
**AN ANALYSIS OF LAWS GOVERNING LAND UNDER PERMIT AND THEIR IMPACT
ON WOMEN'S LAND RIGHTS IN ZIMBABWE**

BY

Sibongile Rufaro GWANZURA

Supervisor: Dr Rosalie Katsande

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ABSTRACT

This research seeks to analyse the laws governing land under permit and its impact on women's rights to land. This includes access, control and ownership of that land under the Fast Track Land Resettlement Programme (FTLRP) but specifically looking at women who are on A1 (small scale) farms. This research further seeks to analyse the laws governing land from pre-colonial through to colonial times right up to the current era in a quest to establish women's position with regard to land rights. In so doing, I look at the different factors that have affected women and continue to affect them in their quest for equality, not only in land allocation but also with regard to access and control of the land. In order to achieve this I went into the field to engage with women who have A1 permits and also made a comparison with those without permits but still have offer letters either in their husbands' names or as individuals.

While much research has been conducted on women's rights to land, I seek to explore the benefits of Statutory Instrument (SI) 53 of 2014 which has provisions for women. My research is confined to Chifundi Village, Emily Park and Temperly Village in Mhangura as this is the area where the A1 permits were initially rolled out in 2014. Chifundi and Emily Park already have A1 permits while Temperly village is yet to receive them. While SI 53/14 still has gaps that can be improved upon, I seek to analyse the successes that are already well in evidence, and in so doing, have challenged the Government to expedite the rolling out of these permits so that all the women under the A1 settlement scheme can enjoy the same legal and non-legal protection as provided for by SI53/14. I also analyse the literature on women's land rights and build a case for the forging of a better and more clearly defined and all-inclusive piece of legislation that regulates women's land rights, whilst taking into account historical injustices women suffered with regard to access, control and ownership of land.

While SI53/14 has been a major milestone in defining the rights of women, it only protects the rights of those women who have already benefited under the resettlement programme. I seek to provoke critical thinking around the issue of affirmative action in connexion with the allocation and re-allocation of land so that the number of women who have benefitted from the scheme can positively translate to a meaningful percentage population of women in the country. I also seek to provoke thinking around the inclusion of the provisions of SI 53/14 in the up and coming Zimbabwe Land Bill which is yet to go before Parliament. It is my hope that such a move will bring with it a more consolidated law on land that also has provisions on women and their rights to access and control land. In this study, I also seek to analyse the value put on women's work in cases of disputes and make an argument for valuing their work on the land and in the domestic sphere. In order to achieve this, I look at several international and regional human rights instruments to which Zimbabwe is a party and also probe the provisions of the 2013 Constitution as being key in the crafting of laws that are gender sensitive as we move away from an era of gender neutral laws.

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DECLARATION

I, **SIBONGILE RUFARO GWANZURA**, do hereby declare that this dissertation is my original work and has not been presented or submitted anywhere else before the award of certificates or any form of assessment.

Signed

Date

Sibongile Rufaro Gwanzura

Supervisor

Dr R. K.Katsande

DEDICATION

To the gift bestowed upon us by the ancestors, the dreams and hopes of the slave, my Mother.... a super woman who birthed the dynamite in me and whose legacy continues to live for ever....

I salute you Mama and will always love you.

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The road has been long, torturous and winding but I weathered the storm because of my mentor and supervisor, Dr. R. K. Katsande. Your patience, persistence and wit have made it possible and worthwhile. Profound thanks.

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JB 'aka' Jeremiah 'aka' my bestie, thank you for being a beacon of encouragement. We have done it again.

Nyasha Yvonne Choto, now you can have your bestie back. Thanks for being my all.

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My love, my pillar, my world, my rock, I thank you for all the love and support. I hope I make you proud. I love you.

LIST OF ACRONYMS

CEDAW	Convention on the Elimination of All forms of Discrimination against Women
FGD	Focus Group Discussion
FTLRP	Fast Track Land Resettlement Programme
GMB	Grain Marketing Board
ICESCR	International Convention on Economic, Social and Cultural Rights
SI	Statutory Instrument
SI 53/14	Agricultural Land Settlement (Permit Terms and Conditions), Regulations, Statutory Instrument (SI) 53 of 2014
UDHR	Universal Declaration of Human Rights
WLSA	Women and Law in Southern Africa
ZESN	Zimbabwe Electoral Support Network
ZLC	Zimbabwe Land Commission
ZWLA	Zimbabwe Women Lawyers Association

LIST OF INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS AND DOCUMENTS

Convention on the Elimination of All forms of Discrimination against Women (CEDAW)
International Convention on Economic, Social and Cultural Rights (ICESCR)
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in
Africa (Maputo Protocol)
SADC Protocol on Gender and Development
Universal Declaration of Human Rights (UDHR)

LIST OF STATUTES

Agriculture Land Settlement Act (Chapter 20:01)
Agricultural Land Settlement (Permit Terms and Conditions) Regulations, Statutory
Instrument (SI) 53 of 2014
Alienated Land (Information) Act (Chapter 20:02)
Communal Lands Act (Chapter 20:04)
Constitution of Zimbabwe Amendment (No. 20) Act 2013
Fingo Location (Distribution of Land) Act (Chapter 20:07)
Gazetted Land (Consequential Provisions) Act (No. 8 of 2006) (Chapter 20:28)
Land Acquisition Act (Chapter 20:10)
Land Commission Bill
Land Occupation Conditions Act (Chapter 20:11)
Land Survey Act (Chapter 20:12)
Matrimonial Causes Act (Chapter 5:13)
Rhodes Estates Act (Chapter 20:17)
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CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Introduction

‘Land appears to act as a powerful symbol of male domination and of the social construction of women’s dependent status. Of course, this has effects that are not simply symbolic. Lack of access to land on a similar basis to men affects women’s livelihood security. This is evidently the case in mainly rural/agricultural societies, but access to land is often a “fall-back” position for food security even in mainly urban societies’ (Shackleton, Shackleton and Cousins, 2000; Jacobs 2002; Federici, 2005).

From the above analysis, access, control and ownership of land are pivotal in women’s livelihoods. According to sociologists Jesse Ribot and Nancy Lee Peluso (2003), rural women have access to land and to use it, but they are far less likely than men to have control over it and its products or to own it. Many women only have conditional access to land and may lose the right when their husbands die or upon divorce. Land rights, as will be referred to in my research, speaks to access, control and ownership of land on A1 farms specifically. I seek to analyse the ability of farmers to make decisions over their land and choice of product on A1 farms. With regard to ownership, I will refer to one’s real right to the land which gives them power to manage, administer and even dispose of the land. For the avoidance of doubt, the land in question remains state land and while one may have control and access, the land remains that of the state.

A1 farms are the smallholder farming settlement which are villagised or self-contained. These were meant to cater for the majority of the land hungry population so that they would get land in the fast track land resettlement programme (Scoones et al, 2010). A1 permits in this regard refer to Agricultural Land Settlement Permits issued substantially in the form set out in the Schedule by the Minister pursuant to section 7(a) of the Act, which entitles the person to whom or on whose behalf it is issued to occupy, hold and use allocated land (Annexure C is a sample of an A1 farm permit).¹ The enabling law is Statutory Instrument (SI) 53/14 which are the regulations that are cited as the Agricultural Land Settlement (Permit Terms and Conditions), 2014. The Fast Track Land Reform Programme (FTLRP) was

¹ Definition in terms of Statutory Instrument 53 of 2014.

defined by Government as the process of compulsorily acquiring land for resettlement purposes based on legal instruments and a set of administrative guidelines (Matondi, 2012).

This research looks at the legal framework in Zimbabwe and the adequacy in its protection of women's land rights. It also seeks to analyse women's rights from an international human rights framework and identifies the gaps in our domestic legal framework as stipulated and provided for in the international and human rights instruments. Finally, I seek to make recommendations to remedy the gaps.

1.2 The history of land in Zimbabwe

Land has always been a source of political conflict in Zimbabwe since colonization, be it with the indigenous black communities among themselves or between the white settlers and the black rural communities. When the colonialists came into the country, they seized the majority of the good agricultural land and left the black peasants to scratch for a living from marginal tribal reserves that were not fertile. At Independence, the Government signed the infamous Lancaster House Agreement² which barred the Government of the day from taking back the land from the white settlers for the next ten years which meant that land redistribution would only be done after 1990 but it only then began in 2000. It had initially been agreed that it would be done on a willing buyer willing seller basis and that the Government would promptly pay for compensation of land acquired and pay it adequately (Matondi, 2012).

When the colonialists came, they were quick to protect their property rights, and put in place pieces of legislation that protected them and their rights to the land that they had forcefully acquired from the natives (Moyo, 1994). However, through it all, they did not address the issue of ownership, access and control of the indigenous land and there were no gender specific provisions in any of the laws (Goebel, 2005). The manner in which the laws were crafted leaves one wondering whether it was a deliberate move not to upset existing patriarchal structures, whether it was a mere oversight or part of a deliberate plan by the colonial regime to continue the subjugation of women by their native men (WLSA, 2017). As will be clearly seen in most of the statutes, issues to do with administration and management

² The Lancaster House Agreement was a political consensus which brought about the Independence of Zimbabwe from colonial Rhodesian rule.

are what are most addressed and the laws are silent when it comes to women owning land or having any rights accorded to them.

At the advent of the land redistribution era,³the Government of Zimbabwe put in place several pieces of legislation that sought to address the injustices of the former colonial Government but once again, there was no effort to include gender specific provisions in these pieces of legislation. The nearest to a gender sensitive legislative milestone in this process came in the form and promulgation of Statutory Instrument (SI) 53/ 14 which made specific provisions for women with regard to their rights under the land redistribution process.

1.3 Background of the research area

The research was carried out in Chifundi, Mhangura in Zimbabwe (Figure 1). Mhangura is a small town located in Mashonaland West, north-west of Zimbabwe, approximately 188km from the capital Harare. It is a former mining town which was famous for its copper but has since become a ghost town after the mine shut down in the late 1990s due to the falling global price of copper. Its name was probably derived from the Shona word Mhangura which meant “red metal”, with particular reference to the copper which was predominant in that area.

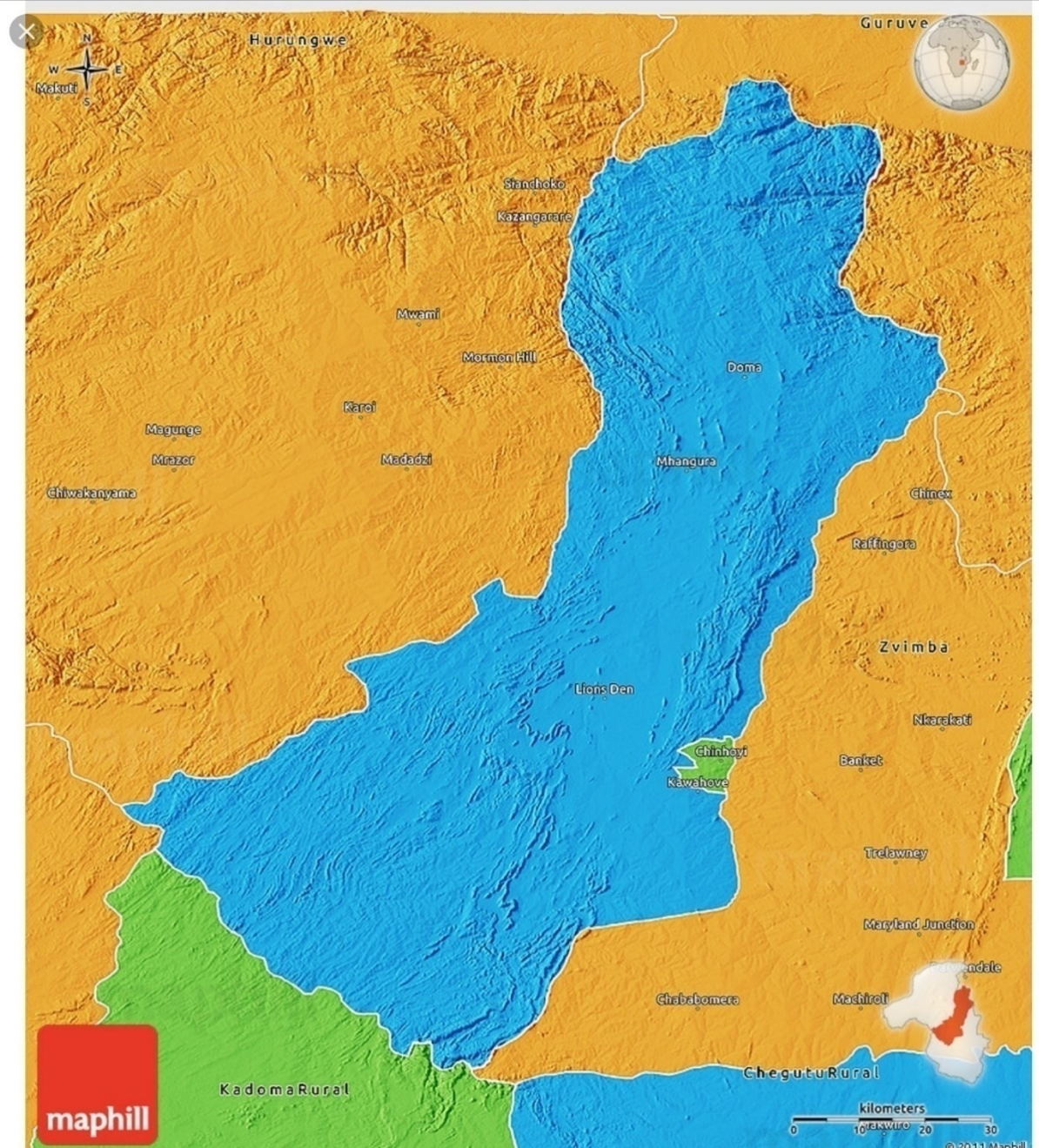
According to Press Reader of the government national newspaper, The Sunday Mail of 26 June 2016, Mhangura is in Region 2A which means it is conducive for crops such as maize, tobacco, coffee and even citrus fruits. It receives rainfall well above 1,000 millilitres a year and is frost free which therefore makes it a good area for potato production all year round. Maize is a common crop in the area but in the two villages where I conducted most of my research, they also have irrigation schemes so they do a lot of horticulture.

Mhangura has the country’s biggest silos as it was once known as the bread basket of the country before the onset of the land reform program in 2000 due to its high yields (ZESN Constituency profile, 2008).

³ The Land reform began in 1980 upon the signing of the Lancaster House Agreement but only got into full swing in the early 2000s.

1.4 Demarcation of the study

Figure 1: Map Showing Location of Makonde District in Mashonaland West Province⁴



My study focused on Chifundi Village and Emily Park in Mhangura where the permits were rolled out by the former President in 2014. The study was also done in Temperly Village

⁴ Makonde District is where we find Mhangura, my area of research.

which is a farm right next to Chifundi Village after learning that the farmers in Temperly Village were yet to receive their permits.

1.5 Problem statement

Women have been marginalised with regard to access, ownership and control of agricultural land since time immemorial. The laws governing land have been gender neutral and silent on women's rights (WLSA, 2017). From pre-colonial through to colonial times and even after independence, laws that were crafted with regard to land focused more on demarcations and administration of land and did nothing to address the gender disparity that already existed with regard to women's ownership of land (Goebel, 2006). If anything, they actually reinforced patriarchal dominance that already existed in our culture as Africans and marginalised women when it came to issues of ownership, access and control of land.

The enactment of the Constitution of Zimbabwe in 2013 ushered in a new era that gave birth to gender sensitive laws and regulations such as Agricultural Land Settlement (Permit Terms and Conditions), Regulations, Statutory Instrument (SI) 53 of 2014 and the move to come up with the Land Commission Bill which will see the repeal of some gender neutral laws such as the Agricultural Land Act and the Rural Land Act (WLSA, 2017). In particular, section 56 of the Constitution on equality and non-discrimination encourages the achievement of substantive equality as we gradually move from formal equality. However the implementation of provisions of SI 53/14 is still an issue and so is the slow finalisation of the Zimbabwe Land Commission Bill which is yet to be enacted and become an Act of Parliament.

1.6 Objective of the research study

The main objective of my research was to analyse the laws governing land under permit and their impact on women's rights to land in Zimbabwe. I also sought to assess women's knowledge of their rights, their access and control rights under A1 permits and then make recommendations to protect their user rights.

This research was therefore guided by the following assumptions and research questions.

1.7 Research assumptions

- 1.7.1 That the legal framework in Zimbabwe does not adequately protect the land rights of women on A1 farms in Zimbabwe.
- 1.7.2 That the laws regulating A1 farms have no provision for affirmative action with regard to land distribution.
- 1.7.3 That women's land rights on A1 farms are not real/absolute and can be easily violated.
- 1.7.4 That the law does not recognise or value the hard work put into the land by women when resolving access and control rights during marriage and after divorce.
- 1.7.5 That there is a need for legal and non-legal measures that will ensure women's user rights to land are protected in A1 farms.

1.8 Research questions

- 1.8.1 Does the legal framework in Zimbabwe adequately protect the land rights of women on A1 farms in Zimbabwe?
- 1.8.2 Do the laws regulating A1 farms have any provision for affirmative action with regard to land distribution?
- 1.8.3 Are women's land rights on A1 farms real/absolute and can they be easily violated?
- 1.8.4 Does the law recognise or value the hard work put into the land by women when resolving access and control rights during marriage and after divorce.
- 1.8.5 Is there a need for legal and non-legal measures that will ensure women's user rights to land are protected in A1 farms?

1.9 Limitations of the study

While the issue of land in Zimbabwe can be explored in any area, my research was limited to Chifundi village and Emily Park where the A1 permits were initially rolled out in 2014. Given that my topic was to do with land under permit, I identified the area that had been the first to receive these permits. Having heard the success stories in these two areas about having received permits, I then sought to do a comparison with an area in the same town but which was yet to receive permits and this led me to Temperly village. This helped me realise the effects of not having these permits on the lives of the women and the issue of lack of security of tenure as the respondents felt their rights to the land were uncertain as long as they held the offer letters and not the A1 permits.

During my research period, the Zimbabwe Land Bill had not yet been enacted into law and was yet to pass through the Parliament before being made into law. This research is therefore limited to the bill before it was passed into law and thus the researcher seeks to have certain provisions included in the bill as a way of securing women's rights to land. These include and are not limited to the inclusion of provisions of SI 53/14 in the Bill and also the expedition of enacting the bill into an Act of Parliament.

1.10 Chapter summaries

This Chapter sought to give a general understanding of the history of land in Zimbabwe and an overview of my research study. Chapter 2 gives an outline of the theoretical and methodological framework used in the study. I also give an overview of the research methods used and end the chapter with the emerging issues from the research.

In Chapter 3, I look at the different land laws from the colonial times to date and analyse the strides taken to protect women's land rights to date. Chapter 4 analyses the findings in my field research on women's land rights whilst putting them in the context of my literature review and theoretical framework.

Lastly Chapter 5 concludes the research by making a case for women and their rights to land and end by making recommendations for the enhancement and protection of these rights.

CHAPTER TWO

2.0 RESEARCH METHODOLOGIES, THEORETICAL FRAMEWORK AND DATA COLLECTION METHODS

2.1 Introduction

The previous chapter focused on the background of my research and its limitations. I also looked at the objective of my research, my research assumptions and my research questions which guided this research. This chapter explains the different research methodologies, theoretical framework and data collection methods used in an endeavour to understand and get a clear understanding of women's rights to land on A1 farms. I used the social construction theory in order to help me understand how my respondents were socially constructed to behave in the manner in which they did. I also used the Marxist and Socialist theory in order to appreciate the way in which women's work is undervalued. The masculinity theory helped me appreciate the role patriarchy plays in gender roles. The relational nature of women helped me understand why women put their families and loved ones first before themselves.

Methodologically, I used the women's law approach to interrogate women's lived realities. I also used the actors, structures and norms approach to understand how different actors and structures influence women and their livelihoods, and how the different norms such as culture and tradition play a role in women's access to and control of land. The sex and gender analysis helped me understand the effects of one's sex or gender on land allocation, access, control and ownership of land. This helped me to understand not only the historical background of land but also to analyse and understand why women are still marginalised when it comes to their rights to access, control and ownership of land.

2.2 THEORETICAL FRAMEWORK

2.2.1 Social Constructionist Theory

Social constructionist theory can be defined as a perspective which believes that a great deal of human life exists as it does due to social and interpersonal influences (Gergen, 1985). Although genetically inherited factors and social factors are at work at the same time, social constructionism does not deny the influence of genetic inheritance, but decides to concentrate

on investigating the social influences on communal and individual life. Women are thus expected to be confined in the home as they have been socially constructed and I use this theory to analyse women's access to land as it has been believed that they belong to the home and should always exist in the shadows of their male counterparts. This even affects their ownership as the structures use the same theory to subjugate women when it comes to ownership of land.

2.2.2 Masculinity

Cornell suggests that:

'...not all men benefit equally from the institutions of patriarchy and that some forms of masculinity are culturally elevated above others in certain times and places. The idea of hegemonic and subordinate or marginal masculinities is used to reflect the power dimensions of gender relations'(Connell, 1987).

From the above analysis, it is clear that patriarchy plays a role in gender relations and men are seen as the stronger and more superior beings, but not so in all instances as men themselves are treated differently. Cornwall (1997) and White (1999) also look at the issues of class, race and age when understanding men's and women's lives, and the ways in which they relate to each other. On the land issue, this is treated in a cultural perspective and gives men the upper hand as they are the ones culturally expected to own land and make decisions over land. However, this is not applicable if it comes to sons-in-law wanting land in the community they married into, hence, men are treated differently.

2.2.3 Marxist and socialist theories

Women's work has always been under-valued and not considered to be work as work since in most cases it does not bring income into the home. In order to confirm this analysis I used the Marxist and Socialist theory. Not only did it help me understand the gendered roles of women, but it also helped me assess the value attached to the work they do in the home and beyond. When divorcing, women are often treated as people who have not contributed much to the development of the home but people forget the role they play in making sure everyone's needs are catered for so that they are able to perform be it at work, school or in the fields.

2.2.4 Relational nature of women

'Wolves and women are relational by nature, inquiring, possessed of great endurance and strength. They are deeply intuitive, intensely concerned with their young, their mate and their pack. Yet both have been hounded, harassed and falsely imputed to be devouring and devious, overly aggressive, of less value than those who are their detractors.' Clarissa Pinkola Estes (2015).

As explained above, women have a way of putting their family and loved ones first before themselves and this was seen in my research as women were more concerned with the welfare of their families. Their persistence, determination and sometimes aggression in what they do was evidenced by the hard work they put into the land as a result of the permits as they felt entitled to receive what they did and that their rights were protected.

2.3 METHODOLOGICAL FRAMEWORK

2.3.1 Interrogating women's lived realities

Given the nature of my topic which is analysing women's land rights, I used the women's law approach to analyse and interrogate the lived realities of women in my research. As Stang Dahl (1987) puts it, I took women as the starting point, explored and interrogated their lived realities on land under permit, while analysing the laws governing them in order to find ways of improving their security in terms of control, access and ownership of land. Going into the field, I assumed that the laws governing land in Zimbabwe did not adequately protect the rights of women on A1 farms. However, having interacted with the women in my area of research, I learnt that the coming in of the A1 permits had given them security which they applauded and they had become even more motivated to work on the farms.

During my one-on-one interviews with the women of Chifundi village, I realised that most of those who had benefited from the A1 permits were actually basking in the glory of the provisions of SI 53/14. One lady was relieved that the law had protected her in that when her husband died, she already had a permit, hence the in-laws and her step children could not chase her away as she was the rightful heir given that she was a joint signatory to the permit.

In another discussion, one woman proudly showed me her house and the improvements she had made on the land since the issuance of the permits. She also celebrated that she was able

to save money to buy a house in neighbouring Chinhoyi as an investment. This was apart from being able to sustain herself and her family and also take her children to school in the city and not the local school which she shunned because of the poor results of its students. In my view, these were success stories that emanated from the issuance of the A1 permits as provided for by SI 53/14.

The women's law approach also enabled me to see women from their relational side in that they were more concerned with the welfare of their families and had no problems since the permits had been jointly registered in their names together with their husbands. For them, they saw that as a move that brought the family unit together and enabled peace to prevail in the home as their husbands did not want to risk having their land shared between them and their wives should a problem arise. Given that women were joint and equal signatories meant the men made extra efforts to try and be at peace with their wives and in case of any dispute they tried to resolve their differences amicably before the matter had been taken up.

While women were happy that they had access, control and ownership through the permits, the men were concerned with the issue of security of tenure as they explained that the permits did not adequately protect their rights to the land. For women, all was well as they saw the permits as a major milestone in ensuring their security during the subsistence of their marriage and even upon divorce or death, but men were concerned about the perpetuity of the land for the sake of their future generations since the permits were said to be for an indefinite period.

2.3.2 The impact of actors structures and norms on women's access to and control of land

In my study, I had encounters with various actors and structures involved in women's access to and control of land. Taking a leaf out of the writing of Bentzon et al.(1998), I engaged the actors and structures perspective as it was useful in my research.

“The actor perspective is particularly useful in obtaining a dynamic and processual understanding of gender and legal change in the context of societies where state-law interplays with other normative orders. It assumes that social and legal change take place through interaction between human beings as individuals or groups and not through some seemingly abstract medium such as the Law” (Bentzon et al, 1998).

It helped me examine the existing relationship between women and other individuals, institutions and groups in their access to land. Women in my findings were mostly mere beneficiaries of land as a result of marriage especially with the issuance of the A1 permits. This portrayed the continuous impact of traditional, cultural practices that treated women as ‘the other’ in a relationship. While women were the face of the home, the ones involved in the day to day running of the fields, their access and control rights were still being influenced by culture and tradition.

Land issues in Zimbabwe have always been treated with privacy and so much bureaucracy thus making the process of acquiring information a bit difficult. However, my topic had to do with the area in which the former Minister of Lands had an interest as he was the Legislator for the area where the permits had initially been rolled out. After having first met with the former Minister and explaining the purpose of my research, authority to conduct my research in his Constituency was granted.

Speaking to the different women in my research, I learnt that even in times of disputes, their issues were resolved by the traditional leaders who were all men. In light of this, I noted that women’s subjugation remained prevalent as tradition and custom continued to be applied in their day to day living. This explains why in my focus group discussion (FGD) with men, none of them could entertain the idea of leaving their wives on the farm as they felt that it was their heritage despite it being state land that had no link or relation to ancestry. The men argued how it was all right for them to re-marry and let their subsequent spouse benefit from the farm but unanimously agreed that it was painful, disrespectful and unheard of for a woman to do the same thing. As far as the men were concerned, they wanted the land to remain in the possession of their children rather than their wives as they felt it would be secured for generations to come. Now, given that these are the same people who are tasked with the responsibility of safeguarding, allocating in some instances and even resolving disputes concerning issues of land, one can only imagine the mind-set applied in such decisions.

2.3.3 Exploring the effects of the different sexes and gender in women's rights to access, control and ownership of land

I engaged the sex and gender analysis approach in my endeavour to establish the effects of one's sex or gender with regard to the allocation, access, control and ownership of land. As Coates (1999) states, if gender roles are unchallenged, they have a number of direct effects on communities, households and individuals, in particular, women and children. Given the simple understanding of gender to mean socially constructed roles, I sought to establish the role played by women on A1 farms. Entering the field, I assumed that women had no control or access to land. This however, was mostly challenged in instances where the farmers had A1 permits. I noted that women had been empowered and educated on the provisions of SI53/14 which gave them equal and joint rights as the permit holder. This gave them equal gender roles in terms of division of labour especially in the fields as they worked together as a family for the common good of harvesting good yields.

In some instances, I noted that men still held the notion that a woman's place was in the home and they had to be in formal employment in order to fend for their families. One particular respondent also emphasised how she had to first quit her formal job and stay on the farm while her husband remained in formal employment. Of interest though is how her husband then decided to quit his job after realising that due to his wife's hard work on the farm, they could actually survive on farming.

During my focus group discussions with both men and women, I noted that women shied away from airing their views as they felt that the men were better placed and qualified to contribute to the discussion. It was only after I had excused all the men from the discussion that the women began to freely share their views and concerns. While government had made strides towards empowering women by appointing them to committees that ran the affairs of the community, women complained about the men who disregarded their positions. One woman explained how men felt more superior to them and demanded the use of agricultural mechanisation whenever it suited them and without waiting their turn. In one case a man aggressively demanded that a tractor that was being used to plough a woman's field be removed and used to plough his field. She said,

“... These men are very selfish and insubordinate. They are unhappy that the Government has placed us women in committees that run irrigation projects here.

Imagine, the other day, one man named X came and demanded that a tractor which I had allocated to work on another lady's farm, be moved and go and till his land. They have no regard for our positions of authority at all. If anything, they continue to intimidate us but we will not be moved.”⁵

Speaking to women from different households, I noted that in most families, the couples worked together on their farms. From the choice of crop to when to plant, the marketing and sale of their produce up to the use of the funds raised, all this was said to be done amicably in the home as the men understood that they were equal to their spouses as a result of the A1 permits which were registered in both their names. This gave them equal access to and control over their land and this, in my view, ought to be credited to the officers who were responsible for the issuance of the permits and had explained the provisions of SI 53/14 in such a way that enabled and ensured some form of equality in the home. However, I noticed that a challenge arose in the public sphere where men did not want to be equal with women. They felt, in my view, that the public sphere was still the sole preserve of men and women had no place in such a space.

2.3.4 Exploring the plurality of norms and values within the legal system against cultural interference

In my research, I analysed the plurality of norms and values within the legal system, given that, as a country, Zimbabwe uses a dual legal system which allows for the application of customary law together with general law. This helped me understand the effects of this plurality on women's rights to land. While the allocation of A1 farms was done without the intention of bringing in culture and tradition, these found their way into the affairs of the community as Chiefs and traditional leaders were appointed as custodians in those places where A1 farmers had been resettled or the farms were allocated in areas already under some form of chieftaincy. In Chifundi, for example, there was no Chief as the community was previously a predominantly white farmers' area, but after the resettlement process, the area was allocated to Chief NemaKonde. This directly translated to the application of customary law to the day to day lives of the people and the resolution of their disputes.

Speaking to the women in my area of research, the Chiefs had however been educated about the provisions of the SI 53/14 and thus managed to resolve land disputes using the general

⁵ Committee member of the irrigation scheme in Emily Park expressing disgruntlement at the disregard of her office on a FGD in Chifundi village on 14 November 2017.

law that governed their type of set-up. Although the community was subject to customary law, it did not in any way affect the manner in which land was accessed or controlled. Customary law seemed to play a major role in terms of managing social and cultural issues such as marriage and the like. When it came to land, there seemed to be an understanding of the correct law to apply.

2.4 DATA COLLECTION METHODS

Table 1 shows details of the respondents involved in the research.

2.4.1 Focus group discussions

I had two focus group discussions, initially with men in Chifundivillage after there had been an outcry that they had been side-lined at my first focus group discussion turned women's forum where I had met only with women. I then did another focus group discussion in Temperly village with the women there and their village head who had assisted in mobilising them (Figure 2, 3, 6 and 7). The focus group discussions were very helpful in that I heard not only how successful the permits had been but also the fears of the community. The groups managed to speak freely and without fear and this gave me a better insight into the community and their way of living as they confirmed and reaffirmed others' positions.

Figure 2: *Focus Group discussion with men in Chifundi Village*



Figure 3: *Focus Group discussion on Temperly Farm*



2.4.2 One-on-one in-depth interview

I managed to conduct one-on-one interviews with key respondents and informants from the Ministry (i.e., officials) and women's organisations. I also had one-on-one interviews with two village heads, the Councillor, several women and a few men in Chifundi village (Figures 4 and 5). The information I got from these interviews was detailed and I was able to get first-hand information about the lived realities of the villagers. Having introduced myself as a researcher and coupled with the fact that we come from the same province, I was well received and I easily gained the trust of my interviewees who either shared my totem or rural home. Not only did I gain their trust and receive information, but there was an overwhelming invitation for me to visit their different homes as they felt we were related and shared a lot in common.

Figure 4: One-on-one interview with a woman in Chifundi Village



The one-on-one interviews helped in that some of the information which respondents felt they could not answer in a public forum, like a focus group discussion, became easy for them to share with me. It also helped that I took the opportunity to conduct these interviews in their respective homes so they felt comfortable and safe as I spoke to them in their comfort zones. Most of my statistics came from these one-on-one interviews, initially from my respondents

in the village and then verified by the Ministry officials who provided me with the official statistics in their Ministry database.

Figure 5: *One-on-one Interview - Chifundi Village*



Figure 6: *Focus Group discussion in Chifundi Village*



Figure 7: *Focus Group Discussion in Chifundi Village turned into a forum after more people than anticipated turned up*



2.4.3 Views from key informants

In order to come up with a near holistic understanding of land rights, the strides taken by Government and also the official position of the Ministry, I sought to discuss with experts on land issues, Ministry officials, and they included a representative of the Deputy Director of Resettlement and the Deputy Director of Estates Management in the Ministry of Lands, Agriculture and Rural Resettlement (Appendices A and B). I also managed to interview a legal officer with Women and Law in Southern Africa (WILSA) who was also spearheading research on agricultural land including land under permit which is the focus of this research. This helped in that I was able to obtain and hear the Ministry's position and also have a critical analysis of the laws and the gaps from the views of an independent organisation.

2.4.4 Observation

Having been welcomed into peoples' homes, and received several invitations to visit their different homes in order to assess the gains of the land reform process as well as the successes of having been issued with permits, I was able to deduce the way of living and

compare the information I was receiving with what actually existed on the ground. Several of the villagers had begun erecting permanent structures on their land as they had been assured of security of tenure (Figures 8 and 9). I also observed that in several homes, the families worked together on the fields and did not have any extra help except in instances where they came together as groups to help one another in exchange for a day in others' fields (*nhimbe*) or for payment, better known as '*maricho*' in my vernacular language, Shona.

Figure 8: *Evidence of Solid Structures erected at the farms*



Figure 9: *A properly built toilet by one household*



The men seemed more concerned about bigger projects like cattle ranching, dairy enterprises and running small businesses while the women were content with having enough land to sustain their gardens, plant small grains and legumes and to run their chicken projects. There seemed to be consensus, however, about how to use the land depending on the financial viability of each home and their exposure. I observed that in one particular teacher's home, the couple was intent on running their farm solely as a business project to raise funds to invest in real estate in nearby Chinhoyi.

2.5 Emerging issues

In the FGDs that I conducted, an emerging issue on the issue of security on the part of children was continuously raised. Men and women alike were afraid that if they died and their surviving spouse re-married, their children could be sent away from the farm and disinherited. There was a plea to include children on the permit as joint and equal signatories so that their rights would be secured.

Men also raised the issue of security of tenure in the event of a change in Government but this was dispelled by the Deputy Director in the Ministry of Lands who re-affirmed that the process of land distribution was irreversible and that there was no need for men to worry. She

referred to the provisions of SI 53/14 that stipulated that the A1 permits were for an indefinite period. Having interacted with the women of Temperly Village, I noted the insecurity around security of tenure due to the lack of permits in their area, hence the request for the expeditious issuance of A1 permits.

Table 1: LIST OF RESPONDENTS

Respondents by category	Designation/ Area	Female	Male	Total Respondents
FGD turned women's forum in Chifundi village	Beneficiaries of A1 permits	85	2	87
Day 2 FGD in Chifundi Village	Beneficiaries of A1 permits	6	18	24
Day 3 FGD at Temperly Farm	Community yet to receive permits	14	2	16
WLSA	Programmes Officer	1		1
ZWLA	Legal Officer	1		1
Ministry of Lands	Officers in resettlement department	2		2
Ministry of Lands	Deputy Director – Estates Management	1		1
One-on-one interviews in Chifundi and Emily Park	Villagers	12	4	16
Councillor and Village Heads	Chifundi		3	3

2.6 Conclusion

In this chapter I explained the different research methodologies, theoretical framework and data collection methods used in an endeavour to understand and get a clear understanding of women's rights to land on A1 farms. I also used the social construction theory in order to help understand how my respondents were socially constructed to behave in the manner in which they did. I used the Marxist and Socialist theory in order to appreciate the way in which

women's work is undervalued. The masculinity theory helped me appreciate the role patriarchy plays in gender roles. The relational nature of women helped me understand why women put their families and loved ones first before themselves.

Methodologically, I used the women's law approach to interrogate women's lived realities. I also used the actors, structures and norms approach to understand how different actors and structures influence women and their livelihoods, and how the different norms such as culture and tradition play a role in women's access to and control of land. The sex and gender analysis helped me understand the effects of one's sex or gender on land allocation, access, control and ownership of land. This helped me to understand not only the historical background of land but also to analyse and understand why women are still marginalised when it comes to their rights to access, control and ownership of land.

In the next chapter, I will look at the history of land laws in Zimbabwe from colonial times up to the agrarian reform process. I will also give a brief overview of the different laws and then a summary of the provisions on women in the Constitution and SI53/14.

CHAPTER THREE

3.0 A HISTORY OF LAND LAWS IN ZIMBABWE

3.1 Introduction

The previous chapter looked at the theoretical and methodological framework, as well as the data collection methods used in conducting my research. This chapter looks at the history of land laws in Zimbabwe from colonial times up to the agrarian reform process and begins to look at strides taken in achieving women's rights to land. Using different literature, I was able to analyse the laws that existed before and after colonisation and thereby establish that in all these pieces of legislation, women's land rights were given no priority or mention. It is only when we reach SI 53/14 that we find provisions that speak to women's land rights. The Constitution provides some gender neutral laws and these appear to have been adopted by SI 53/14.

3.2 A look at the history of land laws in Zimbabwe

Land plays a fundamental role in the manner in which women live and fend for their families on a daily basis (Goebel, 2005). Not only is it a source of accommodation, belonging, but also their source of livelihood. It is thus imperative to ensure that their rights to use and control land are at the core of crafting and implementing laws relating to land (Moyo, 1994). However this had not been the case prior to colonisation as the laws were patriarchal and land allocation followed the male primogeniture. Even when the white settlers moved into the country, their thrust seemed to reinforce the marginalisation of women. One would have thought that with the advent of land reform, these injustices and gender gaps would be given priority, but again, the women continued to live in the shadow of their male counterparts as spouses or as children of the male head of a clan (WLSA, 2017).

3.3 From colonial laws to the agrarian land reform process: Women still marginalised

The land reform process presented a radical opportunity to transform women's property rights. However, given the percentage of women who rely on land as a source of

livelihood, the land and the way in which it was apportioned to women during the fast track land resettlement programme (FTLRP) has come nowhere near closing the gender gap between men and women in terms of ownership of land (Goebel, 2005). After the 2000 land reform exercise, 18% of women were allocated land individually against the 20% quota provided for in the Land Resettlement Act (Utete Report, 2003).⁶

The FTLRP ushered in a new era which could have been a launching pad for amending the gender disparities that have existed between men and women in Zimbabwe even prior to the pre-colonial period. The land which was distributed did not follow any cultural or ancestral pattern as it belonged to the state. While this is the reality in legal terms, the reality on the ground is such that these patriarchal values, systems and norms continue to play an important role in the establishment of these new resettlements as evidenced by the influence of Chiefs, village heads and other cultural values still in place (Hellum and Derman, 2004:1800). Given the silence surrounding women's rights in the provisions governing the FTLRP, one can only wonder whether women's needs were placed anywhere near the core principles in the process or whether they were left on the periphery as they have been in every era.

Looking closely at the FTLRP, one can deduce that it had less to do with remedying the gender gap and more to do with correcting colonial injustices. Women's issues were thus left on the periphery and may glaringly be seen as an aside to the land reform process itself (WLSA, 2017). Below is an analysis of land laws that were crafted from the time of the colonial era to the advent of the FTLRP.

3.3.1 Settled Estates Leasing Act (20:19)

This Act commenced on 10 June 1891. It facilitated the leases of settled estates. In essence one can say it sought to protect the rights of the white settler regime and gave them leasing rights. Having come and forcefully taken over black people's land, the thrust of the colonial regime was to protect their right to the land which they had usurped from the black majority.

⁶ Report of the Presidential Land Review Committee on the Implementation of the Fast Track Land Reform Programme, 2000-2002 ('The Utete Report').

3.3.2 Title Registration and Derelict Lands Act (Chapter 20:20)

The Act also came into effect on 10 June 1891. It dealt with the registration of title in certain cases, and for the disposal of certain derelict land. Again, having forcefully removed the black majority from their ancestral land, the white settlers then crafted this legislation that gave them title over land which had not been procured but had been usurped from the black majority. As part of the process, they moved the Africans to the infertile lands of communal reserves. The administrative nature of the law did not cater for gender equality or make any provision for women's land rights.

3.3.3 Land Occupation Conditions Act (Chapter 20:11)

This Act came into effect on 9 November 1900 in a bid to provide title for land already granted. It gave the meaning of the term 'occupation' with reference to grants of land in Zimbabwe. It prescribed how the condition of occupation may be eliminated from the terms of such grants and it also provided for the surrender of titles to land already granted. Once again, the law sought to improve and enhance the security and land tenure of the white settlers from an administrative point of view. The Act also remained silent on the needs and concerns of women and the black majority as it focused on land which had supposedly been granted and sought to protect the rights of those who occupied it.

3.3.4 Alienated Land (Information) Act (Chapter 20:02)

This piece of legislation came into effect on 3 July 1925 and dealt with any land other than state land. The President had powers to request information in relation to nature of the land, including its development, cultivation, livestock, improvements, etc. Once again, this Act governed administrative issues concerning land.

3.3.5 Land Survey Act (Chapter 20:12)

This Act came into effect on 1 May 1933 and provides for the consolidation and amendment of laws relating to the survey of land. Administratively, this Act sought to demarcate and lay clear boundaries for land already occupied and it consolidated the laws already in place with regard to land surveyance.

3.3.6 Fingo Location (Distribution of Land) Act (Chapter 20:07)

This Act came into effect on 1 August 1940 and sought to withhold or abolish certain rights to land in Ntabazinduna Reserve known as Fingo land. It also sought to declare that certain persons are entitled to an award of land in the said location and also for the appointment of a commission to determine which persons are entitled to such award and for the survey of such land.

3.3.7 Agriculture Land Settlement Act (Chapter 20:01)

This Act came into effect on 1 January 1970 and it gave the Minister of Lands power to distribute land while also empowering the President to retake possession of the land. It made no provision for addressing the historical injustice of men owning vast tracts of land over women. With regard to establishing an Agricultural Land Settlement Board, the Act prescribes the functions of the board, focusing on the settlement of persons and the alienation of agricultural land. The Minister appoints the board and no provision is made for the representation of women.

3.3.8 Rhodes Estates Act (Chapter 20:17)

This Act came into effect on 2 April 1978 and provides for the development and maintenance of Rhodes Estates which are in the areas of Inyanga and Matopos. It also stipulates how the funds concerning the Estates should be administered. All this was done in order to secure the rights of the occupiers and to make sure that these lands were preserved for generations to come. When looking closely at the Nyanga and Matobo Reserves today, it requires no lens to see the extent to which the settlers went to protect their most valuable and historical pieces of land, land that would have been part of the heritage of Zimbabwe's indigenous people.

3.3.9 Communal Lands Act (Chapter 20:04)

The Communal Lands Act came into effect on 1 February 1983 and it governed communal land which comprised land that was called 'Tribal Trust Land' (TTL) as of 1 February 1983. It also empowered Chiefs and traditional leaders to play a role in distributing land. Now we see the post-colonial era laws coming to try and create and establish systems in the areas in which the indigenous people had been settled. Again, with the arrival of this law, the continued subjugation of women comes into play as the customary and traditional laws are patriarchal in nature. This Act also empowered Chiefs and traditional leaders to allocate land

and to be the custodians of communal land. Given the patriarchal nature of our customary law, women remained in the shadow of their male counterparts.

3.3.10 Land Acquisition Act (Chapter 20:10)

The Act commenced on 8 May 1992 and was amended in 2000. It empowers the President and other authorities to acquire land and other immovable property and to do so forcibly in certain situations. It also provides for compensation to be paid for agricultural land required for resettlement purposes. It also provides for the establishment of the Derelict Land Board, which is mandated to deal with the declaration and acquisition of derelict land and to provide for issues connected with such land. This again comes into play following the Lancaster House Agreement in which the colonial regime agreed with the black majority Government that land redistribution would only be considered ten years after Independence in 1980.

The Act only came into effect in 1992, but, as fate would have it, the land reform process was a controversial one. It was very slow and only began in earnest in 2000 which then led to sporadic land grabbing.

3.3.11 Gazetted Land (Consequential Provisions) Act (No. 8 of 2006) (Chapter 20:28)

This Act came into effect on 20 December 2006 and it provides for protection from eviction through land settlement leases, permits and offer letters. However, the question which remains a major concern of the beneficiaries of the land reform process is their security of tenure to the land and this cropped up in several discussions in my research.

3.3.12 The Acts as summarized above

The above eleven pieces of legislation are all silent on women's rights to ownership, access and control of land. They all seem to focus on administrative and management issues concerning land. In addition, there is no focus on the indigenous people and their control of land. Essentially all the pieces of legislation prior to Independence seemed to protect the white settler regime. The reality is, however, that while legislation after independence has sought to correct these colonial injustices, neither pre- nor post-colonial legislation has given any thought to the protection of women's rights.

State land in Zimbabwe is owned by the President and title only passes upon registration(Matondi, 2012). Most of these statutes also speak to general administrative and management issues rather than addressing the individual rights of ownership, access and control of land. One would have thought that after the new Government came into power, it would seek to amend the laws so that they protected the rights of all indigenous people but that is yet to be achieved.

This, in my view, could have had a bearing on the enactment of the Land Acquisition Act which ushered in land grabs. The former colonizers seemed to continue to enjoying the benefits of the previous regime and the ten year time limit contained in the Lancaster House Agreement. Then, in the year 2000, the Government identified 1471 commercial farms for land redistribution. The process became so chaotic, however, that even farms that had not been initially identified for land redistribution ended up being occupied. The manner in which the land grabs were conducted was so chaotic and violent that women continued to suffer.

Since most women did not benefit from the land grabs, the Government then considered the issue of gender and made an effort to reallocate land to them. Since the redistribution process was politicised and conducted along partisan lines, it was difficult for other people to access land (Matondi, 2012). As a result, women suffered double discrimination, both on the basis of their gender and their partisan affiliation. For most women, however, the decision to support a particular political party is not so much their own but rather that of the men in their lives (such as their fathers, brothers or husbands) and it is their decisions which, through association, are attributed to the women. The closest most women come to land is through access to it as a spouse or child of a male with land, while others only access land as seasonal workers (WLSA, 2016).

3.4 Constitution of Zimbabwe

Section 56 of the Constitution speaks to the principle of equality and non-discrimination and explicitly states that men and women have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres (section 56(2)). It also provides in section 56(3) that everyone has a right not to be treated in an unfairly discriminatory manner on grounds such as race, nationality, colour, sex, marital status,

culture, custom or economic or social status, among many others. Here we see the important swing away from formal towards substantive equality. As Mary Becker (1999) so keenly observes, formal equality cannot challenge patriarchy because it is empty of values. It gives women only the right to what men are entitled to under the rules and values worked out by and for men. It is thus imperative to move away from formal equality to substantive equality.

Linked to the above, section 71(2) of the Constitution then provides for the right of every Zimbabwean to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of all forms of property be it individually or in association with others. When read together with section 72(7), it provides for the people of Zimbabwe to re-assert their rights and regain ownership of their land. This section, when it refers to the people of Zimbabwe, recognizes the rights of both men and women to enjoy agricultural land equally. In essence, the laws should therefore create a level playing field for both men and women with regard not only to access but also to own and control land.

Section 80 of the Constitution re-asserts the rights of women to agricultural land.⁷ Furthermore, section 80(3) nullifies any laws, traditions and cultural practices that infringe the rights of women. It states that all laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of their infringement. This however is yet to be addressed in relation to land as the permits adopted a villagised model in which Chiefs and traditional leaders are the custodians of the laws and traditions, thereby reinforcing patriarchy.

Custom and tradition have no place for women in land distribution as this is treated as the prerogative of the male heads of the household (Goebel, 2005). Women only become beneficiaries either as spouses, parents, children or siblings of the male head of the family. Given this scenario, the starting point should have been to do away with Chiefs and traditional leaders where there was allocation of land such as in A1 resettlements as this only perpetuates the subjugation of women to patriarchal domination and rule. Such is the reality of the women who have become joint signatory holders to A1 permits but whose decisions and opinions are greatly influenced by men.

⁷ Section 80(1) of the Constitution states that every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities.

While SI 53/14 which governs the allocation of A1 farms and the issuance of the permits is silent on affirmative action in an endeavour to address the historic injustices of women's access to and control of land, the manner in which the land resettlement process was initially conducted was so chaotic that it made it very difficult for women to find their footing in the allocation of land. Section 289 of the Constitution actually deals with the guiding policy on agricultural land. It recognises that in order to redress the unjust and unfair pattern of land ownership brought about by the law, there is a need for equitable access to land by law. It further makes reference to Section 72 which provides for the rights of every Zimbabwean citizen to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of agricultural land and that the allocation and distribution of agricultural land must be fair and equitable, having regard to gender balance and that no person may be deprived arbitrarily of their right to occupy and use agricultural land.

Section 292 of the Constitution calls upon the state to take measures (including legislative measures) to give security of tenure to every person lawfully owning or occupying land. In reality, the laws are yet to be aligned to the Constitution in order to ensure such security of tenure and thus the beneficiaries of land continue to hold their security in fear that their rights may be violated and this is undesirable for production as people cannot commit fully to produce or settle in areas where their security is or may be threatened. Given that sections 296 and 297, respectively, provide for the establishment and functions of the Zimbabwe Land Commission, the hope is that its operation will expedite the enactment of the Zimbabwe Land Bill which will hopefully assist in ensuring that there will be equitable access to land through the elimination of all forms of unfair discrimination, especially gender discrimination, and that investigations, complaints and disputes regarding the supervision, administration and allocation of agricultural land will be conducted expeditiously.

Given the supremacy of the Constitution (section 2⁸), and the above provisions, it is clear that the Constitution does promote women's access to agricultural land rights. The hope is that if the provisions discussed are fully and properly implemented, this will result in the elevation of women and their status in Zimbabwe which will in turn reduce poverty. The hope is that if the provisions discussed are implemented fully, this will result in the elevation of women's status in society and reduce poverty as women will now be able to fully produce on the land.

⁸ Section 2 of the Constitution states that the Constitution is the supreme law of Zimbabwe and that any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.

3.5 The promulgation of the Agricultural Land Settlement (Permits Terms and Conditions) Regulations, SI 53/2014

The Agricultural Land Settlement (Permits Terms and Conditions) Regulations (Statutory Instrument 53/14) came into effect in 2014 and sought to enhance women's rights to access, control and ownership of land. While the Regulations still leave a lot to be desired in terms of its protection of women's rights, it brought about some gender sensitive provisions which were non-existent in the previous pieces of legislation (discussed above). The Regulations were a milestone in addressing women's rights in that it sought to cover the provisions provided for in the Constitution on women's rights. It makes provisions for permit holders and the beneficiaries of land acquired under the land reform programme in terms of effects on spouses with regard to access, control and ownership of farms, be it during the subsistence of a marriage and upon its dissolution upon death or divorce.

While SI 53/14 makes provisions for those in marriages, it makes no provision for any quota⁹ that should be allocated to women. One may argue that while the Regulations do not seek to redistribute land they do seek to govern and make provisions for the protection of the rights of those already in possession of land (WLSA, 2017). Given this scenario, one must applaud the Government for addressing the rights of those women who were previously marginalised because the offer letters were in the names of their husbands (WLSA, 2017). From its definition of spouse, the Regulations seek to incorporate not only those in registered marriages but also those in unregistered customary law unions although the various sections within the Regulations seek to explain the rights and entitlements of the spouses in the different types of marriages.

3.5.1 Definition of spouse

The definition of a spouse in terms of the Regulations includes not only those in a civil marriage but also those in an unregistered customary law marriage. Given that generally such a marriage is only regarded as valid for the purposes of custody, guardianship, and inheritance for the children under customary law (WLSA, 2016), it is very heartening that the State has seen fit to finally recognise this type of marriage in the fight to protect women's

⁹ A quota is a fixed share of something that a person or group is entitled to receive or is bound to contribute.

rights in cases where they are in unions which have not been registered, formalised or solemnised.

3.5.2 Duration of permits and rights of permit holders

Section 5 of the Regulations provides for the duration of the permits and states that they are issued for an indefinite period. In section 6 it clarifies the rights and responsibilities of permit holders. Section 6(1) enables permit holders to occupy, hold and use the allocated land for certain purposes. This gives them the right to occupy and use the land for only three purposes, namely, residential, pastoral and agricultural use. Therefore, it can be inferred that one cannot turn the use of the land to industrial or any use other than those stipulated. The rights of these permit holders are therefore limited by these provisions.

Section 6(2) of the Regulations clarifies that title in the land is not vested in the permit holder as the land belongs to the State and hence the land cannot be sold. The powers of the permit holder are thus limited to, among other things, leasing and bequeathing the land. It states:

(2) For the avoidance of doubt, it is declared that a permit holder does not have title over the allocated land, that is to say, he or she may not sell the allocated land, but may, however, transfer, lease, hypothecate, bequeath or otherwise encumber the allocated land in the manner provided under section 7.

3.5.3 Marriage of permit holders

In section 10, the Regulations deal with permit holders who are married at the time of the signing of the permit. To their credit, they recognise both monogamous and polygamous marriages as they refer to the marriage of a permit holder to one or more spouses at the time the permit is signed. It also enables a permit holder to request that the permit be amended in order to enable his or her spouse to become a joint signatory holder.

3.5.4 Subsequent marriage(s) of married permit holder after permit is signed

Section 11 of the Regulations deals with customary marriages which, in essence, are potentially polygamous. It seeks to protect the rights of the spouse who was a signatory permit holder in that she has to consent in writing to the subsequent spouse being registered

as a joint and equal holder of the allocated land. This is a milestone in protecting women's rights in that a man cannot merely impose other wives on the land without seeking the consent of his existing wife or wives should they be registered on the property. Not only does it enable women to be proactive in securing their land rights, but it also brings to an end the patriarchal notion of having men in full control of what happens to the land.

3.5.5 Unmarried permit holder who becomes married after permit is signed

Section 12 deals with those men and women who are single when the permits are issued but proceed to marry customarily. In such instances, when the signatory permit holder marries his or her first spouse, they will be deemed to hold an equal joint and undivided share in the land, but this does not follow in instances where a man then takes on subsequent spouses as the first wife's consent is required.

3.5.6 Effect of death of signatory permit holder

In Section 13, the rights of spouses upon death are dealt with in that it provides for the surviving spouse in a monogamous marriage to inherit the joint undivided share in the land of the deceased spouse. The surviving spouse will thus be expected to take up the responsibilities and conditions of the deceased permit holder. Should it be a polygamous marriage, then the surviving spouses will remain equal joint and undivided shareholders in the land and also take up the responsibility of the deceased primary permit holder.

Section 13 also provides for the bequeathing of the allocated land to an intended beneficiary or beneficiaries through a testamentary will. This is a milestone in that it secures the wishes of a permit holder should they die and it also reduces the risk of property grabbing and causing conflicts within the family.

3.5.7 Effect of divorce of permit holders

Section 14 which concerns divorce provides for the compensation of the assessed share with regard to contributions towards the development or improvements to the land and not the division of the land. In light of this, it is difficult to protect the rights of women who will be

joint signatory permit holders as they cannot remain on the land but only receive compensation for whatever improvements made to the land. The land under permit cannot be subdivided and thus women remain only beneficiaries for as long as they remain in the marriage and their rights are not protected once the marriage comes to an end.

Since only one party can retain the land while the other is compensated for the value of its improvements, women tend to lose out as they are only subsequent signatories save for a few instances where they are actually sole signatories to a permit. Also, in view of the fact that such determination is made by an arbitrator appointed by the Minister, one wonders whether this type of arbitration is fair and whether it sufficiently takes into account the plight of women whose benefit to such land is derived through marriage.

SI 53/14 provides women with several opportunities in relation to their rights to control and access land. While being gender sensitive in that they not only look at the rights of men, the Regulations create opportunities for both men and women in relation to agricultural land. They address the issue of how one can be compensated at divorce, and while there are still gaps here, these Regulations constitute a significant milestone in the improvement of women's rights since the era when they were prejudiced with regard to land upon divorce. Even at death, not only do the Regulations enable the bequeathing of the land through a will, they also provide for the rights of a surviving spouse upon the death of the permit holder.

3.6 2014 to date: Strides taken to protect women's rights to land

Since the promulgation of SI 53/14 important strides have been made towards the realisation of women's rights in terms of access, control and ownership of A1 farms. However, I have discovered from the interviews conducted during this research that clearly more can be done to improve the operational Regulations of SI 53/14 so that aspects of it can be improved to secure women's rights to ownership of land, especially after divorce.

Speaking to Land Officers in the Ministry of Lands, I was advised that all in all there were **2553 commercial farms** repossessed for purposes of re-allocation into A1 (small scale) farms in the country. The A1 farms are a minimum of 6 hectares of arable land, 1 hectare for household, and 13 hectares for grazing. These had already been allocated to people but the Ministry continues to receive applications from prospective farmers who were on the waiting

list. The files in the office of one of the Land Officers included applications from both men and women either individually or as couples. While there was a gender officer within the Ministry, the Land Officer informed me that they could not ascertain the number of women who actually had benefitted from the allocation process but there were applications received from women as well and the allocation was based on the waiting list.

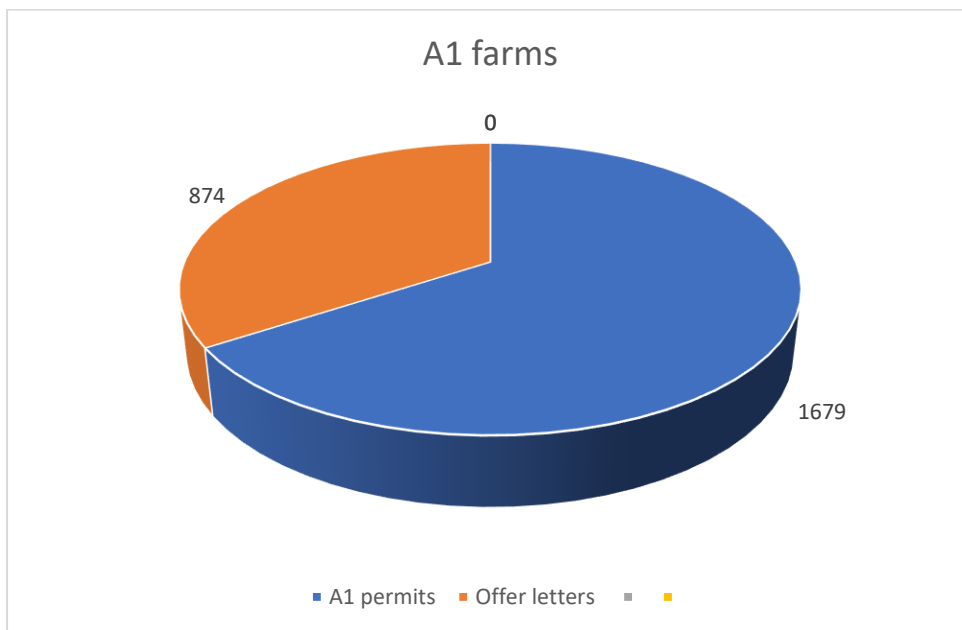
She also emphasised that data on the sexes of the beneficiaries was not being disaggregated which meant that it was difficult to ascertain how many women had benefitted from the exercise. In its baseline report on Gender and Access to Land post the 2013 Constitution in Zimbabwe, WLSA echoed similar sentiments with regard to gender-disaggregated data, stating that the lack of resources, capacity and will on the part of the Government to ensure the availability of up-to-date information remained a challenge. It also quoted one officer in the Ministry of Lands, who emphasised the difficulty in coming up with up-to-date statistics saying that the data was also changing, as women became divorcees, widows, got married or re-married. This, in their view, was the reason one could not ascertain the actual number of women beneficiaries on the ground, and hence the Ministry's thrust to promote allocation per household unit rather than individually.

I was informed by the Deputy Director that of the **2553 commercial farms** allocated for A1 resettlement **1679 farms** already had permits since 2014 when the A1 permits had been initially rolled out. She however could not give me the names of the other areas that had permits, but she did inform me that after its launch in 2014, the permit exercise was then rolled out throughout the country. She emphasised how the process had been rather slow as the preparation work for the allocation of the permits had huge financial implications for the Ministry. I learnt that the process involved purchasing land survey equipment and also equipping the Surveyor General's office with more officers who could work on surveying the land before it was ready to be issued with the permits. A lot of training also had to take place not only for those doing the survey but also within the Ministry in order to impart knowledge of SI 53/14 to officers who would in turn be responsible for allocating the land and adjudicating issues relating to the A1 permits.

Figure 10 is a pie chart which shows the total number of farms available and the number of those with offer letters compared to those who now have A1 permits. It is clear from the pie chart that a lot has been done since 2014 in terms of issuing these permits. However, of

concern is the number of those who are still in possession of offer letters as the women in these areas could be prejudiced by the fact that they do not have the permits and could thus be subjected to all sorts of abuse. It also indirectly affects the production of the land as those with offer letters do not feel sufficiently secure on their pieces of land fearing that they could be chased away at any time.

Figure 10: *Proportion of farms with A1 permit holders to offer letter holders*



Speaking to the Land Officers, I noted that they differed in their opinions. Some were of the view that if anyone had an offer letter, they could not have their issues resolved using the provisions of SI 53/14 while others said that as long as one had an A1 farm, SI 53/14 was the piece of legislation that governed them and any issues concerning them.

On the ground, the A1 permit beneficiaries were convinced that upon divorce the farm would be divided between the parties but this was not the case according to SI 53/14. I did however deduce the origin of the confusion as the responses I received from the officers within the Ministry themselves differed. Some spoke of awarding the land to one spouse and compensating the other, while other officers had divided the piece of land between the two spouses where they had a dispute but this decision had not been reduced to writing. In essence, it became in my view, an operational issue depending on which officer was assigned to hear one's case and that seemed to be the view of most of my respondents.

When I asked whether the officers applied the provisions of the Statutory Instrument in cases of those who died still in possession of letters of offer, they referred me to the Legal Department as they felt they were not legal officers and thus not well placed to respond to that question. This was despite the fact that they were the ones handling the issues. So I later learned that they did their best to work with the judicial system and often postponed their decision until the issue of the distribution of property according to the Letters of Administration and only then allocated the land to the person whom the family would have agreed to take over from the holder of the offer letter.

With regard to educating women on their rights and entitlements under SI 53/14, I was informed that very little had been done as the Ministry was not well resourced to take up that role. There were however, training courses conducted with community leaders such as the Councillors, Chiefs, Village Heads and farmers associations. Also during the issuing process, I was informed that the officers took the opportunity to educate the permit holders of their rights and entitlements. One officer actually pulled out a record which she had set aside since the husband did not want to have his wife registered on the permit. The Deputy Director emphasised that when the A1 permit holders came through to their offices, it was an opportunity for them to interact with these beneficiaries and educate them about their rights and entitlements.

On the issue of security of tenure on the farms, she also informed me that the re-allocation of land was only being done on very few A2 farms which specialised in production such as dairy, coffee, etc., but that this was done in such a way that the white farmers were given a portion of the land and did not displace the beneficiaries of the FTLRP. She reiterated that on the issue of tenure, the thrust of re-allocation to former white farmers was on the A2 and not the A1 farms. She dispelled social media allegations that white farmers were flocking back to the country to reclaim 'their land'. She confirmed that the land reform process was irreversible. This was echoed by the Minister of Lands, Agriculture and Resettlement on the news when he addressed farmers in Chifundi and Emily Park while touring irrigation projects on 10 March 2018. He warned against those who wanted to disrupt farmers who had tenure documents promising that such perpetrators would be brought to account.

Concerning the security of tenure of farmers on A1 farms, I was informed that no displacement was taking place nor intended in the near future. Asked about the farmers who

were said to be coming back and claiming land using their title deeds, I was told that for all land under the land reform process, there were no title deeds as the farms were state land and thus they were only leasehold property. As for the A2 farms, they had 99 year leases, while the A1 farms had A1 settlement permits. In terms of compensation for those who had had their farms taken, I was told that the Ministry was still in the process of compensating farmers and that remained a work in progress.

3.7 Conclusion

In this chapter, I looked at the history of land laws in Zimbabwe from colonial times to date. I also looked at strides made towards empowering women and their rights to land given the number of farms that have had A1 permits rolled out. Evaluating the history of the land laws in the country, one can see how the laws have progressed towards some form of equality for women concerning their access, control and ownership of land. In the next chapter, I will present and analyse my findings using my literature review and the theoretical and methodological framework already analysed. I will also share some success stories from the one-on-one interviews I had in Chifundi village.

CHAPTER FOUR

4.0 FINDINGS

4.1 Introduction

In the previous chapter, I looked at the history of land laws in Zimbabwe from colonial times to the enactment of the Constitution in 2013 which paved way for the Agricultural Land Settlement (Permits Terms and Conditions) Regulations (Statutory Instrument 53/14). For both the Constitution and SI 53/14, I analysed provisions on women's land rights and the strides taken to date to secure these rights for women on A1 farms. In this chapter I will go on to analyse my findings using the different literature and the theoretical and methodological framework already discussed. I will also profile some of the success stories I heard during my one-on-one interviews with my respondents and emphasise the successes of the A1 permits as narrated by the women during my interviews.

4.2 The legal framework in Zimbabwe and its protection of women's land rights

Prior to 2013, the laws in Zimbabwe were gender neutral and did not guarantee women security of tenure at any level before or during marriage, upon the divorce or even death of their husbands (WLSA, 2017). The legal framework, as already analysed above, was silent on women's rights to be allocated land in their own right or as spouses. This was despite Zimbabwe having ratified several international human rights instruments such as the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) which, in article 2(a), mandates states parties to embody the principle of equality of men and women in their national legislation and also to realise this principle in practice. In article 14(2)(g) it also speaks to equal treatment in land and agrarian reforms as well as in land resettlement schemes. In article 16(1)(h), it speaks to the rights of both spouses with regard to ownership, acquisition, management, administration, enjoyment and disposition of property whether free of charge or for a valuable consideration. The 2013 Constitution and the coming in of SI 53/14 have gone a long way in incorporating the provisions of CEDAW. While this is appreciated, implementation remains a challenge.

Article 2 of the Universal Declaration on Human Rights (UDHR) also speaks to the protection of rights and freedoms regardless of sex and this is reiterated in article 7 of the Maputo Protocol which provides for men and women to have a right to the equitable sharing of the joint property derived from marriage. This was incorporated in both the Constitution and SI 53/14. We see SI 53/14 providing for joint registration which entails equal joint control and access rights to the parties. As I interviewed the respondents, there was an overwhelming response from those who had jointly registered permits with regard to the protection of the law. Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living including adequate food. Interpreting this with regard to land means that for there to be adequate food, the laws in place have to be favourable for access and control of land since land is pivotal to the production of food for the family. Once again the SI 53/14 gives equal and joint rights to signatories thereby asserting this right.

The ICESCR brings to the fore the issue of substantive equality which is critical in women's human rights as it notes that formal equality (equality in the law), although important, is not enough to ensure women's rights in reality. Substantive equality understands that in order for women to enjoy their human rights, there is a need to acknowledge the reality of gender inequality so that gender-responsive and women-centred laws and policies are enacted to combat such inequalities. Here we see the inclusion of women on the permits as joint signatories and although it does not cover a large number of women, we do see and realise that strides are being made by the Government to remedy the historic injustices against women. For instance, even though the offer letters only had the name of one person (usually men, we see the A1 permits enabling the joint signing of both spouses. Speaking to the Land Officers, it was actually a prerequisite for every married man to register their spouse and if anyone refused to do so, their application would be turned down or delayed until they had agreed to have their spouse registered as well.

The SADC Protocol on Gender and Development (2016 Revised Version) also makes reference to access to property and resources and in article 18 (a) it states that states parties shall review all policies and laws that determine access to, control of, and benefit from, productive resources by women in order to end all discrimination against women and girls with regard to water rights and property such as land and tenure thereof. Again this could be further reinforced in the laws and the Zimbabwe Land Bill could assist in the protection of such rights. While the Zimbabwe Land Bill is set to repeal some gender neutral laws, it could

be a major milestone in securing women's land rights if provisions of SI 53/14 were to be incorporated into the Bill itself so that the laws do not remain fragmented. The fact that SI 53/14 are Regulations means that as subsidiary legislation they are not as authoritative as primary legislation which is an act of parliament.

4.3 Affirmative action with regard to land distribution: Fact or fallacy

SI 53/14 deals with agricultural state land acquired during the land resettlement process. While it does not necessarily address the historic injustices of women's access to and control of land, the fact that it provides for the joint signing of the permits gives a ray of hope in terms of trying to address the gap in the number of women with land compared to men. In its publication, WLSA notes that as of 2012, 39.7% of women compared to 69.3% men had benefited from the land reform programme under the A1 scheme.

At the inception of the land reform process, while land allocation was said to be based on a "One family, One farm" policy, there was no clear policy as to who would receive the offer letter. The mere proposition was that as long as the farm had been allocated to the family, it belonged to the family as a unit. This however was not the case in times of dispute as the land would then be left to whoever had the offer letter registered in their name. Given the patriarchal nature of our society, it was mostly the men who then had the offer letters in their names. Upon speaking to a group of women in Temperly Village, I discovered that they were disgruntled having received no proper explanation with regard to the rights they had been given and that even though the A1 farms were being initially allocated to couples only, women found that they were only beneficiaries whereas the men were the offer letter holders. One even lamented how she had been prejudiced upon divorce in that, while she was under the impression that she was a joint owner, she was told that she had to vacate the farm as her marriage to the offer letter holder had ended. In her anger she explained:

"... I was the one that had to relocate from our rural home and spend several nights in the 'bush', (with reference to having lived in a farm shared at the inception of the land reform process), I lived under harsh conditions and on some days had to go without food. How can the Government not take into cognisance all the hardships I had to endure in order for us to get a farm? Today I am told that the farm belongs to the man and yet if I had known, I would have registered the offer letter in my name since it was my struggle to get that land."

She blamed cultural socialisation for having made her decide to register the farm in her husband's name, yet she was the one that had endured hardships to secure the land. Cultural socialisation has made women see themselves as being inferior to their male counterparts and thus unable to think of themselves as owners in their own right, but rather as dependents of their husbands. When probed further, she told me how she had been socialised to respect the man as the head of the household, thus leading to her decide to have the offer letter in her husband's name, despite his being absent during the allocation process.

Another respondent, however, gave her version of how she had benefited from the A1 youth scheme and had received her own farm. She celebrated such initiatives by the Government as she was a disgruntled first wife, whose husband had taken another younger wife and thus depleted the family's resources. While women may still be prejudiced in terms of land allocation, one cannot dispute the fact that there is a need for gender disaggregated data so that clear statistics can be obtained and used to design a road map. Given that women also now benefit as spousal signatory holders on the A1 permits, it becomes difficult to ascertain the exact number of women beneficiaries at any one time as some continuously change their status. Also the fact that the SI 53/14 does not provide for equal and equitable distribution of the farm in the event of a dispute, makes it difficult for women to really enjoy their rights. The rights accorded to women in SI 53/14 therefore remain debatable as to whether they are a fact or a fallacy in terms of women's access to and control of land.

As FAO (2002) puts it, gender disaggregation of data is a complex process in most developing countries because of few existing land registers or documents; incomplete or outdated land registers; registers which do not reflect the de facto situation; land registers with only one name, usually that of the men as the heads of the household, and those that do not reflect the variety of formal and informal rights. In the light of this statement, it becomes very difficult to conclusively say that there is no affirmative action or gender equality in terms of land already allocated, as it remains only an argument based on hearsay and mere speculation. This research however provides concrete examples of how women benefited and continue to benefit under A1 permits as discussed below.

4.4 Women's experiences and success stories with A1 permits

4.4.1 Interviewee Hilda

Hilda is in her late 30s, married and is jointly registered on the permit together with her husband. The couple has 4 children aged 9, 15, 18 and 22 and they had started staying in Chifundi in 2000 at the inception of the land reform program. She told me about how happy they were as a couple and how her husband empowered her to run the affairs of the farm since he worked in the city during the week and only came home on weekends. Since they had been issued with the permits, she said that she had been motivated to work hard and she could actually see the results of her hard labour as they had managed to buy several household goods from the proceeds of their farming sales. In her view she had absolute rights to the land as she was joint signatory to the permit and in no way did she feel threatened or any less than equal to her husband.

She also applauded the Government for empowering the black majority as the land reform programme had brought about an opportunity for people to own a piece of land free of charge. The couple managed to build a house and buy 2 cars, a grinding mill and to take their children to better schools away from the village. They also managed to draw electricity from the nearby school to their stand at their own cost. In addition, they had bought several pieces of farm equipment which included ploughs, harrows, scotch carts. They had also acquired several heads of livestock for both consumption and re-sale. They have sunk a well but eventually would like to drill a borehole so that they can increase the productivity of their farm.

The couple was growing soya beans and maize on their 6 hectares as well as different types of legumes and nuts for their personal consumption on their 1 hectare. She was very excited at having permits as she claimed to have benefited from them in that they could now borrow against their plots and continue to develop themselves as a result of the permit scheme. She felt that her rights as a woman had been secured and protected.

4.4.2 Interviewee Kuziva

Kuziva obtained a plot in 2001. It was registered in her husband's name. When the permits were rolled out in 2014, it was then jointly registered in the names of both her and her husband. The couple has 4 children in form 3, grade 6 and grade 1 and one who is married. The couple is married under the civil marriage (Ch. 5:11). Kuziva told me that they are receiving inputs from Command Agriculture to supplement their inputs. She also shared her experience of doing '*maricho*'¹⁰ to get help at times on the farm. At times they would go and help their neighbours in their fields in return for a day's help. Traditionally in the African context, specifically in Zimbabwe it is known as '*nhimbe*'¹¹. Usually the couple however, work as a family on their farm.

She told me that their area is under Chief NemaKonde but that the area he presided over was too big and hence too many matters were being handled by the Chief's Court. This confirmed Goebel's (2005:153) argument that women's relationship to resettlement had to be understood through the lens of culture and ritual, particularly the way in which tradition was deployed in the resettlement context. Chiefs and traditional leaders play a major role in the safeguarding of traditional beliefs and norms such as appeasing spirits and other cultural practices that serve to reinforce patrilineal control over land thereby distancing women from owning land in their own right.

She also told me how easy it was to get paid by the Grain Marketing Board (GMB) in the last 2 years after selling one's crop. When I asked her how long this took, she told me less than 2 weeks and that in most cases within one week after selling their produce. She also shared her joy and confidence in the former Government saying that the issuance of permits had given them security of tenure as the rights of the permit holders are now secured by SI 53/14.

4.4.3 Interviewee Lucy

This interviewee gave me an interesting success story on the acquisition of land. She however expressed concern over shortages of farm inputs. She said her hope was that the Government would subsidise the farmers with inputs if their crops were to survive this season. She

¹⁰ Maricho is when someone goes to work on another's field or piece of land in exchange for money, food or any goods as a payment method.

¹¹ Nhimbe is the act of teaming up in groups to help each other in one's field and take turns to return the favour on theirs. The family being helped usually provides traditional beer and food for the participants.

informed me that they came to Chifundi in 2001 together with her husband. Initially the offer letter was in her husband's name but when the permits were rolled out, it was registered in both their names.

Originally from Masvingo, the couple moved to Mhangura purely because of the land reform programme. They did not have any relatives or family ties in the area and they still consider their rural home to be Masvingo. When the land reform began, both husband and wife were working in the city to fend for their family and support their parents. It had never crossed their minds that they could survive and live on farming until they were resettled in Chifundi village. It was only then that both husband and wife resigned from their formal jobs and resorted to putting their joint efforts into the farm. Lucy resigned first. Her husband quit his job after he saw how good the first season's yield was and when they both did their sum they realised they could actually survive on farming.

Further, she informed me how culture dictated that everything belonged to the husband but was so happy that the permits secured the woman's rights to the property as joint signatories. She said that they could now open joint bank accounts using the permits whereas before they had to rely on marriage certificates to open joint accounts. She admitted that this was a very welcome move. She also informed me that the permits now enable them to get inputs even in the absence of her husband since she is now a joint signatory. This was different from the era of offer letters when only the husband's name appeared on the offer letter and therefore only he could get the farming inputs.

The interviewee celebrated the fact that the permits made provision for when parties divorce or die. She said she now slept in peace knowing that she was free to remain on her farm even if her husband dies and no longer fears being chased away by relatives or having to leave the land because it is reclaimed by the Government and redistributed to other people.

4.4.4 Interviewee Beauty

The interviewee moved to Chifundi in 2003 when her husband was offered a farm. The farm offer letter was in her husband's name. In 2014 when the permits were issued in their area, she was jointly registered with her husband on the permit. She told me how in her

understanding, being jointly registered on the permit with her husband meant her rights to the property were secured should her husband die. She also said it uplifted and empowered women as they now felt secure.

Beauty was once married before coming to Chifundi with her new husband and had children from her previous marriage. Her husband then died in 2015, barely a year after being issued with a permit. She applauded the Government for not only securing her rights upon her husband's death by issuing permits to which she was a joint signatory, but she also expressed gratitude for information dissemination and empowerment as she was able to assert her rights from property grabbers. She said she was now able to look after her children from the previous marriage while working on the farm. This is a milestone for Zimbabwe because SI 53/14 incorporates the protective inheritance provisions of article 21 of the Maputo Protocol Article 21.¹²

When her husband died, the relatives were very supportive of her continuous stay but she faced some problems from her husband's children who threatened to send her away and take over the farm. They even took some household furniture before he was buried but after the police were engaged the family resolved their differences and the step children returned Beauty's household goods. Beauty celebrated the fact that her husband died after the permit had been issued in both their names. She would have become destitute had the demise of her husband occurred before the permits were issued.

On further probing, she hailed the Government's move and she vowed to work hard on her farm as she had been empowered by the issuance of the permits. Of interest to me as the researcher was how she narrated having ignored the children looting her household goods, and decided to concentrate on honouring her husband and giving him a decent burial. Asked why she had not fought back, she said she knew the law was on her side and these children did not know what they were getting themselves into, so she did not want to stoop to their level. She knew that once she reported the matter to the authorities, justice would prevail.

¹² Article 21 of Maputo Protocol on right to inheritance states that a widow shall have the right to an equitable share in the inheritance of the property of her husband.

4.5 Protection of women's rights to land: Real/absolute rights vs. personal rights

As I reached into the community, I was initially of the view that women had no rights of access, control and ownership of land. WLSA quoted Bhatasara and Chiweshe (2017:13) who argued that the issue of married women and their right to control and ownland post the fast track land resettlement programme in Zimbabwe was a complex one. They argued that once a couple were awarded land, it meant that the wife could no longer obtain land in her own name. In simple terms this meant that by virtue of being married, women lost their control over land. In essence this meant that, in most cases, women only had user rights and therefore were limited in their decisions as to what crops to grow, how to market their yields or use the proceeds of their sale (Chiweshe, Chakona and Helliker, 2014). This however was not the situation on the ground in my area of research on all 3 farms, namely Chifundi, Emily Park and Temperly.

The interviews with the women above revealed that the women had the same rights as their husbands and worked amicably on their farms as one family unit. Upon speaking to the village head's wife,¹³ she pointed that since the issuance of the permits in 2014, the women felt very empowered and motivated to work on their land. With regard to determining which crops were to be grown, she felt that they had an equal say and even the labour roles were allocated equally within the family unit. She felt that some women had misinterpreted the permits as having given them power to abuse their spouses and were becoming more unruly to the extent that men felt abused by the women. Through this I affirmed that women are not a homogenous group in that while the general perception was that women were abused and subordinate, not all of them fell into the same bracket as these women in Chifundi were said to be aggressive and assertive.

In terms of determining the market of the crops and what to do with the proceeds of the sales, she emphasised that it depended on each family unit but that the general view was that each family worked together and shared the proceeds proportionately depending on the needs of each partner. In some instances, the families were using the resources to invest in better education for their children or buying properties for themselves. Not in any instance were the women worried about their access to or control over the land. If anything, they actually

¹³ 7 February 2018, Chifundi Village

applauded the Government for making great strides towards remedying the injustices of the past.

4.6 The sweat of their hands: Recognition of hard work put into land by women when resolving access and control rights during marriage and after divorce

Women have always been portrayed as the abused and thus as I began my research, this was the assumption that I held in my thoughts. While the current Constitution has been hailed for taking major steps to redress and improve some aspects of women's rights to property including agricultural land, these steps are slow as the alignment of other laws to the Constitution are yet to be done. The Constitution of 2013 cannot be ignored as it led to the promulgation of SI 53/14 which seeks to enhance women's access to agricultural land. It also provided an opportunity for the drafting of the Land Commission Bill which, once enacted, will see the repeal of major gender neutral laws such as the Rural Land Act, the Agricultural Land and the Land Acquisition Act.

According to article 7 of the Maputo Protocol states parties are mandated to ensure that in cases of separation, divorce or annulment of marriage, women and men have the right to an equitable sharing of the joint property derived from the marriage. This is echoed by section 56 of the Constitution of Zimbabwe on equality and non-discrimination. We also see that SI 533/14 contains a provision for compensating one spouse for the value of their share in improvements to the land if it is awarded to the other. While technically this may seem fair, one cannot ignore the acrimony that prevails at divorce, and wonder if women's work in the home will be considered in such distribution. Just as the Marxist Socialist feminists aver that women's work in the home is not valued and given the recognition it deserves, women are often said to have been working in the home and no value is attached to their work, whereas if it were to be valued, they would get more recognition for work done in the home. I questioned a former legal officer of ZWLA and she emphasised the difficulty in handling such cases as men often claim to have done the majority of the improvements, leaving women with barely nothing to claim, especially since men perceive their wives as not having worked but merely performed household chores and subsistence farming for the survival of their families, work which they consider has no monetary value.

In her experience, however, she hailed the Land Officers in the Ministry of Lands who were instrumental deciding such disputes. She shared her experience of having secured favourable judgments in favour of her clients and she attributed this to the gender training which had probably been done within the Ministry. She hoped that a woman's rights organisation would take up strategic litigation to bring clarity to the manner in which such disputes should be resolved by way of jurisprudence. She felt that there was also a need to lobby the Government to amend SI 53/14 so that its provisions protect the rights of women to an even greater extent.

4.7 Measures to ensure the protection of women's user rights to land

Women's user rights to land continue to be central to the concerns of women's lobby groups and the Government. During my interview with a Legal Officer at WLSA, I learnt of the various initiatives being taken by their organisation to protect women's rights to land. These included legal and non-legal measures. As an organisation, WLSA was in the process of lobbying the ZLC so that it incorporates the provisions of the SI 53/14 into the Land Bill. This, in their view, would better protect the land rights of women as anything short of that would not be treated with the same seriousness. They were also working towards engaging with the ZLC so that it aligns laws such as the Matrimonial Causes Act with the provisions of SI 53/14.

WLSA was also seeking to engage the ZLC to implement the provisions of the 2013 Constitution with regard to women and land. This entailed looking into the 50/50 allocation of land and also fostering gender mainstreaming in land policies as outlined by the Constitution. A legal officer at ZWLA also shared their intention to take up strategic litigation with regard to women's user rights and to challenge the allocation of land to bring about a shift from a policy of 'one household, one farm' to a situation in which every person is considered in the allocation of land on an individual basis.

Speaking to the Land Officers in the Ministry of Lands, Agriculture and Rural Resettlement, I noted their differing opinions and therefore identified that they all need to be educated about and trained in how to apply the provisions of SI 53/14. The officers also seemed to be

overwhelmed with the large amount of work received by their offices and they attributed the slow implementation and actioning of applications to a lack of adequate human resources.

4.8 Conclusion

In this chapter, I have analysed my findings in the field and made reference to the literature and theoretical framework already discussed earlier. I profiled the success stories of the A1 permits in Chifundi village based on the voices of my respondents whom I interviewed at length and in-depth during my one-on-one interviews with them. This was a major part of this research as the interviews covered the various aspects of investigation which I had raised in my research assumptions and questions. In the next chapter, I conclude the research and make recommendations for the future so that women's access to and control of land are better protected.

CHAPTER FIVE

5.0 CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

Having looked at the issue of laws governing land under permit and their impact on women's land rights, I have drawn the following conclusions:

1. Whether the legal framework in Zimbabwe adequately protects the land rights of women on A1 farms in Zimbabwe.

From my assessment of the laws governing land in Zimbabwe, I am persuaded to conclude that strides have been made towards the protection of women's land rights on A1 farms. The promulgation of SI 53/14 has ushered in a new era which is beginning to accommodate women's rights, concerns, interests and needs. While the laws can still be improved, one cannot ignore the fact that Government has taken measures to correct historic injustices against women. There is also a concern over the allocation of the A1 permits as some women are yet to benefit from them. Some women continue to face discrimination as they are not registered on the offer letters and thus their security is not guaranteed in terms of application of the law as each case is treated on an individual basis depending on the particular Land Officer who handles the matter. However, from the perspective of the respondents in the villages in which I conducted my research, the beneficiaries celebrate the measures already in place, especially the fact that they are joint signatories to the permits. In their view, the laws protect them in a big way compared to yester year when there was no recognition of women's rights at all.

2. Whether the laws regulating A1 farms have any provision for affirmative action with regard to land distribution.

The operational law, being Statutory Instrument 53 of 2014, does not specifically seek to address affirmative action in terms of land distribution. What it seeks to do is move from the offer letter system in which the holder of an offer letter holds all the powers to the land, to a

system where both spouses are equal and joint beneficiaries of the land in question. As a result, the number of women who are now registered on A1 farm permits has increased. That being the case, it is safe to conclude that the laws regulating A1 farms make no provision for affirmative action with regard to land distribution as there is no law that actually addresses affirmative action with regard to land allocation save for the Land Acquisition Act which, according to the Utete Report, gave a 20% quota for women. With respect, this quota is untenable and cannot be objectively justified based on the fact that women constitute about 51% of the population.

3. Whether women's land rights on A1 farms are real/absolute and can be easily violated.

While it can be concluded that the rights conferred by A1 farm permits are real as opposed to personal, they give their holders (women and men) in their individual capacity or joint holders (wives and husbands) greater protection. However, when it comes to their being easily violated, it is my view that the laws can be amended to improve the protection of women's rights, especially at divorce.

4. Whether the law recognises or values the hard work put into the land by women when resolving access and control rights during marriage and after divorce.

It is concluded that the law does recognise and value the hard work put into the land by women when resolving access and control rights during marriage and after divorce. Statutory Instrument 53/14 clearly stipulates that both signatories have equal and joint rights and even at divorce it provides for the parties to agree on who remains on the land and the manner in which the party leaving should be compensated for the improvements done on it. This is view of the fact that the SI makes it quite clear that the land cannot be divided as it is only enough for a single household unit.

5. Whether there is a need for legal and non-legal measures that will ensure women's user rights to land are protected in A1 farms.

Women's user rights can be further protected hence it is my conclusion that there is a need for not only legal but also non-legal measures to ensure the protection of their rights. The reason is that so long as these rights are not fully covered or provided for by the law, violations will continue to occur. Even in instances where the laws are available, their intended beneficiaries cannot use them to assert their rights if they are unaware of their existence. I also noticed that there was no agreement between the various implementers of the laws (i.e., within the Ministry itself and among other key respondents such as the Councillor and the village head) as to their understanding and application of the law.

5.2 Recommendations

Having made the above conclusions, below are my recommendations.

1. The legal framework in Zimbabwe and its adequate protection of the land rights of women on A1 farms in Zimbabwe.

While there have been strides made towards protecting women's land rights through the legal framework, I believe more can be done in order to tighten the laws and align all other laws to the Constitution so that there is little to no discord in their application. The Constitution has been hailed for its gender equality and non-discrimination clauses, but as long as the Constitution is applied in isolation and the other laws are not aligned to its letter and spirit, women will continue to face discrimination.

There is also a need to disseminate information to these women about their rights so that they can assert them. In so doing, it is imperative that measures be taken to translate laws such as SI 53/14 into all sixteen languages recognised by the Constitution so that at least this critical legal information can be easily accessible to all. Such translations should then be disseminated throughout the country so that they are readily available, not only to the officers implementing the law but also to the public at large and should be made available through community libraries and leaders.

There is a need to expedite the issuing of A1 permits so that all the women in the country can apply for and enjoy access to them especially given the fact they have already been available

for four years. They are an ideal tool through which to eliminate the marginalisation which many women continue to face.

2. Laws regulating A1 farms and provisions for affirmative action with regard to land distribution.

While Statutory Instrument 53/14 does not seek to address affirmative action, there is a need to remedy the historic injustices which are still in evidence by making sure that in all possible cases where the permit holders are men who have spouses, their wives must be registered as joint and equal signatories. It is also important to realise that while we seek to achieve affirmative action, women are not a homogenous group and thus there is a need to find ways of fighting for women in different spheres. For example, when considering recommendations, we need to factor in the unique needs, interests, rights and concerns of women with disabilities, young women, the youth, widows and single women. From my findings, it was said that land was being allocated to couples, but the offer letters were only being issued in the names of husbands. Very few women, such as widows, had benefitted in their individual capacity and there was only one lady in particular who had benefitted as a youth.

Given that very few women have directly benefitted from the land reform programme, it is recommended that there be gender disaggregation of data so that it is clear for all to see. As long as such information remains unrecorded it will remain very difficult to ascertain how many women have actually benefitted and what sort of recommendations should be made for affirmative action. It is a matter of pure reason and fairness that the 20% quota for women put forward by the Utete Report will do very little to remedy the injustices against women given that they comprise the majority of the nation's population.

3. Women's land rights on A1 farms are real/absolute but they can be easily violated

Given that the A1 permits give women real rights to the land, there is a need to empower them in relation to their rights. There is also a need to train the implementers of the laws within the Government so that they apply the law uniformly in all the cases that they handle. Given that SI 53/14 provides for the registration of spouses, the Land Officers need to be

trained to ensure that for any future permits issued, the women are co-registered in order to secure their rights.

I also recommend the continuous implementing and simultaneous monitoring of the provisions of SI 53/14 so that the exercise of issuing of A1 farm permits can continue and where challenges are identified they can be addressed. Currently, women depend on District Lands Committees to adjudicate issues regarding their land rights and are unaware that the Constitution and SI 53/14 have vested them with real rights which have the protection of the full force of the law.

There is also a need to train and equip these District Land Officers on the provisions of the Constitution and SI 53/14 so that they handle the issues according to law. Chiefs and traditional leaders are also in need of such training as they are the ones at the grassroots who usually adjudicate land issues.

4. Placing a value on the hard work put into the land by women when resolving access and control rights during marriage and after divorce.

While the law does recognise and value the hard work put into the land by women when resolving access and control rights during marriage, I feel that more can be done at divorce so that one is not only compensated for the improvements on the land, but can have an opportunity to be reallocated a plot of land if land is available. Also there might be a need to treat each matter on a case by case basis so that in certain instances, a woman who is a mother figure may actually remain on the land. Given that the land belongs to the Government and that one can only be compensated for the improvements to the land, I recommend that the provision which protects the signatory permit holder who has contributed most to such development be scrapped. Firstly, there are many cases in which women are not able to contribute as much as their husbands due to the performance of their biological roles such as child birth and rearing. Furthermore, women's household work and the hard work they invest in the productivity of land is not fairly and properly valued or recognised.

There is also a need to sensitise the community on the provisions of SI 53/14 as the permit holders are under the impression that at divorce, the dispute can be resolved by subdividing

the land for which there is no such provision. This too goes back to the officers responsible for issuing of these permits in that it seems they are the ones misinforming the general populace without regard to the actual provisions of SI 53/14.

5. The need for legal and non-legal measures that will ensure women's user rights to land are protected in A1 farms.

It is recommended that laws governing land under permit be incorporated in the Zimbabwe Land Commission Bill in order to have one holistic piece of legislation rather than having to rely on fragmented pieces of law. The provisions of SI 53/14 also need to be incorporated in the ZLC Bill. Laws such as the Matrimonial Causes Act also need to be amended in line with the provisions of SI 53/14. There is also a need to ensure gender parity in the ZLC itself and that women enjoy equal representation in the Commission.

In order to trace and track the pattern of land ownership by gender on a national scale, there is a need for an arm such as the ZLC to spearhead the generation of gender disaggregated data on land allocation which is stored in a decentralised database and made accessible to all districts and provinces.

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Annexure A – Research Permission from the Director, Human Resources – Ministry of Lands

All correspondence should be addressed to

"THE SECRETARY"

Telephone: 706081/9

Fax: 734646

Telex: ZIM AGRIC: 22455 ZW



**MINISTRY OF LANDS, AGRICULTURE
AND RURAL RESETTLEMENT**
Ngungunyana Building
1, Borrowdale Road
Private Bag 7701
Causeway
Harare

Ref: P/GWANZURA S

31 January 2018

Ms. Sibongile Gwanzura
2 Forestview Gardens
11 David Morgan Crescent
Avondale
Harare

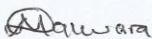


**REQUEST TO CARRYOUT A RESEARCH IN THE MINISTRY OF LANDS,
AGRICULTURE AND RURAL RESETTLEMENT: MS. SIBONGILE
GWANZURA: STUDENT: UNIVERSITY OF ZIMBABWE.**

Reference is made to the above subject matter.

This letter serves to inform you that the Director Human Resources has approved your application to carry out a research in the Ministry of Lands, Agriculture and Rural Resettlement.

Furthermore you are advised to use the information that you are going to obtain for the research project only and avail a copy of the same to the Ministry upon completion.



L. Makwara

FOR SECRETARY FOR LANDS, AGRICULTURE AND RURAL RESETTLEMENT

Cc. Director HR

Annexure B – Research Permission from Secretary for Lands and Rural Resettlement

All correspondences should be addressed to: The Secretary
TELEPHONE: 797325 and 706286

FAX: 708315

Ref: P/GWANZURA S

12 January 2018

Ms Sibongile Gwanzura
2 Forestview Gardens
11 David Morgen Crescent
Avondale



Ministry of Lands and Rural
Resettlement
Private Bag 7779
Causeway, Harare



REQUEST TO CARRYOUT A RESEARCH IN THE MINISTRY OF LANDS AND RURAL RESETTLEMENT: MS. SIBONGILE GWANZURA: STUDENT: UNIVERSITY OF ZIMBABWE.

Reference is made to the above subject matter.

This letter serves to inform you that the Secretary for Lands and Rural Resettlement has approved your application to carry out a research in the Ministry of Lands and Rural Resettlement.

Furthermore you are advised to use the information that you are going to obtain for the research project only and avail a copy of the same to the Ministry upon completion.

Handwritten signature of L. Makwara in black ink.


L. Makwara
FOR SECRETARY FOR LANDS AND RURAL RESETTLEMENT

Annexure C – Sample of A1 Permit

00007357

PERMIT NO: MSW/MAK178/V1/02 File Ref: MSW/MAK178

A1 MODEL SETTLEMENT PERMIT
(Statutory Instrument 53 of 2014)



Entered into Between

THE GOVERNMENT OF ZIMBABWE
Being duly represented by
**THE MINISTER OF LANDS AND RURAL
RESETTLEMENT**

And

[REDACTED]
ID NUMBER: [REDACTED]
&
[REDACTED]
ID NUMBER: [REDACTED]

(hereinafter referred to as the "Permit Holder(s)")

(In relation to any person who holds land under this "Permit Holder" shall mean the head of household in whose name this permit is issued and his or her spouse (s) as specified under Section 2.1 of this permit)



A1 MODEL SETTLEMENT PERMIT
PRELIMINARY

This Permit relates to Resettlement Land acquired by virtue of section 72(2) and 72(4) of the Constitution of Zimbabwe, 2013, and in particular to that category of Resettlement land allocated under the A1 Model Scheme described in the Land Reform and Resettlement Programme and Implementation Plan (Phase 2) published in April, 2001 (as re-issued and amended from time to time);

This Permit is issued subject to the terms and conditions set out in the Agricultural Land Settlement (Permit Terms and Conditions) Regulations, 2014.

DETAILS OF PERMIT HOLDER

For the purposes of this section, a "Permit Holder" means a male or female head of household in whose name this Permit is issued. The Permit Holder in whose name this Permit is issued shall be primarily responsible for fulfilling the conditions of this Permit.

However, despite the fact that the Permit is issued to the person named in this section, the spouse of the Permit Holder or, in the case of polygamous marriage, all the spouses of the Permit Holder (as specified under section 2.1), shall be regarded as Joint Heads of Household for the purposes of this Permit.

1.1 Surname: [REDACTED]

1.2 First Name: [REDACTED]

1.3 Other Names: **N/A**

1.4 Title (Dr./Mr./Mrs./Miss./Ms.): MR

1.5 Place of Birth: **CHINHOYI**

1.6 Date of Birth: **21 NOVEMBER 1968** Age: **45 Years**

7 National ID Number: [REDACTED]

Marital Status (tick applicable):	Married <input checked="" type="checkbox"/>	Single <input type="checkbox"/>	Divorced <input type="checkbox"/>	Widowed <input type="checkbox"/>
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Citizenship: **ZIMBABWEAN**

PERMIT NO. MSW/MAK178/V/1/02

IN THE CASE OF JOINT SIGNATORIES:

2.1 Surname: [REDACTED]
2.2 First Name: [REDACTED]
2.3 Other Names: **N/A**
2.4 Title (Dr./Mr./Mrs./Miss./Ms.): MRS
2.5 Place of Birth: **GOKWE**
2.6 Date of Birth: **02 MARCH 1985** Age: **29 YEARS**
2.7 National ID Number: [REDACTED]

2.8 Marital Status (tick applicable):

Married	Single	Divorced	Widowed
✓			

2.9 Citizenship: **ZIMBABWEAN**

3.1 Surname: **N/A**
3.2 First Name: **N/A**
3.3 Other Names: **N/A**
3.4 Title (Dr./Mr./Mrs./Miss./Ms.):
3.5 Place of Birth: **N/A**
3.6 Date of Birth: **N/A** Age: **N/A**
3.7 National ID Number: **N/A**

3.8 Marital Status (tick applicable):

Married	Single	Divorced	Widowed

3.9 Citizenship: **N/A**

PERMIT NO. MSW/MAK178/V1/02

4.1 Surname: **N/A**
4.2 First Name: **N/A**
4.3 Other Names: **N/A**
4.4 Title (Dr./Mr./Mrs./Miss./Ms.): _____
4.5 Place of Birth: **N/A**
4.6 Date of Birth: **N/A** Age: **N/A**
4.7 National ID Number: **N/A**

4.8 Marital Status (tick applicable):

Married	Single	Divorced	Widowed
---------	--------	----------	---------

4.9 Citizenship: **N/A**

5.1 Surname: **N/A**
5.2 First Name: **N/A**
5.3 Other Names: **N/A**
5.4 Title (Dr./Mr./Mrs./Miss./Ms.): _____
5.5 Place of Birth: **N/A**
5.6 Date of Birth: **N/A** Age: **N/A**
5.7 National ID Number: **N/A**

5.8 Marital Status (tick applicable):

Married	Single	Divorced	Widowed
---------	--------	----------	---------

5.9 Citizenship: **N/A**

PERMIT NO. MSW/MAK178/V1/02

DETAILS OF ALLOCATED LAND

For the purposes of this section and sections 4 and 5, "Allocated Land" means the Land allocated to the Permit Holder under this Permit as indicated in the attached layout.

- 6.1 Name of Allocated Land: **Remainder of Chifundi**
- 6.2 Plot Number: **2**
- 6.3 Area of Allocated Land in hectares: **(a) Residential 1; (b) Arable 6; (c) Communal Grazing 13**
- 6.4 Date of allocation: **04 October 2001**
- 6.5 Ward: **Five (5)**
- 6.6 District: **Makonde**
- 6.7 Province: **Mashonaland West**

Signature of Permit Holder: [Redacted] Date: **02/06/14**

IN THE CASE OF JOINT SIGNATORIES:

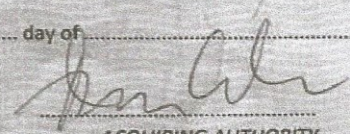
Signature of Permit Holder: [Redacted] Date: **02/06/14**

Signature of Permit Holder: _____ Date: _____

Signature of Permit Holder: _____ Date: _____

Signature of Permit Holder: _____ Date: _____

ued by _____ this _____ day of _____



ACQUIRING AUTHORITY
(MINISTER OF LANDS AND RURAL RESETTLEMENT)

MASHONLAND WEST PROVINCE
 Makonde District: Angwa North I.C.A
CHIFUNDI

Subdivisions Layout
 Scale: 1:25000

1:50 000 Map Ref.-1730A1
 Contact Print-HRE 1984:258 B 344
 Total Farm Area = 832 ha

