
**WOMEN'S ACCESS TO COMMUNAL LAND:
A CASE STUDY OF SIABUWA, BINGA, ZIMBABWE**

BY

Jameson Denzilizium MULEYA

Supervisor: Dr Rosalie Katsande

**A Dissertation submitted in partial fulfilment of the requirements for a Masters Degree
in Women's Socio-Legal Studies, Southern and Eastern African Regional Centre for
Women's Law,
University of Zimbabwe**

2020

Abstract

While it is appreciated that Zimbabwe's gender equality legal framework has improved, a great deal more needs to be achieved through its implementation especially in the distribution of communal lands of Zimbabwe. The allocation of this precious resource is still uneven and skewed towards men. Most rural women are struggling to fully access communal land despite it being their main source of livelihood and through them that of their families and Zimbabwe's rural population in general. The implementation and monitoring of land policies is inadequate in rural areas and this has caused much suffering among Zimbabwe's rural women. This research assessed the challenges faced by rural women in accessing communal land. In doing so, a qualitative ethnographic case study of Siabuwa in Binga, Zimbabwe was chosen for this research's methodology. In-depth interviews with key informants were the main method of gathering data for the study and these were complemented with Focus Group Discussions and participatory observation. The research findings revealed that most rural women in Binga still suffer gender discrimination in accessing communal land primarily due to the fact that traditional leadership dominates the land allocation process. It is hoped that this study will act as an eye opener to interested stakeholders and in particular government and wake them up to the difficulties faced by rural women in accessing communal land and how this negatively affects their development as well as that of their communities and the nation in general in view of the crucial role they play in the welfare of the family unit, the foundation of the nation. The study also endeavours to signify the need to rethink other strategies to enable access to land for Zimbabwe's disadvantaged rural women.

Table of contents

Declaration	7
Dedication	8
Acknowledgements	9
List of abbreviations and acronyms	10
List of international human rights instruments and documents	12
List of local legislation	12
List of appendices	13
List of figures	13
List of tables	13
CHAPTER ONE	14
1.0 INTRODUCTION AND BACKGROUND TO THE STUDY	14
1.1 Introduction	14
1.2 Background of the study	16
1.3 Statement of the problem	18
1.4 Objective of the study	19
1.5 Research Assumptions	19
1.6 Research Questions	19
1.7 Definitions of Terms	20
1.8 Summary of chapters.....	20
CHAPTER TWO	22
2.0 THEORETICAL AND METHODOLOGICAL FRAMEWORK	22
2.1 Introduction	22
2.2 THEORETICAL FRAMEWORK	22
2.2.1 <i>Women’s Law Theory</i>	22
2.2.2 <i>African feminism as related to access to resources</i>	24
2.3 METHODOLOGICAL FRAMEWORK	26
2.3.1 <i>Introduction</i>	26

2.3.2	<i>Choice of research methods in collecting data</i>	26
2.3.3	<i>Grounded theory and its relevance to the study: The sifting process</i>	26
2.3.3.1	Reasons for applying grounded research.....	28
2.3.4	<i>Selection of appropriate land institutions and actors</i>	29
2.3.5	<i>Engaging the appropriate method: Qualitative versus quantitative</i>	29
2.3.6	<i>Information soliciting: Methods used to obtain research data</i>	31
2.3.6.1	Interviews	31
2.3.6.2	Ethnographic means of data collection.....	32
2.3.6.3	Data from secondary sources.....	33
2.3.7	<i>Ethical considerations and limitations</i>	33
2.3.7.1	Anonymity of informants	34
2.3.7.2	Times of interviews	34
2.3.8	<i>Constraints and solutions</i>	34
2.3.8.1	Demand for incentives by participants	34
2.3.8.2	Politicising land issues.....	34
2.3.8.3	Effect of participants' activities during the study period	35
2.3.8.4	Resistance of local leadership.....	35
2.4	Summary on methodology framework.....	36
CHAPTER THREE.....		37
3.0	COMMUNAL LAND GOVERNANCE IN BINGA: WHO CONTROLS LAND?	37
3.1	Introduction	37
3.2	The dominance of Tonga traditional practices in land allocation in Binga	37
3.2.1	<i>Women's space in society: Women's land rights</i>	42
3.2.2	<i>Solving land disputes in the traditional way</i>	44
3.2.3	<i>Traditional court cases on land issues</i>	46
3.3	Women's poverty and access to land	48
3.3.1	<i>Women's sources of livelihood in Binga</i>	49

3.3.2	<i>Non-governmental organisations and women's livelihood</i>	52
3.4	Institutions and actors involved in the allocation of land: State v. non-state.....	56
3.5	Influence of legal framework on land	58
3.6	Conclusion.....	60
CHAPTER FOUR.....		61
4.0	INSUFFICIENCY OF LAND MECHANISM FOR WOMEN: WHAT IS WRONG?.....	61
4.1	Introduction	61
4.2	Effects of Legal Pluralism: General Law versus Customary law: Can the two co-exist?.....	61
4.3	Impact of legal education on women's land issues	63
4.4	Identifying rural women's problem in the legal sphere: Availability versus acceptance of law	65
4.5	Conclusion.....	67
CHAPTER FIVE		68
5.0	STUDY CONCLUSION AND RECOMMENDATIONS	68
5.1	Introduction	68
5.2	Conclusion by assumptions.....	68
5.2.1	<i>Traditional practices hinder women's access to communal land in Binga</i>	68
5.2.2	<i>The involvement of several land related agencies in the administration of communal land hampers women's access to land in Binga</i>	68
5.2.3	<i>Lack of women's access to communal land has an adverse impact on their livelihoods in Binga</i>	69
5.2.4	<i>Legal system in place</i>	69
5.2.5	<i>Land administration and women's access to land</i>	69
5.3	Recommendations	70
5.4	Recommendation for future research	71
Bibliography		72

Appendices.....76

Declaration

I, Jameson Denzilizium Muleya, certify that this research is my original work. It is an honest and true effort of my personal research. I certify that the work has not been presented anywhere else before.

Signed

Date

This research was submitted with my approval as University Supervisor.

Signed

(Dr R.K. Katsande)

Deputy Director (SEARCWL), UZ

Date

Dedication

I dedicate this work to my family, friends and workmates at SARPCCO Centre of Excellence whom I missed while away. My special thanks go to my wife Sheillah who took care of the family during my absence. I say keep it up “*maimwana*”, you are a STAR.

To those who participated in this research, I thank you for your valuable contribution and I hope you find this piece of work valuable.

Acknowledgements

My gratitude and appreciation go to the following:

Thanks to NORAD for availing financial support.

My supervisor Dr R.K Katsande who proved to be a no-nonsense woman, very dedicated and focused.

I to thank my employers giving me time to conduct this study. I promise to put the knowledge I have acquired to good use and add value to the organisation. I do not think you will regret having sent me to study at SEARCWL and I look forward to putting the fruits of my rich learning experience into practice.

List of abbreviations and acronyms

ADRA	Adventist Development and Relief Agency
Agritex	Agricultural, Technical and Extension Services
BIDA	Binga District Administrator
BRDC	Binga Rural District Council
CEDAW	Convention on the Elimination of All forms of Discrimination against Women
CEO	Chief Executive Officer
CLA	Communal Land Act
Criminal Law Code	Criminal Law (Codification & Reform) Act [Chapter 9:23]
DA	District Administrator
DDC	District Development Coordinator
FGD	Focus group discussion
FPL	Food Poverty Line
FTLRRP	Fast Track Land Reform and Resettlement Programme
GBV	Gender Based Violence
HIV	Human Immunodeficiency Virus
IRR	Impoverishment, Risk and Reconstruction
JSC	Judicial Service Commission
KMTC	<i>Kulima Mbobumi</i> Training Centre
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
MDP	Malicious Damage to Property
MS	MellemfolkelightSamvirke
NGO	Non-Governmental Organisation
OIC	Officer In Charge
PDL	Poverty Datum Line
RDC	Rural District Council
RDCA	Rural District Council Act
SADC	Southern African Development Community
SEARCWL	Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe
TLA	Traditional Leaders Act
TTLA	Tribal Trust Lands Act

WLSA	Women and Law in Southern Africa
ZANU PF	Zimbabwe African National Union – Patriotic Front
ZIMPHIA	Zimbabwe Population-Based HIV Impact Assessment
ZIMSTAT	Zimbabwe National Statistics Agency
ZRP	Zimbabwe Republic Police

List of international human rights instruments and documents

Beijing Platform for Action

Convention on the Elimination of All forms of Discrimination against Women (CEDAW)

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

SADC Gender and Development Declaration

List of local legislation

Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution)

Communal Land Act [Chapter 20:04]

Criminal Law (Codification & Reform) Act [Chapter 9:23] (the Criminal Law Code)

Rural District Council Act [Chapter 29:13] (RDCA)

Traditional Leaders Act [Chapter 29:17] (TLA)

Tribal Trust Lands Act (TTLA)

List of appendices

Appendix 1: Application for authority to the Judicial Service Commission	76
Appendix 2: Application for authority to the Binga Magistrate’s Court	77
Appendix 3: Letter of authority from the Judicial Service Commission	78
Appendix 4: Application of authority to the Ministry of Local Government and Public Works	79
Appendix 5: Letter of authority from the Ministry of Local Government and Public Works	80
Appendix 6: Application for authority to the Ministry of Women’s Affairs, Community, Small and Medium Enterprises Development.....	81
Appendix 7: Letter of authority from the Ministry of Women’s Affairs, Community, Small and Medium Enterprises Development	82
Appendix 8: Letter of authority from the Ministry of Lands, Agriculture and Resettlement	83
Appendix 9: Samples of research interview guides used.....	84

List of figures

Figure 1: Diagram showing the cycle of the grounded research process	27
Figure 2: Photograph of a woman farmer.....	50
Figure 3: Photograph of the ZUBO Director and the researcher (right).....	52
Figure 4: Photograph of fisherwomen	53
Figure 5: Photograph of a woman farmer’s forest of jatropher trees in Binga.....	54

List of tables

Table 1: Showing the distribution in the use of communal land between men and women	18
Table 2: Showing details of the key informants.....	31
Table 3: Showing the distribution of land ownership between men and women in section A of Nabusenga Irrigation Scheme.....	51
Table 4: Showing the distribution of land ownership between men and women in section B of Nabusenga Irrigation Scheme	51

CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Introduction

“Land is the only thing in the world that amounts to anything, for it’s the only thing in this world that lasts. It’s the only thing worth working for, worth fighting for, worth dying for, because it’s the only thing that lasts.”
Margaret Mitchell in Kanokanga (2018)

The above statement justifies the worthiness of land as property for the livelihood for human beings, men and women alike. Since women continue to lag behind men as far as land rights are concerned, their struggle to improve their access to land remains on-going. In fact, land, as a resource, receives more global attention than any other (Kanokanga, 2018), especially in the realm of its allocation and management. In recognition of the crucial need for women to access land, African states, including Zimbabwe, who are parties to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) are “required to take appropriate measures to provide women with access to ... land” (article 15(a)).

At national level, section 289 of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution) on the principles guiding policy on agricultural land needs to be observed. Section 289(c) is particularly worthy of mention since it states:

‘The allocation and distribution of agricultural land must be fair and equitable, having regard to gender balance and diverse community interests.’

Equality and non-discrimination are two principles which have proved to be difficult to realise especially as far as gender is concerned. Commenting on gender relations in Zimbabwe, which are manifested largely through male dominance and female subordination (Gudhlanga, 2010; Ostergraad, 1992), Gudhlanga (2010) says they have always been biased against women. This is despite the government’s efforts in enacting progressive laws which are aimed at protecting and promoting human rights for both men and women as evidenced by their inclusion in the country’s progressive 2013 Constitution.

Land in Zimbabwe is one of the essential means of production which requires fair distribution between men and women for the development of the country. Armed with international human rights instruments to which Zimbabwe is a signatory, gender equality and non-discrimination on access to and distribution of critical resources such as land should not be a problem. In fact achieving and maintaining gender equality should be an every day reality in Zimbabwe in view of the progressive legislation it has enacted since independence relating to improved access to and distribution of the country's resources.

The fact is however that women continue to experience challenges in accessing communal land despite the active presence of officials from the Gender Commission and the Ministry of Women's Affairs, Community, Small and Medium Enterprises Development and other state agencies up to village level in rural areas who are driving gender equality programmes promoting access to and distribution of the means of production.

While statistics indicate that about 86% of women in Zimbabwe depend on land for their livelihood, only 5% of rural women have primary land rights while the majority access land through their husbands or other male relatives and sometimes have no access at all (ZimStat 2012).

This study will establish that inaccessibility of communal land by rural women in Binga has negatively affected their welfare and that of their families. It has generally derailed the development of rural communities which could be experiencing positive growth if women were afforded fair access to communal land as they are considered to possess both the necessary capability and agency to use it effectively (Birds and Espey, 2010).

Gender relations have often legitimised the exclusion of women from participation in decision-making processes especially concerning the allocation and management of natural resources, including land. The noted result of these unequal relations is the failure of women to access basic resources like land which is the backbone of their livelihood. Of importance is the emphasis placed by most African governments on formal laws to improve women's access to land. According to most international and regional human rights instruments such as Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Maputo Protocol, every state party has the duty to protect, provide, respect and fulfil the right to land to all its citizens in an equal and non-discriminatory manner.

It is a fact that women living on communal land contribute so much to the well-being of their families through agricultural activities. However, their interests are not seriously considered by policy makers who seem to ignore their rights to land. Zimbabwe as shown by its ignorance to women's access to land seems to follow the gender-blind approach to land issues.

1.2 Background of the study

Gender inequality on the access to productive assets has been a long talked about issue world-wide. However, it seems not enough is being done. The question which this study seeks to critically analyse is why is the discourse on women's access to land not receiving the expected attention it deserves from Zimbabwe's decision makers?

Although there are several studies done on land distribution in Zimbabwe, many such studies concentrate on racial imbalances created during the colonial era between whites and blacks. Although it is acknowledged that active participation of women is key in the fight against poverty, little research has been conducted on the women's rights to communal land resulting in the government turning a blind eye to them when formulating and implementing programmes claiming to eradicate rural poverty. In 1995, while giving a speech during the launch of Bulawayo's Kelvin North Training Centre, Bjorn Forde, the then Secretary General of MellefolkelightSamvirke (MS), emphasised the importance of having a rural focus as it is considered that the poverty in communal land areas deserves most attention to achieve sustainable development (Nielsen, 1995).

Lack of appropriate evidence for decision making has been cited as a key problem blocking progressive policy responses to women's access to resources (Bird and Pratt, 2004):

“Inadequate research funding for gendered micro-level studies limits the generation of robust empirical evidence which might challenge the perceived unimportance of intra-household and gender concerns” (Bird and Espey 2010:365)

Commenting on the status of black women, Stewart (2010) emphasises the need for research in countries in the Eastern and Southern African region on women's access to and control of resources including land (Stewart, 2010: 246).

This study is therefore aimed at providing the much needed empirical evidence on women's access to communal land to assist in both gender-setting and policy formulation. The research employed the Social Relations Approach which is mainly concerned with analysing the role of gender inequality in the distribution of resources.

Policy makers usually prioritise those policies which seem less complex and less costly and the availability of evidence through research may be considered one of their priorities. In this respect Bird and Espey observe:

“A lack of evidence for decision-making can have a considerable impact upon policy priorities” (Bird and Espey 2010:365)

Medeiros and Costa (2010) also emphasise the importance of accurate information about societal trends in the policy making process. They claim that “a flawed diagnosis of the facts may end up misguiding policies and making their results inadequate.” It therefore follows that a solid or well-grounded understanding of the actual situation of women and men in society is a key basis for the formulation of policies and for the evaluation of intervention strategies and measures aimed at closing gender gaps

Women's land issues related to the Fast Track Land Reform and Resettlement Programme (FTLRRP) and urban land have been widely documented. However, less has been said about how women on communal land access, control and use land and their rights to such land. It is therefore the aim of this study to document the ways in which rural women access, control and use communal land and how the administration of the communal land system impacts them.

The communal land tenure system is one of Zimbabwe's prevailing systems of tenure which is governed by the Communal Land Act [Chapter 20:04] (CLA) and other Acts of Parliament. Statistics indicate that 42% of the total land in Zimbabwe falls under the communal land system (ZimStat, 2012). Women in rural areas who access land through their fathers, husbands, sons, uncles, brothers or other male figures as stipulated by customary law are the major users of communal land as shown in Table 1.

Table 1: Showing the distribution in the use of communal land between men and women

	Women	Men
Communal area (size)	3 173 546	2 825 855

(Source: ZimStat 2012)

Section 4 of the CLA stipulates that all communal land is vested in the President of the country and all those who access it have usufruct rights. Statistics have shown that access to land in Zimbabwe has been proved to be a gendered process. The existence of the nation's dual legal system (of general and customary law) in which its laws, policies and socio-cultural practices interact with each other is blamed for the gendered contract system which is largely biased in favour men.

Most studies carried out so far have pointed to women's subordinated position and under-representation in land delivery institutions as an accelerant to their lack of institutional support. In Latin America, women were found to own less land than their men counterparts and it is mostly men who make major decisions concerning the family's land produce (Reinhardt, 1988; Deere and Leon, 2003). When women do inherit land, it is a mere process leading to the land simply being handed from one male person to another who may be a son, husband, brother or uncle. In fact, women are only used as access points and conduits (Stewart, 2011).

Despite the existence of a wide range of progressive laws in Zimbabwe's statute books which aim at gender equality, women still suffer discrimination in as far as access to, control over and use of land especially in communal land is concerned as they still fall under the domination of certain traditional customs and practices. A major stumbling block for Zimbabwe's rural women is their own lack of awareness of their rights.

1.3 Statement of the problem

Section 56(2) of the Zimbabwe Constitution, which is the country's supreme law, provides for the principles of equality and non-discrimination by guaranteeing that all men and women have the right to equal treatment including the right to equal opportunities in all spheres of life. This principle also extends to property rights meaning that every Zimbabwean citizen including all women have the right to acquire, hold, occupy, use, transfer, hypothecate, lease

and dispose of all forms of property (including land) individually or in association with others. However, the communal land administration mechanisms in place are discriminating against most rural women in their access to communal land resulting in the deterioration of the welfare of the women and that of their families. This is in contravention of section 80(3) of the Constitution which states that all laws, customs and cultural practices that infringe the rights of women conferred by the Constitution are considered to be void to the extent of the infringement.

Considering that land is one of the vital resources of rural women's livelihood which ensures their economic survival and growth, this research is aimed at finding ways in which rural women can access communal land in an equal and fair manner which in turn will have the effect of stimulating the development of their rural communities and the country at large.

1.4 Objective of the study

The objective of this study is to explore the challenges faced by rural women in realising their land rights in practice. Overall, the study is aiming to assist in reforming land administrative processes in Zimbabwe's communal lands.

1.5 Research Assumptions

The following assumptions informed the research:

1. Traditional practices hinder women's access to communal land in Binga.
2. Involvement of several land related agencies in the administration of communal land hamper women's access to land in Binga.
3. Lack of women's access to communal land has an adverse impact on their livelihoods in Binga.
4. Laws and policies that are in place do not adequately promote women's access to communal land.
5. There is a need to review the land administration mechanisms in Binga to ensure more women have access to communal land.

1.6 Research Questions

The research questions which guided this research as informed by the above assumptions were as follows:

1. Do traditional practices hinder women's access to communal land in Binga?
2. Does the involvement of several land related agencies in the administration of communal land hamper women's access to land in Binga?
3. Does the lack of access to communal land have an adverse impact on women's livelihoods in Binga?
4. Do laws and policies that are in place adequately promote women's access to communal land?
5. Is there a need to review the land administration mechanisms in Binga to ensure more women have access to communal land?

1.7 Definitions of Terms

Access

"Theory of access" by Ribot and Peluso (2003) defines access as "the ability to obtain benefits from things", in this case, land. Marlet et al. (2015) define access to land as the ability to freely choose, control and use the output from it.

Empowerment

Kabeer (1999:473) defines empowerment as "the expansion in people's ability to make strategic life choices in a context where their ability was previously denied to them."

Women

'Women' is a term which usual depicts female adults. For this study, it will mean female person irrespective of age.

1.8 Summary of chapters

This dissertation comprises five chapters. Chapter one basically explains the motive for conducting this study. It includes its background, objective, research assumptions and questions. Chapter two explains the methodology of the study. Different methodological approaches are given which explain how the research was conducted. It also explains the different methods used in the collection of data from the different sources. It also details the theoretical framework which was engaged throughout the study. Chapter three analyses the research findings. It concentrates on how communal land is controlled in Binga. Women who are central to this study are compared with men in their access to land as their source of livelihood. The system which regulates land is analysed and evaluated in the context of their

impact on the women's well-being. Chapter four looks at the mechanisms of land management in Binga and whether and how they consider women and how they impact them and their access to land. The final chapter summarises the conclusions of the study based on its findings discussed in chapter three. These conclusions are specifically linked to each research assumption. The final part of this chapter is dedicated to the suggested recommendations emanating from the study which, it is hoped, may be useful to policy makers.

CHAPTER TWO

2.0 THEORETICAL AND METHODOLOGICAL FRAMEWORK

2.1 Introduction

Different methodologies, methods and theoretical perspectives have been engaged in this study. This chapter therefore outlines and justifies the adopted methodologies, methods and theories, including the constraints met during the study. For clarity purpose, the chapter is divided into two main parts. Paragraph 2.2 deals with the theoretical framework while paragraph 2.3 concentrates on methodological framework of the study..

Paragraph 2.2 focuses on the theoretical perspectives including the women's law approach which focus on explaining and understanding women's lived realities. The section explains the reasons for choosing the theories and methods used including their strengths and weaknesses.

The description of the research design for this study is contained in paragraph 2.3. Here, an explanation is given of grounded theory, which is the main methodology used in this study. It also describes how data was collected from the research sources in an attempt to address the research objectives, assumptions and research which guided the whole study.

It should also be mentioned that this study which is qualitative looked at women using the actors, norms and institutions oriented approach.

2.2 THEORETICAL FRAMEWORK

2.2.1 *Women's Law Theory*

Despite being a theory within the law discipline, the women's law approach embraces other disciplines such as sociology, anthropology and many more (Dahl, 1986). Dahl (1986) further describes the methodology of women's law as cross disciplinary and pluralistic. This study used the women's law approach as its key theoretical framework. Its relevance emanates from the nature of the study title "women's access to communal land" which is a women-focused study.

Upon entering the research field, I considered on which women to concentrate and the type of land to take into account within the purview of the study. I took into account that women are

not homogenous. I found a number of factors differentiated between the women living in the research community. Some of the factors considered included the age, tribe of origin, marital status and many more. Non-homogeneity means that women were affected by women's issues, including land, differently which meant that I had to consider the sameness and difference approach during my research. For example, older women had different stories to tell from younger women. So there are differences between women despite the fact that they are usually viewed as a common group or sisterhood (Ann Stewart, 2011). Sameness and difference can also be intersectional as postulated by the women's law approach. This study established the fact that rural women are discriminated against in the context of land governance simply because they are women. However, some women suffer additional discrimination because, e.g., they are outsiders and not from the local Tonga tribe.

The women's law approach links women's lived realities to the laws which regulate societal behaviour. Its aim is to interrogate and investigate the system of law as it affects the lived realities of women (Bentzon et al., 1998). As pointed out by Stewart (1997), the women's law approach considers women and their lived reality as a starting point in the formulation of the law and eventual law reform which makes a drastic change from the traditional system of seeing law as the beginning of the process. It is its bottom-up character (reality – law) which inspired me to engage the theory in my study of women on communal land. This was also emphasised by Bruijn et al. (1997) when they realised that the key to bridging the gap between societal problems and their potential solutions begins with academe securing a sound grounded understanding of the problems themselves. The bottom-up approach has the effect of allowing the lived realities of those most in need of solutions to shape the law instead of the law makers “taking (or rather imposing) the law (of their own creation) to/on the people.”

The women's law approach enabled me to analyse the women's lived realities as to how they accessed, used, controlled and managed communal land as compared to men within the context of international and local formal laws. In other words, I compared reality as it is on the ground with the reality intended by the law (reality versus the law). Since legal pluralism dominated the community I researched, the women's law approach became very relevant especially as I had to consider the impact of different types of laws on the women's enjoyment of their rights, freedoms and entitlements.

Apart from the formal systems in place, the community relied on other informal norms and dispute resolution mechanisms recognised by the women's law approach (Bentzon et al., 1998). This approach enabled me to move away from the assumption that the formal legal system is the only source of rights. The women's law approach also recognises semi-autonomous structures which play a part in shaping the behaviour of members of a society. In some cases, these semi-autonomous structures might emerge stronger and become even more influential than the existing legal structures. This was one of the reasons that I found the women's law theory more suitable and applicable to this research than the legal positivist theory which recognises only the formal system of law as the source of human rights and ignores the moral philosophic basis of human rights (Shestack, 1998).

My study looked at the welfare of rural women's livelihood which depends on communal land. As such, I disregarded the positivist theory which regards the formal law system as the only one to be obeyed even though it ignores the welfare of the individuals who are ruled by it. For example, the law recognises the head of the family, who are mainly men, to be the beneficiaries of government programmes. This immediately puts women at a disadvantage. This is a situation in which an approach inspired by moral philosophy, such as the women's law approach, should be applied.

In conclusion, as pointed by Tsanga and Stewart (2011), the inadequacy and confining nature of law in conceptualising and resolving societal problems has persuaded me to opt for the women's law approach as the main theory of this study.

2.2.2 African feminism as related to access to resources

In investigating women's access to communal land, African feminism was engaged, especially considering the importance of communal land in an African context. In fact, African feminist theories informed this study as it looked at the ways in which land is shared between men and women in Africa's rural areas.

The uniqueness of the African feminism perspective from traditional western feminism is in its refusal to separate women from men. Some African feminists such as Ogunyeri (1996) even replace the term feminism with African womanism to distinguish it from separatist-centred motive of feminism. The concept of womanism emphasises the complementarity of rather than competition between men and women. Steady (1981) defines African feminism as

emphasising female autonomy and co-operation, nature over culture. The concern of African feminism is the equality of all African people irrespective of gender.

African feminism questions the features of traditional African cultures without denigrating them. African feminism became relevant in this study for its emphasis on African women whose problems are largely concerned with access to the basic amenities of life and land as one of those amenities.

Ogundipe-Leslie's (1994) STIWANISM theory (Social Transformation Including Women in Africa) is one of the important African feminist theories. It emphasises social equality with men in Africa. Those who are for the theory observe the historical gender inequality but believe that change may be brought about by convincing men to consider women in social spheres. Leslie's STIWANISM model is relevant in redressing current economic inequalities between men and women in African communities, especially rural areas where men still control resources.

Acholonu's theory of Motherism (1995) is another strain of African feminism. In her book, *'Motherism: the Afrocentric Alternative to Feminism,'* Acholonu (1995) describes motherism as composed of motherhood, nature and nurture. The theory involves several elements, such as ordering, reordering, creating structures, building and rebuilding in cooperation with Mother Nature at all levels of human endeavour. In explaining "motherist", the theory does not separate men and women just as our African societies experience both female and male-headed families. A mother is characterised by partnership, co-operation, tolerance, love, understanding and patience.

Nego (no ego) feminist theory is another African feminist theory which is based on negotiation. The theory itself is structured on cultural imperatives of the society. As Nnaemeka (2004) puts it, this theory describes the lived realities of African cultures which have a culture of negotiation and compromise in the realising of agreements. Women in rural areas are generally patient and believe in negotiating with their male counterparts for access to resources including land.

Other African feminist theories such as the cultural feminist theory which focuses on the liberation of women through individual change also informed this research. This theory

utilises the essentialist understanding of male and female difference as the foundation of women's subordination in society – 'the otherness of women.' These were the main theories which informed this study.

2.3 METHODOLOGICAL FRAMEWORK

2.3.1 Introduction

It is always essential in research to have a well thought out action plan. Yin (1984) emphasises having a clear action plan starting with creating a set of questions to be answered and ending with the final stage at which conclusions about the answers to the questions are formulated. In pursuit of a similar process, I came up with a research design which involved a number of steps which were taken between the setting of the research questions and the formulation of the study's conclusions and recommendations. The planned steps included the choice of the data collection methods, the process of collection and the analysis of collected research data.

The study's main research question is, 'To what extent do Zimbabwe's national laws differ, if they do, from the regional and international human rights instruments affording women free control of communal land and its produce?'

2.3.2 Choice of research methods in collecting data

The research design employed is based on the research objectives, assumptions and questions outlined in Chapter 1 of this study. Beside engaging feminist perspectives in understanding women's experiences (Giddens, 1984) which were only used as mere "sensing devices", I should mention that the field work was embarked upon in an open-minded manner (Rutsate, 2016). This study employed both purposive and convenience sampling where data was collected using the in-depth interviewing of key informants, group interviews and focus group discussions (FGDs) mainly with women. There were some cases in which I employed observation and participatory methods especially where I felt biased data could be obtained if I used the interview method.

2.3.3 Grounded theory and its relevance to the study: The sifting process

Bentzon et al. (1998)'s definition of grounded research was considered appropriate in my study. They define grounded research as:

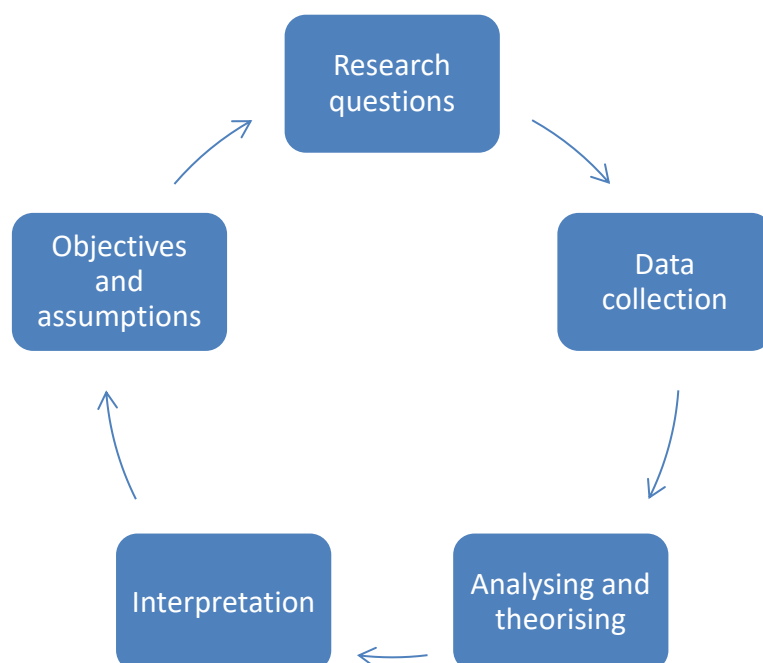
“an interactive process in which data and theory, lived reality and perceptions about norms are constantly engaged with each other to help the researcher decide what data to collect and how to interpret it” (Bentzon et al, 1998:18).

Considering that not all data was immediately relevant to my research, I had to select more relevant and appropriate data (like ‘wheat’) from the rest of the data which I considered chaff (set aside for possible future use) and therefore I likened the exercise to a sifting process.

More importantly, grounded theory became appropriate when the data obtained led to the obtaining of more data and the process continued.

Following similar steps as in Rutsate (2016)’s PhD thesis, Bentzon’s (above) approach was found to be appropriate in conceptualising grounded theory in this study as it describes the similar process I also had to go through. As is discussed later in this study, the research design also followed the process of collecting data, engaging with and interpreting it which then led to the emergence of new questions which in turn necessitated the collection of further data. This process is depicted in Figure 1.

Figure 1: Diagram showing the cycle of the grounded research process



Source: Hull (2014)

Grounded approach was considered important in this research as it allowed continuous engagement with objectives, assumptions, questions and moreover research methods. The new questions which emerged from field work necessitated the collection of further data. Data analysis, conceptualisation and theorisation were done to generate new research concepts. The process then led to the continuous revision and development of objectives to match the research assumptions and questions until final moderation was reached.

In engaging with grounded theory, I constantly applied what Bentzon et al. (1998) term the “six research skills or tools”, namely, an open mind, next question technique, concept building, constant comparison method, theoretical selection and limitation on theory building.

2.3.3.1 Reasons for applying grounded research

There are several approaches that I could have used in this study including desk research. Yet upon comparing these approaches with each other I was led to choose the grounded approach as the most appropriate methodology for this study as it yielded the best results. The need for empirically obtained evidence which has a higher potential for providing a more accurate reflection of the events in the field made me favour the grounded research approach. For example, though cheaper, desk research, which lacks personal interaction with research participants, was considered to be more likely to give an inaccurate analysis of the events in the research field. The weakness of desk research is that it relies purely on secondary data obtained through archive material, the internet or other means which do not involve the researcher’s personal interaction with interviewees. Input data emanating directly from my engaging and listening to participants’ worldviews and opinions and making my own personal observations of their roles within the events occurring in the field of research were crucial to establishing the veracity of this study. This is supported by Graham (1991) who emphasises the need for researcher-actor interaction:

“Satisfactory explanations of social activities ... require a substantial appreciation of the perspectives, culture and worldviews of the actors involved rather than depending merely on statistical evidence” (Graham 1991, 178).

Grounded research also enhances the generation of theories, as explained by Bentzon et al. (1998):

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

2.3.4 Selection of appropriate land institutions and actors

Despite the numerous structures involved in the regulation of communal lands, I had a hard time in making a decision as to which institutions and actors to include as participants in my study for the obtaining of accurate information. Finally, I decided on state and non-state institutions. State institutions included the Rural District Council (RDC), the District Administrator (DA), the Ministry of Gender, the Judicial Service Commission (JSC) and the Agricultural, Technical and Extension Services (Agritex), while the non-state institutions were non-governmental organisations (NGOs) such as churches and other private organisations.

The study required me to go further and select the actual actors. In so doing, purposive sampling was used to select particular participants for interviews. Some of the selected interviewees included the Chief Executive Officer (CEO) of the Binga Rural District Council (BRDC), the Binga District Administrator (BIDA), the Binga resident Magistrate, the District Development Coordinator (DDC) in the Ministry of Women’s Affairs, local Agritex officers, traditional chiefs, committee members of Village Land Committees and Councillors. Local elders were also selected for their rich knowledge of local traditional norms and practices. Women, including the victims of land issues, were also interviewed. Leaders of selected NGOs, churches and other independent organisations completed the list of interviewees. However, gaps which arose during the study necessitated the expansion of institutions and actors to include local youth, the police and other local men.

2.3.5 Engaging the appropriate method: Qualitative versus quantitative

Based on the research title, “Women’s access to Communal land,” the study is women focused which, as explained earlier, used the grounded approach as its main methodology. The study was qualitative in nature. I found Holleway and Wheeler’s (2002) definition of qualitative research very appropriate in that they define it as:

“a form of social inquiry that focuses on the way people interpret and make sense of their experience and the world in which they live”.

In this case, the study focused on the experiences of women in relation to communal land for both agriculture and residential purposes. To be more specific, the aim of the study is to find gender conflict resolution mechanisms on land issues which are currently absent at the district level and below (Marongwe, 2002). The study considered it more appropriate to focus on women’s personal narratives on the extent of their involvement in communal land governance instead of relying on quantitative statistical data in that respect (Rutsate, 2016).

However, despite the qualitative nature of this study, some quantitative data proved useful in supporting the main qualitative method used in this research. The mixture of research methods (as this can be termed) assisted in the triangulation of the data which verified the consistency of the findings obtained from the different research methods used (Denzin, 1978; Patten, 1999)

Moreover, I took into account that answers to different research issues can be provided by employing different research methods (Graham, 1991, Denzin, 1970) hence the possibility of using different methods (qualitative and quantitative) in the same study. In this study, I found it important to engage with the quantitative method, though to a lesser extent, as a means of measuring the levels and quality of women’s participation in land management. For example, a comparison of the number of women and men beneficiaries of land in irrigation schemes and the composition of land committees were used to confirm gender equality and discrimination.

The study focused more on rural women (in Binga District) where ZIMSTAT (the nation’s data base) lacked accurate data. This therefore necessitated opting less for the quantitative and more for the qualitative research method with more emphasis on capturing the women’s voices in order to make informed conclusions about the women’s status in respect of their access to communal land. In an effort to ensure that this study makes a meaningful contribution to knowledge, I considered it important to rely more on qualitatively obtained data though it was supplemented to a certain extent by quantitatively obtained statistics regarding women’s access to land in communal areas.

2.3.6 Information soliciting: Methods used to obtain research data

2.3.6.1 Interviews

The main data collection method engaged was interviews which were conducted either on a one-to-one basis or in a group. In-depth interviews were done mostly with key informants such as government officials, chiefs, councillors, local elders, women and other identified informants (Table 2).

The one-on-one interviews were mostly done in easily accessible areas such as around Kalungwizi village which gave me sufficient time to interview a number of informants. Considering that the study was carried out during the summer season when rural farmers were busy with preparing their land, focus group discussions became the only viable option especially when respondents lived in more remote areas. This method allowed me to capture data from a number of participants at the same time, especially from those who shared common interests, such as youths.

Table 2: Showing details of the key informants

Category	Frequency	Female	Male
Government agencies	8	6	3
NGO managers	5	2	3
Focus Group discussion	5	32	9
Traditional leaders	9	1	10
Local elders	9	13	8
Youths	4	10	4
Total	40	64	37

Source: *Researcher*

Despite the type of interviews employed, this method allowed me to listen carefully to people's personal views on how things were supposed to be done, past experiences and more

importantly the narrations of the real experiences they were encountering as individuals, as part of their household, family or community. This is acknowledged by Reinharz and Davidman (1992) as follows:

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

Semi-structured research interview guides (Appendix 9) were used to allow for information flexibility which is absent when a full structured interview is adopted. Open-ended interviews were preferred to allow interviewees to include any information which they felt was relevant. In addition, the guide assisted in giving direction to the interview. The flexibility and informality of interview guides allowed me to fill the research gaps during my field work, i.e., I could get clarification or more explanations when the need arose.

2.3.6.2 Ethnographic means of data collection

One of the factors which led to the choice of the research area was my personal acquaintance with the norms and practices of the local people which made it easier for me to live with them during the study period. Since the study was carried out in my home area, my presence did not arouse suspicion among the research participants. My rich prior knowledge of the research community enabled me to accurately describe and interpret the cultural practices of the social group under study. This method of data collection is referred to as an ethnographic study. It is an inquiry process which consists of the prolonged observation of a group, typically through participant observation, in which the researcher is immersed in the day-to-day lives of the people and involves one-on-one interviews with members of the group (Creswell, 1998).

Besides engaging in-depth interviews with key informants, group interviews and focus group discussions (which assisted in giving an accurate description and interpretation of the culture and other existing social structures in the communal areas), I also used participant observant or participatory research skills which involved my observing and analysing the everyday social life of the researched community at close quarters. Being a local son of the research area proved an advantage in that the participants, my fellow community members, felt at ease with me, trusted and confided in me. For instance, I was welcomed at and could easily attend local court sessions which presided over land disputes. Also being a resident of the

researched community enabled me to engage in discursive-like interviews with my fellow residents. This method was seen to be effective in soliciting more information than anticipated due to the openness of the interviewees. Therefore, the data which was obtained through participant observation enriched the accuracy of the results of the study.

2.3.6.3 Data from secondary sources

(a) Desk research: Library and the internet

Desk research cannot be completely ruled out in any study as researchers engage already existing data. My first entry in this research was to engage library and internet sources. The internet enabled me to access relevant electronic journals and other electronic data which I used to complement the primary data obtained from the field.

Apart from accessing the SEARCWL library, I managed to access hard copies of literature from other sources. They were invaluable resources and without this already existing information, some research gaps could not have been completely filled.

(b) Story telling - Historical evidence

The study made use of life history narratives of key informants such as elders and traditional leaders who remembered how communal land management was formerly conducted. Useful information was obtained from elders who narrated how women used to be treated in land matters. This method of data collection was necessitated as a result of the absence of documented evidence of the researched communities. While I found it useful to compare how communal land management was conducted in the past and at the time of the study, I heeded the warning of Holloway and Wheeler (2002):

“The content of such first-person narratives necessarily emerge from memory which is selective.”

2.3.7 Ethical considerations and limitations

The proper handling of ethical issues is an important factor in research involving interaction between different people. This section discusses the ethical issues and limitations that confronted me during the field work. I also discuss the solutions which I adopted in trying to overcome the constraints.

2.3.7.1 Anonymity of informants

During interviews, my informants spoke of events which occurred in their private lives in their families and in their community. Some of these issues were sensitive and disclosure of their identities would expose them to victimisation by their families and/or community. Therefore even though I gave my informants no explicit guarantee of anonymity, I used pseudonyms to protect their identities in view of the fact that this research was to be published and available for public consumption.

2.3.7.2 Times of interviews

For the sake of convenience, interviews were mostly carried out during the day. Rural women, the focus of this research, are not comfortable with visitors “after hours” especially concerning sensitive issues such as those covered by the research.

2.3.8 Constraints and solutions

The field work had its own constraints. However, quick solutions which I considered would not compromise my research were employed to overcome them. I summarise these constraints below and how dealt with them.

2.3.8.1 Demand for incentives by participants

The area of Binga is a popular research field for nearby tertiary institutions and most research is donor funded which pays participants rewards for their information. For example, my research in the area coincided with Zimbabwe Population-based HIV Impact Assessment (ZIMPHIA), a sponsored research project on health during which the researchers offered cash to their informants. This experience had caused people in the area to fall victim to “donor dependency syndrome” as a result of which they expected money or other material gifts from me for participating in this research. After a few embarrassing encounters I made it a point, prior to interviewing any person, to first clearly explain that this research was a purely academic exercise for which they as participants would receive no material benefit. I also made it very clear that this research was intended for use by policy and law makers who have the requisite capacity to materially assist Binga in the long-term.

2.3.8.2 Politicising land issues

In some visited institutions such as the BRDC, Agritex and the DA’s office, I found that this land issue is highly politicised to the point that key informants would distance themselves

from me. One instance occurred at the BRDC when the CEO avoided me and referred me to the Council's Human Resources Manager who in turn referred me to the Social Welfare Manager. It was evident that the Council leadership was not interested in discussing District land issues which is political issue. They also seemed to believe that I might be a spy for a certain political party. Despite my production of the research approval letter from the Ministry of Local Government (Appendix 5) they refused to accept the fact that this research was purely academic.

My solution was to request an audience with the CEO to whom I fully explained myself and produced evidence including my application to and authority from the Ministry of Local Government to conduct the research (Appendices 4 and 5) and my student card. Although the CEO declined to be interviewed, he authorised an interview with his subordinate (the Social Welfare Manager). I used my connections with local Agritex officers to facilitate access to representatives in the Ministry of Agriculture.

Appendices 1, 2, 3, 6, 7, and 8 are the various applications for permission I needed to make to various government authorities and the authority they provided in order for me to conduct this research.

2.3.8.3 Effect of participants' activities during the study period

The study was carried out between November 2019 and February 2020 when most rural farmers were busy with various agricultural activities. This posed a challenge since most informants in the research community could not spend much time with me. To overcome this constraint, I opted to visit my informants on Thursdays and Sundays which are not traditional working days in Binga. I also made a point of setting up appointments prior to interview dates.

2.3.8.4 Resistance of local leadership

In every rural area I visited, my entry point was the village head to whom I had to explain my intention before engaging in interviews with informants in the area. However, this presented its own shortcomings. Some village heads did not trust my presence as they viewed my research as a threat to their traditional ways of managing land in their area. They then kept track of my movements within their areas. In one instance at Malube village, the village head wanted me to interview informants in his presence which I agreed to do in order to avoid any

conflict. However, this incident was not repeated in other villages. One advantage of the members of village leadership's acceptance of me, a resident of the researched community, is that they gave me the benefit of doubt.

2.4 Summary on methodology framework

It can be concluded that the main methodological approach used to collect empirical data for this research was the grounded research approach which involved actors. In the collection of the research data, various research tools and instruments were used and they included semi-structured questionnaire assisted interviews, observation and participatory research skills. Finally, quick solutions to overcome general constraints during the field work were outlined.

CHAPTER THREE

3.0 COMMUNAL LAND GOVERNANCE IN BINGA: WHO CONTROLS LAND?

3.1 Introduction

It would be short-sighted to analyse land rights in rural areas without spelling out the players involved in the management of communal land in Zimbabwe. These institutions influence how the resource is shared between men and women. This chapter therefore discusses the links between the different institutions in the governance of communal land in relation to women's land rights.

3.2 The dominance of Tonga traditional practices in land allocation in Binga

Cultural norms, beliefs and values and customary law are cited as reasons for women's lower social and economic status (Mavuru and Nyanhanda-Rutsauka, 2008). This is despite the provision of section 17(1)(c) of the Zimbabwe Constitution which states:

“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 to men.”

The dominant practice of patrilocal marriage in Tonga people makes women subordinate to their husbands. This system, which moves women to their husband's village, makes them intruders among their husbands' families and as such they are made to feel like outsiders and are treated as when it comes to accessing family resources including land. The indirect accessing of land by women through their husbands during marriage is not a problem in Tonga culture.

At the global level, Zimbabwe as a party to CEDAW, should seriously consider Article 5(a) which says:

“States Parties shall 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.”

During their marriage, wives find themselves in a comfort zone in terms of accessing family resources. However, problems arise after the dissolution of the marriage (upon divorce or

death) when the husband's family is required (according to Tonga culture) to take the woman back to her original village/family. This is a violation of CEDAW's article 16(c) which stresses that couples enjoy the same rights and responsibilities during and upon the dissolution of their marriage. One woman said in a FGD:

“When I am still in marriage I would be rich as I can access my husband's land. From the back of my mind, I know this is temporary because these people will take me back to my father when the marriage ends and I will be denied the same land I am using today. Men are cruel because they don't consider my effort in acquiring and clearing the same land. Sure, something needs to be done to free us as women from this situation”.¹

Usually the women's original family do not allocate resources to their married daughters since men consider that they already access resources through their husbands. This therefore entails that the dissolution of their marriage is basically the end of women's access to resources especially land which is vital for their livelihood as discussed in the next section on traditional court cases. It is worth noting that Article 13(a) opposes discriminating against women in respect of family resources. It emphasise the equal right to family benefits for both men and women. In this context, a divorced daughter has the right to benefit from her family's resources.

I interviewed three sisters from the same family.² They explained that their father allocated them pieces of land before they got married. When they got married they left their home and joined their husbands' families. They said the land their father had allocated them would then be used by another member of their family who wanted extra land. They explained that the problem would arise if their marriage failed. Upon returning to their home it would be difficult for them to claim back the land which had been allocated to them to their marriage since in their absence their father would most likely have already re-allocated it to his sons.

The three sisters criticised the inconsistency in the system of allocating communal land in Binga to women. Under the old system the responsibility of allocating permanent land to a wife would fall on her husband's family. According to this system, a girl would be betrothed or pledged in marriage as early as 3 years old or younger and her husband would monitor her growth. There was no minimum marriageable age. For this reason, a girl's father would not

¹ Interviewed at Kalungwizi on 19/12/19.

² Interviewed at Kalungwizi on 27/12/19.

allocate land to his daughter who would eventually marry and join her husband and his family. It would be the responsibility of her husband to allocate his family's resources including land to his future wife.

Under the new system, girls get married when they are mature, say at the age of 16 years and older. Since girls are capable of owning land before they marry, their fathers allocate land to them. However, marriages are no longer as permanent as they used to be and divorced women re-marry and the process continues so long as the woman remains sexually active. Such women have earned themselves the name "*banakwenda*."³

The three sisters complained that both these systems are now being erratically applied which leaves women in doubt and uncertain as to who is responsible for allocating land to them. They complained that despite the fact that boys also leave home, they are allocated land on a permanent basis and it remains theirs, but this is not the case with girls. They gave the example of a boy who grows up and leaves his home to work in the city for 20 or more years yet the land allocated to him is kept for him although it might be temporarily utilised by another family member until his return; but the land allocated to him by his father always remains his land. Their question was, 'Why can't this also happen with girls. In the same way as employment which can terminate for men working in cities, marriages can also terminate for daughters who marry.' Their argument was that employment and marriage should be treated in a similar way. Their reasoning was, if a married woman leaves and loses her right to keep land allocated to her by her father, a son who leaves to work in the city should also lose his right to keep land which has been similarly allocated land to him by his father.

One old man explained clearly the two versions when he was stressing the point on how land was inherited on the death of a husband.

(a) The old customary way of allocating land to women

He stated that in the past, a woman had the right to receive land from her husband. This was due to the fact that in Tonga culture, if a woman gets married, the bond between her and her husband's family is expected to be permanent (i.e., marriage was forever). Divorce was rare. If her husband died the woman (widow) would marry one of her deceased husband's brothers as it was important to keep the same surname for all the woman's children. (Incidentally,

³ Nomadic people.

article 20(c) of the Maputo Protocol states that a widow shall have the right not only to remarry but to remarry a person of her own choice.)

For this reason, he said a woman would remain in her husband's family till her death and therefore she would only receive land from that family since she would spend the rest of her life with them. In this way, the land was given to the wife in the knowledge that she and the land would remain permanently with her husband's family. This meant that girls did not inherit their fathers' land since they would get married. When I asked what would happen to women who did not get married, he said it was taboo for a woman to remain unmarried. In fact, he said as soon as a baby girl was born her future marriage would be arranged (*kubatiramukadzi*); so a girl did not exercise her choice to marry, it was exercised for her.

Under this old system, the land which a woman receives upon her marriage remains hers and she remains in total control of it till her death. This is the old version of the customary way in which women access communal land.

(b) The new way of allocating land to women

He said this new system is now replacing the old system. This may be due to the application of women's human rights which are being advocated by NGOs, the government and civic organisations. For example, article 20(c) of the Maputo Protocol condemns the practice of widow inheritance and provides that widows have the right to remarry husbands of their own choice. In addition, diseases such as HIV have made widow inheritance a health risk. In spite of this, he said, widow inheritance is still practised in some parts of Binga. Under the new system the person who inherits takes over the property including land. Because the wife is not inherited, she is required to go back to her father's home "empty handed" irrespective of the provisions of article 16(c) of CEDAW. This is especially the case with younger widows who are still young enough to remarry. Because of this and to avoid conflicts, he explained that husbands no longer give permanent land to their wives since it is understood that they will one day leave their husband's family.

This practice of women remarrying after the dissolution of their marriages has earned them the name "*banakwenda*" meaning roving people. He said husbands now give permanent land only to their older wives who have no possibility of remarrying. This means the older a wife, the more likely she is to be allocated permanent land but it will still fall under the overall

control of the eldest son. I asked him how were women without male children or no children at all treated. He said, traditionally, if a woman has no male child or no child at all and no possibility of remarrying, she is required to go back to her father's home and he will have the responsibility of allocating land to her. He agreed that such women are usually allocated barren, unproductive and infertile land since the better lands will have already been given to the father's sons or his brothers. He concluded that the old system was better since it catered for women in terms of communal land allocation.

This scenario shows that the traditions of social norms are a major determinant of human relations at every level of society (Chant, 2010). It has been observed that Binga's traditional norms are very pronounced up to clan level. Once a man marries he is considered a family man and qualifies to be allocated family land. Observing this practice, Stewart (2010) describes women as access points and conduits by men to land and other resources. When I asked one old man why most women had no land of their own he very astutely declared:

“How can a property own another property? A wife is property acquired from another family like any other property which changes ownership. Women owning land might happen elsewhere [but] not in Binga. A wife is there to take care of my assets including family land and not as an owner of my family resources.”⁴

The Binga traditional system is jealously guarded and ruthlessly enforced by Tongas to the extent that they rebel against anyone and even government employees who go against their 'normal' way of doing things, especially on land allocation. Recently, the District Administrator (DA), now referred as District Development Coordinator (DDC), was evicted from her office after she tried to enforce the principle of gender equality and non-discrimination on family land allocation as required by section 17(1)(c) of the Constitution which states that:

‘the State and all government institutions at every level must take practical measures to ensure that women have access to resources, including land, on the basis of equality to with men.’

⁴ Interviewed at Siabuwa on 13/12/19.

This did not go down well with local traditional leaders who demanded her removal from office as a result of which she was removed. During the time of research, the office was still vacant. One bitter chief gestured widely with his hands emphasising his point:

“We don’t want Shonas and Ndebeles in these offices. These foreigners are sent here to destroy our traditions. We are saying no and we mean no to people who want to tamper with our way of living. As traditional leaders, we are advocating that these institutions be led by our own sons and daughters who understand our ways of doing things. With these Shonas and Ndebeles in office, we will go no way.”⁵

This touches on what Bird and Espey have to say about the importance of local knowledge in approaching and initiating changes for visible equality and economic development:

“Understanding the way in which household members interrelate the customary practices that govern their familial structures and traditional mores that affect their methods of managing assets and the complex of economic social and emotional calculations made by women and men when making decisions is vital for equitable social and economic development (Bird and Espey, 2010).

3.2.1 Women’s space in society: Women’s land rights

In most cases, women are used as access points and conduits (Stewart, 2010) to resources from which they never fully benefit. The age of majority of 18 which stipulated in the Constitution does not apply to the allocation of family resources among the Tonga.

The main factor considered especially in accessing land is the marital status of the man. Marrying is a man’s “passport” to obtaining land in his own right. In fact, a man largely earns respect from his community when he marries and the more wives he has, the more respect he receives. I asked Syandye, a 72 year old man from Kalungwizi village, about how he allocated land to his children and he had this to say:

“Land is for a family man. I give a piece of land to my son who gets married. Marrying is an indication that my son is mature and responsible. To me, unmarried sons despite their age are still considered boys who do not deserve to be given precious resources like land. Any of my sons who marry is assured of a piece of land.”⁶

⁵ Interviewed at Binga Growth Point on 18/12/19.

⁶ Interviewed at Kalungwizi on 10/01/2020.

He explained that daughters were not included in his land “budget” because he considered them temporary residents in his home as they would get married into another family at some stage in their life. Therefore, the issues of gender equality and women’s empowerment need to remain important areas of attention in development in the region.

The area councillor explained that, culturally, a woman does not receive land from her father before or during her marriage. A woman can only receive land from her father if she returns to his home after the dissolution of her marriage, i.e., following her husband’s death or upon divorce. A married woman needs to ensure relations between herself and her husband’s entire family are good so that she is allocated sufficient land to live off during her marriage. All these practices exclude women from family benefits which are violations of article 13(a) of CEDAW.

Emphasising the advantages of equitable allocation of resources between men and women, Marongwe (2002) has the following to say:

“A fair distribution of country’s resources is a prerequisite for peaceful co-existence and stable development of Zimbabwe.”

Women generally have limited access to land. A study among the Mousgoum people in Kenya established unequal access to land between men and women as follows:

“Women are not given access to land in their own right, but as wives or in the case of divorces and widows, as daughters or sisters of males within their own families (Bruijun et al., 1997:15).

An interviewed old man said that since women can be equated to property, it follows that women, as property, cannot own property. He continued that women are not capable of owning land because they themselves are considered to be first line property. He mentioned that this is the reason why a wife can be inherited like any other property. He gave the following the types of inherited property:

- First line property – wife
- Second line property – immovable property such as land and buildings
- Third line property – movable property

Based on this view, he said that we cannot talk of women owning land since they themselves are also considered property which is capable of being owned:

“Land is so precious that it cannot be given to a woman. Yes, a woman can use the land but the overall ownership is in the hands of a man always.”⁷

3.2.2 Solving land disputes in the traditional way

Traditional leaders who are the chiefs, head persons or village heads (Section 280 of the Constitution) have frequently engaged in solving disputes emanating within their communities. However, it is debatable as to whether it is proper for traditional institutions to solve these disputes.

The most serious weakness of these traditional leaders is their lack of legal knowledge which some view is essential for solving disputes. For example, it has been observed that they fail to distinguish between civil and criminal cases and, as a result, preside over criminal matters which should only be handled by the Magistrates’ Courts. During the course of this research, I came across an angry, aggrieved woman who complained that the traditional leader who heard her cases treated it as a land dispute and she had this to say:

“My brother-in-law came to my fields a where he cut off all my crops. He claimed that the field belong to his late brother and he was supposed to use the land, not me. My brother-in-law is claiming the land because I rejected to be inherited. I reported the case to our village head who unfortunately judged that my brother-in-law’s actions were above board. The village head in his judgement said my brother-in-law was correct to claim their family land from an intruder. I was now referred to as intruder.”⁸

Based on this woman’s narration, her brother-in-law committed the pure and simple crime of malicious damage to property (MDP) as defined by section 140 of the Criminal Law (Codification & Reform) Act [Chapter 9:23] (the Criminal Law Code) which provides:

“Any person who, knowing that another person is entitled to own, possess or control any property or realising that there is a real risk or possibility that another person may be so entitled, damages or destroys the property —

- (a) intending to cause such damage or destruction; or

⁷ Interviewed at Kasawu on 12/12/19.

⁸ Interviewed at Siabuwa on 07/01/2020.

- (b) realising that there is a real risk or possibility that such damage or destruction may result from his or her act or omission;

shall be guilty of malicious damage to property.”

If the proper procedure had been followed, this case, which was a criminal case, would have been presided over by a Magistrate. This is just one of the areas in which traditional leaders lack the proper, essential knowledge required to resolve local land disputes.

The powers of traditional leaders are defined in section 282(1)(d) of the Constitution which gives them the power to administer communal land. Section 282(2) gives them authority, jurisdiction and control over communal land including persons within those areas. Section 282 sets out the functions of traditional leaders and one of them is to resolve disputes between people in their communities in accordance with customary law (section 282(1)(e)). I am of the view that there is a gap in the law in that it fails to clearly describe the nature of disputes which should be handled by traditional leaders. This gap effectively gives them a wide discretion to determine themselves what matters they can and cannot handle and the exercise of this discretion is open to abuse.

Chief Siabuwa, Mr Robertson Sibanda, was of the opinion that a woman can access communal land either from her father’s family or her husband’s, but not both. He emphasised that “*mwanankukuulyanguliwo*” (literally meaning ‘the chicks which feed from their mother are readily available’). He explained that women do not usually benefit from their father’s land because when it is allocated they have already married and left home. Therefore, women ought to nurture good relationships with their husband’s families in order to share with them when they allocate their land. He further explained that every child including girls have the right to receive land from their father. However, he indicated that most women lose this right because they marry and leave home before they are old enough to be considered eligible to own property including land. He said that boys, on the other hand, tend to benefit more from this process because they usually stay at home longer than girls and are therefore old enough for their father to allocate them land by the time he conducts the exercise. He said that the Tonga saying, “*mwanankukuulyanguliwo*” usually refers to boys in that they are the chicks who stay nearest the mother hen so that when she (the cook, the parent) is ready to feed them, they are closest to her and receive the food (the land) she gives them.

He said fathers do not usually distribute his land among his children when he is young and strong enough to work but only when he is older and weaker. By this stage of his life his daughters have usually already married and have left home and for this reason it is usually a father's sons who benefit more from this practice than his daughters. A father, however, is responsible for giving/allocating some land to his daughter if her marriage fails and she returns home (returnee). He said this can be done either by redistributing the land that has already been distributed between his children in order to include his returnee daughter in the exercise or if extra land is available, he can allocate that land to her. He added that if a father dies his land can be inherited by either male or female children provided they are still living at home at the time of his death and old enough to inherit land. Those women who are already married would not be eligible to inherit his land and may only become eligible to do so if they later become returnees, return home from a failed marriage or after the death of their husband. He said the village head is present to witness the inheritance process. He said one of the father's brothers is chosen by the family to administer the inheritance of land process. Even though he himself is not entitled to receive and should not receive any share of land, this does sometimes happen. He said that no other people except the deceased father's children should receive land unless all the children in the family unanimously agree to share the land with an outsider such as their father's brother or grandchildren.

The following section sets out what occurred with some cases over which traditional leaders presided and which I as a researcher witnessed.

3.2.3 Traditional court cases on land issues

During the research period, I had an opportunity to attend and observe the Chief's and Village heads' cases. Of interest to me were the land cases involving women.

1. Cases presided over by Chief Siabuwa
 - 1(a) I attended a land dispute case between a sister and brother. The circumstances of the case were that a brother was opposing his married sister over family land despite the fact she occupied the land before her father's death. Her brother based his claim on the Binga traditional practice that male heirs are given power over all family land. His sister claimed that as family member she was entitled to benefit from the family land.

In its judgment, the Chief's committee applied a mixture of customary and general law. It accepted that all family children despite their gender were entitled to benefit fairly from family land. However, they cautioned themselves against the danger of a woman benefiting twice from access to land through her father and her husband (double-dipping). Finally, after weighing all the facts, the land was awarded to the sister who was not in possession of sufficient land of her husband's family.

- 1(b) A case of two sisters fighting over family land was brought before the Chief. One sister was a widow while the other was married. The widowed sister complained that her married sister was not supposed to access family land while she was still married because she would be double-dipping. After the chief assessed the claims, it was found that the married sister already had enough land from her husband's family. The case therefore went against the married sister who was told to leave the land for her widowed sister who did not have enough land.

The question which remained in my mind was how gender and marital status were relied upon in these rulings.

2. Case presided over by Village head

The case was between a daughter and her father. The divorced daughter claimed the family land from her father after she was divorced and brought back to her father. Initially, the father gave the daughter virgin⁹ land which she cleared for agricultural purposes. However, he later claimed it back from her and gave it to his newly married son. Later on, his son divorced his wife and the land was lying idle since the son was employed in Bulawayo. The daughter then tried to claim back the land. Her father denied her access to the land and she brought the case to the village head. Her father claimed that his reason for taking the land back from his divorced daughter and re-allocating it to his son was that he could not allocate land to "*banakwenda*."¹⁰ The village head applied traditional customs and in handing down his judgment, held:

"Family land is vested in the family head who is in this case the father. He has the right to use the family land as he deems necessary."¹¹

⁹ Unused land.

¹⁰ Tonga word to describe women as roving people.

¹¹ At Muswa village court on 10/12/19.

The land was therefore awarded to the father and his daughter ended-up looking for employment as a house maid.

I observed that no appeal was made against these decisions. I am not very sure whether the parties were satisfied with the judgements or whether they were unaware of the appeal process.

3.3 Women's poverty and access to land

Binga is one of the poorest districts in Zimbabwe given the persistence of chronic poverty in the area (Mudimba, 2015). Some scholars have described the poverty in Binga as a paradox considering its vast resources. Although the causes of the poverty in Binga cannot be attributed to any single factor, scholars like Colson (1999) associate it with a change in their social system after the Tonga people were displaced following the construction of Kariba dam. Some claim that Cernca's (1997) model of Impoverishment, Risk and Reconstruction (IRR) most aptly describes their situation. The model identifies the risks associated with displacement and landlessness, food insecurity, loss of access to common property and social disarticulation as being some of those which explain poverty among the Tonga people. Whatever the reason for their poverty, their women have been hardest hit by it. In fact, the study by Colson (1999) on the Zambian side of the Tonga community claims that the domestic arrangement of equality between men and women changed after their displacement and this prejudiced women who were left with no land of their own.

One elderly woman (Njombyile) interviewed about the matter had this to say:

“We (women) used to have equal access to land in the floodplain plain before being displaced. We never used to rely on our men (husbands) as we had our own land and we could sell the produce at our will. However, during the construction of the Kariba dam, men had to travel inland for the search of land and they cleared before we followed. We found our men had cleared land and this changed our system and up to now men have called the land their own. The scenario was different in the valley where no land clearance was required. We used to give land to our daughters and sons but look now, we no longer have land of our own and we are made even poorer because now men dictate everything. We wish to go back to the floodplains where we were independent from men.”¹²

¹² Interviewed at Siabuwa on 16/12/19.

This new system has enforced that the only way for women to negotiate access to these economic resources like land would be through a male figure such as father, husband, sons or clansmen (Bird and Espey, 2010). This situation limits women's economic independence and choices. Access to economic resources leads to an improved well-being of a woman and her family as it has positive impact upon increased spending on food, children's welfare and education (ibid) especially in rural areas as noticed in Binga where women are the major users of land for agriculture. In fact, land can also be used by women as collateral to access other assets such as credits (Dolan, 2002).

Agarawal (1994) emphasised on the availability of productive resources as a way of eradicating poverty when he said:

“Women's and children's risk of poverty and physical well-being could depend significantly on whether or not women have direct access to income and productive assets such as land and not just access mediated through husbands or other male family members.”

3.3.1 Women's sources of livelihood in Binga

“Land is a vital source of rural women's livelihoods which ensures the economic survival of their families and ultimately their control and ownership of land is crucial.”

(Nyagwande, 2016:6)

In my view, land is, according to the above quote, the main, if not, the only source of women's livelihood. Interviewed women indicated that unlike them, men have other means of economic survival. One lady said:

“Our men usually go to Bulawayo or other cities for employment in the industrial or manufacturing sector, but for us women, it is unusual to leave the family. We survive solely on farming without any other alternative livelihood.”¹³

The customary tenure system of communal land puts rural women at an even greater disadvantage since the system follows local customary laws in the process of allocating land. The nature of the system favours men and women depend entirely on their negotiated

¹³ Interviewed at Siabuwa on 16/12/19.

relationships with men in order to access land for their livelihoods (Nyagwande, 2016). Gaidzanwa (1991) notes that the insecure nature of their land rights reduces women's commitment to agriculture. This is the case in Binga where this scenario reduces their inclination to make any meaningful investment in land. This in turn contributes to the impoverishment of many rural women who consider themselves nomadic especially after the dissolution of their marriages.

The fact that this situation has prevailed for so long in Binga is an indictment of the government's failure to protect its vulnerable rural women, especially in accordance with article 14(1) of CEDAW (to which Zimbabwe is a state party) which directs as follows:

“States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.”

Rural women who were interviewed in Siabuwa indicated that they relied a great deal on their back yard gardens for their livelihood (Figure 2).

Figure 2: Photograph of a woman farmer



The bigger plots were said to be under the control of their husbands who preferred growing cash crops (such as cotton) which were not of much use to the women and children since the men monopolised the cash proceeds received from their harvests. One bitter woman expressed her unhappiness as follows:

“I do not have land of my own. I rely on this garden for my livelihood. The proper field is fully my husband’s territory and he prefers cotton to other crops. The money from the sale of the cotton is for his use. Though this garden is not enough for the family food, I try to work hard with my children to earn a living from it.”¹⁴

An Agritex officer interviewed confirmed that in the communal area although women spend more time in the fields than men, who spend most of their time in beer halls, the land statistics for Sections A and B of Nabusenga-Siabuwa Irrigation Scheme show that men own more land than women (Tables 3 and 4).

Table 3: Showing the distribution of land ownership between men and women in section A of Nabusenga Irrigation Scheme

Gender	Number
Male	11
Female	03
Total	13

Table 4: Showing the distribution of land ownership between men and women in section B of Nabusenga Irrigation Scheme

Gender	Number
Male	10
Female	08
Total	18

He said although most of the plots are in the names of husbands, it is actually their wives and children who know and work on them. He complained that the problem was that after the planting season, husbands come in and take control of the produce. This has created family

¹⁴ Interviewed at Siabuwa on 15/12/19.

misunderstandings and conflicts and even resulted in the deaths mostly of wives who spend a great deal of their precious time tending these crops.

3.3.2 Non-governmental organisations and women's livelihood

Binga, one of the poorest districts of Zimbabwe, has been the subject of much research which has uncharitably described the area and its people as being barbaric, backward, uncivilised and immersed in tradition. A number of different non-governmental organisations (NGOs) including local and international civic organisations have flocked to the area with the aim of assisting the Tonga people to uplift their lives. Some of these NGOs have done a tremendous job.

I had an interview with the Director of ZUBO Trust, Mrs Rosemary Cumanzala, an enthusiastic local woman who is rich in local knowledge and who explained that her organisation, an NGO, was formed to assist Tonga women with economic projects using the area's natural resources. Its motto is 'Bringing women together for self-empowerment' (Figure 3).

Figure 3: Photograph of the ZUBO Director and the researcher (right)



Since its formation in 2009, she said her organisation has been engaged in different developmental projects such as growing of jatrofa trees which they use for soap making. She pointed out that although the project is still in its infancy the women have started selling their soap locally and exporting it to various countries including Germany. Apart from fish

production women are also assisted in Milala production which is used to make African bowls. Concerning the issue of fish production, Mrs Cumanzala explained that the Trust had tried to diversify by approaching women in the fishing industry which is another area where women can earn a living (Figure 4). She said:

“Our vision as an organisation is to see lives of Binga women changing to better. We have decided to also assist women in the fishing industry. In fact, fishing has been a productive sector among women here but being done at a small scale. We want to increase the scale by acquiring more fishing boats for these women. These projects compliment their economic survival.”¹⁵

Figure 4: Photograph of fisherwomen



In relation to jatropher farming I discovered that, upon visiting one of the women’s farms (Figure 5), a major drawback to the full realisation of the project was, as explained by Mrs Cumanzala, the lack of availability of land. Most women were found making use of their backyard gardens for their jatropher farms because their husbands who yield power over what to plant on the main farm fields did not approve of the women’s jatropher farming. She said women were complaining that their husbands are reluctant to give them land to expand their jatropher and milala production projects. She said that men do not allocate land to women for projects for which they have not given their approval. She said the demand for the women’s products is now high but the women face the challenge of how to secure more land in order to expand their jatropher production.

¹⁵ Interviewed at Binga Back Harbour on 19/12/19.

Figure 5: Photograph of a woman farmer's forest of jatropher trees in Binga



The ZUBO director had this to say:

“I am satisfied that my organisation has equipped these women with the much needed skills and knowledge on jatropha production and these women are ready to go. The problem is land. Their husbands who own land don't approve the jatropha production on their land; instead they prefer cash crops like cotton. This has taken women backwards as they are left with no option except to use their small gardens. Their products have ready market around the world and these women are now failing to supply the markets. I pray that men understand these women. This is one of the women's projects which can lift lives of women in Binga to become self economic sustainable.”¹⁶

In Binga, communal land is controlled by the head of the family who is usually a man. This practice is affecting women's projects since as women they cannot decide how land belonging to the family can be used. Unless the man who controls the land also approves the project which is to be conducted on it, such land cannot be used for the project.

The ZUBO director said her organisation has since engaged the local leadership including men to persuade men to allocate women land for their identified projects. Women were of the view that men, being what they are, will always oppose women's ideas and that their biggest challenge is trying to convince men to co-operate with them. Mabhena (2020) refers to this phenomenon when he refers to an article in the Herald newspaper by its news and political

¹⁶ Interviewed at Binga Back Harbour on 19/12/19 .

editor on 6 January 2020 who quotes Niccolo Machiavilli in ‘Is man inherently evil?’ as follows:

“All men are evil and they are always going to act according to the wickedness of their spirits whenever they have free scope.”

*‘Kulima Mbobumi’*¹⁷ Training Centre (KMTC) was another NGO project in Binga. As its name implies, the project assists farmers in Binga. Mr P. Mumpande who is the head of KMTC institution caters for 60% women and 40% men. Its focus is upgrading the agricultural skills of local people. The NGO focus is on women since they are considered to be bread winners of families in terms of food security. He explained that women never practise the skills they acquire from the institution on a large scale due to their lack of access to sufficient land which they can have under their control. He also explained that the institution investigated why women in the district were resistant to learning new agricultural skills and they discovered that they were only interested in learning about crops which they knew their men would accept. For example, since men resisted the cultivation of Jatropha trees, women were equally uninterested because men would not allow them to cultivate them in their larger fields which jatropha trees need.

Asked on the gender ratio of trainees, the organisation’s manager, Mr. Mumpande, said their organisation’s policy is 70% women and 30% men. He said:

“We arrived at this ratio which is skewed towards women after realising the important roles played by women in agriculture industry here.”¹⁸

The Binga Agritex officers whom I also interviewed confirmed that their workshops were also attended more by women than men. They even explained that agricultural activities in Binga are considered more of a woman’s than a man’s concern. Said Mr Maphosa, an Agritex officer in the Siabuwa area:

“During my field visits as an Agritex officer, I find mostly women working in their fields while men go for traditional beer drinks.”¹⁹

¹⁷ Meaning,, ‘Agriculture is life.’

¹⁸ Interviewed at Binga’s KMTC on 20/12/19.

¹⁹ Interviewed at Siabuwa Youth Centre on 17/12/19.

There are several other NGOs which operate in Binga. Generally, their main objective is to improve the living standards of the Tonga people which are said to be far below the Poverty Datum Line (PDL) and as at March 2019 the Food Poverty Line (FPL) stood at US\$59 for one person (ZIMSTAT). Some of the many other NGOs active in the area include Save the Children, Adventist Development and Relief Agency (ADRA) and Green Carbon.

As already mentioned, the focus of these NGOs is on improving the sustainability of the livelihoods of the Binga people, especially their women who are heavily involved in farming. Currently most NGOs concentrate on equipping women with agricultural knowledge and skills (training) and providing them with agricultural equipment and inputs. I consider, however, that more important than all these resources is land because without land for agricultural purposes all other resources become useless. In other words, NGOs should also focus more on advocating for the equal and fair distribution of land between men and women in order to achieve substantial equality in Binga between the sexes. In fact, since land is everything, giving land to women would permanently empower them. To be more precise, it is better to give a person a fishing rod than to give him a fish. In other words, increasing women's access to land is a vital strategy for their sustainable economic survival.

3.4 Institutions and actors involved in the allocation of land: State v. non-state

Both government departments and local traditional leadership have been delegated powers to allocate and manage Communal Land on behalf of the State. One such institution is the Rural District Council (RDC) which is governed by section 8 of the Communal Land Act [Chapter 20:04] (CLA). The enactment of the CLA in 1983 meant the transfer of authority over Communal Land from traditional leaders to RDCs. The Act gave RDCs power to allocate land to rightful persons. The main concern is about the procedure used by RDCs in allocating land. The RDCs followed the Tribal Trust Lands Act (TTLA) approach according to which traditional leaders were in charge. Lack of clarity engulfed the new system and as a result, chiefs and village heads in Binga continue to allocate land or rather usufruct rights over individual pieces of land to household heads who are mainly men.

The main confusion with CLA is the lack of clarity as whether RDCs or local traditional leadership is the final or deciding authority on land issues. Section 8 of the CLA states:

“In allocating land, the BRDC shall have regard to customary law relating to allocation, occupation and use in the area concerned and consult and cooperate with traditional leaders appointed to preside over the community concerned in terms of Traditional Leaders Act (TLA) 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 are regarded as forming part of such community or who according to such customary law may be permitted to occupy and use such land.”

The section points to RDCs having the authority to allocate land but problems arise when the BRDC and local traditional leaders fail to agree. There have been cases in which traditional leaders in certain areas have proven to be more powerful in matters concerning agriculture and residential land as evidenced from the lack of appeals made against their decisions to the Magistrates’ Courts or other appeal authorities.

Traditional chiefs obtain their powers on land allocation from section 5(g) of the TLA which states the duties of a chief as:

“ensuring that Communal Land is allocated in accordance with Part III of the Communal Land Act [Chapter 20:04] and ensuring that the requirements of any enactment in force for the use and occupation of communal or resettlement land are observed”.

I managed to interview the Executive Officer (Social Welfare), Mr Syamuyi at THE BRDC who explained that after realising that the issue of women’s issues including women’s access to communal land were of great concern, the Council then considered it important to create a Council Gender Committee which oversees such issues in the district. He confirmed that land issues are mostly dealt at local level by Chiefs and village heads. No appeal of such issues has reached the Council and therefore the officer was confident that the local leadership were handling such issues adequately. He was of the view that the involvement of the Council in land matters would be considered an unwelcome interference with the powers given to the chiefs and village heads.

There are other structures which are also considered to be stakeholders in the land allocation process and these include political institutions such as the ruling party’s ZANU-PF.

In all the land issues in Binga, women are invisible actors in the decision making process (Bruijn, 1997). This has influenced an increase in illegal land sales by men and those in authority who are “deemed” to have the final say in respect of all decisions concerning land.

3.5 Influence of legal framework on land

The much vaunted legislative achievements in women’s rights, in particular those addressing gender inequalities in African States do not tally with the reality for women in rural areas (Bird and Espey, 2010). Even in countries like Zimbabwe where the laws and rules demand gender equality and protection of human rights, there is a tendency to assume that *de facto* (actual) equality has been achieved when it has not is leading to an underestimation of existing discrimination and its negative effects. Be that as it may, Zimbabwe has been commended (e.g., by CEDAW) for putting in place various national legislative instruments aimed at guaranteeing women’s legal and Constitutional rights. Furthermore, Zimbabwe’s effort in creating an enabling environment for the attainment of equity and equality between men and women has been shown by its having ratified various international conventions and declarations on gender and equality which include CEDAW (1979), the Beijing Platform for Action (1995) and the SADC Gender and Development Declaration of 1997 which have been incorporated into the country’s policies.

In the spirit of section 56 of the Zimbabwe Constitution on equality and non-discrimination, policies are also becoming more gender sensitive. In fact, policy formulation in Zimbabwe has proven to be quite successful; the main challenge, as observed by Bruijn et al. (1997), has been the implementation and stability of these policies in the rural areas. It is in this respect that the BRDC has been reluctant to exercise its legitimate authority over land in terms of section 8 of the Communal Land Act (CLA).

This has led CEDAW to comment in one of its reports (2020) that while Zimbabwe is commended for its excellent ‘text’ record (i.e., its laws and policies), a huge gap exists between these texts and their application. On 13 February 2020, for example, the Honourable Minister of Women’s Affairs, Sithembiso Nyoni, presented Zimbabwe’s report to CEDAW in Geneva in which she outlined the position of Zimbabwe’s inheritance laws. She explained to the Committee that when a husband dies, his wife automatically inherits. This point was however, disputed by the Committee who remained concerned about the continued eviction of widows from their homes by their in-laws. This was also noted by Bird and Pratt (2004) in

Uganda on customary inheritance practices where they found out that although male heirs of land were supposed to be responsible for supporting the deceased's family, widows and their children, these dependents were finding themselves forced from their homes and land (Bird and Pratt, 2004).

The State uses public policies in the promotion of effective development. The weakness of most Zimbabwe land policies is their lack of gender sensitivity where society (women and men) is treated as undifferentiated. Another problem of these policies is on their defining 'household' as a nuclear family comprising father, mother and children as if this is the standard set up of a family. The experience in Binga, like any other rural area, has proved that this definition of household as purported by land policies is lagging behind especially considering the increase in the number of female-headed families which fall outside the scope of these public policies. This is where most land policies fail to meet the intention of the planners.

Binga has a high migration rate among males who leave in search of employment in Zimbabwe's large cities as the area has no industrial or manufacturing sectors. This leaves women as heads of their households and responsible for farm production. Any public policy therefore which assumes or defines household as a nuclear family loses relevance in most rural areas like Binga.

It was found that women lack representation in institutions that deal with communal land in Binga. This gives men the green light to dispose of it at will (Kameri-Mbote, 2006). Despite my having come across complaints during the research from women that their brothers, husbands and even fathers were disposing of family land at will, I found that no land related case had been dealt with at the Magistrates Courts. The resident magistrate, Mrs. Portia Moyo, I interviewed said she had been at the Binga Magistrates Court since January 2019 but had never dealt with a land dispute case between a man and a woman. She understands that such cases are all handled by the local traditional leaders. She suspects that the local belief is that such issues do not require the involvement of the formal court system and although such disputes arise they are not brought to the Magistrates Courts and that if parties approach the police, they also refer such cases back to the community leadership. For this reason, she said she could not comment on the issue of women's access to communal land in Binga. She said:

“I can say that local people trust their traditional way of solving their land issues. I have been a resident magistrate in Binga for one year now but I have never with dealt a land case here.”²⁰

The Member in Charge of the police station confirmed to having received several reports on land disputes between women and men. However, he said they sounded more civil than criminal in nature and therefore he always referred such complainants to local leadership to handle. He said that since complaints do not come back to him, he felt confident that such reports are being satisfactorily dealt by local the leadership. He said that no such case has been referred to the Magistrates Courts.

A follow-up to see how the land related cases were handled by local police was made. The Acting Officer In Charge (O.I.C) of the Zimbabwe Republic Police (ZRP), Siabuwa admitted that such cases result in some form of Gender Based Violence (GBV). However, the fact that such cases were related to land made the police refer them to traditional courts.

“It is a tradition here that anything to do with land is referred to the Chief or Village head as such; no case of that matter had been referred to formal court. None of those whom we refer come back to pursue the case and this gives me the confidence in the traditional ways of solving land issues.”²¹

3.6 Conclusion

There is a lack of cohesion between the several institutions involved in communal land management. Traditional leadership has emerged as the most powerful institution involved in the allocation of communal land. The absence of checks and balances among the institutions has negatively affected women who are always side-lined during the land allocation process. The uneven distribution of communal land between men and women has derailed rural development. Women who have the potential to champion development lack access to the resources (including land) in order to do so.

²⁰ Interviewed at Binga Magistrates Courts on 19/12/19.

²¹ Interviewed at Siabuwa Police Station on 09/12/19.

CHAPTER FOUR

4.0 INSUFFICIENCY OF LAND MECHANISM FOR WOMEN: WHAT IS WRONG?

4.1 Introduction

It is important to note the contribution of public policies to women's agency in ensuring that the subtle and explicit forms of gender-based discrimination are outlawed and that these laws are enforced (Hicks in Mashozhera, 2016). An effective legal system has proved to be a good tool in solving disputes. Land inequality is one area in which the legal mechanism in Zimbabwe is expected to rectify the situation. This chapter will analyse the legal mechanism which is applied to the management of communal land in Binga.

4.2 Effects of Legal Pluralism: General Law versus Customary law: Can the two co-exist?

The legal system in Zimbabwe especially as it applies to communal land ignores gender discrimination issues because politicians generally consider them unattractive as they are difficult and expensive to solve. Since independence in 1980 and despite the importance of the land issue in Zimbabwe, politicians have not considered it important to deal with access to or inheritance of communal land. The concentration of land policy has been turned toward rectifying the racial imbalance in land ownership which has resulted in the brushing aside of the important issue of gender inequality which is negatively affecting women.

Although Zimbabwe has progressed by enacting legislation that protects women from discriminatory laws, the conflict between the formal and customary legal system is frequently unaddressed (Magugunyeki, 2018). This situation has left women at Binga and possibly other rural areas exposed to harmful traditional and cultural practices. They are particularly pronounced in Binga.

It has been a pity to observe that efforts by the Zimbabwean government to create an "enabling" terrain for rural communities has hit a brick wall as some traditions and practices that are detrimental to the physical or mental integrity of girls and women override the formal legal system.

As is the case with other cultures, the disparities that exist between the law and Tonga culture in Binga is causing glaring impediments in efforts to address these seemingly harmful cultural practices.

The Tonga community in Binga is among those where customary law has been allowed to prevail over legislative instruments leaving women vulnerable to harmful traditional and cultural practices. Under customary land tenure which governs communal land, the heir is male and this shows the bias of the communal land tenure system towards men (Gaidzanwa, 1995) even though a substantial number of rural families are female headed (WLSA, 1993).

An interview was held with Mrs Tafadzwa Mtetwa who is the Binga District Co-ordinator in the Ministry of Gender.

She explained that her Ministry promotes equal opportunities for both women and men in all areas of development. She said however that development in the district was being obstructed by negative cultural and other traditional practices. She said that in Binga district, land is considered male property which always remains in the hands of males. She said some of the Ministry's projects are affected by this practice. She gave an example of the Ministry's Women's Development Fund (WDF) which is meant to assist women related projects. Most funded projects are agricultural. Most women in Binga do not own or have direct access to land. They rely on their husbands, father, sons or uncles when it comes to accessing land. Therefore these projects can only start after they receive the nod from the male head of their family since it is he who decides how land is to be used. In some cases, a husband can agree today and change his mind tomorrow and this practice obstructs and delays women's projects. She said most women in the district shun agricultural products fearing their men's disapproval of them. She said that even though women are the bread winners in communal areas because of their high agricultural productivity, they still do not enjoy ownership of or access to their own land. All access to land occurs through their husbands or fathers.

Zimbabwe's customary practices in land inheritance and ownership follow a patrilineal system which means that land is only transferred to a male heir within the family or clan (Rakadi in Chant, 2010). As also pointed by Gaidzanwa (1981), in the case of Zimbabwe's communal lands, customary laws take precedence as far as land inheritance is concerned. In terms of these inheritance laws in Binga, heirs to land which is owned by men (usually

husbands) are always males, e.g., their sons, brothers, uncles etc. This has meant that upon the deaths of their husbands, most Tonga women lose their right to continue accessing the land to which they enjoyed primary rights during their marriage. In evaluating the status of women in Judaism, Chidzonga and Nyore (2018) note that women were not entitled to inherit land and would only do so if there was no brother or other male relative capable of inheriting it. This clearly indicates the insecurity of women under communal land tenure system (Gaidzanwa, 1991).

It should also be noted that the adverse impact of inequalities on women's access to land does not only affect women's well-being on the dissolution of their marriages, but also upon women who continue to reside with their husbands (Deininger, 2003).

4.3 Impact of legal education on women's land issues

“The empowerment of rural women and girls is essential to building a prosperous, equitable and peaceful future for all on a healthy planet.”

This was said by United Nations (UN) Secretary-General, Antonio Guterres while addressing at International Day of Rural Women (Mugugunyeki, 2018)

Pearl Matibe who is the founder of Advocacy for Progress which is an organisation based in the United States of America noticed that rural women were unaware of the existing recourse in place if their rights were violated. She had the following to say:

“Most women lack information, education and access to the legal system”.

As mentioned earlier, the legal material which is available in Binga and maybe in other rural areas are mainly in text form, e.g., books, pamphlets and other written material. However, the literacy level is generally very low in the district and it is even worse among women. In fact, women find it difficult to read, write, and to interpret documents especially of a legal nature.

One woman who was interviewed about the extent of her knowledge of the legal system openly admitted that she only knew about the local traditional courts. Although she possessed a pamphlet on women's empowerment, she was unable to explain its contents.

This has proved to me that even though the government, NGOs, civic organisations and other stakeholders seem to be making an effort to take the law to the people of Binga, they have failed to achieve their objective largely as a result of the low literacy rate among Binga's women. An officer in the Ministry of Women's Affairs admitted as much in the following statement;

“Low literacy is hampering the Ministry's agenda of spreading message to women. As a Ministry we engaged in campaigns where one of the strategies was to distribute pamphlets and fliers on women empowerment. The most challenge is that most women are not capable of reading due to low education. We are considering going back to our drawing board to try and choose another option for Binga district so that we reach out intended population.”²²

This problem is attributable to the government's failure to educate Binga's women as this would have put them in a better position to access their rights including their right to land. In terms of section 75(1)(a) of its Constitution, the government committed itself to providing basic State-funded education for everyone including adults. Furthermore, basic education is compulsory. However, this research has established that most women in Binga lack the basic education which would enable them to read, write and interpret documents. The government's duty to provide education especially to women is stipulated in Article 12(2)(a) of the Maputo Protocol which requires State parties to take specific positive action to promote literacy among women.

Article 14(2)(d) of CEDAW also emphasises that State parties provide basic education when it says that:

“parties [are] to ensure women obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency.”

Lack of education was cited as one of the reasons why women preferred traditional courts to formal Magistrates Courts though other factors such as distance also contributed to their decision. Women avoided these formal courts because their formal procedures involve too much paper work. One middle-aged woman had this to say:

²² Interviewed at Binga Growth Point on 18/12/19.

“I prefer to go to the Chief’s or Village heads’ courts. I don’t even feel like appealing even when the judgement is not in my favour because the Magistrate’s Courts will mean involvement of papers which I don’t think will be of much use since I cannot read and write. Going to the Magistrates’ Court especially on land issues where our men counter parts are better off.”²³

4.4 Identifying rural women’s problem in the legal sphere: Availability versus acceptance of law

One may well wonder why the Tonga people and their women in particular remain quiet even when their basic rights are violated. It is a fact that Zimbabwe has good equality laws in terms of its Constitution and other legal instruments. Notably, women in Binga still find it difficult to get have a completely protective system. It was hoped that the legal system would provide an adequate solution to this problem. However, a gap still exists. The interviewed Binga resident Magistrate, Mrs. Moyo, explained what she thought about Binga women:

“I have worked in different districts around the country but the situation is unique here. Women seem to avoid or be avoided by the legal system. The problem I see here is two pronged. It might be on the system itself or on the women themselves. What I can say is that I have never presided over a land issue involving women here. I always ask myself a question whether women are contented with how resources are shared to them.”²⁴

There are however different views as to why women in Binga do not bring their disputes, especially over land, to the formal courts. One school of thought blames the “unavailability” of laws in the remote area. In other words, although laws exist to settle their disputes, they serve no purpose unless the people they are intended to benefit are able to make use of them. In this case, it was found that resources about the laws which could assist Binga women was available but they were in English which the majority of women could not understand even if they were read to them. Considering the high rate of illiteracy among women in Binga, as discussed above, even if the literature were in their own vernacular language, they would still be unable to read or understand their contents.

In her book, “Taking the law to the people”, Tsanga (2002) also explains the meaning of physical availability including availability in terms of possession of actual knowledge of the law which is seriously lacking among Tonga women. When I was trying to measure the extent of their knowledge of their land rights, I discovered that most women were not able

²³ Interviewed at Siabuwa on 17/12/19.

²⁴ Interviewed at Binga Magistrates Courts on 19/12/19.

read or analyse the pamphlets which the NGOs used to educate them about their rights. Where no direct contact was made with the women themselves using a local Binga resident, the system set up by the NGOs could not serve its purpose due to the fact that the facilitators employed by the NGOs were either from the Shona or Ndebele tribe and could not therefore fully explain the law and its concepts to the women in Tonga. It would be much better if the educators were local people who could perform this role as the residents of Binga tend to see the current legal literacy program as an attempt by Shonas and Ndebeles to impose foreign laws on them.

The one and only lawyer I interviewed had this to say in connection with the availability of laws in Binga:

“It all depends with the context on which you want to refer availability here. If we are taking it to mean physical availability, yes we can say to some extent legal literature is being distributed here. Thanks to NGOs, civic organisations and even government departments for reaching the areas which were thought to be unreachable in distributing the written legal material. However, the availability in terms of “soft copy” or actual knowledge obtained by local people, of which it should consider the most necessary availability is nearer to zero especially on women. The pamphlets are just given unexplained. For me it is same as work not done because the information in the form of text is nothing unless it gets into targeted people’s minds. If I were to rate the impact of the intervention, surely it would fail. More so, legal text is always difficult to understand. Taking this view of availability, then I can safely say the laws are unavailable in Binga.”²⁵

Binga lies in region 5 which receives very unreliable rainfall. There is no commercial agriculture in the area especially in the form of commercial crop farming. The area is also tsetse infested making it difficult for cattle ranching. Because of these and other factors, the government has shown little or no interest in developing the area agriculturally since it does not contribute much to the country’s food security. As a result, the importance of women in agriculture in Binga has never been taken seriously which means that women’s land rights are not discussed. It is also therefore in this sense that the laws which protect woman’s land rights in Binga are unavailable to their women.

There are those who argue that although Binga is properly serviced in terms of a legal system, the problem is more a matter of the acceptance or lack of acceptance of the laws by

²⁵ Interviewed at Binga Growth Point on 18/12/19.

the people who need their protection and in this case they are the Binga women themselves. For example, the Binga District Coordinator in the Ministry of Women's Affairs, Gender and Community Development was extremely critical of women themselves whom they accused of agreeing with their men to reject the government programmes which are meant to empower them:

“Every time we go to communities on government programmes, women reject us. These women sometimes openly tell us that the Harare laws cannot be applied here. I am sure Tonga culture is stronger such that they see no good of the modern legal system with its rights enforcement power. In fact I can conclude that they don't want to hear anything about these legal instruments.”²⁶

Therefore, despite the availability of mechanisms to take the law to the people as proposed by Tsanga (2002), people can still reject those laws because they are so embedded in and controlled by their own stronger culture and belief system. It is for this reason that the issue of the (non-)acceptance of laws needs to be included as one of the factors to consider in evaluating the effects of the system. In this case, the non-acceptance of the laws by the women in Binga has weakened the impact of the laws which are in place and intended to benefit them.

4.5 Conclusion

It has emerged that both general law and customary law are applied in communal land governance. Although some land agencies including NGOs are making an effort to take the general law to the people and women in Binga, the methods they are employing to do so are ineffective as far as the Tonga women are concerned. Disseminating written materials about the law is proving ineffective considering the poor literacy levels among Tonga women. This has put women in Binga at a disadvantage since they are unable to interpret legal documents.

²⁶ Interviewed at Binga Growth Point on 18/12/19.

CHAPTER FIVE

5.0 STUDY CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This section draws conclusions based on an analysis of the findings discussed in chapters three and four above. Recommendations are also put forward as solutions to the problems identified. The research was guided by the following research questions:

1. Do traditional practices hinder women's access to communal land in Binga?
2. Does the involvement of several land related agencies in the administration of communal land hamper women's access to land in Binga?
3. Does the lack of access to communal land have an adverse impact on women's livelihoods in Binga?
4. Do the laws and policies that are in place adequately promote women's access to communal land?
5. Is there a need to review the land administration mechanisms in Binga to ensure more women have access to communal land?

5.2 Conclusion by assumptions

The following are conclusions drawn from the findings presented in this study:

5.2.1 Traditional practices hinder women's access to communal land in Binga

It is concluded that the communal land tenure system in Binga is still embedded in its traditional customs which do not recognise women's land rights resulting in their failing to enjoy free access to land. The system is skewed towards men. The customary tenure system only gives women secondary user rights to land while men have primary user rights. This eventually results in women only being able to access land through men and, as such, their control over, use of and access to land is limited.

5.2.2 The involvement of several land related agencies in the administration of communal land hampers women's access to land in Binga

It is concluded that the uncoordinated involvement of many agencies involved in land administration only serve to worsen women's access to land. In fact, some agencies are unaware of their roles in land administration even though there are legal instruments which

determine their duties. However the several Acts of Parliament which do deal with land (the RDCA, TLA and CLA) contain claw-back clauses and contradict each other only help to further confuse the system and the mandates of these agencies. The effect of the overlapping and duplication of duties of these agencies drives the management of land issues into the hands of the traditional leadership institution which still follows an oppressive patrilineal system which severely discriminates against women accessing land.

Gender land conflicts (i.e., their causes, nature and magnitude) remain unrecorded or undocumented for future reference especially at the chief and village levels despite the fact that this is the most popular means of solving land disputes in the district.

5.2.3 Lack of women's access to communal land has an adverse impact on their livelihoods in Binga

It is concluded that land is the foundation of the livelihoods of women, their families and their community as a whole. The deprivation of access to land by rural women has pushed them into extreme poverty. Although the area receives moderate-low rains, the inadequacy of land worsens the women's situation. Binga women have however proved in their past to be very effective in the use of land as they flourished during the time that they cultivated their crops along the Zambezi River prior to the construction of Kariba Dam. Their forced migration into the Binga area overburdened the land and competition for the scarce resource has seen women come off second best to their male counterparts. In fact, the non-availability of land for women has seriously pushed them below the Poverty Datum Line (PDL) and threatened food security in the area.

5.2.4 Legal system in place

Policymakers who are politicians have a tendency to ignore cultural and traditional social practices even if they are aware of their adverse impact on communities for fear that their opposition to them will most likely compromise their popularity with voters especially when elections are looming.

5.2.5 Land administration and women's access to land

Gender land conflicts are mainly caused by the structural-based scarcity of land as an essential resource. The main cause of this is the fact that the present policies, institutions and

programmes have failed to distribute land in an equitable and socially acceptable manner among women and men.

5.3 Recommendations

Gender issues have to be integrated into development policies, plans and strategies. To this end, advocates of gender issues and women's empowerment continue to work hard to inform policy makers on the importance of taking on board gender issues and concerns at all levels. For example, policy makers (Members of Parliament) need to be constantly engaged with their constituencies and interact with their electorates to enable them to use people's lived experiences to inform the law they disseminate. This approach should improve the legal literacy of the community and build up the capacity of its structures to be sensitive to instead of dictate to the people they serve (Tsanga, 2007:499).

Most households in Binga and in many other rural areas are female-headed and as such, more support should be given to female farmers in terms of services and policy to improve agricultural production in rural areas. It is important to consider women's crucial role in agricultural planning and institutional policies in rural areas for them to continue being the main food provider. In fact, rural women should be respected and considered as farmers as opposed to merely housewives. Government's agricultural programmes need to focus more on women for their active participation in agricultural activities. The "head of family" syndrome upon which the government is relying primarily benefits men who are traditionally considered the natural heads of their families.

Since this research has revealed that rural women are increasingly burdened with supporting their families, agricultural land policies should increasingly consider them beneficiaries of agricultural production with the aim of increasing the standard of living in rural areas.

Members of institutions such as RDCs and traditional leadership need to be trained and equipped with appropriate knowledge and skills that will enable them to resolve gender and related conflicts in the areas of influence. In addition, the efforts of stakeholders should be synergised by a comprehensive system of coordination between them. This should ensure that the different agencies complement as opposed to compete against each other. In fact, it would be prudent to put in place effective monitoring mechanisms within institutions which are involved in communal land administration to ensure the government's objective of gender

equality and non-discrimination is achieved according to the vision and requirements of the Constitution.

If the government were to educate rural women this would go a long way in assisting them to interpret legal documents connected with litigation of land related issues. Ideally, the court system should take steps to come closer to people so that the law becomes more visible, more relevant and more respected by them.

In summing up the recommendations of this research, the way forward is for land law reform looking at both customary laws and the current state laws. Dahl (1987) equates the law to fertile soil for the cultivation of rules which can provide a foundation for change. In quoting Dahl, Nyagwande (2016) notes that in order to improve the standard of living of rural women, not only good law should be formulated but their implementation and monitoring needs to be effective. This is in line with article 1(a) of the Maputo Protocol which states:

“States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination.”

5.4 Recommendation for future research

This study has established that while the principles of equality and non-discrimination are soundly embedded in the fabric of Zimbabwe’s law, especially in its Constitution which is the foundation of its legal system, its track record in implementing them through compliance with, for example, the aims and purposes of CEDAW, has been found to be seriously wanting. In order to improve its performance, the raising of the legal literacy of its communal farmers, the majority of whom are women and the heads of most households, is paramount.

Bibliography

- Acholonu, O.C. (1995). *Motherism: The Afrocentric Alternative to Feminism*, Afa Publications.
- Agarwal, B., & Bina, A. (1994). *A field of one's own: Gender and land rights in South Asia* (Vol. 58). Cambridge University Press.
- Anthony Giddens. (1984). *The constitution of society: Outline of the theory of structuration*. Univ of California Press.
- Bentzon, A.W. et al (1998). *Pursuing Grounded Theory in Law: South-North Experiences in Developing Women's Law*. Harare. Mond Books.
- Bird, K., & Espey, J. (2010). „Power, patriarchy and land: examining women's land rights in Uganda and Rwanda“. *The international handbook of gender and poverty*. Cheltenham: Edward Elgar.
- Bird, K., & Pratt, N. (2004). Fracture points in social policies for chronic poverty reduction. *Chronic Poverty Research Centre Working Paper*, (47).
- Cernea, M. (1997). 'The Risks and Reconstruction model for resettling displaced populations', *World development*, 25(10): 1569-1587.
- Chant, S., & Datu, K. (2015). Women in cities: Prosperity or poverty? A need for multi-dimensional and multi-spatial analysis. In *The city in urban poverty* (pp. 39-63). Palgrave Macmillan, London
- Chidzonga, N. and Nyore M (2018). *Advanced level: Family and Religious Studies: Question and Answers Paper 1*, Dingani Publishers, Bulawayo.
- Colson, E. (1999) 'Gendering those Uprooted by Development', In D. Indra (ed) *Engendering Forced migration, Theory and Practice*, pp 23-28. New York: Berghahn Books
- Creswell, J.W. (1998). *Qualitative inquiry and research design: Choosing among five traditions*, Thousand Oaks, CA: Sage
- Dahl, S.T. (1986) *Taking women as a starting point: Building Women's Law*, University of Oslo Working Paper No. 4, July, 1986
- De Bruijn, M., van Halsema, I., & van den Hombergh, H. (1997). *Gender and land use: diversity in environmental practices*.
- Deere, C. D., & León, M. (2003). The gender asset gap: Land in Latin America. *World development*, 31(6), 925-947.
- Deininger, K. W. (2003). *Land policies for growth and poverty reduction*. World Bank Publications.
- Denzin, N. K. (1970) *The Research Act in Sociology*, London: Butterworth
- Denzin, N.K. (1978) *Sociological Methods*, New York: McGraw-Hill

- Gaidzanwa, R. (1991). *Women in development in Zimbabwe*. Harare: University of Zimbabwe Publications
- Gaidzanwa, R. (1995). Land and the economic empowerment of women: A gendered analysis. *Southern African Feminist Review*, 1(1), 1.
- Graham, A. (1991) "Qualitative Research" in A. Graham and C. Skinner, (eds.) *Handbook for Research Students in the Social Sciences*, The Falmer Press, London
- Gudhlanga, E. S. (2010). *Gender dynamics in Shona culture: The case of Yvonne Vera's novels*. VDM Publishing. Holloway, I. and S. Wheeler (2002) *Qualitative Research in Nursing*, Blackwell
- Hull, S. (2014). Analysing the cadastral template using a grounded theory approach. In *AfricaGEO. Cape Town: CONSAS Conference* (pp. 1-16). Yin, R. (1984). *Case study research*. Beverly Hills
- Kabeer, N. (1999) 'Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment', *Development and Change*. Vol.30 (1999) 435-464.
- Kameri-Mbote, P. (2006). Women, land rights and the environment: the Kenyan experience. *Development*, 49(3), 43-48.
- Kanokanga, P. (Unpublished). *Agricultural land in Zimbabwe: Agricultural law – What You Need to Know*.
- Mabhena, L. (2020). Is man inherently evil? In: *Herald (Zimbabwe)*, January 06.
- Marongwe, N. (2001, September). Conflicts over land and other natural resources in Zimbabwe: a research report. In *research seminar Rethinking and, state and citizenship through the Zimbabwe crisis* (pp. 4-5).
- Mashozhera, M. (2016). "What can be she say"-exploring the negative impact of child marriages on women's meaningful participation in the public sphere. Dissertation submitted in partial fulfillment of the requirement for a Masters in Women's Law degree, Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe. (Unpublished)
- Mavura, S. and nyanhanda-Ratsauka, K. (2008). *Step ahead "O" level History Students' Book 3*. Longman Zimbabwe, Harare.
- Medeiros, M., & Costa, J. (2010). The 'feminisation of poverty': A widespread phenomenon. *The international handbook of gender and poverty: Concepts, research, policy*, 95-100.
- Merlet, P. et al (2015). Acceso a la tierra y rutas de desarrollo en comunidades Rurales del municipio de Rio Blanco.
- Mudimba, V. M. (2015). Zimbabwe.
- Mugugunyeki, M. (2018). *Nip gender inequality in the bud*: **In**: The Standard (Zimbabwe), October 18 Accessed at <https://www.thestandard.co.zw/2018/10/28/nip-gender-inequality-bud/> on 20/02/2020


- Nielsen, A. K., ed. (1995). *Training for a better life, Zimbabwe*
- Nnaemeka, o. (2004). 'Nego-Feminism: Theorising, Practicing and Pruning Africa's way: *Journal of women in culture and society*. 29(2)357-385.
- Nyagwande, F. (2016). *The impact of urban expansion into peri-urban communal areas on rural women's land rights: A case study of Seke Communal area: Zimbabwe*. Dissertation submitted in partial fulfillment of the requirement for a Masters in Women's Law degree, Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe. (Unpublished)
- Ogundipe-Leslie, O. (1994). *Re-Creating Ourselves, African Women and Critical Transformation*, Trenton, New Jersey, Africa World Press.
- Ogunyeni, C.O. (1996). *African Wo/man Palava: The Nigerian Novel by Women, Chicago and London: The University of Chicago Press*.
- Østergaard, L. (1992). *Gender and development; a practical guide*.
- Patton, M.Q. (1999) "Enhancing the quality and credibility of qualitative analysis," *HSR: Health Services Research* 34 (5) Part II. Pp. 1189-1208
- Reinhardt, N. (1988). *Our daily bread: the peasant question and family farming in the Colombian Andes*. Berkeley: University of California Press.
- Reinharz, S., & Davidman, L. (1992). *Feminist methods in social research*. Oxford University Press.
- Ribot, J. y Peluso, N. (2003). «A theory of access». *Rural Sociology*, 68 (2), 153-181
- Rutsate, E.L. (2016). *Women's participation in water governance and reform in Zimbabwe: A case study of four AI Resettlement Farms in Mazowe Catchment Post the Fast Track Land Reform and Resettlement Programme (Unpublished doctoral dissertation)*, Southern and Eastern Africa Regional Centre for Women's Law, Faculty of Law, University of Zimbabwe, Harare.
- Saunders, M. N., Lewis, P., Thornhill, A., & Bristow, A. (2015). *Understanding research philosophy and approaches to theory development*.
- Shestack, J. "The Jurisprudence of Human Rights", in Theodor Meron (ed), (1984), *Human Rights in International Law: Legal and Policy Issues*, p. 101
- Steady, F.C. (1981). *The Black Woman Cross-Culturally*, Cambridge, Massa-Chusetts: Schenkman Publishing Co.
- Stewart, J.E. and A.S, Tsanga (eds.) (2011) *Women and Law: Innovative approaches to teaching, research and analysis*, Weaver Press.
- Stewart, A. (2011) *Gender, Law and Justice in a Global Market: Law in Context*, Cambridge University Press
- Stewart, A. (1997). *Gender, Law and Justice in a Global Market: Law in context*, Cambridge University Press.
- Stewart, T. A. (2010). *Intellectual capital: The new wealth of organization*. Currency.

Tsanga, A. S. (2003). Taking law to the people: Gender, law reform and community legal education in Zimbabwe.

ZIMSTAT (2012) Census 2012 Preliminary Report, Zimbabwe National Statistics Agency.

Appendices

Appendix 1: Application for authority to the Judicial Service Commission




**SOUTHERN AND EASTERN
AFRICAN
REGIONAL CENTRE FOR
WOMEN'S LAW (SEARCWL-UZ)**

30 Mt. Pleasant Drive
P.O. Box MP 167
Mount Pleasant
Harare, Zimbabwe

Telephone: (242) 745365/6
Fax: 263-4-745348

E-mail: stewart@law.uz.ac.zw
rudo@law.uz.ac.zw
tsomondo@law.uz.ac.zw



16 October 2019

The Secretary
Judicial Services Commission Service
2nd Floor Causeway Building
Cnr Third Street and Central Avenue
HARARE

Dear Sir/ Madam.


RE: RESEARCH PERMISSION: MULEYA JAMESON D


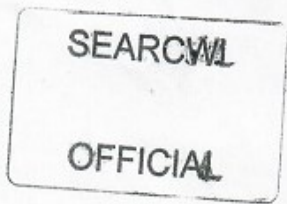
MULEYA JAMESON is a registered Masters in Women's Socio-Legal Studies student at the SEARCWL, University of Zimbabwe. One of the requirements of the degree programme is that the student undertakes independent research in their home country.

His research topic is: **Women's Access To Communal Land.**

I would be most grateful if you could provide assistance in the conduct of this research. It is hoped that the outcome of this research will add to understanding of women's issues in the Eastern and Southern African regions. All SEARCWL students are aware of the need for confidentiality with regard to sensitive information and where this is desired by informants and interviewees anonymity will be provided. Should you wish any further information or details on the work to be carried out please do not hesitate to contact me via the SEARCWL at stewart@law.uz.ac.zw or 263-242-745365/6.

On behalf of the SEARCWL I would like to thank you in advance for your invaluable cooperation.

Yours faithfully

PROFESSOR J.E. STEWART, DIRECTOR

Appendix 2: Application for authority to the Binga Magistrate's Court



**SOUTHERN AND EASTERN
AFRICAN
REGIONAL CENTRE FOR
WOMEN'S LAW (SEARCWL-UZ)**

30 Mt. Pleasant Drive
P.O. Box MP 167
Mount Pleasant
Harare, Zimbabwe

Telephone: (242) 745365/6
Fax: 263-4-745348

E-mail: stewart@law.uz.ac.zw
rudo@law.uz.ac.zw
tsomondo@law.uz.ac.zw



16 October 2019

BINGA MAGISTRATES' COURT

Dear Sir/ Madam.

RE: RESEARCH PERMISSION: MULEYA JAMESON D

MULEYA JAMESON is a registered Masters in Women's Socio-Legal Studies student at the SEARCWL, University of Zimbabwe. One of the requirements of the degree programme is that the student undertakes independent research in their home country.

His research topic is: **Women's Access To Communal Land.**

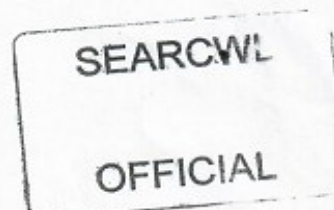
I would be most grateful if you could provide assistance in the conduct of this research. It is hoped that the outcome of this research will add to understanding of women's issues in the Eastern and Southern African regions. All SEARCWL students are aware of the need for confidentiality with regard to sensitive information and where this is desired by informants and interviewees anonymity will be provided. Should you wish any further information or details on the work to be carried out please do not hesitate to contact me via the SEARCWL at stewart@law.uz.ac.zw or 263-242-745365/6.

On behalf of the SEARCWL I would like to thank you in advance for your invaluable cooperation.

Yours faithfully

A handwritten signature in black ink, appearing to read 'J.E. Stewart'.

PROFESSOR J.E. STEWART, DIRECTOR



Appendix 3: Letter of authority from the Judicial Service Commission

Telephone: 704118
Fax: 700937



JUDICIAL SERVICE COMMISSION
P.O. Box CY 870
CAUSEWAY
ZIMBABWE

Ref: Research Authority/Student/19

28 October 2019

The Acting Chief Magistrate
Attention: Mr M Mutevedzi

**RE: APPLICATION FOR AUTHORITY TO CARRY OUT A RESEARCH STUDY FOR A
MASTERS IN WOMEN'S SOCIO-LEGAL STUDIES: MULEYA JAMESON: UNIVERSITY
OF ZIMBABWE, SEARCWL.**

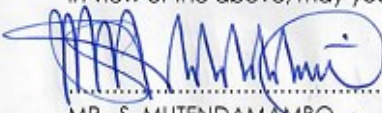
The above subject refers.

Mr Jameson Muleya is requesting for permission to conduct a research at Binga Magistrates Court. The research topic is entitled "**WOMEN'S ACCESS TO COMMUNAL LAND**".

Please be advised that the Secretary for Judicial Service Commission has approved the student's request for authority to conduct research at Binga Magistrates Court on conditions that:

- Data obtained will be used for academic purposes only.
- The research does not disturb or interfere with work and operations of the courts.

In view of the above, may your office therefore assist the student accordingly.


.....
MR. S. MUTENDAMAMBO

FOR: SECRETARY, JUDICIAL SERVICE COMMISSION

Cc: Deputy Secretary - Judicial Service Commission
Cc: Human Resources - Chief Magistrate's Office
Cc: Human Resources - Superior Courts
Cc: Human Resources - Section Float
Cc: Jameson Muleya ✓



Appendix 4: Application of authority to the Ministry of Local Government and Public Works



**SOUTHERN AND EASTERN
AFRICAN
REGIONAL CENTRE FOR
WOMEN'S LAW (SEARCWL-UZ)**

30 Mt. Pleasant Drive
P.O. Box MP 167
Mount Pleasant
Harare, Zimbabwe

Telephone: (242) 745365/6
Fax: 263-4-745348

E-mail: stewart@law.uz.ac.zw
rudo@law.uz.ac.zw
tsomondo@law.uz.ac.zw



16 October 2019

Permanent Secretary
Ministry of Local Government
Cnr Leopold Takawira and Herbert Chitepo
HARARE

Dear Sir/ Madam.

RE: RESEARCH PERMISSION: MULEYA JAMESON D


MULEYA JAMESON is a registered Masters in Women's Socio-Legal Studies student at the SEARCWL, University of Zimbabwe. One of the requirements of the degree programme is that the student undertakes independent research in their home country.

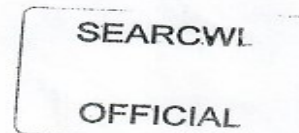
His research topic is: **Women's Access To Communal Land.**

I would be most grateful if you could provide assistance in the conduct of this research. It is hoped that the outcome of this research will add to understanding of women's issues in the Eastern and Southern African regions. All SEARCWL students are aware of the need for confidentiality with regard to sensitive information and where this is desired by informants and interviewees anonymity will be provided. Should you wish any further information or details on the work to be carried out please do not hesitate to contact me via the SEARCWL at stewart@law.uz.ac.zw or 263-242-745365/6.

On behalf of the SEARCWL I would like to thank you in advance for your invaluable cooperation.

Yours faithfully


PROFESSOR J.E. STEWART, DIRECTOR



Appendix 5: Letter of authority from the Ministry of Local Government and Public Works

Ministry of Local Government and Public Works

Telephone 263 4 707615

Fax 263 4 797706

REF: ADM/23/8



ZIMBABWE

Office of The Secretary
P. Bag 7706
Causeway,
Harare

02 January 2020

Mr Jameson Denzilizium Muleya
Southern And Eastern African Regional Centre For Women's Law (SEARCWL)
30 Mt Pleasant Drive
P.O Box MP 167
Harare


**APPROVAL OF AUTHORITY TO UNDERTAKE AN ACADEMIC RESEARCH:
MR JAMESON DENZILIZIUM MULEYA: SOUTHERN AND EASTERN
AFRICAN REGIONAL CENTRE FOR WOMEN'S LAW (SEARCWL): STUDENT**

The above subject matter refers.

It is a pleasure to advise you that the Head of Ministry, in his memorandum dated 20 November 2019, approved your application to undertake a field research on **Women's access to Communal Land**.

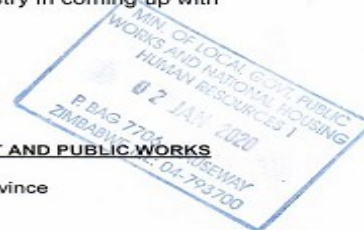
Please be advised that the research findings should not be subject to external consumption and must be solely used for academic purposes only. You are mandated to complete the Official Secrecy Act before commencement of the research project. In addition, the final copy of the research findings should be submitted to the Office of the Permanent Secretary upon completion.

It is hoped that the research findings will help the Ministry in coming up with relevant strategies in the study area undertaken.


I. Chazuka

FOR: PERMANENT SECRETARY FOR LOCAL GOVERNMENT AND PUBLIC WORKS

Cc: The Provincial Administrator, Matabeleland North Province
The District Administrator, Binga District



**Appendix 6: Application for authority to the Ministry of Women's Affairs,
Community, Small and Medium Enterprises Development**



**SOUTHERN AND EASTERN
AFRICAN
REGIONAL CENTRE FOR
WOMEN'S LAW (SEARCWL-UZ)**

30 Mt. Pleasant Drive
P.O. Box MP 167
Mount Pleasant
Harare, Zimbabwe

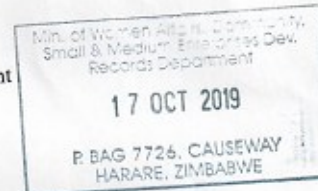
Telephone: (242) 745365/6
Fax: 263-4-745348

E-mail: stewart@law.uz.ac.zw
rudo@law.uz.ac.zw
tsomondo@law.uz.ac.zw



16 October 2019

Permanent Secretary
Ministry of Women's Affairs, Gender and Community Development
8th Floor, Kaguvi Building
Central Avenue
HARARE



Dear Sir/ Madam.

RE: RESEARCH PERMISSION: MULEYA JAMESON D


MULEYA JAMESON is a registered Masters in Women's Socio-Legal Studies student at the SEARCWL, University of Zimbabwe. One of the requirements of the degree programme is that the student undertakes independent research in their home country.

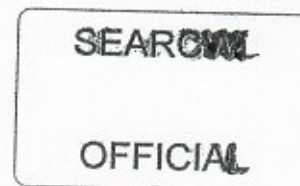
His research topic is: **Women's Access To Communal Land.**

I would be most grateful if you could provide assistance in the conduct of this research. It is hoped that the outcome of this research will add to understanding of women's issues in the Eastern and Southern African regions. All SEARCWL students are aware of the need for confidentiality with regard to sensitive information and where this is desired by informants and interviewees anonymity will be provided. Should you wish any further information or details on the work to be carried out please do not hesitate to contact me via the SEARCWL at stewart@law.uz.ac.zw or 263-242-745365/6.

On behalf of the SEARCWL I would like to thank you in advance for your invaluable cooperation.

Yours faithfully


PROFESSOR J.E. STEWART, DIRECTOR



Appendix 7: Letter of authority from the Ministry of Women's Affairs, Community, Small and Medium Enterprises Development

All communications should be addressed to **The Secretary**
Telephone: 2-708398, 2-735188,
2-790932
www.women.gov.zw



Ministry of Women Affairs,
Community Small and Medium
Enterprises Development
P. Bag 7726 Causeway
Harare

REF/ Muleya Jameson D
Student Reg No. R191016U

24 October 2019

Muleya Jameson D
ZRP Waterfalls
Harare

REF: RESEARCH ON WOMEN ACCESS TO LAND

Reference is made to your letter dated 16 October 2019 requesting to conduct research in the Ministry of Women Affairs, Community, Small and Medium Enterprises Development on **women access to land**.

Please be advised that your application has been approved.

The approval is granted on condition that the information obtained from the Ministry shall be strictly for academic purposes only.

Please note that you are required to submit copy of your final thesis to this Ministry for record keeping.


M. Mukurakudya
ACTING DEPUTY DIRECTOR
**FOR: SECRETARY FOR WOMEN AFFAIRS, COMMUNITY, SMALL AND
MEDIUM ENTERPRISE DEEVELOPMENT**



Appendix 8: Letter of authority from the Ministry of Lands, Agriculture and Resettlement

All correspondence should be
addressed to "THE SECRETARY"
Telephone: 706081/9
Fax: 734646
Telex: ZIM AGRIC: 22455 ZW



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

Ref: AGRI/A/4

31 October 2019

Mr Jameson D. Muleya
Southern and Eastern African Regional Centre for Women's Law
30 Mt Pleasant Drive
P.O. Box MP 167
Mount Pleasant
Harare

RE: APPLICATION FOR AUTHORITY TO CONDUCT RESEARCH ON WOMEN'S ACCESS TO COMMUNAL LAND IN THE MINISTRY OF LANDS, AGRICULTURE, WATER, CLIMATE AND RURAL RESETTLEMENT

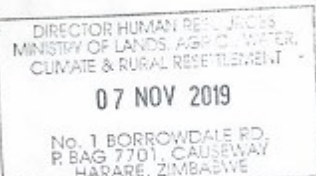
Reference is made to your letter dated 16 October 2019 on the above mentioned matter.

As a student registered for a Masters in Women's Socio-Legal Studies at Southern and Eastern African Regional Centre for Women's Law under University of Zimbabwe, you are required to undertake an independent research in your country as part fulfilment of your degree programme. You have approached Ministry of Lands, Agriculture, Water, Climate and Rural Resettlement to assist you in conducting your research.

Authority to carry out your research is hereby granted on condition that you follow the guiding principles of conducting a research at an organisation in which confidentiality regarding sensitive information is key.

Wish you all the best in your studies.


G.G. Chijairira



FOR SECRETARY FOR LANDS, AGRICULTURE, WATER, CLIMATE AND RURAL RESETTLEMENT

Cc: Director, Human Resources

Appendix 9: Samples of research interview guides used

1. Local Women

- ❖ Age
- ❖ Your level of education
- ❖ Marital status
- ❖ How many marriages did you go through?
- ❖ Do you own land of your own and if yes how did you acquire it?
- ❖ Have you experienced unfair allocation of land (in family or community)?
- ❖ How are the cases of unfair allocation of land involving women dealt?
- ❖ Are you happy with the judgements given by adjudicators in land issues?
- ❖ What do you do when you are not satisfied with the judgement on land allocation issues?
- ❖ How are men and women treated in land allocation?

2. Chief

- ❖ How often do you deal with land cases involving women in your area?
- ❖ Who are the complainants in these land issues?
- ❖ What are the traditional practices in land allocation?
- ❖ How do you consider women's rights on land allocation?
- ❖ Comment on the women's participation to community development?

3. NGOs

- ❖ Your position in the organisation
- ❖ Your organisation's mandate (Mission and vision).
- ❖ How do you treat the needs of women?
- ❖ Sustainability of your organisation's programs
- ❖ How far have you gone in achieving your goal?
- ❖ Comment on the benefits of your programs to women and how do they relate to women's access to land.
- ❖ Do you see any improvement in as far as women's access to land coming soon in Binga?

4. Government agencies

- ❖ Personal profession
- ❖ Employment history with the department or ministry
- ❖ Nature of duties
- ❖ Department or ministry's relevance to women's land issues

- ❖ Explain the source of your mandate in communal land.
- ❖ How do you relate to other land agencies?
- ❖ How many cases have you handled on communal land allocation?
- ❖ Comment on the level of equity and equality between men and women in accessing communal land
- ❖ What might be hindering factors in achieving equality in land allocation in Binga?

NB: Similar interview guides also used for other categories of informants.