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**THE IMPACT OF URBAN EXPANSION INTO PERI-URBAN COMMUNAL AREAS  
ON RURAL WOMEN'S LAND RIGHTS: A CASE STUDY OF SEKE COMMUNAL  
AREA, ZIMBABWE**

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**By**

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## Abstract

The author of this dissertation's love of her rural upbringing has long made her alive to the embeddedness of rural women's lives in land for livelihoods and in turn has fostered her desire as a lawyer to improve their land rights. Taking the example of rural women in Seke communal land on the outskirts of Harare, Zimbabwe's capital, she explores the impact of urban expansion into peri-urban communal areas on rural women's land rights, which has occurred through multifaceted processes that have built upon Zimbabwe's pre-1980 British colonial legacy of discrimination against women in the administration and allocation of communal land through a customary law system which favours men and land acquisitions that to date thrive on insecurity of land tenure in communal areas. These processes have ignored the country's post-Independent Constitutional provisions which guide acquisition of land for developmental purposes, including compensation, participation and provisions which advance gender equality and non-discrimination and render void customary laws that discriminate against women thereby impacting on their rights including the right to food security and livelihood. Taking rural women's lived realities in the wake of urban expansion processes as the guiding perspective and using complementary methodologies (including those of human rights, legal pluralism, grounded theory, sex and gender analysis, actors and structures) and methods (including interviews, observation and focus groups) grounded in the same perspective, she effectively collects data which captures the impact of urban expansion through a gendered lens, to give special attention to the violations of rural women's land rights which have occurred due to urban expansion. Her findings reveal that while processes involved in urban expansion affect different categories of occupants in communal areas, rural women as a category tend to suffer disproportionately. This is due to their gendered position in the administration and allocation of communal land which has historically marginalised them from accessing land in their own right. Urban expansion comes into this already skewed access to land for rural women to introduce processes which exacerbate their hardship and further prejudice their land rights. In order to improve rural women's land rights, the author concludes by suggesting recommendations, including (a) the alignment of communal land laws with the Constitution (so as to modify the customary law allocation of communal land which discriminates against rural women), (b) the favourable position of titling communal land to mitigate threats of expropriation of communal land by third parties, including the State and agencies of the government, and (c) the need to jointly register women so that they become co-owners of land and property on an equal footing with men.

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## **Declaration**

I, FADZAI ABIGAIL NYAGWANDE, do hereby declare that this dissertation is my original work and has not been presented or submitted anywhere else before the award of certificates or any other form of assessment.

Signed.....

Fadzai Abigail Nyagwande

Date.....

Supervisor.....

Dr. R.K Katsande

## ***Dedication***

*To Jesus Christ my Saviour, My Friend and Soon Coming King,*

*For being the fountain of all wisdom and knowledge that I have drawn from,*

*For being a constant friend and guide; I never at one point walked alone throughout this  
journey,*

*For being faithful to the end and bringing this work to completion; where there seemed to be  
no way you made it possible,*

*My eternal gratitude goes to you....THIS IS FOR YOU!*



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To all my respondents in Seke Communal Area, especially the rural women who are at the fore of this study and to everyone who gave their input into this piece of work, thank you for making this work a resounding success.

## **List of abbreviations and acronyms**

BSAC	British South Africa Company
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CEO	Chief Executive Officer
CLA	Communal Lands Act
CRT	Community Residents Trust
DfID	Department for International Development
GC	General Comment
GMB	Grain Marketing Board
GR	General Recommendation
ICESCR	International Convention on Economic, Social and Cultural Rights
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
RDC	Rural District Council
RDCA	Rural District Councils Act
RTCPA	Regional Town and Country Planning Act
SADC Declaration	SADC Declaration on Gender and Development
TLA	Traditional Leaders Act
TTL	Tribal Trust Land
UDHR	Universal Declaration of Human Rights
UN	United Nations

## **List of statutes**

### *Kenya*

Registered Land Act of Kenya Chapter 300, 2010

Land Registration Act of Kenya, 2012

### *Zimbabwe*

Constitution of Zimbabwe (No. 20) Act 2013

Communal Land Act Chapter 20:04 (CLA)

Traditional Leaders Act Chapter 29:17 (TLA)

Regional Town and Country Planning Act Chapter 29:12 (RTCPA)

Rural District Councils Act (RDCA)

Land Acquisition Act Chapter 20:10

Mineral and Mines Act Chapter 21:05

## **List of international and regional human rights instruments and documents**

Beijing Platform for Action

CESCR General Comment No. 4 on the Right to Adequate Housing, 1991

CESCR General Comment No. 7 on the Right to Adequate Housing: Forced Evictions, 1997

CESCR General Comment No.12 on the Right to Adequate Food, 1999

Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

CEDAW General Recommendation No.21 on Equality in Marriage and Family Relations, 1994

International Covenant on Economic, Social and Cultural Rights (ICESCR)

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

Rio Declaration on Environment and Development

SADC Declaration on Gender and Development (the SADC Declaration)

Sustainable Development Goal 2 to End Hunger, Achieve Food Security and Improved Nutrition and Promote Sustainable Agriculture

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## **Executive summary**

The study was conducted in Zimbabwe's Seke peri-urban communal area, about 40 km south of Harare, Zimbabwe's capital city. The aim of the study is to unpack the processes culminating in urban expansion from the experiences of rural women so as to bring to bear their impact on rural women's land rights and to fill in the gender neutral void by articulating the significance of and need to prioritise rural women's land rights as a human rights issue requiring State compliance.

Rural women's land rights are situated in a precarious position owing to the colonial legacy of communal land laws that are operationalised by customary law, which is predicated on patrilineal administration and allocation of land therefore favouring men. Using various methodological approaches and methods, which are driven by the realities of rural women as the starting point of data collection, the findings in the study reveal that this organisation of communal land according to customary law is discriminatory against women who do not access land in their own right but through negotiations within various relationships with men. This gives men leverage to control land in ways that are detrimental to rural women's access to land as evidenced by traditional leaders' and men's conclusion of illegal transactions in land which, along with many factors, have contributed to the urban sprawl whose intrusion has violated women's access to land for agricultural livelihoods on which they depend for their economic survival and that of their families.

The urbanisation processes involving registration of previously communal homesteads in the change from communal to urban residential use by the Manyame Rural District Council has compounded the marginalisation of women in land ownership as it builds upon customary law which discriminates against women in favour of men. Owing to the patrilineal allocation of land it is mostly men whose names appear on communal land permits who are being registered for formal title to property.

The study also establishes that the colonial legacy of insecurity of land tenure in communal land has been a major factor upon which land expropriation by third parties has thrived to the detriment of rural women's access to land. This is evidenced by the acquisition of communal land previously used as fields and gardens by the Manyame Rural District Council (RDC), as a State agent, for the development of growth centres and in the regularisation process which

has converted agricultural communal land use to urban residential use thereby usurping land previously used by rural women for agricultural livelihoods. The RDC has taken advantage of the insecurity of land tenure of occupants in communal land not to engage and negotiate with them for participation in the formulation and implementation of development plans, access to information and fair and adequate compensation and this has marginalised rural women's concerns for access to land for livelihoods.

Using the Constitution and international and regional human rights instruments to interrogate the urban expansion phenomenon, the author reveals how customary law allocation of communal land which discriminates against rural women's land rights is contrary to their human rights entitlements to gender equality and non-discrimination which extends to land and property rights and their right to participation in developmental processes, right to food security, the right to adequate housing, the right to livelihoods and the right to compensation, among other rights. She also reveals how the failure to interact with and place importance on the Constitution in the implementation of the different urban expansion processes means that actors within these processes, primarily the RDC, as the State agent, is in violation of rural women's land rights. The study concludes by giving recommendations, including the following:

- There is a need to modify customary law governing the administration and allocation of communal land through men which creates inequalities between women and men and is thereby discriminatory against women contrary to Constitutional provisions.
- There is a need to put in place institutional training and monitoring mechanisms within institutions that handle land issues so that gender equality and non-discrimination are integrated into all stages of formulation and implementation of programmes.
- Titling of communal land to secure tenure as a starting point in order to protect rural women's livelihoods is a favourable initiative to protect them from unsanctioned land acquisitions. Rural women must be joint-owners in the ongoing registration process.

- It is recommended that communal land laws be aligned with the Constitution so as to bestow legal capacity on rural women to pursue legal remedies concerning deprivation of access to land for livelihoods caused by any third party.

## CHAPTER ONE

### 1.0 INTRODUCTION AND BACKGROUND TO THE RESEARCH

#### 1.1 Introduction

*'As long as we live in a society where men and women have different paths in life, different living conditions, with different needs and opportunities, legal rules and policies will necessarily affect men and women differently' (Dahl, 1987).*

Women's predominance in rural areas increases their dependence on land for their livelihoods, as well as for a place to live and raise their families. Based on the general understanding that women are more concentrated in rural areas, more dependent on land, and more likely to be poor given the fact that men are more likely to migrate to urban areas for work, it is clear that land is a central issue and is key to advancing the rights and well-being of women living in communal land<sup>1</sup> in Zimbabwe. The obstacles which prevent women from effectively enjoying rights to access,<sup>2</sup> control<sup>3</sup> and ownership<sup>4</sup> of communal land are many and complex and this study zooms in on urban expansion as one of these factors.

While urban expansion affects the rural populace at large in similar or different ways, the implications for rural women tend to be more onerous due to the already existing gendered nature of communal land and its access, control and ownership by rural women. Rural women have always accessed communal land not in their own right, but through negotiations within various relationships with men including husbands, brothers and uncles. This has both negative and positive implications for rural women's livelihoods as the findings discussed in later chapters will reveal. Urban expansion has come into play in this already skewed access to land for rural women and stripped away the limited opportunities through which rural women have historically negotiated their rights in communal land for livelihoods. Taking the

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<sup>1</sup> Communal land in Zimbabwe is State land not subject to individual ownership or to sale by occupants who have only the right to use. Allocation of land is governed by customary law which is predicated on patrilineal allocation of land. The primary uses of land are residential and agricultural.

<sup>2</sup> Access to land is used in this study to mean the ability to derive benefits from land rather than necessarily a bundle of rights to own it (Budlender, 2011, available at <http://www.idrc.ca/EN/Resources/Publications/openebooks/525-0/index.html>.)

<sup>3</sup> Control over land in this study is used to mean the ability to make decisions over land and its products (Budlender, 2011).

<sup>4</sup> Ownership of land refers to personal rights in land which gives individual rights to manage, administer and dispose of land at one's volition. Control over land in this study is used to mean the ability to make decisions over land and its products (Budlender, 2011).



above statement as the lens for assessment, the study seeks to explore and bring to bear the impact of urban expansion into peri-urban communal areas on rural women's access to, control over and ownership of land from a gendered perspective.

## **1.2 Background of the research site**

In order to bring to bear the impact of urban expansion into peri-urban communal areas on rural women's access to, control over and ownership of land, I purposively selected Seke communal area due to its proximity to Harare, which is my location, compared to other peri-urban communal areas.

Seke communal area is situated in Seke District (Figure 1). Seke District is one of the nine Districts in the Mashonaland East Province of Zimbabwe. Seke communal area falls under Natural Region 2. According to the Zimbabwe National Statistics Agency (Zim Stats) in the last national census, Seke District comprises 21 Wards (Zim Stats, 2012). Of the 21 Wards, 8 Wards are communal land. The rest are large scale commercial farms, old resettlements and urban areas. The total number of communal households in the 8 Wards is 13,051 (Zim Stats, 2012). The 8 communal wards are villagised and each ward comprises of at least 10 villages. Seke communal is peri-urban to the capital city, Harare, and the distance between them is at least 40 km, depending on the ward.

It must be noted that it is not all Wards or villages in the Seke communal area which have been changed from communal land use to urban land use. According to notice NR01/2015 issued by the Manyame RDC, it is villages including Chitsvatsva, Murisa, Kuora, parts of Kaseke, Marimbi, Rusirevi, Masona, Nechiva and Chitanda villages which were incorporated into Murisa Rural Service Centre. All the other villages except those to be incorporated into Dema District Service Centre remain communal with the land managed in terms of the Communal Land Act Cap 20:04 and the Traditional Leaders Act Cap 29:17 and normal procedures for the allocation of communal land continues to apply in these villages. However, the impact of urban expansion has generally been felt in the rest of Seke communal area as evidenced by the responses of occupants in villages that are not included in the RDC notice during the research.

The research was carried out in 2 of the 8 Wards in Seke communal area which have largely been affected by urban expansion. These were Wards 1 and 2, having a total of 5 217 households (Zim Stats, 2012). Apart from the 2 Wards, a further few villages were also selected for the research.

Prior to urban expansion into the selected Wards in Seke communal area, the traditional occupants enjoyed the communal land uses, namely residential and agricultural uses. Through the use of customary law, occupants were allocated 50x50 sqm residential homesteads and up to 6 acres per family for agriculture. Although land was allocated through male figures of the family, most rural women in the villages researched had the right to access and use land for livelihoods.

Natural Region 2, where Seke communal is located, is characterised by intensive farming of maize, tobacco, cotton and market gardening (Moyo *et al.*, 1993). Prior to the ongoing urban expansion process into the selected villages of the research, traditional occupants engaged in subsistence farming and the favourable climate in Natural Region 2 for maize, tobacco and cotton allowed for production of surplus for income generation. Agriculture thus formed the backbone of livelihoods in these villages. Historically, Seke communal area is the home of successful market gardening that is practised in wetlands, especially stream-bank cultivation. Its proximity to markets in the two major urban areas of Chitungwiza and Harare makes market gardening a major income generating source. Thus, prior to urban expansion in the selected research areas, traditional occupants, primarily rural women, principally depended on income from market gardening for the survival of their families.

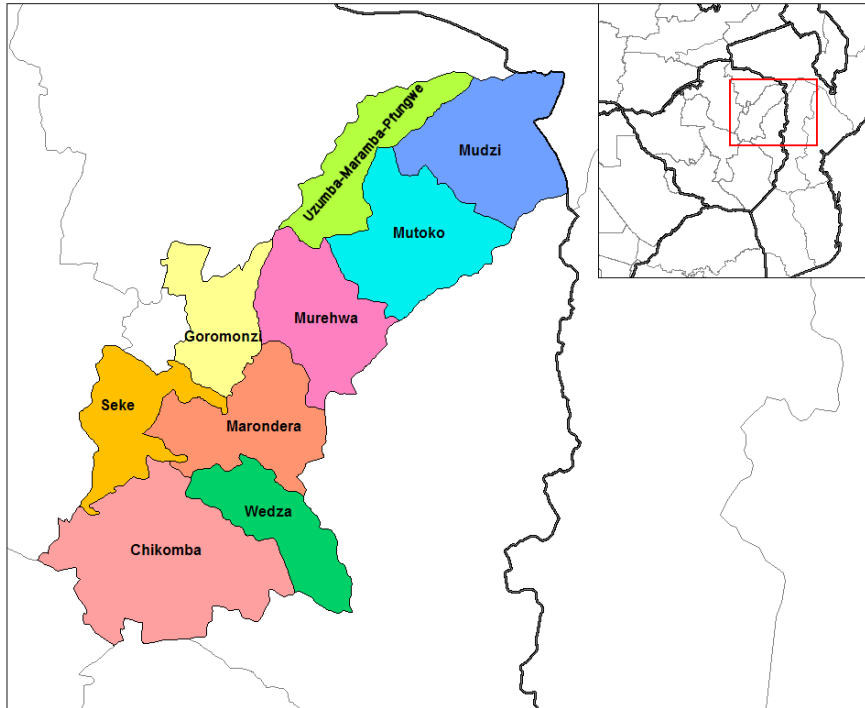


Figure 1: Map showing Districts in Mashonaland East Province

### 1.3 Significance of the research

The issue of urban expansion into Seke peri-urban communal area has captured the attention of many media reports which have shed light on the general impact of urban expansion on rural livelihoods. While this publicity has been essential in my selection of Seke communal area as my research site and in informing my initial research design, by contrast, the media reports have given little, if any, attention to the gendered nature of the impact of urban expansion. The gender dynamics of rural women and men's relationships to land which are fundamentally different and therefore having more deepened consequences for rural women's livelihoods and status with regards to land, have not been discussed in the media reports on the impact of urban expansion. The research seeks to fill in this void.

The media reports also focused on the impact of urban expansion based on the illegal sales of communal land predominantly by traditional leaders and male heads of households as they made prime news because of the arrests that accompanied them but they did not search below the surface to unearth what triggered such illegal sales. As a result, the reports profiled the illegal sales of communal land as the primary cause of the urban sprawl which in turn has resulted in urban expansion into Seke communal area.

By contrast, the research goes deeper and unravels the multi-faceted, underlying causes that have resulted in the urban expansion into Seke communal area thereby diminishing livelihoods for traditional occupants, with special attention being given to rural women who have suffered disproportionately in the whole discourse. These include the development of rural growth points/centres by the RDC which initially threatened the traditional occupants with the expropriation of their land vital for their livelihoods and without offering them alternatives. This was met by reactionary responses from the traditional occupants in the illegal sale of communal land predominantly concluded by traditional leaders and male family fiduciaries owing to the gendered management and allocation of communal land, leading to an uncontrolled urban sprawl which in turn further diminished land for livelihoods. As a result, the urban sprawl has necessitated the implementation of a regularization process by the Manyame RDC as the communal land regulating authority in Seke, which has formalised the illegal occupants on land that rural women traditionally accessed for livelihoods.

The effect of the regularization process has mainly been the change of land use from the primary communal land uses (namely, residential and agricultural under which women accessed land for livelihoods) to urban land use which is primarily residential and cannot sustain agricultural livelihoods. The urban residential use has in turn resulted in the introduction of a registration process of the communal homesteads which has side-lined rural women from ownership because of the customary legal regime upon which it is based.

All these multi-faceted processes which have occurred in the wake of urban expansion in Seke communal area have not been examined through gendered lenses and this has resulted in serious implications for rural women's land rights. This research therefore seeks to consider the position of rural women in relation to land as a result of the impact of urban expansion into Seke communal area.

#### **1.4 Statement problem**

Section 56(2) of the Constitution lays down the principle of equality and non-discrimination and provides that men and women have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. Subsection (3) goes further to provide that every person has the right not to be treated in a unfairly discriminatory

manner on such grounds that include, sex, gender, marital status, custom or economic or social status of the Constitution. The principles of equality and non-discrimination extend to property rights where every person in Zimbabwe has the right to acquire, hold, occupy, use, transfer, hypothecate lease or dispose of all forms of property individually or in association with others.<sup>5</sup> From the definition of property<sup>6</sup> in section 71, communal land would be included and communal occupants, although not its owners,<sup>7</sup> have an interest in it for their livelihoods and residence. This entails that rural women have a right to acquire communal land individually since they have an interest in it, according to the Constitution which is the supreme law of Zimbabwe.<sup>8</sup> These provisions are further bolstered by section 80(3) of the Constitution which provides that all laws, customs, traditions and cultural practices that infringe the rights of women conferred by it are void to the extent of the infringement.

However, the reality for rural women is that the continuation of use of communal land laws which are rooted in the colonial period has reinforced their disadvantaged customary law position of access to communal land which is socially embedded and negotiated through various social relations with men through a customary law system that allocates land through men.<sup>9</sup> This is in spite of the fact that 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. The allocation of communal land through a customary law that favours men impacts on rural women's control over land and clearly violates the Constitution which provides for equal treatment of women and men and makes void customary practices that are discriminatory against women.

While a number of factors which impact on rural women's access to, control over and ownership of land are acknowledged, the study examines the phenomenon of rapid urban expansion into peri-urban communal areas which has become a predominant factor. Pioneered by Rural District Councils (RDCs), the fast growing phenomenon of urban

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<sup>5</sup> Section 71 of the Constitution.

<sup>6</sup> Property is defined in section 71 to mean property of any description or any right or interest in property.

<sup>7</sup> Section 4 of the Communal Land Act vests communal land in the President who shall permit it to be occupied and used in accordance with this Act.

<sup>8</sup> According to section 2 of the Constitution, the Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency and the obligations imposed by it are binding on every person, natural or juristic including the State, institutions and agencies of government at every level and must be fulfilled by them.

<sup>9</sup> Although many poor rural women have access to land and use it, they are generally far less likely than men to have control over it and its products or to own it (Budlender, 2011), footnote 2.

expansion into peri-urban communal areas has been carried out through the acquisition of land previously allocated to the rural occupants for agricultural purposes which thrives on the colonial legacy of insecurity of tenure in communal land. Whereas the Constitution provides that no person may be compulsorily deprived of their property<sup>10</sup> except in specified situations including for the development or use of the property for a purpose beneficial to the community,<sup>11</sup> the Constitution requires that any acquiring authority must give reasonable notice of the intention to acquire the property to everyone whose interest or right in the property would be affected by the acquisition and to pay fair and adequate compensation for the acquisition before acquiring the property or within a reasonable time after the acquisition. However, the Manyame RDC has not followed these Constitutional procedures and this has carried with it a huge impact on the agriculture-based livelihoods of the rural women and their families.

More specifically, the RDC has paid little attention to the gendered contours of the multi-layered processes that have merged during the urban expansion processes and how they have impacted upon the lived realities of rural women. Consequently, urban expansion processes have built on to and reinforced, rather than rectified, in accordance with the Constitution, the discriminatory effects of the customary law allocation of communal land against rural women in the transition from communal to urban residential use, thus further exacerbating the difficulties they already experience accessing land for livelihoods, control over and ownership of land.

## **1.5 Objective of the research**

The primary objective of the research is to explore the various processes that have been and are involved in the phenomenon of urban expansion into Seke peri-urban communal area from a gendered perspective so as to distil the consequences on and articulate the concerns of rural women's access, control and ownership of land, which is the key productive resource for their survival and that of their families.

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<sup>10</sup> Bearing in mind that property includes an interest in property; this means that rural people's interest in communal land can be read into the definition of property according to section 71 of the Constitution.

<sup>11</sup> Section 71(3)(b)(ii).

## **1.6 Research assumptions**

1. Rural women's voices and concerns about their access to land have not been articulated in the phenomenon of urban expansion.
2. The sale of communal land is illegal and in contravention of the Communal Lands Act but it is not being adhered to by chiefs and male household heads who are selling it to urban buyers for residential purposes thereby fuelling urban expansion to the detriment of rural women's access to land.
3. Rural women are impoverished by urban expansion since it takes up land that is useful to sustain their livelihoods and the economic survival of their families.
4. The exclusion of rural women from decision-making at both household and community level marginalises them from important decisions that affect their lives, in this case to whom and how allocation of land should be done in a manner that secures their access to land.
5. By vesting the authority to allocate communal in the chief and prescribing patrilineal allocation, customary law marginalises rural women and exposes them to the harsh impacts of urban expansion on their livelihoods which are embedded in their access to land.
6. The legal remedies available for rural women who are alienated from accessing communal land as a result of urban expansion are limited and/or ineffective to redress or deter the sale of communal land.

## **1.7 Research questions**

1. Have rural women's voices and concerns about their access to land been articulated and captured in the phenomenon of urban expansion?
2. Are chiefs and male household heads adhering to the customary law allocation and occupation of communal land as prescribed by the Communal Land Act?

3. Are rural women impoverished by urban expansion which is engulfing land that is useful for sustaining their livelihoods and ensuring the economic survival of their families?
4. Does the exclusion of women from decision-making at both household and community level marginalize them from important decisions that affect their lives, in this case, to whom and how allocation of land should be done in a manner that secures their access to land?
5. Does customary law, by vesting the authority to allocate communal land in chiefs and prescribing patrilineal allocation of communal land, marginalize rural women and expose them to the harsh impacts of urban expansion on their livelihoods which are embedded in their access to land?
6. Are the legal remedies available for rural women who are alienated from accessing land as a result of urban expansion limited or ineffective?

## **1.8 Summary of chapters**

Chapter 2 explains the different methodological approaches and different data collection methods that were employed during the research which were essential to gather data and to analyse the impact of the multifaceted factors that have contributed to urban expansion on rural women's land rights in Seke communal area.

Chapter 3 inserts a historical background to tenure arrangements in communal land from the colonial times in order to establish the root of insecurity of communal land tenure as it remains today and to deepen the analysis of the origins of discrimination against rural women in customary law governing communal land rights. The historical background is essential since the organisation and administration of communal land in Zimbabwe takes its cue from this era and the colonial legacy of land laws is the major framework through which sustainable livelihoods for rural women and their position in law with regards to land rights have been conditioned.



Chapter 4 begins the analysis of the findings in Seke communal area regarding the different processes culminating in urban expansion which have combined and impacted on rural women's access to land for livelihoods. These processes include the development of rural growth centres pioneered by the RDC, the illegal sale of communal land predominantly concluded by traditional leaders and individual rural men which culminated in the regularization of the affected communal villages and the change of land use from communal agricultural to urban residential use. The findings are also analysed in this chapter within a human rights framework which seeks to highlight the infringements on the rural women's right to food security, right to access and control over land as a productive resource in order to gain a living and the right to sustainable development through the exercising of the right to participation, all of which have resulted from these processes.

Chapter 5 is a continuation of the analysis of findings in Seke with regard to the change of land use from communal to urban residential which has resulted in the introduction of the registration of communal homesteads leading to the formalisation of land rights. The findings in this chapter are examined to explore whether rural women have been accorded an opportunity for their names to be registered for formal title. The analysis is also situated in a human rights framework that seeks to excavate the human rights violations involved in the failure of the RDC to co-register women together with men in the ongoing registration of communal homesteads.

Chapter 6 gives a conclusion to the findings discussed and the suggested recommendations.

## **CHAPTER TWO**

### **2.0 RESEARCH METHODOLOGIES AND DATA COLLECTION METHODS**

#### **2.1 Introduction**

Engaging with different methodological approaches and the use of different data collection methods was an essential component of my research. It helped me not only to unearth, but also to analyse the impact of the multifaceted factors that have contributed to urban expansion on rural women's land rights in Seke. The use of different methodologies and methods proved useful in unravelling the complex narratives of the processes involved in urban expansion and in excavating new issues that were not on the surface of the media reports which informed my initial research design. These different methodological approaches and data collection methods are discussed below.

#### **2.2 Methodological approaches**

##### **2.2.1 *Engagement with women's lived realities***

The women's law approach was useful in my study as my initial assumptions were informed mainly by media reports which generalized the impact of urban expansion into Seke communal area. In the media reports, rural women's concerns were expressed in the same voice as that of the Seke community at large, thereby failing to take into account the highly gendered nuances of the impact and implications of urban expansion and its processes on rural women's access to, control over and ownership of land. These gendered nuances, arising from the embeddedness of rural women's lives in land and natural resources for livelihoods, and their disproportionate position in so far as access to, control over and ownership of land is concerned made it imperative to take rural women's actual lived experiences and life situations as a starting point for the analysis of their position in the face of urban expansion (Bentzon, 1998; Kameri-mbote, 2007).

I therefore interviewed rural women and found out that most of them had no alternative sources of livelihood apart from farming as compared to men, who had other skills through which they secured livelihoods, as illustrated by one rural woman who noted:

‘I have been responsible for all the farming to produce both food for the family and surplus to sell and generate income to send the children to school while my husband works in the city. This has gone a long way in augmenting my husband’s salary. I do not know how to make my family survive, now that we are said to be in an urban residential area.’<sup>12</sup>

Another woman also noted:

‘Men have resorted to digging sand in order to sell to those building their houses and some have become builders, but as for us women who only survived from farming, it is difficult to think of an alternative livelihood.’<sup>13</sup>

This helped to bring out what media reports have failed to capture, and that is how rural women in Seke have suffered more than others from urban expansion, even though it was also affecting other categories of people.

The women’s law approach also helped me to understand from rural women that their realities of the value attached to their role as the primary care givers to their families was directly linked to the importance for them of access to land for livelihoods so as to produce food and generate income to fend for their families. This was increasing evidence to demonstrate that due to different gender roles ascribed to rural women and men, urban expansion increased the vulnerabilities for loss of livelihoods more for rural women. Their role as primary care givers to their families linked the relational theory (that defines women in terms of their relationships to other people as a positive value of female identity) to practise, as most women did not speak for themselves but bore and spoke of the burden of loss of livelihoods arising from urban expansion not only for themselves but also for their families (Bonthuys, 2007).

Talking to women about their experiences made it possible not only to hear their concerns, but to also observe their body language which revealed the emotions attached to their loss of livelihoods. Women were more emotional than men when they talked about the impact of urban expansion. Almost breaking into tears in one of the focus group discussions I held, one woman exclaimed:

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<sup>12</sup> 30 November 2015, Kaseke Village.

<sup>13</sup> 17 November 2015, Mubobo Village.

‘I have lived in this village since 1966 and back then, I used to farm a lot and was able to sell my surplus to the Grain Marketing Board (GMB) and send my children to school. I never had to buy food but now because we no longer have any fields, we and our families are starving. A lot of children in this village have dropped out of school. We cannot afford to buy food. What kind of law is this which allows the Rural District Council (RDC) to take away our land and cause such suffering?’<sup>14</sup>

I also managed to examine and understand how women are considered in law and how institutions correspond to women’s needs and realities through engaging with the women’s law approach. Customary law, as embodied in the laws governing the administration and allocation of communal land, brought to bear how rural women are disadvantaged when it comes to control over and ownership of land because it regards only men as ‘stewards’ of communal land. This disadvantage was made manifest in the illegal sale of communal land predominantly by men to the detriment of women’s access to land for livelihoods. This brought to life the liberal feminist concern with discrimination and gender-bias in the law as the source of women’s oppression and the need for achieving equality between men and women through non-discrimination and the removal of gender bias within the law (Bonthuys, 2007).

The profound lack of interest in the gendered outcome in the process of registration of homesteads by the RDC (which basically was not diligent in implementing joint registration in the transition from communal to urban land use in Seke, preferring to register in the names appearing on communal land permits that had been issued under customary law which favoured men) exposed the institutional failure to respond to rural women’s needs for protection against threats of disposal of property by men.

### ***2.2.2 Development of new directions and new sources of data during the study***

The initial stages of seeking permission to carry out research from the Manyame RDC headquarters in Beatrice were marked with scepticism as the Chief Executive Officer (CEO) of the RDC kept emphasising that Seke was a sensitive area to carry out a study such as mine because there were pending legal processes in the area. On my initial visit, I was asked to specify the wards in which I intended to carry out the study but I insisted on getting permission for the all the wards since I did not know the ones in which to find the relevant data for my study. After several visits to Beatrice, which is 54 km from Harare, I promised to

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<sup>14</sup> 17 November 2015, Mubobo Village.

furnish the RDC with the research findings and I was finally granted permission. From here, grounded theory<sup>15</sup> made my data collection an exploratory journey.

Before entering the field, my initial assumptions were limited to a desk review mainly of media reports which focused on the illegal sale of communal land in Seke and the ongoing arrests of the land 'barons'. My research design therefore hinged on the broad assumption that illegal sales of communal land by traditional leaders and male heads of the household (which was a result of customary law allocation of communal land being male biased), were the underlying factors leading to the urban sprawl, thereby relegating women from decision-making that affected and diminished their access to land for livelihoods. This restricted the focus of my initial human rights framework on the infringement of rural women's land rights by third parties other than the State and the State's positive duty to protect rural women's access to land from infringement by these third parties

My starting point was the RDC sub-office in Dema. The officials refused to give me any information on my study and told me to visit the Beatrice headquarters for all the information related to my research. I then randomly started my interviews in the villages surrounding the Dema rural growth centre. As I began collecting data on the ground I was discouraged to find that the illegal sale of communal land was neither a burning issue for respondents nor did they cite it as the underlying or primary reason for the urban expansion, as I had expected. I quickly felt that my initial assumptions were not holding. However, as I interviewed my respondents more deeply most of them did not deny that the illegal sale of portions of fields and pastures, largely by traditional leaders and male household heads, had indeed contributed to urban expansion and diminished rural women's access to land for livelihoods, and this confirmed my initial assumption that the illegal sale of communal land by traditional leaders and male heads of the household was a factor depriving women of access to land for livelihoods. In addition, they alluded to the development of rural growth centres<sup>16</sup> as the

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<sup>15</sup> Grounded Theory is an interactive process in which data and theory, lived realities and perceptions about norms are constantly engaged with each other to help the researcher decide what data to collect and how to interpret it. The interaction between developing theories and methodology is constant, as preliminary assumptions direct the data collection and then the collected data, when analyzed, indicates new directions and new sources of data (Bentzon, 1998: 18).

<sup>16</sup> The term 'growth point' or rural growth centre is widely used in Zimbabwe to denote settlements which are earmarked or designated for economic and physical development. Growth points can generally be defined as settlements (rural or urban) which central and local government consider have potential for further development and hence need to be supported by further public and private sector investment. In the immediate post-Independent era (post-1980) the focus of the growth centre policy was on rural areas. The

primary cause which had triggered all the other contributing factors that then ensued, including the illegal sale of land, all of which had now combined to accelerate urban expansion to the detriment of rural women's land rights in Seke. I then began to explore and analyse this new empirical data which was not apparent in the limited desk review which informed my initial research design, and it necessitated the expansion of my study to interrogate it.

One woman from Chinamano village, which was the first village that I randomly sampled, informed me:

‘People in this village have sold their fields ahead of the RDC coming to acquire them as they did in Mubobo village, near Dema rural district growth centre across the road where they developed a residential location. Go and see what has happened to people of that village for yourself.’<sup>17</sup>

This directed me to Mubobo village in order to investigate about this new information regarding the RDC residential location which had been developed on what were previously people's fields. In Mubobo, a village situated close to Dema growth point, most respondents revealed that long before the illegal sale of land took place in adjacent villages, the RDC had acquired a portion of their fields in order to develop the growth point. Later on, the RDC moved in to take over all their fields which they designated as a residential location and stopped them from conducting any farming activities. They indicated that the RDC had promised to relocate them to other land where their agriculture-based livelihoods would be sustained but that promise had gone unfulfilled for years. I triangulated this data with that obtained from the first village and that which later emerged in Ward 2 from an interview with the headman of Kaseke village who also made the point that the development of growth centres (giving the example of a growth centre in Murisa village), was the first step towards urbanisation and was spearheaded by the RDC long before any illegal sale of land had taken place. These responses substantiated the RDC notice which I had come across on the internet and which, among other things, gave notice to the effect:

‘PLEASE note that only Chitsvatsva, Murisa, Kuora, parts of Kaseke, Marimbi, Rusirevi, Masona, Nechiva and Chitanda villages were incorporated

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centres (points) were identified in the communal areas and received public sector investment to improve physical and social infrastructure (Wekwete, 1988).

<sup>17</sup> 10 November 2015, Chinamano Village.

into Murisa Rural Service Centre. All the other villages except those to be incorporated into Dema District Service Centre remain communal with the land managed in terms of the Communal Land Act. (NOTICE-NR01/2015).<sup>18</sup>

Respondents noted that failure to give the affected occupants alternative land for agriculture caused the surrounding villagers to conclude that the RDC's urban expansion through Growth Points/Centres of the whole communal area was imminent. Afraid that the RDC would not relocate or compensate them and that they would eventually lose their fields to the RDC (which they had witnessed happening in other locations where the RDC had already taken over fields to develop growth points and residential locations), headmen and largely male household heads in these other villages began to illegally sell off their fields in order to benefit financially before the RDC could acquire them.

This information led me to interview a Council official at Manyame RDC in Beatrice in order to understand the official view of the regularisation process and whether it was sensitive to the needs and realities of rural women who were losing access to land which was essential to sustain their livelihoods. This interview raised new data that the RDC had changed the communal land use in the affected areas in Seke from residential/agricultural to urban residential use because agricultural livelihoods were no longer sustainable in those areas. He also revealed new data that due to changes in land use, the Council had embarked on a registration process since an urban residential location would require formalisation of land rights. In this regard, he indicated:

'For the traditional occupants, we are registering the land in the name which appears on the communal land permit, which in most cases would be a man, since land was allocated mainly through the male head of the household under customary law. It means we have more men being registered than women....our processes are not concerned with gender issues.'<sup>19</sup>

This new information led me back to the rural women in the areas where I had carried out the study in order to find out if they were aware of the registration process and what they understood about the implications of the registration process in the transition from communal land use to urban-residential land use. Most rural women confirmed that the RDC officials had asked them to register each homestead in the name of the male household head with an

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<sup>18</sup> Available at <http://www.digilink.co.zw/manyame/NOTICE-%20NR01-2015.pdf>.

<sup>19</sup> 14 December 2015, Manyame Rural District Council, Beatrice.

exception of a few homesteads which are female-headed being registered in their names, following the provisions of the Communal Land Act which prescribes patrilineal customary law allocation of communal land. This revealed that in the transition from communal to urban residential use through registration, the RDC was building upon the customary law allocation of communal land in violation of section 80(3) of the Constitution which renders void all laws, customs, traditions and cultural practices that infringe the rights of women and section 56 of the Constitution which calls for the equal treatment and non-discrimination of men and women.

Thus, this open-minded approach encouraged me to analyse my data against my assumptions, allowing me to constantly review and amend them as I uncovered new issues and avenues of inquiry and discovery (Bentzon, 1998). As new data emerged, it led me to new sources of data which helped to bring clarity to what were, in the initial field visits, very complex narratives on the different processes that had contributed to urban expansion into Seke communal land. The triangulation of data collected became easier as different pieces of information and different data sources came together and assisted me to paint a full picture of the sequence of events in the urbanisation process. The new data was crucial because my research framework expanded from merely focussing on the illegal sale of communal land by men to include the whole host of factors and processes that impacted on rural women's land rights in the areas researched. My human rights framework also expanded to encompass not only the positive duty of the State to protect violations of rural women's land rights by third parties, such as traditional leaders and male heads of households, but also to include its (the State's) negative duty, through its agent, the RDC, not to infringe on those rights. It became apparent that the RDC was in violation of the Constitutional provisions<sup>20</sup> to give reasonable notice of the intention to acquire property to those who would be affected by the acquisition and to pay them fair and adequate compensation for the acquisition before acquiring the property or within a reasonable time after doing so.

### ***2.2.3 Interacting with institutions and their agents***

Throughout the study, I interviewed various actors involved in the urban expansion process and they gave their different perspectives about urban expansion and the processes involved. Interviews with headmen allowed me to understand how their role in the allocation of land

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<sup>20</sup> Section 71(c)(i)(ii).



and their use of customary law impacted on rural women's access to land. Conducting an interview with the RDC official gave me insight into how their role in the urban expansion processes, such as regularization and registration, impacted on rural women's land rights. Using the actors and structures approach helped me to interrogate structures, such as the customary law, to see how it influenced rural women's access to land in Seke communal area before and during its transition from communal to urban land use.

The Chitungwiza Magistrates Court was an important structure in assessing the legal remedies that had been utilized in protecting rural women's access to land and in confirming who had concluded the illegal sales of the communal land between rural women and men in assessing the gendered roles that determined who had control over it. The Community Residents Trust (CRT) which was formed to represent traditional and new occupants' concerns was also important in assessing whether rural women's concerns about access to land for livelihoods had been articulated or represented to the different government authorities which the CRT approached concerning the urban expansion processes into Seke communal area.

#### ***2.2.4 Exploring the social and cultural construct of communal land rights between men and women***

Using Sex and Gender Analysis, I managed to interrogate who between rural women and men in Seke communal area, has more access, control and prospects of ownership of land in the different processes at play in urban expansion. It was to my advantage that the period of research occurred in the rainy season when people work in their fields. I observed that more rural women than men do this kind of work and this highlighted the gendered social construction that it is women who access land merely as users in order to fulfil their gendered role as primary care givers through the provision of food for their families. This served as a clear indication that access to land is largely by rural women. A perusal of court records from Chitungwiza Magistrates Court revealed the gendered nuances involved in the illegal sale of fields. Those arrested for the illegal sale of land were mostly men showing that men dominated the control over land in Seke communal area. This confirmed the media reports which influenced my initial assumptions that traditional leaders and male household heads had concluded most of the illegal sales which had led to less land being available for farming and pastures. The registration of homesteads by the RDC based on the names on the

communal land permits which bore mostly men's names was a clear indication of how ownership was largely transferred to men.

### ***2.2.5 Legitimising and asserting (enforcing?) rural women's land rights through human rights entitlements***

Locating the urbanisation process in Seke communal area within a human rights framework was imperative as it shifted the urbanisation process from being a social issue with merely moral obligations to a legal issue where legal obligations arose for the various actors involved. The Constitution of Zimbabwe, coupled with Zimbabwe being a signatory to various International and Regional human rights instruments, offer practical advantages to rural women by providing a platform where they can assert and articulate their legitimate claims with a legal authority that other approaches do not offer (Connors, 2000). The human rights approach was useful in assessing the compliance or lack thereof of different actors in the urban expansion processes in upholding rural women's rights including access, control and ownership of land and property, their right to participate in development planning that affects their lives, their right to food security and their right to compensation and relocation when they are affected by development processes, in this case, urban expansion. I used CEDAW, the Maputo Protocol, the SADC Declaration and other international and human rights instruments and documents to establish the state's duty to protect, promote and fulfil these rights.

### ***2.2.6 The plurality of norms and values within the legal system***

Zimbabwe inherited a dual legal system from its British colonisers which allows customary law to operate together with general law. My study in Seke communal area on rural women's land rights provided an opportunity for me to analyse the implications of legal pluralism for rural women's land rights. The communal allocation of land, being governed by customary law which is patrilineal, meant that land was allocated through men. Through interviews, however, I also became aware of the local norms and values within which rural women, through multiple relationships, negotiated their access to land for livelihoods. In this regard, the practice of customary law allocation through the men did not prove discriminatory to rural women as they utilized the opportunities within it to utilise land for livelihoods.

However, when it came to control over land, customary law became discriminatory against rural women who were side-lined from decision-making process in the disposal of land as

evidenced by men concluding illegal sales of communal land, thereby necessitating the need for the intervention of legislative strategies which hold that discriminatory customary laws are unlawful (Hellum, 1999). Customary law also became discriminatory to rural women in the transition of land use from communal to urban use, as evidenced by most men being registered on communal land permits which were obtained customarily by the RDC. This pointed to the need to create a procedural framework that allows customary law to evolve in response to statutory provisions dealing with gender equality and non-discrimination in the on-going process of land and property-holding changes in order to protect rural women's rights to own property.

### **2.3 Emerging issues**

The main thrust of the study at the research design stage problematized the illegal sale of communal land by men due to the skewed gender allocation of land according to customary law as the main cause of urban expansion which impacted on women's access and control of land for livelihoods. However, findings in the field brought out underlying causes and on-going processes which were impacting on rural women's access to, control over and ownership of land in Seke communal area which were not apparent at the research design stage but proved to be pertinent and central to the study. These include rural development through growth centres by the RDC, the regularization and change of land use from communal to urban residential use and the introduction of registration all of which interacted to impact upon rural women's land rights in the urban expansion phenomenon. These were incorporated into the discussion of the study's findings.

### **2.4 Data collection methods**

#### **2.4.1 Random sampling**

I used random sampling at the inception of the research since I did not have any clear guidance as to which areas in Seke communal land area had been affected by urban expansion and ear-marked to change from communal to urban use. I also at this stage had not established where to locate my key informants, hence I just randomly interviewed respondents who were willing to give me information on my study and guide me to my key informants.

### **2.4.2 Focus group discussions**

I had open discussions with two focus groups which were organized by two headmen of different villages. The discussions involved both rural women and men who related the history of their settlement in Seke communal area and the challenges they were now having in the face of urban expansion. The open conversation method was useful because it allowed the respondents to determine and air their views and concerns in relation to what issues were relevant and pertinent to them in the urban expansion discourse, with my making only minimal interjections to clarify or seek more information. Figures 2 and 3 are photographs of the respondents gathered at the two focus groups.



**Figure 2: Rural men at a focus group discussion in Mubobo**



**Figure 3: Rural women at a focus group discussion in Mubobo**

### **2.4.3 In-depth interviews**

I collected most of the data for the study from interviews with my key informants including rural women and men, headmen and the RDC in order to obtain information on the actual lived experiences of rural women in relation to land rights which had a direct bearing on my research objective. Once I introduced myself and explained that I was conducting the research in my capacity as a law student, most respondents relaxed and felt comfortable giving me as much information as they could as I guided the discussions by asking them

searching questions concerning my study. Some respondents also directed me to other sources whom they thought might be useful to the research. For example, through information obtained from an interview with Headman Kaseke, I learned about and attended a residents' meeting addressed by the Ziko Community Residents Trust. Also it was through interviews that I learned the name of the key RDC official and got to know him.

#### ***2.4.4 Passive participation***

I used the method of passive participation to collect data when I attending a Ziko Community Residents Trust (CRT) meeting which was open to interested parties (both traditional and new occupants) who had been affected by regularization processes which were taking place at the time of the research. Figure 4 is a photograph of part of the crowd gathered to attend the meeting. From the address of the Chairman of the Trust, I managed to gather information that had been obtained from various government authorities, such as the Ministry of Local Government, which the committee had visited in order to confirm whether what the RDC was doing was sanctioned by the Government. He informed that what the RDC processes had been approved in all the government offices they had gone as above board.



Figure 4: Part of the crowd at a Ziko CRT meeting

#### **2.4.5 Observation**

As I visited the various villages in the field, I took advantage of the fact that it was the ploughing season and observed that it was mostly rural women who were hoeing the fields confirming that most rural women used the land for farming. At a CRT meeting representing both the traditional and new occupants who had bought stands in Seke, I also took the opportunity to use the observation method and noticed that discussions were dominated mostly by men and to lesser extent women who had illegally settled in the area whose occupation had been or was still to be regularized by the RDC and that the discussions predominantly concerned housing issues thereby side-lining rural women's concerns for farming livelihoods. When talking about livelihoods whether in individual interviews or group discussions, rural women were observed to be more emotional over the loss to urban expansion.

#### **2.4.6 Perusal of court records**

I visited Chitungwiza Magistrates Court in order to establish the legal remedies that were available for rural women who had been affected by urban expansion and also to establish who had concluded illegal sales of communal land from the court records. This method was useful in my gender analysis of who had legal capacity to seek legal redress and to make decisions concerning the disposal of land between rural women and men.

#### **2.4.7 Pictorial data**

I took photographs during the research in order to make the findings of the study, particularly the lived realities of rural women in the face of urban expansion, more vivid to the readers of this study and as evidence that the study was based on empirical research.

#### **2.4.8 Secondary methods**

I used the library, internet, human rights instruments, newspapers and statutes as fundamental sources to analyze and situate my findings within already established and ongoing debates involving rural women's land rights.

### 2.4.8 The respondents

Table 1 gives details of the 72 respondents involved in the research.

**Table 1: Showing details of the respondents involved in the study**

Respondents by Category	Designation	Male	Female	Total Number of Respondents
Headmen	Headmen	2		
RDC Official	Town Planner	1		
Ziko Community Residents Trust	Chairman	1		
Ziko Community Residents Trust	Vice-chairman	1		
Zimbabwe Combined Residents and Rate Payers Association	Chairman	1		
District Administrator	District Administrator	1		
Women	N/A		45	
Men	N/A	20		
Total		27	45	72

### 2.5 Limitations of the study

Seke Communal Area is made up of 8 Wards, with an estimated total of 13,051 households as already mentioned in chapter 1. Each Ward hosts over 10 villages. While the regularization process and change from communal to urban use by the RDC has been implemented in selected Wards and villages with others remaining communal land, all the Wards have felt the impact of urban expansion to a varying extent. Those which remain communal land face the impending threat of transition to urban residential use based on the RDC's track record to date.

The study, however, could not cover the 8 communal wards because it proved too costly and impractical to collect data from all the wards or villages within the short period allocated to the study and owing to the fact that the study was not funded. I therefore purposively resorted to the use of data collected from villages in Wards 1 and 2 which have been affected by regularization and change of land use from communal to urban residential use in order to



arrive at generalisations on the impact of urban expansion on rural women's land rights in Seke Communal Area. My basis for the generalisations is premised on the idea that useful data could be equally drawn from a representative portion of the population of rural women in Seke communal, who have been/are being affected by the same elements.

In the 2 Wards from which data was collected, it was also impractical to cover many villages because I was unable to go into the field as frequently as I would have liked given the cost of travelling to Seke which is 40 km from Harare. Other hindrances included time spent travelling between villages, the lengthy interviews which sought to excavate as much information as was necessary to understand the very complicated narratives of urban expansion from the respondents and the time needed to analyse and triangulate the data so as to follow leads to new sources of pertinent information on the subject matter.

I could also not proceed back and forth between respondents in order to discover the official line from the RDC on certain issues that were highlighted by occupants of Seke so as to compare the official version with the lived realities of the rural women. I managed to secure an interview with the RDC town planner in a very short time because his office was very busy. I waited for almost two and half hours until I could interview him and he had to rush through the interview which meant that I could not ask him all the questions I intended. In addition, the prohibitive cost of frequent travel over long distances was a huge limitation because Manyame RDC Headquarters is 54 km from Harare which meant that I could not afford to go there as often as I would have liked to continuously triangulate my field findings with official information. The RDC sub-office in Dema was unwilling to give interviews and instead directed me to the Head Office in Beatrice for information related to my study.

The study also failed to pursue officials in government Ministries such as the Ministry of Local Government which is charged with the administration of communal land because of time constraints. This was due to the fact that I spent most of my time in the field in order to acquire as much information and understanding as possible of the many issues that emerged there. While these hidden issues had not been apparent at the research design stage and only gradually revealed themselves after I entered the field, they subsequently proved extremely critical to the study.



## **2.6 Conclusion**

This chapter has discussed the methodological approaches and methods that were employed in collecting the data for the study and how they were useful in the analysis and collection of relevant data from different sources. The chapter also highlighted how the study developed through empirical data from the initial desk review research design to grounded research with the guidance of different methodological approaches to relevant data sources.

## CHAPTER THREE

### 3.0 A COLONIAL LEGACY OF ‘LAND GRABBING’?: THE HISTORICAL BACKGROUND OF INSECURITY OF TENURE IN COMMUNAL LANDS AND ITS IMPACT ON POST-INDEPENDENCE LAND LAWS

#### 3.1 Introduction

It would be short-sighted to analyse women’s land rights without providing an historical background to land tenure<sup>21</sup> arrangements dating back to the colonial times because the organisation and administration of communal land in Zimbabwe takes its cue from this era. The colonial legacy of land laws is the major framework through which livelihoods<sup>22</sup> for rural women and their position in law with regards to land rights have been conditioned. This is discussed in detail below.

#### 3.2 The historical background of communal land in Zimbabwe: The Colonial era

In British colonial times, land allocation was characterised by inequalities and racial discrimination. The British South African Company (BSAC)<sup>23</sup> forcefully removed Native blacks from areas of fertile soil, which were expropriated to become European land, and pushed their original dwellers on to poor and sandy soils. Under the British Crown, the Land Apportionment Act of 1930 divided land into native reserves, formally known as Tribal Trust Lands (TTLs) where the blacks were settled and the rest of the land became European land. The division into Native and European land was defined by different tenure systems and racial categories. European land was held under freehold<sup>24</sup> while TTLS, based on a colonial construction of traditional African landholding systems was considered ‘communal’ with

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<sup>21</sup> Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land which determines who can use what resources for how long, and under what conditions (UN Economic Commission for Africa, 2004) available at <http://landwise.resourceequity.org/record/1486>.

<sup>22</sup> A livelihood comprises the capabilities, assets (including both material and social resources) and activities required for a means of living (Scoones, 2009).

<sup>23</sup> The British South African Company was a private corporation, equipped with its own army and acting under a British concession that conquered the territory, it set up the system of private ownership and race privilege that became the colonial system (Verma, 2014: 56).

<sup>24</sup> Freehold is a concept implying the personal right to control, manage, use and dispose of property (Economic Commission for Africa, 2004) available at [http://www.uncsd2012.org/content/documents/land\\_tenure\\_systems%20and%20their%20impacts%20on%20Food%20Security%20and%20Sustainable%20Development%20in%20Africa.pdf](http://www.uncsd2012.org/content/documents/land_tenure_systems%20and%20their%20impacts%20on%20Food%20Security%20and%20Sustainable%20Development%20in%20Africa.pdf).

only usufruct rights (Moyana, 1984). This set in motion two parallel systems of land tenure, the European freehold tenure secured by title deeds and the native communal/customary tenure,<sup>25</sup> without any form of tenure security.

Under the Land Apportionment Act, the BSAC formally recognised the role of traditional authorities as interlocutors between the British Crown and the Natives, to hold land in trust for the British Crown and to grant only usufruct rights to the Natives using customary law which the colonial powers initiated, with serious distortions regarding community rights and individual rights to land (Economic Commission for Africa, 2012). However, in practice the authority to allocate land fell primarily to the European Native Commissioner. Grazing and woodland areas were used as common property resources while homesteads and fields stayed within a family. Colonial officials outlawed the buying of land in TTLs and maintained that TTLs had to be kept as Crown land and a ‘social security net’ for all Africans (Shutt, 1995). The ultimate ownership of land by the Crown meant that Natives could be relocated through the directive of the Crown. The colonial regime also banned transactions in land in TTLs so as to retain ownership of it in the event of its later desiring to advance its interests in it, especially mining which was critical to the industrialisation of the first world. Therefore, mining rights took precedence over communal rights in land, meaning that Natives could be displaced at any time from land where minerals were discovered.<sup>26</sup>

An analysis of this arrangement is noteworthy as it marks the beginning of the marginalisation of women from decision-making regarding land. Customary tenure was reformulated to satisfy the demands of the colonisers for land. The post-Independent

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<sup>25</sup> Customary tenure is a system where rights in land are ostensibly controlled and allocated according to traditional practice (Economic Commission for Africa, 2004, available at [http://www.uncsd2012.org/content/documents/land\\_tenure\\_systems%20and%20their%20impacts%20on%20Food%20Security%20and%20Sustainable%20Development%20in%20Africa.pdf](http://www.uncsd2012.org/content/documents/land_tenure_systems%20and%20their%20impacts%20on%20Food%20Security%20and%20Sustainable%20Development%20in%20Africa.pdf).)

<sup>26</sup> Notice that even to date under Section 10(3)(d) of the CLA, mining rights still take precedence over any other rights in land in communal areas. In regard to mining and minerals, the CLA works together with the Mines and Minerals Act which was also drafted in the colonial period to satisfy the objective of colonization, i.e., the exploitation of mineral resources and was uncritically received into Zimbabwe’s statute law at Independence in 1980. Section 2 vests all minerals in the President despite the *dominium* or right a person may possess in land and to soil under which minerals are found. Even where a communal occupant finds minerals on their land, they cannot exploit it because they are only permitted to use the land for residential and agricultural purposes under their communal land permit. Due to lack of security of tenure in Communal areas, communal occupants have very limited leverage, if any, to negotiate for due compensation. In the case of Communal land, notice under the Mineral and Mines Act is given to the RDC for the area and not the occupiers of communal land, despite section 71(3)(c)(i) the Constitution directing that persons with interests in property are supposed to be notified of any acquisition plans. The result has been massive mining operations by powerful mining companies taking place in collaboration with the State in some communal areas at the expense of agricultural livelihoods.

government has inherited this colonial customary tenure regime which is replete with distortions that ignored the existing customary tenure systems concerning customary authorities and land management, thereby reinforcing the predominance of patriarchal systems which were adopted as a result of collaboration with male authorities to the exclusion of their women counterparts (Economic Commission for Africa, 2012). Both the male and colonial-imposed versions of customary land tenure were approved and codified into law. The result, which is still felt today by rural women, was their relegation to minority positions which ensured that women only have access to land through male relationships. Far more extensive and deep-rooted was the impact of the creation and maintenance of insecurity of land tenure in communal lands, which post-independence has remained in the grasp of ownership of the State. This has enormous consequences for rural women's land rights in communal land and on human rights including food security, participation in sustainable development and ownership of land and property by rural women as will be evident in the discussions that follow.

### **3.3 Overview and analysis of communal land laws: Post-Independence**

The Land Tenure Amendment Act of 1977, which was enacted by the Rhodesian government in response to the intensification of the liberation struggle in the 1970s, removed racial segregation. By the time of Independence in 1980, formal racial segregation had been removed (Chirisa, 2012). However, in connection with communal land (formerly called TTLs), the new post-Independent government uncritically assimilated the land tenure and organisational systems that were used in the colonial period which were predicated on principles underpinned by segregation and discrimination based on distortions of customary tenure systems. Right from the onset of Independence to the present day, little effort has been made to develop communal land laws so that they truly reflect indigenous knowledge and democracy, rendering the post-independent State little better than a re-incarnation of its former British master. This has negatively impacted on rural women's access to land for livelihoods, food security, sustainable development and rural women's ownership of property, as rural women have remained in almost exactly the same position they were in under colonisation in relation to their access to communal land.

The relevant laws governing communal land are the Communal Lands Act (CLA) which gives specific guidelines on the occupation and use of communal land, the Traditional

Leaders Act (TLA) which establishes the duties of chiefs in relation to communal land, the Rural District Councils Act (RDCA) which establishes Rural District Councils (RDCs) as the authorities responsible for administering communal land and the Regional Town and Country Planning Act (RTCPA) which regulates spatial planning, i.e., the management of space and development in order to create better places which respond to the needs of society, the economy and the environment.

Section 3 of the CLA defines communal land as consisting land which immediately before 1 February 1983 was TTLs in terms of the Tribal Trust Land Act of 1979. According to section 4 of the CLA, all communal land is vested in the President who permits its occupation in accordance with the Act. Section 8 of the Communal Lands Act states that in allocating land, a RDC shall have regard to customary law relating to the 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 the 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 tenure system in communal areas is therefore communal/customary tenure which only allows for usufruct rights, meaning that the occupants of communal land are only entitled to occupy and use the land and not to own it. The primary land uses permitted to occupants of communal land under section 8 are for agricultural and residential purposes with the consent of the RDC, through the issuing of a communal land permit.

The major challenge with the above provisions is the use of customary law in the allocation of communal land since it is patrilineal and therefore allocation is mostly through the male representative of the family. It gives rise to a case of discrimination against rural women since in the first instance they cannot get allocation of land in their own right because of the gendered nature of customary law allocation of communal land which gives preference to men. This keeps women in a position where they depend on negotiations through male relationships for access to land for livelihoods, as long as those relationships do not break down. This is in spite of the fact that the Constitution recognises the right of *every person in any part of Zimbabwe* to acquire all forms of property *either individually* or in association

with others<sup>27</sup> (Emphasis mine). It is argued that *'every person'* in the above provision includes rural women and *'any part of Zimbabwe'* includes communal areas. It therefore follows that the Constitution recognises that rural women can acquire communal land in their own individual capacity. In addition, the provisions of the CLA which invoke customary law which is discriminatory against women violate the Constitutional provision of section 80(3) which categorically renders void all laws, customs, traditions and cultural practices that infringe the rights of women conferred by the Constitution.

The vesting of communal land in the President is a reflection of how TTLs remained Crown land in the colonial era and its delegation through the RDC Act of 1988 places the administration of communal land under the regulating authority of the RDC which is a replication of the Native Commissioner who regulated TTLs on behalf of the Crown in colonial times.

Section 10 of the Communal Lands Act provides that the Minister of Lands and Rural Settlement, after consultation with the RDC established for the area concerned, may set aside any land contained within communal land for any purpose whatsoever which he considers is in the interest of the inhabitants of the area concerned or in the public interest or which he considers will promote the development of communal land generally or of the area concerned. This includes the establishment of a township, business centre, industrial area or land that is subject to a layout approved in terms of section 43 of the RTCPA, where such land is designated for any such purpose in terms of a rural development plan approved by him and the Minister responsible for lands after consultations with the Director of Physical Planning and any RDC established for the area concerned.

The main challenge which arises with the application of the above provisions is that of the overbearing State which can arbitrarily acquire communal land through its relevant Minister who has wide-ranging discretionary powers to interfere with the communal agricultural and residential land uses. This poses a huge threat to rural women's livelihoods and food security which are in most instances solely dependent on access to communal land for agriculture. The situation is exacerbated by the lack of secure tenure which weakens the negotiating powers for adequate compensation and relocation options for the occupants of communal

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<sup>27</sup> Section 71(2).

land in cases of land being set aside by the relevant Minister for other uses, as shall be revealed in the analysis of the findings of the study in the chapters that follow. It is therefore expedient that in such cases warranting the setting aside of any part of communal land for purposes of section 10 of the CLA, the Constitutional provisions in section 71(3)(c) (which requires the acquiring authority to pay fair compensation for the acquisition before acquiring the property or within a reasonable time after the acquisition) be adhered to as the Constitution takes precedence over any other law.<sup>28</sup>

According to section 5 of the TLA, the duties of chiefs include ensuring that communal land is allocated in accordance with the Act and that the use and occupation of communal land is observed. Sections 14 and 15 further provide for the responsibility of the chiefs to control illegal settlements and generally prevent degradation, abuse and misuse of land and natural resources in their area of jurisdiction and also provide for the establishment and operations of a village assembly made up of the inhabitants of the village concerned. The functions of the village assembly includes to consider and resolve all issues relating to land, water and other natural resources within the area and to make appropriate recommendations in accordance with any approved layout or development plan of the village or ward. Sections 14 and 15 therefore give rights to traditional occupants of communal land to self-organise and self-determine with respect to rural development.

However, the TLA has claw back provisions that curtail these rights of traditional leaders and occupants. Section 26 of the Act states that:

‘No land shall be allocated in terms of the Act except with the approval of the appropriate RDC which shall be the administrative authority with overall control over the use and allocation of all communal land.’

This means that although the RDC, in administering Communal land, works in consultation with the local traditional leaders who are appointed in terms of the TLA, the power of traditional leaders and occupants over communal land is merely custodial and overridden by the authority of the RDC. The lack of freehold tenure rights over the land they occupy limits traditional occupants’ recognition as important stakeholders in any developmental planning,

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<sup>28</sup> Section 71(3)(c)(i) must also be adhered to in situations of communal land being set aside for purposes of section 10 of the CLA. It provides that the acquiring authority must give reasonable notice of the intention to acquire the property to everyone whose interest or right in the property would be affected by the acquisition.

just as occurred in colonial times, and this shall be more discussed in the following chapters. The customary tenure arrangement hinders the ability of occupants of communal areas to engage and negotiate with the state for participation in the decision-making process, in having access to information and in receiving fair and adequate compensation or alternative land when they are affected or displaced by developmental processes, such as urban expansion. This leads to a violation of their right to participate in rural development within the spirit of section 13(2) of the Constitution.<sup>29</sup>

Based on the above provisions, the tenure system in communal areas gives more recognition to other entities, especially RDCs as the administrative and regulating authorities over communal land. As non-owners of the land, communal occupants are prone to compulsory acquisition of land, displacements or even evictions since the RDCs hold and exercise the ownership rights over communal land on behalf of the President.

The CLA provides for compensation under section 12, where communal land has been set aside for purposes in terms of section 10 as discussed above, specifically the right to occupy and use alternative land. This complies with the provisions of the Constitution of Zimbabwe. The departure point is section 71(2) of the Constitution which defines property as, ‘property of any description and any right *or interest in the property*’ (My emphasis). This can be safely interpreted to mean that traditional occupants of communal land regard the residential and agricultural land that they occupy under the CLA as ‘their property’ based on the interest they have in that land for the sustenance of their livelihoods, despite not having ownership rights in the land. That having been established, section 71(3)(c) provides that where land is compulsorily acquired, the law requires the acquiring authority to give reasonable notice to everyone whose interest or right in the property would be affected by the acquisition and to pay adequate and fair compensation for the acquisition before acquisition of the property or within a reasonable time after the acquisition. However, as shall be observed in the findings from Seke, the precarious nature of customary tenure seems to be interpreted as giving any acquiring authority an excuse to take advantage of the lack of ownership rights of the occupants of communal land by denying them compensation for the land acquired, apparently based on the problematic reasoning that it is owned by the State which out of benevolence

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<sup>29</sup> Section 13(2) provides that the State and all institutions and agencies of government at every level must endeavour to facilitate rapid and equitable development and the measures taken to that end must involve the people in the formulation and implementation of development plans and programmes that affect them.



grants occupants no more than an unsecured privilege of occupying the land. In other words, occupants' rights are not properly understood as being vested in them and therefore protected by law, including the right to receive compensation as provided by the law.

The ultimate vesting of land in the President (State) just like in colonial times means that occupants of communal land are at risk of losing their usufruct rights at any time. This exposes them to displacement, land grabs or relocation at the directives of the State. This has been the fate of traditional occupants in the wake of urban expansion into Seke communal area as shall be revealed in the discussions which follow.

In addition to being governed by the CTA, the RDCA and the TLA, Communal Land is also subject to the RTCPA which regulates spatial planning.<sup>30</sup> The lack of coordination and integration of the laws governing communal land and the RTCPA has led to a failure to address the tensions and contradictions pertaining to development planning amongst them, in particular conflicts between urban expansion of towns surrounding communal areas vis-à-vis communal livelihoods which is the discussion at the core of this study.<sup>31</sup>

### 3.4 Conclusion

It is evident that the laws governing communal land are rooted in and have colonial imprints that were aimed at achieving the segregationist policies and repressive legislation in the colonial era which are now dysfunctional in an independent Zimbabwe (Chirisa, 2012). The major challenge is the insecurity of tenure within which rural women negotiate their land rights using the colonial prescriptions of a skewed customary law allocation of communal land which increases the incidence of rural women's dependency on men for access to land

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<sup>30</sup> Spatial Planning refers to the methods used by the public sector to influence the distribution of people and activities in spaces of various scales. It is about the management of space and development in order to create better places, responding to the needs of society, the economy and the environment. It entails going beyond traditional land use planning to bring together and integrate policies for the development and use of land with other policies and programmes which influence the nature of places and how they function (The Bartlett School of Planning (undated) @ <http://www.bartlett.ucl.ac.uk/planning/programmes/postgraduate/msc/diploma-spatial-planning>; University of Innsbruck (2012) available at <http://www.ess.co.at/SPATIALPLANNING/planning.html> ).

<sup>31</sup> The difficulty in using the RTCPA principles which were used in the colonial period based on racial division of towns and the countryside as guidelines for spatial planning is apparent as the Act gives little attention to spatial planning in communal land and resettlement areas. This has given rise to planning challenges in communal and resettlement areas, for example, the sub-divisions and consolidations made under the A1 and A2 models of resettlement have changed the arrangement of space and this has planning problems, for example, for the provision of amenities such as schools and clinics which have not been provided for in the RTCPA (Chirisa, 2012: 5).

and their marginalisation in the control and ownership realms. These provisions are now out of touch with the principles of equality and non-discrimination as envisaged and promoted by the Constitution and violate a number of Constitutional provisions. The findings and analysis in the following chapter will illuminate the impact of insecurity of land tenure and customary law in the face of various processes that have culminated to urban expansion into Seke communal area on rural women's land rights.

## **CHAPTER FOUR**

### **4.0 ‘RE-COMPLICATED’: UNPACKING THE IMPACT OF THE PROCESSES WHICH HAVE LED TO URBAN EXPANSION ON RURAL WOMEN’S ACCESS TO LAND FOR LIVELIHOODS**

#### **4.1 Introduction**

The previous chapter has established the complications caused by the colonial organisation of communal land in rural women’s rights to access to land and which went on to inherited by the post-Independence communal land laws. This chapter seeks to analyse the findings in Seke communal land regarding the more recent different processes which have culminated in urban expansion and which have combined and ‘re-complicated’ rural women’s access to land for livelihoods. These processes are, firstly, the development of rural growth centres pioneered by the RDC, secondly, the illegal sale of communal land predominantly concluded by traditional leaders and individual rural men and which have triggered, thirdly, the regularization of the affected communal villages and the change of land-use from communal agricultural to urban residential use. The findings will also be analysed within a human rights framework which seeks to highlight the infringements on rural women’s right to food security, right to access and control over land as a productive resource in order to earn a living and the right to sustainable development through the exercising of their right to participation, which have all resulted from these processes.

#### **4.2 Marooned: ‘Land grabbing’ for rural growth centres and residential locations without alternatives**

Rural women in Mubobo village in Dema, Seke have been uniquely affected by the urban expansion phenomenon. Findings from Mubobo village revealed that before the illegal sales of fields by headmen and individuals occurred in Seke communal area, their village had already experienced the negative impact of rural development. Respondents from Mubobo village noted that the RDC initially took a small portion of land that was previously used as fields to develop a rural growth centre.<sup>32</sup> Later, the RDC, without consultation, took over the rest of their fields (as much as 6 acres per family), indicating, on their map for rural development, that these fields were designated to be a residential location for the growth

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<sup>32</sup> See definition of ‘growth centre’ in footnote 16, above.

centre. They pegged the area and stopped the occupants from carrying out all farming activities in their fields. Headman Mubobo, recalling the history of their settlement and the arrival of the RDC, said:

‘This was Dema Crown land during the colonial era. When the whites left, it was declared a reserve and we were resettled here. The RDC was not here then. I don’t remember the years they came in but all I know is that they started changing things for us. Without consultations with us, they just dictated that they were taking our fields because they were residential locations on their plan.’<sup>33</sup>

Chirisa highlights that the development of rural growth centres was an immediate post-Independent government initiative to lure investors which took the form of public sector investment in the improvement of the physical and social infrastructural attractiveness of communal areas in order to turn them into potential investment areas (Chirisa, 2012).

However, findings in Dema did not show that any tangible investment had taken place to the betterment of rural people’s livelihoods as a result of the growth centre strategy by the RDC. Instead, the RDC divided the fields into residential stands which they sold to buyers who are not primarily farmers and whose interest in the land was more for residential than investment purposes. The direct impact of the development of the growth centre and RDC residential locations in Mubobo village has been the loss of access to land for livelihoods for rural women.

Upon analysing these findings in Mubobo concerning rural development through growth centres, I find myself agreeing with the propositions by Scoones and the author of the Department for International Development (DfID) guidance sheets who advocate sustainable livelihood<sup>34</sup> approaches/perspectives as a core rural development priority. They opine that rural development must take a bottom-up, participatory approach in which the starting point is consideration of how different people in different communities gain a living and based on the principle of their participation, determine priorities for any practical intervention. The interventions should be articulated within the context of such realities without imposing artificial interventions on complex realities. It is only by focusing on understanding these

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<sup>33</sup> 12 November 2015, Mubobo Village.

<sup>34</sup> Sustainable livelihood is when a livelihood can cope with and recover from stresses and shocks and maintain or enhance its capabilities and assets both now and in the future, while not undermining the natural resource base (Scoones, 2009).

complex local realities that sustainable livelihood approaches can become an ideal entry point for participatory approaches to inquiry with negotiated learning taking place between local people and outsiders (Scoones, 2009; DfID, undated).

The experience of Mubobo village in Dema is an example of the result of the implementation of a top-down approach where rural women's sole dependency on agriculture as a means of livelihood was not recognised nor taken as the primary consideration in the guidance of the RDC's growth centre strategy. This led to negative rural development which diminished instead of improved the livelihoods of rural women and their families. It thus violated section 13(2) of the Constitution which provides that measures for national development by the State and all institutions and agencies of government at every level must involve the people in the formulation and development of implementation plans and programmes that affect them. Section 13(3), in particular, requires that such measures must protect and enhance the right of people, particularly women, to equal opportunities in development.

Most respondents indicated that they understood that development is something that is bound to happen but they also appreciated that alternatives need to be put in place. They indicated that they had been moved on twice due to the forces of development. Firstly they had been moved to pave way for an industrial site and secondly for the development of the national airport. However they did admit that the government had properly relocated them in both occasions. They also noted that when the main road was constructed, they received due compensation for the land they lost to make way for the road. When the RDC approached them they expected to be treated in the same way, i.e., to be relocated and compensated for the loss their fields so that they could sustain and continue with their agricultural activities, the basis of their livelihoods. The failure by the RDC as a State agent to relocate and compensate the rural women and their families is in violation of section 71(3)(c)(ii) of the Constitution which requires an acquiring authority to pay adequate compensation for the acquisition of property.<sup>35</sup>

Scoones notes that a livelihood is sustainable when it can cope with and recover from stresses and shocks to maintain or enhance its capabilities and asserts, while not undermining the

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<sup>35</sup> See also section 12 of the CLA which provides for compensation when communal land is set aside for the purposes set out in terms of section 10, in particular, section 12(i) and (2) providing for a right to occupy or use alternative land and to compensation payable from the Consolidated Revenue Fund.

natural resource base (Scoones, 1998). It is clear that the RDC-initiated rural development through growth centres is a stress/shock which renders rural women's livelihoods unsustainable as it has removed their access to land for agriculture, the resource base of their livelihoods.

Scoones further maintains that assessing resilience and the ability of a livelihood to successfully cope with stresses and shocks requires an analysis of numerous factors, including an evaluation of historical experiences of responses to various shocks and stresses (Scoones, 1998). It is abundantly clear that relocation to areas where agricultural livelihoods continued to be sustained has historically been a successful response to developmental projects for rural people in Seke, in particular, for rural women who did not have alternative livelihoods, evidenced by their hope for relocation in the face of rural development and urban expansion as was done for them before. The failure by the RDC to relocate rural women and their families has led to their inability to successfully cope with the stresses exerted on their livelihoods by rural development.

Respondents also indicated that the RDC had promised to relocate them when they had initially acquired their fields but now the RDC was taking advantage of the illegal sale of communal land that had occurred in other villages and the on-going regularization and urbanisation process occurring in most parts of Seke communal land in its decision not to compensate or relocate them. They also responded that on various occasions when the RDC had called for meetings at their Dema sub-office, the RDC basically said the same thing every time:

'This communal land is State land; that includes where you are staying. You are better off keeping quiet otherwise you risk losing even the residential yards that we left you with.'<sup>36</sup>

#### ***4.2.1 The effects of insecurity of land tenure in communal areas***

This brings into play the issue of insecurity of land tenure (as discussed in the previous chapter) which is a real threat to the security of rural women's social, economic and cultural livelihoods due to the nature of their land holding rights as merely users, which weakens rural occupants' negotiating position against institutions such as the RDC which holds stronger

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<sup>36</sup> According to respondent, one, Susan, 17 November 2015, Mubobo Village.

rights of ownership on behalf of the State. The failure of the communal land laws to provide tenure security to occupants of communal areas, in particular rural women whose livelihoods are embedded in their access to land, leads to negative consequences, such as those discussed above, including poorly managed expropriation of land can result in their impoverishment.

As argued in the previous chapter, the absence of secure tenure in communal areas is predicated on colonial segregation and racial discrimination which was aimed at securing more land for the colonial masters at the expense of the expropriation of untitled land for the natives, which remained Crown land and susceptible to acquisition by the colonisers. The major question becomes why land in communal areas remains untitled where elsewhere, people can acquire title to land? It is argued that insecurity of tenure in communal areas has become discriminatory against communal land occupants in an independent and democratic State<sup>37</sup> which is founded on the principles of equality and non-discrimination.<sup>38</sup> The findings expose a clear case of land grabbing by the RDC, where they took fields without compensation or alternative land for rural women and their families (Figure 5).

#### ***4.2.2 The effects of the development of rural growth centre residential locations on rural women's livelihoods***

Most rural women indicated that this has led to the loss of their livelihoods and they felt marooned and hopeless as to how they can ensure the survival of their families because they were not prepared for an urban life since they did not possess other livelihood skills. They indicated that men had quickly adjusted by finding alternative income generating skills such as digging river sand to sell to those building in the location (Figure 7) and most men had found jobs in brick-making and building (Figure 6).

From this, it can be noted that the ability to pursue different livelihood strategies is dependent on the basic material and social, tangible and intangible assets and capabilities that people have in their possession (Scoones, 1998). Most rural women's capabilities lie in farming through their access to land. The findings also highlight how women and men's relationships

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<sup>37</sup> Zimbabwe is defined under section 1 of the Constitution, among other things, as a democratic republic.

<sup>38</sup> See section 3 of the Constitution which fosters the founding values and principles including the recognition of equality of all human beings and gender equality. See also section 56 of the Constitution which provides that all persons have the right to equal protection and benefit of the law and the right not to be treated in an unfairly discriminatory manner.

to agricultural land are fundamentally different, and how these differences can have deep consequences for women's status, standard of living and survival.<sup>39</sup>

Koopman sheds further light on these differences when she notes that in most African household production systems, the production and processing of food crops are women's responsibilities and women's labour inputs in agriculture normally exceed men's. In addition, male farmers also derive income from a wide range of non-agricultural enterprises and from casual or part-time wage labour, unlike rural women whose opportunities to engage in wage labour and non-agricultural enterprises are far more limited (Koopman, 1997).

It can therefore be rightly argued that the ability of a livelihood to be able to cope with and recover from stresses and shocks is dependent on its resilience and adaptation to vulnerability. Those who are unable to cope or adapt, in this case, clearly the rural women whose livelihoods are squarely dependent on access to land for agriculture, are inevitably vulnerable and unlikely to achieve sustainable livelihoods (Scoones, 1998).

Rural women in Mubobo also indicated the loss of gardening livelihoods as a direct result of the RDC residential location. Rural women indicated that gardens, which were often established and managed by rural women along rivers or adjacent to other water sources, were a vital part of livelihoods in Seke. Supplementary watering characterised these garden sites and access to water was a critical factor. Women in Mubobo cited that yields in gardens were high due to supplementary watering. They also indicated that previously they were able to produce at least three crops in a year which gave them a relative high income. They responded that prior to the development of the location they carried out successful market gardening along the Hunyani River (Figure 8). They highlighted that the income was used to meet household needs such as school fees for children and buying clothes. Produce from the gardens was also an important source of food for their families. Mrs Moyo's plight on market gardens reflected that of the rural women at a focus group discussion:

‘Since the development of the RDC residential location began, the land we used as market gardens along the Hunyani River has been converted into land for river-sand harvesting to sell to those building their houses in the location.

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<sup>39</sup> This authenticates Dahl's argument quoted in the introduction of this paper that, 'As long as we live in a society where men and women have different paths in life, different living conditions, with different needs and opportunities, legal rules and policies will necessarily affect men and women differently' (Dahl, 1987).



This has had a huge impact on our income from gardening. A grave site has also been allocated by the RDC on part of the land we previously used for gardening for the residents of the location. Previously we had lorries coming to ferry our produce to markets in Harare and Chitungwiza. Now we have been overtaken by those in the farm across the Hunyani. They now produce better than us. No one is interested in our little produce any more. Things are bad for us. Children are dropping out of school here because we don't have income anymore.<sup>40</sup>

The emphasis on the importance of gardens by the rural women is underscored by Scoones, who noted that gardens have a significant impact on livelihoods in terms of improving household nutrition, expanding the range of crops grown, lengthening the productive season and providing extra income for the household (Scoones, 2010).

A study by Chikobvu on gardening in Seke reiterated that vegetable sales formed the major income contributor to the Seke communal households compared to crops from rain-fed fields, the latter being prone to drought. According to her findings, gardening had the potential to reduce the chances of crop failure as the irrigation from supplementary water sources was regular and systematic which increased the opportunities for households to harvest something. In addition, vegetable gardening had an advantage over the rain-fed field crops in that buyers paid for the produce immediately, thus, the income from vegetable gardening was more reliable to meet other household needs (Chikobvu, 2011).

The gendered nature of gardening as an important source of livelihood for rural women is underscored by Hellum who highlights that the produce from gardens is often sown, weeded and watered by women and girls and is useful both for consumption and sale to meet the day to day needs of families, thereby authenticating the findings from rural women in Mubobo (Hellum, 2012). The impact of rural development through a growth centre in Mubobo on rural women's access to land for livelihoods is well summed up by Shiva, who concludes that development projects have destroyed women's productivity by removing land, water and forests from their management and access (Shiva, 1989).

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<sup>40</sup> 17 November 2015, Mubobo Village.



**Figure 5: Woman shows fields taken by the RDC for a residential location**



**Figure 6: A residential location under construction on former fields**



**Figure 7: The destructive effects of river-sand harvesting on former gardens**



**Figure 8: Part of the Hunyani River which was a vital source of water for gardening**

### **4.3 But who is to blame for the loss of rural women's access to land for livelihoods?: The illegal sale of communal land reveals the driving factors**

#### **4.3.1 Threats of acquisition by the Rural District Council**

Most respondents attributed the growth in illegal transactions in communal land in Seke to threats posed by the RDC to compulsorily acquire land designated as fields for the development of growth centres and residential locations, without paying any compensation or allocating alternative land to sustain their livelihoods, contrary to the safeguards laid down in

the Constitution.<sup>41</sup> Fear of expropriation without compensation by the RDC due to its administrative position in the area was a recurring theme in explaining why traditional occupants resorted to the illegal sale of communal land. In an interview with Sabhuku Kaseke, he noted:

‘When people saw that the RDC was taking over the communal area without relocation, they started selling their fields.’<sup>42</sup>

This confirmed what one woman in Mubobo village had previously indicated:

‘I don’t think people would have sold their fields if the RDC had relocated us when they initially took our fields to develop a growth point and a residential location. Had the promise for relocation been fulfilled to us as initially promised by the RDC, surrounding villages would have waited to be relocated to places where they could carry on with agriculture to sustain their families.’<sup>43</sup>

It is important to comment here that while the threats posed by external actors who are third parties without previous relations to the land such as multi-national companies, have been clearly debated in human rights literature, state obligations in relation to internal threats caused by, for example in this case, local administrative authorities are less clearly developed in human rights literature, yet, threats which affect women’s land rights disproportionately often fall into this group (Ik Dahl, 2008).

#### ***4.3.2 The effects of gender imbalance in administration and allocation of communal land***

Most rural women and men were uncomfortable about engaging in discussions that sought to bring out whether they personally had illegally sold their fields and who was responsible for deciding on such sales within the family set-up. This was possibly due to the fact that arrests had been effected against those who had illegally sold their fields previously and being unsure of what I intended to do with the information obtained. However, interviews with those who had purchased land illegally and a perusal of court records at Chitungwiza Magistrates Court helped me to make the gendered analysis on decision-making in the

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<sup>41</sup> See section 71(3)(c)(ii) requiring the acquiring authority to pay fair and adequate compensation for the acquisition.

<sup>42</sup> 30 November 2015, Kaseke Village.

<sup>43</sup> 16 January 2016, Mubobo Village.

conclusion of the sales and how the gendered conclusion of illegal sales impacted on rural women's access to land. One Nomore informed:

'I met a man from this village at Ziko shops who indicated that his field was too big and he was selling a portion of it as a residential stand while I was passing through for a drink. I am a truck driver by profession and at that time I was renting in Glenview. When I concluded the sale, the headman was a witness and he got a portion of the money. My experience and that of my friends who also bought land here was that women were not involved in concluding these sales. They were usually concluded at the beer hall and most of the men would drink that money. Men just wanted money as I see it.'<sup>44</sup>

Another woman indicated:

'Our headman and his brother sold huge tracts of land. He was once arrested and went to court. We do not know what the outcome was. We just saw him returning to his home. Others speculate that he paid a bribe to the police and at the courts.'<sup>45</sup>

At Chitungwiza Magistrates Court, a perusal of the court records initially meant to assess the effectiveness of the available remedies for illegal sale of communal land in protecting rural women's access to land soon became useful as a tool with which to analyse the gendered conclusions of illegal land sales. The perusal of court records substantiated that traditional authorities and ordinary rural men had concluded the illegal land sales as those who were tried and sentenced were headmen and ordinary rural men.

The above is reflective of what Kameri-mbote rightly articulates when she notes:

'Women are underrepresented in institutions that deal with land, their rights under communal 'ownership' are not defined and this allows men to dispose of family land freely' (Kameri-mbote, 2006).

While under the customary tenure, rural women in Seke had rights to access land for livelihoods, it was clear that they did not have control over that land as evidenced by their absence from the conclusion of the sales of the land.

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<sup>44</sup> 13 November 2015, Zin'anga Village.

<sup>45</sup> 13 November 2015, Zin'anga Village.

Koopman identifies the skewed gender dynamics in the control over land in most African agricultural households which is that, in an overwhelming majority of cases, men have ultimate control over the household's most basic productive resource, that is land, and that male control of land increases significantly the uncertainty and risk in women's food – production activities since men have the power to dispose of it (Koopman, 1997).

The control that men have over communal land stems from the patrilineal organisation of communal land in both the administration and allocation of land which places men in decision-making positions to the detriment of rural women's control over land. This is in violation of section 17 of the Constitution which requires the State to promote full gender balance and the full participation of women in all spheres of the Zimbabwean society on the basis of equality with men. Subsection 1(c) and section 2 are far-reaching and provide that the State and all institutions and agencies of government at every level must take practical measures to ensure that woman have access to resources, including land, on the basis of equality with men and the State must take measures to rectify gender discrimination and imbalances resulting from past practices and policies.

#### ***4.3.3 The effects of expensive urban residential land and housing***

In connection with the illegal sales, it also emerged that most of the people who bought illegal communal stands in Seke were from the nearby urban towns of Chitungwiza and the capital city of Harare. In Zimbabwe, ever fewer urban dwellers are able afford township housing owing to the high unemployment rate due to the government's failure to align the nation's population and urban growth rates and the generally low wages earned by the urban working class (Moyo, 2000). In addition, unregulated neo-liberal/market-based approaches to the management of urban land have led to extortionate prices for the sale of urban residential stands. The failure by the state to respond to the increasing demand for urban land for residential purposes through the implementation of strategic land policy frameworks has driven potential buyers to seek and become illegal occupants of land in peri-urban communal areas. For example, Seke communal area has received the brunt of a wave of home seekers from Chitungwiza and Harare and this has further exacerbated rural women's access to land for livelihoods.

#### 4.3.4 *The effects of Operation Restore Order of 2005*

Some respondents also attributed the result of illegal sale of land in Seke to Operation Restore order of 2005, popularly referred to as Operation *Murambatsvina*. Sabhuku Kaseke remarked:

‘In 2005, some people came from Harare to this communal area after their houses were destroyed by the government through operation *Murambatsvina*. The President declared that they should go to rural areas and when they came to my village, I could not deny them a place to stay. I allocated land to them. Today, the RDC blames me for selling land illegally. I did not sell land; others began then to see the opportunity to sell their fields but as headmen I simply helped those people who had been displaced from Harare by Operation *Murambatsvina*.’<sup>46</sup>

This is in agreement with Moyo, who identifies the increased urban squatting, shared lodging and shacks as having resulted from the demand of land for residential purposes in urban areas (Moyo, 2000). As already discussed in the previous chapter, poor spatial planning<sup>47</sup> contributed to the increased demand for urban residential land as well as the lack of coordination and integration of communal land laws with the RTCPA.

This all culminated in Operation *Murambatsvina* during which urban dwellers lost their homes to the government’s clean-up policy, which received international criticism for its implementation without an alternative plan for those rendered homeless and saw the destruction of homes and the displacement of thousands of urban dwellers.<sup>48</sup> The pressure of the urban homeless was once again exerted on peri-urban communal areas which absorbed and settled them and from which where they could easily commute to the capital city in search of work.

The interview with a RDC official revealed that the RDC is not ready to take responsibility for the urban sprawl into Seke:

‘We recognise that the law says whenever development takes place, the existing users have the existing user rights to compensation and relocation, but

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<sup>46</sup> 30 November 2015, Kaseke Village.

<sup>47</sup> See definition in footnote 30, above.

<sup>48</sup> Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation *Murambatsvina* by the UN Special Envoy on Human Settlements Issues in Zimbabwe, Mrs. Anna Kajumulo Tibaijuka at [http://www.un.org/News/dh/infocus/zimbabwe/zimbabwe\\_rpt.pdf](http://www.un.org/News/dh/infocus/zimbabwe/zimbabwe_rpt.pdf).

in this case, the same person we are saying needs protection is the same person who caused the problem we as the RDC are trying to solve. There is no compensation or relocation option in this case because the people in Seke abused their right by engaging in illegal sale of land. Where the government has planned development, there is always a budget for compensation and relocation but the situation in Seke is such that it was not government initiated therefore there is no budget for that. People should have consulted with the council upon hearing rumours that we wanted to develop the area and discussed relocation options if they were genuine, but they took things into their own hands.’<sup>49</sup>

Yet when analysed from the perspectives discussed above, the lack of effective strategies by the State to cope with the increasing demand of residential land in urban areas and Operation *Murambatsvina* are significant contributing factors to diminished access to land for livelihoods for rural women and their families in Seke. In addition, due to the skewed gender dynamics of communal land tenure, rural women are experiencing long-term negative harm to their agricultural livelihoods as a result of men engaging in the illegal sale of communal land.

#### **4.4 Assessing the effectiveness of legal remedies in protecting rural women’s access to land in the face of the illegal sale of communal land**

While it was rural women who essentially lost access to land for livelihoods to the urban sprawl caused by men disposing of it through illegal sales, they lacked the legal capacity to redress the problem under the CLA. Rural women’s incapacity to pursue legal remedies emanates from the lack of security of land tenure arising from the customary tenure organisation of communal land which recognises women simply as users endowed with only rights to access but not own land. The vesting of ownership rights in the State, which according to the law delegates the regulatory authority of communal land to the RDC, gives the latter the *locus standi*<sup>50</sup> to pursue legal remedies under the CLA. Vhugen correctly observes that customarily recognised land tenure rights often become threatened, without legal recourse, as those rights may be ignored or marginalized when use rights are transferred to outsiders (Vhugen, 2012-2013).

Armed with the legal capacity to redress illegal communal land sales, the RDC proceeded to utilize section 28 of the TLA which makes it an offence to dispose of communal land or the

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<sup>49</sup> 14 December 2015, Manyame Rural District Council, Beatrice.

<sup>50</sup> Legal capacity.

right to occupy and use such land except in accordance with the Act and the CLA. This led to the arrest of traditional leaders and individual rural men who had sold communal land illegally. According to the records perused, they were all sentenced to a fine of \$50 or 20 days' imprisonment. All the accused persons in the records perused managed to escape with a fine, which arguably, was not a sufficiently effective deterrent the illegal sales of land did not stop and some accused persons re-offended at the expense of rural women who lost and continued to lose communal land which is central to their livelihoods.

It was also observed that the RDC only brought before the law those who sold land illegally but was reluctant to cause the arrest of those who purchased land and occupied it in contravention of the CLA. In other words, the RDC did not enforce the provisions of section 16(2)(a) of the CLA against the occupiers. The provision states that a court convicting any person on a charge of occupying any land in contravention of the Act, may, in addition to any penalty imposed, make an order for ejection from such land of such person. It is argued that had this option been utilized by the RDC, it would have sent out a strong deterrent message to those would-be illegal purchasers of communal land. The combination of the two legal remedies of causing the arrest of both the sellers and the purchasers would have worked together to strengthen the protection and preservation of communal land from undergoing its transition to urban residential use as a result of the urban sprawl thereby ultimately protecting rural women's access to land for livelihoods.

The RDC instead opted to regularize the settlement of illegal purchasers of communal land by making them pay a penalty fee of US\$1,000 and US\$6 per square meter for the land that the RDC would formally peg for them in the ongoing regularization<sup>51</sup> process which is discussed below.

#### **4.5 Are rural women's land rights protected? Interrogating the regularization process**

Following the illegal sale of communal land by headmen and predominantly male heads of households in Seke, and the RDC's reluctance to utilize the provision of the Communal Land Act to cause arrests of the illegal occupants in Seke (which has already been argued would

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<sup>51</sup> Regularization is the process which defines the steps which are taken by the RDC to formalize all informal housing settlements with secure title rights and proper planning and the eventual provision of all required services.



have been a more effective legal remedy to secure rural women's access to communal land for their livelihoods), the RDC proceeded to regularize the illegal occupations as already noted.

Respondents indicated that the RDC stopped the customary law allocation of land through traditional leaders (which secured access of up to 6 acres of fields per family for livelihoods for rural women and their families), leaving only the 50 x 50 metre residential yards/homesteads (Figure 10). The RDC took over the administration of the rest of the land, including the acquisition of the 6 acre fields per family, which now has to be bought as residential stands from the RDC. They further indicated that this has led them, the new occupants, to now further subdivide the 50 x 50 metre homesteads into smaller plots and allocate them to their children so that they can also build their own houses (as they lack finance to buy their own stands from the RDC) and they have also subdivided their 50 x 50 metre plots out of fear that the RDC would itself reduce the size of these yards in order to make more residential stands available for sale. All this activity further reduced the little space that was left for farming within the 50 x 50 metre homesteads. It was also found that the remedial provisions of section 71(3)(d) and (e) have not been invoked by the rural women because they are ignorant of them.<sup>52</sup>

Respondents highlighted their concern over grazing pastures for their livestock which had significantly shrunk as space was being quickly engulfed by houses that are being constructed (Figure 9). Most of them indicated that this was forcing them to sell their livestock which was useful for both agriculture and food.

For most rural women who had largely not been involved in the conclusion of the illegal sales of land (and which the RDC was now using as an excuse to regularise their change of land use process, i.e., from communal to urban-residential use), this so-called regularisation process has proved to be a huge setback to the daily challenge of sustaining their families. The harm suffered is clearly felt by Mary who observed:

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<sup>52</sup> Section 71(3)(d) and (e) of the Constitution entitle any person, which would include rural women, whose property has been acquired to apply to a competent court for the prompt return of the property if the court does not confirm the acquisition and it entitles any claimant for compensation to apply to a competent court for the determination of their interest in the property, the legality of the deprivation and the amount of compensation to which they are entitled.

‘We are deeply pained by the Council’s actions. The fields that we got through the headman have been taken and now belong to the RDC. The space for pastures has significantly reduced. That leaves us and our children at zero. It’s difficult. I have children and grandchildren. I used to farm a lot and take my produce to the Grain Marketing Board for sale. I survived with my children on the produce from my field and garden. I used the money to send them to school. I do not have that land anymore. I have no idea where to turn to in order to sustain the family.’<sup>53</sup>

The findings also bring to the fore the tensions and trade-offs within the regularization process that negatively impact upon achieving substantive gender equality for rural women. On one hand, the current model of regularization increases housing facilities for new occupants from nearby urban cities while retaining the residential homesteads for rural women and their families. On the surface, this speaks of creating formal equality between the two groups, in that both are provided with accommodation. On the other hand, however, it deepens inequalities for rural women who are losing the land they use for fields and gardens thereby diminishing their livelihoods, and this problem can only be cured by treating their situation differently in order to achieve substantive equality in the spirit of section 56(6) of the Constitution.<sup>54</sup>

While such a regularization model may over time continue to be rolled out over an ever increasing extent of peri-urban communal areas, undeniably increasing residential facilities for outside occupants, the fact that it causes a significant loss of livelihoods for rural women in its wake also means that it is not sustainable and thus fails to meet commitments to sustainable development.<sup>55</sup> The United Nations noted that in the pursuit of sustainability, the question of what is sustained and who benefits are central (United Nations, 2014). The RDC, on the contrary, has substituted regularization for proper planning which involves the more profound task of restructuring social, economic and power imbalances in the administration of communal land through the utilization of legal remedies that preserve the communal agricultural land uses through which women access land for livelihoods. This would be

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<sup>53</sup> 11 November 2015, Mubobo Village.

<sup>54</sup> Section 56(6) of the Constitution requires the state to take reasonable legislative and other measures to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination. Such a measure is not to be regarded as unfair for the purposes of subsection 3 which prohibits discrimination.

<sup>55</sup> Sustainable development is defined as development that meets the needs of current generations without compromising that of future generations (International Institute for Sustainable Development at <http://www.iisd.org/topic/sustainable-development>.)

essential to transform patterns that are unsustainable for rural women's access to land for agricultural livelihoods.

It is clear from the above findings that the RDC regularization process has been the final straw which has virtually put an end to the communal agricultural land use in the affected villages, thereby removing rural women's customary land tenure protection of access to land for livelihoods by introducing urban-residential use. The next section explores whether rural women's concerns for their access to land for livelihoods were effectively captured in the regularization process through their meaningful participation.



**Figure 9: Dwindling pastures due to urban expansion**



**Figure 10: Rural families crowd on to 50 x 50 metre homesteads left by RDC**

#### ***4.5.1 Have rural women's lived realities been meaningfully considered? Assessing the participation of rural women in the regularization process***

Most rural women and men cited experiences where the RDC came into villages and homesteads without any notice or consultation and began to peg both fields and homesteads as groundwork for the so-called regularization process. For most rural women, this generated a lot of insecurity over their livelihoods. They also indicated that the process was not extensively consultative or transparent in violation of section 71(3)(c) and section 13(2) and

(3) of the Constitution.<sup>56</sup> Most rural women indicated that this resulted in their concerns for their access to land for livelihoods being overlooked, as the RDC was interested more in the financial benefits they were getting through making the illegal occupants who had bought land pay a fine of US\$1,000, and a further US\$6 per square metre in order for their stands to be regularized. Respondents indicated that the RDC continued to allocate land to new buyers instead of regularizing the existing structures/stands audited at the inception of the regulation process and this increased their insecurity over even the 50 x 50 metres yards which are sustaining their livelihoods.

Rural women's concerns for farming livelihoods were also side-lined within structures which were meant to represent them in negotiations with the RDC and government authorities in resolving the challenges arising from regularization. As a passive participant in one meeting held by the Ziko Community Residents Trust (CRT) whose membership comprised both traditional and new occupants, I observed that the CRT focused on pursuing common ground for the two categories of its membership, which was housing, given the possibility of demolitions in the regularization process. Rural women's specific needs for access to land for livelihoods were thereby marginalized.

These findings show how the RDC regularization model and the CRT failed to take a sustainable livelihood approach which is guided by an understanding of the diverse local realities, needs and perspectives in order to determine the priorities for practical intervention for the affected rural women and their families (Scoones, 2009). This essentially required that the rural women in Seke (whose livelihoods were negatively impacted) actively and meaningfully participated in the entire regularization process so that they, their interests and concerns could be allowed to influence the institutional structures and processes that govern their lives in accordance with section 17 of the Constitution.<sup>57</sup> It was therefore imperative for the RDC and the CRT to pay attention to the specific challenges posed by the regularization process with regard to access to land for livelihoods and actively address the entrenched

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<sup>56</sup> Section 71(3)(c) of the Constitution requires the acquiring authority to give reasonable notice of the intention to acquire the property to everyone whose interests or right in the property would be affected by the acquisition, while section 13(2) and (3) require the involvement of the people in the formulation and implementation of development plans and programmes that affect them and the protection and enhancement of the people, particularly women, to equal opportunities in development.

<sup>57</sup> Section 17 requires the State to promote the full participation of women in all spheres of the Zimbabwean society on the basis of equality with men and that both genders are represented in institutions and agencies of government at every level.

discrimination and inequalities by providing/supporting alternative solutions that secured access to land for livelihoods for them. The RDC and the CRT failed to realise that for gender equality pathways to be made truly sustainable, those whose lives and well-being are at stake, especially rural women, must be involved in decision-making and leadership through collective action and engagement (United Nations, 2014).

#### **4.6 A financial project versus livelihoods?**

Most respondents indicated that the RDC was not concerned about rural women and their families' access to land for livelihoods nor was it concerned about protecting them from losing more land. Rather it was pre-occupied with the financial rewards which it expected to amass from converting communal land to urban residential use after which people would buy stands from the RDC. They also responded that although the rural women and their families were the people who were affected by this so-called regularisation process, its financial benefits did not accrue to them in terms of assisting with their relocation and compensation but went instead to the RDC. Mr Jimu's complaint reflected that of many others:

'We have people who are settled illegally here. The council makes follow ups to find out how they got to settle here and they make illegal settlers to pay a penalty for that. Once they pay the penalty, they are regularised in the Council books. But the challenge remains. How does that solve the affected rural people's problem whereby their land for farming has been affected since the penalty fee goes into the pocket of the RDC and the illegal settlers are not moved or the money used to relocate the rural people who are affected?'<sup>58</sup>

Most rural women indicated that they could not afford to buy the stands since their source of income, which is the fields, had been taken by the RDC and converted into these residential stands which the RDC was now selling. Respondents indicated that the regularization process was not consultative or transparent because it had apparently become a money-making project for the RDC. Respondents indicated that the RDC continued to allocate land to new buyers instead of regularizing the existing structures/stands audited at the inception of the regulation process and this increased their insecurity over even the remaining 50 x 50 metre homesteads which are sustaining their livelihoods.

The manner in which the RDC has handled the regularization process has proved to have serious consequences for its winners and losers among social groups in Seke. The findings

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<sup>58</sup> 10 November 2015, Chinamano Village.

also raise questions concerning the true nature of the RDC's interests as the local land regulating authority. The state of affairs in Seke for rural women is best understood when analysed in terms of Shiva's observation that from the point of view of capitalist patriarchy, productivity is a measure of the production of commodities and profit, whereas to third world women, productivity is a measure of producing life and sustenance. The fact that the RDC has undermined and ignored livelihood productivity does not in any way reduce its centrality to rural women and their families' survival. It merely reflects the RDC's single-minded economic concern in which profits trump life (Shiva, 1989). In this regard, the RDC's conduct typifies that of a patriarchal capitalist because of its appropriation of communal land in order to sell residential stands at the expense of prioritising rural women's farming livelihoods or giving them alternative solutions to their livelihoods that are at stake.

While large numbers of both rural women and men were impoverished by the regularization process and the change of land use from communal to urban use, women tended to lose more. The privatisation of land which, for the RDC, is a revenue generating operation has meant that rural women are displaced more severely as their traditional land-use rights are eroded. Urban expansion for residential use has meant that rural women are left with meagre resources to feed and care for children and the aged whereas men have found alternative sources of livelihoods such as digging for sand and building.

When critically analysed, the regularization process also reveals that the class-based interests of the 'elite' are a major factor in pushing the RDC's agenda of urban expansion and change of land use from communal to urban use which increasingly marginalises and excludes rural women (Goebel, 2005). The process appears to emphasise the transfer of land from the rural 'poor' (particularly rural women who, apart from their agriculture-based livelihoods, do not have any other means of income) to the urban 'elite' who have the means to purchase land from the RDC. While this venture boosts revenue for the state, though the agency of the RDC, it clearly tramples rural women's rights to food security, livelihoods and access to land. If left unchecked by such developments, political institutions can become undermined and governments end up serving the interests of economic elites to the detriment of ordinary people (Oxfam Briefing Paper, 2014). One rural woman shared bluntly:

‘This is now all about those who have money. The RDC told us that they do not want to hear from the traditional occupants because we do not have money.’<sup>59</sup>

Another woman from Kaseke village noted:

‘I do not know of any rural woman in this village who has been able to buy a stand from the RDC. Where do we get the money to buy the stands when we depend on the same land that the RDC has taken away from us for income?’<sup>60</sup>

It is regrettable that in an Independent Zimbabwe whose Constitution prohibits discrimination between the classes (in terms of section 56), the State/RDC’s conduct seems to mimic what it did in former colonial times when land was transferred from the ‘poor’ native Africans to the white ‘elites’. This was not lost on one respondent who noted:

‘The RDC is treating us as if we were foreigners. We now cannot have land for agriculture and pastures, yet this is the reason why we fought the liberation struggle so that we can have ample land for our livelihoods. I had the guts to tell one RDC official that Smith’s regime was better because they at least gave us alternative land.’<sup>61</sup>

It is evident that regularization and change of land use from communal to urban by the RDC has been directed at material improvement alone. This has increased and created problems for rural women’s livelihoods because the RDC has ignored the economic, cultural and social factors in which rural women’s lives are embedded. This has resulted in the process of urban expansion becoming an uneven development process which is based on narrow economic guidelines for the RDC. This falls short of the United Nations Survey which points out that all aspects of development must mobilize the interests, rights and participation of all groups concerned and must not move further or faster than its slowest and most disadvantaged members of society (UN, 1989). The current emphasis in human rights instruments and various committees governing these instruments on the centrality of the integration of women in all aspects of development as a human rights issue testifies to the growing realization that there can be no progress towards a better life unless it includes all its citizens in the process.

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<sup>59</sup> 17 November 2015, Mubobo Village.

<sup>60</sup> 30 November 2015, Kaseke Village.

<sup>61</sup> 17 November 2015, Mubobo Village.

It is evident that the development of growth centres, the illegal sales of communal land, and the regularization process which has led to the change of land use from communal to urban have all occurred on land previously used by rural women as fields and gardens to sustain them and to ensure the economic survival of their families. In the process, several human rights for rural women protected by the Constitution and various human rights instruments to which Zimbabwe is a party are clearly infringed.

## **4.7 The human rights infringements**

### **4.7.1 *The right to adequate food***

The Zimbabwean Constitution makes provision for the right to food in section 77. It not only provides for the right to food but qualifies that the food must be sufficient. This is an important provision particularly for women who largely have the duty to supply food to their families. However the duty to respect, protect and fulfil this right by the State is limited to the availability of resources, therefore the right is to be progressively realised.<sup>62</sup>

Section 46 of the Constitution requires that international law and all treaties and conventions to which Zimbabwe is a party to must be taken into account when interpreting the rights therein. In this regard the following international provisions apply.

The right to adequate food was first proclaimed in article 25 of the Universal Declaration on Human Rights (UDHR) as part of the right to an adequate standard of living and thereafter enshrined in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The link between the right to food and access to land has been established and elaborated upon by the CESCR Committee in its General Comment (GC) 12 which states that the right to adequate food is realised when every man, woman and child has physical and economic access at all times to adequate food *or means for its procurement* (para.6, my emphasis). According to the Committee, violations of the right to food can occur through the direct action of States or other entities insufficiently regulated by States. These include the

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<sup>62</sup> In terms of understanding progressive realisation, there must be immediate and tangible progress towards the realisation of rights. The fact that progressive realisation introduces a flexibility to the enforcement of socio-economic rights does not imply that states can drag their feet. Progressive realisation cannot be interpreted under any circumstance to imply for states the right to defer indefinitely efforts to ensure full realisation. States are required to begin immediately to take steps to fulfil their obligations and in the context of the ICESCR, the obligation to take steps towards progressive realisation ‘must be taken within a reasonably short time’, after entry into force of the ICESCR for the state concerned. The obligation on states therefore is ‘to move as expeditiously and effectively as possible’ towards full realisation (Chenwi., undated, available at <http://www.dejure.up.ac.za/images/files/vol46-3-2013/Chapter%205.pdf>.)



formal repeal or suspension of legislation necessary for the continued enjoyment of the right to food and failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others (para. 19). It is evident that the change of communal-agricultural land use to urban-residential use and the suspension of the operation of customary tenure through which women accessed land by the RDC (as a State agent) violate the right to adequate food for rural women and their families. In addition, the reluctance by the RDC to seek eviction orders against those who illegally purchased and occupied communal land and instead opting to regularize their occupation failed to prevent them from settling on land useful for agriculture thereby violating rural women and their families' right to adequate food.

In the regional context, the right to adequate food is entrenched in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) which provides (in article 15) for the right to food security and explicitly links the right to adequate food with the provision of access to the means of producing food which includes land.<sup>63</sup>

The right to food security is therefore visibly being violated in the urban expansion processes in Seke as land for fields and gardening have been expropriated for residential purposes, and the 50 x 50 metre homesteads that remain for rural women and their families are inadequate to meet the normative content of the right to adequate food thereby eroding access to land useful for producing adequate food.

#### ***4.7.2 The right to access and control over productive resources***

The Constitution, international and regional human rights instruments do not contain an explicit right to livelihoods. However, relying on the definition of a livelihood, which comprises the capabilities, assets (including both material and social resources) and activities required to gain a means of living, and the inter-dependency of rights, it becomes evident that the right to livelihoods for rural women is implicitly provided for in the Constitution and human rights instruments.

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<sup>63</sup> See also Goal 2 of the SDGs which is to end hunger, achieve food security and improved nutrition and promote sustainable agriculture. It acknowledges that investing in smallholder women and men farmers is an important way to increase food security and nutrition for the poorest, as well as food production for local and global markets and that giving women farmers access to resources has the potential to reduce the number of the hungry by up to 150 million. This goal builds on to the already established right to adequate food/right to food security enshrined in various international and regional human rights instruments.

Section 17(1)(c) of the Constitution provides that the State and all institutions and agencies of government at every level must take practical measures to ensure that women have access to resources, including land, on the basis of equality with men. Article 19(c) of the AU Protocol obliges States Parties to promote women's access to and control over productive resources *such as land* (my emphasis), proving the centrality of access to land as a material resource required to gain a living.<sup>64</sup>

The right to livelihoods for rural women is also inferred in the provisions of article 14(1) of Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which places an obligation on States Parties to take into account the particular problems faced by rural women and *the significant roles which rural women play in the economic survival of their families* (my emphasis), including their work in the non-monetized sectors of the economy, and it obliges States Parties to take all appropriate measures to ensure the application of the provisions of the Convention to women in rural areas.

The findings in Seke revealed that most rural women depend solely on agriculture to ensure the economic survival of their families. The findings also revealed that the processes involved in urban expansion discussed above have resulted in the RDC, a State agent, expropriating land that was previously used for agricultural livelihoods for residential purposes. This amounts therefore to a violation of rural women's right to access and control over productive resources, specifically land for livelihoods which secures their economic survival and that of their families.

#### ***4.7.3 The right to participation in development***

Section 13(1)(d), (2) and (3) of the Constitution provides that the State must take measures to bring about balanced development of rural and urban areas which must involve the people in the formulation and implementation of development plans and programmes that affect them and that these measures must protect and enhance the right of the people, particularly women, to equal opportunities in development.<sup>65</sup>

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<sup>64</sup> See also Goal 2 of the SDGs which confirms that agriculture provides livelihoods for 40 per cent of today's global population but most importantly, that it is the largest source of income and jobs for poor rural households. This establishes the link and inter-dependency between livelihoods and access to land for agriculture for rural women and their families.

<sup>65</sup> See also section 17(a) of the Constitution which provides that the State must promote the full participation of women in all spheres of Zimbabwean society on the basis of equality with men.

In international human rights, the ground-breaking United Nations Declaration on the Right to Development proclaimed in 1986 that development is a right<sup>66</sup> that belongs to everyone, and that everyone is entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

The broad understanding of women's participation in development is expressed in the Beijing Declaration and Platform for Action, the Rio Declaration on Environment and Development and in the Maputo Protocol. Principle 20 of the Rio Declaration, in summary, highlights that the full participation of women is essential to achieve sustainable development. Article 19(b) of the Maputo Protocol provides for women's right to sustainable development and in this regard:

‘State Parties shall take all appropriate measures to ensure that women participate at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes.’

These provisions complement the concept of women's participation in all areas of public life contained in the CEDAW. Article 14(2)(a) of CEDAW, however, comes closest to the root of the current focus on rural women by narrowing down the broad understanding of women's participation in development and specifically includes rural women's right to participation in development and states that:

‘State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right to participate in the elaboration and implementation of development planning at all levels.’

From the findings discussed above, it is clear that rural women's concerns regarding access to land for livelihoods have been not been articulated due to lack of extensive consultation, transparency and rural women's participation at various levels in the urban expansion processes, in particular, the development of rural growth centres and regularization processes

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<sup>66</sup> ‘The right to development puts people at the centre of the development process, which aims to improve the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development. It is a means by which individuals and peoples collectively determine their needs and priorities and ensure the protection and advancement of their rights and interests in the fair distribution of the resulting benefits’ (United Nations, undated).

by the RDC. This violates their right to participation in development processes that affect their livelihoods. Their participation lies at the core of achieving sustainable development for themselves, their families and their entire community.

#### **4.8 Conclusion**

It is abundantly clear that the factors and forces culminating in urban expansion in Seke have marginalised rural women's priorities and need for access to agricultural land for livelihoods which are central to ensuring their survival and that of their families. The various human rights violations suffered are evident and have been discussed. Yet this is not the end of the matter. Another challenge stands in the way of rural women's opportunity to become owners of land/property in the transition from communal agriculture land-use to urban residential-use which has introduced formal rights to land and this is discussed in the next chapter.

## CHAPTER FIVE

### 5.0 ‘SLIPPING AWAY IN TRANSITION’: INTERROGATING THE IMPACT OF THE INTRODUCTION OF LAND REGISTRATION ON RURAL WOMEN’S LAND RIGHTS

#### 5.1 Introduction

Indications from the RDC official were that regularization also entailed change of land use from communal to urban-residential use in the areas affected. He explained:

‘The due processes for allocation of communal land in the manner prescribed by the CLA, the TLA and the RDC Act were no longer being followed by traditional occupants who were now selling land illegally. As a result, the density of people in the communal area increased and the settlement became haphazard. For us as the regulating authority, the only way to regulate the area was to regularize the settlements and to urbanise it seeing that a communal settlement was no longer sustainable because there was no more space to sustain livelihoods. This means that access to land for agricultural livelihoods is no longer there because the land has been urbanised and the primary land use is now urban-residential.’<sup>67</sup>

The change of land use from communal to urban residential speaks of a shift from communal user rights in land to formal personal/individual rights in land. This entails a transition from the less secure customary form of land tenure to a more secure form of land tenure resulting from the registration<sup>68</sup> of formal title in land. Unlike customary land tenure<sup>69</sup> where women’s access to land is predicated on men, formal title ordinarily allows women to hold title in their own right, both individually and jointly with others. It is against this background that the findings from the ongoing registration process for rural homesteads in affected villages in Seke will be examined to analyse whether rural women have been accorded an opportunity to have their own names registered in a formal title to land.

Findings from the ongoing registration process are also well suited to examine where they fit into contemporary debates concerning the most appropriate ways of securing women’s access to land. These debates are divided between the use of customary law systems on one hand

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<sup>67</sup> 14 December 2015, Manyame Rural District Council, Beatrice.

<sup>68</sup> Registration is used interchangeably with formalization to describe the shift from informal customary tenure to the formal legal regulation of land rights. This culminates in obtaining a formal title to land.

<sup>69</sup> See the definition of customary tenure in footnote 25.

and registration/formalisation on the other as means to achieve gender justice for women with respect to access to land. As Whitehead noted, these discourses are relevant in particular for most rural African women who primarily depend on agricultural production for livelihoods, making the complex of local norms, customary practices and statutory laws that affect their access to and interests in land very significant (Whitehead, 2003). These are discussed in light of the findings below.

## **5.2 Customary law and rural women's land rights under communal land use**

Most rural women responded that the customary law allocation of land allowed them to have access to land for livelihoods. The allocation through male figures of families did not hinder their use of land. Veronica's opinion concerning land under customary tenure represents the opinion expressed by almost all the rural women respondents interviewed when she said:

‘The customary allocation of land was good for us as women because even though land was allocated through our fathers and husbands, we used it to farm and sustain our families.’<sup>70</sup>

Headmen Mubobo added that:

‘Women who got married in the village used their husband's land. The widows were not displaced from their husband's land but continued to use it and the unmarried women accessed land through their fathers.’

Mary, now 88 years old, from Chinamano village explained:

‘I was divorced and returned to my parents' home. I had two children. I then perceived that fights over my father's land would ensue between my brothers and their children and me and my children so I approached the headmen and the village committee to ask for allocation of land. I was duly granted land and got a permit from the RDC. This is the land that I have depended on to raise my children and to send them to school and the same land which I intended to pass on to my children for an inheritance, had the RDC not come in to this communal land to take away the land from us. I am not the only case in this village. My friend adjacent to my land also returned from her husband and got land in the same way.’<sup>71</sup>

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<sup>70</sup> 10 November 2015, Chinamano Village.

<sup>71</sup> 10 November 2015, Chinamano Village.

Most respondents demonstrated that in practice, there were fewer differences in rights to land between men and women under customary tenure than is often presented in public discourse. This coincided with the arguments put forward by Nyamu-Musembi who opines that the abolitionist approaches of human rights actors which assume that there is no possibility of realisation of women's human rights in local practices or custom must shift to open-mindedness to the potential opportunities that local practices offer. This could lead to the recognition and utilization of the positive openings presented by general principles of fairness and justice in a community's value system and this may provide a basis for recognising and respecting women's human rights (Nyamu-Musembi, 2002).

However, the opportunities offered under customary land tenure are not as simplistic as they appear. Customary law is a double-sided tool which offers both advantages for women, largely in the realm of access, and disadvantages in the realm of control over land as highlighted by the findings above and in the ownership realm as will be discussed below. Customary land tenure is highly nuanced and attention has to be given to power relations which are rooted in colonial history. Women's position with respect to land claims was weakened by allowing men alone to be the representatives in local level power structures in the administration of land, such as traditional authorities and men as heads of the household in land allocation. This has been perpetuated by the post-colonial State which embraced the contested and distorted understandings of customary law and legal pluralism of the colonial State as already discussed in previous chapters. Achieving gender justice for rural women's land claims in a society where the colonial understanding of customary law has been uncritically assimilated and is deeply ingrained is a mammoth task as shall be revealed in the findings on registration of land rights during the transition process from communal to urban residential land use in Seke to which I now turn.

### **5.3 Customary law and rural women's land rights under urban use**

An interview with a RDC official highlighted that due to the large scale urban sprawl resulting from the illegal sale of communal land in Seke, the agricultural communal land use of that land was no longer sustainable. As a result, the RDC changed the communal land use to urban land use which, in Seke, was primarily residential. This means that rights and claims to land/property in Seke were transitioning from one legal code (that is customary law tenure)

to another, that is, freehold tenure where registration/formalisation culminating in formal title over property was to be used to protect rights in land/property.

It is essential to note that the two types of tenure foster rights which are radically different. Under customary tenure, women's rights to use land for livelihoods were protected through relational negotiations with men as husbands, fathers, brothers and uncles and the flexible application of principles of fairness and justice in the community's value system, as evident from the findings with rural women above. Rural women's rights to use land were also protected by the fact that even though the rights to land were allocated through men, land was under men's stewardship rather than their personal property because legally, men as well as women had no right to sell/dispose of land granted for communal uses. Under the freehold tenure, titling translates rights into personal property which gives individual rights to manage, administer and dispose of land at one's volition.

The next step is to analyse how rural women's land rights have been protected in the transition because rights will inevitably be lost if there is no direct translation of rights and claims to land when moving from customary tenure to freehold tenure (Adoko, 2008).

#### **5.4 'What has gender got to do with it?'**

A RDC officer involved in the registration process expressed a profound lack of interest in the gendered fallout caused by the registration process by reason of the fact that the men were already the 'owners' according to the communal land permit and the possible solution of offering joint ownership was, according to him, irrelevant as gender was not their pre-occupation as an institution. The interview with the RDC official informed that:

'Registration of stands is now underway. For the rural homesteads, we are registering those who hold communal land permits. As the RDC, we check the name that appears on the permit and we register that person as the owner of the stand. This means that a lot of women are losing out since permits were obtained under the customary tenure where communal land was primarily allocated through the men.'<sup>72</sup>

Rural women confirmed that men have customarily been the ones to whom land was allocated under the customary tenure and that was not problematic for them since they still

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<sup>72</sup> 14 December 2015, Manyame Rural District Council, Beatrice.



enjoyed access to land for their livelihoods. They however were ignorant of the implications of registration in men's names on transition from customary tenure to freehold tenure which translated to personal rights of ownership in land and property to the men who are being registered, thereby exposing rural women to the risk of the men disposing of the property. A woman in Mubobo who is the village secretary to the headman confirmed:

'The RDC has allocated numbers to each homestead. I was requested as secretary, to register the name of the head of each homestead against that number. Here the head of the homestead refers to the male figure of that homestead. Only in a few instances where there was no male head did I register homesteads in the names of the women who were the heads.'<sup>73</sup>

These findings converge with Ik Dahl's argument that the transformative potential of joint-titling for women is wholly dependent on the competence and commitment of the political and bureaucratic actors involved (Ik Dahl, 2008). While the law provides for possibilities of joint ownership,<sup>74</sup> as shall be discussed in the human rights analytical framework below, the attitude of the RDC as an institution as evidenced from the interview with their official designated to perform the registration on the principles of gender equality and non-discrimination in the registration process leaves a lot to be desired as it violates the Constitution by discriminating against and marginalising rural women in the registration process.

The notion of the man alone being the representative of the household is clearly demonstrated by the customary law allocation of communal land through male fiduciaries that are viewed as the heads of the household. This notion consistently found expression in interviews, even from officials whom one would expect to be in a better position to protect women, showing how deeply ingrained the notion is in society. The District Administrator, for example, remarked:

'That the man is the head of the household is undebated. Men paid the head tax in colonial times and in communal areas, men are the ones responsible for paying communal land tax. This is a nation-wide established fact which cannot just be changed. I do not see how the RDC is wrong in registering the communal homesteads in the names of the male heads of the household and not the women.'<sup>75</sup>

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<sup>73</sup> 16 January 2016, Mubobo Village.

<sup>74</sup> Section 71(2) of the Constitution.

<sup>75</sup> 5 February 2016, Makoni.

While the impact on rural women of registration of homesteads predominantly in the names of male heads of the household is yet to be seen since it is still in its early stages of infancy in Seke communal, the Kenyan tenure reform experience through the process of land registration under the now repealed Kenyan Registered Land Act on women's property rights makes a compelling case from which lessons must be drawn. The provisions of the Act were gender neutral. However, according to the Act, the power of allocation was what was considered a registrable interest (in the same way the RDC is considering registrable interest to be the name appearing on the communal land permit), which was allocated predominantly to men under the customary tenure, for registration. Women in Kenya only had rights of use (just like the rural women in Seke) while men retained those of allocation. Therefore, the failure of the Registered Land Act to recognise customary rights of use excluded most women from acquiring titles to land (Ik Dahl *et al.*, 2005).

Most families in Kenya appointed the eldest son or the male head of the household to be registered as the only owner and failed to utilize the provision that a right under customary law must be noted on the register in order to be protected. The impact of the latitude that male representatives were given to be the absolute owners was an increase of cases where such male representatives sought to evict the other family members (Ik Dahl *et al.*, 2005). It goes without saying that women, being the least represented in titling, were the most vulnerable to such evictions.

The new Kenyan Land Registration Act of 2012 was enacted to address the effects of registration on women's land rights, among other groups, that were perpetrated by the repealed Registered Land Act. It inserts, among other safeguards, that registered land shall be subject to overriding interests which subsist without their being noted on the register, including spousal rights over matrimonial property. Another safeguard that was introduced by the Act is the presumption that spouses shall hold land as joint tenants in relation to land obtained by a spouse for co-ownership and use of both spouses unless the certificate of ownership clearly states otherwise. Where a spouse holds land or a dwelling house in his/her name individually and undertakes a disposition of that land/house, the disposition shall be void at the option of the spouse or spouses who have not consented to the disposition.

The registration experiences in Seke clearly demonstrate that women's use of land and their means of access to land and housing under customary tenure do not easily translate into

formal legal ownership and this validates empirical studies from other African contexts as demonstrated by the Kenyan case. The Constitution and various human rights instruments provide the basis for an analysis of the type of situations such as arise from the registration process in Seke with regard to rural women's experiences. These include gender equality and non-discrimination, but more specifically, the equal right to enjoyment of property, equal rights between spouses and the right to housing to which I now turn.

## **5.5 Human rights analytical framework on land/property registration**

### **5.5.1 Constitutional provisions**

The departure point for analysing the registration process is the general principles of equality and non-discrimination. The Constitution of Zimbabwe enshrines the principles of equality and non-discrimination in section 56(2) and (3) where women and men have the right to equal treatment and the right not to be treated in an unfairly discriminatory manner on various grounds, including custom. Section 56(6) is even more far-reaching in calling upon the State to take reasonable legislative and other measures to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination, together with section 17(2) which requires the State to take positive measures to rectify gender discrimination and imbalances resulting from past practices and policies. Such measures, in terms of section 56(6)(b), are not to be regarded as unfair for the purposes of subsection 3 which prohibits discrimination.

These provisions show a clear departure from understanding equality as formal equality where men and women are treated in the same manner, to an infusion of substantive equality which demands unequal treatment in favour of the disadvantaged, in this case rural women who have been disadvantaged by the customary law practice of allocation of land which favoured men and the issuing of land permits in men's names.<sup>76</sup> This places an obligation on the RDC, as a State agent, to register rural women jointly with men for formal title in order to deliver them from the unfair discrimination of the past customary practice of allocation of land through men.

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<sup>76</sup> This is buttressed by Fredman who argues that formal equality ignores the ongoing disadvantage experienced by women which further entrenches the disadvantage and she stresses that gender-specific factors causing women's disadvantage cannot be fully addressed without substantive equality (Fredman, 2013).

The Constitution also spells out the right to joint-ownership to property in section 71 which grants every person, which would include rural women, in any part of Zimbabwe, which would include communal areas, the right to acquire and hold property, either individually or in association with others. The failure by the RDC to jointly register rural women in the ongoing registration therefore flies in the face of Section 71.

### ***5.5.2 International and regional provisions***

International human rights have increased their focus on women's equality. In light of this increased attention to women's equality, States are obliged to address discriminatory traditions and customary law 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 (article 5(a) of CEDAW; article 2(2) of the Maputo Protocol).<sup>77</sup>

In the context of property, increased attention has been given to the need to give women the rights to and access to land. Article 16(h) of CEDAW obliges state parties to ensure, on the basis of equality of men and women, the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property. In discussing article 16, the CEDAW Committee in its General Recommendation (GR) 21 on equality in marriage and family relations problematized the effect of assigning to the man alone the role of representative of the household. The Committee noted that the holding of a belief in the patriarchal structure of the family which places the father, husband or son in a favourable position leads to a sharp deterioration of the woman's place in the family. State parties should therefore resolutely discourage any notions of inequality of women and men which are affirmed by custom. It concluded that regulation resulting in the husband being accorded the status of head of the household and primary decision maker contravened CEDAW (para. 17).

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<sup>77</sup> Article 5(a) of CEDAW provides that 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; while article (2)(2) of the Maputo Protocol provides that States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

The registration of homesteads by the RDC in mostly men's names as they appear on communal land permits which emanates from a prejudicial customary practice based on the superiority of men as the representative of the household therefore goes against the provisions of equal rights to property and equal rights between spouses as enshrined in various international and regional instruments. This in turn leads to discrimination against rural women.

Titling and privatisation are not explicitly provided for in the various human rights Conventions.<sup>78</sup> However, development in the human rights system has shifted from merely ensuring protection of property rights to the introduction of the concept of 'secure tenure,' for example, GC4 of the ICESCR emphasises the need for all persons to have a degree of security of tenure which guarantees legal protection against eviction, harassment and other threats (para.8.a).

Article 15(a) of the African Protocol obliges State parties to promote women's access to and control over productive resources such as land and guarantee their rights to property. Article 18 of the SADC Declaration provides that:

'State Parties shall, by 2015, review all policies and laws that determine access to, control of and benefit from productive resources by women in order to end discrimination against women and girls to property such as land and tenure thereof.'<sup>79</sup>

In light of the Constitutional and international and regional human rights provisions, it is argued that the RDC must have utilized these provisions to register rural women as co-owners of homesteads in the transition from customary tenure to formalisation so as to address the mischief and discrimination perpetuated by the patriarchal structure of the family which gives men the favourable position of allocation of land under the customary tenure. This would protect and advance rural women who have been disadvantaged by unfair

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<sup>78</sup> However, the UN treaty-based monitoring committees have commented on it in their GCs concerning the interpretation and implementation of treaty provisions by giving them consideration from a property rights' perspective as well as from a consideration of the fundamental right to equality before the law (Ik Dahl, 2008).

<sup>79</sup> Addressing the spill-over effects of such practices on registration of land has been pointed out as a core-factor to ensure gender-sensitive land reform (Ik Dahl *et al.*, 2005; Whitehead, 2003).

discrimination under the customary tenure where they only have the right to access/use land.<sup>80</sup>

As observed by the CEDAW Committee in GC 21, Zimbabwe, like many other countries, does indeed acknowledge the right of women to own an equal share of property but the practical ability of women to exercise this right is being limited by the RDC which is relying on custom to register communal homesteads in the formalisation process (para. 30).

### ***5.5.3 The right to housing***

The registration of homesteads in the names on the communal land permit holders who are mostly men should also be situated and articulated in its implications on rural women's right to housing.

#### **5.5.3.1 The Constitution**

The Constitution does not explicitly provide for the right to housing. However section 28 requires the State and all institutions and agencies of government at every level to take legislative and other measures, within the resources available to them, to enable every person to have access to adequate shelter. This right to shelter is reinforced by section 74 which provides that no person may be evicted from their home without a court order. By registering homesteads in only the names appearing on communal land permits, the RDC is violating the general principles of equality and non-discrimination against rural women. It is also argued that this increases rural women's vulnerability to arbitrary evictions by the men who are acquiring personal rights in the property.

#### **5.5.3.2 International human rights provisions**

Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living for himself and his family, including adequate housing. GC 4 gives a dynamic interpretation which departs from the reference of the Covenant to 'himself and his family' and states that the right to adequate housing applies to everyone. Individuals and families are therefore entitled to adequate housing regardless of status, age and other such factors. The Committee also elaborates in GC4 that States must take immediate measures aimed at conferring legal

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<sup>80</sup> Fredman emphasises that the transformative nature of substantive equality requires institutional change through taking into account existing power structures, in this case, the patriarchal customary law and the role of gender in them and allocation of land through the male as the representative of the household, so as to treat women differently in order to achieve equalities of outcome (Fredman, 2013).

security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected groups.

In GC 7 on the interpretation of article 11, the CESCR committee has established that legal security of tenure is central for the right to adequate housing. In this regard they interpreted that article 11(1) does not only refer to the right to housing in a narrow sense of just having a roof over one's head, but to adequate housing, which entails among other aspects, adequate legal security of tenure. Specifically, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

From the above, it is apparent that the right to adequate housing for rural women is being violated by the RDC which is registering homesteads only in the name appearing on the communal land permit in a situation where the RDC is very alive to the fact that customary tenure allocation was male biased and most of the permits are in the names of men. It is clear that rural women are the group that is affected, and need to possess a degree of security of tenure, through joint registration in order to guarantee them legal protection against forced eviction or other threats. Yet, there have been no genuine consultations with them concerning the registration process and no efforts on the part of the RDC as a state agent, to confer legal security of tenure upon rural women in the transition from customary tenure to formalization, which violates human rights principles.<sup>81</sup>

Article 2(2) of the CESCR requires state parties use all appropriate means, including legislative and other measures to promote all the rights protected under the Covenant. This includes measures which provide the greatest possible security of tenure to occupiers of houses and land, in this case rural women, since the right to adequate housing is for everyone. The Committee emphasizes that such legislation must also apply to all agents acting under the authority of the state or who are accountable to it, in this case the RDC. It further reiterates the need to ensure that legislative and other measures are adequate to prevent forced evictions and that appropriate safeguards are put in place to prevent forced evictions by private persons or bodies.

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<sup>81</sup> From the lessons drawn from Kenya as discussed above, this exposes rural women to the risk of forced evictions or loss of property should the registered owners of the property, who are mostly men, decide to dispose of their personal rights in the property.

## 5.6 Conclusion

The change of land use from communal to urban/residential use has not facilitated rural women's land ownership rights as demonstrated by the voices of respondents from Seke. It is clear that the RDC's almost wholesale registration of homesteads in the names of men which previously appeared on the communal land permits falls far short of providing safeguards or being sufficient to prevent forced evictions or other threats that can arise for rural women at the hands of men whose rights in land and property are transformed into personal rights upon registration. In this regard, it is imperative that joint titling of land as provided for by the Constitution be implemented by the RDC, especially for marital property. Given that in Zimbabwe, unlike Kenya as discussed above, there is no legal requirement for spousal consent upon the disposal of property, the lack of such safeguards limits the ability of rural women to control the disposal of property or the income derived from it, since they will not be regarded as owners and this poses a serious threat to rural women's right to housing.

Further, land laws or marital laws must include such safeguards as has occurred in Kenya in an attempt to protect women's interest in marital property. These include legal measures in order to incorporate rules requiring spousal consent for the disposal of marital property to protect women who suffer more disproportionately at the hands of their husbands selling matrimonial property or mortgaging it without their knowledge. I am alive to the fact that these measures are not unproblematic as experienced elsewhere where they have been introduced due to conflicting interests that arise, but the demand for protecting rural women's property rights takes precedence as a human rights issue. It is my opinion that these safeguards are not an end in themselves but will at least provide a starting point and allow for future adjustments and adaptations which the experiences of women will determine.



## CHAPTER SIX

### 6.0 CONCLUSIONS AND RECOMMENDATIONS

#### 6.1 Introduction

This study sought to excavate the multi-faceted processes that have culminated in urban expansion into Seke communal area with special attention being given to the gendered impact of these processes on rural women's land rights, including access to, control over and ownership of land. These processes primarily include the rural development of growth centres, the illegal sale of communal land predominantly concluded by traditional leaders and ordinary rural men, the regularization of these sales culminating in the change from communal to urban/residential land use and the introduction of the registration of homesteads. An historical background to the laws governing communal land was necessary because of its impact on current communal land laws.

#### 6.2 Conclusions

From the findings presented in this study, the following conclusions are drawn.

1. *Have rural women's voices and concerns about their access to land been articulated and captured in the phenomenon of urban expansion?*

It is concluded that women's voices and concerns have not been articulated in the urban expansion phenomenon because the processes involved have not been gendered, thus women's embeddedness in land resulting from the genderedness of land has not been considered. In addition, the precarious nature of rural women's customary tenure which gives them only user rights has weakened their negotiating power (a) in stopping traditional leaders and men from engaging in illegal sales of land useful for their livelihoods, (b) in pursuing alternatives such as relocation and compensation for land acquisitions by the RDC and (c) in participating in the regularization and developmental processes in order to have their need for land for agriculture considered. The transition from communal to urban residential land use has introduced the registration of homesteads culminating in formal registration but the process has marginalised rural women's need for joint title.

2. *Are chiefs and male household heads adhering to the customary law allocation and occupation of communal land as prescribed by the Communal Land Act?*

It is concluded that traditional leaders and male heads of the households have not adhered to the customary allocation of communal land as prescribed by the CLA. This is evidenced by the illegal sale of communal land, mainly concluded by traditional leaders and ordinary rural men. Illegal sales revealed that although rural women have access to land for livelihoods through male figures under customary tenure, they lack control over that land as evidenced by their marginalisation in the conclusion of land transactions. The land sales have led to an urban sprawl which has diminished land available and useful for rural women's agricultural livelihoods.

3. *Are rural women impoverished by urban expansion which is engulfing land that is useful for sustaining their livelihoods and ensuring the economic survival of their families?*

It is concluded that rural women and their families have lost their access to land for livelihoods due to the expropriation of land previously allocated to them as fields by the RDC for purposes of developing growth centres and residential locations, the illegal sale of communal land and the change from communal to urban/residential land use. Activities in sand-harvesting have taken place on land previously used for gardening which was a high income earner for rural women in ensuring the economic survival of them and their families. This has impoverished rural women and their families as well as impacted on their right to food security and on the economic gain previously used for the survival of rural women and their families obtained from these fields and gardens.

4. *Does the exclusion of women from decision-making at both household and community level marginalize them from important decisions that affect their lives, in this case to whom and how allocation of land should be done in a manner that secures their access to land?*

AND

5. *Does customary law, by vesting the authority to allocate communal land in chiefs and prescribing patrilineal allocation of communal land, marginalize rural women and expose them to the harsh impacts of urban expansion on their livelihoods which are embedded in their access to land?*

Research questions 4 and 5 arrive at similar conclusions. An overview of the colonial history of laws governing communal land revealed that they were constructed on distortions of customary tenure systems which reflected the male version of customary law and which

accomplished the racial and segregationist policies of the former colonial masters. These excluded women from decision-making with regard to land at both household and community level. It is therefore concluded that the uncritical assimilation of these laws after Independence have carried over the customary law tenets which have continued to discriminate against women in their relationship to land through marginalising them from decision making at both family and community level.

6. *Are the legal remedies available for rural women who are alienated from accessing land as a result of urban expansion limited or ineffective?*

Rural women have not been able to pursue legal remedies due to their position as users and not owners with only rights to access land. The vesting of ownership rights in the State which, according to the law, delegates the regulatory authority of communal land to the RDC gives the latter the legal capacity to pursue legal remedies under the CLA. It has been found that the legal remedies pursued by the RDC following the illegal sales have not been effective in restoring land to rural women in order protect their right to access agricultural land so as to secure their livelihoods. The effectiveness of the Constitutional remedies under section 71 is yet to be measured as they had not been invoked by rural women during this study.

### **6.3 Recommendations**

From the above conclusions the following recommendations are made.

1. *Have rural women's voices and concerns about their access to land been articulated and captured in the phenomenon of urban expansion?*

It is not enough simply to boast a Constitution that envisages the principles of gender equality and non-discrimination and participation of the affected people. There is also a need to implement those principles by establishing measures, in this case, institutional training and monitoring mechanisms within relevant institutions that handle land issues so that gender equality and non-discrimination and participation of affected people are integrated into all stages of formulation and implementation of programmes in line with the Constitution. Gender-sensitisation training in land issues always needs to take women as the starting point, given women's historical disadvantage and discrimination in land rights.<sup>82</sup>

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<sup>82</sup> The lack of concern about gender equality and non-discrimination principles in the implementation of land related processes by the RDC is worrying. Careful consideration and attention must be given to possible

There is also need to sensitise rural women on land rights because of the disquieting ignorance about the implications of the registration process on their rights to ownership of property so that they can be autonomous and be the agency of articulation of their own rights.

It is recommended that registration processes be nuanced with principles of gender equality and non-discrimination so as to address rural women's ownership rights from which they are side-lined under the customary tenure system.<sup>83</sup>

2. *Are chiefs and male household heads adhering to the customary law allocation and occupation of communal land as prescribed by the Communal Land Act?*

It is recommended that customary law governing the administration and allocation of communal land which is discriminatory against women by giving men control over decisions regarding land contrary to Constitutional provisions be modified since it gives men latitude to dispose of communal land at the expense of rural women's access to land for livelihoods.

3. *Are rural women impoverished by urban expansion which is engulfing land that is useful for sustaining their livelihoods and ensuring the economic survival of their families?*

From the experiences of land acquisitions in Seke, which have been widely confirmed in African countries, it is recommended that titling of communal land to secure tenure as a starting point in order to protect rural women's livelihoods is a favourable position.<sup>84</sup> The fundamental goal must be the protection of existing user rights and an emphasis on the human rights approach/objective of protecting people's land resource which is the basis for their livelihood as opposed to the neo-liberal economic arguments that emphasise the marketability of land and titling as a facilitation of a market in land rights. While the possible tension between these two approaches/objectives is acknowledged, formalisation through the

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gender outcomes especially for rural women who have different starting points, life paths, needs and opportunities from men when dealing with land rights.

<sup>83</sup> This will ensure that legal rules shift from promoting more substantive rather than just formal equality so that where land rights are socially embedded and gendered, as highlighted by the findings in Seke, protection against discrimination concerning who will benefit is acknowledged as being a central issue so as to address the inequitable effects of formalization.

<sup>84</sup> One major cause leading to rural women's impoverishment through urban expansion has been the lack of secure tenure which makes them vulnerable to external threats emanating from the state itself and other third parties of expropriation of land. In the event of threats of compulsory land acquisition or expropriation, awarding title in the recommended manner has the potential to increase rural people's participation in decisions that affect their lives at all levels and puts them in a better position to negotiate compensation and alternative land and to pursue legal remedies due to the personal rights in property that it confers compared to the current use rights which are easily side-lined.

recommended lens of a human rights approach views user rights as more important than the right and ability to sell land.

4. *Does the exclusion of women from decision-making at both household and community level marginalize them from important decisions that affect their lives, in this case to whom and how allocation of land should be done in a manner that secures their access to land?*

AND

5. *Does customary law, by vesting the authority to allocate communal land in chiefs and prescribing patrilineal allocation of communal land, marginalize rural women and expose them to the harsh impacts of urban expansion on their livelihoods which are embedded in their access to land?*

There is a need to review laws governing communal land which are still rooted in the inherited colonial past in light of the progressive Constitutional and international human rights provisions already discussed, as they undoubtedly are fatal to rural women's land rights if not subjected to review in order to reflect and address the current lived experiences of communal land occupants, in particular rural women who are disadvantaged under the current communal land organisation.<sup>85</sup> As Dahl opines, law is fertile soil for the cultivation of rules which can provide a foundation for vast changes and if the position of women is to be improved, this must also be done through the law (Dahl, 1987).

6. *Are the legal remedies available for rural women who are alienated from accessing land as a result of urban expansion limited or ineffective?*

It is recommended that communal land laws be aligned with the Constitution in order to empower rural women to pursue legal remedies concerning deprivation of access to land for livelihoods caused by any third party.

#### **6.4 Areas for further study**

Manyame Rural District Council has since advised all beneficiaries and occupiers of communal land in Seke that the re-planning of settlements in villages incorporated into Murisa Rural Service Centre is nearing completion and that Council now awaits the approval

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<sup>85</sup> As already established, laws governing communal land have carried over the natural consequence of the past perception and discrimination against women who were consciously and systematically excluded from control over and ownership of land.

of Phase 1 of the Comprehensive Mixed Uses Layout Plan before it starts pegging stands which will pave the way for the provision of services and the official offer of stands to qualifying occupants under the urban residential land use scheme. The Council has since indicated that priority will first be given to the original villagers of the affected villages who have valid communal land permits, then, second, to illegal beneficiaries and occupants who have paid penalty fees in full and, third, to those who have paid part of their penalty fees and have also submitted acceptable payment plans to Council (NOTICE- NR01/2015).

In light of the above notice, the RDC has indicated that that regardless of whether one is a communal permit holder, if their homestead stands where amenities such as a road, school, electric lines, etc., are located according to the Comprehensive Mixed Uses Layout Plan, their homesteads will be demolished and the owners asked to build on an appropriate site, according to that plan.<sup>86</sup>

There is a need for a longitudinal study that keeps track of the implementation stages of the RDC's Comprehensive Mixed Uses Layout Plan as the preliminary processes of regularization and pegging were still underway and implementation had not yet begun during the time of the study, so as to monitor compliance with human rights standards. Specifically, the longitudinal study needs to be situated in a human rights framework of the right to adequate housing. The Constitution provides in section 74 that no person may be evicted from their home or have their home demolished without an order of court made after considering all relevant circumstances.<sup>87</sup>

In international human rights, GR 7 of the CESCR committee which elaborates on the right to adequate housing under article 11 states that where evictions and house demolitions may be justifiable it is incumbent upon the relevant authorities to ensure that they are carried out in a

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<sup>86</sup> This was highlighted by the Chairman of the Trust at the Community Housing Residents Association Trust meeting attended during the period of the study. Some respondents confirmed the RDC's position and informed that during the pegging phase, the RDC had indicated that their houses stood in the way of amenities and that although they would remain entitled to land in the actual implementation phase, their homesteads would be demolished without compensation and the owners asked to build in line with the Layout Plan.

<sup>87</sup> Some of the relevant circumstances to be considered are that in the first instance, the homesteads for traditional occupants were legal under the communal land permit which was issued to the occupants by the same RDC when the land was still under communal land use; the economic status of those affected and their ability to build new homes according to council approved plans and standards, given that the Constitution prohibits discrimination on grounds including economic status and the age of those affected and in light of the fact that some of the respondents who were informed that their houses will be demolished are old and cannot afford the expense of building new houses.

manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.<sup>88</sup>

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<sup>88</sup> It is important that the study be situated also in light of the 1988 Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in its resolution 43/181 which recognizes the fundamental obligation of governments to protect and improve houses and neighbourhoods rather than damage or destroy and the Report of the United Nations Conference on Settlements (Habitat II) which calls for alternative suitable solutions to be put in place.

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