

**Interrogating Marriage as an Organizing Framework
in Land Based Businesses: A Case Study of Women
Horticulture Farmers in Ward 25, Nyadire District,
Mutoko, Zimbabwe**

By

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Dedication

To all women in business the world over

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Last, but not least, to the one above all of us, the omnipresent God, for giving me the strength to go on.

Declaration

I, Rosalie Kumbirai Katsande, declare that the work presented in this thesis is my own and it has never been submitted for a degree course in any other university. Where information has been obtained from other sources, I verify that this has been revealed.

Signed.....

Date.....

Acronyms

AABSS	The American Association of Behavioral and Social Sciences
AFC	Agriculture Finance Corporation
AGRITEX	Agricultural Extension Services
CBZ	Commercial Bank of Zimbabwe
CCPR	Committee on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
DRD	Declaration on the Right to Development
ESAP	Economic Structural Adjustment Programme
FAO	Food and Agriculture Organization
FTLRP	Fast Track Land Reform Programme
GAD	Gender and Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LAMA	Legal Age of Majority Act
MFI	Micro Finance Institution
MSME	Micro Small and Medium Enterprise
NGO	Non Governmental Organization
POSB	People's Own Savings Bank
SACCOS	Saving and Credit Co-operatives Societies
SADC	Southern African Development Community
SEARCWL	Southern and Eastern African Regional Centre for Women's Law
SEDCO	Small Enterprises Development Corporation
UCLU	Unregistered Customary Law Union
UK	United Kingdom of Great Britain

UN	United Nations
WAD	Women and Development Approach
WADCO	Ward Development Committee
WID	Women in Development
ZANU (PF)	Zimbabwe African National Union – Patriotic Front

Abstract

This study explores married women's rights and entitlements in horticulture businesses located in irrigation schemes in Ward 25 in Nyadire District, Mutoko, Zimbabwe. The study is primarily directed at understanding the role and impact of laws and policies on marriage and business and the differential effect of these laws on the lives of women as compared to men. Central to the argument presented in this study is the need to transcend the historical male dominated notion of marriage in family business arrangements and look at it as a partnership relationship that defines the responsibilities between the parties to each other beyond the marriage relationship. In family business relationships, marriage should not be central and treated as it has traditionally been, that is, as the dominant framework, but, rather, the business relationship should define individual contributions to the marriage.

In this study, I am arguing that the under-valuation and chronic under-recognition of women's contribution to family economies lie in the dominance of marriage as the organizing model for farming business activities in both communal and small scale resettlement land. The study focused on not just the contribution of women to horticultural production through their labour input into the plot and household, but also on the relationship between production and reproduction in a family business that came into being as a result of marriage. The findings show that women are given minimal recognition in the business as they are not involved in the major business decisions, most importantly decisions on how the income generated from the business is used. The business models discussed in this study are the family and co-operative models. These models are layered in a way that adversely affects women's capacity to engage with them. The findings show that the family model dominates despite the overarching old co-operative model. Whilst the operation of the irrigation schemes is regulated by state law, in reality, operation is guided by a set of norms that are more applicable and seen as being more acceptable than state enforced laws. The study concluded that regardless of whether marriage is formalised under statute or custom, women in the irrigation schemes do not enjoy anything more than the mere rights to use the land. Married women rarely enjoy equal rights to control proceeds of the horticulture businesses.

This study, therefore, seeks to profile women horticulture farmers as serious contributors and to see them not only as wives but also as partners in the business. To achieve this, the first step is to recognize the economic value of women's work in the home and in the horticulture plots. Valuing women's work will show the extent of women's contribution to the horticulture business. A platform for this has been created by the 2013 Zimbabwe Constitution through the provision of an unqualified equality clause in section 56. The national objective on marriage in section 26 also provides for equality of rights and obligations of spouses during marriage and at its dissolution; and that in the event of dissolution of a marriage, whether through death or divorce, provision should be made for the necessary protection of any children and spouses. This has been put into effect through the new Agricultural Land Settlement (Permit Terms and Conditions) Regulations of 2014 (SI 53/2014) which is discussed in this study.

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Chapter 1 Understanding the problem

It is likely that our failure to assign a price for the services of the homemaker has tended to convey the impression that they are valueless rather than priceless. (Waring, *If Women Counted: A New Feminist Economics*, 1998)

1.1 Background to the Study

Rudo is a second wife in a polygamous relationship. She is the holder of a plot she inherited from her parents in her capacity as the first child, as the deceased did not produce male children who could have inherited the plot. The plot is registered in Rudo's name and she is staying on it with her husband who moved there in 2006 upon their marriage. Her husband came with his first wife and they are all staying together on the plot.

The family grows crops like butternuts, traditional cucumbers (*magaka eminzwa*), green vegetables, tomatoes and okra. The two wives regard their farming as commercial and they sell their produce mainly at Mbare¹ market. It is their husband who goes to the market usually twice a week. They are not at liberty to question him how much he got for their produce at the market for fear of his saying things like, "*Urikuda kunditora stock here?*" ("*Are you taking stock?*") *He can even buy something with their proceeds and say, "Madzimai ndadzoka, mari ndatenga marata aya."* ("*My wives, I am back, with the money realized from the sale I bought roofing material.*") This decision to buy roofing material is made without consulting his wives, even though they are heavily involved in the business. This is done regardless of other business plans the wives may have in mind. If the wives want something, they have to write a list of the things they need and their husband will buy the required things on their behalf. In the rare circumstances that one of the wives goes to the market, she cannot buy anything without the consent of her husband.²

The above is a narrative of the outcome of an interview I did in the initial stages of fieldwork.

I paid little attention to this interview because, by then, I was deeply concerned about establishing the entrepreneurial potential of women horticulture farmers. However, this narrative became the cornerstone of the argument presented in this study. The narrative is a classic case of male dominance and women's subordination. Even though Rudo, the second wife, is the registered plot holder, her husband controls the business. When I asked Rudo

¹ Mbare is a market for fresh produce located at Mbare bus terminus in the suburb of Mbare in Harare. This is the major market for small scale horticulture farmers.

² Interview at Nyaitenga Overhead Irrigation Scheme held on 20 July 2010.

during a second interview about her decision to become a second wife, she said, “*Society looks down upon unmarried women ... but a second wife is treated with much more respect than a single woman.*”

This study will show that women horticulture farmers are involved in both productive and reproductive work, with the family as the primary unit of production. Women work day-in, day-out providing labour for the horticulture business. The horticulture business relationships that most of these women and men in my study are involved in are premised upon marriage. The study examines how different legal norms are reinforcing gendered forms of exclusion and how asymmetric power relations are created in the process. It focuses on dynamics at play between legal pluralities and women horticulture farmers’ struggles for gender and economic justice, drawing upon findings from an empirical research study that I carried out on women horticulture farmers in irrigation schemes in the Mashonaland East Province of Zimbabwe. The study is informed by an earlier study by Griffiths, where she focussed on the relationship between justice, as represented by law and women’s experiences of the gendered world in which they have to negotiate their status on which claims to property and resources in family life are based (Griffiths, 1997, p. 1). In her study, as is the case with this study (though from a different perspective), Griffiths focussed on two interrelated themes. She looked at (1) the interconnections of gender, marriage and the other relationships between women and men and access to resources, and (2) the underlining relationships between state law and customary law in theory and in practice.

In this study, there are disputes in which women are being forced to abandon property acquired from the proceeds of a family horticulture venture because the land on which the business is located is controlled by the man’s patrilineal family. This occurs despite the fact that the women’s labour, contribution and intellectual capital were used to drive the business.

Marriage, as a legal concept, distorts the business relationship in which the parties had been involved. This leads to women being viewed not as the business partners of their husbands but merely as their wives. The business model that dominates the use of land is located in marriage and the family obligations that flow from marriage. The study will present cases that demonstrate that once a matter arises between married couples, the word 'marriage' blocks all the other avenues that could have been pursued in resolving what could otherwise be a purely business dispute.

I am a lecturer based at the Southern and Eastern African Regional Centre for Women's Law (SEARCWL) based at the University of Zimbabwe. Among my other duties, I teach an optional course entitled, 'Women Commerce and the Law in Africa' at Master's level. In 2013 we had a combined seminar with the 'Women, Families, Social Realities and the Law' class. This occurred after it was realized that the two courses converged in the areas of women's work and the valuing of women's work. We started by looking at the implications for women and girls when men/fathers enter the commercial arena. The general observations of the students were that women's work in terms of home care work, home chores, trading and selling obligations and family business related tasks will increase, but that there are very few chances of remuneration for the work and women's leisure will be curtailed. The other exercise looked at the implications for men and boys when women/mothers enter the commercial arena in terms of home care work, home chores, trading and selling obligations and family business related tasks. The general observation of the students was that any increase in men's work is marginal and that their chances of remuneration are high. For the males, only their leisure may be marginally affected.

The second exercise was more complex. It involved the students identifying the area of law applicable to different case scenarios. One of the scenarios was that of a notional man and a

notional woman who resided separately on a notional piece of land and were not related to each other, but who worked together to build a business and shared the risks and the ups and downs of a farming enterprise. The students were asked how they conceptualized the pair, legally? Their answer was that it was probably a partnership. Even if they had not carried out the legal niceties of forming a partnership, at the breakup of their relationship or upon the death of one of them, the law, in trying to resolve how to deal with the assets and compensate the parties or their estates, would construct a partnership and an exercise in the re-assignment and re-distribution of the partnership's assets would take place. During its life, the partnership would be liable for common expenses, labour, input costs, marketing and whatever is required to keep the enterprise functional and profits would be shared on, perhaps, a *pro rata* or equal basis.

The next scenario was what if the notional pair had started out on the notional land as unconnected social or emotional people who later became involved with each other in emotional, social, reproductive and related activities? And what if one of them died or they separated? Which area of law would then be applicable? There was an extensive debate about this. The family law students began to bring in their family law expertise, provisions of laws, such as the Matrimonial Causes Act (Chapter 5:13) and inheritance laws were cited. The question we asked the class was, 'Why do we treat the two scenarios differently because marriage or a marriage-like relationship intruded into the relationship between the parties?' 'Do we assess or divide up the partnership assets, profits and losses at the door of the church or at the commencement of whatever other process is invoked to establish the relationship?' Yes, it seems, as lawyers, we do and then we recommence our assessment according to the laws, general law or customary law, regulating marriage.

Why do marriages or marriage-like relationships obscure our view of the reality of the business enterprise that the pair is engaged in? Could it be because the moment we hear the word ‘marriage’, we make it the mediating legal framework and our vision is distorted. This is not to suggest the marriage is irrelevant, rather it is a case of how exactly we regard it. Where and how do we nest the relationship and its consequences? How do we assign values and recognition to the various activities of the parties? Do we nest the marriage in the business enterprise or the business enterprise in the marriage? What we decide makes a very significant difference. Answering these questions forms the basis of my thesis.

My study is located within equality and non-discrimination and the broader human rights discourse. The rights discourse is a powerful tool for making governments accountable for the treatment of their citizens. As such, feminists have adopted this discourse to help secure women’s rights. Securing women’s rights means ensuring that women are included in the group to whom the entitlement is extended.

The study will show that the strong links in land based horticulture businesses to marriage leads to the application of customary law that may, in turn, lead to women’s subordinate status and lack of recognition of their labour and contribution. This is despite the fact that the horticulture venture also falls under a co-operative business model governed by an agreed constitution by the co-operative members, making the regulation of irrigation schemes a well defined area of general law. Arguably, there should be very limited reach or impact of customary law in such cases.

The study at first was exploratory and was designed to gain deeper understanding of the business models women horticulture farmers were engaged in and their possible limitations. This empirical research was based on a case study of Chitora I, Chitora II, Nyaitenga Drip and

Sprinkler Irrigation Schemes in Mutoko focusing on the opportunities that were available and the challenges women were facing. As the study developed, I used an investigative framework; firstly, I interrogated and investigated the business models women were using. The data collected was analyzed using orthodox legal theory to map the models. I used legal pluralism to help map the multiple normative orders, that is, state law and official customary/living customary law. It was only from there that the models started to emerge. Data was collected and analyzed using the capabilities approach within the broader framework of the women's law approach. The central question asked by the capabilities approach that guided me through data collection was not, "How satisfied is this woman, or how much, in the way of resources, is she able to command?", but, instead, "What is she actually able to do and to be?" (Nussbaum, 2000, p. 15).

It is within this broad methodological framework that narratives of women horticulture farmers' experiences were collected and analyzed. My main interest was to allow the women horticulture farmers in Mutoko to narrate their experiences in their own voices and within their own context. In collecting data, I utilized multiple data collection methods, including interviews, focus group discussions and observations.

What emerged was that there were three categories of women in different circumstances.

These were:

1. Women with very clear land rights but these rights were not being recognised and actualised. This category comprises women who inherited the plots from their husbands and daughters who had inherited from their parents. There are various ways in which the women are being deprived of effective utilization of the land.

2. Women in *de facto* control and management of the irrigation plots. These are women whose husbands work in towns and the women are responsible for the day-to-day running of the horticulture businesses.
3. Women working on the irrigation plots with their husbands.

Women in all the three categories, especially the first category, are rightful occupiers in terms of the law through the Irrigation Schemes' Constitutions and inheritance laws. As individuals, they are entitled to occupation, use and enjoyment of the land but for most this is not the case. They lack control and some are not in full occupation of the irrigation plots. This is despite the fact that they also have clear rights in terms of the 2013 Zimbabwean Constitution and land rights now conferred on them by the Agricultural Land Settlement (Permit Terms and Conditions) Regulations of 2014 (SI 53/2014). Their problems emanate from culture, marriage, social attitudes and politics. The women horticulture farmers are in business. They do not need diversionary income generating projects purportedly set up in the name of development. What they need, as this study will reveal, is autonomy, decision making and power. They need capacity and recognition of their capabilities.

1.2 Study objectives

1. To identify and assess how women farmers in the horticulture sphere, in the Mashonaland East Province of Zimbabwe, are conducting business and the business models, if any, that they are engaged in.
2. To identify and analyze the appropriateness of the business models used by women.
3. To identify and analyze the legal frameworks that women may utilize to enhance their horticulture businesses.
4. To examine the factors that may inhibit the use of the various legal frameworks by some women farmers.

5. To explore whether women's inability to have a dominant role in horticulture businesses is as a result of the non-implementation of laws.
6. To recommend the appropriate implementation strategies that the state and development oriented Non Governmental Organizations (NGOs) might utilize to promote and strengthen women's businesses in the horticulture sector.

1.3 Study assumptions

1. Most women horticulture farmers in Mutoko are involved in commercially viable businesses and the models of doing business that are functioning are the family model and the cooperative model.
2. The cooperative business model is not effective for the horticulture farmers because it was imposed upon the horticulturalists at the inception of the irrigation schemes through Government of Zimbabwe socialist policies.
3. Most women horticulture businesses situated within a family set-up are deeply affected by sex and gender relations, thereby limiting their capacity.
4. The fact that most women horticulture businesses are situated within the family leads to the non-valuing of women's work in the horticulture business and women are not seen as partners in the business.
5. State and development oriented NGOs do not appreciate the needs of women horticulturalists in developing their economic situation.
6. Most women's inability to have a dominant role in business is as a result of the non-implementation of laws and an influence of other non-legal factors, such as politics, culture and geography.

1.4 Research Questions

1. Are most women horticulture farmers in Mutoko involved in commercially viable businesses and are the family model and the cooperative model the functioning models of doing business?
2. Is the cooperative business model that the horticulture farmers are utilizing ineffective because it was imposed upon the horticulturalists at the inception of the irrigation schemes through Government of Zimbabwe socialist policies?
3. Are most women horticulture businesses situated within a family set-up deeply affected by sex and gender relations, thereby limiting women's capacity?
4. Does the fact the most women horticulture businesses are situated within the family lead to the non-valuing of women's work in the horticulture business? Are women not seen as partners in the business?
5. Do the state and development oriented NGOs appreciate the needs of women horticulturalists in developing their economic situation?
6. Does most women's inability to have a dominant role in business result from the non-implementation of laws and the influence of other non-legal factors, such as politics, culture and geography?

1.5 Selecting the research site

The area the research was conducted in, Mutoko, is renowned for small scale horticulture farming and tomatoes are the main crop. Whenever I told colleagues that I was going to Mutoko, the usual request was "bring us tomatoes". In a survey I conducted at the early design stage of this research at a horticulture market in Harare, that is, the Mbare market, the majority of the tomato producers were from Mutoko. My 'home area' is located in the Mutoko District. Although I did not grow up within the District, I am aware that tomato production is 'big business' in Mutoko. As I was growing up mainly male relatives would, as

I recall, every now and again stay overnight at our home which was then located in Mbare during the early 1980s. These visits became less frequent from 1985 onwards when we moved from there to our new place of residence which was far from the Mbare Market.

Although a few of my female relatives would come to Harare to sell their produce, each time I visited my rural home, I would find them either working in their gardens or packing tomatoes into the boxes ready for the market. Their work always revolved around their gardens. The situation has remained more or less the same, as I noted during an initial visit I did with my supervisor to Mutoko some time in July 2009 at the early design stage of this research. Once I settled on researching women horticulture farmers in Mutoko, my supervisor and I drove along the Harare/Nyamapanda road into the centre of Mutoko. Every time we noticed people by the road side selling horticulture produce, we stopped and I briefly interviewed them and asked them about the source of their produce and how they established its selling price. At the Mutoko market, I noted that the majority of the producers were women and I identified Nyaitenga and Chitora as being the main areas from which they hailed. These early interviews and observations influenced my selection of the research sites. I went back to the selected sites in September 2009 to introduce myself to the communities and to familiarize myself with the set-up in the selected sites. In the process, I carried out conversational interviews focusing on identifying and assessing how women horticulture farmers were conducting business and the business models they were engaged in. I used the findings from the site identification interviews and my own observations to shape the subsequent data collection. An initial analysis of these findings made me realise that to gain a deeper understanding of the business models women are engaged in and their possible limitations, I needed to focus on women's experiences. An inductive approach was, therefore, the most appropriate method of data collection to explore women horticulture farmers' experiences through the women's eyes.

1.6 Overview of the research site

1.6.1 Irrigation Schemes in Nyadire Ward 25

Ward 25 comprises resettlement irrigation schemes established after independence.³ The schemes are under the Model B resettlement. Model B schemes were based on co-operative principles. People were resettled for the purposes of communal living and co-operative farming. The co-operatives, however, are no longer as functional as they were when they started. The members of the irrigation schemes were granted three permits, one for pasture for a certain number of livestock on a communal basis, another to cultivate an arable plot and the last to reside on a specific residential plot. The permits, I noted, were for no specific duration, and they did not provide for a long lease or ownership, although the new regulations on resettlement land effectively makes the permit a long lease in terms of section 6(2) of the Agricultural Land Settlement (Permit Terms and Conditions) Regulations of 2014 (hereinafter called ‘SI 53/2014’). This section provides that although a permit holder does not have title over the allocated land, he or she may transfer, lease, hypothecate, bequeath or otherwise encumber the allocated land with the approval of the Minister. This means permit holders now have formal rights in the allocated land but one cannot pass a greater right in it than he or she already possesses.

1.6.2 Nyaitenga Overhead Irrigation Scheme

The first irrigation project in the Ward was established in 1988. To date, there are twenty irrigators in the scheme each allocated an arable plot of 0.5 ha. The source of water is Nyaitenga Dam.

³ Chitora I; Chitora II Nyaitenga Drip and Sprinkler Irrigation Schemes.

1.6.3 Selection of irrigation members

When the scheme was set up in 1988, the selection of beneficiaries was done by the Resettlement Officer, community leaders and Agriculture Extension Officers. Beneficiaries turned out to be young men between 18-30 years of age coming from nearby surrounding villages in the ward. According to the Resettlement Officer who participated in the selection process, there were no female applicants. The committee did not do anything to encourage female applicants as, in the words of the resettlement officer, “the issue of gender equality in land distribution was not a factor to be considered during those days.”⁴ On asking him why in his opinion there were no female applicants, he explained that at the design stage of the scheme, it was made clear that the scheme was being set up to run as a business entity for horticulture purposes. As a result, interested parties were supposed to prove that they were capable of running a business, were available for training and could obtain the necessary finances. Although a loan was made available by the Agriculture Finance Corporation (AFC), according to the resettlement officer, the mere mention of business and borrowing scared off most of the potential women applicants. He recalled that some women made enquiries but once the operational requirements were explained, they never came back. I managed to trace Melody whose son, then aged 20, joined the scheme in 1988 and is still a member.⁵ Melody said that when Nyaitenga overhead scheme started in 1988, she was 38 years old, having been married at the age of 15. Her first child, a female, was 22 years old and her second child Crispen, a male, was 20 years old. As parents, she and her husband encouraged their son to join the scheme and not their daughter. On asking her for their reason, she replied, according to my narrative, as follows:

Their daughter was ready for marriage and at 22 years she was already overdue and participation in the irrigation project would have been a distraction. She also said that they were told that for one to successfully run a horticulture project he/she should be

⁴ Interview with a Resettlement Officer on 12 August 2009.

⁵ Interview at Nyaitenga Overhead Scheme on 13 August 2009.

able to read and write as there was documentation to be completed for one to obtain a loan and there was training involved. Their daughter had not gone to school having been a war collaborator at the age of 10. She further said that joining the scheme would mean going to Harare to sell and buy inputs. Her husband would never allow their daughter go to Harare alone in the company of men as they had not seen any female names on the list of those who registered their interest to participate in the scheme. Further it had been explained to them that the scheme would run on business principles with the intention of making a profit to augment family income. To her providing for the family was not a female job but a male function within the family, therefore their son was the most suitable candidate. Lastly only one person per family was being considered. Thus their son was the obvious choice.

It should be noted that being a war collaborator at the age of 10 exposed her to the risk of engagement with men in the liberation forces. Having participated in a liberation war one of whose causes was to end the unequal distribution of land between the black and the white race, she was surely entitled to land when it became available for redistribution.

Over the years, membership of the scheme has changed due to various reasons, chief among them being failure to pay operational costs, death and subsequent succession to the plots. There are now only six out of the original twenty members. At the time of the research, there were seven (7) female plot holders, all of whom took over their plots from deceased husbands and deceased parents.

1.6.4 Chitora II Irrigation Scheme

Chitora II Irrigation Scheme has two sections, i.e, the flood section and the overhead drag-hose sprinkler section. This scheme was established in 2008. The scheme has thirty-three members each allocated a 0.5 Ha plot. There are five female plot holders who became members having met the selection criteria explained below.

1.6.5 Selection Criteria of irrigation members

The selection committee for Chitora II was made up of Agricultural Extension Services (AGRITEX) Officers and the Ward Development Committee (WADCO). The ward councillor chaired the committee. She said there was stiff competition as they received seventy–six applications of which twenty were from female applicants. On closer analysis of the selection criteria which she explained, I noted that women were inherently disadvantaged by the criteria used. Firstly, the applicant was supposed to be originally from the Nyadire Ward. It turned out that most women applicants did not meet this requirement as they were not originally from the ward. They only became residents of the ward through marriage. One woman explained, “*Waida vana wakazvarirwa muno, vane wabereki wemuno*”⁶ (meaning, literally, “Only those who were born in the ward and whose parents were originally from that ward were considered”). The second requirement was that one should have contributed in the form of labour to the construction of the dam and also to the digging of trenches at the targeted irrigation site. Although a number of women provided their labour, their husbands became members because they were the ones who were born in the Mutoko District. The third requirement was that one had to be a holder of a master farmer’s certificate. There were some women who were originally from the Mutoko District by birth and had contributed their labour during the setting up the scheme but were not holders of a master farmer certificate. An agreement was reached to consider female headed households who satisfied the first two selection requirements, even though they were not holders of master farmer certificates. As a result, five women were admitted as members of Chitora II irrigation scheme, only one of which had a master farmer certificate.⁷

⁶ Interview at Chitora II Irrigation Scheme on 12 August 2009.

⁷ Master Farmer Training Scheme is an approach used by the Zimbabwean Ministry of Agriculture’s Department of Agricultural Extension Services to develop competent farmers. The objective of master farmer training is to spread modern, scientific farming techniques in communal areas. Master Farmer Certificates and badges are awarded to communal farmers who adopt and practice improved methods.

1.6.6 Nyaitenga Drip Irrigation Scheme

Nyaitenga Drip Irrigation Scheme was set up in 2000. According to the councillor of the ward, the scheme specifically targeted women having realised that women were left out when earlier schemes were established. The scheme started as a FAO/Agritex pilot drip project for rural set-ups in Zimbabwe. The irrigation potential of the scheme was identified by the community, Agritex officers and the resettlement officer, following the development of Nyaitenga Overhead Irrigation Scheme. Financing of the scheme was in the form of a grant provided by FAO and farmers contributed through clearing, stumping the land and the digging of trenches.

Nyaitenga Drip has eight members, each occupying an individual plot of 0.5 ha. Three of the members are men, while the rest are women. The members were selected from the ward by the Ward Leadership Team, chaired by the Councillor. I asked why men were included in a scheme that was set up to target women. I was told that the setting up of a scheme was something that women could not do on their own because stumping and digging trenches was 'men's work'. This is work that the society assigned to men. I asked the women their opinion about the so-called 'men's work' and they said that they could dig trenches just as well as any man. What I found interesting was that, according to them, they ended up digging more trenches than the men because two of the three men took up leadership positions; one became the Chairperson of the scheme and the other the Vice Chairperson. The women said that most of the time when manual work was being done, the two men were either attending meetings or giving instructions. At the end of the day, the women felt short-changed. These situation of these women needs to be analysed within a legal and human rights timeline as discussed below.

1.7 Women's Legal Entitlements

From 1980, the Zimbabwean legislative and policy framework has been greatly influenced by multi-layered processes at the international, regional and national levels. The attainment of independence in Zimbabwe saw the birth of a new Constitution⁸ enshrined with a Bill of Rights. There was an anti-discrimination clause enshrined in section 23 of the old Constitution which prohibited discrimination on the basis of sex, gender, creed, race, tribe, place of origin, political opinions and colour. This section was later amended to include gender and marital status.⁹ The section was criticised for being in the nature of a “claw back” clause which permitted discrimination in the matters of personal and customary law.¹⁰ In particular, section 23(3)(a)(b) which read:

Nothing contained in any law shall be held to be in contravention of subsection (1) (a) to the extent that the law in question relates to any of the following matters—

- (a) matters of personal law;
- (b) the application of African customary law in any case involving Africans or an African and one or more persons who are not Africans where such persons have consented to the application of African customary law in that case;

The net effect of this provision was that in relation to issues like divorce, inheritance and marriage, where customary law is deemed applicable, customary law was given precedence over general law. This, according to a study done by FAO, worked to protect male privileges in relation to property (FAO, 2012).

⁸ This Constitution was published in 1979, as provided by the Statutory Instrument 1979/1600 of the United Kingdom; amended twice in 1981; in 1983; 1984; 1985; twice in 1987; twice in 1989; twice in 1990; twice in 1993; 1996; 1998; 2000; 2005; 2007; 2009 and 2013.

⁹ This was introduced in 1996 through Amendment No 14.

¹⁰ Section 23(3)(a)(b) of the 1979 Constitution.

This provision was significant, especially in the allocation of land, whether in the context of dissolution of marriage or other circumstances. Customarily, women cannot access land by virtue of the Communal Land Act (Chapter 20:04) which provides that land has to be allocated to a person that has customarily lived in the area. Section 8(2) of the Communal Lands Act encourages the Rural District Council to:

Have regard to customary law relating to allocation, occupation and use of land in the area concerned and grant consent only to persons who, according to the customary law of the community that has traditionally and continuously occupied and used land in the area concerned...or who according to customary law may be permitted to occupy and use such land.¹¹

Although the area under study is resettlement land and does not fall under communal land, according to a headman interviewed, the customary practice of the area is that male adults have the right to land both in their own right and on behalf of their families. Thus, it is left in the hands of the male adults to allocate the land in favour of their daughters, wives or any other female relatives if they choose to do so, but, more often than not, women are not allocated land, even though the Communal Land Act says that land can be allocated to any person. Most women, whether married under customary or civil law, still use relationships to access land. The person who ‘owns’ and controls the land determines its use and makes decisions regarding the produce of that land, regardless of who actually works the land. The position is made more problematic as, for example, on the dissolution of the marriage, especially those consummated under customary law, whether registered or not, in which case the woman loses the land because, “they did not bring land from their natal homes.”¹²

¹¹ This section should now be realigned with section 80(3) of the 2013 Constitution which provides that all laws, customs, traditions and cultural practices that infringe the rights of women conferred by the Constitution are void to the extent of the infringement.

¹² Interview with a Headman at Chitora Irrigation Scheme on 1 September 2011.

Upon attaining independence, Zimbabwe took positive steps towards the emancipation and empowerment of women (Mungwini, 2007, p. 124). The government showed commitment in changing the plight of women rights from the onset (Batezat & Mwalo, 1989, p. 4). Women were recognized as an oppressed group and were made a target of government policies. The government's achievements to transform women's status were realised through landmark legal reforms and socio-cultural development. The country witnessed the passing of legislation such as the Legal Age of Majority Act in 1982 and many other positive statutes,¹³ with the most recent being the Domestic Violence Act (Chapter 5.16). Zimbabwe was then one of six Southern African countries to have such specific legislation on domestic violence (Nyoni & Dzinoreva, 2010, p. 250).

Discrimination on the basis of sex, gender and marital status was prohibited in terms of section 23(1) & (2) of the old Constitution and is prohibited in terms of section 56¹⁴ of the 2013 Constitution.

The term 'gender' has been commonly defined as the socially constructed roles, relationships and learned behaviours of male or female. In other words, gender is about how men and women are viewed in the society, their roles and responsibilities. For example, men are breadwinners, whereas women are bread makers. In most gender studies done in different

¹³ Zimbabwe made significant strides in amending and enacting legislation and enacted 17 pieces of legislation to advance the gender equality and equity objective. These include Matrimonial Causes Act (1985); Maintenance Act (1999); Administration of Estates Amendment Act (1997); Sexual Offences Act (2001), Education Act (2004), Labour Act (Chapter 28:01); Criminal Law Codification and Reform Act (2006); Domestic Violence Act (2007). The 2004 Public Sector Gender Policy put in place Gender Focal Points in all Ministries and Parastatals and in 2012 dialogue was initiated to set up a Gender Commission and this Commission is provided for in the new Constitution in terms of section 245.

¹⁴ Section 56 (1) of the 2013 Constitution provides that all persons are equal before the law and have the right to equal protection and benefit of the law. Subsection (2) further provides that women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social spheres. In terms of subsection (3), "every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic and social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status or whether they are born in or out of wedlock".

societies, it has been revealed that most, if not all, gender based norms and practices favour boys and men over women and girls in granting access to resources, opportunities, rights, voice, decision-making power at home and in the public spheres, thereby systematically putting women in a subjugated position within society (Akinola & Olawasen, 2013, p. 105). The term ‘gender equality’ has been variously interpreted and this study is premised on the World Bank definition. The World Bank defines ‘gender equality’ in terms of rights, resources and voice – equality under the law, equality of opportunities, including access to human capital and other productive resources, and equality of rewards for work and equality of voice (Mason & King, 2001, p. 5).

At the international and regional level, countries have signed, ratified and adopted instruments which promote gender equality and equity. Zimbabwe is a party to most of these instruments and these include the Southern African Development Community's (SADC) Declaration on Gender and Development ratified in 2009, and its addendum on the Prevention and Eradication of Violence Against Women and Children; Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ratified in 1991, Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol) ratified in 2008 and the Beijing Declaration and Platform for Action; International Covenant on Economic, Social and Cultural Rights (ICESCR) and Convention on the Minimum Age for Marriage and Registration of Marriages.¹⁵ To fully understand where the women in my study should now be in relation to the rights of use, occupation and control over land, it is important to consider the development of both constitutional and other legal frameworks that mandate equality and equity.

¹⁵ All of these are considered in greater detail within the context of the study.

1.8 Equality and equity legislation in Zimbabwe

1.8.1 The Constitution

In Zimbabwe, the Constitution is the supreme law of the land and any law that is inconsistent with it is void to the extent of the inconsistency. This is referred to as constitutional supremacy, meaning that the Constitution takes precedence over all other laws. Supremacy of the Constitution is provided for in section 3(1)(a) as the first founding value or principle on which Zimbabwe is founded. In addition, section 2(1) specifically states that: ‘This Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency’. Section 2(2) goes on to specify who is bound by the Constitution and it states: “The obligations imposed by this Constitution are binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions and agencies of government at every level, and must be fulfilled by them.” The effect of this wording is that constitutional obligations are binding on every person and not just organs of state.

Like all modern constitutions, the Zimbabwean Constitution contains a justiciable Bill of Rights and these include, among others, the right to life, freedom of expression and association, property rights, marriage rights and protection against discrimination. I now focus on protection against discrimination in both the old and the new Constitutions.

The 2013 Constitution of Zimbabwe that was signed into law by the President on 22 May 2013 is widely acknowledged for its firm commitment to gender equality. The affirmative action provisions further assert the new Constitution’s resolve to redress gender inequality. The Constitution reaffirms earlier commitments shown by the 2005 Constitutional Amendment No. 17 to the 1979 Constitution. Chapter 2 on National Objectives in the 2013 Constitution spells out gender balance as being one of the objectives to guide the state, all

institutions and agencies of Government. Throughout the statement of the 26 national objectives, equality is emphasized and, where appropriate, women and girls are specifically mentioned. The Bill of Rights in Chapter 4 of the 2013 Constitution recognizes that men and women have a right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. The Constitution also has special enforcement provisions in section 85, in that any of the following persons, namely - any person acting in their own interests, acting on behalf of another person who cannot act for themselves, acting as a member, or in the interests of a group or class of persons, acting in the public interest, or any association acting in the interests of its members - is entitled to approach a court, alleging that a fundamental right or freedom enshrined in the Constitution has been, is being or is likely to be infringed, and the court may grant appropriate relief, including a declaration of rights and an award of compensation.

Further, unlike in the old Constitution in which equality and non-discrimination were not clearly stated as being, among other things, between men and women, section 56(2) of the new Constitution categorically states that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

Further, section 80 of the new Constitution provides, specifically, for the rights of women. Subsection (1) provides that every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities. Subsection (3) further provides that all laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of the infringement. This is also provided for in section 2 which states that the Constitution is the supreme law of the country and “all laws and any law, practice, custom or conduct inconsistent with it is invalid to the extent of that inconsistency...” In terms of the realization of women’s rights, this

provision requires that laws and policies are subject to being interpreted as being in violation of the fundamental rights set out in the Constitution. This is important for women, as this study of women horticulture farmers shows that customs, laws and policies are often interpreted to perpetuate discrimination or suppression of their rights. The provision that any law inconsistent with the Constitution is invalid lays a good foundation for women to exercise and enjoy the rights provided for under the 2013 Constitution. In subjecting all laws, including customary laws, to the equality clause, the new Constitution addresses discrimination and equality clearly and unambiguously and presents a real opportunity to review and re-envisage women's rights and entitlements in land and under customary law.

The Founding Values and Principles in section 3 of the new Constitution further provides that Zimbabwe is founded on the respect and recognition of the equality of all human beings, gender equality, recognition of the rights of women, the elderly, youths and children and the equitable sharing of national resources, including land. These founding values and principles demonstrate the Constitution's spirit and intent with regard to the principle of equality. The values and principles of recognition of the inherent dignity and worth of each human being, the recognition of the equality of all human beings and gender equality are all stated separately to emphasise the importance of these values and bringing out the Constitution's commitment to equality of persons before the law and in the society. National objectives in chapter 2 are a new concept in the constitutional history of Zimbabwe. The objectives are a summary of the framework which the government and all State institutions are to use in the formulation and implementation of policy. The gender balance objective in section 17(1)(c) provides the State *must* promote full gender balance in Zimbabwean society, and, in particular, the State and all institutions and agencies of government at every level must take practical measures to ensure that women have access to resources, including land, on the basis of equality with men. Section 17(2) further provides that the State must take positive

measures to rectify gender discrimination and imbalances resulting from past practices and policies.

Section 17 of the new Constitution categorically defines ‘gender balance’ to mean the promotion of the full participation of women in all spheres of Zimbabwean society on the basis of equality with men. In addition, the objective proceeds to state that the State must take measures, including legislation, to ensure that there is equal representation of men and women in all state institutions and agencies and at all levels.

Section 23 of the old Zimbabwe Constitution provided that in implementing any programme of land reform the government shall treat men and women on an equal basis with respect to the allocation or distribution of land or any right or interest therein under that programme. This provision which was added in 2005 by Amendment No 17 to the Constitution was exempted from the application of the claw back clauses in section 23(3)(a) and (b) of that Constitution. This definite positive move is also provided for in the 2013 Constitution. The 2013 Constitution has a clear provision for women to access resources, including land, on an equal basis with men. For a country whose economy is agro based and depends heavily on the land, this provision indicates acknowledgement that the economy should be driven by both men and women. This, however, can only be achieved if women’s work is fully recognised and not seen as an appendage to that of men.

Section 13(1) of the new Constitution requires state parties and agencies of the Government to facilitate rapid and equitable development. The Government is mandated to take measures to support private initiative and self-reliance, to foster the development of industrial and commercial enterprises in order to empower Zimbabweans and to bring about balanced

development. Subsection (3) requires that these measures must protect and enhance the right of the people, particularly women, to equal opportunities in development.

By themselves, the principles of equality and non-discrimination, are not sufficient to guarantee true equality. Temporary special measures may sometimes be needed in order to bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others. Temporary special measures aim at realizing not only *de jure* (or formal) equality, but also *de facto* (or substantive) equality for men and women. Equality guarantees that women and men enjoy all human rights on an even, like or same basis.

The affirmative action clause in section 23(3)(g) of the old Constitution did not satisfactorily address women as an oppressed group and this resulted in the sub-optimal improvement of women's social status. This study argues that affirmative action is the nearest and most effective tool to realise and bring out women's worth in every sector of the society. It seeks further to argue that affirmative action, apart from improving gender equality in every sector of Zimbabwe, can ultimately improve economic development if there is full commitment to its goals and measures by government and the private sector.

Section 14(1) of the new Constitution provides that the State and all institutions and agencies of government at every level must endeavour to facilitate and take measures to empower, through appropriate, transparent, fair and just affirmative action, all marginalised persons, groups and communities in Zimbabwe. Subsection (2) calls for the State and all institutions and agencies of government at every level to ensure that appropriate and adequate measures are undertaken to create employment for all Zimbabweans, especially women and youth. Section 246(f) enables the Gender Commission to recommend affirmative action programmes to achieve gender equality. These provisions on gender equality and equity are a landmark

development in our law. It is something that the old Constitution lacked. The manner in which these sections are worded shows a positive move towards achieving equality between men and women. Further section 17 of the 2013 Constitution mandates the State to promote full gender balance in Zimbabwean society. In terms of the constitutional provision, the State must promote the full participation of women in all spheres of Zimbabwean society on the basis of equality with men and the State must take positive measures to rectify gender discrimination and imbalances resulting from past practices and policies.

Of paramount importance to this study is section 24 of the new Constitution that provides that the State and all institutions and agencies of government must adopt reasonable policies and measures to provide everyone with an opportunity to work in a freely chosen activity, in order to secure a decent living for themselves and their families. At every level, the state must endeavour to secure full employment and the removal of restrictions that unnecessarily inhibit or prevent people from working and otherwise engaging in gainful economic activities. They must also secure vocational guidance and the development of vocational and training programmes, including those for persons with disabilities and the implementation of measures, such as family care that enable women to enjoy a real opportunity to work. Under section 56, women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. In terms of section 80, every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities.

Even under the old Constitution, Zimbabwe made inroads into the prevention of discrimination at various levels but, as will be seen, it was constrained by section 23(3).

1.8.2 Prevention of Discrimination Act (Act No. 19 Of 1998) (Chap. 8:16)

The purpose of this Act is stated in its Preamble as “...to prohibit discrimination on the ground of race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender and to provide a remedy for persons injured by such discrimination; to prohibit the promotion of such discrimination...” This Act prohibits discrimination by one person against another in regard to: (a) the admission and supplying of commodities or services in public premises and facilities;¹⁶ (b) the disposal of immovable property;¹⁷ (c) the granting of finance,¹⁸ and (d) the making or communication of statements based on racial superiority or hatred.¹⁹ It is a criminal offence to discriminate against any person in any of the above instances.

Despite the operation of this provision, women’s plight under the old constitutional provisions was far from being lessened. This was so because discrimination could be effected against them on the pretext of complying with customary law, which, based on the old constitutional provisions, was permissible. This will no longer be the case under the 2013 Constitution as section 56 provides for unequivocal, unfettered equality between women and men, which is unlike the situation under the old Constitution where equality and non-discrimination were not clearly stated as being between men and women.

Section 80(3) of the 2013 Constitution provides that all laws, customs, traditions and cultural practices that infringe the rights of women conferred by the Constitution are void to the extent of the infringement. This is also provided for in section 2 of this Constitution which says that the Constitution is the supreme law of the country and “all laws and any law, practice, custom or conduct inconsistent with it is invalid to the extent of that inconsistency...” In terms of the

¹⁶ Section 3.

¹⁷ Section 4.

¹⁸ Section 5 of the Act.

¹⁹ Section 6.

realization of women's rights, this provision requires that laws and policies are subject to being interpreted as being in violation of the fundamental rights set out in the Constitution. As early as 1982, legislation had been passed which, it was believed, would begin the process of dismantling the exclusion of black women and accord them full legal capacity when they attained the age of 18. One such act was the Legal Age of Majority Act.

1.8.3 Women minors or majors

The Legal Age of Majority Act (LAMA) was promulgated in 1982 and has since been incorporated in the General Law Amendment Act section 15. It confers majority status on every human being upon attaining 18 years of age. In *Chihowa v. Mangwende*, 1987 (1) ZLR 228 (SC), 231 the Supreme Court held that the Legislature, by enacting LAMA, made women (who in African law and custom were perpetual minors) majors and, therefore, equal to men who are majors. The net effect of this law is that women can sue or be sued without the assistance and/or permission of their guardians. I noted during data collection that some married women horticulture farmers' right to participate freely in economic interchange has been circumscribed by societal values and norms that deny them access to and control over crucial resources for development. Women interviewed for this study are married under civil or customary law; most of them are in unregistered customary law unions. Some are divorced and a few have inherited the plots from husbands or parents.

Given the fact that the majority of the women horticulture farmers are married mostly under unregistered customary law unions, one of the core issues this study focussed on was revisiting and re-envisaging marriage as a legal partnership in economic and social responsibilities. The national objective on marriage in section 26 of the 2013 Constitution provides for equality of rights and obligations of spouses during marriage and at its dissolution; and that in the event of the dissolution of a marriage, whether through death or

divorce, provision should be made for the necessary protection of any children and spouses. This objective on marriage is twofold. First and foremost, it seeks to change societal patriarchal perceptions of marriage, its dissolution and the rights of partners within marriage. Secondly, the objective clearly brings out the need for equality of partners in a marriage. This objective takes the equality provisions further by providing categorically that men and women in marriage will have equal rights to property acquired during the marriage and upon the termination of such marriage.

Realization of this objective calls for the total elimination of stereotypes that bedevil our legal thinking when interpreting the legal relationship between a married couple in a business relationship during marriage or upon the divorce or death of one of the parties.

The majority of the respondents' marriages are unregistered customary law unions (73 of the 89 families). According to customary law, a married woman cannot own property in her own right.²⁰ This is premised on the fact that married women do not own or control the main means of production, that is land, and what they produce from the land, therefore, belongs to the owner of the land. In *Mahlangu v Khumalo* SC 49/99, Judge of Appeal, Mr. Justice Muchechete, found that the patrilineal nature of African families in Zimbabwe meant that women's property, even property acquired through her own work after her husband's death, was the property of her marital family, meaning customary law would govern its distribution. The Matrimonial Causes Act (Chapter 5:13) which provides for an equitable distribution of property on divorce, does not apply to unregistered customary law unions. Even if the marriage is registered, the Act is further problematic as it provides only guidelines as to what is just and equitable. The interpretation is left to the individual judge or magistrate.

²⁰ *Mahlangu v Khumalo* SC 49/99.

If the property under contention, for example, was acquired from the proceeds of a family horticulture venture, where the woman's labour, contribution and intellectual capital were used to drive the business, marriage as a legal concept is likely to distort the business relationship that the parties had. Below is a disposition of chapters that shows how this argument is developed in the study.

1.9 Disposition of Chapters

The first chapter is the introductory chapter that sets out the problem. The chapter focuses on the establishment of the irrigation schemes, how the beneficiaries were selected and the net effect this had on equality and the resultant location of women horticulture businesses in the family through marriage. The second chapter looks at how women's contributions can be secured in land based businesses and draws upon equality and equity legislation at local, regional and international level. The third chapter presents the methodological framework of the study. Data were collected and analysed within the broader framework of the women's law approach using grounded theory as a tool for data collection. Chapter four examines how different legal norms are reinforcing gendered forms of exclusion and how asymmetric power relations are created in the process. It focuses on the dynamics at play between legal pluralities and women horticulture farmers' struggles for gender and economic justice.

Chapter five maps the gender and commercial dynamics of women horticulture farmers. The chapter concludes that women are involved in commercially viable businesses where the family is the primary unit of production. Chapter six explores how power hierarchies are created through gender division of labour. It discusses the business models that are functional, that is, the cooperative model and the family business model premised on marriage. The chapter looks at the competing effects of the cooperative and the family business models and concludes that the horticulture businesses are operating under a problematic legal framework

where marriage is the organising framework in what should be viewed as a purely business relationship. The last chapter makes an attempt to answer the research questions by drawing conclusions from the findings and a discussion on the required interventions.

Chapter 2 Securing women's contribution in land based businesses

2.0 Introduction

The question I asked as this study progressed was, “How can the rights that ought to proceed from the recognition of women’s contribution be secured during marriage, divorce, or upon death of the spouse?” The findings of this study will reveal that both the cooperative business model and the irrigation schemes constitutions have failed to protect women’s interests in the horticulture businesses. An effort has been made to try and alleviate the problems that women on resettlement land have been facing, as will be presented in this study. This was done through the enactment of the Agricultural Land Settlement (Permit Terms and Conditions) Regulations, 2014 (hereinafter called ‘SI 53/2014’ and contained in Appendix 2). This statutory instrument is a very progressive piece of subsidiary legislation, as it seeks to address most of the issues raised in this study. Implementation of this statutory instrument has the potential of providing solutions to the questions I grappled with throughout this study. The questions were, “How can women involved in horticulture businesses in which, in reality, they are equal partners, obtain recognition for their contribution to the business?” and “How is this contribution valued?”

2.1 Pertinent provisions of SI 53/2014 to this study

The regulations (or SI 53/2014) define a ‘permit holder’ as a signatory permit holder or any person who has a joint and undivided share in the allocated land. The regulations further define a ‘signatory permit holder’ as a person who signs the permit and this includes a permit holder who is deemed to hold an equal joint and undivided share in the land allocated under the permit. With the written consent of the Minister, permit holders can, in terms of section

7(1)(a), cede, assign, hypothecate, or otherwise alienate or sublet in whole or in part, or donate or dispose of his or her allocated land or any of his or her rights, interests or obligations under his or her permit. Section 9 provides that signatory permit holders are responsible for ensuring the fulfilment of the terms and conditions of the permit. The regulations explain in detail the effect of marriage, divorce and death on the signatory of a permit who signs the permit in his or her capacity as a permit holder.

2.1.1 Marriage of permit holders

The effect of marriage of a signatory of a permit is described in sections 10, 11 and 12 of the regulations. In terms of section 10(1), if a permit holder is married to one or more spouses at the time the permit is signed, his or her spouse(s) shall be deemed to hold an equal joint and undivided share in the allocated land. In a footnote, the regulations explain that if there are two or more spouses at the time the permit is issued, each spouse will hold one joint and undivided share in the allocated land. Section 10(1) further provides that if not married but deemed to have been cohabiting as man and wife, the cohabitation should have been at least for a period of 12 months before the date of the signing of the permit for a spouse to be regarded as holding an equal joint and undivided share in the allocated land. A period of less than 12 months will be considered if the spouse in question at the time of signing the permit was already a joint signatory of the permit, or was in occupation of the allocated land or otherwise actively involved in the allocated land.

In terms of section 11(1) of the regulations, if a signatory permit holder was married to a spouse in a potentially polygamous marriage at the time the permit is first signed and if he subsequently marries another spouse or other spouses, every subsequent spouse shall not become a holder of an equal and undivided share in the allocated land unless the spouse married at the time the permit was first signed signifies in writing her consent to the

additional spouse or spouses, as the case may be, to become holder(s) of an equal joint and undivided share in the allocated land.

As regards an unmarried permit holder who becomes married after the permit is signed, section 12(1) provides that when such holder subsequently becomes married, his or her spouse shall be deemed to hold an equal and undivided share in the allocated land.

2.1.2 Death of permit holders

Upon the death of a signatory permit holder, in terms of section 13(1) of the regulations, in the case of a monogamous or potentially polygamous marriage where there is an existing or surviving spouse, the allocated land shall devolve to the existing or surviving spouse with the consequence that the existing or surviving spouse inherits the joint and undivided share in the allocated land of the deceased spouse. In the case of there being no surviving spouse, the allocated land shall devolve to the dependants of the deceased signatory permit holder with the consequence that each dependant succeeds to or inherits a joint and undivided share. In terms of the regulations, a ‘dependant’ is defined as a minor person who is the natural child, adopted child or step-child of the permit holder or any person towards whom the permit holder has a duty similar to the legal duty of care towards a child or dependant under general law.

2.1.3 Divorce of permit holders

Section 14(1) of the regulations provides that if the marriage, or, in the case of a polygamous marriage, any of the marriages between the permit holder of the permit and his or her spouse is dissolved, the divorced spouse shall retain his or her rights as a joint permit holder and joint head of household unless the signatory permit holder compensates the divorced spouse for his or her assessed share under the permit. The amount of compensation shall be determined by

an arbitrator (chosen by the Minister, in the absence of an agreement by the parties) in terms of the Arbitration Act (Chapter 7:02) or any other law that may substitute the Act [section 13(3)]. The arbitrator will make his or her award in favour of the party who, in the arbitrator's opinion, has been the one most responsible for the development of the allocated land.

2.2 Women's land rights

The regulations which are in line with the equality clause as provided for in the 2013 Constitution have the potential of concretizing women's property rights on resettlement land in terms of access, control and ownership. Below, I will look at how these three concepts of property are dealt with in the statutory instrument.

2.2.1 Access

Defined as referring to the availability for use, access to land is crucial in this study for purposes of understanding how women were accessing land and how land access will be concretized by SI 53/2014. There are various ways by which land is accessed and this depends on the type of land rights that one has over the particular piece of land. Property law stipulates that there are primary land rights which give direct access to land and these rights include the right to bequeath, sanction and dispose of land, while secondary rights are restricted to use rights (Kameri - Mbote, 2005, p. 10). Secondary rights are dependent on others who own and control the land in question, and this person exercises his/her discretion whether to allow use of the fruits of the land on an equal basis with men. Most of the women interviewed have no problem with access to the land; the issue was mainly about control of both the land and its produce.

2.2.2 Control

Control entails the power to distribute and redistribute access rights to members of the society with such power being determined by the power relations between community members. The findings of this study revealed gendered power relations in that men generally exercise authority in the horticulture families and it is men who predominantly have primary rights over the land that forms the basis of the horticulture business.²¹ The study showed that, despite women having access to land and using it, they do not have control over the land or its products. As a result, their access to land is not secured. Married women horticulture farmers' access to land was conditional as it was dependent on their husbands who had power over the land. By SI 53/2014 giving spouses equal, joint and undivided shares in the land means women now have the opportunity to become equal partners in the horticulture business.

Considering gender relations, however, it remains to be seen how existing power relations within society will play out for both men and women now that women are recognised as joint permit holders. What remains to be seen is whether women will fully embrace this opportunity given that men and women differ as groups in the way they reason and see themselves (Ortiz, 1995, p. 524). Married women no longer need to negotiate their land rights but, unlike men who see themselves as autonomous, free standing individuals, women generally see themselves as joined in complex webs of relationships. Understanding this is very important for policy makers, especially when coming up with strategies for the implementation of SI 53/2014. This is so because, as observed by Ikdahl in research she did in Tanzania, local principles and practices for inheritance and division of matrimonial property strongly influence how formal law, like SI 53/2014, is used at the local level (Ikdahl, 2013, p. 184).

²¹ See Chapters 4 and 5.

2.2.3 Ownership

Although none of the farmers will acquire ownership of the allocated land in terms of section 6(2) of SI 53/2014 (which provides that a permit holder does not have title over the allocated land, that is to say, he/she may not sell the allocated land, but may, however, transfer, lease, hypothecate, bequeath or otherwise encumber the allocated land with the consent of the Minister), women horticulture farmers can now claim part ownership of the proceeds of the horticulture businesses by virtue of being joint permit holders and having an undivided share in the allocated land.

Tay and Kamenka define ownership as ...the *prima facie* ultimate power and right to use, control, enjoy and exclude others. It is a relationship both to the item owned and to other people (Tay & Kamenka, 1988, p. 1). There is no ownership where it is impossible, in logic or in fact, to reduce something to possession and control. Ownership shows the privileged connection that those who own have to property. This gives them the power, as well as the right, to exclude from, control and dispose of such property those who do not have this connection. Ownership consists of a bundle of rights and powers, it comprises the right to possess, the right to use, the right to manage, the right to the income of the thing, as well as the right to the capital and the right to security (Bell & Parchomovsky, 2005, p. 73).

However, when one considers the power relations discussed in this study, formal ownership does not necessarily translate into actual control due to a number of factors. Gendered relations in society is one of them. Because of gender stereotypes, granting ownership rights to women may not translate to their being able to control and even access the resource. For married women horticulture farmers to fully benefit from the provisions SI 53/2014, there is a need to transform into reality the concept of gender equality, as provided for by section 56 of the 2013 Constitution and SI 53/2014.

Gender equality implies a society in which women and men enjoy the same opportunities, outcomes, rights and obligations in all spheres of life. Equality between men and women exists when both sexes are able to share equally in the distribution of power and influence; have equal opportunities for financial independence through work or through setting up businesses; enjoy equal access to education and the opportunity to develop personal ambitions (Bell & Parchomovsky, 2005, p. 74).

To begin with, as seen with the 2013 Constitution and SI 53/2024, the law is an essential tool for advancing women's and girls' rights and equality. A robust and effective legal system based on the rule of law is, however, central to assisting women to become equal partners in decision-making and development. By granting married women joint permit rights and undivided shares in the allocated land, be they in monogamous or polygamous marriages, on divorce or upon death of a spouse, SI 53/2014 seeks to concretize women's property rights in resettlement land. This is in line with article 17 of the Universal Declaration on Human Rights which provides for everyone's right to own property, either alone or in association with others. SI 53/2014 protects women horticulture farmers' rights not to be deprived of their right to own property. This is vital as it reflects on both men and women's equal right to the land. This also lines up with article 2 of the Maputo Protocol on Elimination of Discrimination Against Women and CEDAW whose article 14(2) provides that States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development. According to Banda, the CEDAW committee constructs rural as being related to both geography and exclusion from services and opportunities (Banda , 2012, p. 359). Article 14(2) of CEDAW recognises that women's exclusion from voicing their

opinions in development planning has often resulted in planners' failure to take their needs into account (Banda , 2012, p. 365).

The above provision goes further to provide the need for states to ensure, among other things, the right to credit and loans facilities, education and the right to participation. Of vital importance is its recognition of the need for equal treatment in land and agrarian reform as well as in land resettlement schemes. Article 14(2) of CEDAW further seeks to explore issues related to whether women are able to hold title to land both before and after the reform programme.

In addition to this, article 15(2) of CEDAW requires state parties to ensure equality before the law and in civil matters by ensuring that women are accorded equal rights to conclude contracts and to administer property. While women in Zimbabwe have full contractual capacity conferred on them in terms of section 15 of the General Laws Amendment Act, for most married women in land based enterprises this has not been a reality because they lacked equal land rights with their husbands. As a result, this affected their full participation in the business. The provisions of SI 53/2014 present women with a greater opportunity of equality before the law and full administration of property. Related to this is article 16(1)(h) which requires states to ensure that in marriage and family relations both spouses are accorded the same rights in respect of ownership, acquisition, administration, management, enjoyment and disposition of property. SI 53/2014 has made this a reality.

In passing SI 53/2014, Zimbabwe is in line with article 6(b) of the SADC Protocol on Gender and Development, which provides for equality in accessing justice requiring that women, among other rights, be accorded the right to acquire and hold rights in property. Article 4(9)

(b) calls for the equitable share of property between spouses for property acquired during the subsistence of their marriage.

Of specific interest is article 7(9) of the SADC Protocol that provides for member states to ensure that, by 2015, they review all policies and laws determining access to, control of and benefit from productive resources by women so as to eliminate discrimination against women and girls with regard to property, such as land and its tenure, as well as guaranteeing equal inheritance rights for both men and women. Zimbabwe is on course to achieve this and has undertaken such steps through the enactment of the Agriculture Land Resettlement (Permit Terms and Conditions) Regulations of 2014.

Radical feminists, however, argue that the law alone is not enough to achieve equality between men and women because the structures that enforce the laws are patriarchal in nature (Tong, 1989, p. 6). Some radical feminists hold the view that women's oppression is so entrenched in society, particularly in state institutions, and they propose a restructuring of the state institutions so that the rights of women can be realized (Tong, 1989, p. 7). Formal equality is not enough, there is a need to strive for substantive equality. This is true, especially in relation to land and land redistribution, as the findings of this study have shown that land is deeply entrenched in customs, traditions and cultural practices that infringe the rights of women. These are the same customs, traditions and cultural practices and gender stereotype that section 80(3) of the new Constitution says are void to the extent of the infringement. It, however, requires a concerted effort to eradicate such practices. The law is helpful in providing redress but law alone, even with its pluralist accommodations, falls far short of providing an answer to some of these challenges (Tsanga, 2011, p. 9).

Women invest in relationships that may lead to dependency and, in certain cases, as the findings of this study revealed, power imbalances affect most women's decision making capacity (Barendrecht & DeLangen, 2009, p. 253). The subordination of women through customs and male dominance affect women's capacity to fully participate in the horticulture business in which they should be equal partners. The economic power exerted by men over women leaves the women in relationships of dependency. This dependency often translates to issues of decision making power and the ability to make choices. The fact that women find themselves wanting to conform to the customs and dictated gender roles affects their assertion of their rights in a meaningful way. This may militate against women horticulture farmers' full enjoyment of land rights as provided for in SI 53/2014.

2.3 Women's land rights in Unregistered Customary Law Unions

The majority of the respondents who were the subject of this study are in unregistered customary law unions.²² The property rights of the women in these marriages have always

²² In Zimbabwe there are two types of marriages that are recognized at law for all intents and purposes ,i.e. monogamous marriage under Marriages Act and a potentially polygamous marriage under the Customary Marriages Act. There is yet another form of customary marriage commonly known as unregistered customary law unions (UCLUs). This marriage satisfies all the requirements of the registered customary marriage except that it is not registered. It is estimated that 70 per cent of marriages in Zimbabwe are unregistered customary law unions. This marriage is not technically valid at law and is only recognized for purposes of maintenance of children, inheritance and insurance.

The major problem associated with the UCLU is that the provisions of the Matrimonial Causes Act that provide for equitable distribution of property at divorce do not apply to them. The Courts, however, have tried through judicial innovation to come to the aid of the woman by invoking general principles of law such as unjust enrichment, universal partnerships and joint ownership. However, the position of women married under customary law whose marriages are unregistered remains unsettled. In *Ncube v Ndlovu* HB 16/04, parties were customarily married in 1998 and the marriage was not registered. One minor child was born out of the union. Prior to the contracting of the marriage, the respondent had acquired a residential stand and registered it in his name. When the parties got married the stand had been developed and the house was almost complete. At the dissolution of the union, the parties disputed as to how their matrimonial estate was to be dissolved, especially the now developed house as the appellant sought a share out it as well.

The Court *a quo* whilst accepting the contribution made by the appellant the trial magistrate stated: "In a customary law union the property belongs to the man unless the woman can prove that there was tacit universal partnership. The woman is only entitled to *mavoko or umai*." Consequently the trial Court said "In the circumstances the court will give each party what they worked for... The respondent is to pay back the applicant what she contributed towards the building of the house."

On appeal, it was held that this approach disregards the value added to the disputed house by the resources that the appellant ploughed into the construction of the house. To that end the Court held that the customary law

been problematic in the context of the marriage laws of Zimbabwe. As such, a number of High Court judgments have lamented the anomaly that exists between registered and unregistered customary law unions.

Unregistered customary law unions are not recognised as marriages when it comes to issues such as the sharing of the property acquired during the subsistence of the union. The Matrimonial Causes Act (Chapter 5:13) does not recognise unregistered customary unions as marriages.²³ Consequently, the distribution of property jointly acquired during the subsistence of these unions cannot be governed by the state's formal divorce laws. Though the parties in such unions can approach the courts for relief, they are faced with a difficult task which is not

principle that the matrimonial property belongs to the husband has undergone drastic change because of its obvious unfairness towards the wife. Where a customary law marriage is dissolved, a division and distribution of the property acquired during the subsistence of the customary union is possible on the basis of equity or unjust enrichment, even where a tacit universal partnership has not been pleaded.

Whilst this may be a welcome development, the problem is that women in unregistered customary law unions have to rely on judicial innovation. Interpretation of the concepts of unjust enrichment and universal partnership is problematic. Unjust enrichment is a remedy usually available under the law of contract. This remedy is available where a contract is deemed unenforceable or void as a result of vagueness or illegality. The remedy is meant to put the parties back to the position they were before entering the contract. Any prejudice suffered by one party as a result of such a contract can only be compensated for upon proof of such. By applying this remedy to the distribution of matrimonial property where the marriage is not registered, are the courts saying the fact that the marriage was not registered means its avoid relationship and as a result parties should return to the *status quo*? Proving non-monetary contribution that a woman would have made during subsistence of the marriage disadvantages most women as such proof is not always easy. As regards tacit universal partnerships, contribution towards a common goal is an essential element of a valid partnership. Valuing of non monetary contribution is a contentious issue for example nurturing of the family. The guiding principle thus should neither be unjust enrichment or universal partnership but equitable distribution of the property.

²³ This law deals with division of property upon divorce in a registered marriage. It calls for equitable distribution of matrimonial property between spouses upon divorce. Direct and indirect contribution of the spouses to the matrimonial property is to be taken into account in the decision on division of property. However, this law does not apply to unregistered customary law marriages. Amendments to this law were made through Acts 11/1987, 18/1989 (s38), 2/1990 and 6/2000 (s151). These amendments sought to extend the grounds for divorce applicable to civil marriages and to marriages solemnized in terms of the Customary Marriages Act [Chapter 5:07]. They also widened the powers of the Court to make a division of assets upon divorce by authorizing it to make consequential and supplemental provisions necessary to give full effect to any order it makes; and to allow the Court to make an order relating to the property of one or another spouse that is held by another person and thereby order that person to transfer the property as the court directs. With the operation of these provisions of this Act, what it means is that in dividing the property upon divorce, the Courts are enjoined to look at the principle of equity rather than who bought what. However, the judgments show a gender bias and the provisions of the Act are often interpreted to the disadvantage of women. Women take care of the daily needs of the family, whilst men are generally responsible for paying the mortgage, rentals and purchase household furnishers, hence, it is easy for them to prove their direct contribution, whereas women will be at pains to show the Court that her daily activities were equal to his.

encountered by their counterparts in registered marriages. This should no longer be the case regarding property rights of women in resettlement land, as SI 53/2014 specifically defines a 'spouse' as including a spouse in an unregistered customary law marriage and 'marry' shall be construed accordingly.

This is buttressed by the 2013 Constitution of Zimbabwe which protects the property rights of spouses upon divorce and death. Section 26(d) of the new Constitution provides for the protection of spouses in the event of the dissolution of a marriage. It can be argued that this protection extends to women in unregistered customary law unions. The different treatment of women by the marriage laws and the Matrimonial Causes Act amounts to discrimination on the grounds of marital status and this anomaly has to be rectified. The continuation of this situation means that the marriage laws are failing to take cognisance of the realities on the ground as SI 53/2014 has done. The fact that there are so many unregistered unions calls for the laws to be realistic and recognise the practices of the people.

International Instruments further assert the rights of women in the family, particularly their right to property.²⁴ CEDAW protects women in marriage and family relations in the enjoyment of their rights during and at dissolution of marriage. If the human rights norms provide for their equality in the benefit of the law this should be extended to all spheres of life. The current situation of women who are married under unregistered customary law unions perpetuates a distinction on the basis of marital status. Discrimination is not limited to the differences of opportunities between men and women but also between women and women. This approach recognises the fact that that class and marital status have the effect of differentiating women resulting in unfair practices on the ground. The current scenario means

²⁴ Article 16 of CEDAW. This should be read with the non discrimination clause that prohibits distinction and discrimination on the grounds of marital status.

that women married under registered marriages benefit more from the law than those in unregistered customary law unions.

A critical aspect of promoting gender equality is the empowerment of women, with a focus on identifying and redressing power imbalances and giving women more autonomy to manage their own lives. Women's empowerment is vital to sustainable development and the realization of human rights for all.

2.4 Does Statutory Instrument 53 of 2014 reaffirm the Principle of Non-discrimination and Equality?

My study is located within equality and non-discrimination and the broader human rights discourse. The rights discourse is a powerful tool for making governments accountable for the treatment of their citizens. As such, feminists have adopted this discourse to help secure women's rights. Securing women's rights means ensuring that women are included in the group to whom the entitlement is extended. However, this study reveals that women are systematically disadvantaged under the law when it comes to owning property, inheritance, marriage and divorce.

Article 16 of CEDAW provides that States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and, in particular, shall ensure, ... on a basis of equality of men and women, the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

Article 19(c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (hereinafter called 'the Maputo Protocol') provides that women

shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to...promote women's access to and control over productive resources such as land and guarantee their right to property.

Article 18 of the 2008 SADC Protocol on Gender and Development provides that States parties shall, by 2015, review all policies and laws that determine access to, control of, and benefit from productive resources by women in order to:

1. End all discrimination against women and girls with regard to water rights and property such as land and tenure thereof;
2. Ensure that women have equal access and rights to credit, capital, mortgages, security and training as men.

CEDAW calls for the elimination of all forms of discrimination against women. Article 1 defines discrimination as: any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. In addition, article 2(a) provides that States parties must ensure the practical realisation of the principle of equality. General Comment 28 of the CEDAW Committee emphasizes the obligation of States Parties to take all necessary steps in order to prohibit and prevent violations of the rights of women. It also emphasizes that religious or traditional attitudes are not a legitimate defense of such violations. It also requires that States Parties report on the measures they have taken to eliminate and prohibit discrimination against women.

The concept of equality is traditionally understood to mean "the right to be equal to men". This becomes problematic when it is extended to the understanding that women must be treated exactly like men if they are to gain equality with men (Fredman, 2003, p. 111). It implies that women must be treated according to male standards, obscuring the ways in which women are different from men and how they will be disadvantaged because of these differences. I will focus on two models of equality, namely:

1. formal equality, which entails gender neutral treatment in all circumstances;
2. substantive equality that encompasses equality of opportunity, which recognises that women do not necessarily have the same experiences as men and, therefore, should not be treated identically to men in all circumstances; and equality of results, which focuses on equality of outcomes and requires the transformation of the underlying structures that are the cause of inequality.

2.4.1 The formal model of equality

Formal equality is sometimes known as the 'sameness', 'similarly situated', or 'identical treatment' approach to equality (Byrnes, 2012, p. 53). The formal model of equality regards men and women as being the same and, therefore, sets out to treat women the same as men. The problem with this model is that it does not take into consideration the biological and gender differences between women and men. This places pressure on women who have to perform according to male standards (Bayefsky, 1990, p. 5). Women cannot have access to or benefit from opportunities in the same manner as men when there is so much difference between the conditions of women and men (Bayefsky, 1990, p. 5). The formal model of equality adopts what are called 'single standard rules' and fails to acknowledge that there are social and economic disparities between groups and individuals in society that may not

necessarily be remedied by prohibiting sex-based discrimination. Insisting on formal equality might actually reinforce inequality (Reeve C. , 2001).

2.4.2 Substantive Equality

The notion of substantive equality is used in theories of sex or gender inequality which focus on asymmetrical structures of power, dominance and disadvantage at work in society (Byrnes, 2012, p. 55). The CEDAW Convention promotes the substantive equality model and consolidates two central approaches to equality. The first is equality of opportunity in terms of and access to the resources of a country, to be secured by a framework of laws and policies, and supported by institutions and mechanisms for their operation. The second is equality of results upon access and opportunity, toward achieving real change for women. State parties to CEDAW have a responsibility to ensure the practical realisation of rights, and are, thus, obliged to show results.

The substantive approach which recognizes that in order to redistribute benefits equally between women and men, there must be measures to promote women's rights that must transform the unequal power relations between women and men in the process. There should not only be equal opportunities for women, but also equal access to those opportunities (Byrnes, 2012, p. 55).

The substantive equality approach recognizes that women and men cannot be treated the same, and for equality of results to occur, women and men may need to be treated differently. The challenge is to know when to take note of difference, and to decide on appropriate measures for different treatment that will facilitate equal access, control and equal results (Byrnes, 2012, p. 55). Such measures will have to be assessed to ensure that they promote

autonomy rather than protection or dependency. This has to be done without compromising the claim for equal rights and equality as a legal standard.

It is generally acknowledged that each model may contribute to the promotion of equality between women and men and CEDAW itself is informed by more than one model of equality. CEDAW's focus is on eliminating all forms of discrimination against women so that substantive equality, which requires equality in practice and the elimination of the structural causes of inequality, might be achieved.

In General Recommendation No. 25, the CEDAW Committee describes the three obligations that are central to States parties' efforts to eliminate discrimination as being:

1. to ensure that there is no direct or indirect discrimination in their laws and that women are protected against discrimination – committed by public authorities, the judiciary, organizations, enterprises or private individuals – in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies;
2. to improve the *de facto* position of women through concrete and effective policies and programs; and
3. to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals, but also in the law, and legal and societal structures and institutions (Buergenthal, 1997, p. 707).

The principle of non-discrimination is provided for in almost all the major International Human Rights Instruments.²⁵ An understanding of this principle provides a test of whether SI

²⁵ For instance, article 2 of the UDHR, articles 2,3 and 26 of the ICCPR, articles 2 and 3 of the ICESCR, article 2 of the ACHPR, article 2 of CEDAW, article 2 of the Maputo Protocol and the SADC Gender Protocol.

53/2014 has the potential of achieving equal rights for men and women guided by liberal feminist's emphasis on equality of opportunity between men and women.

The Committee on Economic, Social and Cultural Rights (CESCR) clarified what the principles of non-discrimination and equality entail in General Comment No. 16 (2005) on article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights. The committee notes that the enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. Guarantees of non-discrimination and equality in International Human Rights treaties mandate both *de facto* and *de jure* equality. *De jure* (or formal) equality and *de facto* (or substantive) equality are different but interconnected concepts. Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.²⁶

Substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies. In implementing Article 3 of ICESCR and SI 53/2014 for the purpose of this study, States parties should take into account that such laws, policies and practice can fail to address or even perpetuate inequality between men and women because they do not take account existing economic, social and cultural inequalities, particularly those experienced by women.²⁷

In addition to the above, the CEDAW Committee in its General Recommendation No. 25 on Article 4(1) of CEDAW on Temporary Special Measures further elaborated the principle of

²⁶ Paragraph 7.

²⁷ Paragraph 8.

non-discrimination as well as achievement of equality between men and women. In paragraph 8, the Committee noted that, in its view, a purely formal legal or programmatic approach is not sufficient to achieve women's *de facto* equality with men, which the Committee interprets as substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming under-representation of women and a redistribution of resources and power between men and women.

In advancing substantive equality of opportunity over formal equality of opportunity, theorists, like Koggel, argue that:

this aims at questioning the formal equality theorist's account of individual freedom by showing the ways in which wealth, talent, education and stereotyped perceptions all work to limit the opportunities of some individuals namely members of groups who have suffered a history of disadvantage, marginalisation and discrimination (Koggel, 1998, p. 10).

The above sentiments are crucial in appreciating whether having a law that provides equal opportunity for men and women, as does SI 53/2014, will have the same effects for men and women. While I was very excited by the coming into effect of SI 53 /2014, I noted that in as much as the statutory instrument is very comprehensive, its provisions are not entirely unique. The constitutions of the irrigation schemes under study have similar provisions as regards inheritance of the use of the irrigation plots. The schemes' constitutions are very clear that in the event of death, the surviving spouse inherits the plot. The findings of this study revealed that despite these very specific, clear and unambiguous provisions, women horticulture

farmers have found it difficult to enforce the inheritance provision due to many factors, chief among them being the application of customs and traditions that should not be applied in the first place. Politics has not helped the situation either, as political leaders take the disputes as an opportunity to strengthen their control of the irrigation schemes.

For women horticulture farmers in Ward 25 of Nyadire District of Mutoko to enforce their land and property rights in general as provided for by SI 53/2014, one of the arguments put forward in this chapter is that the mere allocation of land to women does not automatically bring democratic gender outcomes in the absence of decisive policy making. In my view, there are a number of issues taken for granted. Women's land rights were affected mainly by the approach adopted by the government to base the allocation of land on the family farm or household model. The family farm or household model meant the land was given to the family or household, not to individuals within these institutions. There are certain assumptions as to what constitutes a family according to tradition. Customary practices assume that men are the heads of families, thus, they are given land and land is registered in their names. The following was a response by Dr Made, Former Minister of Lands, Agriculture and Rural Resettlement, on land allocation:

Since the family is traditionally made up of two partners, the government cannot say which partner should come forward to apply for land. Such specifics must be left to the families to decide (Women and Land Lobby Group, 2001, p. 8).

In the light of the above, SI 53/2014 will not, in reality, achieve its intended purpose unless we change such attitudes, especially in rural areas where land is seen as a preserve of males. There is a need to engage with the community members and leaders in line with the obligation under article 2(2) of the Maputo Protocol which requires states to commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the

elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

2.5 Conclusion

The chapter explored how women's contributions can be secured in land based businesses and draws upon equality and equity legislation at local, regional and international level. Central to the argument presented in the chapter is the need to transcend the historical male dominated notion of marriage in family business arrangements and to look at it as a partnership relationship. The chapter argued that the under-valuation and chronic under-recognition of women's contribution to family economies lies in the dominance of marriage as the organizing model for farming business activities in small scale resettlement land. The national objective in the 2013 Constitution on marriage (section 26) also provides for equality of rights and obligations of spouses during marriage and at its dissolution; and that, in the event of the dissolution of a marriage, whether through death or divorce, provision should be made for the necessary protection of any children and spouses. This has been put into effect through the new Agricultural Land Settlement (Permit Terms and Conditions) Regulations of 2014 (SI 53/2014) discussed in this chapter.

The ensuing chapters will argue that the implementation of the laws discussed in this chapter will require that in family business relationships marriage should **not** be treated as it has traditionally been as the dominant framework but must be viewed as an equal partnership. Thus, it must go beyond a relationship perceived as an institution dominated by one gender over another. The next chapter presents the methodology framework of the study. It explains how data were collected within a broader framework of the women's law approach and capabilities theory. The chapter reflects upon the rationale for choosing the women's law

methodology, the challenges I encountered and how I responded to them. The different processes I employed in the collection and analysis of findings are thus detailed in the chapter.

CHAPTER 3

Methodological framework

Go to the people, live with them, love them, start with what they know, build with what they have, when the work is done, the task is accomplished, the people will say “We have done this ourselves”. LAO TSU China 700B

3.1 Use of women’s law as a feminist methodological approach

My study is primarily directed at understanding the role and impact of laws and policies on marriage and business and the differential effect of these laws on the lives of women as compared to men. The objective of feminist research is to enquire into and describe women’s subordinate position in society as compared to men’s and highlight the nature and extent of this subordination (Tong, 1989, p. 13). This enables the researcher to understand how and through what mechanisms and for what reasons, women are subordinated and continue to be subordinate with a view to planning a strategy that promotes change.

The women’s law approach involves use of three fundamental methodological bases, namely, the ethical, the empirical and the legal doctrinal. The ethical discusses the moral and political questions with the desire to improve women’s position at law and in society (Stang Dahl, 1988, p. 12). The empirical starts with the female body and its social significance as a sex and the legal doctrinal which involves a systematic criticism of current law based on the principles of women’s law (Stang Dahl, 1988, p. 12). As such, women’s law explores women’s lived realities and, from that viewpoint, it questions and investigates the law (Benzton, Hellum, & Ncube, 1998, p. 26). Because of the nature of my study I needed to combine law and anthropology, business studies and feminist analysis within a research framework and then to work within it using a women’s law approach which seeks to expose the manner in which laws that are seemingly gender neutral are, in fact, gendered in their reality. This chapter

reflects upon the rationale for choosing the women's law methodology, the challenges I encountered and how I responded to them. The different processes I employed in the collection of data and analysis of the findings are thus detailed in this chapter.

Women's law, as a form of feminist jurisprudence, can be placed within the framework of feminist critical discourse whose goals are similarly to expose subtleties in power relations that are often taken for granted (Stang Dahl, 1988, p. 13). The approach seeks to understand the realities of law by using a grounded approach that emphasises understanding the application of law from the perspectives of people's 'lived realities'. These realities are essentially used to interrogate the extent to which the law meets or fails to meet such needs and how measures can be shaped. As a methodological approach that uses the grounded theory approach, women's law emphasises theory building from data gathered by approaching the research questions with an open mind; using the next question technique; concept building as the research progresses through making use of a constant comparative method (Benzton, Hellum, & Ncube, 1998). This research methodology encourages the continuous discovery of new issues and seeing reality from the point of view of the examined subject (Benzton, Hellum, & Ncube, 1998, p. 26). The most basic characteristic of the women's law approach is that it focuses on women and it promotes women's need for women's active engagement in changing their lives and legal frameworks.

Within the women's law broader methodology, to gain a deeper understanding of women horticultural farmers' life experiences within a family business set-up I used a case study approach. A case study is an empirical inquiry that investigates a contemporary phenomenon within its real-life context, when the boundaries between phenomenon and context are not clearly evident, and when multiple sources of evidence exist (Yin, 2003, p. 2). Case studies explain the causal links in real-life interventions and the real-life context in which an

intervention has occurred (Yin, 2003, p. 3). They help to explore situations in which the intervention being evaluated has no clear, single set of outcomes (Burns, 2007, p. 22). A case study method was selected for this study following the guidance of Burns who advocated the use of case studies when the researcher desires to probe deeply, and undertake intensive analysis of the subject under investigation (Burns, 2007, p. 18).

Using this approach, I collected the narratives of women farmers in the irrigation communities focusing on the opportunities that were available and the challenges they were facing. Being a lawyer and having been involved in teaching and researching business laws, my focus, at the design stage of this work, was on business laws and questioning whether their utilization by women would enhance their businesses. I was at that stage convinced by the formalization debate,²⁸ having read a lot of literature on the legal entitlements of the poor. This school of thought advocates, among other issues, business rights as a possible solution to end poverty. I was also attracted to De Soto who noted that there is no shortage of entrepreneurs in the world (De Soto, 2000, p. 2). He questions why entrepreneurs have flourished in the West but not elsewhere. The problem, as noted by De Soto, is that developing countries have yet to establish and harmonize the invisible network of laws that turns assets from dead to liquid capital. He defined dead capital as capital outside the law. De Soto suggested that poverty lingers in the Third World because of the failure to create a system of recognising and organizing citizens' property in a way that will allow for it to be converted into dynamic capital usable to provide wealth (De Soto, 2000, p. 19).

²⁸ This is a debate that started with the legal empowerment of the poor. Legal empowerment of the poor means the legal enhancement of the capacity of the poor to seize economic opportunities that help them escape poverty via pro-poor legal reforms, facilitation of the use of law by the poor, and enforcement of the legal rights of the poor. While recognizing the importance of government in creating law and enforcement mechanisms, the team shifted the paradigm to give greater support to civil society efforts that help or pressure government to do its job better.

The horticulture farmers in Mutoko are accumulating capital from their horticultural production, and building houses and developing land in which, before the passing of SI 53/2014, they had no clear land rights. I, therefore, sought to develop a framework that gave appropriate legal identity to these horticultural businesses and provide appropriate legal frameworks for them to function and grow and thus provide the potential for converting dead capital, as I saw it being accumulated in Mutoko, into live capital. I also sought to establish and concretize the fact the women horticulture farmers in Mutoko are entrepreneurs and should be classified as such. This crucial aspect of my work was informed by an earlier study that had been done by Tsitsi Mariwo in 2009. The primary task of her study was to make visible the invisibility of rural women's entrepreneurship in relation to horticulture. She explored the impact of such invisibility on women's right to entrepreneurial development. Her argument was that despite the relevance of women's enterprises in horticulture for macro-economic variables, the failure to include and take into account their needs in planning processes showed the gendered nature not only of entrepreneurship but also the economy (Mariwo, 2009, p. 7).

This informed my then first assumption that women horticultural farmers in Mutoko have entrepreneurial potential and cannot be categorized as subsistence farmers nor are they poor. As I conducted fieldwork and analysed the data I had collected and discussed my findings with my supervisor, I realised that it was not about whether women horticulture farmers had entrepreneurial potential or not, but, rather, it required a thorough investigation of the legal and policy location and nature of the women horticulture businesses. Data collected revealed that most women horticulture farmers were in family businesses farming for basic family requirements and producing for the market.

I questioned whether women's full capacity to utilize land in an effective commercial fashion was being adversely affected by the way in which the businesses were located within and controlled by family. This was because findings indicated that the businesses were family based and controlled and the predominant control of what happen lay in the hands of men. I questioned whether the family business model meant that women are not being given the recognition or that there is inadequate recognition of their input within the family framework. I utilised the women's law approach to interrogate these issues as they were emerging. I found the approach appropriate as it calls for a cross-cut through different legal, social, political, customary and economic disciplines to reveal otherwise hidden, unacceptable, unacknowledged or unexplored gender related effects (Maboreke, 1988, p. 66). Such a basket approach offered me a variety of tools to engage with in light of the lived realities of women engaged in horticulture farming. Thus, I came to realise that women horticulture famers in Mutoko were involved in and making major contributions to commercially viable businesses. I then sought to establish the models of doing business the horticulture farmers were engaged in.

An early analysis of the findings showed that the models of doing business that were functioning were the family and the cooperative models. The family model is where horticulture production is done within a family unit consisting of a husband, wife/wives and children,²⁹ while a cooperative model is where the families' team up in areas of common interests and are governed by a constitution agreed to by the members of the cooperative. Further analysis showed how the family business model and cooperative model were layered in a way that adversely affected women's capacity to engage with them. It became clear that

²⁹ In business law, this type of business model is referred to as a sole trader. The question is how it can be 'sole' when more often than not the business is situated within a family and more than one person is involved. This naming could have originated when women did not have contractual capacity and, therefore, could not have been named in the business.

the family and cooperative models clashed. Despite the overarching old cooperative model, the family model was dominating.

My earlier thinking was that the Zimbabwean legal framework stipulates various forms of business models but these are not suitable for women's rural ventures. Having established the models of doing business the horticulture farmers were utilising, I questioned the effectiveness of the business models bearing in mind that the cooperative model, for example, was imposed upon the horticulture farmers at the inception of the irrigation schemes through the Government of Zimbabwe socialist policies. This was informed by the findings that revealed that the irrigation schemes were set up as business entities based on cooperative principles and governed by constitutions supposedly agreed to by all the members and enforced by a selected management committee. The main objective of these schemes is to operate as a source of income to the members through the creation of employment. Such was achieved through the allocation of a 0.5 hectare plot to the selected members. It appears the initial objective of setting up the irrigation schemes to operate as a source of income to members through the creation of employment has since been forgotten or is being ignored by all actors, members included. Evidence on the ground showed little, if any, recognition of the horticulture ventures by state actors as businesses. As a result, the horticultural enterprises are relatively small. Enterprises function mainly as partnerships between husband and wife. This poses a danger to women losing out on their investment in the event of a dispute as they have to prove existence of the partnership. When it comes to marketing, the businesses are informal cooperative societies, as they go to the market as a group and can sell on behalf of others. The initial cooperatives that were set up collapsed, the main reason being they were not initiated by the members themselves but by government following its socialist policies.

The 1980s saw the creation and substantial growth of cooperatives under state direction. The cooperatives originated from government policy and directives rather than people's common interest and own motivation and were conditioned to emerge as dependant agents of the state (Vingwe, 1994). Porvali (1993) cited by Mohamed– Katerere acknowledged the potential role cooperatives can play in the development process but only if they were restructured and disentangled from the state so as to run on business principles in line with the evolving market economy (Mahomed - Katere, 1998, p. 4).

When I started the research I was of the strong opinion that most women farmers' ventures were small and unregistered because of women's status in the society that is deeply affected by socio economic constraints. In response to my findings, I realised that it was not whether the businesses are registered or not, but, rather, I needed to thoroughly interrogate the family business model within a cooperative framework that the horticulture businesses were situated in and to examine the extent to which this model enhanced or limited women's capacity to effectively participate in the business. As a result, I focused on whether women's capacity was limited because they were affected by sex and gender relations as the businesses were situated within a family set-up.

Being a rural set-up where marriage gives important social status to women, women in 74 of the 89 families are married customarily and two are in marriages,³⁰ they conduct their farming activities within family business structures as shown by the table below.

³⁰ The other 13 women are either widowed or single.

Scheme	Women in Civil marriages	Women in customary law marriages	Widowed	Single
Nyaitenga Drip	0	5	3	1
Nyaitenga overhead	0	17	2	1
Chitora 1	2	14	3	1
Chitora 11 flood	0	20	0	0
Chitora overhead	0	18	0	2
TOTAL	2	74	8	5

Table 1: Marriage Status of Women Interviewed

Men in the irrigation schemes are usually the plot holders but women control the day to day management of the business. In terms of land rights, on paper women have favourable land usage rights now well captured by the provisions of SI 53/2014. These rights have always been in the operational constitutions of the irrigation schemes to the effect that if the plot holder dies, the plot passes on to the surviving spouse. This, however, is not followed in practice, as the land usage rights, though well defined in the irrigation schemes' constitutions are, in reality, enforced through customary structures where land inheritance is through the male lineage and women can only access land through their husbands while the marriage subsists and through their sons, if widowed.

Further, my initial thinking was that the majority of women's horticultural ventures are small and informal because support for women's ventures is often given through social welfare or community development initiatives that place greater emphasis on the provision of micro finance and not through support for enterprise development delivered through economic ministries. Responding to my findings I realised that as women's businesses are situated within the family this leads to the non-recognition of women's contribution in the horticulture

business and, as such, women are not seen as partners in the business. As a result, women are not targeted for business finance.

My initial thinking was that women horticulture farmers needed to utilize formal models and opportunities to enhance their horticulture businesses. My starting point was that women's horticultural businesses in Mutoko were small because of the non-utilization of business laws and, therefore, utilization of business laws would lead to the growth of their businesses. What I had in mind was the progression of the business from family business units to fully fledged companies as shown by the diagram below.

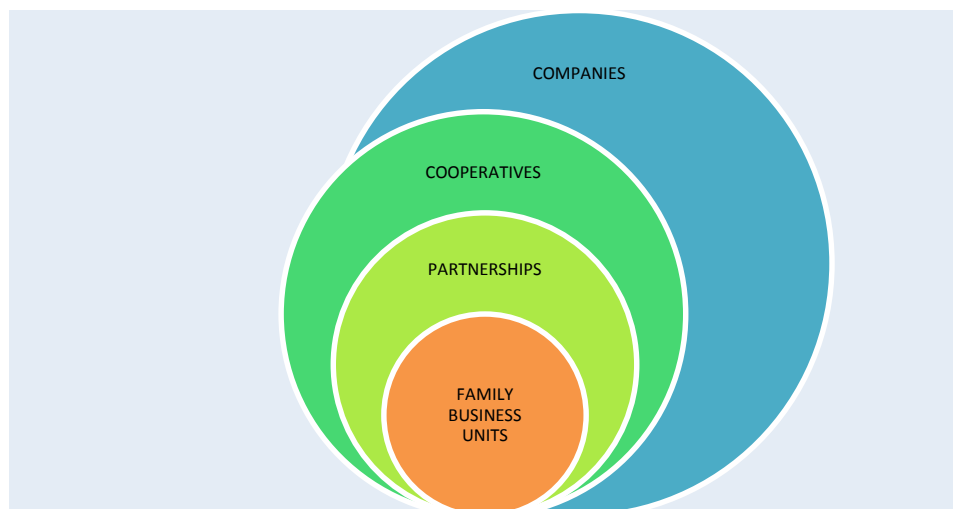


Figure 2: Business Progression

In analysing my data, I realised the problem did not begin and end with the utilization of business laws.

Of the 89 horticulture plots in the irrigation schemes, 26 were either registered in women's names or under the control of women as shown in Table 2, below.

Women who acquired plots in their own right	Widows who inherited from spouses	Daughters who inherited from parents	Women with husbands not staying at the plots	Total Female plot holders
11	10	2	3	26

Table 2: Status of Women on the Irrigated land

Of the 26 female controlled plots, 12 are widows and daughters who inherited from husbands and fathers. These plots were at a stagnant level compared to husband and wife plots; the questions I asked were, “Why was there no significant growth in these businesses?” “Was it because the women were satisfied with the *status quo*?” “Was it because of the economic decline or was it a labour and resources issue, bearing in mind that husband and wife horticulture businesses were doing fairly well?” I asked the women and they said that even though they inherited the plots in terms of the irrigation schemes constitutions, they had not been accepted as members of the irrigation scheme as they had not yet been issued with permits in their own name. The names that were still on the cooperative register were that of their dead husbands. They were not sure whether they would get the permits as there was little cooperation from the irrigation management committees. Because of this lack of tenure security, their horticulture businesses were stagnant. This was happening despite the provisions of the Administration of Estates Act (Chapter 6:01) and the inheritance clause in the irrigation schemes’ constitutions. The Administration of Estates Act provides in section 68 that a spouse can inherit from a deceased estate regardless of the type of marriage she had.

I then asked the women’s law questions, “Is the law appropriate? Is the law meeting the needs of women horticulturalists? Or, are women being left out of viable opportunities because of the way the law is structured?” The women’s law methodology allowed the adoption of a multi-disciplinary approach to answer the above questions. It enabled me to go beyond my narrow business law approach.

As a result, I realized that it was not just the utilization of business laws that provides the potential of enhancing women’s effective participation and potential to benefit from the horticulture businesses. Laws from across the legal spectrum affected women horticultural farmers, either directly or indirectly. What was needed was a general enabling environment.

What emerged was that marriage and family relationships played a central role in the family business, regardless of the particular type of family business model (e.g., family business unit, partnership or the overarching cooperative model) that a family was using. In other words, marriage and the family dominate and underpin whatever structure the business models takes, as shown below:

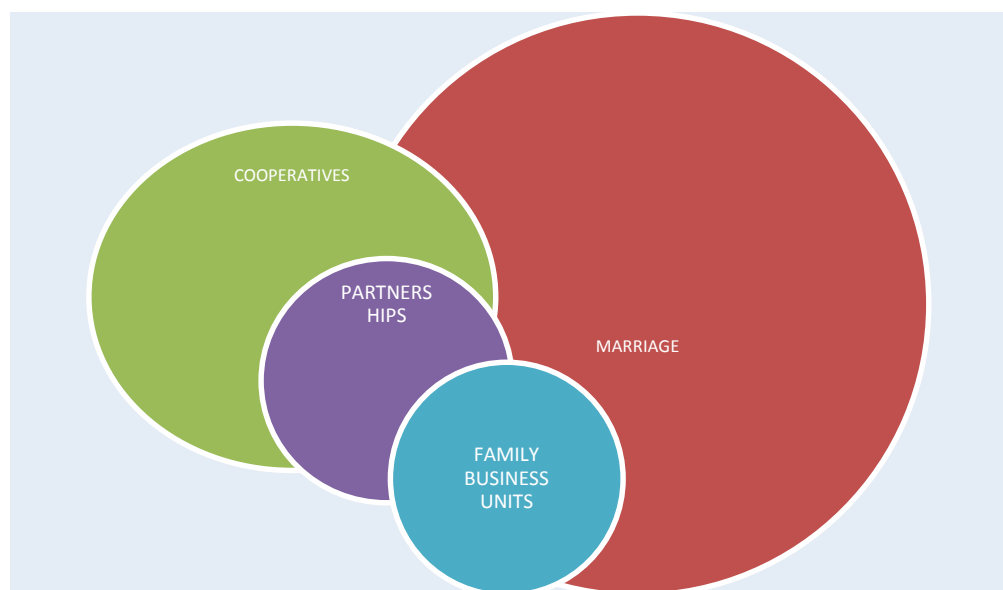


Figure 3: Family Business Model

It became clear that women’s horticulture ventures in Mutoko were affected not only by business laws but by a plurality of laws and norms. I found women horticulture farmers at the intersection between different systems of law³¹ during marriage and upon death of a spouse and a plethora of normative orders that influence the business choices they were making (Benzton, Hellum, & Ncube, 1998, p. 28) as illustrated below:

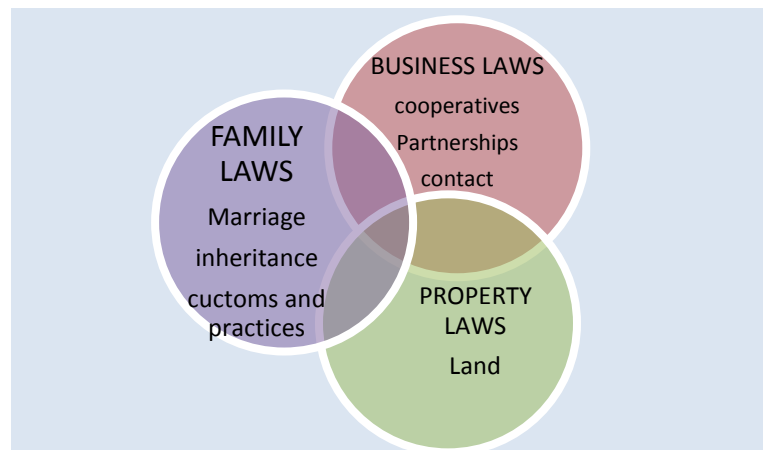


Figure 4: Intersection of Different Systems of Law

This study interrogates the conceptualization of women businesses that are land based and how the premium put on marriage affects women’s commercial capacity. A thorough investigation of women lived realities offered me a methodological path to evaluate rural women’s potential for participation in the wider economy through recognition of rural women horticulture farmer’s individual capacity and capabilities by assessing what women horticulture farmers are doing and what they are potentially able to do and to be. This led me to the capability theory.

3.2 Mapping women capabilities and responding to their capabilities

Through interaction with women horticulture farmers, I observed that within family owned ventures women’s decision making capacity was heavily curtailed. I, however, observed that

³¹ These are general laws that govern business entities and marriage as well as customary laws that govern marriage and access to resources, especially land.

women did most of the work as husbands, though plot owners, were frequently engaged in other work outside the horticulture business. This caused me to question whether women running family owned horticulture businesses were equal partners in the business or mere labourers. If they are mere labourers, was this as a result of gender inequities within the family and society as a whole? Did this pose barriers to the recognition of the women's work? I also queried given different circumstances whether the women would have been able to claim a stake in the businesses. To establish this I employed the capabilities approach. The capability approach is a liberal political theory developed by Martha Nussbaum and Amartya Sen in an effort to address the problem concerning gender inequities. Central to Nussbaum's capabilities approach is the idea that justice should be defined in terms of people's capabilities to do different things in the way they wish them done (Holland, 2008, p. 319). By capabilities, Nussbaum refers to the condition or state of enablement that make it possible for people to achieve things. Capabilities are, therefore, people's real opportunities to achieve outcomes they value. Nussbaum argues that to attain gender justice, women need to have the capability to "hold property" and the capability to "move freely from place to place." She argues further that without these capabilities, women are especially subject to common forms of oppression and deprivation, and they will therefore often remain unable to live a life that is "worthy of the dignity of a human being" (Nussbaum, 2000, p. 34). From this perspective of the capabilities approach, I began my evaluation of development policies of the Government of Zimbabwe focusing on irrigation schemes in Mutoko by looking at how these external conditions shape the capabilities of men and women within the same irrigation scheme. It is from this evaluation that I was able to assess, from a women's perspective, what gender justice is and what it requires. The capabilities approach, as a theory of justice, was useful for this study as it enabled me to interrogate the situation of women in horticulture businesses under irrigation cooperatives. My focus was on identifying the dimensions of this business

model, its possible advantages and limitations and what is, therefore, required with respect to the equitable distribution of economic benefits and burdens among women and men.

Applying the capabilities approach as a tool for design and data analysis enabled me to formulate a broad framework for the evaluation and assessment of women horticulture farmers' well being and social arrangements. Further, I used the capabilities approach as a tool to evaluate women empowerment policies of the Government of Zimbabwe. Nussbaum argues that policy and economic thought should be feminist attentive to the special problems women face (Nussbaum, 2000, p. 21). Feminist approaches to development are generally concerned with ensuring that development satisfies women's needs and further their interests and aspirations (Nussbaum, 2000, p. 21). Using the human development and capabilities approach I challenged the welfarist approach to development as I saw it being applied in Mutoko where focus is on just the provision of the basic minimum without looking at the potential of the recipients (Dorsey, 2012, p. 32).

According to Nussbaum, empowerment arrangements should be primarily evaluated according to the extent of freedom people have to promote or achieve the functions they value in the attainment of development (Nussbaum, 2000, p. 8). The purpose of development is to enlarge all human choices and not just income. As a result, development must put people at the centre of its concerns. From a capabilities perspective, development is a process of expanding the real freedoms that people enjoy, the goal of development being the promotion and expansion of valuable capabilities (Sen, *Development as a Freedom*, 1999, p. 16). I found the capabilities paradigm applicable to my work as it is concerned not only with building human capabilities through investment in people, but using the human capabilities more fully through an enabled framework for growth and development (Mahbub ul Haq , 2004, p. 17).

3.2.1 Linking the Capability Approach and Human Rights

The capability approach fundamentally relies on human rights and provides a way of understanding and implementing the urgent claims captured by the language of rights. Nussbaum argues that human rights cannot be secured until we have secured to them a range of human capabilities (Nussbaum, 2000, p. 24). As human rights focuses on entitlements and state obligations, the capabilities approach focuses on human freedoms and reminds us that freedom is not possible without institutional change. This approach strengthens the human rights discourse. The capabilities approach directs attention to connections that might otherwise be less clear (Nussbaum, 2000, p. 24). Nussbaum gives an example of the connections between access to credit and freedom of expression. Women who can get a loan have a greater likelihood of economic independence from male relatives, thus making it possible for them to speak out even controversially, without fear (Nussbaum, 2000, p. 38). Another example is the connection between land rights and meaningful access to economic participation. If women have property of their own, there is a likelihood of their engaging in economic activities without worrying that the withdrawal of male support will leave them destitute (Nussbaum, 2000, p. 38).

From the data I collected in the field, I used the framework of human rights and capabilities as an analytical tool to evaluate the Government of Zimbabwe women empowerment strategies *vis a vis* the challenges women horticulturalists were facing. In collecting data, I looked at 'how well' the women horticulturalists were doing. Data collected provided a baseline of evidence to evaluate government policies and the level of State compliance with the 2013 Constitution, domestic legislation and International Human Rights Instruments.

3.2.2 Capabilities and the equality principle

Equality draws attention to those who have unequal opportunities due to various disadvantages and may require preferential treatment or affirmative action (Mahbub ul Haq , 2004, p. 18). The equality principle recognizes gender as a central organizing feature of society. Taking a gender perspective made me realize that women stand at the crossroads between production and reproduction, between economic activity and care for human beings and, therefore, between economic growth and human development (Kabeer, 2003b, p. 5). In the sites I did my research, most of the women farmers are in family businesses. A family business is one where a family owns and controls the business and there is a clear established vision to keep the business in the family across generations (Chua, Chrisman, & Sharma, 1999, p. 20). In these family horticulture businesses, both husband and wife are contributing towards the running of the business. In determining the benefits women are accruing out of the joint ventures, I did a comparison of women input into the business and the outputs. I looked at inputs as the women's contribution and output as the positive or negative returns that an individual perceives as having accrued to her as a result of participation in the business relationship. Using the equality principle, I assessed whether distribution of labour and resources is equal from a gender perspective by comparing the ratios of women contribution to those of men and considered the benefits that accrue to each member of the horticulture venture. I focused on the different gender roles of women and men in a family horticultural set up. Key questions on gender I asked were; "Who is responsible for the day-to-day management of the business?" "Who goes to the market?" "If women are precluded from going to the market, how does this position them in the business?" I explored whether there was an artificial ceiling being created for women. I further explored how women horticulturalists in Mutoko were using their family systems to enhance their economic development options and the extent to which the family system acted as a hindrance to their capacity.

Theory explaining venture creation is generally organized around three basic constraints namely Market, Money and Management to give a “3M” framework (Brush, Bruin, & Weiter, 2009, p. 9). Brush (et al 2009) in their paper added “Motherhood” and “Meso/Macro Environment” to “3M’s” to construct a “5M” framework. Whilst from the findings I noted that motherhood had a significant effect on women’s capacity to effectively participate in the business on the same basis as men, following the principle of equality, I realized that there is a need for a much broader definition of women’s roles, to include the role and position of women in the wider family she functions within. I noted that marital obligations, for example, caring obligations for the extended family placed additional strain on venture creation for women in family businesses and women carry these obligations into widowhood. Given the multi-generational families women in Mutoko operate in, there was, therefore, need to include “Marital Obligations” to the “5Ms’ to construct a “6M” framework. I explored marital obligations because they have a significant effect on the business model women can engage in. Women horticulture farmers in Mutoko are involved in commercially viable businesses. One family whose financial returns were available accrued an estimated income of USD 23,828 during the 2011/12 agricultural season. This translates to an average gross income of USD 1,986 a month. This income, by Zimbabwean standards at the time the research was done, was high income as the majority of unskilled to semi skilled workers in the commercial sector were earning less than USD 400 per month.

3.3 Research Methods

A multi-method research design incorporating interviews with key informants, focus group discussions, and observations was used in this investigative study. These multiple methods enabled the triangulation of data, thus securing an in-depth understanding of the issues as they emerged.

3.3.1 The Sample

In selecting respondents, I used a form of purposive sampling referred to as theoretical sampling. Horticulture farmers were selected based on the initial findings of the site selection visits. Below is a list of the institutions from which the respondents were drawn:

Data Source	Organization	Number of respondents	
		FEMALE	MALE
Women and men horticulture farmers in the Mashonaland East Province who own irrigation plots	Chitora 1 and 11		
	Nyaitenga Drip and Overhead	44	16
Horticultural Promotion Council	Horticultural Promotion Council		2
Registrar of companies	Registrar of Companies		2
Relevant government ministries and departments	Ministry of women Affairs, Gender and Community Development	2	2
	Ministry of Small and Medium Enterprises and Cooperatives	1	3
	Ministry of Economic Affairs		
	Ministry of Youth, Empowerment and Indigenization		1
	Department of AGRITEX		3
	City of Harare		1
Financial institutions	Agribank	1	1
	Commercial Bank Of Zimbabwe		
Horticulture produce purchasers and consumers	Supermarkets	5	3
	Catering services	3	1
	Hospitals	2	2
Women in business organizations	Indigenous Business organization	1	
	Women in Business and Skills	2	
	Zimbabwe Women Resource Centre	1	2
	National Federation of Business and Professional Women in Zimbabwe	2	1
	Self Help Development Foundation of Zimbabwe		
	Women Development Credit Scheme	1	1
Clinics and hospitals	Chitora clinic and Nyadire hospital	2	1
TOTAL		66	42

Table 3: List of Respondents

3.3.2 Data collection and analysis

My categorising of data, leading to the identification of emerging issues was influenced by a gender analysis framework. Key to this framework is the collection of data at individual and household levels. I collected data on women's and men's activities which I categorised as either reproductive, productive relating to the horticulture venture or community based. Focus was on how these activities reflected access to and control over income and resources. This highlighted the returns and constraints under which women work and enabled me to assess how such activities may impact on women participation as equal partners in the business.

Data was mainly collected using interviews, focus group discussions and observations.

Analysis of the findings at every stage pointed me to issues that needed exploration. Interview questions of this initial data collection were designed in such a way that they allowed respondents to talk about what was important to them in the form of narratives regarding their horticultural ventures. These personal narratives gave women horticulture farmers opportunities and spaces to articulate business processes as they viewed and experienced them. I selected women and men focusing on how they were utilizing allocated land. Most of the selected respondents were interviewed more than once. The first interviews were mainly conversational, allowing the women and men to talk freely about their experiences. After analysing the data from these initial interviews, I carried out in-depth interviews covering pertinent issues arising from the first interviews. Using this method of data collection, I observed that women do not necessarily share common experiences by virtue of their sex and gender. Their individual experiences differed considerably in relation to age and, especially, marital status. For example, the older married women were allowed by their husbands to go to the Harare markets more often than the younger married women. The male respondents said

younger women were more at risk of being harassed sexually by the touts at Mbare market. As a result, the husbands believed that the local Mutoko markets were safer for their wives.

Among the many issues that arose, issues of credit, markets and land use were prominent.

Using grounded theory as a tool of data collection and analysis, I extracted the phenomena or experiences significant to the respondents by assigning themes to issues that were of importance to the respondents. These issues referred to as phenomena, if assigned a conceptual label, become a code also known as a concept (Strauss & Corbin, 1998, p. 27). In developing a concept, I observed patterns and codified them paying attention to the development of interrelations and patterns of interaction. I pulled together concepts that shared the same characteristics into categories. Categorising the data provides an important link between collecting data and developing theory (Charmaz, 2006, p. 44). It highlights problems, issues, concerns and matters of importance to the phenomena being studied. The use of grounded theory aimed at engaging empirical knowledge about gender relations and local practices and procedures in a constant dialogue with theoretical generalisations and concept building (Benzton, Hellum, & Ncube, 1998, p. 25). Despite having assumptions, open mindedness was crucial to avoid having a rigidly pre-conceived or imposed theory. Thus, assumptions were tested and data analysed to find out which assumptions were holding or being challenged before making adjustments. I categorised the data as falling under the following categories:

1. Household and livelihood roles of women;
2. Access, control and ownership of resources;
3. Women mobility and access to markets;
4. Women decision making and influence;

5. Marriage, land and legal issues;
6. Business models.

The categories that developed therefrom are described by Strauss and Corbin as having ‘analytical power’ due to their potential to explain and predict (Strauss & Corbin, 1998, p. 32). Constant comparisons between collected narratives of the women, the concepts and the categories I identified helped to crystallise the issues to become part of the emerging theory. Thus, the following issues began to emerge:

1. Women horticulturalist business traits;
2. Women property rights *vis a vis* horticultural production;
3. Non-recognition of women’s work, political vulnerability of women and violations of women’s human rights;
4. Marriage and how it influenced the business model women horticulture farmers use;
5. Divorce and sharing of assets;
6. Inheritance of irrigation plots and the effect it has on women’s capacity.

3.3.4 Researchers responsibility and activism

The challenge I faced was conducting fieldwork in a politically volatile environment. Following the political violence that engulfed Zimbabwe before and after the General and Presidential Elections of 2008, according to Sokwanele, Civil Action Support website,³² Mashonaland East Province is on record as one of provinces that were affected most by political violence. I began field work in April 2010, although some respondents were willing to talk, the majority were suspicious of my intentions. The situation was further worsened by the announcement that 2011 was going to be an election year which it never was. The 2008

³² The website was visited on the 10 July 2014.

elections had caused the community much suffering. Both women and men feared a repeat of the violence. They wanted by all means to avoid the mistakes they thought they could have made in 2008 to invoke political violence against them. That included, among others, talking to and entertaining strangers. Even though I had been given the green light to conduct my research I was making very slow progress as most targeted respondents were not cooperating. I had to find a way to gain their trust. Firstly, I asked the councillor of the ward if I could attend the ward meetings. I was hoping that the more they saw me at their gatherings, the more they would understand that I meant no harm. The councillor agreed to my attending the meetings. These meetings were scheduled for the first Monday of every month. The results were positive. Firstly, the community started understanding that I had permission to carry out research and, secondly and most importantly, I observed and got a full understanding of the goings on in the community. I became aware of issues I could never have pursued as these issues could not be freely discussed outside the meetings.

3.3.5 Participant Observation

The real breakthrough came when I was invited for a wedding. One of the irrigators whose partner turned out to be in a bitter inheritance dispute involving an irrigation plot invited me to her wedding. Weddings are community events and everyone is invited to attend. It was after attending this wedding that the community fully accepted me. From that day on, I was never short of respondents, women and men started coming to me with various issues related to their horticulture businesses. It was only after the wedding that I got to learn of the bitter inheritance wrangle that the bride and the groom were involved in with the groom's brothers.

It was after the wedding that I got to learn that Chitora I, the irrigation scheme set up in 1994, was embroiled in three complicated inheritance disputes and two of the affected women had

stopped production. One woman, popularly known as Tina,³³ was slowly being pushed off the plot that she had inherited from her father by her father's brother. Martha from the other irrigation scheme, i.e. Nyaitenga Overhead Scheme, had a court judgement regarding a plot she inherited from her late husband. The management committee and the ward leadership were dragging their feet in having Martha acknowledged as the new owner by issuing her with a permit and changing their irrigation scheme records. At every scheme meeting, the name that was called when the register was read out was that of her late husband and more than three years had lapsed since his death.

3.3.6 Legal advice as research method

Issues started pouring in. Problems started surfacing, my dilemma as a researcher was how to respond to the problems. I repeatedly asked myself whether I should just collect the information I wanted, ignore the problems hoping the women would find their own solution. What if, in trying to assist the affected women, I would make the situation worse for them? The problems also presented me with the opportunity to provide legal information to the horticulture farmers. I decided to categorize the cases into what was achievable during my period of field work and what was not achievable. Martha's case was achievable. It involved engaging with the irrigation committee on their understanding of the constitution. They were all aware of and fully understood the clause that stated that once a plot holder dies, the plot passes on to the surviving spouse. If enforced, it meant Martha would be admitted as a member of the scheme and the scheme would write to the District Administrator's office and Martha would be given a permit. Martha is now the proud holder of a permit. Her case will be fully discussed in ensuing chapters. For Martha to be admitted as a member took a process of continuously engaging with the irrigation committee asking them whether, in their opinion, Martha was running a horticulture business and, if the answer was yes, was she not being

³³ Her case will be fully discussed in the following chapter.

disadvantaged by her not having a permit? I asked them further whether Martha was unlikely to benefit from contract farming that was being initiated by FAVCO³⁴ because she did not have a permit and whether for one to be eligible for this project, a permit was required. This continuous interaction led to the changing of the mindset of male scheme members who would have preferred the young child of the deceased male member to inherit the plot and not his wife, as per the wishes of the extended family of the deceased member.

3.4 Conclusion

This chapter discussed the methodologies and the methods I employed in data collection and analysis as designed at the research design stage. The chapter explored how some assumptions were challenged and reformulated during field work. I worked within a women's law methodological approach, an approach that seeks to expose the manner in which laws are seemingly gender neutral and yet, in reality, are gendered. The chapter reflected on the rationale for choosing the women's law methodology, the challenges I encountered and how I responded to the challenges as I interrogated marriage as an organising framework in land based businesses. The lived realities that emerged are discussed in the next chapters.

³⁴ FAVCO is a company that buys horticultural produce in Zimbabwe.

CHAPTER 4 Lived Realities and Legal Pluralities

That gender equality and women empowerment are goals in their own right and central to all other millennium development goals must be more than mantra. It must become a lived reality for women and men and boys and girls in all countries. (Michelle Bachelet, Head of UN women: 2010).

4.1 Introduction

The findings in this chapter will show that notwithstanding the fact that women have clear rights, most women horticulture farmers are deprived of basic capabilities to participate fully in the horticultural businesses. They have rights to the land that forms the basis of the horticultural businesses but because of social exclusion these rights are not being realised. As a result, they are not achieving a state of well-being and equal partnership in the land based horticultural businesses. By investigating the disadvantages and vulnerable positions of women horticultural farmers in Ward 25 of Nyadire District, Mutoko, this chapter seeks to identify the processes of women's exclusion. Sen argues that the concept of social exclusion has been linked to notions of relative poverty (Sen, 2000, p. 2). Social exclusion does not necessarily lead to poverty, it is possible to be excluded without being poor, as this study will show. Social exclusion, as a theory, allowed me to gain a broader view of women deprivation and disadvantage within family based horticulture businesses. Using perspective, as argued by Saunders, I applied the concept of exclusion to measure legal and policy formulation (Saunders, 2008, p. 8). Sen approaches social exclusion through a broad framework of freedom and capabilities to explain the causal as well as constitutive processes of exclusion and deprivation (Sen, 2000, p. 3). Social exclusion is considered both as a constitutive part of capability deprivation and an instrumental cause of capability failure (Zohir, Rabbani, Mallik, Huq, & Afsana, 2008, p. 42). I used the concept of social exclusion as an analytical tool because of its wide applicability in a broader view of deprivation and disadvantage.

Social exclusion refers to multi-dimensional disadvantage as well as relational – concerning inadequate social participation, lack of social integration, and lack of power (Room, 1995, p. 56). It is the processes through which individuals or groups are wholly or partially excluded from full participation in the society in which they live. In this process, certain individuals are pushed to the edge of society and prevented from participating fully, in this case, as a result of discrimination (de Haan, 1999, p. 11). This results in the women discussed in this chapter having little access to power and decision-making thus making them feel powerless and unable to take control of the decisions that affect their day-to-day lives (European Union, 2004). This chapter will look at how the irrigation schemes were established in the spirit of development and how gender stereotypes result in the creation of a gender hierarchy leading to *de facto* discrimination and economic marginalisation of women. This hierarchy manifests itself in family relationships, inheritance laws and customs; the valuation of women’s work and its visibility; and the power to make decisions.

4.2 I have rights, what happened?

4.2.1 Legal pluralities: Widows who inherited from deceased husbands

To understand the women’s experiences in relation to inheritance in the irrigation schemes, I used the concept of legal pluralism to examine and analyse the interaction between the irrigation schemes’ constitutions, statutory provisions and court determinations, on the one hand, and other normative structures and institutions, on the other.

Legal pluralism is captured in Rouland’s definition which states that it is a multiplicity of forms of law present within any social field (Rouland, 1994, p. 21). Central to the concept of legal pluralism is Moore’s notion of semi-autonomous social fields. Moore argues that the social structure is composed of many semi-autonomous social fields, the definition and boundaries of which are not given by their organisation, but by a processual characteristic,

that is, the fact that it can generate rules and coerce or induce compliance to them (Moore, 1978, p. 57). She defines the semi-autonomous social field as one that has rule-making capacities and the means to induce or coerce compliance; but it is, simultaneously, set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance (Moore, 1978, p. 57). This concept has the following three characteristics: firstly, these fields are the fundamental units of social control, which are directly connected to behavioural norms of conduct; secondly, every individual may simultaneously belong to many social fields, thereby accounting for social complexity; and, finally, a social field is autonomous, i.e., it can resist the penetration of state law, but never totally, its capacity of resistance being a function of the degree of independence of its members *vis-à-vis* itself and of its force of resistance to norms originating in other fields (Westermarck, 1986, p. 138).

Most of the women respondents are situated within multi-generational families. In such multi-generation families, semi autonomous social fields are created. I used the semi autonomous social field as a tool in describing and analyzing the rule generating and upholding processes in dispute resolution at the family level and at the level of the scheme regarding inherited irrigation plots and how these affect the position of women in such business arrangements. Using this tool, I delved deeper into the nature of the household and its relations. This was essential as it enabled me to gain an understanding of women's work within the horticulture businesses and the valuing of women's work.

By the very nature of their operation, the irrigation schemes create semi autonomous social fields, yet they are also governed by state law in the form of "by-laws" (also referred to as a Scheme's Constitution) which are, however, subject to the Constitution and other laws of the country. Inevitable conflicts were bound to arise as the old Zimbabwe Constitution recognized

the application of customary law in matters of personal law.³⁵ The conflicts are exacerbated by the location of these schemes in rural Zimbabwe where customary law is predominantly the preferred source of law in relation to family and family relations.

The schemes' constitution provides for the following: the objectives of the scheme; membership, its obtainment, rights, duties and termination thereof; the Irrigation Management Committee, its composition and functions; prohibited activities and sanctions thereof; aspects of inheritance and amendment of the Constitution (see Appendix 1). The main objective of these schemes is to operate as a source of income to the members through the creation of employment. In terms of the constitutions of the Irrigation Schemes, when the plot-holder dies, the plot devolves to the surviving spouse. It will then devolve to the children upon the death of the surviving spouse. However, the actual distribution of the deceased estate is governed by the customs of that family and the dominant culture in the resettlement area.

The irrigation schemes' constitutions are silent on what should happen should the surviving spouse remarry, however, in terms of the dominant culture of the area, in the event of the surviving spouse being the wife, the plot devolves to the children upon her being remarried. In most cases, the plot is inherited by the youngest child on the rationale that he/she is the one who has been the most disadvantaged by the death of the parents. However, for all intents and purposes, the plot will be registered in the name of the eldest child who would work on the plot and fend for the minor children, should there be any.

³⁵ See section 23(3) of the old Constitution of Zimbabwe, in particular it reads: "nothing contained in any law shall be seen as a contravention of the non-discrimination principle in section 23(1)(a) to the extent that the law in question relates to:

- (a) adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
- b) the application of African customary law in any case involving Africans or an African and one or more persons who are not Africans where such persons have consented to the application of African customary law in that case."

Generally, the fate of the plot is determined by how the plot was originally acquired. In circumstances in which it was originally acquired by parents of the deceased husband, the relatives are reluctant to devolve the plot to the wife; rather the plot follows the patrilineal line. In some instances, responsibility is the main criterion for determining the successor. These practices are not, however, cast in stone, as they differ from one family to another. This is mainly attributed to the nature of resettlement areas, where there is no chief or traditional authority to enforce these rules uniformly. It also fits with inheritance patterns in other parts of the country (Dengu-Zvogbo, Stewart, & Ncube, 1994, p. 83).

Whereas the irrigation schemes' constitutions mention that the surviving spouse inherits the plot, in practice the woman's inheritance is dependent upon the approval of the deceased's relatives and on the condition that she will not remarry. Further, whereas the children have the right to inherit the plot, such is also dependent upon one of the relatives getting a portion of the plot as well.

In terms of settling of disputes arising from the distribution of an estate or in general before a dispute reaches the irrigation management committee, it is expected to be settled domestically in a *family dare*.³⁶ The complainant cannot obtain initial relief from the Irrigation Management Committee or local leader/s since they themselves submit the dispute to the *family dare*. In the event that the complainant is given audience by the local leaders, the case drags on and on with the local leaders "consulting" with the complainant's relatives. In the case of Martha, below, where the matter ended up being settled in the formal Courts, instead of the irrigation management committee in terms of the schemes' constitution, the Magistrate

³⁶ This is a family gathering made up mainly of family elders that is set up to discuss family issues as and when a need arises.

gave effect to customary law ignoring general law provisions that should have been applicable in the case.

4.2.2 Legal Pluralities and intersecting semi autonomous social fields

4.2.2.1 Martha's case³⁷

Martha is aged 24 and was married at the age of 16. She has been a widow since 2008. Martha was in an unregistered customary law marriage and the union produced a child, a boy aged eight. Her husband acquired two plots, one in Macheke³⁸ and the other in Nyaitenga Overhead Irrigation Scheme in the Nyadire District of Mutoko. Upon the death of her husband, the deceased's younger brother sought to inherit Martha as a wife but she refused. As tensions rose and increased because of her refusal, the brother sought to evict her from the irrigation plot. To assist in this eviction case, the deceased's brother sought the assistance of the deceased's first wife who, according to Martha, had been customarily divorced prior to the deceased marrying her. Martha alleged that the first wife made no contribution to the irrigation plot in question as she was staying in Macheke. The deceased's brother, however, argued that no divorce had taken place. It was his case that the plots were acquired during the subsistence of the deceased's first marriage, hence, the first wife was the rightful owner not Martha.

Below is the wording of the settlement that was reached when the case of the estate of the late Bigboy Kanyimo DR/91/06 was heard by the Magistrate's Court on 19 September 2007:

The relatives agreed that Martha will stay at Nyaitenga irrigation village 4B Nyadire. The deceased first wife Jestina will stay at plot number 27 Maryland, Macheke. The deceased brother Evans Kanyimo will be allocated a quarter portion of the plot by Martha. They will inform members of the village at Nyaitenga irrigation scheme that Martha will stay alone at the plot. The widow's name will be on the permit.'

In the above settlement, presumably made in terms of section 68E of the Administration of Estates, Act (Chapter 6:0), which provides for consideration and approval of an inheritance plan, the deceased brother was given a quarter portion he was clearly not entitled to in terms of the constitution of the irrigation scheme leading to a conflict between customary expectations and general laws. This conflict between the provisions of the by-laws and customary practices leaves the woman in a dilemma, being caught between the dictates of the

³⁷ Interview held on 20 February 2011.

³⁸ Macheke is a farming town 105km from Harare.

constitution of the irrigation scheme to which she is a fully subscribed member and dictates of culture that suppress her rights. The general law ought to protect her rights both in terms of the irrigation scheme constitution and section 68 of the Administration of Estates Act.³⁹ If she attempts to resolve the matter through the courts, as in the above case, she is trapped by customary practices. The same applies to the Magistrate who viewed men as the rightful owners of land or the upper guardians of women. Her predicament is half solved and for fear of losing gains, she would have made, she settles for less. She bemoans the injustice of the society and the law but receives comfort from the fact, that to put it in Martha's words, 'half a loaf is better than nothing'.⁴⁰

Further, the inheritance practices in the irrigation schemes allow the surviving wife to inherit the plot only for the duration of her widowhood. Respondents said that in the event that a widow intends to remarry, she loses the plot to the relatives of the deceased or the plot will vest in the older child from the marriage and she will go away empty handed. In the event that the child is a minor, the plot will vest in one of the deceased's relatives. Most women interviewed said that the fear of losing the plot will discourage them from remarrying, if such a situation ever arises. Martha, who was born in 1987, got married in 2003 at the age of 16. Her husband died in 2008 when she was 21 and she has a minor child, born in 2003. For her to beat the practice within this framework to retain the plot and later leave it to her son, it

³⁹This Act entitles all spouses regardless of the type of marriage they had to inherit from the deceased estate. Section 68(3) provides that a marriage contracted according to customary law shall be regarded as a valid marriage for the purposes of inheritance notwithstanding that it has not been solemnized in terms of the Customary Marriages Act (Chapter 5:07). In essence, all spouses are recognized for the purpose of inheritance. Section 68F(2) further provides that where the deceased person is survived by one spouse and one or more children, the surviving spouse should get ownership of or, if that is impracticable, a usufruct over, the house in which the spouse lived at the time of the deceased person's death, together with all household goods in the house.

⁴⁰ Interview held at Nyaitenga irrigation scheme on the 20th of February 2011.

seems she has to remain unmarried till her son becomes a major at the age of 18 when she will be 34.

Such a practice not only goes against the woman's right to marry in her own time and under her own terms and conditions but it also contravenes her right to natural resources, in particular, land. The practice is also discriminatory against women since their male counterparts can remarry without fear of losing their plot. All these discriminatory practices go against the dictates of section 56 of the 2013 Constitution on equality and non discrimination and Section 80 on rights of women. The practices also violate regional and international law, in particular, CEDAW and the Maputo Protocol.⁴¹ Zimbabwe signed CEDAW in 1991 and ratified the convention in 1997 with the explicit purpose of condemning discrimination against women in all its forms, and it symbolized the states parties' commitment to eliminating discrimination against women in all its forms, from legal to social and cultural "prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes."⁴² CEDAW thus calls for the modification or abolition of discriminatory laws, regulations, customs and practices so as to achieve equality.⁴³ The Maputo Protocol calls for the same in article 2 and obliges State Parties to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are

⁴¹ Other international instruments which prohibit discrimination are the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. For instance, Art 3 of the ICESCR calls for the elimination of discrimination against women and "the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant."

⁴² See article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women.

⁴³ See article 2 of CEDAW.

based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.⁴⁴

Customary laws on land use are linked to rights of occupation and use in the conventional sense of the right to alienate is not contemplated. The land vests in the group (tribe) family. The Constitution of the irrigation scheme has a provision on inheritance. The question is, what is being inherited? Is it the land or membership to the cooperative that comes with it the right to use the land? Women horticulture farmers have access to land until such time that laws on marriage and inheritance are added to the equation. Scheme members have a right over the land acquired through a usufruct that can be passed from one member to another by way of a cession. The schemes are predicated on non-customary arrangements but, in reality, such business and property law principles are superseded by the application of customary law and practices. The business concept of the horticulture ventures is forgotten when it comes to women's rights and entitlements.

What is taking centre stage is the issue of land. Inheritance practices that apply to communal land under customary law which are now unconstitutional in terms of sections 56 and 80 of the 2013 Constitution are being applied on resettlement land, thereby prejudicing women of their investment. My findings pointed to the fact that when the irrigation schemes were being put into place and land allocated to single men or married men because they were the ones from that area and most women were only becoming part of the horticultural businesses through marriage, nobody actually thought about how marriage within the customary framework would negatively affect women's contribution. Everything was treated as being

⁴⁴ See article 2(2) of the Maputo Protocol.

marriage and customary law; therefore, it was the men who were recognised. Now, with a new constitutional dispensation that unequivocally provides for equality, the challenge is how do we achieve equality out of this when evidently, as the findings of this research will show, women contribute more? The findings will also show that when women are married and are involved in a land based activity, there is little recognition that what they are doing is business. Business laws are ignored and what take centre stage is land and the associated culture and customs, family laws and administrative laws as illustrated below:

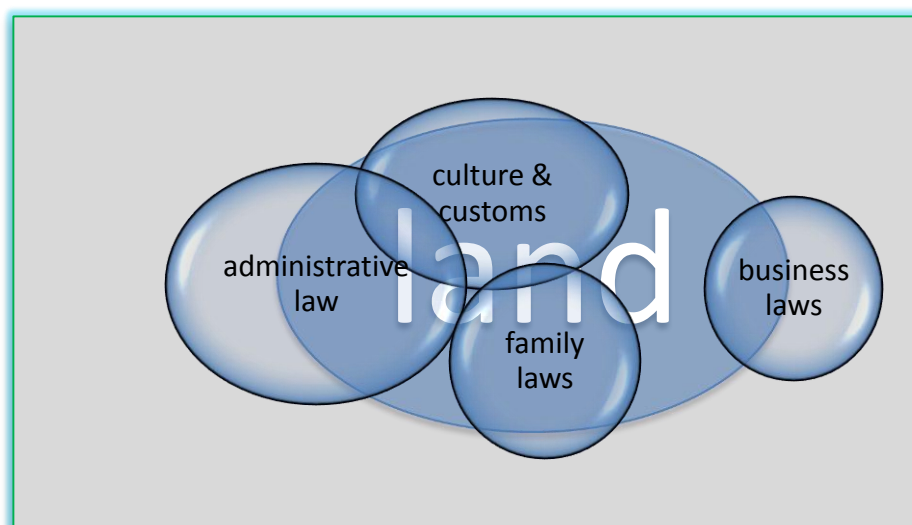


Figure 5: Dominance of other laws

The trend may be the same in that even with the coming into effect of SI 53/2014, the regulations only added women in terms of the right to land but did not effectively tackle the business part. Although in Section 7 the regulations allow the permit holder with the approval of the Minister to:

cede, assign, hypothecate or otherwise alienate or sublet in whole or in part or donate or dispose of his/her allocated land or any other of his/her rights, interests or obligations under his/her permit or place any other person in possession of the allocated land or enter into a partnership for working of the allocated land...

it is not clear whether these permits can be used as collateral. Farming is a business and land is an economic asset, not merely an item of sentimental value. If it is a business those who hold it must be able to use it for business transactions and not merely pass it on. As SI 53/2014 stands, it is more informed by marriage and not by a business model that will feed into the marriage.

4.2.3. Daughters who inherited from parents

4.2.3.1 Tina's case

Daughters who inherited plots from their from parents are in the same predicament as widows. A case in point is that of one woman popularly known as Tina within the community. Tina inherited the plot from her father. Her father made sure the plot was in her name before he died. However, when her father died, despite the fact the plot was in Tina's name, a *family dare* decided that Tina, being a woman, was likely to get married and the plot eventually pass to her husband. To prevent this from ever happening, Tina was made to share the plot with her father's young brother, *babamunini*.

The family *dare* resolution was that *babamunini* be allocated a quarter portion and Tina three quarters of the plot. To date *babamunini* and his two wives are cultivating half of the plot. How *babamunini* got the other quarter share of the plot was because of the irrigation pipe changing arrangement. Tina explained that *babamunini* said he deserved another quarter portion of the plot as he was the one who was changing pipes at night. On asking Tina whether she was not able to change the pipes, she said, even if she could, the practice was that men changed pipes at night and not women. She was not willing to change this or argue with her *babamunini* for fear of reprisals.

Tina was worried about *babanunini's* behaviour and felt strongly that he was likely to eventually take over the plot and put an end to her horticulture venture. Her capabilities to effectively run her business are, therefore, heavily curtailed as her “....development is blighted by overwhelming fear and anxiety as evidenced by traumatic events of abuse or neglect.” (Sen, 2000). Abuse was evidently coming from *Babamunini* and the scheme committee was failing to protect her rights and uphold the scheme's rules, as there were now more than two families on one plot. This was a clear violation of the scheme's constitution, as only one family was allowed on each plot so as to maximize its business potential. It was the committee's duty to regulate this. The family *dare* was also failing to realise that the irrigation plots were business entities and should not be governed in the same way as communal land was governed, that is, a female child should usually not inherit land from her father. Unfortunately, I was not able to interview *babaminini* as Tina stressed that doing so would further strain their relationship. As a matter of ethics, I had to respect her wish.

4.2.4 Women as *de facto* Managers

4.2.4.1 Stancia's case⁴⁵

Stancia is married to Maxwell. Maxwell is a middle child of a first marriage. His father had two wives and both wives are deceased. In 2002, Maxwell inherited the plot from his father with the blessing of all the family members and he is the recognized cooperative member of *Chitora 1* irrigation scheme. All his older brothers were not interested in the plot as they were gainfully employed in Harare. It was agreed that who ever inherited the plot would take care of the younger siblings from the two families. As Maxwell was working in Harare, his wife, Stancia, was solely responsible for production at their 0.5 Ha plot. She decided what to plant and where to market the crops, occasionally seeking help from her husband. She educated her husband's younger siblings from the proceeds of the horticulture business. Stancia was in peaceful and undisturbed possession of the plot until 2008 when three of her husband's elder brothers due to economic decline relocated to Mutoko from Harare and claimed a portion of the 0.5ha plot, arguing that it was their father's plot. In the interest of maintaining peace, Maxwell gave them half of his allocated portion in the scheme. This meant that the brothers would be responsible for half of the utility costs.

⁴⁵ Interview held on 25 March 2011.

The brothers have not been meeting these obligations arguing that Stancia should pay since her husband is the recognized member of the cooperative. The brothers are also claiming the entire plot as Maxwell is not actively involved in the day-to-day running of the business. They said Stancia should join her husband in town. This means her leaving all the investment she made on the plot since 2002. To reinforce their demands, they started uprooting Stancia’s crops. Maxwell approached the irrigation management committee seeking enforcement of the scheme’s constitution as the schemes were set up as business units to cater for a single family. The committee referred the case to the ward land committee chaired by the ward councilor. The ward land committee said they “stand guided by the family” and they referred the case back to the family and asked the village head to mediate. The brothers, having noted that no immediate action was going to be taken, continued pushing Stancia out of business by depriving her access to irrigation equipment. They also threatened her family with unspecified action. Maxwell approached the courts for a protection order under the Domestic Violence Act (Chapter 5:16) which was duly granted. As the registered member of the irrigation scheme, he also approached the courts seeking to evict the three brothers from the plot. The court dismissed the application on the basis that the land under contention was state land and, therefore, the Magistrate’s Court has no jurisdiction. The matter was, therefore, referred to the District Administrator and to date no determination has been made.

Stancia has entitlements as a partner in the business and a *de facto* manager whose entitlements are being infringed. She finds herself at an intersection of general laws, culture and customary practices, state and social institutions, like marriage, as well as politics, as illustrated below:

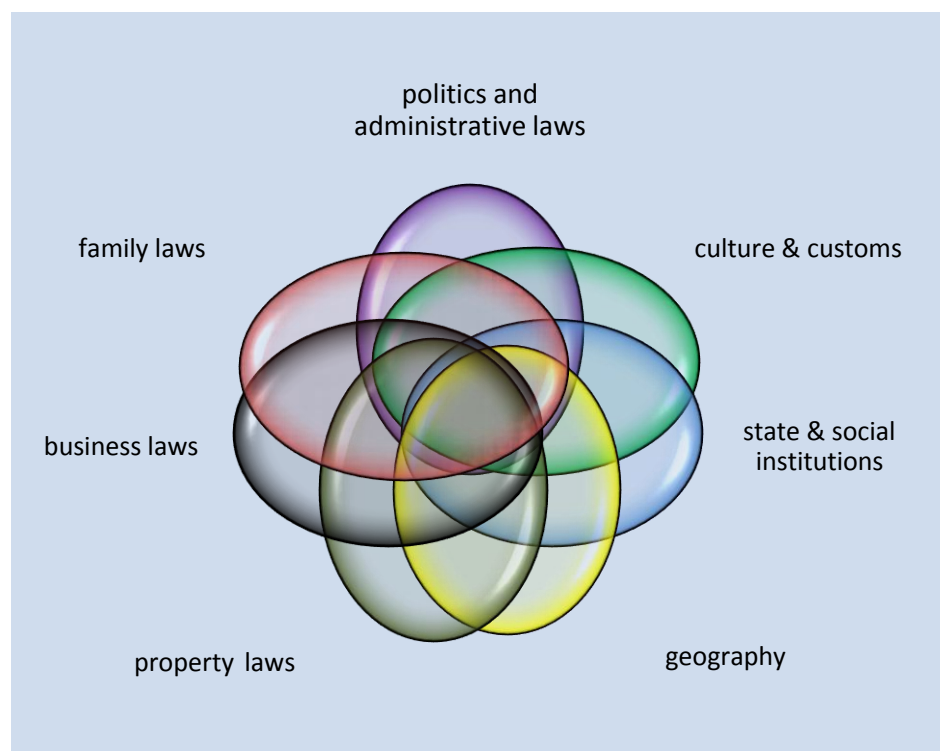


Figure 6: Intersection of laws

In terms of business laws, Stancia can be said to be in a partnership with her husband and is also a *de facto* manager of the business. Although there is no explicit agreement between the two, all the other essential elements of a valid partnership are present, that is, contribution towards a common business with the intention of sharing of profit and losses. Maxwell contributed land which he had access to by virtue of being a member of the irrigation scheme cooperative, having inherited the right from his father. Stancia became part of the business through marriage. She is involved in both productive and reproductive roles. She has a civil marriage in terms of the Marriages Act (Chapter 5:11). This entitles her to inherit from her husband upon his death. This is also in line with the irrigation scheme's constitution and the Administration of Estates Act (Chapter 6:01). She is contributing to the partnership through her labour and management of the business. However, their horticulture business is land based and her husband's brothers argue that the plot belongs to the family. If this contention is upheld, she is likely to lose her share in the business.

There is also interference of the management and functions of the irrigation management committee by both politicians and administrators. Whilst the scheme's constitution mandates the management committee to run the affairs of the cooperative, the state and other social institutions have a bearing on the management of the cooperative. The irrigation management committee will not make a decision without consulting the local leadership and the family of the parties involved. From a business law perspective, looking at it from a cooperative standpoint, the irrigation management committee should operate without interference, especially from the state. Yet, we find the state actively involved in the decision making process. The courts are hesitant to deal with land issues, referring the matter to the District Administrator who resolves the matter at his own time and pace whilst production is stalled.

The involvement of the state and family in conflict resolution where the dispute should be resolved through application of cooperative principles complicates the case. The state agencies involved (namely, the Village Head, Ward Councillor and District Administrator) are all influenced by politics. These state agencies are involved in dispute resolution because the land which forms the greater part of the horticulture businesses' capital is state owned, controlled and politically significant to the ruling party, the Zimbabwe African National Union – Patriotic Front (Zanu PF). Talking to the key informants and asking them how best to resolve this situation, they said that women should be given land in their own right, separate from men.

4.3 Is separateness of women in land redistribution a functional model?

The above discussion shows how horticulture ventures in ward 25 of Nyadire district are being affected by the non-implementation of the provisions of cooperative legislation that seeks to promote business organizations owned and operated by a group of individuals for mutual benefit and the irrigation schemes' constitutions that clearly direct members on how the schemes are supposed to run. The irrigation schemes' constitutions also recognise the right of a spouse to inherit the use and enjoyment of the plot in the event of the death of the plot holder. Evidence on the ground shows that the schemes are neither fully functioning as cooperatives nor are the provisions of the schemes' constitutions being respected. This can be attributed to gender inequalities within the irrigation schemes, mainly as a result of how the schemes were started where land was initially allocated to single men and most women became part of the horticulture ventures through marriage.

This historical allocation of land to heads of the household, who were mostly men, created gaps in the law on matrimonial property and in use and control of land during marriage at

divorce and upon death. This has resulted in judicial decisions that undervalue and dismiss the immense contribution of women to their families and the household. An example is the case of Martha, discussed above. According to the findings of this study, regardless of whether the marriage is formalized under statute or custom, women in the irrigation schemes do not enjoy anything more than mere use rights of the horticulture land. Married women rarely enjoy equal rights to control proceeds of the horticulture businesses. The likelihood is that because of the absence of gender equality which was very evident throughout of this study, at separation or divorce, women are most likely unable to take with them an adequate share of their assets, and are often forced to leave the matrimonial home with little more than personal effects. The law is reshaping how people get land but the uphill battle is in terms of implementation. I, therefore, questioned whether women's access to land would improve if women were considered for land allocation separate from men but within marriage, as was the case with the Fast Track Land Reform Programme (FTLRP).

The Land Resettlement Programme failed women. The model used was land for women as 'sole' owners but within marriage. This separateness of women and men is not a functional model as this study shows. Both men and women vied for land from the same starting point. As a result only 20% of 300 000 individually resettled people were women (Goebel, 2005, p. 150). The fast track land policy did not take into cognisance the relational nature of women. According to relational theory, women's lives are regarded not as autonomous but relational, as they are heavily dependent upon others both for their survival and survival of children who are part of them (West, 2007, p. 131). According to the literature, women, as compared to men, identify themselves as less autonomous, whilst men perceive themselves as bearers of responsibilities (Ortiz, 1995, p. 527).

According to Gilligan, women value relationships and would rarely do anything that will jeopardize these relationships (Gilligan, 1982). Gilligan further states that women, in valuing relationships, possess traits, such as interdependency, absence of hierarchy and community connection, whilst men, as a group, value independence, autonomy, hierarchy and domination (Gilligan, 1982). This relational theory prompted me to question whether the model of land redistribution which is that of seeing women as “sole” owners but within marriage, is a functional model. The statistics of land ownership in Zimbabwe by province (above) evidently shows that only 20% of women benefited. The assumption is that this was as a result of the use of the separateness model, that is, a model that views married women as separate from their husbands. This is not a functional model, as this study has shown, because women’s lives are relational rather than autonomous.

There are a variety of feminist approaches that seek to answer the women question, that is, “How have women been oppressed, repressed and suppressed?” (Tong, 1989, p. 15). Relational feminism is one such approach. It advances the idea that women’s lives are not autonomous but are profoundly relational as a result of their reproductive role (West, 2007, p. 131). As a result, women horticulture farmers interviewed in Ward 25 of Nyadire District in Mutoko do not want land as individuals within marriage. I asked them if an opportunity arose, would they consider taking land as individuals to start horticulture ventures outside their marital businesses. They said this would cause potential disharmony in their families as that would mean leaving the family plot and going to stay where they would have been allocated land. The main question they asked is, “Who would take care of the family if we leave to start new ventures on separate pieces of land?” Some said the answer was obvious. They said that their husbands would simply marry other wives and they would lose out on their contribution made to the horticulture businesses over the years. As such, women are not only individuals, as assumed in International Human Rights Instruments; they are embedded in social and

economic relationships (Hellum, 2013, p. 137). The findings also confirm that while human rights theory focuses on women and men as individual citizens, most African women and men are embedded in complex chains of relationships (Hellum, 2013, p. 138). The question is how to change the nature of these relationships from asymmetric to symmetric partnerships.

4.4 Towards a gendered analysis of development

It matters little how much information we possess about development if we have not grasped its inner meaning. (Goulet, 1985, p. 44)

Residents of Ward 25, Nyadire District in Mutoko meet on the first Monday of every month for a ward meeting chaired by the Councillor of the ward. It is settled practice that before making a contribution at the meeting, one must start with a slogan. One slogan which most speakers use was, “*Pamberi nedevopment!*” (meaning, “Forward with development!”). I found this very interesting and I was prompted to interrogate this slogan. One of my respondents told me that the slogan had something to do with how the irrigation schemes were started. People were told that they were supposed to support this government initiative as it was meant to bring development to the community. That could have been the case when the irrigation schemes started. Although development is a continuous process, the issue about the irrigation schemes was no longer about development in the general sense, but mapping the capabilities of the irrigators and responding to these capabilities.

Development as a right was first proposed by a Senegalese jurist, Keba M’baye, in 1972 (Laure-Hélène , 2002, p. 10) . The Declaration on the Right to Development (DRD) identifies development as “... an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and

political development, in which all human rights and fundamental freedoms can be fully realized.”⁴⁶

In short, for development to be realized as a right, the DRD specifies that the following must be fulfilled:

1. Effective participation of all individuals in the decision-making and the execution of the process of development,
2. Equality of access to resources, and
3. Equity in the sharing of benefits.

These are essential elements of the process of development which make the right to that process a human right and which are the foundation of a right to development. This fulfils the notion that right to development implies a claim for a social order based on equity (Sengupta, 2000, p. 557).

Sengupta is of the view that when development is seen as a human right, it obliges the authorities, both nationally and internationally, to fulfil their duties of promoting, securing, and protecting that right in a country and this is done through various measures, most significantly through adopting appropriate policies of development (Sengupta, 2000, p. 557). These policies should not be politically oriented but should meet the needs of the people at whom they are targeted (Sengupta, 2000, p. 558).

Good examples of such policies are income generating projects mostly introduced in rural areas during general election time. In ward 25, Nyadire district, Mutoko most women have access to income generating projects initiated in the spirit of development by the Ministry of

⁴⁶ See article 1 of the Declaration on the Right to Development.

Women Affairs, Gender and Community Development in the communities but they feel these projects have failed to address their economic needs. These projects include chicken rearing, soap making, sewing of school uniforms, and bun making, among others. Findings of this study revealed that the projects do not recognise the capabilities of women horticultural farmers, they are actually more of a burden as they add more work to the already over-worked women. The major gap noted by the women interviewed as far as the projects are concerned was the lack of women participation in the design of the projects. Women said they are not asked about their needs.

“Someone, somewhere, completely unaware of what’s happening in Mutoko” as one woman said, “sits down and decides what women in Mutoko need to augment their income.”⁴⁷

According to the women, their needs have not been addressed, they are running potentially viable horticultural ventures, and income generating projects are not business initiatives as they are not based on business principles but welfare. One woman said,

“They said the projects will alleviate our poverty, but we are not poor, look we have electricity, we have water pumps, we have cell phones and the children are going to school. The projects are thus not designed for us, I hope you are not bringing to us a similar project”⁴⁸

The Ministry of Women Affairs, Gender and Community Development is endowed with the responsibility of ensuring women’s economic empowerment. The Ministry and other development agencies in Mutoko have been making relatively small investments into income generating projects which I found failing because they were motivated by welfare and not economic development concerns. What was being offered to women horticulture farmers in this thriving horticultural environment over the years was temporary part-time employment using traditionally feminine skills and in activities seen as female appropriate but having

⁴⁷ Interview at Chitora I Irrigation Scheme 20 April 2010.

⁴⁸ Interview at Chitora I Irrigation Scheme on 20 April 2010.

limited markets. My assumption that there is lack of understanding by state agencies and development oriented NGOs of the appropriate needs for women in the informal economy was thus confirmed. Nussbaum argues that international policy and economic thought should be feminist attentive to the special problems women face (Nussbaum, 2000, p. 54). Feminist approaches to development are generally concerned with ensuring that development satisfies women's needs and furthers their interests and aspirations (Nussbaum, 2000, p. 54).

My study challenges the welfarist approach to development as I saw it being applied in Mutoko. Whilst it may be appreciated that welfarist approaches to development assumed the need to dislocate women's economic activities from the land as women in communal areas have limited land rights, according to feminist scholars, increasing women's access to more income generating activities does not necessarily enhance women's economic standing (Trebilcock & Howse, 1999, p. 7). Women I interviewed in Chitora irrigation scheme complained that the initiators of the projects, more so if they are government funded, neither come back for review nor do they assist in market sourcing. At one homestead, I saw bags and bags of dried Black Jack⁴⁹ leaves from an income generating project that was initiated by the Ministry of Women Affairs, Gender and Community Development. The women have no idea of where to market the dried leaves. Promises of assistance in marketing by the project initiators were never fulfilled. It was my observation that the income generating projects were actually distracting women from developing potentially profitable and sustainable pre-existing horticultural ventures. These horticultural ventures are sustainable because women will continue doing what they have always been doing but in a way that opens up more opportunities. They can even move a step further to value addition. Value addition, as this study will show, may be more beneficial to women horticultural businesses than random add

⁴⁹ Black Jack is a wild indigenous vegetable. Its scientific name is *Bidens Pisola*, Shona name *Nhungunira* and Ndebele name *Ucucuza*. The plant is a weed that grows naturally during the rainy season and, if required, is left out in the field during weeding. If dried, it can be used as relish or for medicinal purposes.

on income generating projects as this will dislocate their businesses from the land they have little control over.

There is clear evidence of the non-valuing of women's work. Women's work and the significance of their contribution is subsumed under the family and not seen as what the evidence on the ground demonstrates as a partnership between the male and female. The horticulture ventures are viable commercial operations that have potential if they are run along business lines. If adequate funding is available to the business, the businesses would be more effective. Not much of the required funding is made available because of stereotyping about women in rural areas. Economic support for women is given through provision of handouts to start income generating projects mainly in rearing chickens and they mockingly refer to the project as *'Twuhuku twaOlivia'* literally meaning *'Olivia's little chickens'*.⁵⁰ They said the income generating projects are mainly availed during political campaigns for general elections and one does not dare to refuse to participate.

Women Horticulture farmers in ward 25 of Nyadire District in Mutoko are thus running horticulture businesses which, if properly conceptualized, do not need the intervention of income generating projects. Because of stereotyping of women in rural areas, women are seen as being in need of "something a little bit extra" to do, yet they already have something viable and what they need is substantial input. According to the women, their needs have not been addressed, they are running potentially viable horticultural ventures, and income generating projects are not business initiatives, as they are not based on business principles but welfare. There is an appropriate legal framework in the form of business laws, inheritance

⁵⁰ Olivia Muchena was the Minister of Women Affairs, Gender and Community Development and was also the MP of the area under study.

laws and the constitution that recognise and compensate their share or reflect their share of the labour but the framework is not being implemented.

The state and its implementation bodies, like the Ministry of Women Affairs, Gender and Community Development, the District Administrator and the Courts in Mutoko, are still to realize the potential of women farmers in horticultural production; one can conclude that women's and families horticultural activities are viewed as mere subsistence farming and not business ventures.

Some of the major mistakes in development policies for purposes of alleviating poverty are a direct consequence of erroneous advice from development advisers and experts. The findings revealed that both state and development oriented NGOs do not appreciate the needs for women horticulture farmers. A good example in the establishment and the development of Nyaitenga drip Irrigation scheme. Nyaitenga Drip irrigation was set up in 2000 specifically targeting women, having realised that women were left out when earlier schemes were established. Financing of the scheme was in the form of a grant provided by FAO and farmers contributed through clearing, stumping the land and digging trenches, as described below, by one of the scheme members. Despite its advantages, the drip system was heavily criticised for being crop selective. A crop, like carrot, was said not to be profitable if grown under drip irrigation, yet most women farmers were spending resources trying to grow this crop as their counterparts from the overhead scheme were profiting from carrot production. This showed that the farmers lacked training, as they were learning from an earlier established scheme, yet one was overhead irrigation and the other drip irrigation.

Further, the geographical location of the scheme was said to be problematic as the area easily gets waterlogged during the rainy season. As a result, the farmers cannot utilize all the three

horticulture seasons in a year. Three men in the scheme have an advantage because they have alternative dry-land plots outside the scheme inherited from their fathers. Every rainy season when the scheme is waterlogged, they are assured of income from a butternut crop grown on the dry-land. Women interviewed do not have such alternative land to continue production once the scheme gets waterlogged. Although the dry-land plots fall under resettlement tenure, they are administered in the same way communal land is administered. Women under this tenure system have no guaranteed land rights and as for the Nyaitenga drip irrigation female members, they are confined to the 0.5 Ha under the scheme with no alternative land.

My assessment of the development projects being implemented in my area of study is that they are influenced by the poverty alleviation paradigm although this is an area that cannot be classified as poor as the findings of this study reveal. The poverty paradigm focuses on decreasing household vulnerability and community development (Mayoux, 2001, p. 10). Particular emphasis is placed on the importance of small savings and loan provision for consumption as well as production and group formation for community development. The main focus is on assistance to households (Mayoux, 2001, p. 10).

When utilizing this model, the assumption is that by increasing women's access to micro-finance, women will be able to make a greater contribution to household income, either through their own economic activity or equally becoming a channel for loans to household activity. And through this contribution, women will be recognized and valued by other household members and this will lead not only to increased household well-being, but women's increased role in decision-making and improved well-being for women themselves. This increased status in the household will in itself, in turn, give women the support they need to enable women together with men to bring about wider changes in gender inequality in the community. Fair as this may sound, the application of this model in ward 25 of Mutoko is

misplaced as the ward is mainly comprised of viable horticulture enterprises be it on dry land plots or under irrigation. If a plot holder utilizes all the three seasons of horticulture production as will be shown in the next chapter, the average income is USD 1500 per month. Like any other business, what is critical is access to credit that will enable the horticulture farmers to recapitalize their ventures. The findings of this study show how misleading the poverty paradigm is and how it leads to stereotyping of women in framing ideas.

At the early stage, the development of women was characterized in the context of the welfare approach where it assumed that the benefits of microeconomic strategies for growth would automatically trickle down to women and women would benefit as the economic position of their husbands improved (Momsen, 2010, p. 6). These assumptions were challenged leading to the development of the Women in Development (WID). WID focussed on integrating women into economic development by providing income generation projects for women (Momsen, 2010, p. 6). However, the WID approach was criticised as women's actual or potential contributions were ignored due to the existing structural constraints. WID was further criticised because its emphasis was on the equal rights for women rather than on economic development. From this standpoint, liberal feminists demanded equal opportunities and rights for women, including equal access to jobs and equal pay, and believed individuals should be treated in accordance with their talents and efforts as opposed to characteristics of their sex.

This gave birth to the Women and Development approach (WAD) developing from the work of Marxist and radical feminists (Marchand & Parpart, 1995, p. 45). Marxist feminists argued that gender inequality was derived from capitalism, where men's domination of women is a by-product of capital's domination over labour. According to Marxist feminists, class relations are the most important features of the social structure which determine gender

relations. Subsequently, some radical feminists argued that sexuality itself is a major site of male domination and men's patriarchal power over women is the primary power relationship in human society (Marchand & Parpart, 1995, p. 47). The WAD approach argued that women's position would improve if international relations became more equitable. It explained women's subordination referring to the global economy and was preoccupied with the productive sector at the expense of reproductive side of women's work and lives.

As a result, WID and WAD did not obtain the results hoped for because they did not address the underlying causes of discrimination and subordination of women (Boserup, 2011, p. 30). Socialist feminists argue that research on women in developing countries should challenge the most fundamental assumptions of international development and the best way to address women's subordinate position is to question and tackle the causes of this inequality (Momsen, 2010, p. 16).

As Kabeer notes, by increasing women's income, women can have an increased number of choices, networking, greater household decision-making power, greater social status, and greater sense of confidence and independence (Kabeer, 2003b, p. 10). This means women's empowerment (functioning) can enable women to oppose authoritative patriarchal power structures through collective action. This argument integrated with the gender and development (GAD) perspectives in which women are seen as agents of change rather than passive recipients of development assistance (Rathgeber, 1990, p. 492). Gender inequalities emphasize practical⁵¹ and strategic⁵² needs for women's development. With this understanding, this study argues that gender stereotypes have placed women in the poverty

⁵¹ What women require in order to fulfill their roles and tasks.

⁵² What women require in order to overcome their subordination.

paradigm resulting in women's effective exclusion making them secondary beneficiaries and not developing their capabilities.

4.5 The End Result is Gender Stereotyping

When stereotypes sink into the psyche of a group and they come to define themselves by that stereotype, a whole culture is harmed. (Gustavo Lequerica-Calvo, 2012)

Stereotypes are a set of beliefs about the personal attributes of a group of people, while gender stereotypes are defined relatively as “the structured sets of beliefs about the personal attributes of men and women” (Ashmore & Del Boca, 1979, p. 222). Gender stereotypes are also defined as “beliefs and attitudes about masculinity and femininity” (Brannon, 2008, p. 67). Stereotyping is a generalized view or preconception of attributes or characteristics possessed by, or the roles that should be performed by, a particular group (Cook & Cusack, 2010, p. 9). A stereotype presumes that all members of a certain social group possess particular attributes or characteristics (Cook & Cusack, 2010, p. 12). A stereotype precedes the use of reason; it is a form of perception and it imposes a certain character on the data of our senses before the data reach the intelligence (Cook & Cusack, 2010, p. 11). Stereotype tells us:

About the world before we see it. We imagine most things before we experience them. And those preconceptions, unless education has made us acutely aware, govern deeply the whole process of precipitation. They mark out certain objects as familiar or strange, emphasising the difference, so that the slightly familiar is seen as very familiar, and the somewhat strange as sharply alien (Cook & Cusack, 2010, p. 9).

On the other hand, gender stereotyping refers to discrimination on the basis of sex, especially the discrimination of women by men. It is a combination of behaviours, attitudes and conditions that society prescribes and forces on everyone. The outcome of this is that people conform to the prescriptions and act accordingly. With regard to women, gender stereotyping has relegated them to the inferior position of being obedient though they may be opposed to

the decisions of men and, thus, if conforming to the stereotype, they do not question male decision and male preference. The development of stereotypes may take two paths; actual differences between groups may be detected and then become accentuated or magnified (Kurylo, 2012, p. 341). For instance, it may be observed that men do not perform as much child care as women do, this can then become generalised and accepted that women are more nurturing than men.

Secondly, personal attributes may be developed in a group to suit the beliefs of the group (Snyder, Tanke, & Berscheid, 1977, p. 659). Men may develop aggressive personalities as is expected by the masculinity stereotype. Stern points out that part of the importance of stereotypes lies in the fact that, by predisposing their behaviour towards others, they tend to provoke the anticipated response by those others, thus contributing to reinforce the stereotype (Stern, Cueva, Garcia, Pereda, & Rodriguez, 2001, p. 5). Stereotypes categorise individuals into groups on the basis of preconceptions of attributes or characteristics possessed by, or roles that are or should be performed by an individual, because of his or her apparent membership of a group. They set the parameters for 'acceptable' behaviour and appearance, and enforce these through both the conscious and unconscious employment of the stereotypes (Cook & Cusack, 2010, p. 9). In relation to this study, the selection criterion of the irrigation members was stereotypical, thus contradicting the principle of equality between women and men. The criterion did not put into consideration individual difference and thereby denied women their human rights and fundamental freedoms and imposed discriminatory hierarchies upon them. The selection process at the start of the irrigation schemes excluded women as members of the schemes. The majority of women's participation in the irrigation schemes is based on marriage. Being a rural setup where marriage gives important social status to women, most of the women farmers operate in family businesses. Men are mostly the plot holders but women control the day to day management of the business. However, men are the

ones who more often than not go to the market. Men thus have a better chance to explore the outside world creating an artificial ceiling for women in family businesses. Women's full capacity to utilize land in an effective commercial fashion is being adversely affected by the way in which the business is located and controlled by family and the gender hierarchies that are created in such relationships. The operation of the family business model is thus informed by the marriage family framework and this framework dictates who does what. Women are involved in both reproduction and production activities and men control the means of production.

The family business model results in women not being given full recognition as partners in the business leading to inadequate recognition of their input. The situation of the horticulture businesses within the family model complicates succession to the businesses because of the creation of gender hierarchies.

Article 2(f) of CEDAW requires State Parties 'to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women'. Article 5(a) of CEDAW requires States Parties to take all appropriate measures 'to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women'.

The above articles compel the State to eliminate 'wrongful' gender stereotyping. 'Wrongful' gender stereotypes include both discriminatory stereotypes, prohibited under art 2(f), and stereotypes which perpetuate prejudices about women, but which do not meet the threshold of discrimination as defined by art 1 of CEDAW (that is, they do not impinge upon the human

rights and fundamental freedoms of women in comparison with men), which are prohibited under article 5(a). Even if these gender stereotypes do not reach the threshold of being ‘discriminatory’, they maintain a social and cultural pattern of behaviour that perpetuate gender hierarchies and stereotyped roles for men and women and thus trigger the obligation under article 5(a) to eliminate them.

Gender stereotyping was one of the key issues singled out by the framers of CEDAW, along with such issues as equality in marriage and family relations, and equality in political and public life, as requiring the attention of the State parties (Cusack, 2013, p. 126). The state is further obliged to eliminate wrongful gender stereotyping by non-state actors like the family, the community and the market. These institutions play an instrumental role in creating, perpetuating and institutionalising wrongful stereotypes of women and thereby establishing and/or entrenching gender hierarchies that systematically excludes women in development (Reeve K. , 2012, p. 73). The hallmark of CEDAW comes with article 2 (f) that moves state obligation beyond the comfort zone of availing individual rights to redress for individual discrimination, to requiring transformative cultural change that deals with systemic discrimination (Nyamu Musembi, 2013, p. 185). The Maputo protocol requires states to take measures to outlaw gender discrimination in all spheres and to take corrective action against such discrimination. While the protocol calls on states to take measures against practices and attitudes defended as culture that go against the rights of women, the Protocol (article 17) takes a step further than CEDAW by providing for women’s right to live in a positive cultural context (Nyamu Musembi, 2013, p. 196).

4.6 Conclusion

This chapter presented findings of the research and showed how women horticultural farmers discussed have clear land rights but are being deprived of their rights because of exclusion

based on gender. The women include widows who inherited from their late husbands and daughters who inherited from their fathers. There are also women who are *de facto* managers of their family horticulture businesses but are not recognised as such. The exclusion is occurring in public, that is, formal institutions such as the legal system, as well as social institutions such as the family, communities and households. The next chapter continues with the presentation of findings and focuses on married women in horticulture business with their husbands.

CHAPTER 5 During Marriage: Women Working With their Husbands

In addition to examining the respective advantages or disadvantages of women and men, it is essential to analyze the contrast between effort and compensation for each sex. This contrast is essential in order to better understand gender injustice in the contemporary world. The highly demanding nature of the effort and contributions of women, without proportional rewards, is a particularly important issue to identify and explore. (Sudhir & Sen, 1995)

5.1 Introduction

The practice of horticulture in Mutoko is mostly family based. For married couples, production revolves around the husband, wife and children. Men have control over land and women and children provide the bulk of the labour, while men control the output. During marriage, women horticultural farmers' right to participate freely in economic interchange is circumscribed by societal values and norms that deny them access to and control over crucial resources, like land and capital, and they have little control over their labour.

According to the Food and Agriculture Organization, women are involved in agricultural activities on an equal footing with men and often do more than men do (FAO, 2012). Regrettably, the role of women in rural areas as producers in their own right is not always recognized. It is their role in reproduction as wives and mothers that take centre stage (FAO, 2012). Women's reproductive roles are, therefore, more often than not considered as opposed to their productive roles. An analysis of the findings of this study based on the historical set-up of the irrigation schemes shows that the irrigation projects under review were designed based on a thinking of the horticulture household as consisting of a male farmer, his wife and a number of children. The findings show that women, however, play a much greater role in family horticulture farming as well as in the household. This chapter, therefore, sets out to bring to the fore married women horticulture farmers' life experiences and how women's active participation in agribusiness is affected by the location of their business within

marriage and the family. The chapter also looks at how the socio-cultural construction of gender roles may lead to gender disparities in women’s participation in agribusiness.

5.2 The nature of the household

The table below shows the nature of the household in the five irrigation schemes under this study. The five irrigation schemes are made up of 89 households of which 63 are male headed households and 26 female headed households. In percentage terms, 70.8% of the households are male headed and only 29.2% are female headed.

Name of Scheme	Female headed households	Male Headed households
Nyaitenga overhead	8	14
Nyaitenga Drip	5	3
Chitora 1	4	16
Chitora 11 overheard	4	16
Chitora 11 Flood	5	14
Total	26	63

Table 4: Nature of the household

The female headed households include females whose husbands are deceased and those who never married. Households with a husband working outside the irrigation scheme, but not staying with the family, were not considered as female headed as the husbands, even in their physical absence, still made production decisions. For example, I was informed that most husbands who work in Harare more often than not physically avail themselves at the markets when the produce is being sold.

5.3 The nature of the Horticulture venture

5.3.1 Cropping overview

The members of the irrigation scheme do not follow a set cropping programme. Each family decides on its cropping programme for the year, bearing in mind issues of crop rotation. The

respondents explained that the 0.5 ha plot is divided into four portions measuring 36m x 36m for crop rotation purposes. When the irrigation schemes started, especially the earlier schemes i.e. Nyaitenga Overhead and Chitora I irrigation schemes, the irrigators explained that there were production subcommittees that were mandated with the responsibility of carrying out market surveys and then they recommended to the members the most profitable crops to grow. The cropping pattern was based on the principle of diversification in order to reduce risks associated with price variations and market uncertainties. Although these production committees are still provided for on paper, that is, in the constitutions or by-laws of the schemes, in practice, decisions as to what to plant at the time of the study rested solely with the head of each household. The production committees are no longer as effective as they used to be, as the cooperative nature of the irrigation schemes has almost collapsed.

Major crops grown on the schemes are leafy vegetables (such as rape, covo and spinach) butternuts, tomatoes, peas, green pepper, carrots, and cucumbers. Farmers plant their crops in such a way that there is always a crop being marketed to ensure a continuous generation of cash. This makes it easier for the farmers to pay their monthly electricity and other bills.

The table below shows average yields for different crops for a selected family during the 2011/12 season at Chitora II Flood Irrigation Scheme.

Crop	Yield (tons/0.125h)
Tomatoes	4
Green pepper	4.5
Carrots	3.5
Butternut	3
Cucumber	4
Leafy vegetables	1

Table 5: Major crops grown

It is important to note that the yields indicated below are estimates, as farmers do not have formal scales to weigh the produce. For tomatoes, they use a standard box, as shown below, and for other crops, they use pockets that, when packed, weigh about 50 kilograms. The buyers at the *Mbare Musika* (Mbare Market) usually dictate the prices and there is very little room for negotiation. These buyers are referred to as *Makoronyera*, meaning, “those of devious means” because they always trying to dupe farmers at every given opportunity, as reported in *The Standard* of 17 October 2010.⁵³

⁵³ Makoronyera’ Rip – off small- scale farmers at Mbare Market – *The Standard Sunday 17 October 2010*.

SITTING (sic) on an empty wooden box next to a heap of fly-infested garbage, 45-year-old Chipso Chayambuka looks lost in her thoughts. She appears oblivious to the buzzing flies around her and the strong stench emanating from the rotting mounds of rubbish. For the second time in a week, the small-scale farmer from Mutoko, in Mashonaland East province, has been forced to “sell” her tomatoes to touts at Mbare Green Market at a give-away price. The touts or scroungers infamously known as makoronyera use threats and other intimidatory tactics to force farmers to dispose of their produce to them at extremely low prices, which they then resale at market-related prices. “When we arrived at the market this morning, two of them were already standing next to our produce and they told us that they were buying our tomatoes at US\$1,50 per box,” said Chayambuka, with tears welling up in her eyes. Other farmers sold their tomatoes at US\$2 per box. Although Chayambuka and her husband Frank (56) protested, that did not deter the determined touts who evidently thrive on using brawn rather than brains. One has to be well-muscled toward them off. “They became abusive and seized all the tomatoes and paid us using the price they determined themselves,” she said. “The municipal police don’t protect us because they also benefit from the chaos.” Chayambuka is one of the scores of small-scale farmers who are being fleeced of hundreds of dollars by the touts who force them to sell their produce for a song. Apart from the hassle of dealing with the scroungers, the farmers who sell agricultural produce such as tomatoes, green maize, onions, cucumbers and butternuts, also have to contend with high fees charged by the city council. The local authority collects US\$10 from each farmer for overnight storage and the sale of produce for six hours — from 6am to midday. If a farmer is accompanied by another person, she has to pay a double fee. The charges weigh heavily against the small-scale farmers who travel long distances to Mbare. When storage, transport and other related charges are factored in, a farmer like Chayambuka pockets less than US\$60 after selling 93 boxes of tomatoes. Some of the farmers accused the city council of failing to provide them with enough facilities and services that match up with the fees they charge. “The council is just collecting money from us but they are not providing requisite services,” said Abel Musori (54) from Murehwa.



Other markets for fresh produce are supermarkets and fresh produce wholesales; the most popular wholesale being FAVCO. This wholesale offers a better price for the produce to the farmers but the farmers complained that their payment system was complicated and too slow. They explained that the Mbare Market was a cash market, meaning you get your money the same day.

5.3.2 Tomatoes

Tomatoes are the most lucrative crop grown by the schemes members. I found the crop to be very demanding in terms of inputs and labour but it also gives the farmers high returns. For maximum benefit, the horticulture farmers stagger the planting of the crop so that it is not harvested at the same time as it is very perishable. Planting is done from April to November. The winter crop is the most profitable because the crop is harvested when demand at the market is high, bringing in higher returns. According to the farmers, a winter crop box of tomatoes can sell for as high as USD 12 and a summer crop as low as USD 3.

5.3.3 Green peppers

Green peppers are usually grown over two seasons by most farmers as the crop can be harvested continuously for a period of 6-8 months. Green peppers are the second most popular crop and also second best in terms of returns. The farmers explained that they experience very few problems in terms of marketing green pepper as it is always in high demand.

5.3.4 Carrots, butternut and cucumbers

These are also high income earning crops and new markets, apart from the traditional Mbare Market, are emerging for these crops. According to one of the agriculture extension officers, a quarter portion of a 0.5 Ha plot measuring 36m x 36m produces an average yield of 3-5 tons of carrots. At the time I collected data for this study, leading companies that purchase horticulture produce were buying carrots at 50c per kilogram, butternut for 40c per kilogram and green pepper at 50c per kilogram. This would realize about USD 2 000 gross income for carrots under overhead irrigation and not drip irrigation; and if all four portions of the 0.5ha plot were planted for that season, the gross income would amount to approximately USD 8 000.

5.3.5 Leafy Vegetables

The most commonly grown leafy vegetables are rape, covo, spinach, and chomolia. These vegetables are grown throughout the year. Even though the average yields of these vegetables are low, farmers explained that they grow them because the cash flow from sales is continuous and they use the money to pay for the cost of their day-to-day needs.

5.4 ‘It’s not just farming, it’s a business’

These were the sentiments of most of the farmers demonstrating that the horticulture farmers are running potentially commercial enterprises. Judging by their production, they cannot be classified as subsistence farmers. This was echoed by most of the women and men interviewed. One male head of a household said:

I regard what I am doing as business. This is the very reason I applied to be a member of this scheme in the first place. I wanted a piece of land to further my horticulture skills and make money out of it.⁵⁴

One woman, when I asked her how she viewed their horticulture venture, she said:

⁵⁴ Interview at Nyaitenga Overhead Irrigation Scheme on 17 May 2012.

What we are doing is a farming business. It is not just a garden to grow vegetables for daily consumption but vegetables to sell to other people.⁵⁵

Another woman added:

We regard our horticulture venture as a farming business and, because of that, we channel all our energies towards it. The training my husband received from the Irrigation Department requires us to view farming as a business and that's what we are doing.⁵⁶

What I find interesting about the above voices is that the man interviewed used the singular 'I' and both women, the plural 'we'. The question I, therefore, asked was, "Does the man view the horticulture venture as his own business?" He is the head of the household and at the start of my interview with him he said that he was married. Does that mean his wife does not participate in the business? I asked him that question and the answer was even more interesting. He said that when he applied for membership of the irrigation scheme he was not married and even though he is now married, he regards the horticulture venture as his own business.

5.4.1 Income analysis

According to the respondents, a horticultural year is divided into three seasons. The tables below show a reconstruction of income and expenditure of one of the families that kept traceable records. The woman who provided me with the figures, however, felt that the gross sales may be more than what was recorded, as her husband, who is responsible for the marketing part of their venture, did not always declare all the sales. I found this practice common among most of the male headed households. What is also common among most of the households, whether female or male headed households, is that very few households kept financial records. The explanation was that they stopped keeping records during the hyper

⁵⁵ Interview at Nyaitenga Overhead Irrigation Scheme on 17 May 2012.

⁵⁶ Interview at Nyaitenga Overhead Irrigation Scheme on 17 May 2012.

inflationary period that affected Zimbabwe between 2000 and 2008. For those who had resumed keeping records after the introduction of several foreign currencies into the Zimbabwe financial system, labour costs were not included in the records unless labour was hired from outside the household. Most, if not all, of the male headed households rarely hire labour. Interviewees revealed that they depend on household labour or they exchange labour as families, a Shona traditional practice called *nhimbe*. This they said they usually do so when weeding or harvesting is required. Some female headed households, however, hire labour, especially those with young children who are not old enough to assist in the horticulture ventures.

Below is a reconstruction of an income and expenditure analysis of one family at Chitora I Irrigation Scheme for three horticultural seasons during the year 2011/12:

5.4.2 Season 1

Crop	Carrots 36mx36m	Cucumber 36mx36m	Tomatoes 36mx36m	Leafy Vegetables 36mx36m
Cost USD				
Seed	60	70	84	28
Fertilizer	108	96	152	84
Chemicals	-*	50	56	80
Labour	-*	-	-	-
Transport	200	200	600	100
Energy costs	25	25	25	25
Repair costs	50	50	50	50
Total costs	443	491	967	367
Gross sales	2 000	1 200	2 300	1 500
Net income	1 557	709	2 333	1 133
Season net income	5 732			

Table 6: Season 1

* There are no chemical requirements for the carrot crop and labour costs are not included

5.4.3 Season 2

Crop	Tomatoes 36mx36m	Tomatoes 36mx36m	Green pepper 36mx36m	Green pepper 36mx36m
Cost USD				
Seed	84	84	-	-
Fertilizer	152	152	-	-
Chemicals	56	56	100	100
Labour	-	-	-	-
Transport	600	600	200	200
Energy costs	25	25	25	25
Repair costs	50	50	25	25
Total costs	967	967	350	350
Gross sales	4800*	4800	2250	2250
Net income	3833	3833	1900	1900
Season net income	11 466			

Table 7: Season 2

*This was the most profitable season as the winter tomato crop fetched lucrative prices.

5.4.4 Season 3

Crop	Butternut 36mx36m	Butternut 36mx36m	Green Pepper 36mx36m	Green Pepper 36mx36m
Cost USD				
Seed	72	72	106	106
Fertilizer	146	146	181	181
Chemicals	50	50	200	200
Labour	-	-	-	-
Transport	200	200	200	200
Energy costs	25	25	25	25
Repair costs	50	50	25	25
Total costs	543	543	737	737
Gross sales	1 600	1 600	2 250	2 250
Net income	1 057	1 057	1 513	1 523
Season net income	5 140			

Table 8: season 3

The above figures show that the horticulture ventures are viable enterprises. The family whose financials are discussed above made an estimated income of USD 23 828 translating to an average net income of USD 1 986 a month. This, by Zimbabwean standards at the time the research was done, was a high income, as the majority of unskilled and semi skilled workers

in the commercial sector were earning less than USD 400 per month.⁵⁷ The USD 1 986 figure could be higher, as some of the income may not have been declared, as explained above. What is also important to note is that this income is over estimated as labour costs are not included. One of the agriculture extension officers of the area under study explained that a portion of 36m by 36m of carrots requires four people to work for effective production. The casual labour cost in Nyadire District of Mutoko at the time of the research was generally pegged at USD3 per day. Below are the labour estimations for such a portion.

Activity for a carrot crop	Estimated Number of days	Number of people	Labour cost (USD)
Land preparation	2	4	24
Planting	2	4	24
Covering	2	4	24
Thinning	8	4	96
Weeding	4	4	48
Harvesting	20	4	240
TOTAL cost			468

Table 9: labour costs

Season 1 above shows an estimated net income of USD 1557 for a carrot crop. This excludes the labour costs calculated above and estimated at USD 468. This means that on average, 33% of the income pays the labour costs. This labour consists of work which, as will be noted later in this chapter, is mostly done by women and children.

This lack of making no costings for labour leads to the non-valuing of the work that women do in the horticulture ventures and in the event that there ever comes a need to value women's contribution to the business, such figures will not be readily available leading to off-the-cuff or arbitrary estimates potentially prejudicing women's investments.

⁵⁷ The minimum wage for the commercial sector as at 1/6/2011 was USD 373 for the highest paid grade i.e. grade 12. www.mywage.org/zimbabwe. online available 23/12/12.

5.5 Assets Accrued from income generated from the horticulture

ventures

Irrigators acquire their valuable assets from income derived from their ventures. Most households own more than 20 head of cattle as a result of which room available for grazing is now an issue, as the number of cattle per family has exceeded what was initially anticipated. Most of the horticulture farmers explained they had no cattle when they joined the scheme. Five families bought motor vehicles from scheme generated incomes. Sixty seven of the eighty nine irrigation households own furnished modern brick under asbestos houses. Satellite television is a common feature of most households. They either use electricity from the main grid or solar energy to generate power. Electricity is, however, not generally used for cooking as most households still depend on firewood.

5.6 The family as primary unit of production



The findings above show that horticulture production in the irrigation schemes is based on a family formation of reproduction and production. These two factors are processes in which women are central actors. I noted that the organisation of the horticulture project around the family gave women direct responsibility for care and sustenance of the family business. Women are generally responsible for work in the home and at the horticulture plot, making them the centre of the family horticulture business. This study reveals, not just the contribution of women to horticulture production through their labour input to the plot and household, but also focuses on the relationship between production and reproduction in a family business that came into being as a result of marriage.

The diagram below shows the key findings on work and labour contributions. The inner circle shows the relationships between the parties. The horticulture ventures are mostly family ‘partnerships’ between a husband and wife cemented by marriage. The second circle shows the reproductive and productive activities and answers the question ‘who does what’. The third circle shows the resources (capital) required for the horticulture venture and answers the question ‘who has access, controls or owns’ what resources. The fourth circle shows the business model that emerged, that is, a family business within a cooperative set-up with decision making dominated by men both as individual families and as a cooperative. The outer circle illustrates the regulatory framework that the land based businesses are operating under. It is not just business related laws that regulate the horticulture ventures, as I had initially assumed, but a number of other laws, for example, family law and customary law that shape and direct the commercial relationship between the parties. At the core is the family which comprises husband, wife or wives and children.

As indicated earlier, marriage is a very important social event in the lives of both men and women. According to the respondents, marriage is a societal expectation and it is through marriage and having children that an adult male or female can be totally accepted by the society. The idea of remaining single by choice was frowned upon by most of the respondents, young or old, male or female, but more so by female respondents. Women explained that unmarried women over marriageable age are given names the most popular being “Tina”. Tina was described as a care free woman, a woman who defied all societal expectations about marriage and has no prospects of getting married. There are two female plot holders who are called by the name ‘Tina’. The first has never been married. She is 35 years old and inherited the plot from her father. To avoid passing on the plot to her husband should she ever get married, her father’s young brother has taken over a quarter portion of the plot. She said, at first, she would get angry when she was called by that name but, over the

years, she got used to it. She explained that she no longer has any interest in getting married because, if she does, she will lose the plot to her father's young brother as tradition will expect her to move to her new husband's home. The second woman is aged 24; she is a widow and inherited the plot from her late husband. Her late husband's brother popularized the name to force her to get married and move from her late husband's plot leaving him to inherit. She is young and explained that one day she would like to remarry but will not be pushed into doing so simply because society expects this of her by, for example, calling her 'Tina'. She wanted to secure her land rights first in terms of the scheme's constitution by having her name endorsed on the permit as the plot holder before she got married. At the time I started the field work she had taken her case to court for determination as her late husband's relatives sought to evict her from the plot.

The main question I sought to answer was whether a husband and wife were equal partners in the horticulture business. If not equal partners, who is the legally, economically and socially controlling 'partner' of the business?

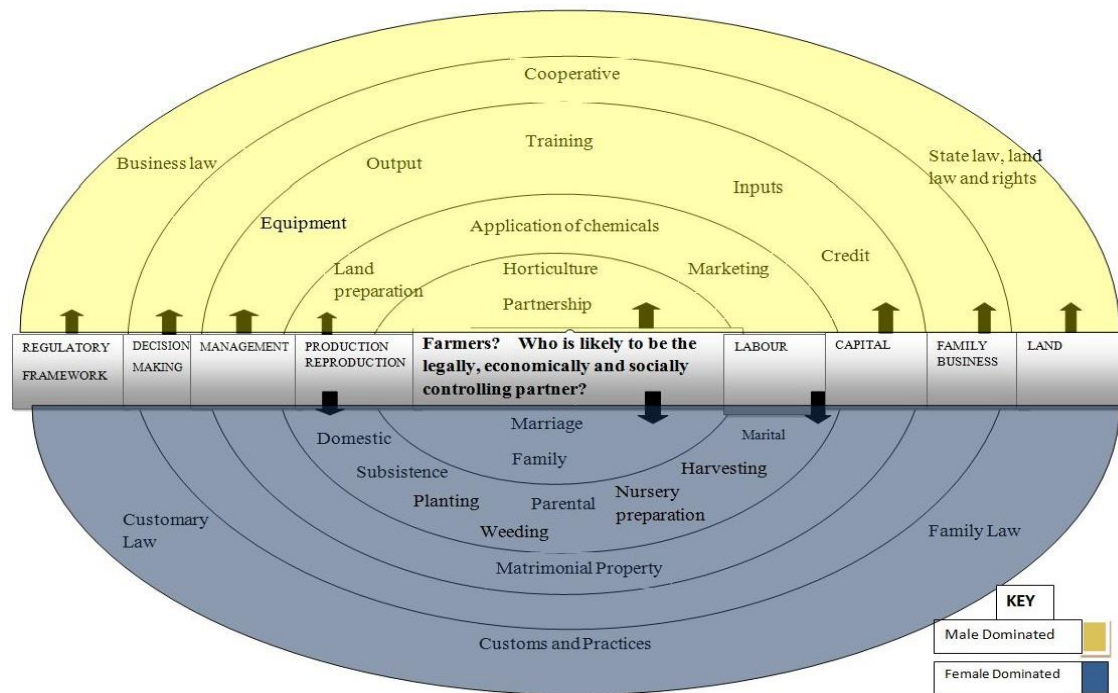


Figure 7: Summary of findings

Figure 7, above, shows two distinct halves. I labelled the upper half male dominated and the lower half female dominated. At the centre is a horticulture ‘partnership’ between husband and wife. The wife became a ‘partner’ in the business as a result of marriage and the business is run as a family business.

Central to the horticulture business relationship are issues of reproduction and production. Commercial farming has traditionally been depicted as ‘a man’s world’, the word ‘farmer’ itself carrying masculine connotations (Whatmore, 1991). The male farmer, in other words, is thought to represent the joint economic behavior of the household. According to Whatmore, an appropriate gender analysis in agriculture is one that takes labor to encompass both productive and reproductive activities, rather than a dualistic conception which separates production from reproduction (Whatmore, 1991).

Feldstein and Poats developed a framework for an intra-household gender analysis (Feldstein & Poats, 1989). To fully understand the productive and reproductive activities within the horticulture ventures, I used the Feldstein and Poats framework. The framework proposes three areas for analysis, namely, activities, resource and benefits and incentives analysis.

5.7 Gender roles and division of labour

The first is the activities analysis. This entails: who does what, when and where? These questions are concerned with the tasks that are performed by men, women and children that contribute to farm production, to household production, to child-bearing and rearing, and to other productive activities, including domestic activities.

5.7.1 Domestic and reproductive responsibilities

In terms of the findings, reproductive activities largely fell within the female domain. Women undertake the majority of the traditional domestic work and are responsible for most of the reproductive roles comprised mainly of child bearing and rearing. Household production amounts to any task performed by a household member that could have been accomplished by hiring a third party (Quigley, 2013). To fully understand time spent by women and men on reproductive roles, I collected data on how much time men and women spend on a daily basis on domestic activities and household production as shown below:

Household chore	Female dominated	Male assisted	frequency	Average time
Preparing children for school	X		Daily	1hr
Cooking meals	X		Daily	3hrs
Collecting water	X		Daily	1hr
Collecting firewood	X	X	Twice a week	2hrs
Laundry	X		Twice a week	2hrs
Cleaning of house	X		Daily	1hr
Child minding	X	X	Daily	Continuous

Table 10: Daily chores

Most women explained that their weekdays start at between 0400hrs and 0500hrs preparing children for school. The children were supposed to wake up early, especially for those from the Nyaitenga Irrigation Scheme as the school (both primary and secondary school) is about 7 kilometres away. For Chitora irrigation scheme residents, the school is 2 kilometres away. Women make sure that the children take a bath and eat before going to school. After the children are gone, women explained that first they go to the nearby boreholes to collect water for their daily needs and after that they clean the house. Laundry and collecting firewood is done twice a week. Most of the household chores are completed by 0800hrs and is resumed in the late afternoon. From morning until late into the afternoon, they join their husbands in the irrigation plot.

This routine is not, however, the same all the time. The routine depends on the work that is required at the plot. The work at the plot, as the women explained, is more important as that is their source of income. According to the women, household chores can be done at any other time, even well into the night. If it is harvesting time, some prefer to harvest early in the morning as the buyers who come to buy from the fields do so at about mid-morning as explained by one woman below:

We go to the garden very early in the morning to harvest and pack for the market, then back at home to prepare children for school. We go back midmorning to weed and irrigate but irrigation is usually done mid afternoon and at times my husband irrigates at night, when to irrigate depends on availability of electricity.⁵⁸

According to the interviews as shown in the table above, as far as daily chores are concerned, men usually assist with firewood collection and occasionally child minding. Women, thus, spend more time per day on household chores than men do, that is, women spend an average

⁵⁸ Interview at Chitora II Irrigation Scheme on 22 May 2012. Electricity is sometimes not available because of load shedding.

of 6 hours compared to men who spend about 1 or 2 hours. An average woman's day starts at 0500hrs and ends at 2200hrs as one woman said:

This is a whole day activity with breaks here and there not to rest but to prepare food for the family and other household chores. You only rest when you sleep for about 5 hours. I wake up at 0500hrs and sleep at 2300hrs. I usually leave the garden at 1600hrs. There will be so much waiting for me at home.⁵⁹

All the women spoken to are actively involved in both household and productive work in the irrigation plots and when asked if they can separate household from productive work, one woman explained:

In my case there is no separation between business and household chores. This is so because I am actively involved in both. I am a wife and I participate in the business at the same time. I provide labour in the plot and I am responsible for most of the work at home. When the worst comes to the worse, I do my household chores like laundry whilst I am giving instructions to the children in the plot. My days are long since I wake up early morning to prepare for my children to go to school and also cook the day's meals. The nights are short, if I am not planning for the next day, I will be nursing a sick child or assisting the children with their home work. I only rest on Sunday when I go to church.⁶⁰

Another woman added:

This is difficult, we do all the household chores and we work in the gardens as well. My husband rarely assists me in the home. At home we cook, sweep and take care of the children. In the gardens we are involved in almost everything.⁶¹

5.8 Resource Analysis

The second area I looked at was the resources required for effective horticulture production. I asked, "Of the two 'partners', who has access to, or control over, the resources for production?" 'Control' is defined as the power to decide whether and how a resource is used and how it is to be allocated. I looked at 'access' as being the freedom or permission to use the resource. An analysis of the findings as shown on the key findings diagram, above, shows

⁵⁹ Interview at Chitora II Irrigation Scheme on 22 May 2012.

⁶⁰ Interview at Chitora I Scheme on 18 May 2012.

⁶¹ Interview at Chitora I Irrigation Scheme on 18 May 2012.

that there are three critical resources needed to effectively run a horticulture venture, namely, land, credit and labour.

5.8.1 Production and management

Production and management is shown in the summary of findings diagram as a male domain. This is because the main resource required for the business, that is, land, is mainly controlled by men, as this chapter will later show. The other capital requirements include, among others, credit, inputs and equipment, training and marketing skills. In terms of credit, in most of the families, men were the registered members of the irrigation schemes and, as such, they are the ones eligible to apply for credit when the facility is available. I, however, noted that most of the businesses rely on money realised from sale of produce to purchase inputs for the next season. The inputs include, among others, seeds, fertilizers, chemicals and small equipment, like irrigation pipes and spraying equipment. The major piece of equipment for irrigation, that is the pump, is shared by all members of the scheme and controlled by the irrigation committees. The committees are no longer effective. I noted that these committees in all the schemes are dominated by men, even Nyaitenga Drip Irrigation Scheme. Interestingly, this is a scheme that was specifically set up to benefit women and has a committee that is chaired by a man. This supposedly women biased scheme has its own challenges that will be discussed in the next chapter.

What is important to note is that although the key findings diagram shows production as typically a male domain, the findings of this research will show that when it comes to who does what on the horticulture plot, productive work is fairly well shared between husband and wife. The division of labour in the plots is not as well defined as it is with the division of labour in the home. Women explained, however, that they are more responsible for tasks that involve more attention to detail, such as. planting, weeding, harvesting and the grading of

produce. Men largely participate in the physical task of land preparation, disease control, and, to a greater extent, marketing.

There is, therefore, a clear sexual division of labor as confirmed by this woman who said:

My husband mainly does the “man’s work” like tilling, changing pipes, sourcing transport and general supervision of the plot. He is the one who most of the times go to the market with our produce. I assist in transplanting seedlings, weeding and harvesting. The children are also involved mainly to provide labour when need arises.⁶²

Men are, thus, more active in the activities most directly related to commercial production, chief amongst which is the marketing of the produce. Regrettably, I found women mostly responsible for activities consistent with the women’s traditional role of nurturing. They nurtured the plants from the seed bed to the transplanting stage and are responsible for weeding and, eventually, harvesting, as shown below:

Activity	Female dominated	Male dominated	Both men and women
Land preparation		X	
Nursery preparation	X		
Planting	X		
Transplanting	X		
Chemical application		X	
Irrigation			X
Harvesting	X		
Marketing		X	
Day to day Management	X		
Decision making		X	

Table 11: Who does what

An analysis of the above shows that women shared equal if not more responsibilities in productive activities with men. Importantly, they are mainly responsible for the day-to-day

⁶² Interview at Nyaitenga Overhead Irrigation Scheme on 17 May 2012.

management of the plot. Irrigation is normally done by two or three people at any given time. Men and women assisted each other when they perform this activity. Planting, weeding and harvesting are tasks mainly done by women and the labour input for these activities is very minimal for men as these are tasks for women. The labour input for buying inputs, chemical application, and marketing, is, on the other hand, very minimal for women as compared with the men who are more involved with it. Whilst women do most of the work on the plot, they do not make decisions without their husband's consent as explained by one woman. When I asked her how production on the irrigation plots is planned, she said:

We no longer plan; we have been doing this for a long time so most of it is now routine. We have set tasks. We know as the year starts, we put in carrots and leafy vegetables, then green pepper, butternut and tomatoes. I practically run the plot as my husband is away most of the time. If there are any changes to be made, my husband has to agree to that decision.⁶³

If we are to add time spent on household activities and productive work on the irrigation plots, women have little control of their labour. They work between 14 -16 hrs a day as compared to 7 – 8 hours worked by men, with the exception of Sundays, when most women go to church. Although it was not possible to dis-aggregate the labour commitments where family members worked together, the preceding discussion suggests that women worked for much longer on operational work than men.

The findings of this study, thus, show a clear gender division of labour in performing commercial horticulture activities and household reproductive activities. When I asked whether there are particular farm operations associated with either men or women in their households, the majority of the respondents indicated that land clearing and the application of chemicals were activities that were associated with men. Land preparation was said to involve the use of machinery and men said they operated machinery better than women. In response,

⁶³ Interview at Nyaitenga Overhead Irrigation Scheme on 17 May 2012.

women said it has always been the role of their husbands to prepare land, not that because they (the women) cannot operate the machinery and they are happy with the *status quo*. On the issue of chemicals, most men said application of chemicals requires precision. The nap sack was heavy to carry and also most chemicals were potentially poisonous. Therefore, they felt men were better suited for this job. Most men felt that women should not be involved with poisonous chemicals as it was their role to cook for the family and take care of young children. Women at a focused group discussion challenged the precision part, saying they can apply the chemicals better than men as they are more patient and men had a tendency of rushing whatever they do. They could also read and understand the instructions, so there was no real reason why this should be a job for men. They explained that the reason why men allocated themselves these tasks is because they are not everyday tasks like weeding. Most chemicals are applied once every two weeks but weeding is continuous because by the time you finish the fourth portion, the portion you started with will need to be weeded again.

5.8.2 Productive work at the horticulture plot categorized as household chores

Most of the other horticulture activities, namely, nursery preparation, transplanting, planting, harvesting, and irrigation were mostly performed by women, including most of the domestic activities. What was apparently clear is that in addition to the productive activities listed above, most women in the horticulture ventures had the sole responsibility for household chores. The productive roles mentioned above were also understood by most respondents to be daily chores. When asked if they are able to separate household chores from the work they do on the irrigation plots, most women said the chores are not separable. To them, it is a continuous long day. One woman stated:

No, we have always been doing this, garden work is also part of our household chores. The work may be too much at times, especially if you make a mistake that different crops mature at the same time.⁶⁴

⁶⁴ Interview at Nyaitenga Overhead Irrigations Scheme on 18 May 2012.

Another added:

I cannot really separate these as they are interrelated. Plot work is also part of daily chores. What I can however say very confidently is that I and the children do most of the household chores i.e. cooking, sweeping, laundry, child care. All this is women's work.⁶⁵

Through interacting with women horticulture farmers in ward 25 Nyadire District Mutoko and just as Asha and Anju observed in their research, I realised that rural women's participation in agro based activities is much more than I had envisaged and this is mainly because of the fact that most of work done by women horticulture farmers is disguised as daily chores (Asha & Anju, 2011, p. 217). The family is the primary unit of production. Women horticulture farmers are involved in both productive and reproductive work, whilst their male counterparts are mostly involved in productive work. The productive work that women do in the horticulture business is seen as part of their daily chores, especially by the women themselves, although *they* all see their involvement in horticulture production as a business. The question, therefore, was, "Do they benefit from the proceeds of their labour?"

5.9 Benefits and incentives analysis

The third area I looked at was an analysis of benefits and incentives or, to put it another way, who benefits from the enterprise? I linked this with the issue of decision making as I found that they were interrelated. According to Feldstein and Poats, benefits analysis refers to who has access to and control of the outputs of production (Feldstein & Poats, 1989). Both the discussion above and the one following on decision making point to the fact that regardless of the fact that women put in more in terms of labour into the family horticulture businesses, it is the men who benefit more from the outputs of that production. Men go to the markets and they control the proceeds. One woman explained:

⁶⁵ Interview at Nyaitenga Overhead Irrigation Scheme on 18 May 2012.

My husband and I decide on what to plant and when. However, sometimes the decisions we would have made as a couple are unilaterally changed by my husband. At times I tell the children to do something in the plot and my husband tells them the opposite, sending conflicting signals to the children. I have learnt over the years to respect my husband and follow his lead. After all I am the wife; I leave him to make the decisions.⁶⁶

Decision-making processes in most households in the study area depended on the issue at hand. The issues that I found to be predominantly decided upon by male members of the family are issues regarding marketing and the expenditure of the money earned.

Female members of the family who are *de facto* managers can decide upon issues such as what to plant on the horticulture plots and how to use the money they are given by their husbands from the proceeds of the sales, but the rest is 'invested' by their husbands. This shows that although women spend a lot of their time in horticultural activities, they do not make final decisions on the income from the product of the sweat of their labour.

5.10 The family business model within a patriarchal mode of production

The findings show that women play an equally central role to that of men in the horticulture business, although this may not be immediately evident. The findings also show the way in which rural households as small-scale, family-based economic enterprises are characterised. What emerges is a family unit, consisting of a husband, wife or wives and children in a business that came into being as a result of a marriage. Within this unit, women, as wives, are primarily family workers whose economic interests are congruent with those of their husbands, and whose work is subsumed within his. Women are, therefore, operating in a family/marriage business model, under a patriarchal mode of production.⁶⁷ According to

⁶⁶ Interview at Chitora II flood irrigation scheme held on 20 May 2012

⁶⁷ The term mode of production was first used by Marx to denote a way of organising economic production. It incorporates consideration of both relations of production (essentially the relations between the producers and

Kynaston, in pursuing evidence for the existence of a patriarchal mode of production, two major issues need to be explored (Kynaston, 1996, p. 225). Firstly, there is a need to look at the extent to which it can be argued that women worked, overall, longer hours on behalf of their household units than men did. Secondly, there is a need to look at the extent to which it can be argued that women received a lesser share of household resources than men did (Kynaston, 1996, p. 225). As discussed above, if we are to combine time spent on reproductive/domestic chores and productive work on the horticulture plots, on average women work between 14 – 16 hours per day as compared to 7 – 8 hours that men work. The findings also point to the fact that because men control the proceeds of the horticulture produce, women receive a lesser share of the household resources than men do.

Answering the question about the role she plays in the business, one woman said:

The whole family is involved but my husband is responsible for overall supervision and planning involved in the garden. He determines when to plant our crops and the very types of crops to grow. This he does after looking at what others would have planted so as to avoid competition. He is also the one who goes to the market and has the overall word on how the money is to be used. The children and I are responsible for planting, weeding, harvesting and grading.⁶⁸

Another woman said:

My husband and our son decide on what to plant and when to do so. The children and I are involved in preparing the land, weeding, transplanting seedlings, fumigation, changing pipes and harvesting.⁶⁹

One answer I found very interesting and quite intriguing was given by a woman who said:

My husband knows all that we need to do. He tells us what he expects me and the children to do and we follow. We have set daily activities.⁷⁰

non-producers in the process of economic production) and the forces of production (the material bases of production, most particularly the means of production, which includes resources such as land, tools, raw materials.

⁶⁸ Interview at Chitora II Flood Irrigation Scheme on 20 May 2012.

⁶⁹ Interview at Nyaitenga Overhead Irrigation Scheme on 17 May 2012.

⁷⁰ Interview at Nyaitenga Overhead Irrigation Scheme on 17 May 2012.

The above voices clearly show how the businesses are structured and organized. An interpretation of what the last woman said shows that the horticulture business, of which this woman is a part, operates under the rule of the father/husband or a male member who is the head of the family. The first two women (above), when asked about their role in the business, instead of going straight on to describe their individual contribution to the business, they start talking about what their husbands do. All three above voices refer to ‘my husband this and my husband that’. This can be interpreted to mean that husbands are the dominant figures in business. The male members of the household are, thus, controlling the economic and property resources and making all major decisions. This structure of domination is what Delphy described as a patriarchal mode of production (Delphy, 1984, p. 237). Power, and the exercise of power, is central to this mode of production, creating an unequal power relationship between men and women. Kandiyoti defined a patriarchal mode of production as class relations within the household, where housewives are the producing class and husbands are the expropriating class (Kandiyoti, 1988, p. 274). The women voices quoted above clearly show the wife as the producing class. Most women are responsible for planting, weeding, harvesting and grading, while most men are responsible for overall supervision and planning. Men generally go to the market and they have the overall say on how the proceeds of the sale are used.

This is despite the fact that women are essentially engaged in the production of labour power. From the above voices, it is evident that the labour power women are producing is owned and controlled not by her, but by her husband/partner. In this sense, the woman, as producer, has neither ownership nor control over part of the means of production. When the husband/partner subsequently sells the proceeds derived from the product brought about largely by the labour power the woman has produced, the decision on how to use the proceeds of the sale generally

rests with the husband. The fact that the woman works longer hours than her male partner is essentially ignored. By working longer hours and yet receiving less, Waltby concludes that the wife is clearly exploited: in effect, according to Waltby, the husband/partner is appropriating the wife's surplus labour (Walby, 1990).

Delphy highlights the way in which women's labour is systematically appropriated by men within the context of the patriarchal mode of production (Delphy, 1984). She notes that just as capitalists are the beneficiaries of the capitalist mode of production, so too are men the beneficiaries of the patriarchal mode of production. She identified the basis of the exploitation as the appropriation of surplus labour. Whilst in the capitalist mode of production, surplus (unpaid) labour is appropriated from wage workers, in the patriarchal mode of production surplus (unpaid) labour is appropriated from women (Delphy, 1984). The women involved do not receive the full value of their labour. In other words, there is a fundamental imbalance between the labour contributions made by women, on the one hand, and the distribution of the wealth and/or resources created by that labour, on the other. This gives men the controlling interest in the family horticulture business at the expense of women who, as the findings show, work an average of 14 – 16 hours a day in the home and on the irrigation plot.

The question I asked, therefore, was, “Whence or from where do husbands derive their power to subordinate wives in a business relationship in which they should be partners?” Is it because of the traditional dominance of men over women? Or, is it because men are mostly the holders of the land on which the businesses are based (with the exception of Rudo’s case discussed at the beginning of the first chapter, but, in that family, the man still held the power) and women only became part of that business as a result of marriage?

5.11 The Relationship Between Land, Business Control and Profits

Whether inherited, allotted, purchased or seized, land remains the most basic resource of agricultural production (Davison, 1988). In ward 25, Nyadire district of Mutoko, land for irrigation purposes was mostly allocated to men; most of the permits for land were issued to men as heads of households, effectively making men the holders of the land. The Food and Agriculture Organization (FAO) defines 'a holder' as the person who exercises control over land and is responsible for utilization of existing resources. According to FAO,⁷¹ 'the holder is not the person who does the work on the land, but rather the person who makes the decisions, even if s/he never sets foot on the land'. The fact that the husband was given a primary land-use right is sometimes translated to mean 'the crops are his' and, therefore, 'the money is his'. The wife, therefore, does not have an obvious right to the fruits of her own labour (Gaidzanwa, 1995, p. 3).

An example is a woman whose husband is a plot holder but works in Harare. The woman practically runs and manages the horticulture business but she had this to say:

We work as a family with the exception of my husband who is not actively involved in the daily tasks. My children assist with labour during harvesting time. I source labour, pay the labourers and supervise them. I meet with my husband twice a week in Harare at the market. The market opens at 0600hrs and my husband is always there to supervise the sale before he goes to work.⁷²

She added:

Although my husband works in Harare, I consult him on what to plant each season.⁷³

Horticulture is a land based business. The land upon which the horticulture ventures are premised is State land. As such, both men and women have no title over the land. The

⁷¹ www.healthridge.ca online available 22/11/12.

⁷² Interview at Nyaitenga Overhead Irrigation Scheme on 21 May 2012.

⁷³ Interview at Nyaitenga Overhead Irrigation Scheme on 21 May 2012.

families have access to the land by virtue of being part of a cooperative of which most male heads of the families are members. As a result, most women in family horticulture businesses can only access the land through their husbands who control the land because they are the members of the cooperative. Some women have gained control of the land through inheritance. Acquiring membership through inheritance, I noted, has its own challenges. Some women who gained control of the land through inheritance are facing production challenges. Their full capacity to utilize land in an effective commercial fashion is being adversely affected by the way in which the business is located in, controlled and restricted by family.

The land on which the horticulture businesses are based is resettlement land. Resettlement land belongs to the state; the holders were only granted usufruct rights through the permit system. In Model B cooperatives women are included as formally equal participants as provided for by the schemes constitutions. Because the constitutions bind all the members of the scheme, customary law on land inheritance does not generally apply.

‘Customary law’ is defined as:

A body of norms generated and enforced by a traditional, sub-state polity and governing the actions of its members... [that] may or may not be recognized by national law. Customary rules are best not regarded as informal, because they enjoy social sanction by a polity. They come with administrative institutions and powerful advocates and have deep cultural resonance. (Bruce, 2007, p. 13)

The problem with customary practices and traditions is that they limit women’s rights on land to secondary rights. Customary practices and traditions, as shown in the case of Martha, above, underpin male dominance in that a male infant is preferred over an adult female to inherit land disadvantaging women and placing them in a subordinate position in the society (Walker, 2001).

Based on my analysis of the findings, the reason why customary practices and traditions are taking precedence over the constitutions of the irrigation schemes in respect of land issues is because marriage was the primary means of women getting access to the land in the irrigation schemes and this is similar to the situation under the communal land system of tenure. Further, the geographical location of the schemes (i.e. in rural communities) and also the fact that the present holders of the plots once resided in communal lands before they were resettled makes the application of customary law the preferred source of law in dispute resolution. The transfer of villagers from communal land to resettlement land led to importation of customs and practices that prevailed in the communal areas. Given this scenario “whatever formal rights accorded to women are taken away by the application of customary law” (Pasura, 2010, p. 445).

5.12 Conclusion

The findings as presented in this chapter show that women horticulturalists in ward 25 of Nyadire District, Mutoko are involved in commercially viable businesses providing produce for the market. The family is the primary unit of production. Family members mostly provide the labour required in the gardens. Findings point to the fact that all horticulture activities function as family based and controlled businesses where the predominant control of the output lies in the hands of men. Women are heavily involved in the input of the horticulture ventures but marriage leads to inadequate recognition of their input in this family business. The operation of the horticulture business that started within a cooperative scheme is now informed and dominated by the marriage framework. Women’s production and participation in the family enterprise is thus subsumed under “the marriage/business framework”. The reality is that women’s involvement in the business operation of the horticulture enterprise is actually enmeshed in family relationships. I, therefore, found it imperative to examine the women’s horticulture commercial activities within the context of her family. Studying the

women horticulture farmers in the context of the family placed them at the intersection of family *and* business.

The business models that emerged are the family and cooperative models. These models are layered in a way that adversely affects women's capacity to engage with them. What is clear in this study is that family and cooperative models clash and the findings show that the family model dominates despite the overarching old cooperative model. The schemes were set up under the old cooperative model but in terms of what the cooperative specifies, there are compliance problems. The irrigation schemes are governed by a constitution but despite what the cooperative constitution says, the family wishes dominate. This framework is especially problematic for women because of the application of customary law in dispute resolution. In terms of land rights, women on paper have favorable land usage rights. These are well documented in the operational constitutions of the irrigation schemes which provide that if the plot holder dies, the plot passes on to the surviving spouse. This, however, is not followed through into practice, since the land usage rights (though well defined in the by-laws) are enforceable through customary structures where land inheritance is through the male lineage. As a result, women can only access land through their husbands while their marriage subsists and through their sons, if widowed. There is, therefore, a need for an intervention that focuses on how the businesses are functioning and how marriage within the customary framework is affecting women's contribution. This is so because the findings make it very clear that everything is governed by marriage and customary law and, therefore, it is men who benefit. The next chapter will look at women's participation in the cooperative business model and the family business model. The chapter will also interrogate decision making and power within the business models using an equality framework.

CHAPTER 6 Women Participation, Power and Decision Making

Consistently, women have been constructed in a fashion thought to reflect their natural place in the social order. Their traditional role is not as legal subject but as helpmate to the man of law. Their place is not the competitive public terrain of law but the private sphere of the home. Here their duties are to serve the domestic and emotional needs of their husbands, to assume responsibility for children, to provide love and stability, to leave the man of law nourished and free to pursue his own interest in the marketplace. (Naffine, 1990, p. 23)

6.1 Introduction

Women horticulture ventures in Ward 25 of Nyadire District, Mutoko are located within a family/marriage business model. From my experience of teaching commercial and corporate law, whilst I knew that the business model referred to as sole trading is mostly a family business, I did not envisage how complicated this business model is. Come to think of it, why are they called sole traders and yet, essentially, they are family businesses? From my recollection as an undergraduate family law student, family law involved highly emotional issues, such as divorce, succession and child custody. By contrast, before becoming a women's law scholar, I viewed business law as involving unemotional issues, such as negotiating the purchase or sale of an asset or arranging the financing of a transaction. Now, as a women's law scholar, I have come to understand the link between what society has construed as the masculine sphere of commerce and the feminine sphere of family. Central to the argument presented in this study is the need to transcend the historical male dominated notion of marriage in family business arrangements and to look at it as a partnership relationship that defines the responsibilities between the parties to each other *beyond* the marriage relationship. An analysis of the findings of this study showed that in family business relationships, marriage should not be central and treated, as has traditionally been the case, as the dominant framework, but, rather, the business relationship should define individual contributions to the marriage.

The two distinct models that emerged from an analysis of the way in which women horticulture farmers are doing business are the cooperative model and the family business model. This chapter explores women participation in these two business models, the limitations of each model and how this impacts on the overall recognition of women's contributions to the business.

6.2 Participation

Participation is the direct control, ownership and management by the people of decision-making. It is inclusive and actively encourages people to genuinely, freely and actively participate in decision-making. Participation must be voluntary, recognized by law, free or not subject to sanction or threat, and active (Human Rights Based Approach Development Toolkit, 2014). Participation of women in socio and economic activities is central to development. It is important that women take part in development processes as active participants rather than passive recipients as is the case with most income generating projects. In its Mission Statement, the Beijing Platform for Action stated that equality between women and men is a matter of human rights and a condition for social justice and is also a necessary and fundamental prerequisite for equality, development and peace. A transformed partnership based on equality between women and men is a condition for people-centred sustainable development. Every human being has the right to participate in decisions that define her or his life. This right is the foundation of the ideal of equal participation in decision-making among women and men. This right argues that since women know their situation best, they should participate equally with men to have their perspective effectively incorporated at all levels of decision-making, from the private to the public spheres of their lives, from the local to the global.

Various development theories focus on participation of women and development and of interest to this study is people-centred development. ‘People-centred development’ is defined as a process by which members of a society increase personal and institutional capacities to mobilize and manage resources to produce sustainable and justly distributed improvements in their quality of life (Davids, Theron , & Mampunye, 2005). This approach is based on people’s participation, sustainability, social learning and empowerment (Davids, Theron , & Mampunye, 2005). Participation is a process through which people are enabled to exercise varying degrees of influence over developmental related activities that affect their lives (Kotze, 2002). The people-centred developmental approach is aimed at encouraging communities to be responsible for their own development, control their own resources, have access to relevant information, have the means to hold government officials accountable for the services they render within the community and participate in the development process (Coetzee & Graaff, 1996).

6.3 The right to participate in development processes

Participation is a key element in the human rights-based approach to development. The preamble of the Protocol on the Rights of Women in Africa (AfPRW) emphasizes the full participation of African women as equal partners in Africa’s development. In article 9, it further emphasises women’s right to participation in decision-making at all levels. The CESCR Committee’s General Comment No. 16 (2002) requires genuine public participation and women’s participation.

Significant commitments have been made at the international level to foster women’s right to participate in decision-making. This right was first recognised as a political right in the 1948 Universal Declaration of Human Rights (UDHR) in Articles 2 and 21 that provide for the equal enjoyment of political rights without discrimination on the basis of one’s sex or any

other ground. The International Covenant on Civil and Political Rights (ICCPR) reaffirmed the principle of non-discrimination in the exercise of the right to participate in public and political life. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) is by far the most comprehensive instrument advocating the participation of women in decision-making. It defines discrimination as any:

Distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The Maputo Protocol [article 19(c)] also provides that women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to...promote women's access to and control over productive resources, such as land, and guarantee their right to property.

The 2008 SADC Protocol on Gender and Development (article 18) provides that States parties shall, by 2015, 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, ensure that women have equal access and rights to credit, capital, mortgages, security and training as men. According to the SADC Protocol, there is supposed to be a gender Audit to ascertain the disproportionate share that women bear in life. This is provided for in article 1 that mandates state parties to conduct time use studies by 2015 and adopt policy measures to ease the burden of the multiple roles played by women.

Although women horticultural farmers occupy a central role within their families as child bearers, child rearers and family care-givers and are actively involved in horticulture production, their voices are largely silenced and rendered irrelevant in the horticulture

businesses. This is the case because notwithstanding the proliferation of local and international legal instruments that address women's right to participate in decision-making - to many of which Zimbabwe is a party - women in businesses premised on marriage (especially land based businesses) are yet to achieve this equality in decision making.

Under CEDAW, the state is obliged to implement its provisions, including the enshrinement in the Constitution of the principle of equality between men and women and the adoption of national legislation protecting the equal rights of men and women. The state also has the obligation to refrain from engaging in any act or practice which discriminates against women. The Beijing Platform for Action called on governments to take measures to ensure women's equal access to and full participation in power structures and decision-making. Many States, Zimbabwe included, committed themselves to make gender balance a goal. Zimbabwe has also been consistent in its acceptance of regional standards contributing towards the improved participation of women in decision-making. Among these is the commitment made by African states in article 4(1) of the Constitutive Act of the African Union to ensure gender equality. At the level of the Southern African Development Community (SADC), Zimbabwe made a commitment under the SADC Gender and Development Protocol to effect legislative and affirmative action measures to encourage participation of women in the development process.

Women's entitlement to equality within the family is universally acknowledged. This entitlement is acknowledged in the Human Rights Committee General Comment No. 28, on equality of rights between men and women (particularly paras 23-27), and General Comment No. 19, on protection of the family, the right to marriage and equality of the spouses; and Committee on Economic, Social and Cultural Rights General Comment No. 16, on the equal right of men and women to the enjoyment of all economic, social and cultural rights (particularly para. 27), and General Comment No. 20, on non-discrimination. To achieve

equal status with men, women horticulture farmers should participate in decision making in all activities of the horticulture business. Inclusion is about ensuring that those who are marginalized can also participate. Power relations in the family mean that one gender dominates the other. Talking to women, I realized that women found it difficult to voice their concerns and ideas both in the cooperative and family business framework.

6.4 Women participation and the cooperative business model

The lack of visibility of women's contribution to the economy results in policies which perpetuate economic, social and political inequality between women and men. There is a very simple equation operating here: if you are invisible as a producer in a nation's economy, you are invisible in the distribution of benefits (unless they label you a welfare 'problem' or 'burden'. (Waring, *Counting for Something! Recognising Women's Contribution to the Global Economy Through Alternative accounting Systems*, 2003, p. 38)

The irrigation schemes were established under the old co-operatives schemes and have struggled to operate under this business model. At the time I did fieldwork for this study, the horticulture enterprises were operating as individual families under registered cooperative schemes. The initial cooperative element within the irrigation schemes collapsed. Irrigation schemes in Ward 25 of Nyadire District in Mutoko are not the only cooperatives set up by the Government of Zimbabwe that collapsed. According to the literature, the majority of such cooperatives are no longer functioning as cooperatives, the main reason being they were not initiated by the members themselves but by government following its socialist policies. The 1980s saw the creation and substantial growth of cooperatives under state direction. The cooperatives originated from government policy and directives rather than people's common interest and own motivation and were conditioned to emerge as dependent agents of the state (Vingwe, 1994, p. 14). The cooperatives hardly operated as business enterprises driven by the interest of their members and the demands of the market. Porvali (1993, p. 5) cited by Mohamed-Katerere, acknowledged the potential role cooperatives can play in the

development process but only if they were restructured and disentangled from the state so as to run on business principles in line with the evolving market economy (Mahomed - Katere, 1998, p. 17).

The authoritative definition of a co-operative is outlined in the International Cooperative Alliance's Statement of Identity which defines 'a co-operative' as an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise (ICA, 1996). In other words, it is a collective entity which expresses the common personality of its individual members and which works for common goals identified by that membership. Put simply, it is a business organization owned and operated by a group of individuals for their mutual benefit. Co-operatives are created to fulfil one of a number of purposes, for example: housing co-operatives, consumer co-operatives, agricultural co-operatives, and workers' cooperatives.

The definition emphasizes some important characteristics of a cooperative enterprise. These include the following:

1. **Autonomy:** that is the cooperative should be as independent of government and as private enterprise as possible.
2. **Association of persons:** The definition deliberately does not read "an association of individuals"; it embraces any legal definition of "person," which includes companies as well as individuals.
3. **Voluntary:** Members should be free to join and leave at will, within the purposes and resources of the organization.
4. **Meet needs:** The central purpose of the cooperative is to meet member needs, which can be purely economic or social and cultural.

5. Joint ownership and democratic control: The members own the cooperative on a mutual basis. Decisions should be made democratically by the members and not controlled by capital or by government.
6. Enterprise: The cooperative is an organized entity that typically functions in the marketplace and engages in exchange of goods and services.

In Zimbabwe, cooperative societies are governed by the Cooperative Societies Act (Chapter 24:05). The Co-operative Societies Act regulates less elaborate co-operatives, intending to operate on a smaller scale.⁷⁴ The Companies Act, on the other hand, regulates cooperative companies. In terms of the Companies Act, a cooperative company is a public company whose memorandum states that its main object is either the co-operative production or marketing of agricultural produce or livestock or the sale of goods to its members.

It has been averred by Prof. Hudson of the Co-Operatives, Friendly Societies and Trusts that it is possible to organize a co-operative entity as a trust such that the property [is] held on trust for the membership subject to the rules of the society. Be as it may, cooperatives entities occupy a middle ground somewhere between ordinary companies and private trusts. To this end, they give a different perspective to the manner in which property might be held and used for the benefit of a group of people otherwise than as beneficiaries or as shareholders. Whereas the ordinary company began life as a partnership holding property in trust for the members of the company in pursuit of their common objectives, the societies constitute a similar arrangement aimed primarily at personal welfare as opposed to commercial activities. Hence, any business conducted by the society cannot be carried on for shareholder profit, as with an ordinary company, rather the business activity must be for the purposes of the society, in particular.⁷⁵

⁷⁴ See section 11 of the Co-operative Societies Act.

⁷⁵ See section 8 of the Co-operative Societies Act.

- a) promoting the economic and social interests of its members in accordance with Government policy;
- b) performing any economic or social activity in the interests of its members;
- c) Participating in the overall economic and social development of the nation by increased production, improvement of supply and marketing channels and the mobilization of human resources.

These objects are a reflection of government's policy of self-reliance which was adopted soon after independence in pursuit of its socialist ideology (Mubwami and Kamete, 2001). Therefore, it can be deduced that the defining point of a cooperative is that the members have a close association with the enterprise as producers.

Based on an assessment of how the irrigation schemes are operating, it appears that while being in close association with the enterprise may have been its members' initial objective, this is no longer the case as individualism has taken over. The constitutions of the cooperative are no longer being strictly adhered to, with the exception of the payment of utilities. This is because if utilities like electricity are not paid, the scheme grinds to a halt. There are other clauses that do not affect the day-to-day running of the scheme. A good example is the inheritance clause. Whilst the constitutions are clear on this, the management committees of the scheme acts on the advice of the extended families who are not members of the cooperative. This has left would-be women members vulnerable under such circumstances.

This is happening despite the provisions of section 7 of the Cooperative Societies Act, which mandates every registered cooperative society to adhere to the outlined principles in all its operations. These cooperative principles are a replica of the Rochdale Principles, which are a set of ideals for the operation of cooperatives. These principles were first set out by the

Rochdale Society of Equitable Pioneers in Rochdale, England, in 1844, and have formed the basis on which co-operatives around the world operate to this day.

6.4.1 Principle1: Voluntary and open membership [s7 (a)]

This principle implies that individuals must not be coerced into cooperative membership. Rather, their participation as active and responsible members should be based on a clear understanding of the values for which cooperatives stand and support for those values. It also entails that the cooperative membership is open to anyone without gender, social, racial, political or religious discrimination. While membership is open, the principle assumes the member is able to use the services provided and is willing to take on the responsibilities of membership. However, this does not prohibit the co-operative from setting ground rules for membership, such as residing in a specific geographic area or payment of a membership fee to join, so long as all persons meeting such criteria are able to participate if they so choose.

In the current research, there was no evidence that any member may have been coerced to join the cooperatives. As explained by the respondents, their participation was voluntary as they all applied to be members. There are, however, some would-be members, mostly women, who were left out on the basis of gender and social standing because the selection criteria excluded them. Whilst there is nothing inherently wrong in setting ground rules for membership, requirements, such as one should reside in a specific geographical area, could become problematic if this extends to meaning that the applicant should have originated from that area. And this is the reason why: Upon marriage, the majority of women in Zimbabwe leave their geographical area of origin and assume the residence of their husbands. The situation of Rudo (discussed in the first chapter, where a man and his first wife left their place of residence to join the second wife) is a rare occurrence, especially in rural Zimbabwe.⁷⁶ As a

⁷⁶ This shows how viable the horticulture ventures in Ward 25 are believed to be.

result, a number of potential women members who were married lost an opportunity to participate in the irrigation schemes in their own right because they were not originally from ward 25. Their participation is now dependent on their husbands who are already members of the scheme.

6.4.2 Principle 2: Democratic member control [s7 (b) and (c)]

According to the second Rochdale Principle in the ICA's Statement on the Co-operative Identity, "Co-operatives are democratic organizations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership." This principle assumes that members will participate in setting policy and giving broad direction to cooperative activities in such a way that no member has a greater 'voice' than any other member.

All the irrigation schemes have governing constitutions and management committees. Whilst no member should have a greater 'voice' than other members, I found the male voices louder than the female voices. When it came to applying the provision in the constitution that stated that a plot is inherited by a spouse upon death of a member, the male members delayed complying with it; rather, they sought guidance from the deceased's family as to who they preferred to take over the plot. In the event of the family choosing a person other than the surviving spouse, the committee 'endorsed' this decision by omission to act (i.e., to register it in the name of the surviving spouse) despite the continuous appeals of the surviving spouse. In the event that the surviving spouse was allowed to continue production, a male relative was appointed as an overseer and was also allocated a portion of the plot in clear violation of the constitution and the committee would continue to watch, yet turn a blind eye, from a distance.

6.4.3 Principle 3: Member economic participation [s 7(d)-(f)]

Member's economic participation is one of the defining features of co-operative societies, and constitutes the third Rochdale Principle in the ICA's Statement on the Co-operative Identity.

According to the ICA, co-operatives are enterprises in which:

“Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.”

This principle can be broken down into two parts, namely: democratic control and limitations on member compensation and appropriate use of surpluses. In the first part, in order to retain the democratic nature of the enterprise, members of cooperatives are expected to contribute capital equitably and to democratically control the capital of the business.

The second part of the principle deals with how members are compensated for funds invested in a co-operative, and how surpluses should be used. Unlike profit generating corporations, co-operatives are a form of social enterprise. In terms of section 81 of the Act, there are at least three purposes for which surplus funds can be used, or distributed, by a co-operative:

1. Allocating the surplus to reserves (this includes re-investments);
2. Distributed or credited to members only in proportion to the business done with the society;
3. Supporting other activities approved by the membership.

The above no longer apply to the cooperatives under discussion. This cooperative element disappeared over the years. Members initially contributed mostly through labour and the bulk

of the capital requirement came through a donation. Members contributed to the maintenance of irrigation equipment but each purchased his or her pipes. Members also contributed towards utility bills. Failure to make these contributions has led to membership change in some schemes. Up till the last day I visited the irrigation schemes, no female owned plot changed ownership for failure to make contributions. All women interviewed were up-to-date with their payments.

6.4.4 Principle 4: Autonomy and independence

According to this principle, co-operatives are autonomous, self-help organizations controlled by their members. If they enter into agreements with other organizations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy. This principle, therefore, emphasizes that cooperatives must be free of intervention from governments or other sources, so that members are able to control their own destiny.

The autonomy and independence of ward 25 irrigation cooperatives is highly questionable. Section 8 of the Cooperative Societies Act provides that every society shall in its operations have regard to the need to *inter alia* promote the economic and social interests of its members in accordance with Government policy. This can be read to mean that the government used cooperatives as an intentional part of its social and economic development strategies. While there are many instances of successful development through cooperatives, evidence from the irrigation schemes under discussion points to the fact that the cooperatives are closely controlled by Government functionaries.

6.4.5 Principle 5: Education, training, and information [s7(1) (g)]

Education is a priority of the cooperative movement as it is more than an advertising product or a platform for distributing information. Rather, it is critical to the effective and informed participation of members which lies at the core of the cooperative definition. "It means engaging the minds of members, elected leaders, managers and employees to comprehend fully the complexity and richness of cooperative thought and action." It is this unique quality of co-operatives that allows its members and prospective members to be educated about the nature and benefits of cooperation. If cooperatives are to be part of the solution to many of the world's problems, people must be not only aware of the concept; they must appreciate it and be willing to participate in it. Such active involvement will not occur if people do not understand cooperative enterprise.

Whilst there is evidence that the members were trained at the inception of the schemes some as early as 1988, it ended there. This study did not establish evidence of further training. If follow up training had been done, the women at Nyaitenga Drip irrigation scheme for example may not be in the predicament I found them in. They could have been trained on how best to handle waterlogged soils or the scheme could have been relocated.

6.5 Women, Participation and the Family Business Model

A family business is one where the bulk of the labour and management of the farm is contained within a family. The practice of horticulture in Mutoko is, as noted, family based. All production revolves around the husband, wife and children. Men have control over land and women and children provide the bulk of the labour while men control the output. In 1884 Frederick Engels first published *The Origin of the Family, Private Property and the State*. This work set out to provide a social explanation for the emergence of women's oppression with the development of the social institutions of the patriarchal family and private property at

that particular time (Brewer, 2004, p. 27). According to Engels, women have always held a respected place in society. Their subjugation within the family only came about as a result of the emergence of private property and accumulation. The origin of the word ‘family’ sums it all up. According to Brewer, the word ‘family’ comes from the Latin term *famulus* which means household slave, and *familia*, the totality of slaves belonging to one man, the patriarch, who inherited all the wealth and wielded absolute power over all members of the household (Brewer, 2004, p. 27). Horticulture businesses in Mutoko function along similar lines, and while women cannot be categorised as slaves, they are, however, under the governance of their husbands. This realisation made me revisit the case of *Salomon v Salomon*⁷⁷ a classic case in company law.

The case of *Salomon v Salomon & Co Ltd* was the first significant recognition by the law of a company owned by a family. The issue for consideration was whether legal personality could be conferred upon the ‘one person company’. Spender questions why the *Salomon* case entered corporate law discourse as a case involving a ‘one person company’, yet it was, in fact, a family company (Spender, 1999, p. 222). My teaching of the case over the years to undergraduate law students never questioned the participation of the family. My interest was only aroused when I started analysing my findings from this study. I realised women horticulture farmers were running commercially viable businesses but legal recognition was given to their husbands as they were the registered members of the irrigation schemes. Similarly, the *Salomon* case identifies Aron Salomon, the husband as the only human legal subject. I only got to know the name of Salomon’s wife when I started researching for this study. According to Spender (1999, p.223), the reasoning of the courts in the *Salomon* litigation was aided by certain constructions of the family, in particular, familial ideology which posits that the interests of the family are coextensive with its patriarch. The problem

⁷⁷ *Salomon v Salomon and Co Ltd* (1897) AC 22.

with familial ideology is that it assumes a commonality of interests of family members with the interest of the head of the household. The family is thus assumed to share common goals, thereby superseding the goals of individual members of the family.

Schoontje Salomon was the wife of Aron Salomon and mother of his seven children. In the case reports of the Salomon litigation she is not mentioned by name, unlike some of her sons. Her only noteworthy act, in terms of the law report, was that of subscribing to the memorandum of A. Salomon & Co Ltd. The family's income was derived from an export and wholesale boot and shoe manufacturing business. Business was initially conducted under the firm name of A. Salomon & Co. Beginning with little or no capital, the business had gradually been built up into a thriving business, consisting of several factories. In July 1892, when A. Salomon & Co Ltd was created and registered, Aron Salomon was wealthy. The subscribers to the memorandum of the newly created company were Aron and Schoontje Salomon, four sons and one daughter.

In corporate law discourse *Salomon v Salomon & Co Ltd* is portrayed as the first case about the "one person company". The portrayal of A. Salomon & Co Ltd as the alter ego of Aron Salomon is misleading as the company was a family company. Scattered through the Salomon judgments are statements which clearly demonstrate that, although the judges were presented with a group which had fulfilled the statutory requirements to form a company under the Companies Act 1862 (UK), they did not regard the group as possessing that associative element (Spender, 1999, p. 223). At first instance, in the Court of Appeal and, finally, in the House of Lords, it was assumed by the judges that no family member could hold an interest which was independent from Mr Salomon. No factual determinations were made about the relationships or interests or involvement in the company of the six so-called dummy members (Spender, 1999, p. 223). Scholars have argued that the lack of legal personality of Mrs

Salomon at that time allowed the court to define the corporate stakeholders narrowly. Over the last 100 years there has been a dramatic shift in that Zimbabwean women in the then Mrs Salomon position have gained legal personality and can claim corporate assets. Although Mrs Salomon has emerged from the role of "mere dummy" the same is not the case for the women horticulture farmers in Ward 25 of Nyadire district. The findings of this research indicate that although anyone above the age of 18 in Zimbabwe has full legal capacity in terms of section 15 of the General Laws Amendment Act, women under this study are yet to fully benefit commercially from this legislation because of the way their businesses are located and situated within the family and marriage.

6.6 Social institutions and their invisible and powerful roles

Social institutions refer to evolved practices with stable rules of behaviour that are outside the formal system (Jutting, Morrison, Dayton-Johnson, & Drechsler, 2008, p. 69). They include the traditions, customs and social norms that govern the intricate workings of societies, especially rural societies. These act as a constraint on women's activities and restrict their ability to compete on an equal footing with men in either social or economic activities. Patriarchal norms largely account for women's restricted role in decision-making at household, community, regional and national levels. This lack of female voice reinforces women's own poor sense of self and underpins the continuance of the economic and social realities which make women unable to compete equally in social and economic activities (Hambly & Sarapura, 2009). According to the Beijing Platform for Action (para. 185):

inequality in the public arena can often start with discriminatory attitudes and practices and unequal power relations between women and men within the family ... The unequal division of labour and responsibilities within households based on unequal power relations also limits women's potential to find the time and develop the skills required for participation in decision-making in wider public forums.

6.7 Participation is about Decision making and Decision making is about Power

Despite the initiatives by the government of Zimbabwe towards gender equality, according to the findings of this study, gender equality is hindered by invisible power embedded in stereotypes and the attitudes and beliefs of the society that in turn inhibits the implementation of the legislative and constitutional amendments that were put in place.

This study looked at how the irrigation schemes were established in the spirit of development and how gender stereotypes and formal equality (as compared to substantive equality) that was used to select initial members of the schemes lead to *de facto* discrimination and economic marginalization of women. This resulted in the creation of a gender hierarchy. This hierarchy is manifested in family relationships, inheritance laws and customs; valuations of women's work and its general invisibility; and the power to make decisions. The substantive equality approach recognizes that women and men cannot be treated the same, and for equality of results to occur, women and men may need to be treated differently. The challenge is to know when to take note of difference, and to decide on appropriate measures for different treatment that will facilitate equal access, control and equal result. Such measures will have to be assessed to ensure they promote autonomy rather than protection or dependency. This has to be done without compromising the claim for equal rights and equality as a legal standard.

The position of women will not be improved as long as the underlying causes of discrimination against women, and of their inequality, are not effectively addressed. The lives of women and men must be considered in a contextual way, and measures adopted towards a

real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns.

Power relations affect how change is brought about. Defining and analyzing different power relations helped me in identifying areas for advocacy, policy and law review and reform in relation to equality and inclusion. I noted many dimensions of power that existed within families and the irrigation institutions and the state. Institutional and attitudinal barriers of irrigation committees and discrimination and stigma of unmarried women was caused by and resulted in different levels of power. This prevented inclusive practice in the irrigation cooperatives as women are seen as lesser members.

Making reference to Steven Lukes' (1974, 2005) three dimensions of power cited in Crawford and Andreassen (2013 p. 5), there are several forms of power that were evident in this study. The first is visible power found in the formal rules, structures, authorities, institutions and procedures, for example, the election of irrigation committee members, irrigation schemes' constitutions or by-laws and operational budgets. Secondly, there is hidden power: for example, within the irrigation schemes there are certain powerful people who control the agenda, like the Zanu PF party chairman and ward sub committees. Lastly, there is invisible power. This level of power shapes values and norms, and, as a result, people's beliefs and attitudes. This perpetuates domination and exclusion and can be difficult to deal with as social and cultural values are sensitive and personal.

Feminist discourse has contributed much to understanding the multidimensional nature of power as a relational construct. To understand the multidimensional nature of power in this study I applied the four-fold typology of power, namely, power to, power with, power from within, and power over (Crawford & Andreassen, 2013, p. 5) .

‘Power to’, refers to the generative and productive capacity to take action, to organize and change existing hierarchies (Crawford & Andreassen, 2013, p. 7). Most married women horticulture farmers do not possess this power. They cannot change existing hierarchies, for example, as regards market of produce and control over the proceeds. They are faced with a situation where their husband returns from the market having already used some of the money generated from the sale of the produce. I found this to be a real challenge for women horticulture farmers especially those in family businesses. Women’s *power to* is heavily affected by the power struggles and unequal decision making capacity within the home. One woman explained that her husband has the sole responsibility of going to the Harare markets. She gave an example that one day he came from the market and simply said, “*Vadzimai, ndadzoka, mari ndatenga marata*” (meaning, “*My wife I am back, the money I realized from the sale I bought roofing material.*”) His decision to buy roofing material was made without consulting his wife, even though she was heavily involved in the business and was the land holder. This was done regardless of other business ideas his wife may have had. Curtailment of women management which can lead to lack of innovation led me to question whether the women horticulture farmers in Mutoko were equal partners in the business.

‘Power with’ emphasizes collective action to solve problems and attain goals. This would be the ideal situation in a cooperative business framework but this power is only possessed by recognised irrigation members who mostly are men (Crawford & Andreassen, 2013, p. 7). Even though women participate in the day-to-day horticulture activities, when it comes to day-to-day management of the irrigation affairs and the scheme as a whole, it is mostly their husbands, as members, who have a say. Discrimination of any kind is now outlawed by the Constitution of Zimbabwe. Although the irrigation communities have constitutions governing their operations, dispute resolution is influenced by customary practices the scheme members

used to follow on communal land before joining the schemes. As a result, there is a clash between the traditional practices and the provisions of the irrigation schemes constitutions and section 56 of the 2013 Constitution of Zimbabwe.

The irrigation schemes were set up on a cooperative basis. Although farmers have plots which they manage individually, there are many issues that they cooperate on. These include payment of electricity and at times they collaborate on the marketing of produce. The irrigation schemes are governed by a constitution and these constitutions, according to one of the resettlement officers, were drafted in a spirit of comradeship, in that members of each scheme are expected to act and behave like one family. There are penalties for acting outside the dictates of the constitution. Members also assist each other with changing water pipes during the evening. Single women and widowed women, however, can no longer hire labour as they are recapitalizing as a result of the economic meltdown. They stated that they form partnerships with their male counterparts in that females change pipes during the day and males at night. With this arrangement in place they have managed to continue production without paying extra for labour. They, however, lamented that these partnerships are not always fair, as some men demanded from the women a quarter portion of their 0.5 ha plot in exchange for their irrigation pipe changing services.

‘Power from within’, or personal power, emanates from increased individual consciousness, self-confidence, self-esteem and self-respect and involves the development of abilities to overcome internalized control or oppression (Crawford & Andreassen, 2013, p. 7); women seem to gain this power outside marriage. A good example is a Martha, who inherited an irrigation plot from her husband. She defied all the odds and approached the courts when her husband’s brother sought to disinherit her. In an interview with her, she said that her widowhood and the sudden realization that she had a minor son to take care of and the effort

she had made to develop the horticulture business gave her the will power to fight the traditional expectation that she either be inherited by her husband's brother or pack her bags and leave. She approached the courts and won a judgement in her favour.

'Power over' refers to the ability to influence and coerce, to force someone or some group to take actions against their will, or, positively stated, to resist force; it may include the ability to prevent certain people or issues from being heard and the ability to legitimize some voices and discredit or render others voiceless (Crawford & Andreassen, 2013, p. 7). This is the power I found dominant in my area of study. Initial data collection started in 2009, barely a year after the political violence of 2008. Personal security was a major issue and remained an issue even at the time of writing. I observed that for my respondents attending political rallies and contributing money towards party initiatives was not an option. Even participating in what were labelled 'development initiatives' was mandatory.

These development initiatives were divorced from the horticulture business in which the community was already engaged. One of the more interesting among them was the one where community members were to cede some of their dry-land for tobacco contract farming that was being initiated by a Chinese company in association with the Government of Zimbabwe. The agreement was that the Chinese company would provide all the capital requirements and buy the crop while the farmer retain a fifth of the profits. All who questioned this project were quickly reminded that they should not forget where we came from. They were reminded that Zimbabwe attained independence as a result of the assistance that was rendered to the liberation struggle by the Chinese Government. During these meetings women were conspicuous by their silence. On asking some of them why they did not contribute during the discussions, women interviewed said they feared being labelled as belonging to the opposition. Such labelling had a negative effect on their work in their horticulture business as

they would confine themselves to their homes for fear of assault. Women said they were more vulnerable to assault than men because they walked long distances to the local markets and when taking sick relatives to the clinic. Men rarely take sick relatives to the clinic and they sold the horticulture produce at the Harare markets where they went by hired trucks. Women also said they were easily subjected to sex based attacks and harassment, especially during times of political instability. These attacks mainly took the form of verbal abuse. There was one suspected case of rape but it was never reported. They complained that the governing structures at these irrigation schemes were strongly influenced by Zanu PF party sentiments and that once labelled as belonging to the opposition, they were forever excluded.

The right of political participation and the protection of free speech and association remain a dream for the majority of the women I interviewed. Mutoko seems to have been unofficially declared a one party district. Freedom of speech, even though it is guaranteed by the 2013 Constitution of Zimbabwe, is not a right they can freely exercise. I found that it was difficult for them to discuss any issues involving a critique of government policies, especially during focus group discussions for fear of being labelled as belonging to the opposition. They, however, opened up during one-on-one interviews.

A good example are the women I interviewed from Nyaitenga Drip irrigation scheme. This is a scheme that was set up in 2000 specifically to target women. As a group, the women expressed their satisfaction and gratitude towards the Government of Zimbabwe for initiating the project. No amount of probing would change their very positive and optimistic answers. Why I was probing was because I had noticed that the scheme was performing badly as compared to other schemes. A good number of plots were lying idle and even to the untrained eye of a lawyer, I could tell that the crops of the cultivated plots were unhealthy and not likely to yield much. It was only when I started individual interviews that the dissatisfaction started

surfacing. The women expressed their dissatisfaction with the way the whole project was set up and the fact that they cannot utilize all the three seasons of a horticulture year because of water logging during the rainy season and there is nothing much they could do about it. This was an issue overlooked right at the design stage of the scheme. Their horticulture businesses were being affected as they had no control of their environment and raising these issues with the Ward committees meant they were ungrateful for what the Government had done for them. One woman said that they were told the following when this issue was raised, “If (you) are not happy, (you) can surrender the plots, the waiting list for resettlement (is) very long”. In other words, these women are enjoying no real benefits from being plot holders.

6.8.1 Transforming power relations: equal status of women and men at the family level

The findings show that male dominance and women’s subordination at the household and family level is common in most of the horticulture families. Rather than being equal partners, men are widely considered the ‘head of the household’ with superior status and decision-making authority and often greater rights and freedoms. Women’s equal status and participation in the family is critical to the strengthening of all other aspects of women’s lives and those of their families and communities.

Both CEDAW [article 16(1)] and the ICCPR [article 23(4)] require equality of rights and responsibilities of spouses during marriage and at its dissolution. The African Charter [article 18(3)] incorporates the equality-in-marriage standard requiring states to ensure the elimination of every form of discrimination against women and also ensure the protection of the rights of the woman...as stipulated in international declarations and conventions. General Comment 28 on the equality of rights between men and women requires that married women must have equal rights to the matrimonial property:

State parties must ensure that the matrimonial regime contains equal rights and obligations for both spouses with regard to...ownership or administration of property, whether common property or property in sole ownership of either spouse...state parties should review their legislation to ensure that married women have equal rights in regard to the ownership and administration of such property.

The CEDAW Committee further highlights that violations of CEDAW occur when states fail to acknowledge the right of women to own an equal share of the property with their husband during a marriage or *de facto* relationship and when that marriage or relationship ends. Many countries recognize that right, but the practical ability of women to exercise it may be limited by legal precedent or custom. Another violation is when there is no legal requirement that a woman be consulted when property owned by the parties during marriage or *de facto* relationship is sold or otherwise disposed of. This limits the woman's ability to control disposition of the property or the income derived from it.

6.9 Measuring Equality

A comprehensive measure of equality rests in the theory of legal capacity. The term 'capacity' has a specific, gender-neutral meaning: the ability to undertake enforceable legal obligations and to enforce one's legal rights without aid of a guardian; the essence of the concept is adulthood, usually measured by age (Freeman, 2013). Capacity in its more general sense refers to the ability to accept and to exercise the rights and responsibilities of an adult in one's society. This concept implies both personal commitment to adult responsibilities and the perception of others that one is capable of living up to them as an adult (Freeman, 2013).

The goal of equality provides that women must be recognized and their activities valued in terms of their contributions and abilities. They must have the opportunity to participate effectively in society on terms of equality between women and men that are meaningful in the context of their lives.

The Legal Age of Majority Act (LAMA) was promulgated in 1982 and has since been incorporated into the General Law Amendment Act section 15. This provision confers majority status on every Zimbabwean, upon attaining 18 years of age. The net effect of this law is that, in relation to women, the latter can sue or be sued without the assistance and/or permission of their guardians. The findings of this study are that women horticultural farmers are not fully enjoying this right. Their right to participate freely in economic interchange has been circumscribed by societal values and norms that deny them access to and control over crucial resources like land and capital, and they have little control over their labour.

Women are involved in both productive and reproductive work. The family is the primary unit of production. Women work day-in, day-out providing labour for the horticultural business. The horticultural business relationship between women and men is thus premised on marriage. The issue about women's work and recognition of women's work in family businesses is the fundamental problem this study sought to address. The findings show that the dominant framework which we all think in terms of when looking at a family business is a marriage. What I sought to establish is whether women in family businesses are better or worse off using a marriage framework. Or, will it be better to secure women's investment in the business if we use a business and a partnership framework, looking at what each partner is contributing to the business.

The findings shows that women in ward 25 of Nyadire District in Mutoko are involved in potentially viable horticulture businesses and they view their horticulture ventures as such. They are, however, making substantial contributions to the business but they go unnoticed because of their husband and wife status which is further complicated by the cooperative business model they operate in. The question is, "Would the interpretation be different had

they not been husband and wife, but, rather, a woman and man in a business relationship together?”

The argument is that if we are to calculate the shares in the business, if we only use the marriage model, bearing in mind that both parties are contributing, women in horticulture businesses are likely to be prejudiced. This is so because using the marriage model where the marriage model encompasses the whole relationship, the automatic assumption is that the businesses are on men’s land and women’s contribution counts for nothing.

The findings show that women are given minimal recognition in the business, as they are not involved in the major business decisions, most importantly, decisions on how the income generated from the business is used. For most of the families, there is no annual assessment of contribution and income at individual level as it is when one is formally employed. The major problem noted is that women horticulture farmers are subsumed under the notion of ‘a farm wife’ and not ‘a business partner’. At the end of each horticulture season, because the husbands control the marketing of the produce, most women are given whatever the husbands decide they should get. This money is mainly used to cover basic household needs. As one woman said:

Zvese ndezvababa, takaroorwa baba vatove nemunda, chedu kushanda nekuriritira mhuri. Chikafu chizhinji tinorima asi mari yekushandisa vanotipa kana takohwa, tatengesa.

(Meaning, Everything belongs to the husband, I got married when he already had the plot. I work on the plot and I take care of the day to day needs of the family. We grow most of the food we eat but at the end of each season my husband gives me money for other household needs.⁷⁸)

These women horticulture farmers are serious contributors not only as wives but as partners in the business. The first step is to recognise the economic value of women’s work in the home

⁷⁸ Interview at Chitora I Irrigation Scheme on 22 August 2011.

and in the horticulture plots since the findings in the previous chapter show that these two spaces are inseparable. Valuing women's work will show the extent of women's contribution to the horticulture business.

6.10 Measurement of women unpaid contribution and valuation of Time

When we measure the.... care sector, it is a bit like looking at an iceberg, where most of it lies, unseen, below the water line. The tip, which is visible above the water line, is the paid market. (Zimmerman, 2011)

The method most widely used to measure unpaid work is gathering information on time use (Luxton, 1997, p. 432). Time use measurement involves collecting data on how much time men and women spend on a daily, weekly, or monthly basis on certain activities that fall under the categories of unpaid work. In terms of the findings presented in the previous chapter, women work between 14 – 16 hours a day on both reproductive and productive work. My data shows that women work more hours than men. Women and children are involved in most of the household chores and in operational activities at the horticulture plot and receive little help from men. This is a phenomenon common to all the male headed households. The findings also show that that women do a lot more in production than men, chief of which is the day to day management of the horticulture venture, and they also do virtually all of the domestic chores. Focusing on time spent alone, therefore, does not include the value of the quality of the work, women's skills, creativity or innovation and work they do in the household. As such women's work remains under-valued but at least it is a start. If all is added up, an equal partnership of at least 50 -50 or more in favour of women should be the case.

6.11 Equality in marriage and family relations

Any law or custom that grants men a right to a greater share of property at the end of a marriage or *de facto* relationship, or on the death of a relative, is discriminatory and will have

a serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person. Women often do not equally enjoy their family's economic wealth and gains, and they usually bear a greater cost than men upon the breakdown of the family and may be left destitute upon widowhood, especially if they have children and particularly where the State provides little or no economic support.

The presumption of equality of spouses at divorce must guide law on the division of matrimonial property. As already discussed above, equal rights for men and women during marriage and at its dissolution are anchored in key provisions of relevant human rights treaties, e.g., in article 23(4) of ICCPR and article 16(1)(h) of CEDAW. The Human Rights Committee, which oversees the implementation of the ICCPR, noted that to fulfil their obligations...States parties must ensure that the matrimonial regime contains equal rights and obligations for both spouses with regard to...ownership and administration of property, and that state parties must also ensure equality in regard to the dissolution of marriage. In its General Recommendation 21 on Equality in Marriage and Family Relations, the CEDAW Committee emphasizes that any law or custom that grants men a right to a greater share of property at the end of a marriage is discriminatory.

6.11.1 Division of property between formally employed couples in an urban set-up

At the termination of a relationship between a couple working in town, there is little difficulty in apportioning her contribution and how to work it out. In *Mupudzi v Mupudzi* HH24/2011, Chitakunye, J. made the following remarks to the wife before awarding her 50% of the matrimonial property:

‘ in cases where the wife is gainfully employed and makes some contribution from her salary towards the welfare of the family, there should be no doubt that she would ordinarily deserve a reasonable share’.

For women not formally employed, the courts recognize women's non-financial contribution at the termination of the marriage. In *Simango v Simango* HH 86/2010, citing *Sithole v Sithole and Another* HB 14/1994, the judge stated that:

“it is accepted that even a wife who is not employed makes a contribution if she looks after the family's affairs and the parties' children enabling the man to be away to work and earn a living for the family. Such a wife cannot, on divorce, go empty handed just because she did not contribute financially.”

In *Usayi v Usayi* 2003 (1) ZLR 684 (S) the Supreme Court, in upholding a High Court decision to award a 50% share to a non-working housewife of many years, held that:

It is not possible to quantify in monetary terms the contribution of a wife and mother who for many years faithfully performed her duties as wife, mother, counselor, domestic worker, house keeper, and day and night nurse for her husband and children. It is not possible to place a monetary value on the love, thoughtfulness and attention to detail that she put into the routine and sometimes boring duties attendant on keeping a household running smoothly and a husband and children happy; nor can one measure in monetary terms the creation of a home and an atmosphere from which both husband and children can function to the best of their ability. In the light of these many and various duties, one cannot say, as is often remarked: throughout the marriage she was a house wife. She never worked.

In the divorce case of *Matambirwa v Matambirwa* HH 151/2010, the husband argued that his wife did not make any financial contribution towards the purchase or the rebuilding of the house. He explained that the house was bought and rebuilt from his own financial resources with no contribution from the wife. He felt that because the wife did not make any such contribution she did not deserve any meaningful share in the house. To that end, he offered the wife a 10% share. When asked why he had made such an offer he said, “The 10% is meant to be a token of appreciation of the time we shared as husband and wife.”

The husband was asked to outline the contribution, if any, the defendant made, to which he replied that his wife was involved in all the chores a house wife does. She would prepare food for the builders. After demolition of the core house by builders she would clean up around the

construction site. She would also clean up as the builders built the new house. Chitakunye J commented that offering 10% for all the work the husband outlined belittled the wife's contribution to the purchase and development of the new house to something inconsequential. The wife was awarded 35% share of the matrimonial home. By awarding 35%, the court focused only on time spent doing the chores but did not include the value of the quality of the work, the woman's skills, creativity or innovation while assisting the builders and work she did in the household. As such, the woman's work was undervalued, but the fact that the court recognised this work is, at least, a start. If all factors are taken into account, an award of at least 50 -50 should have been made by the court.

What the determination in urban areas indicates is that it is possible for the law to make determinations based on equality. It remains to be seen how it will work out in the rural areas. There has been little litigation at the level of the higher courts that make reportable decisions.

6.11.2 Division of property between couples in a rural set-up

The challenge lies with a couple in a rural set-up where, if customary law is applied, everything is assumed to belong to men, leading to the under-recognition of women's contribution. At the termination of the relationship by whatever means, the under-recognition is likely to be cumulative because the families have no basis for calculating what her actual contributions are. As the findings in the previous chapter showed, women's work in the horticulture venture is viewed as part of the daily chores and women in rural areas are, thus, not profiled as serious contributors.

As discussed above, with a couple working in town, the courts are leaning more towards an equal division of the matrimonial property between the parties. The courts are having little difficulty in saying that this is her labour and this is how we work it out. For women in a rural

set-ups, such as the women horticulture farmers under this study, the under-recognition of their contribution is likely because the businesses are based on land that belongs to the man. The relationship women have with the horticulture businesses is based in marriage. The majority of the respondent's marriages are unregistered customary law unions. It is commonly believed that, according to customary law, a married woman cannot own property in her own right. This belief is premised on the fact that married women do not own or control the main means of production, that is land, and what they produce from the land, therefore, belongs to the owner of the land. In *Mahlangu v Khumalo* SC 49/1999, Muchechedere J.A. held that the patrilineal nature of African families in Zimbabwe meant that woman's property, even if acquired through her own work after her husband's death, was the property of her marital family which means that customary law would govern its dissolution. The Matrimonial Causes Act (Chapter 5:13) that provides for the equitable distribution of property on divorce does not apply to unregistered customary law unions. This Act should now be realigned with the 2013 Constitution. Thus, in *Mavate v Chibande* HH43/2012, Hlatshwayo J stated that many judgements of this Court, and indeed the Supreme Court as well, have rued the fact that where an unregistered customary law union is concerned there is no direct application of the provisions of section 7 of the Matrimonial Causes Act. See, for example, *Mashingaidze v Mugomba* HH/1999 and *Chapendama v Chapendama* 1998 (2) ZLR. Where it was stated that even if the marriage is registered, the Act is further problematic as it provides only guidelines of what is just and equitable. The interpretation is left to the individual judge or magistrate. If the property under contention, for example, was acquired from the proceeds of a family horticultural venture where the woman's labour, contribution and intellectual capital were used to drive the business, marriage as a legal concept is likely to distort the business relationship that the parties had.

Section 7(1) of the Matrimonial Causes Act provides that the court may make an order with regard to the division, apportionment or distribution of the assets of the spouses including an order that any asset be transferred from one spouse to the other. The terms used are the assets of the spouses and not matrimonial property. The concept “the assets of the spouses” is clearly intended to have assets owned by the spouses individually (his or hers) or jointly (theirs) at the time of the dissolution of the marriage by the court considered when an order is made with regard to the division, apportionment or distribution of such assets.

The court in *Dicks v Dicks* HH 61/2011 [citing *Takafuma v Takafuma* 1994 (2) ZLR 103 (S)] stated that in dividing matrimonial assets, when looking at contribution, the Court takes a three tier approach. This involves categorizing the assets as ‘hers’, ‘his’ and ‘theirs’. After allocating each what is ‘hers’ or ‘his’ the remaining category of ‘theirs’ would then be shared. If ‘theirs’ leaves one party in a worse of situation then the court is empowered to take from one spouse’s share and give it to the other.

A good example is *M v M* HH 35/2010 where, in relation to the division of property, it was the plaintiff’s case that she was entitled to a 50% share of the Glen View property (house) as the property was purchased from the proceeds of their brokering business [Mainland Business Merchants (Pvt) Ltd] where she was a director. She also contended that she was entitled to 45% of the value of the Queensdale house as she contributed to its acquisition directly and indirectly, such as, cooking for builders who were working on the property. The plaintiff also claimed a 50% share in Mainland Business Merchants where she was a director and shareholder.

The Court, having considered that the division of matrimonial assets was governed by section 7 of the Matrimonial Causes Act, awarded the plaintiff a 45% share of the Queensdale house

and a 50% share in stand 11571, Glenview Township Harare. In relation to the plaintiff's claim of 50% share in Mainland Business Merchants, the Court did

...not make an order in relation to the companies as the plaintiff being a director and shareholder in one of them will be in a position to proceed in terms of the Companies Act [Cap24:03].⁷⁹

In the above case, what was shared were the assets of the spouses, that is, the Glen View property bought from the proceeds of a business that the woman was actively part of and the Queensdale house that the woman also contributed towards. What I found interesting about this case was the recognition by the court that, as far as the shares in the company was concerned, this was purely a company law issue that was supposed to be handled by application of company law principles and the Companies Act, clearly showing the need to distinguish between business and marriage.

The challenge lies with a rural couple involved in a land based business relationship where land is generally allocated to men as heads of households. In this case, the assets of the business that is land and equipment falls under the 'his' category and what is 'theirs' is not assets of the spouses but matrimonial property. This matrimonial property is also 'his' because the business is premised on marriage and on land where customary law is the preferred source of law. What constitutes 'hers' under customary law is *mawoko*⁸⁰ property. Chatikobo, J in *Matibiri v Kumire* 2000(1) ZLR 492 (H) at 496 (in a case where the plaintiff, a woman, married customarily was claiming a share in the matrimonial assets acquired by the parties during the subsistence of a customary law union) stated that:

⁷⁹ M v M (HC 2716/07) [2010] ZWHHC 36; HH 35-2010 (25 February 2010) pg 22 of the cyclostyled judgment

⁸⁰ *Mavoko* property refers to property that women acquire individually out of their own skill and labour outside the family plot. For example, income earned from traditional practices as midwife, herbalist or obtained through what might be termed as private labour rather than the work for the family in the fields (Ncube et al 1997:29).

It is a claim which is not recognizable at customary law because, upon dissolution of an unregistered customary law union, the property acquired by the parties during the union becomes the property of the husband unless it can be classified as *mawoko* property.

In relation to this study, prior to SI 53/2014 this would have been problematic because the strong link of the horticulture business to marriage leads to strong interpretation of customary law, leading, in turn, to women's subordinate status and lack of recognition. This was despite the fact that the horticulture venture was under a cooperative business model governed by an agreed constitution by the cooperative members, making the irrigation schemes a very well defined general law area. In that case, there should have been limited reach of customary law. The fact that the businesses are premised on land, leads to the imposition of customary law to women in non-customary law spaces. One may argue that the near collapse of the cooperative model and the dominance of the family/marriage model paves the way for the application of customary law in terms of section 3(1) of the Customary Law and Local Courts Act under choice of law. The Act provides that unless the justice of the case requires otherwise, customary law shall apply in any civil case where the parties have expressly agreed that it should apply; or regard being had to the nature of the case and the surrounding circumstances, it appears the parties have agreed it should apply; or regard being had to the nature of the case and the surrounding circumstances, it appears just and proper that it should apply. In the case of *Matibiri v Kumire* 2000 (1) ZLR 492 (H) it was held that the truly logical construction of the phrase "unless the justice of the case requires otherwise" is that if the application of customary law does not lead to the attainment of justice, then general law should apply. For women horticulture farmers, this is one case where the justice of the case requires otherwise even if it may appear that the surrounding circumstances make it appear that the parties have agreed to the application of customary law. If customary law is applied in terms of section 3, it will not be possible to extend relief to these women beyond their traditional entitlement of *mawoko* property. The marriage process is governed by customary law in relation to joint

support but the business is its location. Why can't the business be *mawoko* property generation?

In *Mavate v Chibanda* HH 43/2012, Hlatshwayo, J., citing Garwe J (as he then was) in *Mtuda v Ndudzo* 2000(1) ZLR 710(H), stated:

....there can be no doubt that the concept of joint ownership of property is a concept unknown to customary law. Tacit universal partnership is a general law concept which is also unknown to customary law. So too is equitable distribution of property acquired during an unregistered customary law union.

Applying the 'his', 'hers' and 'theirs' concept, for women horticulture farmers, what is her's is *mawoko* property. In this case *mawoko* property in its traditional interpretation is non-existent because women work an average day of 14- 16 hours in the home or work on the man's land and hardly have time for other income generating activities. The justice of the case requires that general law applies so that we go beyond the application of general law principles of tacit universal partnership or unjust enrichment as the courts are doing but to look at the relationship from a business standpoint. Applying principles of general law will transform the property under contention from matrimonial property which under customary law belongs to the men to assets of the spouses as it will be possible to have assets other than *mawoko* property under the 'hers' category.

6.12 Conclusion

From the above discussion, it is clear that the horticulture ventures are operating under a problematic legal framework. It is especially problematic for women. Women are impacted more despite the provisions of cooperative legislation and the irrigation schemes' constitutions. The family is the dominating business model. Men are usually the plot holders but women participate in the day-to-day management of the business. However, men are the ones who more often than not go to the market. This gives them a better chance to explore the

outside world and control the business output. As such, an artificial ceiling for women in family businesses is created. Women horticulture farmers' situation is further complicated by the non-valuing of their work. Their day-to-day horticulture work is categorised as being the same as any other household chore. With the coming into effect of SI 53/2014 and the 2013 Constitution with its unfettered equality clause in section 56 and the provisions of section 80 that makes all laws, customs, traditions and cultural practices that infringe the rights of women conferred in the 2013 Constitution void to the extent of the infringement, the next chapter discusses actualization of women's land rights as provided for in the two pieces of legislation.

CHAPTER 7 **New future, re-envisaged ideas**

The problem is not a lack of practical ways to address gender inequality but rather a lack of change on a large and deep enough scale to bring about a transformation in the way societies conceive of and organise men's and women's roles, responsibilities, and control over resources. (Grown, Gupta, & Kes, 2006)

7.1 Introduction

As indicated in Chapters 1 and 2, the problem with the recognition of women's contribution in land based businesses lies more with implementation of the laws than with the laws *per se*. The 2013 Constitution seeks to redress the historical marginalization of women. Since the colonization of what is now Zimbabwe, the formal legal and political status of the black population, especially women, has been one of political, legal and social marginalization (Damiso & Stewart, 2013, p. 456). Compared with the old constitutional order, the new legal framework not only creates space for women to manoeuvre their way in the private and public sphere on an equal footing with men, but also institutionalizes direct gender-specific measures that seek to correct the consequences of women's historical exclusion from the society (Damiso & Stewart, 2013, p. 456). This study argued that in the colonial period women had a more or less diminished legal status. This situation did not change much after independence and throughout the subsequent regimes women's legal status did not improve much. The law discriminated against women either directly or in its effect. The new Constitution represents a significant improvement in women's status in Zimbabwe in all spheres of life and provides the prospects for women achieving substantive equality.

The Committee on Economic, Social and Cultural Rights (CESCR) has explained that substantive equality, 'is concerned, in addition [to formal equality], with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.' In order to achieve substantive

equality, this study focused on how States parties have perpetuated systemic discrimination, and how other forms of discrimination have become institutionalised in laws, policies, practices and social structures. It is this study's proposition that the position of women will not improve as long as the underlying causes of discrimination against women, and the causes of their inequality, are not effectively addressed. This study looked at the lives of women and men in family horticulture businesses in a contextual way so as to come up with measures that offer real transformation of opportunities in the family institutions and marriage systems so they cease to be grounded in historically determined male paradigms of power and life patterns.

7.2 Women's rights and entitlements in irrigation resettlement: Answering the research questions

In this chapter, I start with revisiting the research questions and summarizing the research findings. Central to the argument presented in this study is the need to transcend the historical patriarchal notion of marriage and transform it into an equal partnership between a man and a woman. As the findings of this study revealed, women in the horticulture family business undertake the majority of horticulture work in addition to domestic or reproductive work and they have limited control over their own labour.

Despite the fact that they have rights, I found women in Ward 25 of Nyadire District, in a position that made it impossible to claim their rights because of the way their horticulture businesses are situated within marriage. The goal of this thesis is not to eliminate marriage but to point out what is needed in order to create an enabling environment that will encourage women to insist on more from life. In order for married women to achieve this there is a need to reconsider marriage and see it like an equal partnership in which men and women share benefits and responsibilities equally. There is a need for a complete overhaul of the character

of marriage in a manner that will drastically change centuries' worth of public beliefs, societal attitudes towards unwed couples, and social institutions beyond marriage.

7.2.1 First research question - Viability of women horticulture businesses

Are most women horticulture farmers in Mutoko involved in commercially viable businesses and are the family model and the cooperative model the functioning models of doing business?

Women horticulture farmers in Mutoko are involved in commercially viable businesses. One family whose financial records were available accrued an estimated income of USD 23 828 during the 2011/12 agriculture season. This translates to an average net income of USD 1 986 a month. This income, by Zimbabwean standards at the time the research was done, was high, as the majority of unskilled to semi skilled workers in the commercial sector were earning less than USD 400 per month. Some families are, however, struggling, not because they are not able but because of the geographical location of the irrigation scheme, for example, the Nyaitenga Drip Irrigation Scheme.

The business models that emerged are the family and cooperative models. These models are layered in a way that adversely affects women's capacity to engage with them. What is clear in this study is that the family and cooperative models clash and that the family model dominates, despite the overarching old cooperative model. The schemes were set up under the old cooperative model but in terms of what the cooperative rules specify, there are compliance problems. The irrigation schemes are governed by a constitution but despite the cooperative's constitutional provisions, the family wishes dominate. As a result, the cooperative members are operating under a problematic legal framework. This framework is especially problematic for women because of the application of customary law in dispute resolution. In terms of land rights, women have favorable land usage rights on paper and these are well documented in the operational constitutions of the irrigation schemes to the effect that if a plot holder dies, the

plot passes to the surviving spouse. These provisions are, however, not followed in practice, as the land usage rights (though well defined in the irrigation schemes' constitution) are enforced *de facto* through customary structures where land inheritance occurs through the male lineage and women can only access land through their husbands while the marriage subsist and through their sons, if they are widowed.

7.2.2 Second research question - Ineffectiveness of the cooperative business model

Is the cooperative business model that the horticulture farmers are utilizing ineffective because it was imposed upon the horticulturalists at the inception of the irrigation schemes through Government of Zimbabwe socialist policies?

The irrigation schemes were set up as business entities based on cooperative principles and governed by constitutions supposedly agreed to by all the members and enforced by a selected management committee. The main objective of these schemes is to operate as a source of income to the members through the creation of employment. It appears that the initial objective of setting up the irrigation schemes to operate as a source of income to members through the creation of employment has since been forgotten. Evidence on the ground shows little, if any, recognition of the horticulture ventures as being businesses. The horticultural enterprises function mainly as tacit partnerships between husband and wife. This is posing a danger to women who stand to lose out on their investment in the event of a dispute as they have to prove the existence of the partnership. When it comes to marketing, the businesses are informally cooperative societies, as they go to the market as a group and can sell on behalf of others. The initial cooperatives that were set up by the government in early the 1980s collapsed, the main reason being they were not initiated by the members themselves but by government following its socialist policies. The cooperatives hardly operated as business enterprises driven by the interest of their members and the demands of the market.

7.2.3 Third research question – Sex and gender relations

Are most women horticulture businesses situated within a family set up deeply affected by sex and gender relations thereby limiting women's capacity?

The selection process at the start of the irrigation schemes excluded women as members of the schemes. The majority of women's participation in the irrigation schemes is based on marriage. Being a rural set-up where marriage gives important social status to women, most of the women farmers operate in family businesses. Men are mostly the plot holders but women control the day-to-day running and management of the business. However, men are the ones who more often than not go to the market. Men thus have a better chance to explore the outside world creating an artificial ceiling for women in family businesses. Women's full capacity to utilize land in an effective commercial fashion is adversely affected by the way in which the business is located and controlled by family and the gender hierarchies that are created in such relationships. The operation of the family business model is thus informed by the marriage family framework and this framework dictates who does what. Women are involved in both reproduction and production activities but men essentially control the means of production leading to asymmetrical gender relations.

7.2.4 Fourth research question – The Non-valuing of women's work

Does the fact the most women horticulture businesses are situated within the family leads to non valuing of women's work in the horticulture business? Are women not seen as partners in the business?

There is clear evidence of the non-valuing of women's work. Women's work and the significance of their contribution is subsumed under the family and not seen as what the evidence on the ground demonstrates as a partnership between the male and female. The horticulture ventures are viable commercial operations that have potential if they are run along business lines. If adequate funding is available to the business, the businesses would be more effective. Not much of the required funding is made available because of stereotyping

about women in rural areas. Economic support for women is given through provision of micro finance to start income generating projects, mainly in rearing chickens. These income generating projects are mainly availed during political campaigns for general elections.

Women horticulture farmers in ward 25 of Nyadire District in Mutoko are thus running horticulture businesses which, if properly conceptualized, do not need the intervention of income generating projects. Because of the stereotyping of women in rural areas, women are seen as in need of “something a little bit extra” to do, yet they already have something viable and what they are in need of is substantial input. According to the women, their needs have not been addressed, they are running potentially viable horticultural ventures, and income generating projects are not business initiatives as they are not based on business principles but welfare. They also require a more appropriate legal framework that recognises, reflects and compensates their share of the labour.

7.2.5 Fifth research question – Appropriate needs for women horticulture farmers

Do the State and development oriented NGOs appreciate the needs of women horticulturalists in developing their economic situation.

The findings reveal that both state and development oriented NGOs do not appreciate the needs of women horticulture farmers. A good example is the establishment and the development of Nyaitenga Drip Irrigation Scheme. The geographical location of the scheme was said to be problematic as the area easily gets waterlogged during the rainy season. As a result, the farmers cannot utilize all three horticulture seasons in a year. Male members of the scheme have alternative dry-land plots inherited from their fathers. Every rainy season when the scheme is waterlogged, they are assured of an income from a butternut crop grown on the dry-land. Women interviewed do not have such alternative land to continue production once

the scheme gets waterlogged. Although the dry-land plots fall under resettlement tenure, they are administered in the same way as communal land is administered, but this should no longer be the case in the light of the passing into law of SI 53/2014. Women under this tenure system have no guaranteed land rights and for the Nyaitenga drip irrigation female members, they are confined to the 0.5 Ha under the scheme with no alternative land.

7.2.6 Sixth research question – Women’s inability to have a dominant role in business

Is most women’s inability to have a dominant role in business a result of non implementation of laws and an influence of other non legal factors such as politics, culture and geography?

My starting point was that women horticulture businesses in Mutoko were small because of the non utilization of business laws and, therefore, the utilization of such laws would lead to the growth of their businesses. The findings point to the fact that it is not just the utilization or impact of business laws that provides the potential for enhancing women’s businesses; rather, it is the laws from across the legal spectrum that affected women’s economic potential either directly or indirectly. The horticultural business relationship of most women and the men they are involved with is premised on marriage. There are disputes where women are being forced to abandon property acquired from the proceeds of a family horticultural venture because the land on which the business is premised is *de facto* controlled by the patrilineal family. The women’s labour, contribution and intellectual capital is being used to drive the business, but marriage as a legal concept is distorting the business relationship that the parties have. The women are not viewed as business partners with their husbands but are simply viewed as wives with all that that title entails. The business model that dominates the use of land is located in marriage and family obligations that flow from marriage.

7.3 Towards the Recognition of Marriage as a Partnership of Equals: the constitutional promise

Article 16 (1) of CEDAW provides for equality in marriage and family relations. Article 23(4) of the International Covenant on Civil and Political Rights (ICCPR) also obliges States Parties to take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

CEDAW has as its explicit objective the principle of equality between women and men, and Article 14 focuses on the rights of rural women. Zimbabwe ratified the convention and thus agreed to take into account the particular problems faced by rural women and the significant roles which they play in the economic survival of their families, and to eliminate discrimination against women in rural areas to ensure that women participate in and benefit from rural development on a basis of equality of men and women. In particular, they agree to ensure rural women enjoy the right:

1. To organise self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
2. To participate in all community activities;
3. To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land resettlement schemes;
4. To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transportation and communications.

The national objective on marriage in section 26 of the new Constitution provides for equality of rights and obligations of spouses during marriage and at its dissolution; and that in the

event of dissolution of a marriage, whether through death or divorce, provision should be made for the necessary protection of any children and spouses. This objective on marriage is twofold. First and foremost, it seeks to change societal patriarchal perceptions of marriage, its dissolution and the rights of partners within marriage. Secondly, the objective clearly brings out the need for equality of partners in a marriage although the objective does not define what constitutes a marriage. This objective takes the equality provisions further by providing categorically that men and women in marriage will have equal rights to property acquired during the marriage upon termination of such marriage.

Realization of this objective calls for total elimination of all stereotypes that bedevil our legal thinking when interpreting the legal relationship between a married couple in a business relationship upon divorce or death of one of the parties.

This is because marriage proceeds from different assumptions to partnership or other business models, it prescribes in advance resolution of conflicts over status and power. The findings of this study have shown that whether under general law or customary law, women are junior partners in marriage.

Section 80 of the 2013 Constitution on the rights of women provides that all laws, customs, traditions and cultural practices that infringe the rights of women conferred by the Constitution are void to the extent of the infringement. In terms of realization of women's rights, this provision requires that laws and policies are subject to being invalidated for being in violation of the fundamental rights set out in the Constitution. This is important for women as the study of women horticulture farmers shows that customs, laws and policies are often interpreted to perpetuate discrimination or suppression of their rights. Such a provision that any law inconsistent with the Constitution is invalid lays a good foundation for women's

exercise and enjoyment of the rights provided for under the new Constitution. In subjecting all laws, including customary laws, to the equality clause, the 2013 Constitution addresses discrimination and equality clearly and unambiguously and presents a real opportunity to review and re-envisage women's rights and entitlements in land and under customary law. The new Constitution calls for equality, equal protection and benefit before the law. On the other hand, the national gender policy establishes a national gender machinery to address the social and economic marginalization of women. There is, therefore, a need for legislation that gives effect to the directions of the Constitution.

The Founding Values and Principles in the 2013 Constitution (section 3) further provide that Zimbabwe is founded on the respect and recognition of the equality of all human beings, gender equality, recognition of the rights of women, the elderly, youths and children and the equitable sharing of national resources, including land. These founding values and principles demonstrate the constitution's spirit and intent on the principle of equality. The values and principles of recognition of the inherent dignity and worth of each human being, recognition of the equality of all human beings and gender equality, are all stated separately, to emphasise the importance of these values, bringing out the Constitution's commitment to equality of persons before the law and in the society.

Central to the argument presented in this study is the need to transcend the historical patriarchal notion of marriage and transform it into a partnership. Marriage should not be treated as it has traditionally been but must be changed within society into an equal partnership beyond a relationship perceived as an institution dominated by one gender to the oppression of the other.

If such is the case at the dissolution of the relationship, the court will no longer struggle to import the principles of universal tacit partnerships or unjust enrichment upon the dissolution of unregistered customary law unions. The central idea of changing marriage into an equal partnership is to eliminate the dominance of one gender over the other.

Key to achieving an equal partnership between the opposite sexes is to transcend the traditional notion of gender roles. Feminists argue that gender is a social construction: the relevant culture in which a person lives defines that person's gender, rather than their biology. If gender is merely a social construction (which changes from culture to culture) then it follows that the perception of traditional gender roles can be constructed differently to establish equal partnerships (Garcia - Rodrigo, 2008, p. 116).

7.3.1 Actualizing women's rights under the 2013 Constitution

Findings of this study revealed that male dominance over women cannot be easily eliminated, unless social views of gender roles and the traditional family and marriage are transformed into a different unit that values equality between the partners, as with an equal partnership. Since marriage has traditionally been a social institution defined by state, its laws and policies (which are presumably the will of the public), marriage must be altered into a more amiable perception of the private family realm, by offering an alternative vision to marriage. Marriage, purportedly an equal partnership, should, ideally, translate into equal stakes in the rights and duties for both partners; but, in reality, women are less equal.

This study recognises that the transformation of marriage to an equal partnership is not something that can readily be achieved. Although SI 53/2014 has started his process, there are recognizable limitations to the proposition. Transforming marriage into an equal partnership, especially when customary law is the dominant framework, will take time, but intellectual

discourse on the issue forms a foundation to improve on the marriage “trap” for either spouse. Findings revealed that while women are ‘lesser partners’ in the relationship, there are clear indications from a combined reading of the Constitution and the Matrimonial Causes Act that the contributions of both parties in a monogamous or polygamous relationship ought to be considered as being of equal worth. From there we then look at the factors that would indicate what one party/partner should be able to take from the business based on their contribution. The problem is that women’s work is pretty well persistently devalued. We need to start to move the process forward and create or see real value in women’s work but at the same time balance that with the joint contribution of the parties to the relationship or business. This is now possible with the advent of the 2013 Constitution that provides a very open constitutional framework that mandates that men and women must be treated equally and that men and women must have equal access to resources. Further, culture and customs have to be made subordinate to the new Constitution and there can be no further discrimination. The Constitutional promise has already been put into motion by SI 53/2014 providing for agriculture land settlement regulations.

There are a number of interventions needed to facilitate the actualization of women’s gains in the new Constitution and the provisions of the agriculture land settlement regulations. Firstly, there is a need for awareness-raising through civic education for different target groups on specific provisions of the Constitution,⁸¹ and the Agricultural Land Settlement Regulations and other laws related to women’s property rights. This can also be accomplished through information packaging and dissemination to facilitate increased knowledge and awareness of the provisions as well as clear misconceptions. The research revealed low awareness levels on land rights among women. The research also revealed the existence of retrogressive cultural

⁸¹ This is in terms of section 7 of the 2013 Constitution that mandates the state to promote public awareness of the Constitution and encourages all persons and organizations, including civic organizations to disseminate awareness and knowledge of the Constitution throughout the society.

factors and which, although now unconstitutional if they remain unchecked, will act against the good intentions of SI 53/2014. Any shortcomings in the implementation of regulations as a result of socio-cultural attitudes that govern horticulture farmers' dealings with land, if not dealt with, will limit the enjoyment by women of the benefits of the regulations and constitutional provisions. Efforts to realize women's land rights through awareness raising and public education campaigns on women's land rights must be intensified. Implementation of the Constitution requires that Zimbabweans be made aware of its provisions for them to be able to stand and call for their actualization. SI 53/2014 embraces the spirit of equality in land occupation and the contents of these regulations must be made known to all women. The statutory instrument embraces joint titling and co-tenancy among spouses as a means to securing women land rights. On the death of one of the spouses as the irrigation schemes' constitutions also provide, the interest is vested in the surviving spouses. The study, however, showed that most women claim their rights once they are supported and informed of them. There is also a dire need for capacity building at local and community levels to enable women to participate in and access land administration and management institutions; and redress grievances through formal dispute resolution forums.

Gender training of national and community actors involved in diverse aspects of women's property rights and dispute resolution can also facilitate the implementation of the favourable provisions in both the 2013 Constitution and the Agricultural Land Settlement Regulations. The need to integrate other efforts to realize women land rights cannot be overemphasized. Efforts to engage cultural structures, such as traditional and local leaders, to initiate dialogue on the importance of avoiding retrogressive cultural attitudes (that deem it wrong for women to own and inherit land) are among the required means of changing and causing men and women to rethink existing practices that infringe on the land rights of women. This should be

done in view of the fact that changing of attitudes and beliefs is a long term process that requires consistent effort.

7.3.2 From needs to a focus on rights

The Inter-American Development Bank (2010) defined women's empowerment in terms of expanding the rights, resources, and capacity of women to make decisions and act independently in social, economic, and political spheres. The UN guidelines on women's empowerment (2011) defined women's empowerment in terms of five components:

1. women's sense of self-worth;
2. their right to have and determine choices;
3. their right to have access to opportunities and resources;
4. their right to have the power to control their own lives, both within and outside the home; and
5. their ability to influence the direction of social change to create a more just social and economic order, nationally and internationally.

The development approach being applied in ward 25 of Nyadire District in Mutoko is focussed on a needs-based approach which views people as passive 'recipients' or 'beneficiaries'. This approach is clearly failing to satisfy the needs of women horticulture farmers. What is needed is a rights-based approach that is a transformational development process in which people are the drivers and subjects of their own development (Inter-American Development Bank, 2010). It implies a change in the power dynamics between those without access and the duty bearers. It aims to bring about sustainable and long term structural change in policies, procedures and laws, as well as changes in attitudes and behaviours (Inter-American Development Bank, 2010). Inclusion as a rights-based approach moves beyond focusing on the specific needs of marginalised groups. It is about empowering

people who are marginalised and improving wider systems of governance, changing the power dynamics between those without access and the duty bearers. It aims to bring about sustainable and long-term structural and systemic change in policies, procedures and laws, as well as changes in attitudes and behaviours to ensure inclusivity and participation of women.

7.3.3 The need to empower women to claim their rights

This study is located within the feminist empowerment paradigm, a paradigm that advocated for gender equality. The underlying assumption under this paradigm is that women's empowerment requires fundamental change in the macro-level development agenda as well as explicit support for women to challenge gender subordination at the micro-level. Under this model, economic empowerment is defined in more than individualist terms to include issues such as property rights, changes in intra-household relations and transformation of the macro-economic context. The ultimate aim is to transform not only gender relations, but all power relations and dimensions of inequality throughout society. Empowerment is the process by which those who have been denied the ability to make strategic life choices acquire such ability (Kabeer, 2003b, p. 9) .

The feminist empowerment paradigm focuses on strategies of empowering women through linking women to existing services and infrastructure, developing new technology, building information networks, shifting to new markets and policy level changes to overcome legislative barriers. Jo Rowlands argues that empowerment can be experienced and exercised in three different dimensions:

1. At the personal level;
2. In close relationships and;
3. Within a group. (Rowlands, 1997)

Rowlands (1997) identifies some core aspects of empowerment depending on the dimension. At the personal level, these core aspects are self-confidence, self-esteem, dignity, a sense of agency and a sense of 'self' in a wider context. In close relationships, the core aspects are ability to negotiate, to communicate, to get support, to defend self/rights, a sense of 'self' in the relationship and a sense of dignity. Finally, in the collective dimension, the core characteristics are group identity, sense of collective agency, group dignity, and self-organization and management. Rowlands (1997) says that we must distinguish between the core of the empowerment process, "the transformation of the individual or the group that is the 'key' that opens the 'locks' on the empowerment door", and the circumstances that appear to encourage or inhibit the process.

There are two important aspects of empowerment. Firstly, the process towards gender equality or greater freedom of choice and action is as important as the change itself. The second aspect is agency, where women on their own must be significant actors of the process of change. This second aspect made me ask, "What is it that women want in order to improve their situation within the male dominated horticulture businesses?"

Most of the women's responses centred mainly on the issue of unequal power relations, firstly, within the family and inevitably within the horticulture businesses. These unequal relations were blocking women's capacity to participate in the business. An example is the case of Rudo discussed at the very beginning of this thesis. Rudo's husband on one occasion came back from the market and simply told her that with the money realized from the sale of their horticulture produce he had bought roof materials. This is the money they should have used to recapitalize their horticulture business but Rudo, due to cultural inhibitions, does not question her husband. This lack of agency has an effect on women's capacity to exercise greater control over key aspects of their lives and fully participate in the business. On further

probing, Rudo believed that perhaps the situation would be better if she had her own income. I asked her what difference would this make and she said her own income could increase her bargaining power. The same sentiments were echoed by other women interviewed. They lamented the fact that they relied too much on their husbands for income. They do most of the work in the horticulture plots but their husbands control the profits because they would have provided the capital. They said access to capital is hugely problematic for them. What were available to women are random income generation projects facilitated by the Ministry of Women Affairs, Gender and Community Development, in areas unrelated to horticulture. Rather than being passive recipients of aid, women horticulture farmers need to drive their own development agenda.

7.3.4 Enhancing women agency and capacity

The findings of this study show that women as compared to men have unequal capacity to exercise agency. Agency means an individual's (or group's) ability to make effective choices and to transform those choices into desired outcomes. 'Agency' can be understood as the process through which women and men use their endowments and take advantage of economic opportunities to achieve desired outcomes. Thus, agency is key to understanding how gender outcomes emerge and why they are equal or unequal.

Although the expansion of women's rights has fostered agency in some realms, before SI 53/2014, the effect of laws in land based activities has been at its weakest in areas regulating relations within households, especially as they pertain to control over resources and family matters. The progress that has been made with the enactment of SI 53/2014 may, however, not translate into improvements in agency for women because the effectiveness of laws like SI 53/2014 depends crucially on the ability and willingness of the State to ensure the law is fully applied and enforced. This study has already shown that social norms have the ability to

limit the effect of laws to the detriment of gender equality. The situation may be worse where an increase in women's agency as provided for by SI53/2014 would threaten the balance of power in the household. Shifting social norms around gender roles and women's abilities is particularly critical to promote women's agency. This process can be complex and slow, but practices can change through the provision of information needed for individuals or groups to challenge them.

It has been argued that economic development can also promote women's agency by improving the conditions that allow agency to be exercised, such as greater access to services, and expanded infrastructure. However, this potential impact relies in part on women's increased bargaining power within the household resulting from the ability to earn their own income.

Women horticulture ventures in ward 25 of the Nyadire District of Mutoko fall within the Micro Small and Medium Enterprises (MSMEs) sector. Since independence, Government has made efforts to develop the MSMEs sector, firstly, through the socialist drive of promoting cooperatives and, secondly, through the capitalist approach introduced when the country embarked on an Economic Structural Adjustment Programme (ESAP) in 1991. The structural change of the economy in the post ESAP era and the decade long economic downturn experienced in the country from 2000 to 2008 saw the economy becoming more and more informalised.

The economic challenges experienced since 2000 which became more pronounced from 2006 to 2008, driven mainly by hyperinflation, shortage of basic commodities, bank notes, among others, greatly affected the horticulture ventures, access to capital being the major challenge.

7.3.5 Need for women's financial inclusion

Financial inclusion occurs when women have effective access to a range of financial products and services that cater to their multiple business and household needs and that are responsive to the socioeconomic and cultural factors that cause financial exclusion in women and men to have different characteristics. The question this study poses is, "Will financial inclusion of women horticulture farmers in family based business provide the potential of empowering women and make them equal partners in the business?" Further, if women can access financial resources on their own account, will that increase their bargaining power within households and their influence over how money and other resources are used and will financial inclusion help to increase women's opportunities to earn an income or control assets outside the household?

The findings showed that in the horticultural businesses, marriage is the dominant framework. What I sought to establish was whether women in family businesses are better or worse off using a marriage framework. Or, will it better secure women's investment in the business if we use a business and a partnership framework, looking at what each partner is contributing to the marriage.

Women on resettlement land now have clear land rights in terms of SI 53/2014. The statutory instrument, by making married women holders of an equal joint and undivided share in allocated land, effectively makes them partners to the horticultural businesses. In terms of partnership law partners are entitled to a share of the profits and also the losses. Partnership law also requires contribution. Most married women have been contributing to the business through their labour. This studies' findings showed this is problematic because it results in women being given minimal recognition in the business. Most women horticultural farmers were not involved in the major business decisions, most importantly decisions on how the

income generated from the business is used because the main capital of the business, that is, the land, belonged to the men. Women interviewed felt that if they can access credit and contribute financially to the business that may improve their decision making capacity in the business. Given that most of the field work was done before SI 53/2014 was enacted, the question this study asks and which requires further research is, “If the banks accept the permits issued under SI 53/2014 as collateral for loans, what will the loan framework be like?”, “Will married women be able to take the loans in their own right or will they be jointly and severally liable with their husbands, if so how much of the credit will women actually control?”, “What should now be the role of the Ministry of Women affairs, Gender and Community Development? Should they be putting more effort in strengthening women’s financial inclusion and recognition of their capabilities?” As the findings of this study showed, married women’s business capabilities in the area of study are not being fully supported because the initiatives being taken by the Ministry are not changing gender roles. Women are being supported in conventionally female activities which are mostly consumption and not production oriented.

7.4 Future Research

The study was primarily directed at understanding the role and impact of laws and policies on marriage and business and the differential effect of these laws on the lives of women as compared to men. It suggested that the undervaluation and chronic under-recognition of women’s contribution to family economies lies in the dominance of marriage as the organizing model for farming business activities in small scale resettlement land. I made suggestions on how to move forward but I also acknowledge that the issues under interrogation are complex issues. What the study provides is the understanding that the law alone is not the answer to the equality debate, there is a need for something more than the law. There is a need for the total elimination of stereotypes that bedevil our legal thinking when

interpreting the legal relationship between a married couple in a business relationship upon divorce or death of one of the parties. SI 53/2014 is the beginning of a solution and whether it will present the same problems that this study looked at is an area for future research.

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Agricultural Land Settlement (Permit Terms and Conditions) Regulations of 2014, Statutory Instrument (SI) 53/2014

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Communal Lands Act (Chapter 20:04)

Companies Act (Chapter 24:03)

Companies Act 1862 (UK)

Constitution of Zimbabwe Amendment (No 20) Act 2013

Co-operative Societies Act (Chapter 24:05)

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Marriages Act (Chapter 5:11)
Matrimonial Causes Act (Chapter 5: 13)
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Appendix 1 – Irrigation Scheme Constitution

CHITORA II / GOLDEN VALLEY IRRIGATION SCHEME

Constitution 2008

1. Name of scheme Chitora II / Golden Valley Irrigation scheme
2. Vision : To become a leading group in horticulture, both local and export
3. Mission : To produce high quality horticultural products for the local and export markets and uplift our standards of living and our surrounding community
4. LOCATION AND POSTAL ADDRESS:-
The scheme is located 111Km along Harare Nyamapanda road and 8 km to the north
Address:
Murenga School
P.O Box 224
Mutoko
5. MEMBERSHIP: 34(Membership will increase due to scheme expansion)
6. Subscriptions / Contributions:-
All members to contribute any amounts due at any given time
7. WITHDRAWAL OR TRANSFER: If a member intends to withdraw or transfer from the scheme, he/she must put it forward in writing three months before the intended date.
8. RENTING: - No member shall let part of his/her whole plot to a second person, doing so will call for complete expulsion.
9. MEETING:- All members shall be present on all meetings unless excused

a)

	TYPE	FREQUENCY
I.	Annual General Meeting	once a year
II.	General meeting	Twice a year
III.	Programme planning	Three times a year
IV.	Review/ evaluation	Every month
V.	Problem solving	When needed
VI.	Committee meeting	Every month

- b) PARTICIPATION:- Only members and their spouses may participate and non members have no voice in meetings.
- c) QUORUM: - A meeting will only commence when 24 members are present on other meetings except during a committee meeting when at least 5 members are needed.

10. WARNING AND FINES

- i. Fighting :- fine 2 broilers/ equivalence
- ii. Gossiping :- warned twice and fine one broiler/ equivalence as third step
- iii. Late payments to the scheme bills :- attract closure of irrigation system a day after due date and settle with 50% interest.
- iv. Allowing animals into the garden will attract a fine of one broiler/ equivalence
- v. Tempering with scheme infrastructure attracts a fine of one broiler/ equivalence
- vi. Absence, self dismissal and late coming to meetings attract a fine of one broiler/equivalence on absence and two warnings for late coming and charged the same fine as above on the third time.

11. Expulsion:- If a plot holder is convicted by the public law on issues of pulling down scheme efforts such as destruction of infrastructure(vandalism) will be discarded and the plot will be surrendered to the scheme authorities for new membership

12. INHERITANCE:- If a plot holder dies, the spouse will inherit the plot

- I. If both members die, the plot will be inherited by the children ranking from the eldest regardless of sex.
- II. In the case of polygamous families, the property will be inherited from the first wife to the last and this will apply to their children
- III. If both have no children then the next of kin of the holder is considered

13. TERM OF OFFICE – 2 Years

14. AMENDMENTS: - To be done when need arise, all members must be present.

15. All members are to abide by this constitution

Signed CHITORA II GOLDEN VALLEY IRRIGATION

NAME	ID
1. C HENJERAI KANDEMIRI	47-089431 N 47
2. CHAMUNORWA CHIKUWIRA	47-087422 E 47
3. HAZVINEI NYAGANDE	85-004197 Q 85
4. ALLAN MUSHAMBA	48-065148 A 48
5. TOZIWEPI CHIDODO	48-092154 E 48
6. DENFORD KABAYANJIRI	47-114473 H 48
7. McDONALD SOKO	48-066621 B 48
8. ENERST CHAMANGA	48-096475 B 48
9. KUDZANAI MUDZINGWA	48-089034 N 48
10. ALBERT JENYURA	48-066551 K 48

11. ANOLD MATAMBANADZO	47-093900 W 47
12. TAFADZWA HONDO	48-102062 Z 48
13. FIYANDA KAVHUMBURA	48-080529 T 48
14. PARADZAI MUSHAMBA	48-077666 G 48
15. JULIET FATA	47-089439 X 49
16. SOLOMON MUKWANHIRI	48-066655 N 48
17. LEONARD CHIMBWANDA	47-082843 C 47
18. TAPIWA ROZHANI	48-066616 W 48
19. BENNY MAFUTA	75-277652 J 48
20. EPHRAIM CHIKUWIRA	59-103822 O 48
21. TAPIWA GUTU	59-113692 M 47
22. SHEPHERD CHIKUSE	47-083544 P 47
23. CLAPERTON KANDEMIRI	48-0742242 Q 48
24. RUDO MUPAYA	48-082682 J 48
25. REGIS DENDEMUTANDE	48-077690 J 48
26. ALICE MAKAZA	47-088766 J 48
27. GIVEMORE CHIMBWANDA	47-088418 T 48
28. CONRAD MUBAIWA	48-088495 W 47
29. GIBSON VASCO	48-053210 Z 48
30. SILVESTER MAROPE	85-006376 T 85
31. MAXWELL ZUNZANYIKA	85-001914 J 85
32. INNOCENT MUTERO	47-103475 D 47
33. SILVESTER MUSEKIWA	47-076969 S 47
34. SPENSOR KADEMO	47-103665 K 48

Appendix 2- Agricultural Land Settlement (Permit Terms and Conditions) Regulations, 2014

Agricultural Land Settlement (Permit Terms and Conditions) Regulations, 2014

IT is hereby notified that the Minister of Lands and Rural Resettlement has, in terms of section 39, as read with section 7(a), of the Agricultural Land Settlement Act [*Chapter 20:01*], made the following regulations:—

Title

1. These regulations may be cited as the Agricultural Land Settlement (Permit Terms and Conditions) Regulations, 2014.

Definitions

2. (1) In these regulations—

“allocated land” means the land named or described in a permit;

“cedent”, in relation to a permit holder, means a permit holder who surrenders his or her permit in accordance with section 16, and “cedent” when used as an adjective shall be construed accordingly;

“compensating permit holder” means a joint permit holder who has the right to buy out the other joint permit holder or holders in terms of these regulations;

“dependant”, in relation to a permit holder, means any of the following as may be applicable—

(a) a minor person who is the natural child, adopted child or step-child of the permit holder;

(b) any person towards whom the permit holder has a duty similar to the legal duty of care towards a child or dependant under the general law;

(c) an adult person who had been a dependant of the permit holder as defined in paragraph (a) or (b);

“designated officer” means—

(a) a Government Land Officer; or

(b) such other officer in the Ministry responsible for lands or agriculture or physical planning as the Minister may designate in writing;

“Minister” includes any other person authorised in writing by the Minister to act on his or her behalf for the purposes of these regulations;

“permit” means an Agricultural Land Settlement Permit 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;

“permit holder” includes, in addition to the signatory permit holder, any person having a joint and undivided share in the allocated land;

“qualifying spouse” means a spouse who is not a subsequent non-qualifying spouse;

“resettlement land” means land identified as resettlement land under the Rural District Councils Act [*Chapter 29:13*];

“signatory permit holder” means a person who signs the permit as permit holder, and includes a permit holder who is deemed by virtue of section 9(1) or 11(1) to hold an equal joint and undivided share in the land allocated under the permit;

“subsequent non-qualifying spouse” has the meaning given to that phrase in section 10(1);

“spouse” includes a spouse in an unregistered customary law marriage, and “marry” shall be construed accordingly.

(2) Where any provision of these regulations is explained by a footnote, the footnote shall form part of these regulations and may be used as an aid to the meaning of that provision.

Every permit issued subject to statutory terms and conditions

3. Every permit is issued subject to the terms and conditions specified in the following provisions of these regulations.

Beneficiaries of permit

4. Every permit is issued for the benefit of the permit holder and his or her dependants.

Duration of permit

5. Subject to these regulations, every permit is issued for an indefinite period.

Rights of permit holders to occupy and use allocated land

6. (1) Every permit holder has the following rights with respect to the occupation, holding and use of the allocated land—

- (a) to occupy, hold and use the allocated land for agricultural, pastoral and personal residential purposes; and
- (b) to develop the land and erect any infrastructure and other improvements thereon related to the purposes specified in paragraph (a).

(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) For the avoidance of doubt it is declared that the right of residence bestowed by subsection (1)(a) is strictly incidental to the right of occupation for agricultural and pastoral purposes.

Rights of permit holders to sublet, assign, cede, etc. allocated land

7. (1) Subject to this section, a permit holder shall not—

- (a) cede, assign, hypothecate or otherwise alienate or sublet in whole or in part, or donate or dispose of his or her allocated land or any of his or her rights, interests or obligations under his or her permit, or place any other person in possession of the allocated land; or
- (b) enter into a partnership for the working of the allocated land;

without the consent of the Minister in writing, which consent shall not be unreasonably withheld.

(2) The Minister shall have ninety (90) days in which to consent or withhold his or her consent in writing to a proposed cession, assignment, hypothecation, alienation, subletting, donation, disposal, placement or partnership referred to in subsection (1) or (2), and any failure to do so shall entitle the permit holder to make an application in terms of the Administrative Justice Act (or any other law that may be substituted for that Act) to compel the Minister to consent to or

with hold its consent to the transaction, or otherwise give reasons for the delay.

(3) No cession, assignment, hypothecation, alienation, subletting, donation, disposal, placement or partnership is made in accordance with subsection (1) or (2) shall be valid unless the cession, assignment, hypothecation, alienation, subletting, donation, disposal, placement or partnership is recorded—

- (a) by a designated officer by way of the officer's endorsement and signature of the permit; and
- (b) by way of notarial deed executed by the permit holder and the other party or parties to the transaction, which notarial deed must be registered by a deeds registry that serves the area where the allocated land in question is located.

(4) The provisions of the Deeds Registries Act [*Chapter 20:05*] relating to “leases” shall apply, with such changes as may be necessary, to the registration of a notarial deed referred to in subsection (3)(b).

(5) The transferee or other person in whose favour a cession, assignment, hypothecation, alienation, subletting, donation, disposal, placement or partnership is made in accordance with subsection (1) or (2) shall be bound by all the provisions of the permit in every respect as if he or she is a permit holder or a joint permit holder, as the case may be.

- (6) The permit holder may sublet infrastructure such as—
- (a) agro-processing infrastructure;
 - (b) dip tanks situated on/along plots/boundaries;
 - (c) tobacco barns;

provided that any rentals charged by the permit holder for such subletting shall be subject to the approval of the Minister, which approval shall not be unreasonably withheld.

(6) Where any resource, improvement or infrastructure such as a dam or a water resource is, at the commencement of the permit, used commonly for the benefit of two or more permit holders or occupiers properties, whether by virtue of a pre-existing servitude or

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otherwise, such resource, improvement or infrastructure shall be under the jurisdiction of such authority as may be determined by the Minister.

(7) A transaction entered into by a permit holder in contravention of this section shall be of no force and effect from its inception and no obligation towards the permit holder or any third party arising from such transaction shall attach to the Minister.

Entitlement of permit holders to improvements made to allocated land

8. (1) Subject to subsection (3), the permit holder shall have title over the improvements referred to in section 6(1)(b).

(2) The permit holder may dispose of his or her rights referred to in section 6(1) (a) and (b) to any other person only with the written consent of—

- (a) every other permit holder, that is to say, every other person (if any) having a joint and undivided share in the allocated land; and
- (b) the Minister.

(3) The permit holder may not dispose of the improvements on the allocated land that belong to him or her by virtue of subsection (1) except to the person who is authorised in terms of subsection (2) to assume the permit holder's rights referred to in section 6(1) upon disposal thereof; accordingly, any agreement to dispose of the improvements shall not be valid unless the appropriate consents required by subsection (2) are obtained by the permit holder.

Responsibility of signatory permit holders

9. (1) Every signatory of a permit who signs the permit in his or her capacity as a permit holder shall, if he or she is—

- (a) the sole signatory in that capacity, bear the sole responsibility for ensuring the fulfilment of the terms and conditions of the permit, including his or her obligations under the permit to the Minister or to any third party, and shall not require the prior consent of his or her spouse to do anything necessary to fulfill those terms and conditions; or

- (b) a joint signatory in that capacity, bear joint responsibility with the other signatory or signatories in that capacity for ensuring the fulfilment of the terms and conditions of the permit, including his or her obligations under the permit to the Minister or to any third party:

Provided that, in the event only where it is impossible to secure the joint or prior consent of every signatory with respect to the fulfilment of any term or condition of the permit, including the discharge of any obligations under the permit to the Minister or to any third party, the Minister may by name require either of the signatories (or any one of them, as the case may be) to fulfil that term or condition, including the discharge of any obligations under the permit to the Minister or to any third party, in which case the signatory so nominated shall not require the prior consent of the other signatory or signatories to fulfill those terms and conditions.

(2) The effect of the marriage of a signatory of a permit who signs the permit in his or her capacity as a permit holder is described in sections 10(2), 11(2) and 12(2) below.

Marriage(s) of permit holder at time permit is signed

10. (1) If a permit holder is married to one or more spouses at the time the permit is signed, his or her spouse(s) shall be deemed to hold an equal joint and undivided share in the allocated land:¹

Provided that if any spouse was not, on the date the permit is signed, and for a period of at least twelve months before such signature, cohabiting as man and wife with the signatory, such spouse shall not be deemed to hold an equal joint and undivided share in the allocated land, unless the spouse in question is, at the time of the signing of the permit, a joint signatory of the permit, or in occupation of, or otherwise actively involved in developing, the allocated land.

¹If there are two spouses at the time the permit is issued to either (or both) of them, each spouse will hold one joint and undivided share in the allocated land, thereby constituting a pool of two joint and undivided shares in the allocated land; if there are three spouses at the time the permit is issued to any (or all) of them, each spouse will hold one joint and undivided share in the allocated land, thereby constituting a pool of three joint and undivided shares in the allocated land; and so on.

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(2) The holding by virtue of this section of an equal joint and undivided share in the allocated land does not affect the primary responsibility of the signatory permit holder for ensuring the fulfilment of the conditions of the permit, including any obligations under the permit to the Minister or to any third party, as determined in accordance with section 8.

(3) A signatory permit holder or (if there are two or more signatories of the permit), every signatory permit holder jointly, may request an amendment of the permit to enable his or her spouse to become a joint signatory thereof.²

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

11. (1) If a signatory permit holder was married—

- (a) to one spouse in a potentially polygamous marriage³ at the time the permit is first signed upon its issuance, and subsequently marries another spouse or other spouses (hereafter in these regulations referred to as “subsequent non-qualifying spouse(s)”), every subsequent non-qualifying spouse shall not become the holder of an equal joint and undivided share in the allocated land, unless the spouse married on the date the permit was first signed upon its issuance signifies in writing her consent to the additional spouse, or each of the additional spouses, as the case may be, becoming the holder of an equal joint and undivided share in the allocated land;⁴ or

² It is not necessary for every holder of a joint and undivided share in the allocated land to be or become a signatory, so long as at least one of them is a signatory. A signatory of the permit is primarily responsible for ensuring the fulfilment of the conditions of the permit; if there are two or more signatories of the permit, the signatories are jointly responsible for ensuring the fulfilment of the conditions of the permit and, in the event of conflict between them concerning the fulfilment of the conditions of the permit, the Minister has the right to nominate one of the signatories as primarily responsible.

³ The significance of the reference to a “potentially polygamous marriage” in this paragraph and to a “polygamous marriage” in paragraph (b) is that these provisions do not apply to a monogamous marriage contracted under the Marriage Act [Chapter 5:11].

⁴ If there is one female spouse in a potentially polygamous marriage at the time the permit is issued to either the male or female spouse (or to both of them), the pool of two joint and undivided shares in the allocated land is not enlarged by the addition of another spouse married after the date of issuance of the permit, unless the first wife signifies her consent in writing to the additional wife becoming a holder a joint and undivided share in the allocated land, in which event there will be a pool of three joint and undivided shares in the allocated land; and so on for subsequent additional spouses.

(b) to two or more spouses in a polygamous marriage at the time the permit is first signed upon its issuance, and subsequently marries another spouse or other spouses, every subsequent non-qualifying spouse shall not become the holder of an equal joint and undivided share in the allocated land, unless the spouses married on the date the permit was first signed upon its issuance signify in writing their consent to the additional spouse, or each of the additional spouses, as the case may be, becoming the holder of an equal joint and undivided share in the allocated land.⁵

(2) In order for the written consent referred to in subsection (1)(a) or (b) to be effective, it must be sworn in the form of an affidavit before a Commissioner of Oaths and a certified copy thereof deposited with the Minister.

(3) If a subsequent non-qualifying spouse becomes the holder of an equal joint and undivided share in the allocated land by virtue of subsection (1)(a) or (b), her consent along with that of the spouse or every spouse married at the time the permit is first signed upon its issuance will be required in order for any additional subsequent non-qualifying spouse to become the holder of an equal joint and undivided share in the allocated land.

(4) The holding by virtue of this section of an equal joint and undivided share in the allocated land does not affect the primary responsibility of the signatory permit holder for ensuring the fulfilment of the conditions of the permit, including any obligations under the permit to the Minister or to any third party, as determined in accordance with section 8.

⁵ If there are three, four or more spouses at the time the permit is issued to one or more of them, the pool of three, four or more joint and undivided shares in the allocated land is not enlarged by the addition of another spouse married after the date of issuance of the permit, unless every wife married at the time the permit is issued signifies her consent in writing to the additional wife becoming a holder a joint and undivided share in the allocated land, in which event there will be a pool of four, five or more (as the case may be) joint and undivided shares in the allocated land; and so on for subsequent additional spouses.

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*Unmarried permit holder who becomes married after permit
signed*

12. (1) If a signatory permit holder was not married at the time the permit is signed by him or her, but subsequently becomes married, his or her spouse shall be deemed to hold an equal joint and undivided share in the allocated land.

(2) Subsection (1) applies only to the first spouse in a potentially polygamous marriage, and any additional spouse will be treated as a subsequent non-qualifying spouse to whom the provisions of section 11(1)(a) or (b) will apply.

(3) Sections 11(2) and (3) shall apply to every subsequent non-qualifying spouse who becomes the holder of an equal joint and undivided share in the allocated land by virtue of subsection (2).

(4) The holding by virtue of this section of an equal joint and undivided share in the allocated land does not affect the primary responsibility of the signatory permit holder for ensuring the fulfilment of the conditions of the permit, including any obligations under the permit to the Minister or to any third party, as determined in accordance with section 8.

*Effect of death of signatory permit holder or surrender of his or
her rights under permit*

13. (1) Upon the death of a signatory permit holder, or the surrender of his or her rights under the permit in accordance with section 17, his or her rights under the permit referred to in section 6 shall—

(a) in the case of a monogamous or potentially polygamous marriage where there is an existing or surviving spouse, devolve to the existing or surviving spouse, with consequence that—

(i) the existing or surviving spouse inherits the joint and undivided share in the allocated land of the deceased spouse;⁶ and

(ii) that spouse shall thereupon, if he or she was not a signatory of the permit, succeed to the primary responsibility of the deceased signatory permit holder for fulfilling the conditions of the permit,

⁶ Meaning that the allocated land will no longer be divided into equal joint and undivided shares but be held exclusively by the surviving spouse.

including any obligations under the permit to the Minister or to any third party;

or

(b) in the case of a monogamous or potentially polygamous marriage where there is no surviving spouse, but one or more dependants of the cedent or deceased signatory permit holder and his or her deceased spouse, devolve to the dependants, with consequence that—

(i) each dependant succeeds to or inherits a joint and undivided share in the allocated land;⁷ and

(ii) every such dependant shall thereupon succeed to the primary responsibility of the deceased signatory permit holder for fulfilling the conditions of the permit, including any obligations under the permit to the Minister or to any third party;

or

(c) in the case of a cedent or deceased husband in a polygamous marriage where there are one or more existing or surviving qualifying spouses, devolve to each existing or surviving qualifying spouse, with consequence that—

(i) the number of equal joint and undivided shares in the allocated land is reduced by one;⁸ and

(ii) every such existing or surviving spouse shall thereupon, if she was not a signatory of the permit, succeed to the primary responsibility of the deceased signatory permit holder for fulfilling the conditions of the permit, including any obligations under the permit to the Minister or to any third party;

or

(d) in the case of a cedent or deceased qualifying wife in a polygamous marriage where there are one or more

⁷ Meaning that if there are three surviving dependants, each will obtain a joint and undivided share in the allocated land, so that the total pool of such shares is three.

⁸ So that, for example, where before his death a man and his two qualifying spouses each held an equal joint and undivided share in the allocated land (thereby constituting a pool of three such shares in the allocated land), after his death the pool of such shares is reduced to two, each one held by the two qualifying surviving spouses.

existing or surviving dependants (being the dependants of her and her husband), devolve to the dependant or dependants, with the consequence that the dependant or dependants shall succeed to or inherit as a single unit the joint and undivided share in the allocated land of the deceased person, without, however, succeeding to the primary responsibility of the deceased signatory permit holder for fulfilling the conditions of the permit;⁹

- (e) in the case of a cedent or deceased qualifying wife in a polygamous marriage where there is no existing or surviving dependant of her and her husband, devolve to the surviving qualifying spouses, with consequence that—
- (i) the number of equal joint and undivided shares in the allocated land is reduced by one;¹⁰ and
 - (ii) every such surviving spouse shall thereupon, if he or she was not a signatory of the permit, succeed to the primary responsibility of the deceased signatory permit holder for fulfilling the conditions of the permit, including any obligations under the permit to the Minister or to any third party;

or

- (f) in the case of a cedent or deceased husband in a polygamous marriage where (in the absence of any qualifying spouse and issue of such spouse) there are one or more existing or surviving subsequent non-qualifying spouses, or one or more existing or surviving dependants of such non-qualifying spouse or spouses

⁹ Where two or more dependants inherit a joint and undivided share under this provision, such inheritance does not diminish the value of the pre-existing shares by adding to the number of such shares in the pool; for example, where before her death the deceased, her husband and his two other qualifying spouses each held an equal joint and undivided share in the allocated land, thereby constituting a pool of four such shares in the allocated land, after her death the pool of such shares remains four, her own share being held by her dependants jointly.

¹⁰ So that, for example, where before her death a woman was in a polygamous marriage consisting of her husband and one other qualifying spouse, the pool of three equal joint and undivided share in the allocated land is, if she dies without issue, reduced to two shares, one each held by the surviving husband and the surviving qualifying spouse.

who predeceased him, devolve to the existing or surviving subsequent non-qualifying spouse or spouses or their dependants, with consequence that—

- (i) each subsequent non-qualifying spouse (or the dependants of such spouse if she is deceased, provided that if there are two more such dependants they shall succeed to or inherit her share as a single unit) succeeds to or inherits a joint and undivided share in the allocated land;¹¹ and
 - (ii) every such spouse (but not the dependants, if any also become entitled to a joint and undivided share in the allocated land) shall thereupon succeed to the primary responsibility of the deceased signatory permit holder for fulfilling the conditions of the permit, including any obligations under the permit to the Minister or to any third party;
- (g) in the case of a cedent or deceased husband in a polygamous marriage where there is no existing or surviving qualifying spouse or any existing or surviving dependant of a qualifying spouse or any existing or surviving subsequent non-qualifying spouse, but only the dependant or dependants of the cedent or deceased and any one or more subsequent non-qualifying spouses, devolve to such dependant or dependants, with consequence that—
- (i) each such dependant succeeds to or inherits a joint and undivided share in the allocated land;¹² and
 - (ii) every such dependant shall thereupon succeed to the primary responsibility of the deceased signatory permit holder for fulfilling the conditions of the permit, including any obligations under the permit to the Minister or to any third party.

¹¹ Meaning that, for instance, if there are two surviving non-qualifying spouses and three surviving dependants of the deceased husband by a third deceased non-qualifying spouse, each of the surviving spouses will obtain an equal joint and undivided share in the allocated land and the dependants together inherit another equal joint and undivided share, so that the total pool of such shares is three.

¹² Meaning that, for instance, if there are three such surviving dependants, each will obtain a joint and undivided share in the allocated land, so that the total pool of such shares is three.

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(2) In the absence of an heir or successor to a cedent or deceased permit holder as provided in subsection (1), the allocated land shall revert to the State, which may issue a new permit in respect thereof.

(3) If it happens that a signatory permit holder is a spouse in a polygamous marriage, and—

(a) he or she is the only signatory to the permit, the signatory permit holder shall have the right, by will, to nominate one of the surviving qualifying spouses to be primarily responsible for fulfilling the conditions of the permit (including any obligations under the permit to the Minister or to any third party), and such nominee shall have the right to buy out the other spouse(s) by compensating him/her/them for his/her/their assessed share(s) under the permit;

(b) he or she is not the only signatory to the permit, the surviving signatory permit holder or permit holders shall upon the death of the first-mentioned signatory permit holder continue to bear or (if there are two or more surviving signatories) to share the primary responsibility of the deceased signatory permit holder for fulfilling the conditions of the permit, including any obligations under the permit to the Minister or to any third party.

(4) If it happens that a signatory permit holder is not survived by any qualifying spouse but only by persons who are the dependants of the signatory permit holder and a qualifying spouse, he or she shall have the right, by will, to nominate one of those dependants who will be primarily responsible for fulfilling the conditions of the permit, and such nominee shall have the right to buy out the other dependant(s) by compensating him/her/them for his/her/their assessed share(s) under the permit.

(5) If a permit holder who is the sole signatory of the permit dies—

- (a) leaving two or more qualifying spouses to succeed him, without having made any testamentary nomination as permitted by subsection (2)(a); or
- (b) without leaving a spouse to succeed him or her and without making any testamentary nomination as permitted by the proviso to subsection (3);

the Minister shall have the right to nominate in writing one surviving spouse or one dependant, as the case may be, as the person who shall be primarily responsible for fulfilling the conditions of the permit, and who shall have the right to buy out the other holders of joint and undivided shares in the allocated land by compensating him/her/them for his/her/their assessed share(s) under the permit.

(6) If it happens that a person who is nominated pursuant to subsection (3)(a), (4) or (5) wishes to buy out the other holders of joint and undivided shares in the allocated land, and there is a dispute concerning the respective values of the joint and undivided shares in the permit, the Minister shall resolve the dispute in accordance with section 15.

(7) This section applies despite any testamentary disposition or customary law to the contrary.

Effect of divorce of permit holders

14. (1) If the marriage or, in the case of a polygamous marriage, any of the marriages between a permit holder who is the sole signatory of the permit and his or her spouse is dissolved, the non-signatory divorced spouse shall retain his or her rights as a joint permit holder and joint head of household unless the signatory permit holder compensates the divorced spouse for his or her assessed share under the permit.

(2) If it happens that both of the divorcing spouses are joint signatories of the permit, then—

- (a) neither of the signatory permit holders shall have a unilateral right to compensate the other for his or her assessed shares under the permit in order to become the sole permit holder (or one of the remaining signatory permit holders, in the case of a polygamous marriage in which any of the other remaining spouses is a signatory of the permit); and
- (b) subsection (3) applies where either of the signatory permit holders concerned wishes to compensate the other for his or her assessed share under the permit in order to become the sole signatory permit holder (or one of the remaining signatory permit holders, in the case of a polygamous marriage in which any of the

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other remaining spouses is a signatory of the permit), but the other signatory permit holder does not agree to be so compensated.

(3) In the situation referred to in subsection (2)(b), the issue of which signatory permit holder shall have the right to compensate the other signatory permit holder for his or her assessed share under the permit shall be determined by an arbitrator (chosen, in the absence of the agreement of the signatory permit holders concerned, by the Minister) in terms of the Arbitration Act [*Chapter 7:02*] (or any other law that may be substituted for that Act), for which purpose the arbitrator will make his or her award in favour of the signatory permit holder who, in the arbitrator's opinion, has been the one most responsible for the development of the allocated land.

(4) Where a joint permit holder has or obtains the right to buy out the other joint permit holder upon their divorce, and there is a dispute concerning the respective values of the joint and undivided shares in the permit, the Minister shall resolve the dispute in accordance with section 16.

Rights of subsequent non-qualifying spouses and dependants of permit holder

15. For the avoidance of doubt it is declared that, during the lifetime of the permit holder—

- (a) a subsequent non-qualifying spouse—
 - (i) does not have any joint or undivided share in the allocated land, but may in certain circumstances succeed to or inherit such a share in accordance with section 13; and
 - (ii) with the leave of her husband or, where her husband is not a signatory to the permit, with the leave of the husband's wife or any one of the husband's wives who is a signatory, occupy and use the allocated land for agricultural, pastoral and residential purposes;
- (b) the dependants of the permit holder do not have any joint or undivided share in the allocated land, but may in certain circumstances succeed to or inherit such share in accordance with section 13.

Assessment of the value of joint and undivided shares in allocated land

16. (1) Where the value of a joint and undivided share in the allocated land is required to be assessed pursuant to section 13(6) or 14(4), the Minister shall, after giving the compensating permit holder and the other permit holders a reasonable opportunity to make oral or written representations in the matter, assess and determine the value, and interest on the amount so determined shall accrue at the monthly average rate of interest as prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*] (or any other law that may be substituted for that Act), for each month that the assessed share remains unpaid, excluding the month in which the share was assessed.

(2) While the assessed share remains unpaid, the person holding such share shall be subject to all the obligations and entitled to all the rights of the holder of an equal joint and undivided share in the allocated land, unless, by notice in writing to the compensating permit holder and the Minister, the holder unconditionally surrenders his or her share to the compensating permit holder.

(3) If the holder of the assessed share is not compensated therefor (together with interest) within twelve months from the date when the value of such share was assessed in accordance with this section, and has not earlier surrendered his or her share to the compensating permit holder, the holder thereof may require the compensating permit holder to revalue the assessed share, and this section shall, upon written notice to the Minister by either the holder of the assessed share or the compensating shareholder to that effect, apply to such revaluation.

Surrender of permit

17. (1) A permit holder may, subject to these regulations, divest himself or herself of all rights and obligations under the permit by surrendering his or her permit or share in the permit, whereupon, if there is any other permit holder or other persons lawfully entitled to any right over the allocated land subject to the permit, his or her equal joint and undivided share in the allocated land shall devolve to the other permit holder or permit holders, or the dependants of any permit holder, in accordance with section 13.

(2) In order for the surrender of a permit to be effective, it must be sworn before a Commissioner of Oaths, and a certified copy thereof deposited with the Minister.

Cancellation of permit

18. (1) Subject to subsection (2), the Minister reserves the right to cancel a permit and repossess the allocated land, in the event of—

- (a) any material breach of the terms and conditions of the permit; or
- (b) the permit holder allowing his or her agricultural or pastoral operations to decline to such an extent that the allocated land is not being properly managed; or
- (c) the permit-holder purporting to cede, assign, hypothecate or otherwise alienate or sublet in whole or in part, or donate or dispose of his or her allocated land or any of his or her rights, interests or obligations under his or her permit, or place any other person in possession of the allocated land, or to enter into a partnership for the working of the allocated land, without obtaining the consent of the Minister in writing in accordance with section 7; or
- (d) the permit holder finally and absolutely abandoning the allocated land:

Provided that the permit holder shall be deemed to have finally and absolutely abandoned the allocated land if he or she absents himself or herself from the allocated land without appointing a responsible person for more than ninety (90) consecutive days in any calendar year, without the prior written consent of the Minister.

(2) The Minister shall, before giving notice to the permit holder of the cancellation of the permit on a ground specified in subsection (1), give to the permit holder at least thirty (30) days' notice of his or her intention to terminate the permit, together with his or her reasons for wishing to do so, and afford the permit holder an opportunity to make representations to him or her on the matter.

Termination of permit by Minister

19. (1) The Minister may, by giving not less than ninety (90) days' written notice to the permit holder setting forth the reasons for the termination, terminate a permit on any ground on which he or she would be permitted to acquire land compulsorily under the Constitution and any Act made pursuant to the compulsory acquisition provisions of the Constitution.

(2) Upon termination of a permit under subsection (1), the Minister reserves the right to resume possession of the allocated land without prejudice to his or her rights to claim any charges, damages or other moneys due from the permit holder.

Compensation where permit cancelled or terminated

20. (1) Where the Minister cancels or terminates a permit, compensation may be claimed by the permit holder (except where the permit holder has or is deemed to have finally and absolutely abandoned the allocated land) only for either or both of the following, as applicable—

- (a) the improvements referred to in section 6(1)(b); and
- (b) any crops growing on the allocated land on the day of the cancellation or termination of the permit, unless the Minister allows the permit holder to harvest them.

(2) Compensation that is agreed or determined under this section shall be payable promptly to the former permit holder, or his or her trustee, assignee or legal representative, and in any event not later than 180 days from the date when the Minister resumes possession of the allocated land that was subject to the permit.

(3) In default of agreement between the parties, the amount and application of any compensation due to the permit holder shall be determined by arbitration in terms of the Arbitration Act [*Chapter 7:02*] or any other law that may be substituted for that Act.

Destruction of crop residues before vacation of allocated land

21. Prior to vacating the allocated land upon its repossession pursuant to the cancellation or termination of a permit, the former permit holder shall destroy all crop residues as is required by the law notwithstanding that the date prescribed for such destruction falls after

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the date by which the former permit holder is required to vacate the allocated land, and failing the former permit holder's compliance with this condition, the Minister shall have the right to effect such crop destruction and recover the costs thereof from the former permit holder or, alternatively, deduct the costs from the quantum of compensation due to the former permit holder under section 20.

Amendment of regulations

22. Where the Minister seeks to—

- (a) repeal or replace these regulations; or
- (b) amend these regulations in any of the following ways—
 - (i) to amend the definition of “dependant” or “spouse” in section 2(1);
 - (ii) to restrict or extend the beneficiaries of the permit as provided in section 4;
 - (iii) to substitute the indefinite operation of the permit under section 5 by any definite period of time;
 - (iv) to abolish, restrict or qualify the rights or entitlement of permit holders under section 6, 7 or 8;
 - (v) to abolish, restrict or qualify the rights under section 10 of any spouse of the permit holder at the time the permit is signed;
 - (vi) to abolish, restrict or qualify the rights of qualifying spouses under section 11;
 - (vii) to abolish, restrict or qualify the rights of a spouse of a permit holder in a potentially polygamous marriage referred to in section 12;
 - (viii) to vary in any way the consequences attendant upon the surrender of a permit or the death of a permit holder under section 13;
 - (ix) to abolish, restrict, qualify or extend the rights of divorced spouses under section 14 with respect to land allocated under a permit;
 - (x) to abolish, restrict, qualify or extend the rights of the non-qualifying spouses or dependants of a permit holder section 15;

- (xi) to vary the provisions for the assessment of the value of joint and undivided shares in allocated land under section 16;
- (xii) to extend the grounds for the cancellation of a permit under section 18;
- (xiii) to vary the provisions for the assessment of compensation upon the cancellation or termination of a permit under section 20;
- (xiv) to amend, repeal or replace this section;

the Minister shall, no later than thirty (30) days before he or she intends so to repeal, replace or amend these regulations, give notice of such intention to all permit holders by General Notice in the *Gazette*, and in any newspaper circulated in the areas where permit holders reside, setting forth in such notice the substance of any proposed amendment or replacement of the regulations, and the reasons for such amendment, replacement or repeal, as the case may be, and inviting objections thereto from permit holders and other interested parties.

SCHEDULE (*Section 2(1)*)

FORM OF PERMIT

PLOT NO.

.....



Permit No.:

File Ref.:

A1 MODEL SETTLEMENT PERMIT

PRELIMINARY

This Permit relates to Resettlement Land acquired under section 16B of the previous Constitution of Zimbabwe, which continues to be vested in the State by virtue of section 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);

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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 a 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:
- 1.2 First name:
- 1.3 Other names:
- 1.4 Title (Dr./Mr./Mrs./Miss/Ms.):
- 1.5 Place of birth:
- 1.6 Date of birth: Age:
- 1.7 National ID Number:
- 1.8 Marital Status (tick applicable):
- | | | | |
|---------|--------|----------|---------|
| Married | Single | Divorced | Widowed |
|---------|--------|----------|---------|
- 1.9 Citizenship:

IN THE CASE OF JOINT SIGNATORIES:

- 1.1 Surname:.....
- 1.2 First name:.....
- 1.3 Other names:
- 1.4 Title (Dr./Mr./Mrs./Miss/Ms.):
- 1.5 Place of birth:
- 1.6 Date of birth: Age:
- 1.7 National ID Number:.....

1.8 Marital Status (tick applicable):
.....

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

1.9 Citizenship:

1.1 Surname:

1.2 First name:

1.3 Other names:.....

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

1.5 Place of birth:

1.6 Date of birth: Age:

1.7 National ID Number:

1.8 Marital Status (tick applicable):
.....

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

1.9 Citizenship:

1.1 Surname:

1.2 First name:.....

1.3 Other names:.....

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

1.5 Place of birth:

1.6 Date of birth: Age:

1.7 National ID Number:

1.8 Marital Status (tick applicable):
.....

Married	Single	Divorced	Widowed
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1.9 Citizenship:

1.1 Surname:.....

1.2 First name:.....

1.3 Other names:.....

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

1.5 Place of birth:

1.6 Date of birth: Age:

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1.7 National ID Number:.....

1.8 Marital Status (tick applicable):	Married	Single	Divorced	Widowed
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1.9 Citizenship:

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.

3.1 Name of Allocated Land:

3.2 Subdivision(s) of Allocated Land:

3.3 Area of Allocated Land in hectares:.....

3.4 Date of allocation:.....

3.5 Ward:

3.6 District:.....

3.7 Province:

Signature of Permit Holder: Date:

IN THE CASE OF JOINT SIGNATORIES:

Signature of Permit Holder: Date:

Signature of Permit Holder: Date:

Signature of Permit Holder: Date:

Signature of Permit Holder: Date:

Issued by this..... day of

.....
ACQUIRING AUTHORITY
(MINISTER OF LANDS AND RURAL RESETTLEMENT)

ENDORSEMENTS WHERE PERMIT IS SUBLET, ASSIGNED, CEDED, ETC.

Name(s) and signature(s) of signatory (signatories) of permit wishing to cede, assign, hypothecate or otherwise alienate or sublet in whole or in part, or donate or dispose of his/her allocated land or any of his or her rights, interests or obligations under his or her permit, or place any other person in possession of the allocated land, or to enter into a partnership for the working of the allocated land (delete inapplicable):.....

.....
.....
.....

Name(s) and signature(s) of the beneficiary (beneficiaries) of the proposed cession, assignment, hypothecation, alienation, subletting, donation, disposal, placement or partnership (delete inapplicable):.....

.....
.....
.....

Important Notice to Permit Holder and Other Party (Parties) to the cession, sublease, assignment, etc: The cession, assignment, hypothecation, alienation, subletting, donation, disposal, placement or partnership herein endorsed is not completed or valid until it is recorded by way of a notarial deed executed by the permit holder(s) and the other party or parties to the transaction, which notarial deed must be registered by a deeds registry that serves the area where the allocated land in question is located.

Witnessed, Endorsed and Signed by
(Name of Designated Officer)

this..... day of..... (month).....(year)