality of the drinking water they were accessing from the unprotected shallow wells. On 16 December, 2011, Sheilla Nyamurundira, the village head's wife and farmer said;

²⁵³ Namely Dairiboard, Seedco and Arda

There is a problem here for both drinking water and water for commercial purposes. Our drinking water comes from open shallow wells we dig in the fields or gardens and for a few fortunate ones, they get it from wells at their homesteads. The drinking water is not clean at all.

At Maidei Farm, the village head and his wife kept very low profiles while the local woman councillor was the one who was very visible in terms of activism on water issues on the farm. Consequently, unlike on the other farms where detailed case studies of the village heads were done, at Maidei Farm the main case study was that of the woman councillor.

Asked about the availability of drinking water at Maidei farm during an interview on 17 December, 2011 Mrs Muchena replied;

Some people here have privately dug their own wells and so we have up to 8 such wells on the farm. People in this community share drinking water from privately dug wells. My own well collapsed at its bottom due to the sandy soils prevalent here and so my family and I fetch drinking water from our neighbours who have wells but the water from all these wells is not clean and potable.

When asked whether she and the other women fetching water from neighbours' wells paid anything in cash or kind to the owners of the wells supplying them with water, she replied;

Why should someone sell water which they did not create? It is the common understanding in our community that once God entrusts you with a water source on your land, you have to share it with others otherwise it may dry up as punishment from God.

Later on the same day 17 December, 2011, Eunice Makwarimba, another farmer had narrated how she and her family had dug up an open shallow well in their field whose water they shared with other neighbouring families. According to Eunice, the well's water was of an acceptable standard since she and her family had not fallen sick from drinking it. She would drain the well often so that new clean water always seeped in from the well's walls.

Chisi Gandari Chiparaushe, a farmer aged 32 years had this to say on 17 December, 2011;

We get our drinking water from an open shallow well we dug close to our home. Due to rainwater in the rainy season, the water is dirty and muddy. We are scared of falling sick when we drink the water but then we have no alternative. It is just fortunate that we haven't had diarrheal diseases although 18 people from our family are sharing that dirty drinking water. There are also 6 other families neighbouring us who are sharing this dirty water with us. The other households in the area have privately dug their own wells.

Six months later on 04 June, 2012, more interviews were conducted at Maidei Farm vis-à-vis the availability and quality of drinking water during the dry season. Mai Netsai Ngoni Kashanga, a very young farmer aged 23 years had this to say;

We dug a well close to our homestead but the water is dirty. We sometimes suffer from diarrhoea especially during the rainy season. We share this water with others...

On the same day, another farmer Melody Mandipiwa Mawarire had an ambiguous answer on the quality of the drinking water she accessed though she admitted that rubbish tended to get into the water source;

We dug our own well next to our homestead. The water is relatively clean but then the well is not protected and so a lot of rubbish gets in. We share our drinking water with many people who come to fetch it from our homestead.

Adding her voice to the focus group discussion held at Maidei Farm on 04 June, 2012, Sethule Gambiza stated;

We dug two wells at our homestead but both wells collapsed and as a result they just look like pits with rainwater. We use the water for laundry and bathing only. We can't drink it, it's dirty. We fetch drinking water from our neighbours' wells.

As a result of these interviews and from my own observations, it was clear that there existed no clean water sources at Maidei Farm. During the rainy season, the common water sources that were unprotected and located at homesteads, in gardens and fields; were contaminated by dirty rainwater runoff that would wash into them. In terms of distance from women farmers' homesteads, these wells fell within a 500 metre radius. Nevertheless during the dry season when most of these shallow wells dried up, women walked for about 2 km to fetch water from shallow unprotected wells dug on the banks of Gulf dam and Munanga River.

Generally, as drawn from my findings, there was also sharing of water between and among women A1 farmers without any exchange of money between those who had dug the wells and the neighbours who fetched water from these wells. Asking them why this was so, I received various responses which all pointed to the fact that water should not be sold as it did not belong to any human being. Below is a sample of those responses;

We don't pay any money to the Nhemas for the water we fetch from their well because it is unheard of to sell water in a rural set-up. We simply assist in keeping the area around the well clean by weeding around it. Our men also drain the well when it's required to do so.²⁵⁴

We don't ask anyone to pay for water from our family well because in rural communities such as ours water is for all young and old; men and women; poor or rich; disabled or able bodied. If you deny others water you would be inviting witches to bewitch you and God won't protect you for selling a resource he created. Water is free just like sunshine. We simply ask for help from neighbours sharing water with us, in scooping mud out of the well when it becomes clogged and it's usually the men who do that.²⁵⁵

No one sells water here otherwise they will be reported to the chief for committing a taboo. You sell something for value added to it. What value do you add to water in an unimproved water source like an open shallow well? One can only seek help in kind to dig the well deeper or cleaning the area surrounding the well.²⁵⁶

In summary therefore, water for domestic use was generally regarded as something which could not be acquired as a personal possession but rather was free for the taking by anyone who needed it even where it was located on another's land.

7.5.3 Saga A1 Farm

At the time this study commenced in 2010, all the boreholes left by the former commercial farmer at Saga Farm had broken down. During the period between 2010 and March 2013 when field work was conducted for this study, women farmers at Saga Farm had access only to unclean water sources in the form of unprotected shallow wells in family gardens situated within a 500 metre radius of most homesteads. However in the dry season when these privately dug sources dried up, women had to walk to open wells on the banks of Muvhunzi River, Makoronyera²⁵⁷ and Dombotaura²⁵⁸ dams. All the three main open access water sources at Saga Farm were situated at an equidistance of approximately 2 km from each of the two sets of homesteads on both sides of the Harare-Shamva road.

In interviews conducted with 33 women farmers and farm workers during the period September 2011 and June 2012, I asked where they accessed their drinking water from. Apart from the village head's wife who had a deep covered well at her home, the rest of the

²⁵⁴ Adelia Mususa at Maidei Farm on 17 December, 2011

²⁵⁵ As stated by Eunice Makwarimba on 17 December, 2011

²⁵⁶ Sarah Kunaka on 17 December, 2011

²⁵⁷ Both situated to the South of Harare- Shamva Road

²⁵⁸ Situated to the north of the Harare- Shamva Road

women farmers fetched unclean water from unprotected shallow wells located within individual women's gardens. The most popular were Mrs Mutema and Mrs Toriro's wells, freely accessible from their family vegetable gardens in the wetland south of Harare-Shamva Road. Excluding the well's owners 7 women farmers accessed drinking water from Mrs Mutema's well while 7 other women farmers accessed it from Mrs Toriro's. Six other women farmers with plots and homesteads situated to the north of the Harare- Shamva Road had their own privately dug unprotected shallow wells, from which the other 4 women farmers accessed water.

In interviews held between January 2011 and March, 2013, both women farmers and male farmers at Saga Farm expressed their despondency in having to access and drink unclean water from unprotected sources on the farm. On 06 January, 2012, Etah Kasiye had this to say;

I dug an unprotected well at home from which we get our drinking water. When it is raining we don't drink the water since it will be too muddy. We then get drinking water from the Kashambadzas who live next door to us and have a protected deep well.

In a group interview held at Saga Farm on 25 March, 2012, the comments below were made. Celia Ruzema, farming with her husband lamented;

*But what we cry for most are working boreholes close to our homes so we women may rest and also drink clean water. 'Mitsipa yabhenda iyi nekutakura migoro yemvura kubva kudhamu muchirimo. Kana ari manyoka hatichatauri. Chokwadi tatambura.'*²⁵⁹

Mrs Chimboza, the village head's wife simply stated;

The water quality is bad.

Another farmer, Misheck Kuvhima, a war veteran put it even more poignantly when he stated;

The water is bad and we are having diarrhoea problems especially the children. I am even ashamed to give you water to drink, were you to ask for it.

Oliver Dzvuke another male farmer chipped in saying;

*Kungorovera mwoyo padombo amai, mvura yatinonwa itsvina yega yega.*²⁶⁰ *It's just poverty, we could just contribute money and dig a communal well which would have brick walls and would be covered.*

²⁵⁹ Translated to mean, "Our necks are bent due to carrying heavy buckets of water from the dam during the dry season. Coming to the issue of diarrhoea, we might as well keep quiet. For sure we have suffered."

Mrs. Tomupe Mashumba had the last word;

We implore you to convey our grievances in relation to drinking water to the Government and our donors. We are not concerned about lack of electricity. What we want is clean water for drinking. We are even scared of a cholera outbreak.

In interviews held at Saga Farm in the different seasons, women farmers expressed different sentiments vis-à-vis water availability as conditioned by the varying weather patterns. Mrs Chimboza, the village head's wife in an interview at Saga Farm on 25 June, 2012, said;

I think this year women are in trouble on this farm. The shallow garden wells are drying up. They never used to dry up until October/November when the new rains would replenish the water in them. I really don't know what this world is coming to. Maybe it's this 'Climate Change' people are always talking about. Now women are queuing up at the wells after the dirty bottom water has been scooped. It takes hours before clean water slowly seeps into the dredged well from the well's walls until it is sufficient enough to go round.²⁶¹

Below is a picture collage showing the different scenarios in terms of water availability and quality at Saga Farm during the different seasons;

Figure 15: Mrs. Mutema's garden well during the rainy and dry seasons respectively:



Figure 16: Mrs. Toriro's garden well during the rainy and dry seasons respectively:



²⁶⁰ A Shona proverb which when translated means, 'It's just hitting one's heart against a stone. Mother, the water we drink is just dirt and only dirt!' The proverb is used to show one's daring to engage in a risky activity like in the case at hand to drink unclean and unsafe water.

²⁶¹ In an interview with the village head's wife Mrs Chimboza at Saga Farm on 25 June, 2012

It has to be noted however that the unclean water women farmers accessed from unprotected shallow wells was free. Nevertheless since the water supplies in unprotected wells were replenished through rain water which raised the underground water table; the degree of water availability and quality largely varied in accordance with the seasons. Although water would be plentiful during the rainy season, its quality was generally bad and there was a marked increase in waterborne diseases as rain water washed away filth such as human excrement into the unprotected wells. Hence at the times when field work was conducted during the rainy season, the drinking water situation at Saga farm was not so dire since there was rainwater which seeped into the ground and replenished the unprotected shallow wells in family gardens and at homesteads with water.

The situation however increasingly became desperate as the season became increasingly drier. The unprotected shallow wells in vegetable gardens would slowly begin to dry up in the dry winter months of June and July and usually by October, just before the onset of the rainy season, most wells would be dry. The women farmers would then spend more time looking for water as they travelled for distances averaging 2 km one way to fetch water from open access unprotected shallow wells along the banks of Muvhunzi River, Makoronyera and Dombotaura dams which are perennial.

The above findings on the sharing of water even from privately dug wells resonates with findings made by Professor Bill Derman and Professor Anne Hellum in a qualitative study conducted among the Shona in three villages in Mhondoro Communal Lands between 1999 and 2004, that was part of a broader study of national water reform in Zimbabwe, undertaken by the Centre for Applied Social Studies (CASS) at the University of Zimbabwe (Hellum, 2007:109). In the study, Derman and Hellum examined how primary water was managed locally starting in 1999 when water was plentiful, through the drought, political and economic crises in 2002, 2003 and 2004 (Hellum, 2007:109). Their study findings have

been widely published (Derman and Hellum, 2003; Hellum and Derman, 2004; Derman, Hellum and Sithole, 2005; Derman, Hellum et al, 2007:248, Derman and Hellum, 2008).

One of the key findings made as quoted from Derman and Hellum (2008:6) was the existence among the Shona in Mhondoro Communal Lands, of a customary duty to share drinking water, even from privately dug wells and boreholes. This duty to share “increased rather than decreased during drought periods.” Further, “the water users and well-owners reported that they had never paid or received money or give gifts.” In their report, Derman and Hellum (2008:6, note 23) also indicate that these sharing “norms... (also) existed in those areas of the three catchments where the CASS water research team was working” which included Mazowe Catchment.

An exception to the above finding by Derman and Hellum in their study vis-à-vis privately built water sources was what happened at Saga Farm where the village head and his wife privately dug a deep well which they kept covered. Except on one occasion when an immediate neighbour was seen fetching water from their well, on all the other visits to the village head’s home during field work for this study, no other women were observed coming to fetch water from the village head’s well. This is contrasted with the lines of women farmers and women farm workers who could be occasionally observed on a daily basis carrying 20 litre buckets of water on their heads as they left the unprotected wells in the other women A1 farmers’ gardens.

In an interview with her, on 25 March, 2011, Beulah Chimboza was asked whether she, as a village head’s wife, took responsibility and was sharing water from her deep covered well with the other women on the farm given the hard times women at Saga farm were facing in terms of water scarcity. Initially, she responded in the affirmative. Upon asking her further why she felt obliged to share water from her privately dug well; she responded;

I was born and raised in a remote area in Mudzi District. For all those years we were growing up, it was impressed upon us that you cannot deny anyone water; even witches or

any other social outcast you may think of otherwise your well will dry up as a punishment from God. Apart from drying up, those you would have denied water may poison your well out of spite and you would all die. I have never denied anyone water as a result.

As time passed on and my relationship with Mrs. Chimboza grew closer, I queried why other women A1 farmers were not fetching water from her deep well. She then explained that the other women understood her plight and were avoiding finishing her well water supplies since she could only wash clothes at home and not at the river because she had a water mermaid spirit which placed her in danger of being taken by a mermaid if she dared go to do laundry at the river. She pointed out two occasions on which she was nearly taken away in a whirlwind by a water mermaid while washing at the river, a fact she had been warned about in dreams prior to the occurrence of the frightening incidences. Since then, she was doing her laundry at home and as such was trying as much as she could to conserve the supplies she had, which fact the other women farmers on the farm understood.

7.5.4 Conclusion

The water sourced from common pool sources such as springs, unprotected wells and rivers by women farmers was freely accessible without anyone claiming sole responsibility over them and were thus 'res nullius.' The only problem the women A1 farmers faced with these sources was that they were located far away from their homesteads for some of the women. Secondly, the water was mostly of a bad quality. Some women A1 farmers had to carry 20 litre buckets of water on their heads for the 2 km return journey to their homes from these sources.

As regards privately built water sources such as deep covered or uncovered wells, shallow unprotected wells, the access patterns varied. For two privately owned deep wells at Kara and Saga farms the women farmers owning them for varied reasons placed strict restrictions on who to share their water with. A deep uncovered well left behind by a white commercial farmer was freely shared with no restrictions at a farm that was not part of this study but which had been patronized by Creek A1 women farmers at some point. With regards to

other privately dug unprotected shallow wells in women farmers gardens, the water there was shared freely with little restriction although some women farmers at Maidei Farm demanded all water users to chip in with labour aimed at keeping the well surrounds clean or to dredge the well as well as contribute to buying a rope or small bucket used in drawing water. Mr and Mrs Seke at Kara Farm required labour from other water users to keep the well area clean and forbade any laundry being done there.

7.6 Women farmers' access to clean water from common property boreholes at Creek and Saga farms

7.6.0 Introduction

There was a point in time during the study when women farmers at Creek and Saga farms had access to clean borehole water. These were formerly an electrified and a windmill driven borehole inherited from white commercial farmers that had been converted. The rules of inclusion and exclusion differed on the two farms as discussed in this section.

7.6.1 Creek Farm: The included and excluded water users

Having also relied on the electrified borehole at Kara Farm for clean drinking water, its breakdown at the beginning of 2011 forced the A1 farmers at Creek Farm to search for alternatives such as rain water harvesting. Initially resorting to unclean water from unprotected sources such as the deep uncovered well at Kilda Farm, Seke's well and Mudzi River water from Kara Farm, the A1 farmers soon found a lasting solution. In an interview held with the village head at Creek Farm, Samson Mudzimu on 05 November, 2011, he gave a historical account of the previously dire situation at the farm arising from the scarcity of clean water that had forced the A1 farmers to look for a lasting solution. He said;

People at the neighbouring Kilda Farm are drinking dirty water. I could never drink that water. They removed a concrete slab which had been placed over a deep well by the former commercial farmer. Even as I speak, that well is not covered and anything can go in. While we once used to fetch drinking water from there after the Kara Farm borehole broke down; the unsanitary conditions at the Kilda Farm well forced us to seek solutions to our own water problems here.

After the farmers at Creek Farm had contributed money to buy spares to have DDF technicians convert their electrified borehole to a hand operated one in mid-2011; they now had access to clean drinking water. This clean water was shared between the women A1 farmers at Creek Farm, their workers and some of the women farmers at Kara Farm, since in the past; the women A1 farmers at Creek Farm had also sourced water from Kara Farm at a time their own borehole was dysfunctional. The clean borehole water was however not shared with former farm workers and their families. Below is a picture showing clean borehole water at Creek Farm;

Figure 17: Clean Borehole water at Creek Farm



1. Mrs Chipo Mugadza (case study 1)

One of the prominent women A1 farmers to fetch water from the Creek Farm borehole was Mrs. Mugadza. As a widow she was the sole owner of a house in the neighbouring small urban centre of Glendale, approximately 10 km away. She would thus send her son or one of her male workers or even go herself aboard a commuter omnibus to Glendale with an empty 20 litre container to fetch clean potable water from her urban home. This clean water was treated by Mazowe Rural District Council and supplied through the Glendale town management at an affordable cost. Her second option was to ask a neighbour who owned a truck to take her 200 litre drum along as he fetched water for his own household from the borehole at Creek Farm, 2km away. Alternatively, she would send her male workers with 20

litre containers in wheel barrows or 200 litre drums in a cattle drawn scotch-cart to fetch water from the same borehole at Creek Farm. She would use the raw water from taps at Kara Farm for other domestic purposes such as laundry and bathing. In an interview at Kara Farm on 03 November, 2011, I asked Mrs Mugadza whether she paid anything for the clean drinking water accessed from the Creek Farm borehole, to which she responded;

No I am not paying anything because for all these past years our borehole here was always working and the people at Creek Farm always fetched clean drinking water from our taps for free. However, since the transformer here was struck by lightning, the farmers at Creek Farm have repaired their broken down electrified borehole and converted it to a hand pumped one. In accordance with our culture, it would not augur well that for all these years we have allowed them to fetch clean drinking water for free from here and now that our positions are reversed, they charge us. There is a Shona proverb which says, “Kandiro kanoenda kunobva kamwe” kana kuti “kandiro enda, kandiro dzoka.”²⁶² So they give us free water but since the borehole is about 3 kilometres away from here most people here just opt for the raw water from Mudzi river because a return journey to and from Creek Farm for purposes of fetching water is not for the fainthearted. As for the Creek Farmers, between 2008 and 2010, they could afford to fetch clean water from our taps because their other nearest water source, Mudzi River, albeit with dirty water, was here as well, less than 300 metres behind our compound.

Emanating from an act of reciprocity, the farmers at Creek Farm supplied Mrs Mugadza, the woman village head at Kara Farm with free clean drinking water.

2. Enock Toringepi (case study 2)

It seems however like the reciprocal action extended to Mrs Mugadza was exclusive to her as the village head at Kara Farm since Enock Toringepi another A1 farmer at Kara Farm told a different story. In an interview held with him on 04 November, 2011, Enock indicated that he sourced clean drinking water from the Creek Farm borehole for which he had to pay a monthly levy of US\$2.

3. Mrs Badu (case study 16)

Similar to Enock Toringepi, Mrs Badu was excluded from the act of reciprocity extended to Mrs Mugadza for having shared the Kara Farm borehole water with Creek Farm A1 farmers in the past. Although Mrs Badu had access to the borehole at Creek farm she had to pay the water levy demanded by the A1 farmers there at a montly cost of between US\$2 and U\$4.

²⁶² Literally translated, it means, ‘A little plate goes where another has come from’ or else, ‘Little plate Go! Little plate come back!’ interpreted further to mean that in the Shona culture one is expected to return favours and not expect to always receive favours or gifts without reciprocating or returning the favour.

7.6.2 The all inclusive drinking water sharing patterns at Saga Farm

With technical assistance from DDF, one borehole drilled by the former white commercial farmer at Saga Farm in 1961 which was driven by a windmill, was modified and converted to a bush pump in 2013. For this borehole conversion, DDF required about US\$330 to buy cheap spares and for their transport costs to and from the farm. The A1 farmers had contributed US\$80 while another local donor chipped in with US\$250. Apart from occasional borehole maintenance and repair costs, clean drinking water accessed from this borehole was at little or no cost. A unique feature of the water sharing patterns at Saga Farm was that just as it had been the case with water from unprotected wells in women farmers' gardens, women farmers shared this clean borehole water with farm workers both current and former.

While the water fetched from the borehole was reserved for drinking, women farmers with homesteads south of the Harare- Shamva Road were still forced by circumstances to continue relying on the traditional unprotected water sources in their vegetable gardens and at Muvhunzi River and Makoronyera Dam for water used for other domestic uses such as watering gardens, laundry and bathing. This was because these unprotected wells were within an approximate distance of 500 metres from their homesteads while the borehole supplying clean potable water was up to 1 km away from the homesteads. The former windmill driven borehole's unsuitable location was due to the fact that it had never been intended for the former white commercial farmer's workers in the compound. Rather it had been meant for animals on the farm.

For the women farmers whose homesteads were located north of the Harare- Shamva road, the repaired borehole was on average situated approximately 2 km away from their homesteads. Hence for these particular women farmers, nothing changed and they still accessed unclean water from the unprotected wells in their gardens as these were much

closer. The village head's wife also continued to use the well water at her homestead since the borehole supplying clean potable water was approximately 1km away from her homestead. She was of the view that water from her deep covered well was of an equally good quality suitable for drinking.

7.6.3 Conclusion: Different norms of sharing water and differences among women A1 farmers

It is clear from the findings as outlined above that women accessed water differently depending on the social networks that were open to them. The access also depended on whether the water source was a common pool, common property or privately managed resource. There was open access to all sources viewed as belonging to the commons such as rivers and dams. While access to common pool resources was open to everyone for purposes of accessing drinking water, however, there were some village heads, who restricted this access to the commons when it came to land and water for food production as well as for livelihoods using state environmental management laws as the reason for doing so.

7.7 The means of water transportation on the four A1 farms

Depending on each woman's personal circumstances, household income and the terrain across which water was to be transported, drinking water was transported from the sources to homes in 20 litre buckets carried by women on their heads as well as containers in wheelbarrows and scotch carts. While Mrs Mugadza of Kara Farm sent her workers and sometimes her male neighbour to fetch clean water from Creek Farm borehole using wheelbarrows, a scotchcart or motorvehicle; Mrs Badu, also from Kara Farm, had to enlist the services of her two unmarried daughters to fetch water from the same borehole using 20 litre buckets which they carried on their heads for the 2 km return journey. The traditional means of transportation for water at Maidei Farm was its carrying in buckets balanced on the head mostly by women. The wheel barrow or scotch cart was not visible at all on this farm. This was explained by the fact that all the drinking water sources there were situated

in gardens and fields as well as on river banks; most of which were accessible only via rough terrains, inaccessible to wheeled forms of transportation. Since the unprotected wells at Saga Farm were within 500 metres of their homes, women farmers would use buckets carried on their heads for this relatively short distance. Characteristic of most African societies it was mostly men who used wheelbarrows and scotch carts to transport water, while women mostly carried the water on their heads.

7.8 Women farmers' access to culturally acceptable and dignified sanitary facilities

The women A1 farmers at Kara and Creek farms took over the Blair pit toilets located next to houses which white commercial farmers had built for their workers. These toilets double up as bathrooms. At Kara Farm are also water system based shower rooms, laundry tubs and toilets built by Jack Sellers for his workers which women farmers can also access since access to them is not restricted to workers only. Women farmers at Creek Farm and their families also had access to a manually operated borehole situated between 400 and 700 metres from their houses where they would do their laundry. On the other hand, women A1 farmers at Maidei Farm had access to privately built Blair toilets which were also used as bathrooms. For laundry and bathing, the women farmers at Maidei Farm used water from the open shallow wells or alternatively bathed at the rivers and dams on the farm. Access to culturally acceptable sanitation was therefore not a problem for women A1 farmers at both Kara and Creek A1 farms.

The toilets at Maidei Farm were few since the women A1 had built them on their own and hence did not inherit any toilets from the previous commercial farm owner. Situated at Saga Farm were a few scattered privately built Blair pit toilets as well as those built by the previous white commercial farmer at each women farmer's homestead although the latter needed replacement. A feature common to all the four A1 farms under study was that the women farmers' toilets were considered as private with no sharing of such toilets by two or

more families. Farm workers were also not allowed access into these toilets belonging to women farmers.

7.9 Water for livelihood and productive purposes: An overview

In paragraph 6 of GC 15/2002, referred to earlier the UNCESCR stated as follows;

Water is required for a range of different purposes, besides personal and domestic uses, to realize many of the Covenant rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life). Nevertheless, priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights.

Regardless of the fact that the UNCESCR placed water required to produce food and for securing livelihoods at a lower priority level than that essential for personal and domestic uses; the Committee acknowledged that water required to prevent starvation and disease should also be prioritized. Viewed from the perspective of both food and water security; in this thesis, I define water for livelihood purposes as that which is essential for a family or household to meet its dietary needs as well as leave enough to generate an income which will enable that household to live a decent or dignified life as anticipated in Article 12 of ICESCR.²⁶³ This would then cover a little extra money to send one's children to school in fulfilment of their right to education. This type of water is discussed in detail in Chapter 3 of this thesis.

In Zimbabwe, water for livelihoods would be viewed as similar to primary water to the extent to which it was informally defined to cover market gardening by rural women in communal lands prior to FTLRRP. Under that framework, all water used in and around the rural homestead was deemed to be for primary use. This is differentiated from water used for commercial purposes on commercial farms as visualized in the Water Act, Chapter

²⁶³ Recognizing "the right of everyone to an adequate standard of living for himself and his family, including adequate food... free from hunger..." (Article 11 (1) and (2)) as well as, "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (Article 12 (1))

20:24 and by ZINWA; which I can describe as bulk water used to irrigate commercial crops as a business venture aimed at generating a relatively high profit margin used in purchasing luxury items such as several expensive motor vehicles and apartments for letting.

UN-Water (2013) the United Nations' inter-agency coordination mechanism for all water-related issues, in its Analytical Brief entitled "Water Security and the Global Water Agenda" at page (vi) defines water security as;

The capacity of a population to safeguard sustainable access to adequate quantities of and acceptable quality water for sustaining livelihoods, human well-being, and socio-economic development, for ensuring protection against water-borne pollution and water-related disasters, and for preserving ecosystems in a climate of peace and political stability.

It is this water occupying a middle classification between water for domestic use or primary purposes and commercial water which I argue is missing in the Zimbabwean classification of the different uses of water. Taken in its proper perspective, this middle of the road water use should also attract affordable tariffs rather than the punitive cost reminiscent of commercial water globally.

In addition to the general conceptualization of livelihoods in Chapter 3, in this chapter the theoretical is applied to grounded findings. Taken in the context of this study on women on rural land, water for livelihoods generally would therefore mean water used to irrigate vegetable gardens for family consumption and small scale marketing of excess requirements in the locality. The common interpretation of such water in communal lands was such that it was in practice subsumed under water for primary purposes by government officials tasked with its implementation under both the repealed 1976 and the current 1998 Water Acts. Prior to FTLRRP there was therefore no strict limitation of the use of water for domestic purposes in rural communities as the water authority recovered costs from large-scale commercial farmers in commercial farming areas.

The movement of black peasant farmers from communal lands into commercial farming areas has changed the whole scenario. Hellum et al (2015:6) states that, "in Zimbabwe, like

in other African countries, rural communities have for generations relied on common pool water resources governed by local customs (Van Koppen et al 2008).” Emanating from this common practice; prior to FTLRRP when the majority of blacks still occupied communal lands, they had benefitted from the customary practice of reserving riparian land for family gardens watered by free water.²⁶⁴ Further to that, the practice was primarily aimed at ensuring that everyone in the community had basic means of survival. Clearly not aimed at profit-making, this practice of accessing free water from rivers, vleis, dambos and streams to water gardens close to such water sources, guaranteed adequate nutrition for the whole family in line with a customary Shona world view which respects everyone’s right to life.

According to Derman and Hellum (2008:7), in one of the Mhondoro villages where they held interviews, everyone stated that, “they had obtained the headman’s (sabhuku) explicit or implicit approval to access land for gardens on vleis or close to rivers.” According to one village head, “The gardens ...were important sources of livelihood and self reliance...” As such, “everyone was granted land for gardens in this area,” suggesting “a wider concern for livelihood that is not limited to clean drinking water but extends to access to garden land with available water sources.” As such many families in communal lands discreetly used and are still using that ‘window of opportunity’ to sell market vegetables excess to requirements at markets in the locality or even ferry some to Mbare Musika in Harare. Using proceeds from such small-scale gardening ventures, this capacitated some rural women to educate their children, inclusive of girl children as shown by a number of studies (Derman and Hellum, 2003; Derman, Hellum and Sithole, 2005; Derman and Hellum et al, 2007, 2008; Hellum et al, 2015:384). The Domboshawa area has, due to the growth in innovative forms of small scale family based vegetable production, been termed Zimbabwe’s “horticultural corridor” (Matondi 2013). The question facing me in my study

²⁶⁴ Which practice was considered justifiable from both the perspective of primary water as conceptualized by state officials and alternatively as free access to the commons under the customary law perspective

was whether or not this customary practice had endured in the new A1 farming communities generally classified as falling under commercial farming areas?

What I observed was that, depending on the social circumstances peculiar to women farmers on each of the four farms in Mazowe Catchment, they manually or mechanically irrigated food crops such as maize, leafy vegetables, tomatoes, peas, cucumbers, water melons and paprika in small plots or family gardens located either in the main A1 fields or close to rivers and dams on these farms. Manual irrigation entailed the use of watering cans by women farmers on one hand; while on the other hand, more enterprising women farmers bought small diesel and petrol pumps as well as irrigation pipes to convey water from the water source to the plots. The different water access patterns unique to each farm are discussed below.

7.10 Women farmers' access to and use of water for livelihoods and productive purposes in Upper Mazowe Sub-Catchment: Kara Farm

7.10.0 Introduction

Since there existed kitchen gardens next to farmers' houses at Kara Farm, the practice of running family gardens next to Mudzi River by women farmers was not a common phenomenon. Rather women farmers would water various types of vegetables in their newly acquired kitchen gardens for family requirements. As one woman farmer indicated in an interview held on 03 May, 2011;

As you can see, I run a thriving home garden here with onions, popcorn, sugar beans and tomatoes. I use raw tap water from Mudzi River supplied by the white commercial farmer, Mr Jack Sellers.

During the early months of 2011 vegetables in kitchen gardens were being watered using raw Mudzi River water coming out of taps scattered in the compound but by September 2011 the water supplies had become so erratic that most of the gardens were left fallow as women farmers concentrated on irrigating cash crops such as wheat, barley and sugar beans in the bigger family fields using commercial water. As such small-scale irrigation of

horticultural products such as leafy vegetables and tomatoes by women farmers at Kara Farm was not a common phenomenon like at Maidei Farm in Nyagui sub-catchment.

7.10.1 Stories emerging from the Case studies

On 7 November, 2011, Rodia Kavhuru (case study 11) in an interview explained the situation regarding kitchen gardens and family gardens along Mudzi River at Kara Farm;

Some settlers here have planted vegetables near Mudzi River but they are very few since we have small gardens next to our houses. The vegetable garden beside my house has no vegetables due to erratic and inadequate water supplies from the taps. Several other settlers here have started small vegetable gardens in the fields so that they utilize irrigation water to water the vegetables. There is thus limited riparian cultivation among farmers here. The authorities do not forbid gardening near the river as long as the garden is a reasonable distance from the river.

In an interview held with him on 04 November, 2011, Enock Toringepi talked about his experiences in accessing irrigation water at Kara Farm. He indicated that it was mostly male farmers who could do winter crop farming using pipes hired from neighbouring farmers such as Mr. Jack Sellers at Kara A2 Farm. Pipes had to be hired from him and elsewhere because the ones left by Carl Harvey, the white commercial farmer were not adequate as most had either been stolen or vandalized. The pipes were hired at an average cost of US\$150 per 3 months. He only knew of 3 women (including the village head) who had managed to hire pipes for winter crop farming. To ensure fair and orderly sharing of irrigation pumps and pipes, there was in existence an irrigation association.

Enock indicated how costly it was to be a member of the Irrigation Association;

Besides the US\$200-00 joining fee, US\$ 47-00 is set aside for any engine repairs. The money is paid whenever there is an engine breakdown. US\$105-00 is required to cover any repairs to the motor, pump and box. One also needs to pay US\$15-00 per month as contribution to the Pump Attendants' wages. On average ZINWA charges US\$36-00 per hectare for the whole season for irrigated sugar beans, at a rate of 8cents per mega-litre of water. ZINWA uses a flat rate for us such that even if one irrigates land which is smaller than a hectare, one pays US\$36-00. One is obliged to pay 25% of the US\$36-00 per hectare and then pay in full after harvest. ZESA bills depend on what one has irrigated and the size of the irrigated area as well as the duration within which one has irrigated. When one hires irrigation pipes, they can irrigate faster rather than wait for the few pipes which remain which settlers share. When we arrived on this farm, there were some irrigation pipes of which a few remain. Most of the pipes were stolen and we share the remaining few pipes. Because of the long queue of farmers waiting their turn to use those pipes, I last used those pipes long back. I would rather hire pipes from neighbouring farms.

To break even, eight male-headed households at Kara farm combined forces in a cooperative to carry out contract farming on behalf of Delta Beverages and Mr Jack Sellers. Only three of the families, which include that of Mr and Mrs Badu, were working on the ground at Kara farm while the other five families resided and worked in Harare. The eight male headed households combined their hectareage to make a total of 48 hectares. While male headed farming households pooled their land resources and opted for contract farming; female headed households, had no such collaborations as each woman household head interested in winter irrigation had to work extra hard so as to compete with the combined efforts of male headed households. In interviews with two female household heads who were engaged in winter crop farming; they indicated that they chose not to participate in contract farming for fear of encumbering themselves with financial commitments to a contractor for farming inputs when the risk of having a poor harvest was high. As stated by Rodia Kavhuru, on 7 November, 2011;

I was a member of a cooperative here which shares irrigation pipes. Water availability for irrigating is good except that since pipes are shared, members have to irrigate in turns i.e. they have alternate watering days. One needs to be very hard working if one is to get meaningful outputs from farming here.

7.10.2 Conclusion: Kara Farm

Mainly due to the high input costs involved in winter crop farming, only a few women farmers engaged in winter crop farming at Kara Farm since such ventures required that one have a regular and reasonably high income to finance the cost of irrigation water sold at commercial rates by ZINWA; hiring labour and the hiring of irrigation pipes from nearby commercial A2 farmers to augment the few pipes shared by these A1 farmers (men and women). As such, only a handful of women household heads (through divorce or widowhood) were in a position to compete with male headed households in the use of irrigation water during the winter season. This was despite the fact that if one combined women from both male and female headed households, they outnumbered men at 11 women to 8 men or alternatively they made up 58% of irrigators (see section 5.9.1 in Chapter 5)

Nonetheless, due to the various issues discussed above, the extent to which single, divorced or widowed women farmers could compete for productive water at a substantively equal footing with men and women from male headed households was highly curtailed.

7.11 Women farmers' access to and use of water for livelihoods and productive purposes in Upper Mazowe Sub-Catchment: Creek Farm

As indicated earlier in Chapter 4, the majority of A1 farmers at Creek Farm originated from Chitungwiza in Harare and other Harare high density suburbs. Due to the conversion of the communal area reserved for farm workers' kitchen gardens into grazing lands, women A1 farmers at Creek Farm also lacked access to any kitchen gardens and as a result they created new family vegetable gardens along the banks of Mudzi River, south of those created mostly by farm workers at Kara Farm. Some of the women A1 farmers who included the village head's wife, Sosannah Mudzimu, pooled resources so that they could engage in a gardening project. They bought small diesel and petrol pumps as well as a few pipes to ferry water from Mudzi River into their gardening project.

From several interviews conducted at Creek Farm, it was clear that there was no winter crop irrigation taking place in the main fields as farming families generally resorted to rain fed farming due to lack of irrigation equipment. Below are excerpts from interviews held with women and male A1 farmers as well as women and male farm workers on 5 November, 2011 regarding the status of winter crop irrigation at Creek Farm;

When McCray left the farm, he left the irrigation infrastructure intact. As time went on, some of the pipes were stolen and the water engines broke down. Some have been repaired recently. The new settlers are irrigating on a very small portion of the farm. Most of them do dry farming.²⁶⁵

When new settlers first settled at Creek Farm, the drinking water infrastructure and irrigation pipes laid by the white commercial farmer, Mr. McCray were intact and operational. A few years down the line, they had mostly been stolen while others had broken down and were not repaired. At the time we arrived there in early 2005, the water infrastructure was still alright but by 2008, it was all in shambles. Most of the settlers here now practice dry farming whereby they only plant maize during the summer rainy season.²⁶⁶

²⁶⁵ From Mrs. Reza, a farm worker

²⁶⁶ Farai Kondo, a former farm worker, who is now a casual general labourer in the area

*We are mainly doing dry farming because we don't have the pipes to move water from Mudzi Dam. The women though have their own small gardening project.*²⁶⁷

*Some irrigation is going on though at a very small scale. It is mainly done by women farmers who have formed gardening cooperatives. We often work for the new settlers at Creek Farm but they are very difficult when it comes to paying up.*²⁶⁸

*There used to be very successful irrigation going on at Creek Farm...Presently, the irrigation of crops is being done on a very small piece of land as compared to the past. Most of the infrastructure was stolen at the time the new farmers settled here*²⁶⁹.

*I am also a former worker at Creek Farm, which used to specialize in maize farming throughout the year. As workers we would be rotated in the fields. One would weed the maize, or would plant, weed, pick up and grade potatoes. Currently, there is hardly any irrigation of crops going on here. It's just dry farming.*²⁷⁰

It became apparent in analyzing the above interviews that the few women farmers engaged in a gardening project were the only visible users of water for family food and livelihood purposes. The women farmers had however encountered run-ins with ZINWA officials who sought to bill them for using river water productively through small diesel and petrol pumps. Sossanah, the village head's wife in an interview on 5 November, 2011 indicated that;

The ZINWA official who moves round the farms checking on our use of water from rivers and dams for irrigation informed us that, as long as we use water pumps to pump water into pipes for irrigation, then we have to pay since we would be running farming businesses. We have tried reasoning with him that we have to survive but he insists it is government policy which he cannot change.

7.11.1 Concluding observations: Water for livelihoods at Creek Farm

After indicating to me in an interview with him at the ZINWA Catchment offices in Harare on 08 July, 2014, that as ZINWA officials they were allowed to use their discretion to determine the limits of primary water, I asked the Mazowe Catchment Coordinator for the facts he looked for in determining any water use as not being primary. He responded;

As long as women use buckets and watering cans to water vegetables on land measuring up to a hectare of land, I will consider that as primary use. But if I see a woman watering less than a quarter acre of land under vegetables or tobacco using a diesel or petrol water pump and hosepipes as well as trenches from a river, I will certainly view that as the commercial use of water because such irrigation equipment draw much more water in terms of volume from water sources than buckets and watering cans.

²⁶⁷ The village head of Creek Farm, Mr Steve Mudzimu, also farming with his wife

²⁶⁸ From Pamaida Changamire, a former farm worker who is now a casual labourer at Creek Farm as well as on neighbouring farms.

²⁶⁹ Shoorai Nyakudemba, who together with her husband are casual labourers at Creek Farm

²⁷⁰ Violet Kamuchacha, also a former worker at Creek Farm who together with her husband are now casual labourers.

To me such kind of approach by ZINWA officials smacked of gender insensitivity on the part of the predominantly male ZINWA officials. They needed gender sensitization that would make them appreciate that the water laws they were using needed engendering so they would appreciate that it was mainly women who got engaged in the heavy manual labour of carrying endless buckets of water to irrigate a small plot. Once these women scrimped and saved to buy a small diesel or petrol pump to ease their water carrying burden, ZINWA then jumped in to classify such use as commercial and hence demand payment through permits.

7.12 Women farmers' access to and use of water for livelihoods and productive purposes in Nyagui Sub-Catchment: Maidei Farm

Compared to the other three A1 farms under research for this study, there was much more intensive productive use of water at Maidei A1 Farm whereby women A1 farmers grew maize, leafy vegetables, tomatoes, butternuts, baby marrows, onions, sugar beans, peanuts, sweet potatoes, potatoes and okra in their plots. The women farmers then irrigated these plots with water accessed from the main irrigation pipeline, left by the white commercial farmer, which runs from Gulf Dam to the A2 farms approximately 3-5 km away across the valley. The women put in their own feeder pipes which drew water from this main pipeline. It was the situation therefore that even during the dry season the women at Maidei Farm were ever busy irrigating their gardens which were generally pieces of land averaging half an acre to one acre in size which were hived off each household's 6 hectare plot.

Typical of land related resources women farmers used kinship ties to access water which they then used productively to irrigate their vegetable gardens. I say so because from interviews I held with both male and women farmers on all the four A1 farms, it was mostly men who had participated in 'jambanja' after which they had had land allocated to them using the land permit system. From a sample of 11 women interviewed on 17 December, 2011 and 04 June, 2012 at Maidei Farm, all were married and were irrigating fresh farm

produce grown on land allocated to either a husband or father-in-law. Since most of the farmers now have married sons, these have also been allocated similar half acre or one acre plots by their parents, on which their wives are primarily engaged in market gardening. It seems a new phenomenon has arisen on this A1 farm whereby, a new generation of sons and their wives are farming on their parents' plots.²⁷¹ Below is a picture collage showing the road market at Maidei Farm;

Figure 18: Women A1 farmers selling vegetables at Maidei Farm along Harare-Shamva road;



The successful productive use and management of water by women farmers at Maidei Farm lies in the fact that the majority of the interviewed women farmers settled on this commercial farm in 2001 coming from their original rural homes in Domboshawa, Murewa, Mutoko and Uzumba-Maramba, Pfungwe which areas are well renowned in Zimbabwe for successful small-scale horticultural farming. This market gardening was largely done by women in their villages of origin and this female tag given to market gardening has been perpetuated on the A1 farms, since out of all the interviews I conducted at Maidei Farm, I could not locate many male farmers actively engaged in market gardening except for one who was a widower. The widower, Aleck Nyoni was interviewed at Maidei Farm on 17 March, 2013 and his story was;

²⁷¹ The father or father-in-law could either be alive or deceased. The daughter in law would engage in market gardening on the family allocated plot (usually ½ acre or 1 acre hived off the parents' 6 ha plot) in her own right and naturally it was expected that the sale proceeds would belong to her and her husband.

Case Study 17: Aleck Nyoni

Aleck Nyoni, a widower aged 63 years was the local ViDCo Chairman at Maidei A1 Farm. He was a widower whose wife had died in 2010. Aleck would often be seen fetching drinking water in a bucket carried on his head, much to the amusement of his fellow A1 farmers in this farming community. He had ten children. Four of his sons were married and living with him at his plot at Maidei Farm. He had eight grandchildren. His four sons' homesteads were dotted around his 6 hectare plot of which only 3 hectares are arable.

In the interview with Aleck Nyoni, he had this to say;

In total I was allocated 3 hectares of fertile arable land here but supported by my family, I irrigate on one and half acres of this land. I grow maize on another ½ hectare while my four married sons use the rest of the land during the rainy season. The irrigation water we get is not adequate for our needs and we do not get it when we need it...I farm mostly tomatoes and at the peak of the season I can harvest between 3 – 4 tonnes of tomatoes per week. However, I know some women farmers who harvest between 7 - 10 tonnes of tomatoes per week. We sell our produce at Mbare Musika in Harare but there are other market women from Harare who come here for direct orders for tomatoes and vegetables at a wholesale price.

Most of the interviewed male farmers indicated that they as men were more interested in farming tobacco since according to them this crop generated high profit margins than vegetables. Women farmers with vegetable gardening projects at Maidei Farm were therefore sustainably and productively using irrigation water throughout the year to feed their families as well as earn a little extra cash to support their families, unlike their male counterparts who concentrated on tobacco farming in the main fields, an enterprise which almost always was done once a year during the rainy season. The use of free rain water also increased male tobacco farmers' profit margins. Unlike women farmers who in most cases worked with their children and daughters-in-law in their gardens, male farmers generally did not assist in the gardens but come the rainy season they would demand that their wives and other family members inclusive of daughters-in-law assist them in their bigger tobacco fields. Considering that the majority of A1 farmers at Maidei Farm worked as families, unlike at Kara and Creek farms in Upper Mazowe sub-catchment, there were very few farm workers at Maidei Farm.

Since women A1 farmers at Maidei Farm shared water from the main irrigation pipeline with four male A2 farmers with bigger A2 farms across the valley, there was a lot of conflict emanating from this sharing of irrigation water. This conflict between A1 women farmers and A2 male farmers arose from the fact that A2 farmers demanded that A1 farmers contribute 30% of the total bills incurred from irrigation costs such as electricity to run the electrified borehole pump at Gulf Dam, maintenance of the borehole pump and the cost of commercial agricultural water paid to ZINWA. This was despite the fact that women A1 farmers irrigated much smaller areas averaging 1 – 2 acres and could only irrigate once in a week. In an enterprising manner, the women farmers had put in their own feeder pipes to draw water from the main pipeline conveying water from Gulf Dam to the A2 farms.

At the beginning of the study, the women farmers on the A1 farms who were upstream of the A2 farms, leased to four male farmers, took advantage of their having plots situated at a higher place than the A2 farms across the valley. Since the flow of water in the main pipeline was heavier and stronger on A1 plots than on the four A2 farms downstream, the women A1 farmers could water their horticultural crops as much as they wanted to. In interviews held with women A1 farmers at Maidei Farm regarding access to water for livelihood and productive uses, some responded as follows;

I farm with my husband...We use hosepipes connected to the irrigation water main pipeline which comes from Gulf Dam and passes through our farm on its way to the A2 farms across the valley. We water depending on availability of electricity. We used to pay US\$10 per month per A1 farmer family using piped irrigation water. We would then alternate in paying with the A2 farmers.²⁷²

Sethule Gasela was angry with the A2 farmers, whom she felt were short-changing them as A1 farmers. She said;

My husband and I farm on my late father-in-law's farm. We have connected pipes which are approximately 30 metres in length to the main pipeline. As a family, we usually pay approximately US\$40 every 2 months depending on how big the bill is. The A2 farmers are taking advantage of us as they want us to pay similar amounts as them and yet they have far much more hectareage under tillage than us as a whole.²⁷³

²⁷² Emma Kashangura in an interview held at the roadside market at Maidei Farm on 4 June, 2012

²⁷³ In an interview at Maidei Farm on 4 June, 2012

Melody Mandishona Maguma aged 24 with an ‘O’ Level education is married with 2 children. She used to live with her husband in Chitungwiza, Harare but relocated to the farm when her husband’s brother and his wife who owned the 6 hectare plot died. They are looking after the deceased’s 12 year old orphan. She had this to say;

We have connected a 50 metre long pipe to the main pipeline. We contribute towards repairs to the main pipeline as well as electricity bills. We only pay when there is an outstanding debt. We usually pay about US\$15 per family and another US\$5 per family for repairs which amount to US\$20 in total per family per month. If it’s the water pump which would have broken down, they charge families for spares and labour. We alternate in payment with A2 farmers.²⁷⁴

Shedding more light on the issue, the local woman councillor had on an earlier date said;

There was a time the neighbouring A2 farmers with whom we share the main water pipeline from Gulf Dam used to take advantage of us. They would make us pay 30% of electricity bills and yet they had hectareage amounting to not less than 120 hectares under irrigation while this whole A1 farm would irrigate not more than a total of 10 hectares. We have since challenged this unfair set-up and have resolved to pay not more than 10% of the total bills.²⁷⁵

While this had been the situation at Maidei Farm between 2011 and 2012 when women A1 farmers still had access to as much water as they required as upstream water users, by 2013 the tables had dramatically been turned by the ingenious A2 farmers who started using other unorthodox means to deny irrigation water to the women market gardeners uphill. Being in control of the electrified borehole at Gulf Dam, when the four male A2 farmers released water through the wider part of the main pipeline going through A1 farms, they ensured that it was at low pressure. Due to the low pressure of water released from the dam, the main irrigation pipeline would be half filled with water and yet the women A1 farmers’ feeder pipes drawing water from it into their A1 plots were joined at points higher up on the sides of this main pipeline. Hence when passing through the A1 plots, water flowed below the feeder pipes’ exit points. Nevertheless, when the water got further downhill and nearer to the A2 farms, it suddenly filled up the whole pipeline simply because the pipeline was now much narrower. As a result this water now completely filling up the pipeline gained more pressure to effectively irrigate the A2 farmers’ fields throughout the week. Clearly

²⁷⁴ In an interview at Maidei Farm on 4 June, 2012

²⁷⁵ In an interview at Maidei Farm on 17 December, 2011

illustrating this phenomenon at Maidei Farm, Aleck Nyoni, the ViDCo Chairman in an interview held on 17 March, 2013, narrated thus;

The A2 farmers are the ones running the electrified engines at Gulf Dam which pump water into the irrigation water main pipeline feeding smaller pipes on both A1 and A2 farms and so they control the water outlet points. They open water when they feel like. Although we are at a higher point than their A2 farms they have nonetheless found a way to open water in such a manner it is less than half in the main pipeline and so does not come out from our feeder pipes. Nevertheless since the main pipeline narrows as it slopes towards the valley where their farms are; the water fills up the pipeline and gains pressure thereby allowing them access to adequate water all the time. A month can easily go by with them irrigating their fields with copious amounts of water while we will be having very little water and will also be blissfully unaware that downstream they have plenty of water and some to spare from a dam at our very own doorsteps.

Describing further the impasse which has been created by the conflict between A1 and A2 farmers sharing water from Gulf Dam, Aleck Nyoni in the interview held on 17 March, 2013 went further to state as follows;

When there used to be ARDA, SeedCo and Dairiboard on the four A2 farms, as A1 irrigating farmers we used to contribute about 30% of the total bills incurred until we realized we were being taken advantage of considering the small plots we had under irrigation. We took a stand and said we would contribute only to a maximum of 10% which figure the four indigenous A2 farmers are currently contesting. We have had many meetings aimed at conflict resolution some chaired by the police but nothing tangible by way of resolution has materialized. Due to the selfish manner in which A2 farmers are denying us irrigation water, we have since gone on strike and are no longer contributing anything to the water and electricity bills. So the A2 farmers are paying the bills on their own but the total cost of any water we may use as A1 farmers in a month is just a drop in the ocean considering that each A2 farmer has up to 300 hectares and on average irrigate up to 100 hectares each.

To counter the stiff competition for shared productive water from the main irrigation pipeline some women farmers at Maidei Farm bought their own diesel water pumps and pipes to draw water directly from Gulf Dam into gardens nearer to the dam. They however faced a challenge whereby ZINWA officials were asking them to officially register as users of Agreement water from Gulf Dam which they had to pay for. There were also women former farm workers who did not acquire any land user rights under FTLRRP who were leasing productive land from those who had such rights. Hence, they were also using water productively to irrigate their vegetable gardens from which they also produced fresh farm produce for family consumption as well as for livelihood purposes. This raised a unique fact about the use of productive water at Maidei Farm whereby one did not necessarily need to be the officially registered land user to be able to access and productively use water thereby

clearly showing that in some cases access to irrigation water on A1 farms is not necessarily linked to one's land holding status.

7.12.1 Concluding comments: Maidei Farm

Conflicts abound at Maidei Farm between women A1 farmers and four male A2 commercial farmers as emanating from unequal sharing patterns of water with A2 farmers. Since the women A1 farmers were not clear about their right to lodge a complaint with their local stakeholder group or directly to the Nyagui sub-catchment council; the A2 farmers took advantage of the situation and proposed to have the matter resolved at the local police station. The women A1 farmers were not happy with the outcome since nothing changed and naturally they suspected there were some corrupt activities which took place that were meant to protect the more economically endowed A2 farmers.

7.13 Women farmers' access to and use of water for livelihoods and productive purposes in Nyagui Sub-Catchment: Saga Farm

There was no significant use of productive water at Saga Farm as most A1 farmers focused on dry farming of maize and tobacco. This could be explained by the fact that, for the most part this study was carried out there was no functional borehole at Saga Farm which could be used to pump irrigation water into the fields. Nevertheless in a bid to fulfil their role as traditional food providers for their families, a few women A1 farmers at Saga Farm were involved in small scale gardening projects located next to Dombotaura Dam and Muvhunzi River as well as the wetland on both sides of a small stream joining the two water courses, north and south of the Harare-Shamva Road.

To enhance production and similar to what was happening at Creek and Maidei farms, the women farmers at Saga Farm bought small diesel and petrol pumps to draw water from Dombotaura and Makoronyera dams as well as Muvhunzi River. They also bought hosepipes with wide diameters which they inserted into the dam or river water after which the use of gravitational force would allow the water to flow freely from the water source

into the garden plot. This enterprising move on the part of women farmers at Saga Farm however attracted the attention of the local sub-catchment coordinator who demanded that the women farmers who were drawing water from Muvhunzi River pay for it and also report at the nearest ZINWA Catchment Council Offices in Harare for purposes of acquiring water user permits.

7.13.1 Conclusion: Saga Farm

Just like the situation at the other farms, ZINWA officials' wholesale classification of river and dam water as commercial water is defeating the whole purpose for women to be allocated land close to water sources in accordance with the Shona customary norm that recognizes the role played by women in producing food for the family and generating an income. Most of the plots and gardens these women are irrigating range between less than a quarter acre to 2 acres. One hectare measures 2.47 acres and hence the majority of these gardens are less than a hectare, which is supposed to be the limit of land to be irrigated using primary water according to ZINWA which has not supplied women (on credit) with the necessary flow reading meters that would accurately read their actual water usage.

7.14 Overall Conclusion: Women farmers' access to clean drinking water, water for livelihoods, food production and the right to sanitation - same opportunities; different mediating influences

While all the women farmers on the four farms were in one way or another productively working on rain-fed crops on land acquired under FTLRRP; differences came up regarding their individual and collective access to clean water for drinking and water for livelihoods. Women farmers' access to clean drinking water was determined largely by one's economic status as well as the social networks one had built with other A1 farmers on the same farm or with neighbouring farms as was the case at Creek and Kara Farms as compared to Saga Farms. In a scenario where one group of farmers freely shared clean borehole water with farm workers while the other demanded a fee; those who demanded a fee had an urban background while those who amicably shared clean water from the farm borehole were

largely of rural background. At Saga Farm was created a close knit community which appeared more like the situation in communal lands occupied by people who are mostly related unlike the underlying hostility between A1 farmers and farm workers at Creek Farm. The only bone of contention at Saga Farm was the lack of land with water for dispossessed women farm workers to have family gardens.

While on all the four research sites, no new water sources and irrigation structures had been constructed at the time this research was embarked on, by the time it was completed, there had been significant change in circumstances on three of the four farms. While at Creek and Saga farms there was a progressive realization of the right to clean drinking water through the repair and conversion of boreholes; at Kara Farm there clearly had been notable regression as the electrified borehole previously supplying women farmers with clean drinking water had broken down, only to be replaced with a water treatment plant producing drinking water of questionable quality.

Having discussed the different water access patterns reflected on the four A1 farms under research and the extent to which women farmers were involved in negotiations for water; in the next Chapter the formal and informal practices and norms which determined the extent to which women A1 farmers' participated in making decisions on how water in all its uses was accessed and managed, are interrogated.

CHAPTER 8

WOMEN FARMERS' RIGHT TO WATER: PARTICIPATION IN DECISION MAKING ON HOW WATER IS ACCESSED AND USED ON A1 FARMS IN MAZOWE CATCHMENT

8.0 Introduction

Developing my interrogation from the previous chapter where I examined how women farmers accessed and used water on the four A1 farms under research, in this chapter I critique women farmers' involvement in decision making vis-à-vis how that same water was accessed and used within the household, at inter-household or community level, through sub-catchment and catchment levels to national level. The reason why this was deemed essential to my investigation and analysis in this thesis was because;

...traditionally women are constrained by patriarchal structures from participating in decision - making relating to the allocation and use of natural resources such as land and water. It is generally assumed that decisions made by male heads of households reflect the interests of both men and women. There is growing evidence that this assumption is responsible for the massive failures of water supply schemes (Nozibele Mjoli, 1999:60).

With this in mind, I sought to find out how decisions were made regarding water at different levels in Mazowe Catchment and the extent to which women as farmers were involved. As such I interrogated the normative contexts such as social values, rules, laws, norms and regulations which either facilitated or constrained women's right to participate in making decisions on how water for livelihood as well as clean drinking water and sanitation was accessed and used.

Starting with the conceptualization of the right to participation; the first issue I address is the one regarding women's participation in the access to and decision-making on drinking water. Secondly a discussion is done on women's participation in decision making in the contentious area of balancing competing interests between water for productive use and that meant for livelihoods. Particularly explored is the extent to which women in Mazowe Catchment have participated in making decisions on water management from the intra-

household level, to the local community level (inter-household) through sub-catchment and catchment levels, up to the national level.

In the ultimate my discussion seeks to test whether the basic human rights principles of equality, non-discrimination and access to information on water were being adhered to in deciding how water in its multiplicity was accessed and used. Taken from a relational perspective, I seek to show how women's capacity to participate in decision making on how water is accessed and used is determined by the social networks they move around in. My starting point is from the intra-household level which has always been viewed as "a terrain of struggle, manifest in disputes over the allocation of labour...the distribution of resources...the outcome of which helps to shape the broader society, as the household in turn is shaped by those broader social forces" (Moore, 1988:1-11 as cited in Schmidt, 1992:1). In achieving this, a gender analytical framework was used to find out the authors and perceived objects of gender ascribed roles such as who was responsible for fetching drinking water for the family, who decided on these gender ascribed roles and why? Drawn from data collected for this study, the gender conflicts in decision making which ensued as a direct result of the conflicting perspectives underlying gender ascribed roles flowing from socialization are discussed.

Proceeding to the second stage of my interrogation, an analysis is done vis-à-vis the extent to which women participated in making decisions on how water for domestic, productive and livelihood purposes was to be accessed and shared among male and women farmers on the four A1 farms in Mazowe Catchment. The discussion held in this chapter towards 'participation' is inclusive of how the different sexes prioritized investments in drinking and productive water differently at all levels. In that context, it became important to explore who set the agenda for discussions on water related issues in local fora as well as the constituency which gave them the mandate to steer debates in a particular direction. And

where a few women were elected or appointed as decision makers in such fora, it became essential that the framework of research questions outlined in Tables 2 and 3 on ‘participation in Chapter 2 be revisited.

8.1 The gendered division of labour and women’s perceived roles in water access and use

Custom and tradition have tended more to favour men than women, to promote men and their status and demote women in status, to erect men as masters of the home, village, clan and nation. Admittedly, women have...been allowed sometimes a significant, but at other times a deplorably insignificant role to play. The general principle governing relationships between men and women has, in our traditional society, always been that of superiors and inferiors. Our society has consistently stood on the principle of masculine dominance - the principle that the man is the ruler and the woman his dependant and subject.
(Robert Gabriel Mugabe in 1979 as quoted by Hay and Stichter, 1984:157)

The above quote sets a backdrop to my discussion in this section regarding gender roles and division of labour on the researched A1 farms. The starting point was to gauge the level of participation in decision making by women farmers on the A1 farms, through an analysis of gender roles and division of labour as well as decision making within the household and at community level vis-à-vis drinking, livelihoods and productive water use and management. It thus became imperative an exploration be embarked on vis-à-vis how women farmers perceived of themselves as holders of water rights or more specifically, how they perceived themselves as citizens with a right to participate in decision making from that premise. As stated by Kabeer, (2002:1);

Citizenship is a way of defining personhood which links rights and agency: ‘citizenship as rights enables people to act as agents’ (Lister, 1997). It is consequently, a powerful word, with connotations of respect, rights and dignity...For all that, however, the history of citizenship has been one of terrible exclusions, stemming from the denial of respect, rights, dignity and even humanity by some groups to others. Indeed, from its earliest inception, citizenship has been as much about exclusion as inclusion.

In direct contrast to the Western approach which tends to view ‘citizenship in liberal terms, as individual legal equality accompanied by a set of rights and responsibilities (which are) bestowed by a state to its citizens,²⁷⁶ there has been among some academics a radical shift towards the re-conceptualization of citizenship under “the more pluralistic approaches”

²⁷⁶ DFID has used an explanatory Figure on the CAR Dimensions of Governance to show a top-down approach which views citizenship as encompassing the bestowing of rights and responsibilities on citizens by the state.

which “take a less state-centered, and more actor-oriented approach, arguing that citizenship is attained through the agency of citizens themselves, based on their diverse sets of identities” (Nyamu-Musembi, (2002:1); Gaventa (2002:3)).

While I applaud this move at re-conceptualizing citizenship, my findings clearly show that a significant fact not to be ignored is that women citizens’ capacity to claim rights is also largely determined by the relationships they find themselves located in. Do the social networks or environment they find themselves embedded in allow them to freely claim their freedoms and entitlements on an equal basis with men? Similar to the situation as viewed from the land reform context there also exist in water governance “tensions between women’s rights as individuals and the wider relationships in which they are situated” (see Hellum, 2013:134 in Derman, Hellum and Sandvik, 2013).

One approach makes reference to ‘differentiated citizenship,’ which is citizenship built “on the basis of recognition of difference and diversity rather than the homogeneity of community” (Wang, Li and Guo, 2011:39). It has also been stated that “because women water users are not a homogenous group, water reform policies need to account for these differences” (Hellum 2001:7; Walker 2006:11). In that respect, “difference is placed before equality’ whereby ‘emphasis (is) on the plurality of women’s oppression-varying by social contexts and (other) factors such as race, nationality, ethnicity, and religion, as well as migration patterns across borders.” Thus despite being aware of their rights in general, the problem lies more with the appointment or election of women onto decision making bodies in a bid to add numbers without those women representatives being aware of which of the particular women’s interests they are serving and need to articulate in meetings.

A possible solution suggested by Wang, Li and Guo (2011:39) and which position I support is that a woman representative should be aware of the group interests she represents on the

committee such that, ‘the self-organization of the group is one of the aspects of a principle of group representation,’ whereupon they suggest that;

Members of the group must meet together in democratic forums to discuss issues and formulate group positions and proposals. This principle of group representation should be understood as a part of a larger program for democratic decision-making processes. Public life and decision-making processes should be transformed so that all citizens have significantly greater opportunities for participation in discussion and decision making. In such a more participatory democratic scheme, members of oppressed groups would also have group assemblies, which would delegate group representatives.

Applied to findings in the study, I will explore and test the extent to which the above theoretical perspectives apply to them.

8.2 Women farmers’ participation in decision-making on how domestic water is accessed and used within the household in Mazowe Catchment

In order to grasp the extent to which gendered roles still played any role which could have constrained women from possessing the assertiveness to fully claim a human right to clean drinking water and sanitation, a gender analytical framework was used whereby I conducted a gender audit on the more mundane role of fetching water. The objective was to find out on whom the duty to fetch water and associated roles fell, which fact would clearly show any unequal distribution of responsibilities. The key sub-questions revolved around the norms in place which determined how water was accessed and shared. For each of the four A1 farms the following sub-questions were asked vis-à-vis women in their different social groups;

- Who fetches water at household level and why?
- Who makes the decision on who should fetch water?
- Where had this norm originated from?
- What were the gender stereotypes in operation on the farms which dictated why one particular sex had to fetch water?
- What about women from wealthier classes; did they endure similar stereotypes on water fetching like those from poor households?

The above listed sub-questions were particularly pertinent considering the definition of discrimination (both direct and indirect) in Article 1 of CEDAW, and Article 1(f) of

Women's Protocol as articulated earlier in Chapter 3 of this thesis. Further my findings had to be analyzed as viewed against Article 2 of both CEDAW and Women's Protocol which speak to the elimination of those gender stereotypes that militate against women's political, economic, social and cultural emancipation and advancement.

8.3 Gender conflicts on who fetched water

8.3.0 Introduction

It was apparent during research that on the surface all seemed well within the researched communities but with deeper investigation into the dynamics underlying gender roles related to water access, use and management in the catchment; there existed general awareness on the part of women of the increasingly burdensome roles they had to fulfil. The majority of women farmers were expected to work with their male counterparts in the fields after which they had to fetch water from distant sources which in most cases would be unclean. The consumption of unclean water inevitably led to an increase in water borne diseases within family members especially children towards whom women had to play the nurturing or nursing role. Since there generally was no electricity in their homes; most of these women also had to fetch firewood for cooking, which cooking fell on them as well.²⁷⁷ It was also incumbent upon them that they had to grow vegetables in either kitchen or family gardens to supplement the family's nutritional needs. Despite their apparent awareness of the injustice within this gender distribution of labour heavily skewed against women, some of the women were resigned to the situation indicating that these were traditional or cultural roles handed down to them through past generations.

On all the four research sites, the generally common response to the question regarding who fetched water for domestic use was that it was mostly women and young girls. In the few instances that men and boys fetched water, it was more in assistance than an obligation and

²⁷⁷ A few exceptions were those women farmers with domestic workers who did some of the domestic chores such as fetching firewood and cooking but if anything went wrong in this sphere, the men would hold the women farmers accountable.

depending on the family's income level the men or boys would use wheel barrows or scotch carts to ferry the water, unlike women and young girls who were largely expected to carry 20 litre buckets on their heads.²⁷⁸ This made life a lot easier for boys than the girls' experiences whereby the latter would mostly carry heavy buckets of water on their (still maturing) heads which also had its own health implications. I only encountered one widow at Kara Farm who owned a wheelbarrow, who would fetch water with the wheelbarrow. Otherwise, for most women, even if the wheelbarrow or scotch-cart was there; they preferred carrying water buckets on their heads as this was generally deemed a faster mode of transporting water over rough rural terrain.

In asking the reason behind these highly gendered roles, and who had decided within the household as regards the person supposed to be seized with the duty of fetching water, the popular reason was that long held cultural norms among the Shona people demanded that women fetch and carry water for the whole family comprised of one's husband, children and sometimes members of the extended family if newly married. I encountered a few exceptions to the general rule from some of the wealthier families where a widowed woman farmer and village head did not fetch water but instead tasked her domestic workers to do that. The responses, which were varied and interesting, were sampled through a few captured voices on each of the four A1 farms as outlined below. Since more women farmers were interviewed at Saga and Maidei farms, more responses were obtained from there. The responses recorded from women clearly revealed a myriad of differences between women within the same social group and across the different social groups as shown hereafter.

8.3.1 Kara A1 Farm

From my observations at Kara Farm it was clear that women were expected to fetch drinking water from the unprotected wells and springs as well as the borehole at Creek

²⁷⁸ Boys from households with less income who did not own a wheelbarrow or scotch cart and cattle preferred to lift buckets of water by bucket handles rather than carry them on their heads due to the stereotypes attached to males carrying buckets on their heads.

Farm. While the woman village head at Kara Farm, aged 49 years, was responsible for ensuring that clean drinking water supplies were available in her home, she however delegated to her male workers the responsibility of physically carrying it from source. The nature of her access was determined by the social class she belonged to. As a widow she was solely in charge of her household's financial resources and hence could determine how the available resources were used which included the transportation of water. On the other hand her neighbour, Mrs Badu, aged 50 years in the company of her two young daughters fetched water from the same Creek Farm borehole using 20 litre buckets which they carried on their heads for the 2 km return journey. This was despite the fact that her family owned a wheel-barrow which she could have used to ferry water. Her teenage son would once in a while use the wheelbarrow to ferry clean water from Creek Farm in three 20 litre containers, not as an obligation but as and when he felt like assisting.

Upon asking Mrs Badu on 10 March, 2013 why she and her daughters were the ones seized with the responsibility of ferrying clean water home from 2 km away; she answered;

If I don't make sure that there is clean water in the house, who do I expect to do that for me? My daughters have to help me because one day they will be married and have their own homes and families to take care of. They will have to do the same as I am doing now. It is just like in a company or farm, you find the manager, foreman and general labourers. Everyone should know their place. When you apply for a job you know what is expected of you. If you want to stay married in our cultural setting, you should know what is expected of you as a wife. The man is the manager while the woman is his junior assistant whom he can send to do anything. Our ancestors ruled long back what roles men and women should play. Who am I to question that? After all, cattle would have gone to the woman's family and not to the man's.²⁷⁹

Laughing she continued, "I can only wish I was born a man so I could enjoy similar privileges!" Mrs Badu's response clearly reflected how resigned most interviewed women farmers were to their culturally imposed common fate. Clearly evident were the invisible power dynamics bubbling just below the surface in the form of customary norms that sought to control and shape how women perceived of themselves "and what they viewed as

²⁷⁹ This was in reference to lobola or bride price

unchangeable and unchallengeable” (see Lukes, 1974:24; Langford et al, (2013:134) in Andreassen et al, 2013).

In a follow-up interview at Kara Farm on 10 March, 2013, I asked Rodia Kavhuru about the person who fetched her drinking water from Seke’s well, to which she responded;

It’s me who mostly fetches drinking water from Seke’s well using three 20 litre containers in a wheelbarrow. My son who lives close by also occasionally brings me clean water in a 20 litre container from the bulk clean water he ferries in drums on a scotch-cart from the Creek Farm borehole.

Further I asked her whether her daughter-in-law would sometimes fetch water for her from Seke’s well, and she stated;

My daughter-in-law does not fetch any water on my behalf because she was brought up in an urban setting with running water in the house and hence faces difficulties in fetching water in buckets carried on her head.

I then asked whether it was the position at Kara Farm that both men and women were supposed to fetch drinking water from the borehole and well, to which she replied;

According to our Shona culture, women especially young women should fetch water from the well. In the past girls would use clay pots but now we have since graduated to plastic buckets which are lighter in weight. The advent of running water in urban homes and even on some farms has nullified that woman’s role as everyone just gets water straight from the tap. We also have a situation whereby even in villages many families now own wheelbarrows and scotch carts such that it is not considered out of place for some men to fetch water with wheel barrows or alternatively to span oxen to pull these scotch carts as they fetch water with big containers from communal boreholes. This is because wheel barrows are also used in construction work which is regarded as masculine, just as spanning cattle is considered men’s work. However, were men or boys to be seen carrying buckets of water on their heads, they would become the village’s laughing stock and so it’s never done.

8.3.2 Creek Farm

For the three years that women farmers at Creek Farm sourced clean drinking water from Kara Farm, they used buckets which they carried on their heads for 2 km although once in a while some men fetched the water with wheelbarrows and scotch carts. With the repair of the Creek Farm borehole, women farmers and their girl children still held the primary responsibility of fetching drinking water in containers of different sizes for shorter distances ranging between 100 – 700 metres. The containers would be carried on their heads although as the research progressed young boys pushing wheelbarrows with several water containers became increasingly visible. In interviews with women farmers on the farm they generally

and unquestioningly accepted that the task of fetching clean drinking water naturally fell on them as the traditional food providers for their families just as it was with fetching firewood.

In an interview with Memory Chingadza, a widow then aged 50 on 09 March, 2013 about why it was mostly women who fetched drinking water, she responded;

My dear, there are things one simply does not question because it's a waste of one's time. It's just as good as asking why we as women fall pregnant and carry children for 9 months in our wombs and men do not.

I tried explaining to her that childbearing was different as it was a naturally endowed physical or biological attribute of women attained from birth over which they had no choice and as such could not be compared to a household chore such as cooking, fetching water and ploughing the fields. She remained unconvinced and felt it was I who needed some lessons on our culture.

8.3.3 Maidei Farm

The findings from my study at Maidei Farm showed that it was mostly women who fetched drinking water in buckets carried on their heads. Asking the women farmers in focus group discussions why they solely fetched drinking water; they unanimously agreed that it was a role assigned to them by nature and hence it would be futile for them to try and fight nature. An exception to this scenario though was Aleck Nyoni (case study 17). In an interview held with him on 17 March, 2013, Aleck Nyoni described his daily routine of fetching water from the well;

If my youngest children, a boy in Form 1 and a girl doing Grade 6 are at school, I fetch drinking water with a 20 litre bucket which I carry on my head. Carrying a bucket on one's head makes it easier to walk for the 500 metres back home on rough terrain.

Surprised that he carried a bucket of drinking water on his head from the well, I asked whether he was not ashamed to be seen carrying a bucket on his head, to which he retorted;

You become proud only if you have a wife to do that for you. Pride would only make me suffer from hunger unnecessarily since I would need water to cook some food for myself.

I asked whether his sons, daughters-in-law and grown up grandchildren as the extended family support network did not assist him with this chore. He responded;

They have their own lives to take care of and my daughters-in-law are always busy in their gardening plots and at the road market such that their children once back from school even have to do their household chores of cooking and fetching water. Considering that my youngest children fetch water once back from school, I can't be seen to be further imposing myself on my married children and become an extra burden at this age when I can still do some tasks for myself.

8.3.4 Saga Farm

Since for most of the time I did field work at Saga Farm, there was no clean drinking water in the vicinity of the farm compounds; water was thus fetched from unprotected wells in buckets and other plastic containers. Similar to the situation on the other three farms, women and girls were the ones expected to fetch this water with containers balanced on their heads. Asking why it was mostly women who fetched drinking water, Mai Delia Manhombo, a 54 year old woman farming with her husband who is disabled had this to say;

It is always the mother and the girl children who fetch water in any family setting. Our culture demands that. As a young girl, one is taught by her mother and paternal aunt to maintain that role in a cycle which has been handed down through the generations. If a newly married woman does not do those duties properly, a man has the right to return her to her paternal home on the basis that she was not properly trained and needs re-orientation, after which the husband would collect her. The retraining by the aunts can take anything up to between 3 and 6 months. In my case though, I am doubly obliged to fetch water since my husband is disabled. Even if he wanted to assist me, he cannot push a wheelbarrow. My two grandchildren are too young to assist.²⁸⁰

This position was echoed by Mrs Kuvhima,²⁸¹ another woman farmer aged 50 years who is married to a war veteran. Taking care of a 5 year old disabled child, born of her deceased young sister, she opined;

No one is expected to have a discussion on that issue within a home because I, as a woman, just know that I should fetch water for domestic use as it has been ingrained in me from a very young age that fetching water for domestic use is a woman's duty. As young girls and also newly married women, the village well was a common rendezvous for sharing the latest village news and gossip. One never saw young boys being involved in our feminine banter at the well because they never came there. After all, my husband is asthmatic and I cannot expect him to do heavy manual labour because if he falls sick it's me again who will have to nurse him back to a healthy status.

In a more blatantly gender biased attitude, her husband M. Kuvhima aged 56 years retorted;

My wife fetches water for all our needs. After all she is my worker.²⁸²

While this interviewee categorized his wife as a house worker rather than his partner; what he did not acknowledge or appreciate was that as a worker in the private domestic sphere,

²⁸⁰ In a focus group discussion with 20 women held at Saga farm on 21 March, 2013.

²⁸¹ She stated thus in an interview held at Saga farm on 02 April, 2013.

²⁸² In a Men-only Focus Group Discussion held at Saga farm on 21 March, 2013.

she was engaging in unpaid work. Under different circumstances, specifically the conventional job market in the public sphere, this house work done by his wife could be easily valued or quantified as stated by Cleaver and Elson (2002:5);

The value of the time saved in fetching water is typically determined either by estimating what income women could generate in the time saved through waged or self-employment; or by what it would cost to hire someone else to fetch the water.

This position is echoed by Article 16 of the SADC Protocol on Gender and Development on women's multiple roles which states as follows;

States Parties shall conduct time use studies by 2015 and adopt policy measures to ease the burden of the multiple roles played by women.

Apart from attributing this position to culture, no one could clearly articulate when this gendered practice had begun and whether it was cast in stone such that it could not be changed. It was therefore clear that through the 'internalization' of certain practices within some women as the expected social mores with regard to the division of labour, they had unquestioningly handed down the same practices to younger generations, thereby perpetuating gender based disparities.

In the same males-only focus group discussion held on 21 March, 2013 two young men admitted to fetching water sometimes. They however, explained why;

For us who are young, we see no problem in assisting our mothers to fetch water because the well is just 100 metres away and I can just lift up the bucket by its handle for that distance.²⁸³

There is a small spring in the wetland next to our homestead. I also carry buckets of water by their handle from that spring about 200 metres away.²⁸⁴

According to the two young men, carrying a bucket by its handle appeared more dignified and masculine than carrying it on one's head. From the afore going findings, it became clear that due to deeply embedded and culturally informed stereotypes, women in general had little control over making such minor decisions on a day to day basis regarding who would fetch water between the man and woman in a household depending on who between the two

²⁸³ Kennias, aged 17 years

²⁸⁴ Kudzai, aged 18 years

had the time to do that chore. As a result the role of fetching drinking water for the whole household in Mazowe Catchment fell squarely on women and girl children despite the fact that the same individuals had to cook, nurse babies, fetch firewood and work in the fields. Surprisingly though, most of the interviewees could not tell where this gender ascribed role on fetching water had originated from although one male farmer indicated that his wife was expected to do so because ‘she was his worker.’ That was despite the fact that besides catering to his needs, his wife had to nurse a disabled child as well.

A typical farm scenario commonly experienced at Maidei Farm was that after working in the fields for half the day, the men would proceed to go for a beer drink while women continued with the farming until sunset or would go to the market to sell produce after which they returned home to do all the chores alone. The situation was worse in the dry season, when the men mostly interested in the dry farming of maize and tobacco would not assist the women in their market gardens worked on throughout the year.

8.4 Gender conflicts on water uses

Another common area of gender conflict related to the fetching of water lay in the use of that water. The key sub-questions revolved around who had control over the following issues;

- Deciding on what the fetched water was used for and why?
- Deciding on which water related activity received priority?

From observations made and data from the interviews conducted, it became apparent that just as they had no control on who fetched water on a day to day needs based approach; women had no full control over how and for what purposes the water they fetched was to be used for. The fact that the majority of men chose to bath at home meant that besides fetching water for drinking, women farmers had to fetch water for bathing for their husbands or other male relatives senior to them who lived within their households. This was despite the fact that in the drier months women farmers at Maidei and Saga Farms had to

travel for longer distances to fetch any type of water. As a result of this gender skewed allocation of roles within a household and in a bid to ease their gendered burden, most women chose to bath at the river as they fetched water with 20 litre buckets, most of which water would be used up in bathing by the men.²⁸⁵ The unfairness in this common set up was clearly reflected in a view expressed by a woman farmer at Creek farm when she stated;²⁸⁶

We walk for approximately 2 kilometres one way to fetch water for domestic use from Mudzi River... You know what men are like. A man will demand to have a bath and use 20 litres of water after which he will demand for a clean and ironed shirt. He does not care that his wife walks for 5 kilometres to and fro in search of that 20 litres of water. Culture tells us that a wife should give her husband bath water. Besides that a woman is wanted in the field, garden and home to cook and look after the children. We suffer silently and don't protest lest one is viewed as an uncultured and rebellious woman "akaenda kundoorowa madzitete nanambuya vaenda kunhimbe."²⁸⁷

To prove that this was not a situation peculiar only to Creek farm, a male farmer at Saga farm confirmed a similar trend;²⁸⁸

Women generally do laundry at the River and bath there. As for us men, we will still be at work in the fields and bath at home in the evening.

Out of a total of 12 women farmers interviewed at Kara and Maidei farms on who determined the different uses of water, they were unanimous that neither the husband nor wife explicitly spelled out how water fetched by the wife was to be used. Rather it was something tacitly observed emanating from peer pressure within their communities that once a woman fetched water she had to reserve some especially for her husband's bathing needs. While 8 women admitted that they had to warm the bath water especially in winter, the other four indicated that their husbands specifically preferred cold bath water for personal reasons most of which revolved around a cultural norm which said if men wanted to maintain a firm and fit body which was virile, they had to bath with cold water. One

²⁸⁵ This also raised issues of women farmers' personal security while bathing along a heavily wooded river bank.

²⁸⁶ In a Group interview held at Creek Farm on 29 January, 2011.

²⁸⁷ A Shona saying which literally translated describes a young woman "who elopes or slips away to be married when the old aunts and grandmothers are not around as they would have gone for a beer drink offered during collective community work in each other's fields." The saying is derogatory, describing the young woman as uncultured since she does not give the elderly matriarchs a chance to sit down with her and counsel her on being a good obedient wife. As such she continues being labelled thus into old age unless she conforms.

²⁸⁸ In a men-only Focus Group Discussion held at Saga Farm on 21 March, 2013,

woman indicated that if a woman did not provide warm bath water for her husband and he eventually gained notoriety within the community as a dirty individual who rarely bathed, the community would blame it on the wife as a reflection of her own sloth and laziness.

The fact that most of these men preferred to bath in the comfort of their homesteads with water which, in most cases, had to be firstly heated, raised other gender related issues about the gender specific role of firewood fetching by women farmers. On the other hand the women farmers generally bathed with cold water at the river. Given a choice, most of the women indicated that they would have preferred bathing with warm water especially in winter but could not afford such luxury since it meant more work in carrying larger amounts of water home for bathing purposes only. Unlike their male counterparts who would focus only on commercial farming, all these other unremunerated domestic chores left women farmers with very little time to spare for other income generating work outside the home. This resulted in a perpetuation of the feminization of poverty even at household level.

8.5 Gender conflicts on water prioritization: Water for domestic, livelihood and productive purposes

8.5.0 Introduction

This section explores gender conflicts about which water to prioritize within the household and at the local community level. The breakdown of the domestic and productive water infrastructure gave rise to conflicts between husbands and wives about both money and work. For example conflicts revolved around whether investment in electrified borehole pumps and irrigation pipes for productive farming was to be prioritized over that proposed for drinking water. Investment in drinking water entailed the construction or repair of manually operated borehole pumps and deep covered wells as well as the purchasing of containers to store clean drinking water and the means of water conveyance such as wheelbarrows and scotch-carts. I will start by interrogating gender conflicts revolving

around prioritizing investments in clean drinking water when compiling family budgets at household level.

INTRA-HOUSEHOLD LEVEL

8.5.1 Gender conflicts on prioritization of investment in clean drinking water in family budgets and planning

Considering that gender relations in the private sphere usually inform what occurs in the public sphere namely the community as well as society at large, an equally important need arose for me to interrogate the nature of intra-household gender relations vis-à-vis women farmers' participation in determining family budgets on drinking water. This is so because similar to a National Budget, there is a need to balance priorities in intra-household budgets. Hence Article 15(2) of the SADC Protocol on Gender and Development states that, "States Parties shall ensure gender sensitive and responsive budgeting at the micro and macro levels including tracking, monitoring and evaluation." As observed by Cleaver and Elson (2002:5), through 'various forms of gender bias, women tend to have less access to cash than men' such that 'through households, men and women do to some extent pool and share money' but according to Dwyer and Bruce (1988) 'this is generally incomplete in ways that are biased against women' resulting in such lack of access to cash acting as a barrier or constraint preventing women from reaching their full potential in decision making.

Through interviews with married women farmers on whether their spouses gave them an equal opportunity to make decisions on how the family income was to be invested, the general response was that the male household head had a free reign with household finances forcing some of the women to act in a very masculine way so as to be heard by belligerent spouses who given the slightest opportunity would be outright dictatorial. A significant number of women farmers had simply resigned themselves to being voiceless in respect of family budgets as indicated by three separate interviewees at Maidei farm. The responses

ranged from that of Mai Maruva Nyamapfuko's at Maidei Farm on 17 December, 2011 which went;

It's difficult to budget together. You are simply told, 'Money is finished,' before you have bought anything significant.

To that of Katarina Kavhuru at Kara Farm where she insisted;

My husband and I budget together. My husband's priorities naturally occupy a higher place since he always decides on capital projects. My input is usually on smaller issues.²⁸⁹

This last response was supported by a young woman farmer Mizpa Dube who said;

I have always brought up the issue of scarcity of clean water here. My husband has always responded saying, 'It needs money to dig a deep well.' This is despite the fact that we own a small diesel engine which we use to draw water from the dam to irrigate our market crops.²⁹⁰

Hence while the women valued investments in drinking water as being equally if not more important, men tended to sway the budget towards funding irrigation water facilities as most of them stated that they prioritised investment in commercial water because that was where the real money was, in terms of profits. Bringing in a different view to this general male perspective regarding the obvious priorities taken during family budgets was Mr Badu, the 56 year old farmer from Kara Farm who said;

We budget together. I ask my wife to compile her own list of priorities while I do mine. We then sit down together to decide on what should be prioritized from the two lists. I am not autocratic and often place some of her priorities at a level higher than mine...²⁹¹

Mr Badu's response was not supported by what was happening in his household in that while other farmers on the same farm had invested in wheelbarrows and scotch carts used to ferry clean water from Creek Farm, approximately 2 km distant, his wife was the only visible woman farmer who still ferried water in a 20 litre bucket on her head for the 2 km. Whenever his teenage son wanted to assist his mother, the boy would borrow a wheelbarrow from his elder brother who was married and had a separate household. A more realistic view was that expressed by Mrs Sophia Kasekete farming at Saga farm who plaintively said;

²⁸⁹ In an interview held on 14 March, 2013 whereby her mother-in-law Rodia Kavhuru was present

²⁹⁰ In an interview at Maidei Farm on 17 December, 2011

²⁹¹ In an interview where his wife was jointly interviewed with him on 14 March, 2013 at Kara farm

*We always speak to our husbands to repair the borehole but they do not take heed. If it wasn't for God's Grace, we would all be dead by now. We do plan with them to have clean drinking water but in the end these important plans always come to nought.*²⁹²

Thus despite the bills for electrified boreholes supplying commercial water on A1 farms mounting soon after the FTLRRP, ZESA did not immediately switch off those boreholes due partly to part payments made by some A1 farmers and secondly due to the broader political debates which would have perceived any wholesale disconnection of electrified boreholes supplying irrigation water on A1 farms as sabotage of the FTLRRP. Mostly because of the unequal gender relations as reflected in this study, which saw men taking advantage of deeply embedded gender biased cultural norms to fund masculine activities they thought were more important than those perceived to be feminine;²⁹³ the result has been inequitable outcomes which place a heavier burden on women than men. The trend created was to value and recognise the economic rather than the health and social benefits of water as it was generally assumed that economic benefits were capable of being more easily quantified than the social ones.

Hence while on most of the researched farms, more money was being put into irrigation water at the expense of clean drinking water, the outcome was an increase in diarrheal diseases among children emanating from unsafe drinking water. This resulted in an increased burden being placed on women who had to spend more time nursing sick children. This outcome is very significant considering that such social and health factors reflect on the National key indicators which have been used to assess Zimbabwe's progress in the achievement of Millennium Development Goals by the set date in 2015.

8.5.2 Gender conflicts on prioritization of investment in clean drinking water infrastructure, storage containers and means of water conveyance

Apart from easing the burden of water carrying on women farmers; investment in drinking water in the form of working boreholes closer to their homes or alternatively the purchase of

²⁹² In a focus group discussion on 21 March, 2013

²⁹³ For example investment in irrigation water and infrastructure as opposed to drinking water and sanitation

bigger containers ferried on wheeled forms of transportation, would leave women with ample time to engage in more productive activities which would avail them with disposable cash to be used as they determine. This is evidenced by the fact that during the period when clean drinking water was still available at Creek, Maidei and Saga farms, besides the main agricultural projects women farmers had managed to organize themselves and bought small diesel and petrol pumps used to irrigate garden projects, a source of separate income for them. As issues of access to clean water within a reasonable distance became critical, women farmers had no extra time to spend in the garden projects as all their time was shared between domestic chores in and around the home (which included water fetching) as well as working on the family plot.

The use of smaller containers increased the burden even further since the smaller the container, the higher the frequency with which women farmers fetched water for domestic use as determined also by family size. In a focus group discussion held at Saga farm²⁹⁴ on 21 March, 2013 Shylet Makina (not her real name) assuming herself to be in the worst situation indicated that she fetched water with a 20 litre bucket six times in a day. In response, another participant, Mai Delia Manhombo, referred to earlier who is living with her 2 unmarried sons, a daughter, 2 grandchildren and her husband who is paraplegic and thus uses a wheelchair, retorted;

Six buckets are for fewer people with fewer needs. My daughter and I fetch between eight and ten 20 litre buckets in a day. Nowadays it's better but in the dry season, it is a nightmare for us as I have to wake up long before dawn to fetch water but find none.

Marian Gundu, another young married interviewee in the same focus group who used 5 litre containers to fetch water indicated that she trotted back and forth from the well countless times a day because she did not own any bigger containers. Whenever they got a little money, the husband would treat her and her child to concentrated fruit syrup in a 5 litre container so she could reuse the container for fetching water after they finished the contents.

²⁹⁴ This was prior to April, 2013 when the windmill driven borehole pump at Saga Farm was converted to a manual one by DDF.

Although the unprotected shallow well was approximately 400 metres from her home, the countless trips took much of her time and left her too exhausted to engage in any other productive activity. Taking cognisance of the all pervading influence of gender in water governance, Cleaver and Elson (2002) have indicated as follows with regard to the investment of time and money in drinking water rather than commercial water;

Gender differences may also result in under-investment in water resources even if such investment is guided by formal cost-benefit analysis that does not assume women's time to be a free good. Assessing the benefits depends on determining the amount of time users would save and the value of this time.

With regard to sanitation, the majority of farming households inherited sanitary facilities in the form of Blair toilets previously used by each farm worker household prior to FTLRRP. For those who built their own new homesteads, they also built new Blair toilets as enforced by the local Farm Health worker.

INTER-HOUSEHOLD (COMMUNITY) LEVEL

8.5.3 Gender conflicts on the prioritization of investment in productive water as opposed to drinking water and water for livelihoods at community level

As indicated in earlier chapters, when A1 farmers settled on the former white owned commercial farms, they simply did not pay the electricity bills leading to disconnection of electrified boreholes for non payment of bills ranging from US\$2000 to US\$4000. As long as the white farmers on two of the four A1 farms continued to solely pay the ZESA electricity bills for electrified boreholes supplying the whole A1 farm community with clean drinking water, there appeared to be no problem. It is also interesting to note that while most electrified boreholes supplying drinking water to A1 farms (with no resident white commercial farmer to pay the bills) were disconnected for non payment of bills; the A1 farmers made strenuous efforts to pay part of the electricity bills emanating from electrified boreholes supplying irrigation water. Commercial water being linked to men, the control wielded by male farmers over the family budgets usually meant that some money was always reserved for investments in irrigation water facilities rather than those reserved for drinking water at family level.

An example is drawn from Kara farm, where one male farmer spoke of a common practice whereby the local farmers would hire irrigation pipes from neighbouring A2 farmers and white commercial farmers at US\$150 per 3 months of usage. This has to be viewed against a situation whereby women farmers at the same farm had no access to clean drinking water on the farm since the ZESA transformer's breakdown and hence were sourcing clean water from Creek farm, 2 km away or alternatively dirty water from unprotected sources.

In the local community, where some of the women farmers participated in borehole and irrigation committees, this gave rise to discussions between men and women within and without households on whether investments should be prioritized in productive or drinking water infrastructure. In the next section the discussion is focused on whether and how women farmers' role in decision-making on water at the household level was advanced when they were elected or gained membership into borehole and irrigation committees,²⁹⁵ as well as the interests they served on those committees.

8.5.4 Overall Conclusion on water prioritization

A significant fact revealed by this research is that the nature of the household a woman A1 farmer found herself embedded in usually determined the extent to which she could access and use water in its multiple uses. The volumes of water a woman A1 farmer could access was dependant on who decided which water to invest in, drinking water; water for livelihoods or productive water. Secondly the type of household could also determine whether there was any investment in big containers in which to store water for longer periods of time thereby affording women A1 farmers more time to be productively engaged elsewhere rather than spend the day trooping back and forth from the water source with a 5 litre container as was the case with a woman at Saga Farm. It became apparent from the study that a household which apart from being gender sensitive, was also inclusive would

²⁹⁵ While borehole or water committees usually referred to those committees dealing with boreholes supplying drinking water, irrigation committees referred to committees dealing with borehole pumps and pipes supplying agricultural commercial water as well as the irrigation costs involved.

compile a gender responsive budget which would invest more money in infrastructure supplying clean drinking water closer to homesteads rather than commercial water.

Drawn from evidence gathered in this study, it became clear that there were competing interests in households. The findings show that within male headed households, men wielded greater influence on decisions on investment in either commercial water or water for drinking and livelihood purposes. Men tended to put commercial irrigation water at first priority; while given the opportunity, women would prioritize drinking water for a healthier household. As such men would prefer to invest the season's earnings in hiring or buying irrigation pipes while women preferred to invest in clean water as well as bigger water containers and means of conveying clean water.

Consequently, in male headed households engaged in winter crop farming, the household income was mostly if not wholly channelled towards investments in irrigation infrastructural development while within female headed households larger investments would be made towards the purchase of bigger water containers and water transportation means such as wheelbarrows and ox-drawn scotch-carts to ferry such water as opposed to carrying 20 litre buckets on their heads. Another popular investment for women was in small diesel and petrol engines and thick hosepipes which they used to irrigate their small vegetable plots in the fields or near the river or dam.

8.6 An actor oriented perspective on women farmers participation in decision making on productive, livelihoods and drinking water within the emerging water governance institutions at intra-household and inter-household levels

8.6.0 Introduction

An important key indicator used in this study to determine or gauge the impact or extent of women's exercise of their right to participation in decision making, was their number coupled with their influence on decisions taken in water governance institutions determining

important local water governance issues, as compared to that of men. Article 12 of the SADC Protocol on Gender and Development regarding “governance and representation” states that;

States Parties shall endeavour that by 2015 at least 50% of decision making positions in the public and private sectors are held by women including the use of affirmative action measures provided for in Article 5.

The question was whether women representation on borehole and irrigation committees met this standard. As indicated earlier in this chapter, the key questions revolved around the role of these women sitting on irrigation and borehole committees as well as their mandate i.e. whose interests did they represent? Were they self actors, free agents or representing a particular worldview, or alternatively were there other ulterior forces which informed their actions on the committees?

8.6.1 Women A1 farmers’ representation in Irrigation Committees

Through marriage ties, the majority of women farmers farming on the researched farms gained access to land and water for productive use on A1 farms but the same set up constrained them from actively participating in water governance since membership to irrigation committees was restricted to plot holders only, forcing them to compete with husbands for posts on the committees.²⁹⁶ From the time the new farmers settled on the former commercial farms, irrigation committees were formed which oversaw the use of irrigation water. While these irrigation committees existed on all the researched farms, it appears on two of these namely Creek and Saga farms; they existed in name only and not in practice.

A constraint to women participation in such committees was occasioned by membership to irrigation committees being restricted to plot holders only, thereby effectively excluding the majority of women since a few women acquired land in their own right. Since land permit

²⁹⁶ Since it is mostly men who participated in the violent land grab, their names solely appear on land user permits issued to them by the government. The situation however was set to change with the promulgation of SI53/2014 stating that where a man who is a farmer is married, his spouse automatically becomes a co-permit holder for the farm.

holders were the only people eligible to vote in the selection of members of any irrigation committee, this effectively excluded most women who were farming on land whose permit was in the name of the husband, brother or son. Nevertheless on some farms which were more liberal women whose husbands were permit holders could also vote and be voted for especially if the husband was away working in town. Despite such concessions, due to the inculcation of patriarchal norms that inform the sex to occupy leadership positions, most women found themselves voting for men rather than vote for their fellow womenfolk.

During interviews with women farmers I queried why they were few women sitting on irrigation committees. I received wide ranging reasons for this which all pointed to customary norms underlying the husband-wife relationship and decision-making in the family. The norms influenced how women voted in elections to choose whom to place in positions of power. Rodia Kavhuru, a divorcee from Kara Farm indicated as follows;

As women, we are generally expected by society to be subservient to the husbands in our lives but then the same husbands when gathered become a community. So at the end of the day at any meeting held within a particular community, all the women with husbands at the same meeting become subservient to all the men at that meeting. This cows them and so they will agree to whatever the men decide. Before going to these meetings, a husband and wife usually discuss who to vote for at the meeting and the husband's choice, usually in favour of a man carries the day. So in most cases it is men who get nominated for these posts and women usually check to see who their husbands vote for before also raising up their hands in support. Maybe if they vote through secret ballot rather than a show of hands, things may change. Women who get nominated or voted for are mostly widows or divorcees who are nominated by other single women and sometimes get support from men simply to be on the good side of the government which gave us land and the Party (ZANU PF) as well as our President who push forward this gender balance agenda in leadership. Further, voting for a woman who is not your wife does not induce a feeling of having one's paterfamilias authority threatened. As long as she is not under your roof, then it is fine with most men and they even view such women as colleagues rather than women.²⁹⁷

Mrs Mugadza, the woman village head had this to say on the issue;

Girls who grow up in a rural community are usually told not to be too competitive against boys otherwise they will intimidate them and when it's time for them to be married they may find themselves with no male suitors because no man would be willing to put up with their competitive streak. Due to such unwritten but very influential cultural norms not many married women would dare venture into politics. These are invisible barriers which only strong women dare to cross. I was fortunate in that my late husband, a police officer never felt intimidated by my success outside the home such that when I was appointed village head he morally supported me and would sometimes even sit in the audience when I held my court sessions here.²⁹⁸

²⁹⁷ In an interview at Kara Farm on 10 February, 2013

²⁹⁸ In an interview at Kara Farm on 10 February, 2013

Since her husband supported her success in leadership on the farm, it became easier for other men in the community to support her in the knowledge that her husband was fully behind her. Also drawn from my own observations, I could see why most men inclusive of her male workers treated her with awe as at about 1.81 metres in height, she towered over everyone else, most men included.

When I asked another Kara farmer, Mrs Leah Chimuperu on 10 February, 2013 why there were few women sitting on irrigation committees as compared to men, she responded;

These men attend these irrigation committee meetings so often and sometimes at odd hours such that not many women would be in a position to attend meetings. This is because women have too much domestic work to take care of such as cooking for the family, fetching water and firewood, taking care of children and the husband and above all that, working in the family fields and garden. Even if women wanted to, they just don't have the time and not many men are willing to have their wives elected to such committees as they are suspicious of the close working relations they will have with the other male committee members. I once told my husband in jest that I would seek to be elected to the local Irrigation Committee and he was very upset about it. He said, "Just know that once you are elected, you stay there because that will be your new home. There will be no room for you here. I will be the father and mother of my children here." Even after I told him it was just a joke he told me unequivocally that he did not like such kind of jokes.

The next question was finding out whose interests the women farmers elected or appointed to the irrigation committees represented or advanced. What I discovered was that despite election or appointment to powerful posts such as the woman Secretary of the Creek Farm Irrigation Committee; the said women's active participation in irrigation committees was in practice mere token or non-existent as whatever they suggested was rarely taken up by the full committee. I realized from evidence gathered that despite a woman's membership to an irrigation committee, there were other decisions which could be taken outside the official forum by the other male members and non-members at other venues such as a beer drink, where the woman member was excluded from and hence became unaware that such a consensus had been reached elsewhere.

I also found out that in those instances when some women farmers sitting on the irrigation committees showed an interest in decision making, they masculinised their interests to favour commercial irrigation water so that their interests would coincide or resonate with

those of their male colleagues on the committees. In the ultimate the irrigation committees' interest in commercial water far outweighed that reserved for clean drinking water and yet the majority of women farmers given a chance would have opted for the prioritization of investment in drinking water and sanitation facilities rather than commercial water infrastructure.

1. Kara Farm

One other finding I made related to decision-making was where decisions were made elsewhere in male dominated forums. Such decisions though made in the absence of women, nonetheless bound the women as well. At Kara Farm, decisions affecting women farmers' access to clean drinking water were taken in the absence and without the knowledge of the woman village head, who besides being a traditional leader, chaired the farm's two irrigation committees, naturally qualifying her to be a very authoritative person on the farm when it came to water governance issues. Nonetheless, despite her high powered positions, important decisions were made in other exclusively male fora, from which she was excluded despite the decisions having far reaching impacts on her and other women farmers' access to clean drinking water. With a total of 4 female members against 7 male members in the 2 irrigation committees, the agenda in meetings was driven by the male majority whose interest lay in commercial water perceived to represent foreseeable short term financial gain in the form of bumper harvests.

The exclusion of women from decision-making at Kara farm, is clearly illustrated by an incident where the white commercial farmer, who had been supplying the A1 farmers and his workers with drinking water from Mudzi River was engaged by male farmers (one of whom was not even an Irrigation Committee member) in talks on solving drinking water problems on the farm. The male farmers upon engaging the white farmer at his home were informed on how the latter's plans were to either convert an electrified borehole on the farm

into a bush pump or alternatively construct water filtration and treatment works to filter and purify the Mudzi River water. All these discussions between the white commercial farmer and some male A1 farmers had remained outside the woman village head's knowledge. The decision on whether the white commercial farmer could be allowed to proceed and convert the electrified borehole or alternatively construct a water treatment works at Kara farm was taken by men such as Mr Badu who were not members of the farm's irrigation committees.

2. Creek Farm

Illustrating the common exclusionist practices against women members of irrigation committees, a woman farmer at Creek farm who sought to use her powerful position as Irrigation Committee Secretary to solve drinking water problems on the farm was vetoed by the men. She had called for monetary contributions from all A1 farmers to cover repair costs amounting to US\$2 000 demanded by Dore and Pitte for a drinking water borehole pump which the company had retained until full settlement. Despite her spirited efforts; she received no cooperation from the male farmers on the committee who viewed the issue as domestic and feminine in nature and hence unconnected to the masculine activity of commercial crop irrigation. This was because during that same particular period, the 3 other electrified borehole pumps which had pumped irrigation water had been disconnected by ZESA from the national grid for non-payment of bills and had fallen into disrepair. As a result the other male irrigation committee members who formed a majority preferred that farmers contribute money towards the repair of one of the electrified boreholes which supplied irrigation water rather than the one for drinking water. Nevertheless when the same issue was later raised by the male village head who was not even a member of the Irrigation Committee,²⁹⁹ it suddenly metamorphosed into a more important masculine issue and as a result the men took notice and cooperated and the electrified borehole was repaired and

²⁹⁹ Whose relevance was now reduced due to no winter crop farming taking place at that relevant time

converted to a manual bush pump in 2011. Hence in other instances, initiatives taken by women were either vetoed or boycotted by the men.

3. Maidei Farm

At Maidei Farm in 2012, an attempt had been made to form an independent Irrigation Committee divorced from a pre-existing Joint Irrigation Committee with A2 farmers which had no female member. As stated in an interview held at Maidei Farm with a member of the former joint Irrigation Committee, there never was any discussion about drinking water in their meetings. The newly proposed 7 member Irrigation Committee, which was expected to have 1 woman member had suffered a still birth since Chief Chinhamora had intervened and stopped its formation suggesting that there was no need to have so many committees as the local ViDCo could still decide on irrigation issues. Nevertheless, the politically partisan nature of most ViDCos is well known in Zimbabwean history as they also tend to be male dominated. ViDCos have always had a history of being a closed space for women (CCMT, 2013). Further to that, it was mostly women farmers who engaged in market gardening at Maidei Farm but their productive use of water was being hampered by four male A2 farmers who had since formed their own separate irrigation committee excluding women A1 farmers and their husbands. These four A2 farmers were making all the decisions on how irrigation water from Gulf Dam was to be shared whereby women A1 farmers were excluded from irrigation water supplies on most of the occasions that the A2 farmers irrigated their farms. With no representation on the powerful decision making forum determining irrigation water access and use, women A1 farmers at Maidei Farm were rendered helpless. A few innovative women farmers bought small diesel pumps which they used to draw water directly from Gulf Dam to irrigate their gardening plots but these too did not create any water sharing committee. Further ZINWA put in some spanners into their projects by demanding that they apply for water permits since their water use was viewed as being outside the primary water framework.

4. Saga Farm

While there were two irrigation committees at Saga Farm created at the time of invasion in 2001 they both became dysfunctional after the electrified boreholes supplying irrigation water were disconnected by ZESA for non-payment of bills. While each of the two irrigation committees had 7 members there was only one woman who sat on one of the committees. As the electrified boreholes fell into disrepair due to non-use, vandalism and theft of engine parts, the irrigation committees no longer played any role vis-à-vis winter crop irrigation. In common with other frustrated A1 women farmers on the other two A1 farms namely Creek and Maidei farms, a few women farmers at Saga Farm bought small diesel and petrol pumps to engage in small gardening projects irrigated by water pumped from the local rivers and dams. Due to gender stereotyping in the division of labour however, these women have been constrained from reaching full potential in their gardening projects as they have failed to fully commit themselves to the projects due to spending more time looking for clean drinking water which the women A1 farmers place at first priority. As UNFPA, (2011:25) has observed;

Women spend 70 per cent of their unpaid time caring for family members- a contribution to the global economy that remains largely unrecognized.

8.6.2 Women A1 farmers' representation on Borehole Committees

It is important to also note that borehole committees which had been prevalent in new settlers' places of origin in communal lands and dominated by women were conspicuous by their absence in the new water governance structures on the A1 farms. As previously discussed in this thesis, this was attributed to the fact that when new A1 farmers settled on these farms, a clean drinking water supply was assured through the use of electrified boreholes paid for by white commercial farmers or in their absence, simply not paid for. When most of these electrified boreholes stopped functioning, there were no borehole committees to oversee the resuscitation of a clean drinking water supply. An assumption was therefore made that despite irrigation committees having been formed to cater for

winter irrigation water only, faced by such a crisis, the women committee members, most of whom were widowed women farmers naturally were expected to at least discuss the drinking water woes with a view to resolving them.

1. Kara Farm

From the time A1 farmers settled on Kara Farm in 2001, there never was a time when a borehole committee, catering for farmers' clean drinking water needs, had existed. This has to be understood against a situation whereby 3 women sat on one 7 member Irrigation Committee while one other woman sat on the second 4 member Irrigation Committee. Mrs Mugadza, the woman village head chaired the two irrigation committees. With no functional borehole to supply clean drinking water as from December, 2010, the village head representing the interests of the whole community at Kara farm tried to enlist help from the Mazowe DDF at Concession to drill a bush pump on the farm. Up to the time of writing this thesis, there had been no response from DDF. This is to be viewed against the response by the Goromonzi DDF to a similar plea made by a male war veteran heading the village at Saga A1 Farm in Nyagui sub-catchment which was favourable in that DDF Goromonzi simply asked the villagers concerned to contribute money to buy cheap spares to use in converting the windmill driven pump to a manual borehole pump. Similarly, Mr Mudzimu, the village head at Creek Farm had also successfully enlisted the services of Mazowe DDF at Nzvimbo Growth Point in neighbouring Chiweshe communal lands that had proceeded to convert the dysfunctional electrified borehole at Creek Farm into a manually operated one.

Considering that Mrs Mugadza was a village head as well as Chairperson of the two irrigation committees at Kara Farm, it was expected that she would use her powerful positions to dominate in the three fora. As a woman experiencing problems regarding clean water accessibility, availability and quality at Kara Farm it was expected of her to champion the cause for enabling the availability of clean, adequate drinking water within a reasonable

walking distance from homes. Nevertheless when I asked her whether there had been any discussions within the Kara Farm Irrigation Committee focused on solving the perennial drinking water problems at the farm, her response was in the negative;

Irrigation committee members have always left the issue concerning clean drinking water in the hands of Jack Sellers since he has always provided drinking water to his workers through taps which are also accessible to farmer families although the quality of the water is not that good. As a result in our meetings we focus more on the availability and adequacy of irrigation water, irrigation pipes and farming inputs.³⁰⁰

It did not escape my attention though that unlike Mrs Badu, Mrs Mugadza did not carry heavy 20 litre buckets on her head. Rather her male workers did the job for her using wheeled transport. It was therefore easier for her to fight on the side of men in improving conditions for commercial water rather than drinking water since the lack of clean drinking water was the least of their problems. The male irrigation committee members' wives and Mrs Mugadza's male workers catered for that side of domestic work.

2. Creek Farm

Subsequent to the borehole's repair by DDF, a new 10 member borehole committee was created. No woman sat on that committee as one borehole committee member, Phineas Muzuva indicated that 'the lifting of heavy borehole equipment required male brawn and not weak women.' Nevertheless, women farmers were tasked with cleaning around the borehole, digging and clearing the trench which ferried run-off water from the borehole. Surprisingly, it was a male borehole committee member who supervised these women farmers' cleaning activities! According to Phineas Muzuva no election was held to vote for borehole committee members. Rather while gathered at the borehole pump one day to view the new converted pump the 10 men present simply volunteered to form a borehole committee. This committee determined how water from the borehole was to be used and shared.

3. Maidei Farm

³⁰⁰ In an interview at Kara Farm on 10 February, 2013

For years after the invasion of Maidei Farm, women farmers accessed clean drinking water from an electrified borehole in the vicinity of their homesteads. The electricity bills emanating from the use of this borehole were paid by the white commercial farmer who still farmed on another A2 division of the former large scale commercial farm. The A1 farmers did not put in place any borehole committee to cater for the management of this clean drinking water as some with plots nearest to the borehole even watered their vegetables and green maize using this clean water. Nevertheless, there was a combined irrigation committee catering for the needs of both A1 and A2 farmers sharing commercial water from Gulf Dam. When the white commercial farmer left in 2008, the A1 farmers continued to default payment of electricity bills and the electrified borehole supplying clean drinking water was disconnected from the national grid in 2009 after accumulating a bill of US\$4 000. Up to the time of the writing of this thesis in 2014 the bill remained unpaid and women farmers continued accessing unsafe water from unprotected wells in the absence of any water committee to resolve the issue.

4. Saga Farm

For a few years after the invasion of Saga Farm, women A1 farmers and their families accessed clean drinking water supplied by an electrified borehole. While two irrigation committees were created to manage irrigation water supplied by electrified boreholes, no borehole committee was ever formed to cater for the management of clean drinking water also supplied by an electrified borehole. Since the white commercial farmer had left Saga Farm a short while after the farm's invasion, all the electrified boreholes including the one supplying drinking water were eventually disconnected by ZESA for non-payment of bills. Hence for 5 years prior to April 2013, the women farmers at Saga Farm were accessing water from unprotected wells. Another windmill driven borehole which used to supply underground water to wild game on the farm had broken down due to disuse in the early years after the farm's invasion.

It is under the above circumstances that the village head, despite not being a member of any of the 2 irrigation committees, approached DDF Goromonzi in 2012 seeking their assistance in drilling a borehole at Saga Farm. Nevertheless as an option to the drilling of a new borehole, which understandably DDF could not fund due to lack of financial capacity, the DDF simply requested for a modest monetary contribution from the A1 farmers which was to be used in purchasing cheap spares essential in the conversion of the formerly windmill driven borehole into a manual bush pump. As of April, 2013, the borehole had been successfully converted and the whole community at Saga farm had access to clean drinking water. No new borehole committee to manage access and use of water from this repaired borehole was put in place however.

8.6.3 Conclusion on women A1 farmers' participation in water governance institutions

As reflected by the figures of women sitting on decision making committees as compared to men on the A1 farms; there was gross under-representation of women's interests. Below is a table showing water management institutions on the farms and the gender composition. From the figures outlined in the table, it is clear that women were better represented in the Farm Committees of seven which were created soon after the FTLRRP. Nevertheless in irrigation and borehole committees they were grossly under-represented.

Table 10: Composition of Irrigation, Borehole and other Committees at the Four A1 Farms

SCC	Farm	Irrigation Committee/s		Borehole Committee/s		Other	Name	F	M
		F	M	F	M				
Upper Mazowe	Kara	3	4	-	-	FARMCO	5	2	
		1	3	-	-				
	Creek	2	4	0	10	FARMCO	3	4	
Nyagui	Maidei	1	6	-	-	FARMCO	1	6	
	Saga	1	6	-	-	FARMCO	2	5	
		0	7						
Totals		8	30	0	10		11	17	

The higher number of women in Farm Committees could be attributed to the fact that these were formed soon after the euphoric state people were in after invading land. The majority

were coming from communal lands where the demand for fair representation of women in local governance structures had been encouraged by international donors and state institutions such as the Ministry of Women's Affairs, Gender and Community Development.

8.7 Women representation in decision making forums on water and sanitation at sub-catchment, catchment and national levels

8.7.1 Gender and social inclusion of women A1 farmers in sub-catchment and catchment councils

While at the time of research there existed no direct linkages between the membership of the informally constituted irrigation committees operating on A1 farms and stakeholders within sub-catchment and catchment councils, the latter of which are provided for under the Water Act, Chapter 20:24, a recent development had seen concerted efforts being made on the part of catchment and sub-catchment councils to link up such informal institutions through stakeholder groups. Naturally the irrigation committee chairpersons from various farms sharing a river course became members of the local stakeholder group representing the irrigating farmers from their farm. From the evidence gathered in this research, the majority of irrigation committee members were men elected on the basis of being land permit holders.

Towards the end of field work for this study two males were employed as Sub-Catchment (SCC) and Catchment Council (CC) coordinators, one in Upper Mazowe SCC based at Glendale while the one for Nyagui was based at Musiyiwa Business centre. At the time of interview, the Upper Mazowe sub-catchment council coordinator was a holder of a BSc Honours degree in Land and Water Management. His role was to interact with stakeholders or members of stakeholder groups sharing water along rivers or from the dams. He would visit both farms and mines after which he brought reports to the SCC. The Catchment Coordinator on the other hand brought reports on water use in the catchment to the Catchment Manager and Catchment Council.

There are very few women sitting on catchment and sub-catchment councils as these are dominated by men. According to the Acting Chairperson of Mazowe Catchment interviewed on 26 March, 2013;

Sitting on Upper Mazowe sub-catchment council, we have 15 elected members and some who represent special interest groups of which 4 are women. Regarding Mazowe Catchment Council, there is one woman representing a special interest quota on gender issues, then 2 other women who are members by virtue of being chairpersons of 2 sub-catchment councils, one of which is Upper Rwenya. So out of 10 sub-catchments, 2 of them are chaired by women.

From the figures given by the Acting Chairperson of Mazowe Catchment Council, it's clear that women in leadership form approximately one-quarter of total membership, translating to 25 percent. The affirmative action outlined within the Zimbabwean National Water Policy however sets the minimum women membership of catchment and sub-catchment councils at 30% (see paragraph 7.1.3 on gender) which in turn falls far short of the 50% set out in the SADC Protocol on Gender and Development. For the few women farmers (not more than 5) who currently sit in Mazowe Catchment and sub-Catchment councils, these are all A2 farmers. There is thus no representation of A1 women farmers at national level. Women farm workers are not even considered despite being stakeholders by virtue of their access to and use of drinking water, sanitation and water for family food production.

8.7.2 Gender and social inclusion at national level

In a bid to mainstream gender in each government Ministry, there are gender focal persons tasked with monitoring the extent to which gender is mainstreamed within government activities in each Ministry. A landmark was only reached at the launch of Zimbabwe's water reform programme when the then Minister of Water was a woman. Nevertheless, since she left the Ministry more than 10 years ago, this very important Ministry making strategic policies on important water, environmental and sanitation issues, mostly affecting women, has always had male Ministers. This has to be viewed against a scenario whereby the Ministry and Departments dealing with water affairs in South Africa have traditionally been

headed by women since 2004. The Ministry has been described as one of the most efficient in South Africa.

While it is not always the case that women representatives on decision making organs always represent the interests of the other women they represent on the organ, but taking the Kara Farm scenario where a woman village head empathized with women needing water for food production; sometimes women representatives understand better the daily hardships that their womenfolk encounter in carrying out gender ascribed roles such as fetching clean potable water for the whole family. This becomes important when in the interview with the Acting Chair of Mazowe Catchment, he said; “The Reports we generate at sub-catchment and catchment levels are send directly to the Minister of Water.” In a situation where all the decision makers are men (who are also A2 commercial farmers) in a matter renowned for competing gender interests, the chances that drinking water, water for sanitation, family food production and livelihoods would be placed higher in priority than commercial water, are slim, if not highly unlikely.

8.7.3 Conclusion on Gender and social inclusion in decision making institutions at sub-catchment, catchment and national levels

There is indirect discrimination against women arising from how a stakeholder who gets elected to Catchment and sub-Catchment Councils is elected. This is so because in my interview with the Catchment Council Chairperson for Mazowe on 26 March, 2013 he defined a stakeholder as one who is irrigating on land within the Catchment or sub-catchment. Consequently, election to such decision making bodies is thus determined by one’s land permit registration status. It is an open secret that only a few women managed to stake out land on personal basis under FTLRRP. Hence the majority of women are farming and irrigating land whose land settlement permits are in the names of their spouses. There is thus a negligible number of women who sit on Catchment and sub-Catchment Councils.

An interesting fact is that the Water regulations do not demand that a stakeholder be someone who is irrigating within the Catchment or a permit holder. For one to qualify as a stakeholder, section 2 of SI 47/00 simply requires the person to have an interest in water resources while for one to be elected to a sub- catchment council in terms of section 14(4) (2) of SI 47/00, they need not be a permit holder. The majority of women interviewed on the four researched farms were not aware of these facts. This contravenes the requirement for transparency through the availing of information to stakeholders if the right to water is to be fulfilled.

8.8 Conclusion: The power relations that determine how water is accessed, shared and managed in Mazowe Catchment

A common key factor for all the irrigation committees as revealed in various interviews was that in their meetings they discussed mainly about irrigation water and never about drinking water. Because the woman village head chaired two irrigation committees at Kara farm, an assumption arose that as a village head, she would bring up issues of the lack of clean drinking water, an issue which affected both women farmers and women farm workers (both rich and poor, young and old) but what became apparent was that as a farmer, she represented the interests of women farmers involved in winter crop farming, which interests coincided with those of male farmers' representatives on the Committee.

Nevertheless in a clear reflection of the hidden power they wielded, these assumed male colleagues would often meet elsewhere in male exclusive fora to make important decisions in her absence. The village head's lack of interest in actively advocating for availability of clean drinking water within the vicinity of homes on the farm could also be explained by the fact that despite being a widow, on a personal level, she had the means to access free clean drinking water from Creek farm using her male employees. Hence despite being a woman; taken from the sameness and difference perspective, the village head did not share similar sentiments with other women A1 farmers (whose interests she was expected to represent on

the two irrigation committees) regarding the prioritization of the repair or construction of a new borehole to supply clean drinking water within the vicinity of women's homesteads.

Drawn from my research findings I found out that the success of any strategy to invest in drinking water depended on whether it had come from a man or a woman. If a man happened to support investment in drinking water, his proposal was sure to receive the full support of an irrigation committee. This emanated from gender stereotyping which demanded that since women were not part of male networks, whatever they proposed was relevant for consumption within female networks and hence was not worthy to be a subject of discussion within male networks. A good example is that which happened at Creek Farm as recounted earlier in this chapter. At the same time that an impasse was created on the irrigation committee on whether to support investment in productive or drinking water, the male village head also realized he could not drink the unsafe water from Kilda Farm's unprotected deep well due to its bad quality. Once he took a position in favour of ensuring a regular supply of clean drinking water, most of the male farmers at Creek Farm agreed to pay contributions to have the electrified drinking water borehole repaired and converted to a manual pump.

Another inhibiting factor to women's recognized participation in decision making on irrigation water committees was the all pervading influence of the customary norm to the effect that women should be subservient and should not make decisions where men are available to make those decisions for them. Being women, they had little control over the family budget as the men usually prevailed over them and persuaded them to invest in the bigger commercial irrigation water facilities for cash crop farming e.g. tobacco rather than those for drinking, livelihood and productive water purposes.

For example in a group interview held at Creek farm with four women farmers on 29 January, 2011,³⁰¹ the interviewees, three of whom had ‘O’ Level education (including the village head’s wife) and another who was an Irrigation Committee member were all very aware and vocal about their entitlements and freedoms under the human right to water but lacked capacity to realize the right due to gender related constraints.³⁰² This finding is vindicated by the assertion that, “many women face particular barriers because of various diverse factors in addition to their gender. Often these diverse factors isolate or marginalize women. They are inter alia, denied their human rights, they lack access or are denied access to... economic self-sufficiency and...are excluded from decision-making processes. Such women are often denied the opportunity to contribute to their communities as part of the mainstream.”³⁰³

The debate raised in this thesis draws to a conclusion in the next chapter whereby recommendations are suggested which hopefully will advance rural women’s rights to equality and non-discrimination as well as the right to participation in the water sector as a means of their achieving adequate standards of living which in turn lead to the attainment of the highest levels of physical and mental health.

³⁰¹ a time when there was no clean drinking water at the farm

³⁰² Since the woman Irrigation committee member who was also a widow had failed to get any cooperation from all male farmers on the farm on paying money to repair a borehole, a feat easily accomplished at a later stage by the male village head who is also a war veteran; she felt she lacked capacity to rally men behind her purely based on her sex as well as gender stereotyping which made it impossible for her decision making to be respected by men at the local level.

³⁰³ Paragraph 31, Beijing Platform for Action

CHAPTER 9

AN ASSESSMENT OF RURAL WOMEN'S PARTICIPATION IN WATER GOVERNANCE IN ZIMBABWE FROM INTERNATIONAL, NATIONAL AND LOCAL PERSPECTIVES: A SUMMARY OF FINDINGS, CONCLUSIONS AND MAPPING THE WAY FORWARD

9.0 Introduction

In this Chapter made up of Part I and Part II, firstly presented is a summary of findings made in this study as outlined in more detail in the previous Chapters. In Part I, the findings are summarized based on research objectives, assumptions and questions outlined in Chapter 2 within two broad thematic areas of access and participation. After summarizing and analyzing the findings, the conclusions drawn from those findings are outlined. As such my conclusions are drawn from findings made under those two broad themes focusing on women within the different social groups. The key bases upon which conclusions are made are equality and non-discrimination in women's access to water for personal, domestic, food production, sanitation, and livelihood purposes as provided for under international and national human rights and legal frameworks as well as local imperatives that promote a holistic approach to the access of adequate water. Part II of this chapter, is a layout of recommendations on the way forward, which recommendations are grounded in the findings made in the study.

In summarizing my findings, I ask whether the international, national and local normative and institutional frameworks vis-à-vis water governance respond to how women access water on the ground for personal, domestic, livelihood and food production purposes. The findings show that dependant on one's particular circumstances, women in their heterogeneity claim rights either as individuals or as a collective group. As observed by Bawa (2012);

While the language of human rights (because of its roots in individual libertarian political culture) revolves around individual autonomy, the success of African women's rights advocates largely depends on the successful articulation of individual rights within the collective conscience of their societies.

Another issue which comes out prominently in the findings is how the right to water is articulated differently at different levels of its deconstruction. I briefly summarize on this different conceptualization of the right to water as it is understood at each level, as drawn from my findings.

PART I

DIFFERENT WOMEN, DIFFERENTIAL ACCESS TO, USE OF AND CONTROL OVER WATER AMID INTERSECTING PARADIGMS OF POLITICAL, ECONOMIC, SOCIAL AND CULTURAL EXCLUSION AND INCLUSION IN MAZOWE CATCHMENT

9.1 Introduction

In this part, I give my conclusions for each of the findings made, which conclusions point to the grounded solutions I recommend in Part II.

9.2 How the right to water is conceptualized in a legal pluralist terrain where international, national and local laws and norms intersect and inform each other

In summary the right to water for the rural woman is conceptualized at the international, national and local levels as follows;

1) International Level

Under the international human rights framework, the right to water and sanitation entitles women access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses in a transparent manner based on equality with men and in an atmosphere free from discrimination on any of the prohibited grounds.

While “priority in the allocation of water must be given to the right to water for personal and domestic uses; priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights” such as the right to life, health and food. (UNCESCR GC15/2002, paragraph 6). In order to “ensure that women have the right to nutritious and adequate food;” the State should “take appropriate measures to...provide women with access to clean

drinking water, sources of domestic fuel, land, and the means of producing nutritious food (as well as) establish adequate systems of supply and storage to ensure food security. (Article 15 of the Women's Protocol)

Considering that the human rights based approach to development requires that focus be placed on the most vulnerable and marginalized groups in society; the State should give particular "attention...to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology," and should also "ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples." (UNCESCR GC15/2002, paragraph 7). "Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution" (UNCESCR GC15/2002, paragraph 16(c)).

In accomplishing the above stated obligations, the State is expected to "take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy..." The State should therefore "take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right...to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply... (Article 14(1) (h) of CEDAW)

Discrimination against women is defined in Article 1 and Article 1(f) of the CEDAW and the Women's Protocol respectively, which discrimination is prohibited as elaborated under Article 2 of both the CEDAW and Women's Protocol. This discrimination often encompasses gender stereotyping and cultural practices that are unfavourable to women, as articulated under Article 5 of both the CEDAW and Women's Protocol. This discrimination

is also given as the main reason inhibiting women's enjoyment of their right to participation as envisaged under Article 1 of the ICCPR.

It is my argument that taking such a holistic approach to the right to water as outlined above would then facilitate women's full enjoyment of an adequate standard of living and the highest attainable standard of physical and mental health in terms of Articles 11 and 12 of the ICESCR.

2) The right to water at National Level

Under the national legal and human rights framework, the right to water is a constitutional right under section 77 of the 2013 Zimbabwe Constitution that is placed together with the right to food, clearly reflecting, their complementarities as the production of adequate food can only be realized when adequate water is available. Section 56 as read with section 17 of the 2013 Zimbabwe Constitution speak of all persons' right to equality and non-discrimination in all political, economic, cultural and social spheres in a manner that "promote(s) the full participation of women in all spheres of Zimbabwean society on the basis of equality with men..." As such "the State and all institutions and agencies of government at every level must promote and preserve cultural values and practices which enhance the dignity, well-being and equality of Zimbabweans" (section 16).

At statutory level, the Water Act, Chapter 20:24 provides for access to free primary water up to 5 mega-litres of water per season that is equivalent to 5 000 cubic metres or 5 000 000 litres of water in rural areas as regulated further under section 3(1) of Water (Permits) Regulations, SI206 of 2001 (see Appendix 6). In terms of section 6 of the Water Act Chapter 20:24, the Minister of Environment, Water and Climate has a duty, among several others, (1) to ensure that water for primary purposes is available to all citizens and to also meet the needs of aquatic and associated ecosystems where competing demands for water exist; (2) to encourage participation by consumers in all the sectors as listed in the Water

Act Chapter 20:24; as well as (3) to secure the provision of affordable water to consumers in underprivileged communities.” My findings show that the Minister’s presence together with that of his Ministry’s officials remains largely unregistered on the resettlement farms unlike in the capital city Harare where the Ministry is actively involved in WASH activities funded by international donors.

The National Water Policy of 2013 speaks of access to primary water as a right. History has shown how in the past, almost all water use in communal lands was generally viewed by state officials as primary water use such that women would use the opportunity to freely use such water in gardens to produce adequate food for their families and manage to earn a living from surplus food which enabled them to send their children to school.

While the right to primary water framework is there as described above, it is how employees under ZINWA interpret the volumetric limits of primary water which has become a challenge for rural women on resettlement farms who seek to actualize their claims to an adequate standard of living which accords them some dignity. Were ZINWA officials to consider the peculiar situation that rural women on A1 resettlement farms face in trying to improve on the subsistence farming the majority of them were doing in communal lands; they would employ gender sensitive discretion in estimating what percentage of the 5 mega litres of primary water allowance a woman would use to irrigate a garden plot.

3) Access to water to ensure the right to life and livelihood at local level

As substantiated by past empirical studies, there has been found to exist among the Shona in communal lands a customary norm entitling everyone to free access to water from common pool resources as well as from privately dug wells, to sustain life and livelihoods (as per Derman and Hellum, 2003; Nemarundwe, 2003; Matondi, 2001 and Sithole (B), 1999).

I will proceed to compare the above conceptualization of the right to water, to findings made on the ground vis-à-vis women farmers, women farm workers and workers’ wives’

access to water for personal, domestic, sanitation, food production and livelihood purposes on A1 resettlement farms.

9.3 Responding to Key Research Questions

In this section a summary is done of findings made vis-à-vis how women actually access, use and control water on A1 farms in Mazowe Catchment and whether the way they go about this resonates with how the right to water is conceptualized at the different levels as discussed in the previous section. In accomplishing this, the study's research questions as outlined in Chapter 2 are used as guides.

9.3.1 The forms of water sources infrastructure on the farms and their origin

As discussed in detail in Chapters 6 and 7 of this thesis, within the study were women of different social groups who were accessing water from common pool resources such as rivers and springs, common property resources as well as privately constructed wells that were either covered or unprotected. Hence depending on one's networks women were also fetching water from hand operated boreholes which had replaced the electrified boreholes former white commercial farmers had left behind.

9.3.2 The principles of sharing: Sameness and difference in women's access to, use of and control over water in Mazowe Catchment

In this study, the focus was on three distinct social groups of women namely, women farmers, women farm workers and farm workers' wives vis-à-vis their access to, use of and control over water. My assumption was that women forming each social group out of the three would at least share similar experiences in their water access and use patterns as opposed to men on the other hand. The findings made in that respect, however go beyond how sameness and difference is generally understood and has been previously applied in some researches. Sameness and difference principles have generally been used with respect to men and women vis-à-vis the equality and non-discrimination discourse where each separate group, defined by sex is considered as homogeneous. Hence the general use of the

term, equality between men and women. My findings have shown that differences exist even between and among women within the same social class or across social classes as compared to men on the other hand who also have differences among them.

Viewed from a relational feminist perspective, another strong determinant of the sameness and differences among and across the different social groups of women were the different social networks each woman found herself connected to. Negotiating their way through intricate networks, norms, values and institutions mediating their water use, access, and control, some women succeeded in accessing water for their various needs while others failed to access it.

9.3.2 Differences between women farmers and women farm workers in access to land with water to grow food and for livelihood

The differences in access patterns to water for the multiple uses which included water to grow food for basic family consumption and livelihoods; among women within one social group e.g. farmers or farm workers, were dependant in part to each individual's economic status, social networks, employment status or ethnic origin. Hence while the majority of women farmers had access to family owned³⁰⁴ fields and riparian land with water to irrigate their crops and vegetables, more than 50 % of women former farm workers did not have access to any such land. Access to riparian land with water for family food production was only available for women farm workers at Kara Farm and Maidei Farm.

Most of the current and former women farm workers at Kara and Maidei farms created the gardens for themselves near rivers and dams without seeking express permission from the village heads on the farms. The woman village head at Kara Farm, Mrs. Mugadza³⁰⁵ indicated that she turned a blind eye to these unsanctioned activities. She said this was due to the existence of a Shona customary norm respecting the right to life by demanding that women be allocated land with water in wetlands or close to rivers so that they can grow

³⁰⁴ Ownership here is referred to from the perspective of the Zimbabwean system of land permits and leases.

³⁰⁵ In an interview held with her at Kara Farm on 13 October, 2011

food for the family and for purposes of earning a livelihood. Mrs. Mugadza's assertions were confirmed by Chief Chinhamora who spoke of traditional conservation measures aimed at preventing any soil erosion on river banks as a result of this cultivation of riparian land.

Nevertheless, on the other two farms, the male village heads denied former farm workers and their families such access to riparian land with water. The village head from Creek Farm who was living in the urban dormitory suburb of Chitungwiza immediately prior to the 2001 farm invasions, indicated that he could not allow the women farm workers access to such riparian land as this would violate regulations made by the Minister of Environment in conjunction with the Environmental Management Agency (EMA) in terms of section 140 (2) (g), prohibiting and restricting the cultivation of the banks of public streams or land adjacent to artificially conserved water.³⁰⁶

Women former farm workers who had access to riparian land at Kara Farm were mostly married. This was attributed to the fact that there was cut-throat competition between former farm workers for the riparian virgin land with thick bushes similar to the 'jambanja' in 2000. As such single, divorced and widowed former and current women farm workers with no male partners to stake out land near the river, could not compete with men in this exercise. As a result, while there was available river and dam water as a common pool resource for the realization of their right to water for food and for livelihood purposes, riparian land as an enabling factor was largely unavailable to most women farm workers. This was clearly an act of indirect discrimination since women A1 farmers as a social group had accessed land individually or through their spouses.

³⁰⁶ This has been further regularized to refer to the prohibition and restriction of any cultivation of riparian land within 30 metres of a river bank or dam's edge.

9.3.3 Differences in women's access to clean drinking water

Other women's failure to successfully navigate their way through the available networks that were for one reason or another closed to them; was reflected by their failure to access clean drinking water and sanitation. While water for domestic uses such as laundry and bathing, food production and for livelihoods was generally available from unprotected wells, rivers and springs; clean drinking water was not readily available except at Creek Farm and at a later stage, Saga Farm. The water from unprotected wells was of a bad quality resulting in children suffering from diarrhoea thus increasing the caring burden on women. Clean borehole water at Creek Farm was largely unavailable to former women farm workers due to its high cost, in a move by A1 farmers that was clearly discriminatory against former farm workers.

The women former farm workers at Creek Farm who were mainly of foreign descent and were now largely employed by A1 farmers as casual workers, could not access clean drinking water from the borehole managed by the Creek Farm A1 farmers. On the other hand, women farm workers, mostly of local origin and currently employed on permanent basis by the same A1 farmers could freely access clean drinking water from the same borehole based on the nature of their employment status as well as their ethnic origin status in some cases.

A woman village head at Kara Farm had access to free clean drinking water from the same borehole at Creek Farm, mentioned above which water was denied to former women farm workers. The woman village head enjoyed these privileges which fellow A1 farmers, both male and female did not enjoy as they had to pay a water levy ranging between US\$2 and US\$4 to the borehole committee at Creek Farm. The privileges the woman village head enjoyed were based on reciprocity for the time the A1 farmers at Creek Farm fetched water from the then functional Kara Farm borehole. This was despite the fact that this Kara Farm

borehole from which the reciprocity emanated from fell under the common property resources regime as controlled by the woman village head, her fellow A1 farmers, Jack Sellers and his workers. Under normal circumstances they should all have benefitted from the gesture of reciprocity from the Creek Farm farmers through access to free clean borehole water for all.

Some women farmers at Kara, Maidei and Saga farms had no access to clean drinking water since they accessed it from unprotected wells in neighbours' fields and gardens. There were also women farmers who had privately dug deep wells at their homesteads. Some women A1 farmers shared the water from their deep wells with others while others did not.

9.3.4 Differences in access to sanitation facilities

On all the four farms, the majority of women farmers inherited brick walled and cement floored Blair pit toilets from the workers they evicted. In the absence of such toilets, the women A1 farmers built their own Blair toilets. These are generally found within a 100 metre range of each house. The women farmers do not share their toilets with workers.

Women farm workers currently employed by the white commercial farmer at Kara Farm had access to tap water within 100 metres of their homes as well as communal toilets, laundry and shower rooms using the water flushing system which they shared with former farm workers and casual labourers housed in shanty houses on the same farm. Some of the former farm workers at the other A1 farms had access to grass walled rudimentary pit latrines while a few who had not been evicted from their employer provided accommodation had access to single family use Blair toilets and communal pit latrines. The communal pit latrines at Saga Farm had filled up, forcing some workers and children to defecate in nearby bushes, thereby creating a health hazard. This had resulted in an increase in diarrheal diseases among children thereby increasing the caring burden on women.

9.3.5 Gender stereotyping: Norms and informal institutions that negatively impact on women's right to participation in water governance

The key research questions here were on who developed the formal laws and informal norms and practices regulating access and use of water at local and national levels? Further, I sought to find out the extent to which women from different social groupings understood and were involved in the development of these formal and informal regulatory norms and policies on how water for domestic, livelihood and productive purposes was to be accessed and used?

As revealed by my findings, there existed norms at local and national levels which constrained women from participating in decision making on water access, use and control. The fact that there were norms alleged to be culture and religion based that regarded it as unfeminine for women to be elected to decision making positions in irrigation and borehole committees constrained women from participating freely in elections to such institutions especially if they were married. Further to that, the local communities on resettlement farms had formulated a norm that ruled that eligibility to decision making institutions such as irrigation committees was to be reserved for A1 farmers whose names were registered on the land permits as the legitimate leaseholders. This had to be understood against a situation where the majority of these permits were in the names of men. I also analyzed these informal land ownership based eligibility requirements for one to be elected to an irrigation committee and found them to be more stringent than those necessary for one to be formally recognized as a stakeholder in a stakeholder group, who can be elected as a stakeholder representative representing the group in the local sub-catchment council. In terms of the formal Water Act regulations, one simply has to show that they have an interest in water resources but does not necessarily have to be a permit holder.

To worsen matters for women at farm level similarly construed cultural and religion based norms made it imperative that only women fetched water from wells thereby placing an

extra burden on women already encumbered with a host of other reproductive and productive roles such as taking care of children, cooking, fetching firewood and working in the family garden and fields. Some women had to walk for up to 2 kilometres carrying heavy 20 litre buckets of water on their heads in order to access clean drinking water. Unlike women, the existence of obscure local customs ensured that men did not suffer under a similar burden of carrying heavy buckets of water on their heads.

With women farmers having so many chores to take care of, they were left with little time to participate in any decision making fora on water access, use and management within the community such as irrigation and borehole committees. In instances where women happened to be on the irrigation committee by virtue of being a widowed leaseholder or village head such as Mrs Mugadza from Kara Farm, the male members of the irrigation committee would often make very important decisions while meeting in other male dominated fora outside an irrigation committee meeting e.g. a beer drink which would automatically exclude the female members of the committee. The female members of the irrigation committee would simply be coerced into rubber stamping a decision already taken elsewhere.

Despite the enactment of Statutory Instrument 53 of 2014 on “Agricultural Land Settlement (Permit Terms and Conditions) Regulations” of 2014 seeking to introduce the joint registration of married couples on land permits, I do not foresee this statutory instrument making any real impact on deeply ingrained patriarchal values in rural communities that have always subscribed to the fact that landownership is the preserve of men. Hence even if a husband and wife are co-registered on a permit, when it comes to election to irrigation committees, the man stands a better chance of being elected than the woman. The irrigation committees, which are constituted of far more men than women, have been in place since 2001 and their projected future course would be to maintain this trend which has been

considered as the norm from the time they were initiated rather than expect an overnight revolution in favour of women.

Since members of institutions that make decisions on access to and use of water from the lowest level are the ones who are eligible for the next level in the water governance structure as follows; irrigation committee>>stakeholder group>>sub-catchment>>catchment council; the under-representation of women at the lowest level has a spiralling effect on the next level institutions up to catchment level. Consequently, it comes as no surprise that when I interviewed the Mazowe Acting Catchment Council Chairman in 2013, there were less than 5 women on the 15 member catchment council.

9.3.6 The case of Internally Displaced women former farm workers

The findings in this study also show that former farm workers' eviction from employer provided accommodation triggered a chain of violations of human rights that included the right to housing; clean water and sanitation as well as the right to food from kitchen gardens. With the white commercial farmers having been evicted too, these women former farm workers' means of livelihood were also destroyed. Due to the dirty water they were drinking, women farm workers did not enjoy a right to health since most of the time they were attending to sick children. All this has happened in the absence of any recourse to the law by state and non-state actors. The women farm workers' rights have been violated despite the Zimbabwean State being party to International Conventions that demand that these rights be respected, protected and fulfilled. IDPs were classified under vulnerable and marginalized groups by the UNCESCR in its General Comment 15/2002 thereby requiring the state to pay special attention to them in terms of Principle 18 of the 'Guiding Principles on Internal Displacement (GPID) and ILO Recommendation No. 115 of 1961 on Workers' Housing vis-à-vis their right to shelter, safe water supplies and sanitation.

9.3.7 Conflicts between and among women farmers and women farm workers and other water users regarding access to, use of and control over water for drinking, food production and livelihood purposes amid unclear local dispute resolution frameworks

As discussed earlier, my study's findings also reveal several conflicts which were apparent on the A1 resettlement farms due to differences between men and women vis-à-vis the prioritization of competing water uses. Since most of the interviewees were married women, they felt constrained by social and cultural norms and expectations demanding that they be subservient to their husbands. This was more apparent among women farmers who did not participate in any decision making within the household when it came to making decisions on the family finances raised from the farming activities.

Firstly there existed conflicts within households between men and women on which water use to prioritize between drinking water, water for livelihoods and that reserved for productive use. While male farmers tended to prioritize investments in productive or commercial water, irrigation pipes and payment of electricity bills for electrified boreholes both women farmers and women farm workers wanted to prioritize investments in the construction of deep covered wells or the conversion of electrified boreholes to hand pumps so as to facilitate the availability of clean drinking water that was easily accessible and of a good quality. Some women farm workers, most of whom were married to farm workers as well simply did not combine their wages with those of their spouses as most claimed that the male farm workers would spend it all on beer and other women. Hence to a certain extent women farm workers had more opportunities to make decisions on what they earned.

Given the number of times they had to go to the wells to fetch water, some women preferred to invest in the purchase of bigger containers to store water in so as to reduce the number of times they had to engage in this exercise. Given the opportunity and depending on the availability of funds as combined with a flat terrain between homesteads and water sources; women also preferred investment in wheel barrows and scotch carts so as to ease the burden of carrying buckets of water on their heads. Hence the woman village head at Kara Farm,

who was a widow, had invested in cattle, a scotch cart and 200 litre drums which her workers used in fetching clean water from the borehole at Creek Farm.

The findings also reveal a situation whereby some women farmers at Creek, Maidei and Saga farms had managed to invest money in purchasing small diesel and petrol water pumps as well as thick hosepipes which they used to irrigate their gardens located close to dams and rivers. Nevertheless, these investments in irrigation infrastructure which made it easier for them to water their gardens set them on a collision course with ZINWA officials who saw this as evidence that the women farmers were engaged in the commercial use of water. This conflict revolved around differences in the conceptualization of essential water to sustain life and livelihoods as perceived by the women farmers and how ZINWA officials interpreted the limits of primary water use. The ZINWA officials were of the view that as long as women watered their vegetable gardens with buckets or watering cans, they would consider this as primary water use. Nevertheless, if the women farmers used diesel or petrol pumps as well as hosepipes or irrigation pipes to irrigate a half-acre of vegetables, they would consider water used as commercial since a pump could draw water in large amounts unlike the manual use of buckets.

It was my argument that the above approach by ZINWA officials is gender insensitive as they expect women to suffer from backbreaking work before they can classify the water use as primary. This flies in the face of recommendations made by the UNCESCR in paragraph 16 of its GC15/02 where they state that;

Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum-seekers, internally displaced persons, migrant workers, prisoners and detainees. In particular, States parties should take steps to ensure that: (a) Women are not excluded from decision-making processes concerning water resources and entitlements. The disproportionate burden women bear in the collection of water should be alleviated...

The other main conflict revealed by my study findings was that which simmered between A1 women farmers and four male A2 farmers sharing water and an irrigation main pipeline

at Maidei Farm. The male A2 farmers took advantage of the legal illiteracy of the women A1 farmers when they prevailed upon them to go for dispute resolution at a local police station when they must have been aware of dispute resolution mechanisms available through the sub-catchment council. The village head could not resolve the issue at a local level as he was also an A1 farmer and thus an interested party.

What comes out clearly from my study is the complicated nature of the dispute resolution mechanisms provided for under the Water Act Chapter 20:24. This dispute resolution mechanism is largely inaccessible to most women on resettlement due to the complex procedures they have to navigate through in the event they attempted to claim their socio-economic rights through them. Further to that, membership to the irrigation committees and stakeholder group which are the lower levels of dispute resolution are largely closed spaces for both women farmers and women farm workers.

It is only the other dispute resolution framework provided under the Traditional Leaders Act Chapter 29:17 and Customary Law and Local Courts Act Chapter 7:05 which by using locally understood customary norms guaranteeing water for all, offer a window of opportunity for both social groups of women under study.

Conclusion

As a result of the sameness and differences among women in different social groups, the women encountered intersectional discrimination as based on the different grounds upon which they were denied access to water and/or participation in decision making on water. There was thus social exclusion and/or inclusion in water governance on the A1 resettlement farms as determined by various factors e.g. gender, sex, one's social status as determined by income level, literacy, employment, ethnic origin and marital status. The phenomenon on intersectional discrimination was more intense among internally displaced

former women farm workers and wives of former workers of foreign descent; who were generally perceived as occupying the lowest rung in status on the local social ladder.

What I conclude from the above is that since women within the same social grouping may be different, they should be viewed as such when laws and policies are made to address inequalities among women themselves prior to comparisons being made to similarly placed men in any given society. As the findings from my study show, the nature of intersectional discrimination suffered by one woman farmer or woman farm worker may vary in accordance with each woman's own experiences peculiar to her. Recognition of these differences and similarities among women on one hand and men on the other in law and policy making leads to equality that is substantive and transformative rather than formal.

9.4 The Missing State and International Institutions

In analyzing the institutional framework which impacted on how women accessed, used and controlled water, I looked at formal and informal institutions operating at the international level, then those seized with that role at national level and lastly the institutions which operated at the local level. While I had expected intergovernmental institutions at international level such as United Nations agencies e.g. UNICEF and WHO as well as international development organizations e.g. DFID and OXFAM to be actively involved in helping the Zimbabwean state to comply with its obligation to respect, protect and fulfil rural women's right to water on the A1 farms; there were highly conspicuous by their invisibility within A1 resettlement farms.

9.4.1 The role played by formal institutions in facilitating or constraining women's access to, use of and control over water

This study also showed that in accordance with state sanctioned laws, policies and regulations there exist an array of formal institutions seized with the role to facilitate women's access to, use of and control of water for personal, domestic, livelihood and productive purposes at national and local levels in a manner which seeks to advance the

State's compliance with its obligations under international human rights law, to respect, protect and fulfil the rights to water and sanitation. Examples are Ministries of Health, Environment and Water,³⁰⁷ ZINWA, Rural District Councils, Catchment and sub-Catchment Councils as well as the District Development Fund (DDF).

The State as the primary duty bearer through the above stated agencies was largely invisible from the resettlement farms except for those state agencies such as ZINWA whose main priority is the making of profit from the sale of commercial water. With the departure of most of the white large scale commercial farmers who used to be ZINWA's major water consumers; ZINWA officials are now resorting to classifying water that is for primary purposes as commercial in order to get maximum returns from any investments made in water systems. This has been made possible for ZINWA in the absence of any flow meters to measure the actual water consumption by poor women A1 farmers whereby water charges are based on estimation.

While at national level ZINWA specifically deals more with supplying bulk commercial water to local authorities, industries and commercial farms; it is neglecting one of its key role under section 5 (1) (e) of the ZINWA Act, i.e. "to encourage and assist local authorities in the discharge of their functions under the Rural District Councils Act [Chapter 29:13]...with regard to the development and management of water resources in areas under their jurisdiction and in particular, the provision of potable water and the disposal of waste water." Due to this non-compliance with its obligations as a state agency to respect, protect and fulfil the right to water, some women farmers, women farm workers and workers' wives are resorting to traditional customary norms of sharing the commons. The problem is the bad quality of water for drinking purposes sourced from these unprotected traditional water

³⁰⁷ These specifically deal with the rights to water, sanitation and environmental health.

sources. This has compromised women and children's right to health as they frequently suffer from diarrheal diseases.

At the district level, Goromonzi and Mazowe Rural District Councils as the local authorities in the areas under research in Mazowe Catchment are seized with the obligation to supply potable water in rural areas, inclusive of resettlement areas within their district environs. Reality on the ground though shows that these councils are fulfilling this function only in respect of growth centres within their respective districts such as Goromonzi Centre and Juru Growth Point on one hand and Glendale and Concession on the other. Resettlement farming areas are excluded since their drinking-water works had always existed as independently and individually operated water systems by former white commercial farmers.

Despite being encumbered with functions set out under section 24 of the Water Act as read with section 11 of SI 47 of 2000 that include (i) regulating and supervising permit issuance and exercise, (ii) monitoring water flows and water use allocations under permits issued in their area as well as (iii) the collection of sub-catchment rates, fees and levies; catchment and sub-catchment councils no longer deal with these issues. The taking over of sub-catchment councils' duties by ZINWA employed officials who report directly to the ZINWA Mazowe Catchment Office in Harare, in a way is the recentralization of power into the national offices in direct conflict of the ethos of decentralization which partly informed Zimbabwe's 1990s water reform programme.

The above changes have been effected without any input from women who are using water on the A1 farms. Consequently the result has been that, without warning, women water users on A1 farms with a long history of having free access to common pool water resources to irrigate vegetable gardens in neighbouring communal villages of origin, have woken up one day only to be told by ZINWA officials that the water within rivers located in rural

resettlement areas which may rise from neighbouring communal lands is treated differently. This is despite the fact that the land allocated to them and their families during the FTLRRP, came without them paying any money (Hellum and Derman, 2005:17). The power relations that played out were such that land whose ownership or stewardship had always been associated with men came at no cost during FTLRRP, while water which has always been associated with women had a price tag to it, as long as it was located within these resettlement farming areas.

My findings also reveal that the District Development Fund (DDF) under the Ministry of Transport obliged to drill boreholes for primary water as well as oversee the maintenance and repair of the said boreholes at district level is largely absent. The DDF attributes its inconsistent activities in A1 resettlement areas to lack of funds to sustain their operations. They are also absent from communal lands. A1 farmers on two farms I researched on namely Saga and Creek farms were forced to subsidize DDF's activities by buying the essential spares and funding the transport costs³⁰⁸ of DDF technicians who came to the farms to repair and convert boreholes upon request. Nevertheless, when the woman village head at Kara Farm sought similar assistance from Mazowe Rural District Development Fund, there was inaction on the part of DDF which had previously assisted the A1 farmers at the neighbouring Creek Farm.

The manner in which women from different social groups are negotiating for water on A1 resettlement farms in Mazowe Catchment is such that they are doing it in the total absence or inaction of the state institutions seized with the role to facilitate women's right to water. In most cases women as farmers or farm workers rely on traditional sources of water for drinking and livelihoods through open access to common pool resources which pro-poor facility is being threatened by the actions of officials from ZINWA and EMA.

³⁰⁸ To finance transport costs, part of the farmers' contributions were channelled towards the purchase of fuel for the DDF truck transporting DDF technicians to the borehole site.

PART II

MAPPING THE WAY FORWARD

9.5 Introduction

In this part I will address the issues raised by research questions and my findings in this study, with a view to suggest home-grown solutions that will help the different social groups of women on the A1 resettlement farms I researched on.

9.6 The need for the State to focus on women on A1 farms as vulnerable and previously marginalized groups

Firstly and foremost there is great need for the State and International organizations to be more visible in A1 resettlement areas especially considering women IDPs of foreign descent. Drawing from the recommendations made by the UNCESCR in GC15/02 and the provisions within Article 15 of the Women's Protocol and Article 14 of CEDAW, I classify the majority of the women who are currently on A1 small scale resettlement farms forming one of the most vulnerable and marginalized groups within rural areas in Zimbabwe. Most of the communal lands neighbouring the farms I researched on have schools, clinics and boreholes within short walking distance from villagers' homes unlike the situation on the farms. As per the UNCESCR' recommendations in GC15/02 the State is obliged to pay special attention to these marginalized groups especially women former farm workers who suffer under compounded discrimination. The latter have been deprived of enjoyment of their right to water and have also been excluded from decision-making processes concerning water resources and entitlements.

The State is urged to take temporary special measures to address the inequalities rural women on A1 farms face in their day to day activities whereby they are the main users of water but are excluded from making decisions on it. As my study's findings have shown, women were greatly under represented within decision-making fora from the farm level to national level. There is need therefore for the State to "advocate temporary special measures

to level the playing field and rectify structural discrimination, including affirmative action for women and special forums for participation” through the use of quotas. (OHCHR, 2006:24)

9.7 Need for the state to address the general lack of legal and human rights awareness

While the findings show that women as farmers, workers and workers’ wives have had their rights to water and sanitation violated, they have not taken any action due to a general feeling of helplessness about addressing the situation especially regarding participation in decision making. This is happening under a situation where gender stereotyping of women is rife, in direct violation of the Zimbabwean Constitution. There is therefore need for a human rights and gender awareness campaign as once recommended by the CEDAW Committee in its Concluding Comments after considering Zimbabwe’s Combined 2nd to 5th State Reports, between 13 February and 2 March, 2012. The CEDAW Committee in its Concluding Comments expressed its concern;

at the general lack of awareness of the Convention, its concept of substantive gender equality and ... that women themselves, especially those in rural and remote areas, are not aware of their rights under the Convention, and thus lack the necessary information to claim their rights.

The Committee also expressed its concern;

at the disadvantaged position of women in rural and remote areas who form the majority of women in the State party, and who experience poverty, difficulties in access to health and social services and a lack of participation in decision-making processes at the community level,’ (as well as) ‘the prevalence of discriminatory customs and traditional practices, which particularly prevent rural women from inheriting or acquiring ownership of land and other property, as well as from accessing to credit facilities and community services.

The Committee further noted that, while “the Government ha(d) set aside a 20% quota for women under the Fast Track Land Reform Program, ...the access of rural women to land is limited as compared to men in rural land ownership, and that only 10% of the land under the land reform program was allocated to women.” The issue relating to land ownership is relevant here to the extent to which it still affects women’s capacity to participate in water

governance issues, which activity has always been made to rely on one's land tenure status in rural communities.

The need for this nationwide human rights and gender awareness campaign emanates also from the realization that within the former Lancaster Constitution repealed in 2013, customary law took precedence over gender equality in women's personal law issues such as succession to land in communal lands. As recently as 1981, prior to the enactment of the Legal Age of Majority Act, African women in Zimbabwe were regarded as perpetual minors on the same level with their children. A precedent has already been set at Kara farm where, in direct contradiction to commonly held patriarchal norms informing appointments to traditional leadership, a woman farmer who does not originate from the local area has been appointed village head, clearly illustrating that customary law is created and changed by man and hence is mobile. Considering that during the pre-colonial and colonial era women such as Nehanda played a very significant role in traditional water governance, there is need for national awareness of the fact that women in Zimbabwe have in the past participated in local water governance on an equal basis with men.

The awareness campaign is clearly justified because of the widespread gender stereotyping on the A1 resettlement farms. There is need for the State and other NGOs to spearhead this campaign as rural women currently lack capacity to enforce their rights against deeply embedded cultural biases and prejudices against them which are insurmountable without state intervention to disabuse the general populace of such prejudices. With the help of the state therefore, there would be education on the need to eradicate gender stereotypes in the division of labour. This would release women from solely dealing with domestic chores thereby enabling them to have time and potential to be as equally productive as men on the farms. With more time to utilize primary water in the irrigation of vegetable gardens, there

is bound to be more cash inflows from the sale of vegetables which are surplus to family needs.

Given the financial freedom to make decisions on what to invest in, women farmers can then invest in clean drinking water facilities and sanitation thereby ensuring a healthier self or family. While a state centred approach to development is not the ideal, in the present case regarding women farmers' participation in decision making, there is a need for using state apparatus to change mindsets on women's capability to make decisions on an equal basis with men. Clearly providing for the right to information for women which is essential for the realization of the right to water; Section 7 of the 2013 Zimbabwe Constitutions provides as follows;

(7) The State must promote public awareness of this Constitution, in particular by—(a) translating it into all officially recognised languages and disseminating it as widely as possible; (b) requiring this Constitution to be taught in schools and as part of the curricula for the training of members of the security services, the Civil Service and members and employees of public institutions; and (c) encouraging all persons and organisations, including civic organisations, to disseminate awareness and knowledge of this Constitution throughout society.

9.8 Fulfilling rural women's right to water from a national perspective

9.8.0 Introduction

Considered from assertions made in the previous section, the Zimbabwe Constitution, which embodies economic, social and cultural rights, inclusive of the right to food and water, the National Gender Policy and National Water Policy³⁰⁹ of 2013 as well as the Water Act Chapter 20:24 particularly on primary water, offer opportunities for the effective realization of women's rights to water, sanitation, water for food, housing and livelihood. Viewed from a national perspective, opportunities can be gained in building upon the statutory provision in the Water Act Chapter 20:24 on free water for 'primary purposes' for rural households. Access to water for primary purposes has been drafted as a right within Zimbabwe's National Water Policy.

³⁰⁹ With the right to primary water and sanitation

9.8.1 Reconceptualizing free access to primary water for rural women on A1 resettlement farms

If the interpretation that has always prevailed informally in communal lands that water for primary purposes includes domestic uses which enable rural women to produce basic food for their families as well as earn a livelihood, were to receive formal recognition from state officials, then much would have been gained for rural women's right to water. This is more so that the Constitution provides for the right to food and water within one provision thereby clearly showing the interconnectedness and self-serving nature of the two rights. A broader interpretation would also facilitate women's right to an adequate living standard. There is need therefore to amend the Water Act Chapter 20:24 so that it has a clearer articulation of the extent of uses covered by water for primary purposes.

Given that, the right to water and sanitation does not entitle one to free water or sanitation, the current provision of access to free primary water for rural women actually makes the right to water under Zimbabwe's national context broader than the interpretation in some quarters which views it as referring only to a right to clean drinking water and sanitation. I am of the belief that currently given an upper limit of 5 mega litres³¹⁰ as water for primary purposes under section 3 of SI 206/2000; this amount of water is adequate for rural women's domestic uses and for irrigating vegetables and other food crops for a season for family consumption and for earning a livelihood. The only problem arises from the fact that it is currently not clearly articulated whether the 5 mega litres for primary purposes is per person and for a month or a season. It is only ZINWA officials who state that this amount is for a household for a season (which is six months).

Another problem arises from ZINWA officials who classify water as commercial or primary using estimations and their discretion. Hence a lot of women growing and irrigating vegetables on less than an acre of land have been asked by ZINWA officials to apply for

³¹⁰ This is equivalent to 5000 000 litres or 5 000 cubic metres of water.

permits and pay for the water used at commercial rates. It is my recommendation that the state funds individual flow meter readers for each family on the farms so that ZINWA officials can only charge for water used that is in excess of 5 mega litres.

There is also need to identify the poor and marginalized members in society such as rural women who should be considered for access to free or low cost water especially under the ‘primary water’ matrix. This is especially so considering that under paragraph 27 of the UNCESCR GC15/02, the Committee states that;

To ensure that water is affordable, States parties must adopt the necessary measures that may include, inter alia: (a) use of a range of appropriate low-cost techniques and technologies; (b) appropriate pricing policies such as free or low-cost water; and (c) income supplements. Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.

As it currently stands women farmers on A1 farms are disproportionately burdened with higher costs for their irrigation water unlike the richer A2 farmers some of who irrigate up to 100 hectares at a time.³¹¹ There is thus need for each farmer to have their own flow meter reader. It is also important that there be transparency in the manner in which ZINWA conducts its business. As revealed by the findings, all the water measuring devices in place prior to the FTLRRP in 2000 and the wholesale displacement of white commercial farmers have since broken down and have not been repaired. Further, any water use measuring device which could have been in any dam was for a single large scale commercial farmer before the farm’s subsequent division into smaller 6 hectare A1 plots. For accurate measurement of water use by each A1 farmer, each should have installed at their point of water abstraction, a flow meter reader recording actual consumption.

Considering that most A1 farmers engage in low income generating small scale farming, they generally lack capacity as well as technical expertise to install such sophisticated water

³¹¹ As was the case with A2 farmers across the valley from Maidei A1 Farm but sharing the same pipeline and costs.

use measuring equipment. Further, since the human right to water principles require states parties or their agencies to focus on and pay special attention to the needs of the poor and marginalized members in society; ZINWA and sub-catchment councils should simply install the water measuring devices and recover the cost from those who use large volumes of water while exempting those who use water volumes which are below the maximum set for primary water use. If such an approach was to be taken, then it would make water for livelihoods from ZINWA dams generally affordable for women A1 farmers. Further, the use of water use measuring devices would be to the advantage of women A1 farmers since their actual consumption of water would be measurable unlike the current use of estimates which classifies water use on a piece of land measuring only 1 hectare as commercial.

9.8.2 Law Reform: Engendering the Law

In my study I encountered a big margin of women as farmers, farm workers and wives of farm workers who suffered under intersectional discrimination and one of the common basis for discrimination was mere gender stereotyping. While the 2013 Constitution in sections 17 and 56 respectively provide for “the full participation of women in all spheres of Zimbabwean society on the basis of equality with men,” and that; “Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres,” similar gender provisions have not been mainstreamed into subsidiary laws such as the Water Act. If the law had been engendered then it would have been clear to policy and law makers that generally rural women require more quantities of affordable water for them to be able to produce basic food and earn a livelihood so as to enjoy an adequate standard of living. It is from that perspective that I recommend that the Water Act Chapter 20:24 be amended through engendering so as to have gender and context specific provisions which take into account poor and traditionally marginalized members of the community especially displaced women who are former farm workers and former

workers' wives. As expressed in the following quote; "Gender inequality³¹² is a structural impediment to poverty elimination; It is in everyone's interests to remove it" (DFID, 1999; Wach and Reeves, 2000: 1-2). Further, that; "If development is not engendered, it is endangered" (Hellum, 2012:1; Fredman, 2013:217, 2010:2; UNDP, 1997:7, 1995:1; Wach, H. and H. Reeves, 2000:1-2)

Conclusion

In taking this approach, I conceive a situation taken from a legal pluralist perspective whereby the 'right to primary water' is not only viewed from a national context but would eventually influence how the right to water for livelihoods is perceived on a global level.³¹³ Santos' (1987:279) concept of "porous legality" or "legal porosity"³¹⁴ becomes a reality considering that; "local forms of knowledge and organization are constantly reworked in interaction with changing external conditions" so that the knowledge produced is both simultaneously local and global but not universal" (A. Griffiths 2002:300; Long, (1996:37); J. Griffiths 1986:1)

9.9 Realizing women's right to water from a local traditional perspective

Do we wish to have more disputes enter the official system and proceed further toward definitive resolution? Is the utopia of access to justice a condition in which all disputes are fully adjudicated? Do we want a world in which there is perfect penetration of norms downward through the pyramid so that all disputes are resolved by application of the authoritative norms propounded by the courts? We know enough about the work of courts to suspect that such a condition would be monstrous in its own way.

The above quote by Marc Galanter (1981:3-4) as cited by Ala Hamoudi et al (2015:1) in Helfand (2015:215) foregrounds my recommendations in this section which seeks to take advantage of a legal pluralist environment on the resettlement farms. My findings reveal two forms of dispute resolution vis-à-vis water disputes. Firstly, there is the formal route which should start at sub-Catchment level but however informally starts at the irrigation committee level, via the stakeholder group, to the sub-catchment level. From the sub-

³¹² I would add 'directed against whichever of the two sexes,'

³¹³ Especially within developing countries in Africa, Asia and Latin America

³¹⁴ "The conception of different legal spaces, superimposed, interpenetrated and mixed in our minds as much as in our actions (that constitute) legality"

catchment level the case may be reviewed administratively by the Catchment Council or Catchment Manager or an appeal may be made to the Administrative Court (see Appendix 7 and Figure 7). A decision by the Catchment Council is equivalent to that of the High Court.

The other route is through local traditional leaders. From evidence gathered in my study and observations made in my field of study, rural women's interests vis-à-vis the resolution of disputes concerning their free access to water for personal, domestic, food production and livelihoods purposes will be better served if resolved locally by traditional dispute resolution frameworks. This is because by viewing water as life which is God given, these traditional dispute resolution mechanisms in their own way recognize water from traditional common pool resources as essential for one to enjoy an adequate standard of living and the highest attainable standard of physical and mental health. I state the foregoing in light of previous findings made by other researchers who state;

Zimbabwe, like in other African countries, rural communities have for generations relied on common pool water resources governed by local customs
(Hellum et al (2015: 6; Van Koppen et al 2008)

The problem however has been the prevalent tendency to consider everything that is based on customary or traditional norms as non progressive and inhibiting for women's advancement. My study findings clearly show opportunities which women can take emanating from the influential role of women in pre-colonial and colonial water governance history. While culturally informed norms and practices that seek to define women as second class citizens such as the rampant stereotyping of women should be discarded as informed by Article 5a of CEDAW, Article 2.2 of the Women's Protocol and Section 17(2) of the 2013 Zimbabwe Constitution as read with section 16; there exist traditional norms that help advance women's rights. In promoting local initiatives which enable the human right to water for rural women my recommendation is that the state makes decisions which are focused on what communities and individuals on the ground require, understand and can manage as drawn from age old traditional practices which have always worked for them.

This approach accommodates those informal customary norms which bear strong but positive influences on women and offer better opportunities to them as they access their entitlements under a localized normative framework.

From a local traditional perspective, there are choices to be made between local norms which advance women's right to water for drinking, domestic purposes and livelihoods purposes and those which perpetuate discrimination against women through gender stereotyping. On one hand a lot is to be gained by promoting Shona traditional customary norms that view water as life and as such demand that women should have access to land and water close to rivers for them to grow food crops for family consumption and to earn a livelihood. On the other hand, nothing is gained by respecting a gender stereotypical customary norm which views women as inferior to men thus seeking to justify wholesale discrimination against women in all spheres including water governance. Hence there is need for the Zimbabwean government to respect traditional water governance practices which promote women's right to water for livelihoods. This would also be in keeping with the UNCESCR's GC15/2002 paragraph 21 entailing that in respecting women's right to water, the State should "refrain from arbitrarily interfering with customary or traditional arrangements for water allocation..."

9.9.1 Judicial Training of Traditional Leaders

A related matter to the suggestion made in the previous section is for the state to facilitate the implementation of a well outlined dispute resolution mechanism on the resettlement farms to deal with water disputes. There is need for the "strengthening of central and local accountability mechanisms" vis-à-vis "judicial, quasi-judicial and administrative" functions. "Informal justice mechanisms, including traditional and indigenous justice systems, should be factored in together with the formal justice system, seeking alignment with international standards regarding the administration of justice" (OHCHR, 2006:25) During research for this study I interviewed a woman village head at Kara Farm who indicated that on a

monthly basis local village heads would go for training at Chief Chiweshe's court on local customs. This is an opportunity that the State could use to provide more systematic training of traditional leaders on dispute resolution skills which include those essential in water governance. Judicial training of Traditional Leaders would also involve the sharing of age-old traditional natural conservation methods such as terracing of banks to prevent soil erosion. They would share ideas as traditional leaders on customary or traditional approaches to water sharing and the resolution of any disputes based on known customary norms as the one among the Shona which views water as life which should not be denied anyone (Hellum, 2007).

One of my study findings pointed to conflicts between women and ZINWA as well as EMA officials who disregard the engendered norms available within the customary law frameworks. EMA officials are adamant that there should be no cultivation within 30 metres of a river bank or dam but traditional leaders have shown that the competing interests between sustainable environmental management practices and food production for livelihood can be balanced. It is my recommendation therefore that the state support and enhance the capacity of traditional dispute resolution mechanisms that are user friendly to women. According to Chief Chinamhora, competing interests as mentioned above can be balanced through women practising natural conservation measures such as growing banana plants, sugarcane and bamboos along the banks so that their roots may hold in the soil and prevent soil erosion and the subsequent siltation of rivers. The growing of bananas, sugarcane and bamboos is particularly pertinent in that the bananas and sugarcane is food for family consumption as well as commodities for earning a livelihood. The bamboo is also very useful in the weaving of baskets and the making of cane furniture, which again is a source of livelihood.

With the recommendations given above it is envisaged that, in their interactions with women farm workers, women farmers and wives of farm workers; EMA and ZINWA officials will also be gender sensitized. Further to that and with gender sensitization the officials are expected to be more in tune with how rural women have traditionally accessed water for personal, domestic and livelihoods purposes in communal lands; which rights they should not be denied of now simply because they have had a change of location.

9.10 Area of Possible Future Research

From my study, I realized that the issue concerning lack of access to basic services by displaced women former farm workers is quite widespread and critical. There is a research site dropped from this study which had a huge population of IDPs whose situation is far worse than the findings described in this study. The former farm workers have all gathered at this one farm compound near some A2 farms in Nyagui Sub-Catchment, whereby the majority of them are of foreign descent and were evicted from surrounding commercial farms post the FTLRRP. There are no basic social amenities such as running water and clinics within the vicinity. They access unclean water from nearby dams and rivers. The school is far away and coupled with lack of school fees, many of the children are not going to school. Minor girls are engaging in prostitution since they have dropped out of school. Research in this area would help publicize this dire situation in order for the state and international donors to intervene and thus respect, protect and fulfil the rights of IDPs in Zimbabwe especially women and children who are the worst affected.

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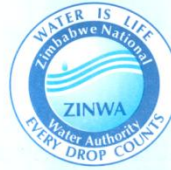
UN (2014) Fact Sheet No. 25 on Forced Evictions

UN Fact Sheet No. 21 on the Right to Housing

APPENDICES

Appendix 1: Letter of Authority from ZINWA

APPENDIX 1



14 October 2010

Ref: H/45/12/1

The Director
SEARCWL
P O Box MP167
Mt Pleasant
HARARE

Dear Sir

Mazowe Catchment
3rd Floor, Old Mutual House
2nd Street/Speke Ave.
P. O. Box CY 715, Causeway
Harare
Tel: 738781/3 / 761465/6 / 761260
Fax: 791594
Email: zinwa@mweb.co.zw

RE: RESEARCH PERMISSION MS ELIZABETH LWANDA RUTSATE – (RESETTLEMENT FARMS MAZOWE DISTRICT)

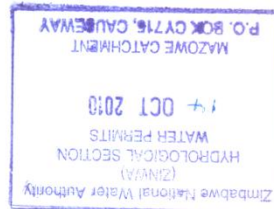
Your letter to this office concerning the above refers.

Our office is ready to avail the required information which might help Mrs Rutsati on her research. However, assistance in form of transport might be a challenge to the Organisation.

Also please note that you did not indicate the names of the two resettlement farms under consideration.

Yours faithfully

E. C. Tundu
C TUNDU
FOR, CATCHMENT MANAGER MAZOWE



Head Office	Sanyati Catchment	Runde Catchment	Save Catchment	Gwayi Catchment	Mzingwane Catchment	Manyame Catchment
Old Mutual Centre Jason Moyo Avenue Box CY 617 Harare Tel: 03 / 04 797 604-7 732 / 04 796980 p@mweb.co.zw	P.O. Box 554 Gweru Tel: 054 222511-4 Fax: 054 220168	P.O. Box 250 Masvingo Tel: 039 263690/262950-2 Fax: 039 263972	P.O. Box 210 Mutare Tel: 020 60926 Fax: 020 62848	P.O. Box 566 Bulawayo Tel: 09 69361-3/67628 Fax: 09 77109	P.O. Box 2008 Bulawayo Tel: 09 885191/2/6/8 Fax: 09 882865	P.O. Box CY 2008 Harare Tel: 738784-6 Fax: 738785

Appendix 2: Letter of Authority from Mazowe RDC

APPENDIX 2

MINISTRY OF LOCAL GOVERNMENT, PUBLIC WORKS AND URBAN DEVELOPMENT

TEL: (0375) 2262/2263

FAX: (0375) 2484

All communications should be addressed
to the District Administrator



ZIMBABWE

REF:

THE DISTRICT ADMINISTRATOR
MAZOWE DISTRICT
P O BOX 100
CONCESSION

27 October 2010

TO WHOM IT MAY CONCERN

RE: RESEARCH PERMISSION FOR MS ELIZABETH LWANDA RUTSATE

Ms Elizabeth Lwanda Rutsate approached our office on 27 October 2010 seeking permission and assistance to carry out a study at four of our Resettlement farms. The area of her research is the participation of women in Water Governance in Zimbabwe with particular reference to two farms in Mazowe district.

Please assist Ms Elizabeth Lwandi Rutsate in undertaking this pertinent study. We have also attached a recommendation letter from the University.

Yours faithfully

M. Mazai
for DISTRICT ADMINISTRATOR-MAZOWE.



Appendix 3: Letter of Authority from Goromonzi RDC

APPENDIX 3

Correspondence should not be addressed to individuals

Telephone: 263-0274-2251-3



Ministry of Local Government, Public
Works and National Housing
District Administrator's Office
Private Bag 43
GOROMONZI

ZIMBABWE

22 November 2011

TO WHOM IT MAY CONCERN

Re: RESEARCH PERMISSION FOR MS ELIZABETH LWANDA RUTSATE

Ms Elizabeth Lwanda Rutsate approached our office on 21 November 2011 seeking permission and assistance to carry out a study at two of our Resettlement farms. The of her research is the participation of Women in Water Governance in Zimbabwe with particular reference to ~~Svisva~~ and ~~Saratoga~~ Farms in Goromonzi District.

Please assist Ms Elizabeth Lwanda Rutsate in undertaking this pertinent study. We Also attached is a recommendation letter from the University.

Your usual cooperation is greatly appreciated.

H MANDIZVIDZA
DISTRICT ADMINISTRATOR: GOROMONZI



Appendix 4: Samples of Research Interview Guides Used

1. Woman Farmer

1. Name
2. Age
3. Level of Education
4. Marital Status
5. Family size
6. Nature of Entitlement to residence at farm
 - 6.1. Is the interviewee entitled to any piece of land for personal use?
7. Duration of stay at farm
8. Place of origin
9. What forms of water sources or irrigation structures are situated on the A1 farms under study?
 - 9.1. Who built them?
10. Is the water supply and irrigation infrastructure on the A1 farm under study shared?
 - a. If yes, do farmers pay any levies or fees for the water?
 - b. What are the norms, principles of sharing water and/or bills?
 - c. How were these norms and principles of sharing developed?
11. Does any water or irrigation committee exist on the farm?
12. What is the proportional representation of women as compared to men who sit on the said water or irrigation committee at farm level.
13. Is the interviewee familiar with Catchment and Sub- Catchment Councils?
14. Do women on the farms (in the various categories) face difficulties in accessing water from water sources on the A1 farms?
 - a. From where do women on the farms as farmers, current and former farm workers (or as spouses and other family members of these) source water for:
 - b. Drinking and other domestic purposes?
 - c. Is the water clean and in adequate quantities?
 - d. Commercial and productive purposes?
 - e. Is the water adequate?

2. Current or Former Farm Worker or Spouse

1. Name
2. Age
3. Level of Education
4. Marital Status
5. Family size
6. Place of origin
7. Duration of stay at farm
8. Nature of Entitlement to residence at farm
 - 9.1. Is the interviewee entitled to any piece of land for personal use?
 - 9.2. Does the interviewee use any water to irrigate any part of personal land portion?
10. Any knowledge about the farm's historical background with regard to irrigation?
11. Is the water supply and irrigation infrastructure on the A1 farm under study currently shared?
 - a. What are the norms, principles of sharing?
 - b. How were these norms and principles of sharing developed?
12. Does any water or irrigation committee exist on the farm?
13. Any knowledge about the proportional representation of women as compared to men who sit on the said water or irrigation committee at farm level.
14. Is the interviewee familiar with Catchment and Sub- Catchment Councils?
15. Do women on the farms (in the various categories) face difficulties in accessing water from water sources on the A1 farms?
 - a. From where do women on the farms as farmers, current and former farm workers (or as spouses and other family members of these) source water for:
 - b. Drinking and other domestic purposes?
 - c. Is the water clean and in adequate quantities?
 - d. Commercial and productive purposes?
 - e. Is the water adequate?

3. Government Minister

1. Personal Professional background?
2. Employment history in the relevant Ministry?
3. Ministry's relevance to water issues as pertaining to women in the various categories?
4. Does any government policy or law exist within the Ministry regulating access to water by women on A1 farms or any other category of resettlement farms?
 - 4.1.If yes, what is the policy or law and how is it implemented by the Ministry?
 - 4.2.From the Minister's view; whether the said policy or regulatory measure promotes water as an economic or social good?
5. The number of female employees directly involved in the implementation of Government policy or law pertaining to access to water?

4. ZINWA Catchment Manager

1. Personal Professional background?
2. Employment history with ZINWA?
3. Nature of duties as Catchment Manager?
4. ZINWA's relevance to water issues as pertaining to women in the various categories?
5. Does ZINWA closely work in conjunction with any Ministry or Ministries?
 - 5.1.If so, which ones and does ZINWA implement any government policy or law regulating access to water by women on A1 farms or any other category of resettlement farms?
 - 5.2.Does ZINWA have its own operational water policy or regulatory measures apart from what is contained in the Water Act and how do they implement them?
 - 5.3.From the Catchment Manager's view, does the said policy or regulatory measure promote water as an economic or social good?
6. Are Catchment and sub- Catchment Councils still operating?
7. If so, what is the working relationship between ZINWA and the said Catchment and sub- Catchment Councils?
8. The number of female employees directly involved in the implementation of Government policy or law pertaining to access to water within ZINWA?

5. Chairperson of the Zimbabwe Human Rights Commission

1. How the Commission is operating?
2. The Commission's position on the UN Resolutions on the Human Right to Drinking Water and Sanitation in line with Millennium Development Goals?
3. The Chairperson's opinion on access to water on resettlement farms in Zimbabwe?

6. Directors of International NGOs

1. Professional History?
2. Duration of Employment by NGO?
3. Organizational policy if any on access to water?
4. Whether women as a special category fit into this policy?
5. Any water related projects being undertaken by the NGO on farms or in the communal areas?
6. Any previous experience in other countries related to projects facilitating access to water (productive and/or for domestic use) by women?

7. Village Head

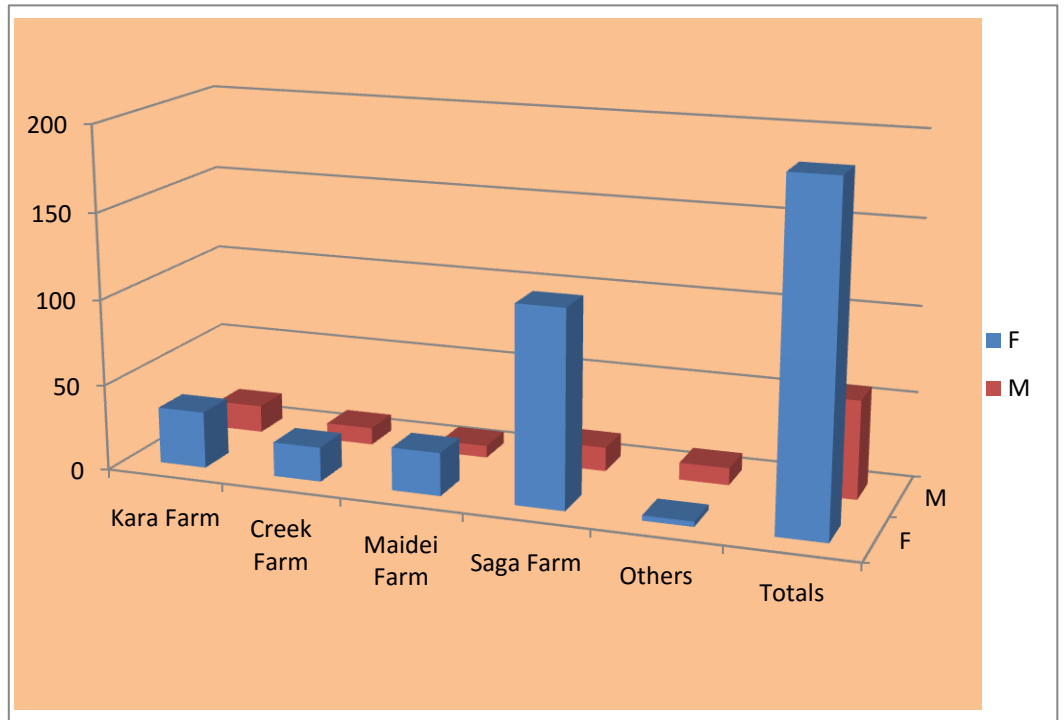
1. Name
2. Age
3. Sex
4. Level of Education
5. Marital Status
6. Family size
7. Place of origin
8. Duration of stay at farm
9. Is he/ she entitled to any piece of land on the farm?
10. How big is it and who allocated it to him/ her?
11. How was he/she elected or appointed to position of Village Head?
12. What forms of water sources or irrigation structures are situated on the A1 farm under study?
 - 9.1. Who built them?
13. Is the water supply and irrigation infrastructure on the A1 farm under study shared?
 - a. If yes, do farmers pay any levies or fees for the water?

- b. What are the norms, principles of sharing water and/or bills?
- c. How were these norms and principles of sharing developed?
- 14. Does any water or irrigation committee exist on the farm?
- 15. What is the proportional representation of women as compared to men who sit on the said water or irrigation committee at farm level.
- 16. Is the interviewee familiar with Catchment and Sub- Catchment Councils?
- 17. Do women on the farms (in the various categories) face difficulties in accessing water from water sources on the A1 farms?
 - a. From where do women on the farms as farmers, current and former farm workers (or as spouses and other family members of these) source water for:
 - b. Drinking and other domestic purposes?
 - c. Is the water clean and in adequate quantities?
 - d. Commercial and productive purposes?
 - e. Is the water adequate?

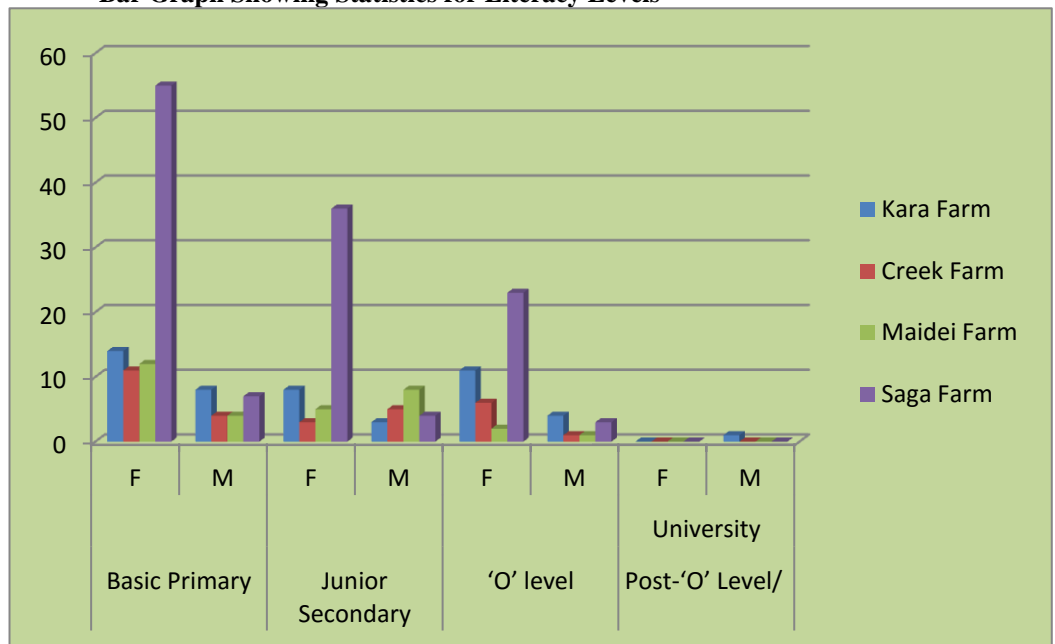
Note: Research Interview Guides for the other categories of informants proceeded along the same lines.

Appendix 5: Statistical Tables and Graphs for Interviews Done

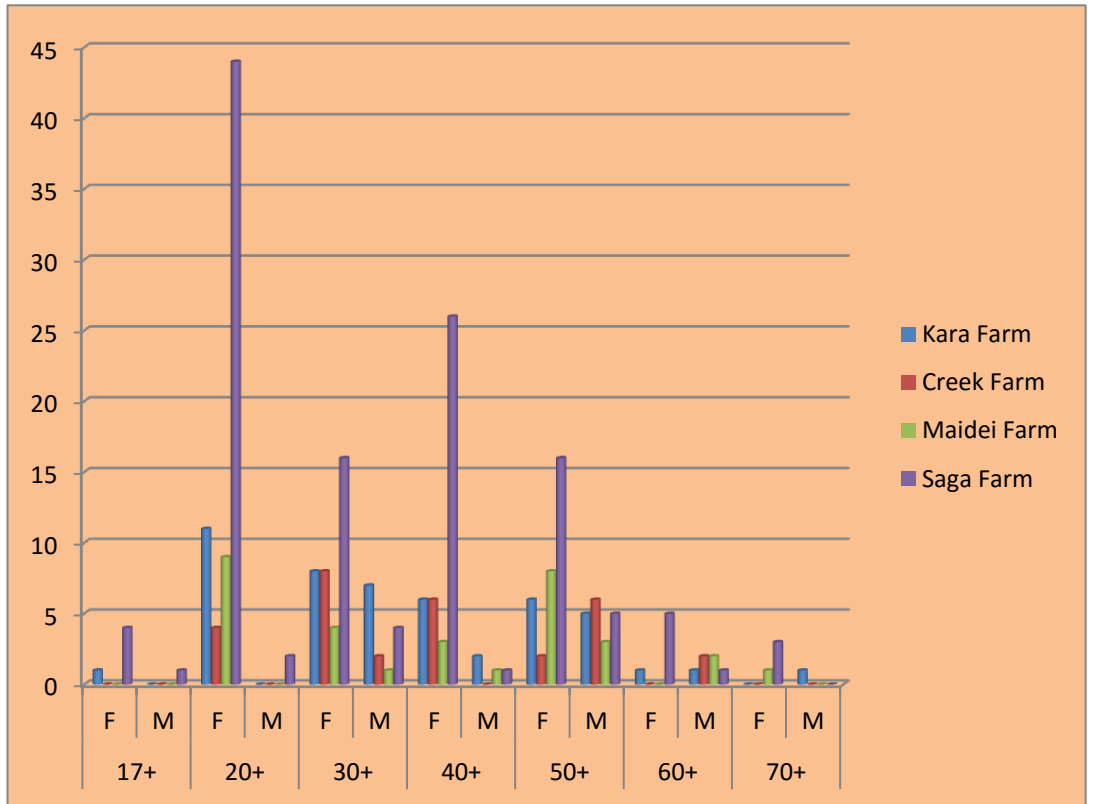
Column Graph Showing Sex Distribution Statistics of Interviewees on Researched A1 Farms and from Other Offices



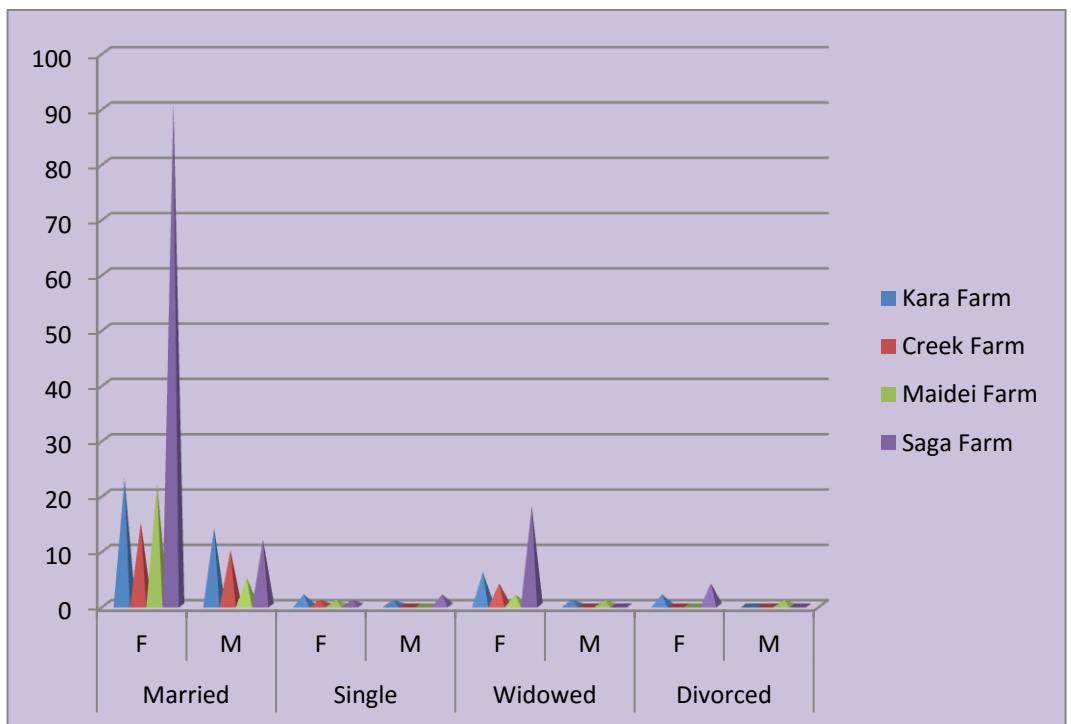
Bar Graph Showing Statistics for Literacy Levels



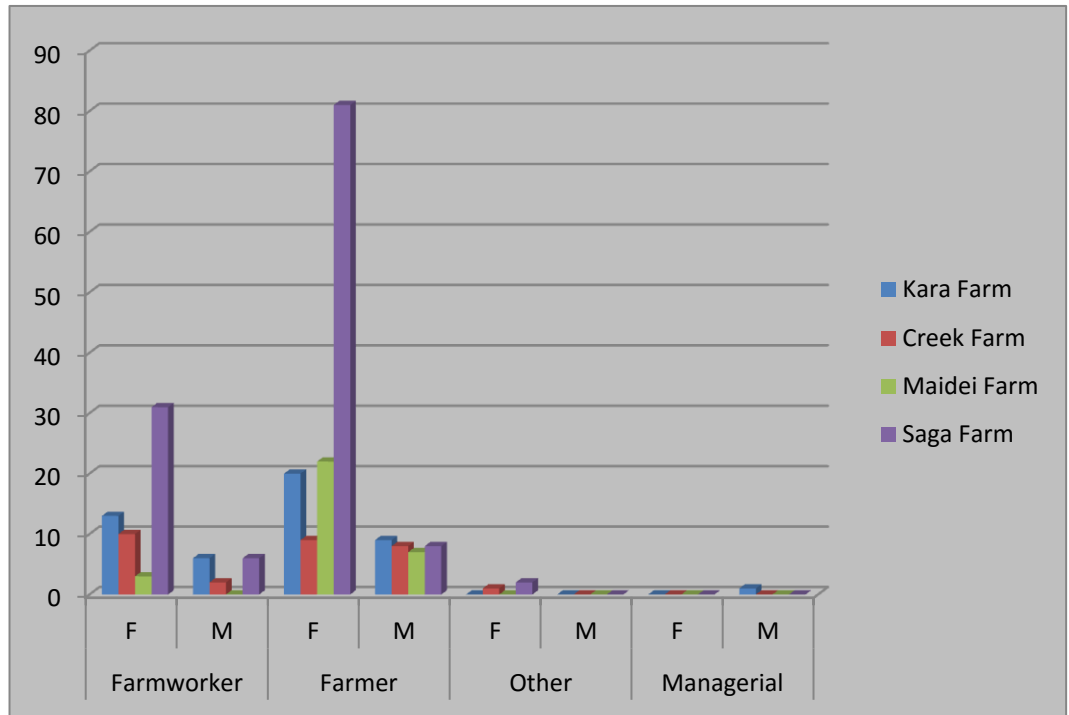
Bar Graph showing Age Distribution Statistics



Column Conical Graph Showing Marital Status Statistics



Occupation Based Column Bar Graph



Appendix 6: Excerpt from Section 3 of the Water Act Chapter 20:24 Water (Permits) Regulations SI 206 of 2001

APPENDIX 6

Water (Permits) Regulations, 2001

S.I. 206 of 2001

"specific ground water permit" means a specific ground water permit referred to in paragraph (b) of subsection (1) of section 13;

"surface area capacity curve" means a curve expressing the relationship between the volume of water in a dam and the surface area of the dam;

"surface water permit" means any permit or temporary permit referred to in paragraphs (a) to (d) or (i) of subsection (1) of section 4;

"water level", in relation to—

(a) a dam or river, means the level of surface water measured from a given datum;

(b) a borehole, means the level of ground water in a borehole measured from the ground level.

(2) Where in these regulations it is provided that an application or petition is to be made or submitted to the appropriate catchment council (whether or not through the appropriate subcatchment council), the application or petition shall be made or submitted to the office of the catchment manager of the appropriate catchment council.

PART II

SURFACE WATER PERMITS

Requirement of surface water permit or water abstraction agreement

3. (1) Subject to this section—

(a) no person shall—

(i) abstract surface water for any purpose other than a primary purpose; or

(ii) store surface water in storage works in a public stream—

A. for any purpose other than a primary purpose; or

B. for a primary purpose in excess of five thousand cubic metres;

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except in terms of a surface water permit issued by the appropriate catchment council under this Part;

(b) no person shall construct water storage works in a public stream—

(i) for any purpose other than a primary purpose; or

(ii) for a primary purpose in excess of five thousand cubic metres;

except in terms of a provisional surface water permit issued by the appropriate catchment council under this Part.

(2) No surface water permit shall be required of a person who wishes to abstract surface water from a water storage works or share of a water storage works vested in the State or the National Water Authority for any purpose mentioned in paragraph (a), but such person must enter into an abstraction agreement with the National Water Authority in terms of subsection (6) of section 39 of the Act.

(3) No catchment council shall allocate water—

(a) in excess of what is permitted by an operative outline plan in terms of section 18 of the Act; or

(b) reserved by the Minister for future use in terms of section 57 of the Act;

except in terms of a temporary permit.

(4) No person shall conduct operations referred to in section 46 of the Act, that is, operations (other than those undertaken in connection with the activities specified in subsection (5) of that section) which will interfere with the banks, bed or course of a public stream, or any marshes, springs, swamps or vleis forming the source, or found along the course, of a public stream, except in terms of a temporary permit issued by the appropriate catchment council under this Part.

Application for surface water permit

4. (1) A person wishing to apply for any one of the surface water permits or other things specified in the following paragraphs shall, through the appropriate subcatchment council or (in the case of

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Appendix 7: Excerpts from the Water Act Chapter 20:24 on Dispute Resolution Structure

ESTABLISHMENT, FUNCTIONS AND PROCEDURES OF CATCHMENT COUNCILS

20 Establishment of catchment councils

(1) The Minister, in consultation with the Zimbabwe National Water Authority may, by statutory instrument— (a) establish a catchment council in respect of an area of a river system specified in that instrument;

(2) A catchment council shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing such functions as a body corporate may by law perform.

21 Functions of catchment council

(1) Subject to this Act, a catchment council shall—

(b) Determine applications made and grant permits required in terms of this Act; and

(c) Regulate and supervise the exercise of rights to, and use of, water in respect of the river system for which it is established; and

(d) To supervise the performance of functions by sub-catchment councils; and

(e) Ensure proper compliance with this Act; and

(f) Perform any other function conferred or imposed upon it in terms of this Act.

(2) The Minister may, by written notice to a catchment council, confer all or any of the powers of officers upon a catchment manager or on all or any of the members of a catchment council, and may at any time amend or revoke any such notice.

(3) For the better exercise of its functions, a catchment council may delegate to sub-catchment councils, either absolutely or subject to conditions, such of its functions as it thinks fit:
.....

23 (2) Subject to this Act, the Minister, after consultation with the National Water Authority and any catchment council concerned, may prescribe— (a) the matters which shall be taken into account in considering the respective priority of different uses of water; and (b) the manner of allocating water between consumers who have competing needs for water; and (c) the methods of allocating water.

24 (2) A sub-catchment council shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing such functions as a body corporate may by law perform.

24 (3) Subject to this Act and without derogation from the powers of a catchment council, a sub-catchment council shall— (a) regulate and supervise the exercise of rights to water within the area for which it was established; and (b) perform such other functions as may be conferred or imposed upon it in terms of this Act.

(9) Any holder of a permit who is aggrieved by a requirement of a sub-catchment council in terms of subsection (8) may, within thirty days of the requirement, appeal to the Administrative Court in terms of Part X.

24 (10) If any person fails to comply with a requirement in terms of (8) which has not been set aside in terms of subsection (9), the sub-catchment council may itself take the steps concerned and recover the cost of doing so from such person in any court of competent jurisdiction.

(11) The Minister may, by written notice to the sub-catchment council concerned, confer all or any of the powers of officers upon all or any of the members of the sub-catchment council, and may at any time amend or revoke any such notice.

25 Persons interested in matters before catchment council

(1) Before proceeding to the determination of any matter submitted to it, a catchment council shall satisfy itself that all persons who, in its opinion, have an interest which is reasonably likely to be adversely affected by the determination have been duly notified of the proceedings.

(2) Any person who has an interest in the determination of any matter submitted to a catchment council may— (a) appear before the catchment council; and

(b) Present such argument or produce such evidence before the catchment council as he thinks fit.

(3) An irrigation company shall, if any matter before a catchment council arises wholly or partly within the area of the combined water scheme concerned, be taken as having an interest referred to in subsection (2).

26 Costs

The costs payable in respect of any proceedings before a catchment council shall be as prescribed.

27 Orders of catchment council

(1) Subject to this Act, a catchment council may make such award or order on any proceedings brought before it as it thinks fit.

(2) An award or order of a catchment council—

(a) Shall be reduced to writing and a copy thereof, certified by the chairman of the catchment council, shall, if such award or order is made on the hearing and determination of a dispute or application, be served on each party to the dispute or application, as the case may be; and

(b) Shall be binding on each party to the dispute or application concerned, if any, unless the award or order is set aside on appeal.

(3) An award or order of a catchment council for the payment of a sum of money by a party to a claim, dispute, appeal or application shall have the same effect as an order of the High Court for such payment unless such award or order is set aside on appeal:

Provided that an appeal against the decision of a catchment council shall not suspend the decision, order, award or finding appealed against.

28 Catchment Manager

(1) For the day to day management and administration of the affairs of a catchment council, there shall be a catchment manager who shall be an employee of the National Water Authority.

(2) In the performance of his functions, a catchment manager shall act on the advice of the catchment council and shall be supervised by the National Water Authority.

(3) A catchment council may delegate to the catchment manager any of its functions imposed upon it in terms of section twenty-one or twenty-two.

29 Powers of catchment managers

(1) Subject to this Act, a catchment manager may, if the catchment council is not meeting—

(a) On an unopposed application or claim— (i) grant permits for the use of water;

(ii) Extend the duration of a temporary permit or provisional permit;

(iii) Grant interdicts in respect of matters cognizable by a catchment council;

(iv) cancel existing permits;

(v) Subject to section 11 of the Communal Land Act [Chapter 20:04], award servitudes;

(vi) grant an application made in terms of section forty-one, forty-six or fifty-three; and

(b) On an opposed or unopposed application—

- (i) Postpone or further postpone the consideration of the matter;
- (ii) Cause any investigation which he considers necessary for the determination of the matter to be carried out;
- (iii) Authorize the proof of all or any of any facts in a matter by affidavit;
- (iv) on such conditions as to costs or otherwise as he thinks fit, authorize an applicant to withdraw his application;

Provided that a catchment manager may not exercise any of the powers set out in this Paragraph on an opposed application unless the applicant has given notice of his application to the person opposing the application;

(c) Exercise, *mutatis mutandis*, the powers referred to in paragraphs (f) and (g) of subsection (1) of section twenty-two.

(2) Notwithstanding anything in this Act, the parties to a dispute may, if they so wish, state the dispute in writing signed by or on behalf of each party and submit the dispute to the catchment manager for consideration and decision.

(3) Any decision made by a catchment manager on a dispute submitted to him in terms of subsection (2) shall— (a) have the same force; and (b) be subject to appeal in the same manner; as if it were a decision of a catchment council.

30 Services by National Water Authority to catchment councils

The National Water Authority shall provide secretarial, administrative, clerical and technical services to catchment councils.

[Section substituted by section 26 of Act 14 of 2002]

31 Inspections

(1) Any member of a catchment council may, for the purpose of—

(a) Enforcing this Act in circumstances where there are reasonable grounds for believing that the search or entry is necessary for the prevention, investigation or detection of a criminal offence; or

(b) Protecting the rights and freedoms of other persons; at all reasonable times enter upon any land and, after having informed the person who is for the time being in charge of the land of the purpose of his visit, make such inspection and inquiry as he may consider necessary for the proper enforcement of this Act.

(2) If any person without just cause refuses to permit a member of a catchment council to conduct any inspection or inquiry in terms of subsection (1), or hinders or obstructs a member of a catchment council in the exercise of his powers in terms of subsection (1), he shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(3) In addition to the penalties specified in subsection (2), the refusal, hindering or obstruction of a member of a catchment council in the exercise of his powers in terms of subsection (1) shall afford a ground for refusing the grant of any permit in terms of this Act or the rescinding of any existing permit.

(4) A catchment council may delegate its functions in terms of this section to an officer, the catchment manager or any other employee of the National Water Authority, and subsections (2) and (3) shall apply *mutatis mutandis*.