

UNIVERSITY OF ZIMBABWE



**INTERROGATING THE RIGHTS AND ENTITLEMENTS OF RETURNING
DAUGHTERS TO LAND IN COMMUNAL AREAS. A STUDY CONDUCTED IN
SEKE COMMUNAL LANDS IN ZIMBABWE.**

By

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Abstract

The study interrogated the land rights of returning daughters in communal areas. The study was carried out in Madamombe village in Seke, Zimbabwe. Data was collected from individuals, small groups of people, gate keepers and key informants. There were various interviews carried out at selected homesteads. Interviews with different groups and individuals were also carried out in pilot study. The findings confirmed that returning daughters do not have the privilege of land rights in their natal homes. This is a male preserve. Son preference in the allocation of land is practised by almost all families in Madamombe. Returning daughters are reluctantly accommodated and get portions of land for subsistence farming only. The study's recommendations focus on the long overdue need for the government to put into practice the Constitutional principles of equality and non-discrimination in order to improve the fate of these women.

Declaration

I, Angela Chikoto, certify that this dissertation is my original work. It is an honest and true effort of my personal research. I certify that the work has not been presented anywhere else before for any other thesis.

Signed.....

Date.....

This dissertation was submitted for examination with my approval as the University Supervisor

Signed.....

Date.....

Professor J.E. Stewart

Director of the Southern and Eastern African Regional Centre for Women’s Law, University of Zimbabwe (SEARCWL).

Date.....Signed.....

Dedication

This work is dedicated to my family, especially my children Tinashe, Tsitsi and Tana for understanding that I need to study.

I also dedicate this research to my late mother who used to emphasize that a woman's social challenges become trivial when she has her own income. She would then say, 'Make good use of this opportunity to go to school.'

I also dedicate this research to returning daughters out there and want them to know that one day, unity of purpose will yield fairness of treatment.

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I am very grateful to my supervisor, Professor J.E. Stewart, for all the effort she made to make sure this research became a success. Thank you for your guidance and amazing patience.

I would also want to thank the SEARCWL staff, Rudo, Blessing, Primrose for walking the road with me and helping out wherever they could. To the lecturers, I can only say thank you, for a job well done. I now understand the position of women in society from the perspective of women lawyers.

Thank you, Cecile, for being of great help in the library.

List of abbreviations and acronyms

ACHPR	African Charter of Human and Peoples' Rights, 1981
CEDAW	Committee/Convention on the Elimination of All Forms of Discrimination Against Women, 1979
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
Maputo Protocol	Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa, 2003
SEARCWL	Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe
UN	United Nations

List of international human rights instruments

African Charter of Human and Peoples' Rights, 1981 (ACHPR)

Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa, 2003 (Maputo Protocol)

Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)

General Recommendation No. 34 of the CEDAW Committee

International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)

SADC Protocol on Gender and Development

List of local legislation and policy

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

Communal Land Act [Chapter 20:04]

Deceased Persons Family Maintenance Act

National Gender Policy (2013-2017)

Traditional Leaders Act [Chapter 29:17]

List of cases

Bhe and Others v Khayelitsha Magistrate and Others CCT 49/02

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Executive summary

This dissertation interrogates the rights and entitlements to land of returning daughters in communal areas. The research for these rights and entitlements was carried out in Madamombe village in Seke. The research provides additional evidence and a different dimension that builds on to what has been confirmed by many findings in Zimbabwe in connection with access, control and ownership of communal land. The main focus however diverts attention to land access of widows, married women and single sisters who do not marry. This specifically focuses on the once married daughter, who tried to brave an abusive and painful marriage but to no avail. She decides to turn to the marital home for comfort.

This research started out of curiosity after witnessing a number of returning daughters in my own communal land staying with their parents and some going to cities to look for domestic work. A lot of interest developed over time and then a decision to find out issues surrounding the lives of the returning daughters within their natal home and the community was made.

I wanted to know the issues and activities surrounding the lives of returning daughters so I selected the grounded theory approach, the women's law approach and the human rights' approach, among others. The grounded theory and women's law approaches focus on the lived realities of returning daughters. The research took the women in Madamombe village as a starting point so as to ascertain what really goes on when returning daughters try to enforce their rights and entitlement to land.

A lot of interviews and discussions were important in order to get real facts and so the qualitative research method became ideal. A number of interviews and discussions with randomly selected respondents and purposively selected key informants and gatekeepers yielded the experiences of returning daughters within this village.

Most of what was collected as data was sorted into themes or categories and the researcher was amazed that returning daughters are caught up between a rock and a hard place. Although the respondents confirmed that families differ, the majority of returning daughters do not have rights and entitlements to land in their natal home in Madamombe village. Families just accommodate them by giving them small portions of land that are only for subsistence farming. The majority of male respondents confirmed that land has become very

important, that they reluctantly give up portions of land to their sisters and that they wish their sisters would marry again. The returning daughters are blamed for lacking resilience and for having made decisions which lost them access to land in their matrimonial home and caused them to return to their natal home, putting pressure on their natural families to give them some of their scarce land.

A critical study of the findings unearthed the fact that there are various normative orders at play in the Madamombe Communal area. These determine access of returning daughters to land rights. Section 80 of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution) reveals that women are not to be discriminated against on any basis. In Madamombe village cultural practices determine who gets what share of land. Daughters are accommodated because families have to shoulder the burden. Discrimination is the order of the day in most families as land rights are readily available for sons only. There is no consideration of human rights laws and the absence of a law that specifies land inheritance exposes returning daughters to customary practices of land allocation. One is justified in believing that there are no laws pertaining to land rights in Communal areas, but there are and these actual but unidentified rights and laws make returning daughters to this village exposed to several forms of vulnerability. Laws and rights do not necessarily mean a change of cultural practices in this case.

The study concludes that returning daughters are far from enjoying their human rights and protection from the law. The state should show political will and enact laws that create equal allocation of communal land to daughters and sons within families. There is a lot to learn from various ethnic groups as well as judgements made by other states which observe fairness into issues of inheritance. There is no need to continue observing cultural practices that are not adjusted to suit the changes that are taking place in present day life. The state should also be wary and suspicious of cultural gatekeepers that want to preserve and enforce rigid practices. At times such resistance is just the manifestation of a selfish desire to continue enjoying certain male benefits that prevent the healthy growth and development of families and communities.

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CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Introduction

This research focuses on finding out whether returning daughters have land rights and entitlements in communal areas. Returning daughters are women who once left their natal home, married and after facing many challenges in the marital home, decided to leave and return to their natal home. Sometimes they come back with their children and at others they are forced to leave them behind. This research interrogates whether these returning daughters are allocated a fair portion of their natal land and whether they are recognised as deserving of equal treatment with their brothers.

This chapter gives the background to the study and explains what motivated research into this topic. The statement of the problem emphasises what the challenge is if women are continuously denied equal access to resources. The aims of the study focus on what then should be done about this crisis bearing in mind that if women do not persist by bringing the crisis to the attention of leaders things may become steadily worse. The chapter ends with the assumptions and research questions that are meant to guide the research so that lived realities of returning daughters in Madamombe become clear.

1.2 Background to study

The focus of this research is to display and illustrate the stark realities of the exclusion of returning daughters from land rights in communal areas. Needless to say this group of women has been somewhat unfortunate and left out when there is talk of land rights for women in the rural areas. Women in communal lands are not a homogenous group. There are discussions and writings referring to married women and widows' land rights. The rights of returning daughters to land however have not been given attention in many documents. They are generally referred to in writings but not much has been said in connection with the need to give them equal land rights in the natal home. This marginalises returning daughters and makes them invisible.

Returning daughters are caught up at in an intersection in which, on the one hand, their divorce has denied them access to land in their matrimonial home and, on the other hand, the

male members of their family do not welcome them for returning and putting pressure on them to share their limited natal land. The male members of the family and the community want to prevent them from accessing adequate land to live on which means that they remain poor, defenceless and dependent on them. The background to this study will show a clear picture of the daughter in question by quoting what has been said in a document by UN Women:

‘She works from daybreak until sundown and often beyond. She tills the land and grows the food that feeds families and nations, but often without land rights or equal access to finances and technology that can improve her livelihood. She is working as hard, or more, as the man next to her, but has less income. She has much to contribute but will her right, voice and experience shape the policies that affect her life?’ (In focus, 2018).

This aptly describes this woman as she labours in the matrimonial home for the benefit of her new family. If working for them is not enough, if she gets divorced and is forced to return to her natal home, she is barely tolerated and accommodated, and no one seems to remember the contributions she has made in the past to the welfare of her family (Figure 1).

Figure 1: Photograph of a returnee daughter working in a field in the matrimonial home



When the returning daughter originally leaves her natal for her matrimonial home she is omitted from family land rights. Communal families are socialised to observe cultural practices that assume that she will access land in her matrimonial home through her husband. Therefore male members of her natal family are quick to exclude her from shares and entitlement to her family's land.

Well before she marries, a daughter does not enjoy her childhood to its fullest as she is quickly taught to perform the gender roles expected of her which involve assisting her mother in performing her triple role for the family's benefit. For this woman it has always been work, work and more work from the time she is a child. Now that she has to return to her family for help, no one remembers the contributions she made towards her family's welfare. As a child she used to wake up early, walk long distances to fetch water and firewood and cook for the very same brothers who are now bent on preventing her from enjoying her rights to family land (Figure 2).

Figure 2: Photograph of girls at work for their families in a communal area



The research was triggered by my personal experience. I grew up partly in the rural areas and had to experience times when my mother would wake up the girls before the boys in the house so that they could help her with the household work. Unfortunately for the girls when it was winter time and there were no crops in the fields, the boys would even sleep longer.

Since the age of twelve I have known what it means to wake up before everyone else and do almost everything that a mother must do.

After school and having attained a degree in teaching I became responsible for sending some of my brothers to school. Upon marriage a number of cows and bulls were driven to my father's kraal. After many years I was asked to pay for the cattle herder. My brothers were fortunate that my father decided to give them their share of their inheritance while he was still alive. This was done secretly and without my knowledge and I continued to pay for the cattle that belonged to my siblings who were working. A few years ago, I found out what had happened and decided to stop paying. I now hear that there are disputes over paying the herdsman.

Since then, I have always felt the pain of exclusion and rejection. It becomes emotionally difficult to continue contributing to the welfare of those who are still in the village. If only they knew that I have even reduced my contribution by a half and no longer feel a part of my family. There are so many questions and thoughts that I entertain. Does my father and his sons think I am living for them? When will they understand that I am human too and need the very same resources that they want so that I can also enjoy an adequate standard of life?

When I relate the toiling woman in her matrimonial home to what also very possibly happened to her when she was growing up and was socialised the way I was in my communal home, the questions that come to mind are, 'Why does the rule of fathers trivialise the lifetime contributions girls and women make for their families? Why are returning daughters caught between a rock and a hard place? Why are families so quick to forget that it was the labour of their returning daughters that is responsible for their present welfare and fortune?'

This forgotten woman is a human being who also needs to enjoy human rights regardless of where she is found and lives. People seem to see her only when they need her help, but when she needs help, she becomes invisible and voiceless. Families in communal areas have to rethink and consider the changes that are taking place in marriages today. Fair and proper adjustments at the family level are very necessary so that returning daughters receive their fair share of land in order to enjoy an adequate standard of living.

There are quite a number of women in communal lands who are living like those referred to in the UN document, above. They have been working on the land since they turned twelve. They worked on the land when they got married. When they divorce and return home, they work on even smaller portions of land and such land also belongs to a male.

Women in the majority of African countries do not have land rights in communal areas. The quest for land rights in most communal areas is contested by men. Men are socialised to believe that family land belongs to them and so they believe that whatever their sisters contribute to family welfare is trivial since they think sisters exist merely as helpers and not as human beings in their own right in need of human and socio-economic rights, especially rights to land.

1.3 Statement of the problem

There is evidence that women in rural areas especially returning daughters have heard of equality from various sources but may never have actually enjoyed such a right especially when it comes to accessing land at the family level. There has been a lot written concerning the absence of specific laws that should guide rural leaders in educating families to observe the principles of equality when allocating land to children. Although Zimbabwe has signed and ratified international human rights instruments, especially the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) which uphold such rights, these have not been domesticated and made into appropriate laws in Zimbabwe.

Zimbabwe as a member state of CEDAW is hesitant to enact, implement and enforce laws that emancipate women. The government lacks the political will and drive to address issues of concern to rural women. The traditional leaders in most communal lands wish to enjoy male privileges as they refuse to recognize the basic needs of women. Their cultural practices are shielded by a government that is reluctant to enact laws that consider the perilous position of single and vulnerable women in rural areas. The state persists in its failure to clarify issues surrounding the allocation of land which will help ensure an adequate standard of living for returning daughters.

As stated by Makonese:

‘The majority of Zimbabwean women depend on land as their source of family livelihood. Without land, rural women are unable to enjoy the right to food or economic development. Land produces food and surplus is sold to complement family needs like medication and school fees’ (Makonese, 2017: 19).

As much as the state and traditional leaders would wish to continue depriving rural women of land there is the glaring reality of female headed families and returning daughters who need enough land for their families’ welfare.

The Zimbabwe Constitution has addressed issues of equality when accessing resources for both men and women. Section 56 emphasizes equal treatment and rights to opportunities in the social and cultural domain. Section 72 deals with rights to agricultural land. The definition of agricultural land does not include communal land. There is little specific detail concerning the allocation of such land in this section. Section 80 annuls laws and cultural beliefs that interfere with the rights of women to the extent that they are inconsistent with the Constitution.

Section 8 of the Communal Land Act encourages district officers to consult and collaborate with community leaders when it comes to allocation of land. District officers should observe the cultural practices of land allocation in the various areas they are working in. More power and decision making is given to chiefs and village heads who are mostly cultural gatekeepers.

As emphasized by Makonese, failure to be precise about the land rights of rural women simply means that they continue to be marginalised and excluded from the only available resource that should change their livelihoods and help them make meaningful contributions to the development of their families, communities and the country.

The effort made by the state to align the Constitution with a number of international and regional Conventions should be followed by new laws, policies or changes in existing laws. The principle of equality and non-discrimination will become a reality for the nation if the state makes the relevant changes as indicated in the Constitution. Little progress has been made to sensitise the majority in communal lands especially leaders and cultural gatekeepers. Delays may lead to a slowing down or even reversal of improvements which have already been made. The stalemate that exists is that although the advantageous rights of the

Constitution override the conflicting provisions of the Communal Land Act, these Constitutional provisions have not yet been realised in practice and have not benefited returning daughters. Therefore returning daughters only enjoy 'paper' rights. Unless their cause is championed they will continue to be excluded in land rights in the communal areas.

The state should display political will by implementing and enforcing programmes that abolish discrimination in the allocation of communal land. The State needs to carry out the promised education and awareness campaigns of equality and non-discrimination in the communal lands. The traditional leaders need to be engaged so they can realise the potential of returning daughters to change communities and standards of living for families. Women need to get fair portions of land.

Research findings in most communal areas in Zimbabwe reveal that land inheritance follows the patrilineal line and that as dictated by the customary laws that daughters do not inherit land. Since returning daughters appear to be on the increase, measures have to be put in place to adjust issues concerning land rights in communal areas. If returning daughters continue to be allocated small portions of land there is certainly going to be very low standards of living in these female-headed families.

There is a gap between returning daughters in the city and the returning daughters in communal lands since inheritance laws in the city have stipulated that all children receive equal shares. The daughters in cities benefit from the Deceased Persons Family Protection Act. Returning daughters in the rural areas face exclusion because of cultural practices that continue to discriminate against them.

1.4 Purpose of the study

The exclusion of women from land rights in communal lands has been an issue of concern to various scholars especially in Africa. Ayodo (2012) in the Standard Digital, expressed concern over the attitude of men everywhere who advocate that daughters have no land rights in the African culture. He pointed out that communities were choosing to lock out female children from inheriting the land. In Zimbabwe, there are various documents expressing disappointment at the exclusion of daughters from land inheritance.

This study intends to assess if returning daughters have land rights in the communal areas. It also focuses on the various challenges faced by returning daughters. There is also need to determine how women's land rights are being overlooked and ignored in communal areas.

The purpose of the research is to examine the human rights instruments, the Zimbabwe Constitution, the national laws and policies. The goal of this study is to focus on what changes need to be made to uphold the principle of equality and non-discrimination in the Constitution.

The research seeks to ascertain why there is resistance from traditional leaders who continue to follow cultural practices of land allocation in communities despite the existence of a number of sections against exclusion and discrimination in the Constitution.

It is important to add to the various suggestions made by researchers some possible solutions that may result in daughters receiving land rights in the communal areas. Many gender activists have vigorously campaigned for the legal changes that we see today. The problem lies in implementing such changes.

1.5 Research assumptions

1. Women and girls have rights to communal land.
2. Daughters have rights of return in communal lands.
3. Divorcees and single women are dispossessed of rights to land in communal areas.
4. Communal land is verbally non-gendered but there is male preference.
5. Section 56 of the Constitution outlaws discrimination.
6. Section 80 of the Constitution specifically addresses women's rights and section 80(3) addresses culture.
7. Women's rights to land are ignored and overlooked in communal lands.
8. Part of the reason is economic and renewed pressure on available land.

1.6 Research questions

1. Do women and girls have rights to communal land?
2. Do daughters have rights of return in communal lands?

3. How are divorcees and single women dispossessed of land rights in communal areas?
4. Is it the case that communal land is verbally non-gendered but there is male preference?
5. How does the Constitution outlaw discrimination?
6. How does the Constitution address women's rights (section 80) and culture (section 80(3)) and other sections?
7. Are women's rights ignored and overlooked in communal lands?
8. Are economic and renewed pressure on available land part of the reason?

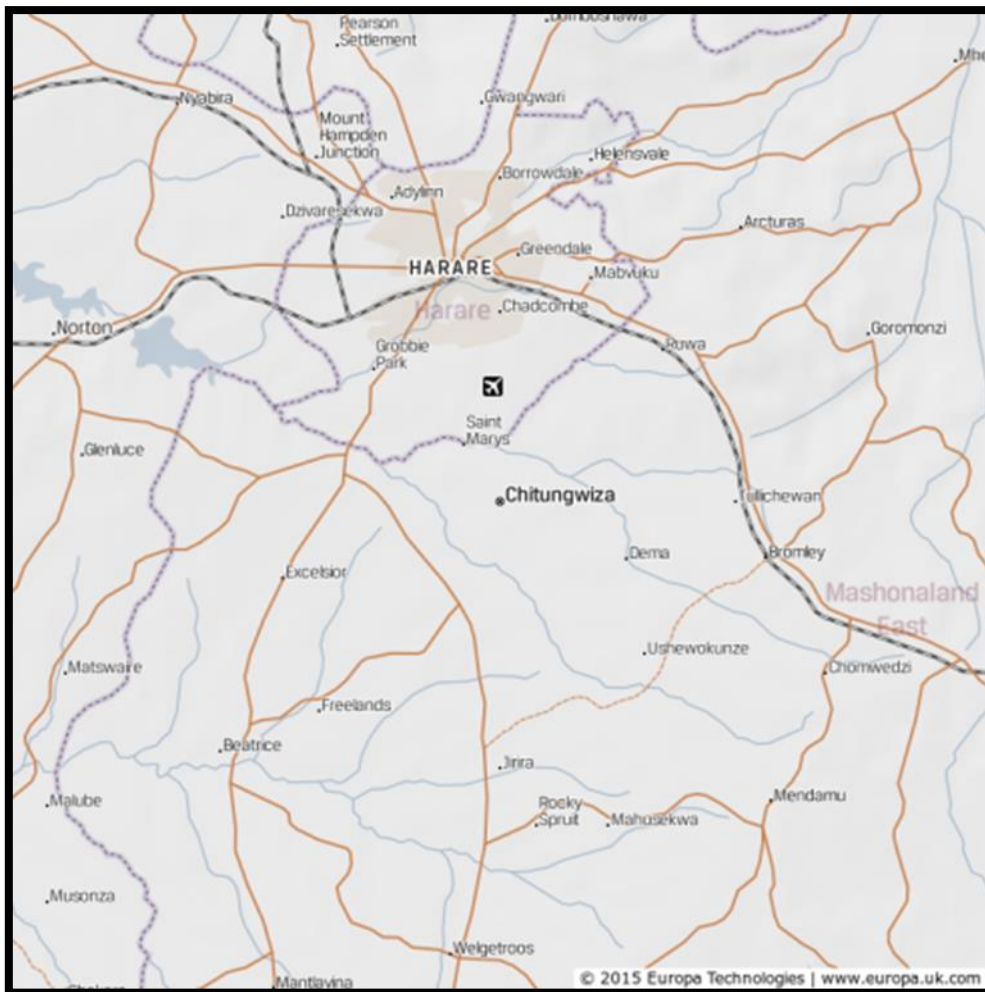
1.7 Demarcation of study area and targeted population

The research was carried out in Zimbabwe around Madamombe village near Dema in Seke just outside Chitungwiza town towards Hwedza (Figures 3 and 4). I selected this area because it is the nearest area just out of town that still has a number of features that display a communal area setting. In other words, in almost every homestead there are some portions of land lying fallow, open spaces around wetlands for cattle grazing, a hut and a kraal. Since it was the rainy season when the research was conducted many portions of land were being cultivated using ox-drawn ploughs.

Figure 3: A map of Zimbabwe showing the research area



Figure 4: A map showing a close-up of the research area



The study objectives really needed the research to be carried out in such an area where most of what was assumed could be challenged or confirmed. As stated in the assumptions, findings in this area confirmed the denial of land rights to returning daughters.

Women were the starting point as I wanted to ascertain how families and communities received returning daughters. I targeted the married, the divorced, cultural gatekeepers and the village leaders who were all over thirty years old.

1.8 Limitations to the study

There was not enough time to interview all the people that were targeted. This village turned out to be bigger than I thought so I ended up interviewing around fifty respondents in the village. I did not have enough money to drive back to town on a daily basis so I had to stay at

a relative's home for several days. Some returning daughters who were living with family members were reluctant to divulge some of the challenges they faced. Their reluctance could have affected the research had it not been for the other returning daughters who shared personal experiences.

1.9 Conclusion

The above discussion reveals that there is possibility of a male conspiracy against the land rights of returning daughters in communal areas. The conspiracy is reinforced by the non-existence of clear laws on principles of equality and non-discrimination. What is stated in the Zimbabwe Constitution needs to be implemented. Women have to continue pressing for changes so that the government rolls out laws and works with gatekeepers to effect change. The customary laws are now being manipulated by some male members of communities who are developing very unhealthy and harmful attachments to land and resources. Land allocation in communal areas has to be treated as a matter of urgency and progress has to be registered in order to curb the continuous exclusion of daughters.

CHAPTER TWO

2.0 LEGAL FRAMEWORKS AND LITERATURE REVIEW

2.1 Introduction

This chapter examines various writings on land issues and the quest for women's land rights in communal areas. Researched information concerning land rights of women in some states in Africa and particularly in Zimbabwe show conflict and denial. A number of international laws and provisions in the Zimbabwe Constitution the rights of women are also canvassed. Although land rights for widows and married women have been researched, I have discovered that there has been little research on the land rights of returning daughters. The significance and meaning of communal areas to the majority of rural people in Zimbabwe will also be explored in some detail.

2.1.1 Communal areas

Most communal areas in Zimbabwe are rural lands that are inhabited by a group of people sharing a certain history and culture. The majority of people living in communal areas have inherited these areas from their ancestors who were pushed into these less productive areas during colonialism. Most communal areas used to be the Tribal Trust Lands. The majority of smallholder farmers live in communal areas and have shares in grazing land, water and land for cropping.

As pointed out by Agarwal, land continues to be a very important form of property in rural areas. Land determines people's social rank, economic security and political influence (Agarwal, 1996). In Zimbabwe, agriculture is the mainstay of most rural families. Having a piece of land brings a sense of security, identity and ownership or access. The majority of women in communal areas need secure access to land for these and other reasons.

The economic meltdown that hit Zimbabwe reached a crisis point around 2007 and many people who were laid off from work went back to the communal areas. Since then, communal lands have become financial fall-back platforms when people become jobless in cities. Needless to say, there was an increase in the people that needed land for their livelihoods. There have been attachments to land from that time. Men who returned from the cities after losing jobs learnt how to grow cash crops and realised that they needed more family land.

There is now competition for ownership and control of land in the communal lands since the majority of people realised and accepted that the cities no longer had much to offer. This land is the same land to which returning daughters are claiming rights.

2.2 Literature review

Researched information confirms that there is an unequal distribution of land between men and women in most African countries including Zimbabwe. Generally communal land rights follow the patrilineal line in which women only access land through male relatives. As stated by one scholar:

‘Women’s access to land and other factors of production need to be considered within the context of social and particularly gender relations’ (Davison, 1988: 202).

Englert and Daley discovered the opposition and resistance of males to equal shares of land rights as they believe ownership of land is a male preserve. They wrote:

‘Women who have struggled for land security have been confronted by resistance and by patriarchy in its many forms. This is because in many parts of the world land is often regarded as a symbol of male dominance, and for women to challenge the *status quo* is to challenge patriarchal control - and thus other social and political inequalities’ (Englert and Daley, 1998).

Ikdahl carried out research on property and land rights in Tanzania. She learnt that issues of land rights brought conflicts and inequalities between men and women in different societies. She then suggested that land rights in rural Africa should take a human rights based approach. Professor Ikdahl pointed out that relationships between the interests of communities in land issues and women’s individual rights within that community is an issue of controversy. She revealed that the CEDAW Committee had on many occasions commented that cultural practices in communal lands continue to deny women rights to land. The Committee has always recommended that African member states frame laws of land rights that clarify the position of rural women (Englert and Daley, 1998: 49).

Kenya like the majority of African countries also refuses women’s requests for land as individuals. Traditional practices still view the ownership of land as being a male benefit. In Kenya, Kameri-Mbote affirms that ‘there is persistence of customary practices and beliefs

that marginalise and exclude women and the youth from land ownership.’ Customary beliefs specify that women cannot own land. She confirms that there are multiple legal systems that work together to create barriers to land rights for women (Kameri-Mbote *et al.*, 2013: 42).

Researched information in Lesotho and Swaziland revealed that land is under traditional tenure. Access, control and ownership of land by women is restricted. Women do not have the right to own and control land because of male controlled practices and discriminatory general laws. Customary laws treat women as minors and so deprive them of rights to land as individuals. Treating women as minors places them in a position where a male member of the family continues to be their guardian. The written law and customary practices marginalize women and strip them of land rights (Mafa and Gudhlanga, 2015).

In Mozambique, as reported by Kimani, women were fortunate to have a new law on land rights in 1997. The new law was adequate in theory but there was a problem with its implementation. Rural women who mostly use traditional courts experienced difficulties as the village chiefs did not follow the new land laws but continued using traditional practices to allocate land (Kimani, 2012).

General Recommendation No. 34 of the CEDAW Committee shows that there is awareness of the current situation confronting the majority of rural women in Africa concerning the accessing of rights ratified by the majority heads of states. Part of the recommendation reads:

‘Committee is aware that in many states rural women’s rights and needs remain insufficiently addressed or ignored in laws, national and local policies, budgets and investment strategies at all levels.

Globally, rural women fare worse than rural men and urban women and men. Rural women disproportionately experience poverty and exclusion.’

In most communal lands in Zimbabwe traditional gender relations create inequality that result in men believing that they are superior to women. The majority of rural men are socialised to believe that resources are a male preserve. Mafa and Gundhlanga write:

‘Gender relations are in terms of the link between power and dominance that structure the life chances of women and men. These relations take the form of male dominance and female subordination. These unequal relations lead to

women failing to access basic resources like land' (Mafa and Gudhlanga, 2015: 125).

Gender relations in most communal areas result in the denial of large pieces of land to women who then have to manage with limited access to important resources. In Zimbabwe, women in communal areas are governed and directed by cultural practices. There are present day interpretations that work to create challenges and obstacles to rural women's land rights. Renewed attachments to land after job losses in cities have led to new conspiracies against land rights for women. The majority of traditional leaders who are generally the cultural gatekeepers are very reluctant to entertain women's demands especially if they oppose and challenge traditional views (Mafa and Gundhlanga, 2015).

Upon realising that there were no legal provisions that assisted women in accessing rights to the communal land, a group called the 'Women and Land Lobby' was formed by gender activists in 1988. The group was against the fact that the Communal Land Act plainly accepted the power and rule of customs and practices of land rights within given areas. Just as women are viewed as minors in Lesotho, the customary law practices in the communal lands of Zimbabwe give women the same status (Mafa and Gudhlanga, 2015).

Despite the struggle put up by women's organisations, women in Zimbabwe's communal lands still do not have land rights as individuals but continue to access land through male relatives. The state has neglected women's demands for land although the Constitution endorses the principles of non-discrimination and equality. The state is not responsive to women's land rights because there is a need to continue enjoying the support of males within the party. Once during a press conference, the then Vice-President Msika who was asked why women did not have land rights answered, 'Because I would have my head cut off by men if I gave women land' (Mafa and Gudhlanga, 2015: 136).

The above research findings and scholarly views show that issues of land rights for women are contested in a number of African communal areas in Africa as well as Zimbabwe. There were no written texts that clarified the land rights of returning daughters in communal areas. The majority of scholars emphasised that women's land rights have been an issue of conflict and that most solutions to this problem have gone no further than the paper on which they are written.

The reluctance of the Government to initiate strategies and schemes for equal land rights in communal lands reveals that even the Government, despite taking part in different discussions on land, is hesitant to give women land rights in communal lands. There are no clear policies on women's land rights. Traditional leaders who are mostly male are bent on preserving cultural practices of land rights and allocation. Therefore, women have to continue the struggle for land rights in communal lands.

2.3 Legal frameworks

Zimbabwe has signed a number of human rights instruments without any reservations. It is a member state of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In this Convention member states are obliged to denounce all forms of discrimination against women. Article 2(c) mandates states to:

‘Establish legal protection of the rights of women on an equal basis with men and ensure ... the effective protection of women against any act of discrimination.’

In article 2(f) state members agree to:

‘Take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.’

Articles 5 and 14 of the same instrument obligate states to focus on the well-being and welfare of the rural woman. Rural women according to CEDAW ought not to face any form of discrimination in the rural setting. Rights are interconnected and indivisible. Zimbabwe is mandated to focus on the welfare and prosperity of rural women so that they may enjoy acceptable standards of living.

As a member state of the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), Zimbabwe guarantees in article 2(2) that rights in this Covenant:

‘Will be exercised without discrimination of any kind as to ... sex ... or other opinion ... social origin birth or other status.’

Article 3 of this Covenant also mandates Zimbabwe to:

‘Ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present covenant.’

Article 11 of the ICESCR obliges state members to:

‘Recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.’

The ICESCR binds Zimbabwe to provide economic and social rights without any discrimination. Women in communal areas need resources to enjoy an adequate standard of living. The state is obliged to make sure rights are also enjoyed by women in communal lands who at times are marginalised.

Zimbabwe is also a member state of the African Charter of Human and Peoples’ Rights, 1981 (ACHPR). The preamble explains that the African states are conscious of their duty to eliminate:

‘all forms of discrimination, particularly those based on ... ethnic group, sex ... religion or ... opinions.’

Article 2 also states that:

‘Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as .ethnic group, sex ... religion or any other opinion.’

There is an emphasis of the principle of equality and non-discrimination that is in CEDAW. Zimbabwe as a member state is quite aware of its obligations to its people. Regardless of whether Zimbabweans live in the urban or communal areas, they are all entitled to enjoy rights guaranteed under this Convention.

The preamble to the Protocol to the African Charter of Human and Peoples’ Rights on the Rights of Women in Africa, 2003 (Maputo Protocol), which is akin to a bill of rights for African women, reminds member states that:

‘Concerned that despite the ratification of the ACHPR and other international human rights instruments, ... women in Africa still continue to be victims of discrimination and harmful practices.’

Article 2(2) of the Protocol says:

‘State parties shall commit to themselves to modify the social and cultural patterns of the 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 sex, or on stereotyped roles for women and men.’

Article 5 of Protocol is dedicated to the elimination of harmful practices. Article 15 obliges state parties to:

‘Ensure that women have the right to nutritious and adequate food.’

Article 15(a) of the Protocol mandates state members to:

‘Provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food.’

The Maputo Protocol has an African context that brings forth the concerns of African women even in rural settings. Being a member to this Protocol means the state is prepared to engage rural leaders in order to modify cultural norms that exclude women from land rights. Zimbabwe agreed to educate the rural folks on equality and inclusion of women in social and economic benefits. Harmful cultural and traditional practices would be abolished.

Zimbabwe is also a member state of the SADC Protocol on Gender and Development which is a regional agreement. In this Protocol, Zimbabwe agreed that despite signing and ratifying the international treaties, women have not yet enjoyed the rights provided. As a member state of the SADC Protocol, the state agreed to initiate programmes that change the mindsets, attitudes and cultural practices that continue to create obstacles to equality. The state has also agreed to draw up programmes and action plans within set timeframes. These programmes are meant to create equality and end all forms of discrimination. This means that rural women will not be left out of any social benefits. Laws that still create marginalisation would be repealed and new laws that create equality would be enacted. Women will not struggle to

have access to fair shares of land. The preamble to the Protocol encourages all member states to:

‘Recognise that social, cultural and religious practices, attitudes and mind sets continue to militate against the attainment of gender equality and equity.’

The state members are committed to:

‘Drawing up a plan of action setting specific targets and timeframes for achieving gender equality and equity in all areas, as well as effective monitoring and evaluation mechanisms for measuring progress.’

Article 6 states:

‘State parties shall review, amend and or repeal all laws that discriminate on the ground of sex or gender by 2015.’

On the same note, article 18, which is on access to property and resources, mandates state members to ‘review all policies and laws that determine access to, control of and benefit from, productive resources by women in order to:

‘(a) End all discrimination against women and girls with regard to water rights and property such as land.’

As pointed out in the abovementioned international and regional instruments, Zimbabwe is obliged to review its laws and abolish any laws that continue to discriminate against women’s land rights. These instruments mandate the state to provide and protect the rights of women. The signed international laws without reservations show that the state is aware of the human rights that women need to enjoy.

2.3.1 The Constitution of Zimbabwe

The 2013 Zimbabwe Constitution has incorporated some of CEDAW’s obligations and this has contributed to raising women’s expectations because of its alignment with the principle of equality and non-discrimination. The much debated section 23 of the old Constitution has been removed. There is hope for the fair treatment of women in all areas including the distribution of the nation’s resources. The Constitution has nullified all cultural practices that continue to marginalise women in all settings. Section 56(2) of the Constitution reads:

‘Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.’

Section 56(3) echoes the obligations found in CEDAW and the ICESCR.

Section 77 is on the right to food and water and provides in (b) that every person has the right to sufficient food.

Section 80(3) states that:

‘All laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of the infringement.’

2.3.2 Laws and policies

2.3.2.1 Communal Land Act

This is the only law focusing on lawful access to and control of land activities in the communal areas. The Communal Land Act does not specify how land is allocated in rural areas. While the pronouns he/she are used, this does not clarify land rights. Traditional leaders still have power to allocate land and district officers have to collaborate with these leaders in land allocation matters. Section 7(c) on access to and control of communal land states:

‘... he or she is a spouse, dependent, relative, guest or employee of a person who occupies or uses communal land in terms of paragraph (a1) or (b).’

Section 8(2)(1)(a) provides:

‘a rural council shall:

- (a) where appropriate have regard to customary law relating to the allocation, occupation and use of land in the area concerned; and
- (a1) consult and cooperate with the chief appointed to preside over the community concerned in terms of the Traditional Leaders Act [Chapter 29:17].’

2.3.2.2 The National Gender Policy (2013 - 2017)

The National Gender Policy's goal reads 'to eradicate gender discrimination and inequalities in all spheres of life and development.' The Policy has not focused on the concerns of rural women especially their access to land and resources. There is reference to the inclusion of women in development issues.

2.4 Conclusion

Issues of land allocation to individual women are of concern in most Africa countries and Zimbabwe. The literature which has been reviewed in this chapter illustrates that many scholars have discovered that most African countries have set up barriers to ensure that communal land ownership and control remains a male preserve. The majority of African heads of state continue to sign and ratify a number of international and regional instruments. Women continue to expect changes as promised in the conventions. The Constitution is expected to result in laws and policies that strengthen the principal of equality and non-discrimination.

CHAPTER THREE

3.0 METHODOLOGY AND DATA COLLECTION METHODS

3.1 Introduction

In this chapter I describe the different approaches taken to unearth the lived realities of returning daughters in Madamombe village. I decided to adopt a number of attitudes and strategies in order to find out whether returning daughters have rights and entitlements to land. I mean to discover if any heed is taken of human rights in the cultural practices of land allocation. I also wanted to ascertain if there are any explicit laws concerning the allocation of land at the family level. With this in mind, I chose the grounded theory and women's law approaches among other styles and tactics of research and talked to women in Madamombe village as a starting point.

I chose a qualitative research approach because I wanted to talk to the villagers on aspects of life that do not need responses in terms of numbers but facts. Creswell says about qualitative research that 'this up-close information gathered by actually talking directly to people and seeing them behave and act within their context is a major characteristic of qualitative research' (Creswell, 2014: 185). He emphasized that qualitative research investigates social issues that cannot be gathered and analysed by quantitative research. The connection between the law, the Constitution and the lived realities of the returning daughters has to be clarified. The qualitative method allows for detailed information to be collected and interpreted by the respondents and the researcher.

A number of data collection methods were used to ascertain if daughters have these land rights as well as rights of return when divorced. The research was guided by semi-structured interviews. A number of open-ended questions were put together for the respondents. The chapter ends with ethical considerations which the research took into account.

3.2 Women's law approach

The women in this village were the starting point of this research as there was a need to find out the lived realities of returning daughters. I realised that only the women's voices could narrate the experiences of returning daughters. As pointed out by Stewart, there are theoretical versions of the law and the actual experiences of women (Stewart *et al.*, 2009: 19).

I wanted to compare the actual experiences of women and what the law states. The lived realities of returning daughters in Madamombe will then lead to discovering what the laws stipulate in connection with land distribution in families in communal areas. Stang Dahl explained that women's law explains the legal position of women and aims to improve the situation of women in society as well as within the law (Tsanga and Stewart, 2011). The empirical data would make it possible to investigate or question the law for the benefit of women.

The women's law approach would also reveal the differences in what the law says versus the realities faced by returning daughters in Madamombe. As quoted by Makonese (unpublished, 2017: 35):

'The starting point for the examination must be in real activities rather than in law. This comes from the realisation that the legal system is historically constructed by men and for men and is reflecting the opinion of men. This means that the legal system provided solutions to conflicts of men and responding to needs and demands of men' (Berg and Gundersen, 1990: 117).

As explained by Makonese, I also understood that there is a need to focus on the situation on the ground then compare it with what is provided for in the laws and policies on access to communal land.

The international laws encourage member states to exercise the principle of equality and non-discrimination. State members are mandated to repeal laws that continue to discriminate against women on any basis. Laws and policies that promote equality have to be enacted. Makonese quotes Banda when explaining that substantive equality goes beyond law-making to include women's realities and in the process considers the effects of law, policies and practices in the enjoyment or absence of relevant rights (Banda, 2012: 380). Member states are then encouraged to take action and provide necessary remedies.

Zimbabwe as a state member has to act according to agreements and make certain that women in communal lands also enjoy the rights and entitlements provided for by the law. There are sections in the Constitution that spell out that the country has taken on board what is in CEDAW and the Maputo Protocol. My mind was flooded with a number of rights and what is in the Constitution when I went into the field. The findings in this research will help

in making meaningful recommendations after assessing the experiences of returning daughters and what the law stipulates.

3.3 The grounded theory approach

Stang Dahl stated that the law is male and so it is important to take the women’s lived realities or a grounded approach (Tsanga and Stewart, 2011). I decided to approach women in various groups in this village. I had open-ended questions that made it possible to ask the next questions so as to gather more information. Data collected on a daily basis was interpreted and categorised. This made it possible to see the particular questions that had not been asked. The following day I would go back into the field with a new set of questions until I had exhausted what I needed to know in connection with the land rights of returning daughters in this village. The whole process of what happened in this field is like a dung beetle ball that keeps growing collecting more debris as the insect rolls it around as explained by Bentzon *et al.* (1998).

This approach made it possible for me to come up with theories that explain the denial of land rights to returning daughters by this community. My aim was to find knowledge from the lived realities of the returning daughters; the cultural practices and structures then build concepts that explain the activities around returning daughters (Bentzon *et al.*, 1998: 25).

The time I took moving around the village made it possible for me to engage forty seven (47) respondents so that I would be able to ascertain the perceptions surrounding returning daughters (Table 1). The grounded theory approach also assisted in finding out if the women have any knowledge of laws or the Constitution.

Table 1: Showing details of respondents in Madamombe village

Category	Women	Men	Total
Individuals	13	22	35
Key Informants		3	3
Gatekeepers	4		4
Returnees	5		5
Total	22	25	47

I also had moments when I would put side by side the challenges faced by returning daughters and what the laws say, then would find the gap. I realised that the reality on the ground or '*de facto*' situation was different from the '*de jure*' or ideal situation that was spelt out in the Constitution. I discovered that the legal gaps in the Communal Land Act as well as the encouragement given to district officers to collaborate with the community leaders in the land allocation process could be contributing factors to the exclusion of daughters from land rights.

3.4 The human rights approach

This approach was taken in relation to the human rights conventions that Zimbabwe signed and ratified without any reservations. A look at the human rights instrument signed by Zimbabwe shows that it has agreed to provide and protect rights on the principle of non-discrimination and equality. As a member state of CEDAW and the ICESCR, Zimbabwe has not yet domesticated these rights and made them into laws. The Constitution of Zimbabwe which is the supreme law of the land is aligned with the provisions stated in these instruments. The research focused on the lived realities of returning daughters while human rights issues lingered at the back of the researcher's mind. This attitude made it possible to detect the rights that returning daughters are deprived of as they get small portions of land for subsistence farming. Responses that showed discrimination on land allocation reflected the meaning of this exclusion in terms of the ratified Conventions. This approach assisted in gathering appropriate data to ascertain whether the practices on the ground align with the Constitution and/or the human rights instruments.

Gaps between policies, legislation and the lived realities of women in Madamombe were discovered. This approach made it possible to understand why women in this village are denied fair portions of land. The signed and ratified human rights instruments are not domesticated and have not been enacted so as to govern land allocation in communal lands. There is knowledge of the Constitution and equality but the state has not carried out awareness campaigns to educate communal leaders on the significance of observing the principle of equality and non-discrimination. The laws of equality remain written on paper and have not become known to this community. The returning daughters are at the mercy of the cultural gatekeepers and traditional leaders who know that land rights are a male preserve.

3.5 Intersectionality

Within the research, there was a need to focus on the varieties of interlocking factors that form barriers that make it difficult for returning daughters to access land rights in Madamombe village. I needed to understand some of the ‘multiple oppressions that are often interwoven and loaded upon African women’s lives and further complicate legal frameworks in addition to gender’ (Tsanga and Stewart, 2011: 11). I focused on the obstacles that are created by social positions in this society as well as the economic status of women.

The majority of women in this community are poorer than men and are considered second class citizens who are subjected to positions of subordination and exclusion from resources. The combination of social position and lack (poorer than men) create barriers to land rights in this village. Crenshaw explains that at times the intersection of power structures form a bond that leads to the exclusion of women from resources (Crenshaw, 2017). Male conspiracy is a system inherited from their forefathers who have craftily woven norms and values that become cultural practices. These cultural practices are traditions which are followed and lead to the exclusion of daughters from land rights for a host of reasons.

The majority of returning daughters arrive home without resources and this creates a platform for their dependence on their natal family. This social position, deprived state and other cultural beliefs concerning returning daughters intertwine to create a cord of barriers to land rights. Different types of discrimination interact to militate against equal access to resources. The returning daughter faces discrimination because she is a woman in the family and the community. She is also discriminated against because she is a divorcee who according to their views has failed to endure and defend access to land in the matrimonial home. She is also discriminated against because she is poor and therefore powerless. At times acts of violence within the family structure also create barriers to fair shares of land rights.

Focusing on intersectionality of factors that determine the land rights of returning daughters in this village helped to discover why there is son preference and why the majority of families think that daughters should just endure difficult marriage. As pointed out by Kamari-Mbote, while there is the Constitution and laws that avail land rights to all in Kenya, these provisions interface with and are negotiated by customary norms that refute and counter land rights of women. Women, according to the customary norms only access land through their spouse,

father, brother or son (Kameri-Mbote, 2017: 227). The situation in Kenyan land rights is not different from that in Madamombe communal area. Customary norms and other factors interface and contest the land rights of returning daughters.

Unfortunately for returning daughters in Madamombe, the traditional gatekeepers and village leaders are adamant that returning daughters do not enjoy equal land rights with sons. There is reference to cultural norms and values that state that daughters do not have land reserved for them in their natal home.

Cultural gatekeepers and traditional leaders are of the view that while there are human rights laws and the Constitution, customary norms and practices take precedence over them and land rights are allocated according to the process and procedures inherited from their ancestors.

3.6 Actors and structures

Bentzon *et al.* state:

‘By focusing on the woman and her relationships with men and with other women and the society in which she is embedded, we may uncover the norms, expectations and social and economic forces which influence problem solving and dispute resolution’ (Bentzon *et al.*, 1998).

This tactic made it possible to start with women’s experiences and knowledge of the activities surrounding returning daughters as well as the traditional arrangements that affect returning daughters’ land rights. The normative orders expose the structures that determine behaviour and action to be taken.

In accessing land rights in communal areas, traditional structures are followed. These arrangements are believed to be inherited and the actors in the allocation of land in communal areas behave as though these structures are cast in stone. I was interested in finding out who allocated land at the community and family level as well as the structures or arrangements they followed. The structures and actors approach also assisted in linking the road mapped by legal pluralism. The traditional leaders exploited the gap in the weak legal systems to continue observing the cultural practices of land allocation for the benefit of males in communities.

The family heads as actors also adhere to the dictates of the cultural gatekeepers who at times are the village leaders in allocating land. The returning daughters are also caught up as actors within a structure that decides their exclusion from land rights at the family level. They have been socialised to accept that norms and values of land allocation give preference to the boy over the girl child. They act within specified practices and accept the small portions allocated to them.

The actors and structures approach assisted in understanding the endurance and acceptance of daughters as being those who are excluded from and marginalised by this society. Daughters even understand the structures and actors that deny them land rights. They also understand that they too are acting as expected by the cultural practices that create this discrimination.

3.7 Research methods

3.7.1 Pilot study

The research topic is quite sensitive to some returning daughters and even those that have had wrangles with some in-laws bringing their daughters back to the natal home. I decided to carry out a pilot study in Chanakira village. This village is just next to Madamombe. A pilot study is a small study carried out before the main research so as to make the necessary corrections and avoid serious flaws during the main research (O'Leary, 2010). In this pilot study I had a group discussion with men and women. Chanakira village is not part of the main research study. I wanted to find out if I would be able to ask questions in a way that would not offend or leave respondents emotionally stressed in Madamombe village. I wanted to find out if the questioning techniques I intended to use in the research would take into consideration the sensitivity of the matter. This pilot study would make it possible for me to adjust my questions in order to cover all the areas of focus in the research.

3.7.2 Population and sampling

Population is described as a group of people selected to become the focus of study (Gray, 2009). In this research, women and men who are above the age of 35 and likely to be married are the target group in Madamombe village. The research focuses on the land rights and entitlements of returning daughters in the village. There are quite a number of men and women in this village and I know that it is not possible to interview all of them. However, Gray explains that 'it is not possible to evaluate the entire population (because of its large

size or lack of research resource) then we ... select a sample ... for evaluation' (Gray, 2009: 148). Since in most research, it is not possible to study everyone, a part of the targeted population would represent the village. Men and women in this village were selected as respondents. I selected the majority of respondents randomly. The cultural gatekeepers, returning daughters and the key informants were selected purposively.

3.7.3 Group discussions

I carried out group discussions with the respondents in this village. I made sure the groups were kept small so that everyone would have a chance to speak. Since it was in the village and during the harvest season when most villagers are busy in the field, I wondered if I would be able to gather large groups at all. I was prepared to welcome new comers since villagers get curious and want to know why a group is gathering around a stranger. The groups never had more than five respondents at a time. Fortunately, there were no respondents who were quick to talk and speak over others. I had prepared to ask specific questions to those not given chances. I planned the group discussions in a manner that would separate females from males. Unfortunately, since it was tea time after working in the fields, I found families waiting for tea and had to discuss issues with husbands and wives together. I had to ask some questions directly to wives. I had made up my mind that I would arrange a separate meeting with the group that I think was disadvantaged as explained by Bentzon *et al.* (1998). Asking direct questions made it possible for wives to make meaningful contributions to the research. Separate meetings were then cancelled. Open-ended questions were adjusted according to the composition of the group. There was room for general questions and specific questions as I searched for answers to the land rights of returning daughters in Madamombe village.

3.7.4 Interviews

I selected participants for individual interviews in this village. The majority were randomly selected and a good number was purposively selected. The cultural gatekeepers, returning daughters and key informants were purposively selected. I chose semi-structured interviews because there were a lot of social issues that needed shared meanings. As explained by Punch:

'semi-structured interview is a very good way of accessing people's perceptions, meanings and definitions of situations and constructions of reality... The most common type is ... face to face verbal interchange' (Punch, 2004: 175).

This helped to build a meaningful picture of the lived realities of returning daughters. A number of open-ended questions were written down. Questions were changed on a daily basis depending on the data collected. Semi-structured interviews allowed respondents to give more information as the researcher was not restricted by specific guidelines.

3.7.5 Key informants

I also interviewed key informants who were purposively chosen. The key informants have positions of influence in the village. They are also part of the cultural gatekeepers. I made sure I interviewed them after I had spoken to quite a number of individual respondents and groups. I wanted the gatekeepers to confirm what had been explained by the villagers. I also adjusted the questions and made certain I would ascertain issues concerning the existence of the law versus some of the practices that were cultural, especially son preference.

3.7.6 Ethical considerations

Research scholars agree with Creswell that it is the right of participants to know the purpose and the nature of study (Creswell, 2014). I made sure there was informed consent of participants by elaborating issues surrounding the research as well as where I was coming from. I tried not to invade the privacy of respondents by asking questions that were too personal. I asked sensitive questions tactfully and allowed the problems to be recounted in the third person narrative. I reserved some questions for the gatekeepers and key informants so that I would not open old wounds and leave some respondents stressed and sad. I changed the names of the respondents and gave them pseudonyms to preserve confidentiality. I told them from the onset that I was going to give them fictitious names and also explained why.

3.8 Conclusion

The different approaches taken have made it possible for an understanding of how returning daughters are left at the mercy of the traditional practices of land allocation that exclude them from land rights in this community. The research methods selected created opportunities for face-to-face conversations that gave room for the collection of data that was important in assessing the lived realities of returning daughters in Madamombe village.

CHAPTER FOUR

4.0 CULTURAL BELIEFS AND LIVED REALITIES

4.1 Introduction

In this chapter I describe the experiences and lived realities of returning daughters in Madamombe village, Seke communal lands. Every challenge that confronts the returning daughter as she starts a new life in the natal home is documented in this chapter. Most of the challenges have been categorised and will be discussed within given themes. Surprisingly, there is evidence that the returning daughter may not find that returning home is better than staying in her matrimonial home and accordingly finds herself caught in the proverbial dilemma of being between a rock and a hard place. The actual words of the respondents, the gatekeepers and key informants are included in the discussion of the lived realities of returning daughters expecting to receive fair shares of land.

All the respondents interviewed agreed that there was room for a returning daughter to be received back into and accommodated by her family. There was general agreement that such practices were passed on from the ancestors. Respondents emphasized that returning daughters had nowhere else to go and so it was the duty of the family to take them back. One of the gatekeepers, Mbuya Chivi pointed out that families handle cases of this kind differently and no family responds just the same as another. Depending on the availability of land, a returning daughter may get her own piece of land, may migrate to town for domestic work or stay with her parents if land is scarce.

4.2 Discrimination in land allocation

A group discussion with four women beyond their middle age showed that traditionally returning daughters are accommodated and given portions of land but there is differential treatment when allocating the land. The boy child gets bigger and better pieces of land. The majority of families in Madamombe village still consider the boy child to be the heir who has rights and entitlements to land that have been passed on from his ancestors. *Mai* (meaning, 'mother of') Tendi explained that the cultural practice of selecting male children as heirs to land rights is still in place. The portions of land given to returning daughters are just for them to carry out subsistence farming and not assets for use to unlock any greater economic value they may potentially have. Returning daughters access the land but their fathers and brothers

own and control what happens to that land. *Mai Ruka* added, '*Mwanakomana ndiye muridzi wemusha.*' She meant that culturally sons were the known heirs and holders of the land. *Mbuya* (meaning, grandmother) *Mary* another gatekeeper emphasized that accepting returning daughters was a family affair because '*munhu haaraswi*' (meaning, 'a human being cannot be thrown away'.)

Mbuya Esther added that land scarcity also affects equal distribution of land between a returning daughter and sons. Families still harbour negative attitudes towards daughters' claims to family land. She said, '*Vanhu vachine kahunhu kekuti munhukadzi haana basa.*' *Mbuya* explained that there is still a preference for sons and allocating land to a daughter is not a priority and may not even be given significance and done at the right time.

Baba (meaning, 'father') *Gondo* (not his real name) who is one of the key informants in Chirimba, reiterated that returning daughters cannot have the same rights to land because their brothers are said to be the real heirs. Sharing land equally would result in less land for the true heirs. *Baba Gondo* said, '*Hanzvadzi yangu haikudze rudzi rwangu.*' He meant that his sister's children belong to a different family line or lineage. Land and any form of inheritance is reserved for the boy child and his descendants. Culturally the boy child has always been the heir and he carries on the family lineage and so he needs the resources used by his ancestors and, in turn, he is mandated to pass on these resources to his sons and the chain continues on like that. He actually said, '*Kupa minda kwacho kupa kwekunyima.*' He meant that land given to a returning daughter may not even be enough and if she needs more she may have to ask for some portions of land to use from the other villagers.

Mbuya Ishe a woman beyond middle age also confirmed the inequalities that existed in the village especially when land is allocated. She said that when a boy child is born women ululate and say, '*Mhuri yakura.*' She added, '*Mwanasikana haakudzi rudzi rwababa vake.*' She meant that the family lineage continuous through the son. She explained that land is not culturally passed on from fathers to their daughters. '*Minda ndeyeverume kwete vakadzi.*' She revealed that there are inequalities in such cultural practises as a result of which women find themselves being treated like second class citizens in the village.

4.3 Identity and access to land

One of the key informants explained that in *Shona* culture, marriage is a permanent arrangement that needs to be viewed as such by women of today. Daughters that get married are counted out of rights and entitlements to land because they are expected to go and establish their own '*musha*' (matrimonial home) where they access land. He however pointed out that giving a returning daughter land is just a practice that has been fuelled by the economic crisis. Families can no longer afford to stay in big groups. Returning daughters are only expected to stay with parents or brothers for a short period.

Baba Gondo emphasized that daughters do not have a permanent place and rights to land in their natal home because there is always the hope that one day they will get married. He hastily added that culturally land is not reserved for daughters in their natal family. Culturally land access for daughters comes through marriage.

When asked why daughters did not enjoy the same rights to land, *Sekuru* (meaning, 'grandfather') *Musa* one of the cultural gatekeepers explained that daughters have access to land whenever they marry. He added that coming back has its own problems and laying claim to ancestral land was not culturally acceptable for women.

Mai Tafi reiterated that traditionally married daughters are not expected to return and so there are no patches of land reserved for them in case they do return. She explained that returning daughters are not allocated land permanently. She actually said, '*Mwana musikana haatarisirwi kugara zvachose pamusha peakabarirwa saka haana cheanopihwa chinonzi ndechake*' (meaning, daughters are not expected to stay permanently at their natal home and so inherit nothing.)

Brother *Simba*, a respondent who looked about 35 years old had a lot to say concerning returning daughters. *Simba* said, '*Tinenge tatomubvisa panhaka. Kudzoka kwake kunenge kwava kutokonzeresa.*' He made it plain that a married sister is counted out of her family's land rights and entitlements. Coming back to lay claim on land is done simply to disrupt the settled order of things.

One of the headman, Hove reiterated that culture dictates that a daughter will access land whenever she marries (i.e., in her matrimonial home) and not in her natal home. He said, '*Chivanhu chedu chinoti mwanasikana haana minda mumusha meabarirwa. Anowana minda kweanenge aroorwa.*' Mbuya Shingai who is also beyond middle age emphasized that in the past marriage created strong ties between families. She even said, '*Kudzoka kwaive kushoma.*' She explained that women married into families and were inherited and so maintained access to land which was abundant then. Divorce was very uncommon and so there were therefore very few returning daughters.

A number of male respondents agreed that the scarcity of land may result in some returning daughters staying with their parents or brothers. Young returning daughters often find that the land allocated to them is inadequate for their survival and so find their way into nearby cities to take up work as domestics and child minders.

4.4 Lack of resilience

Custodians of culture and key informants were convinced that daughters who were choosing to return to their natal homes were failures who were guilty of a lack of resilience. Mbuya Mary explained that married daughters should always be aware of land scarcity and should therefore endure and be patient within their marriages. They should stay in the matrimonial homes to defend '*humambo hwevanakomana vavo*'. Accepting returning daughters would encourage them to leave their matrimonial homes at will. These daughters would fail to soldier on for the sake of their children as after every dispute they would say, '*Ndave kuenda kumusha kwangu.*' Mbuya Mary added that daughters should always know that the challenges they are running away from have always existed and that their own mothers have also endured. Headman Chivi also echoed the same sentiments when he explained that married daughters should learn to endure hardships when they marry. They must understand that surviving marriage is the only way to access enough land. He added that cultural norms must make them realise that they are not the only ones going through marital challenges and that they are not the first ones to be in polygamous relationships.

Baba Gondo, a key informant also expressed fears around giving daughters land as that would then encourage them to think this is a precedent for not enduring the next time they get married. He said if such daughters get married again, '*Kungoenda nekudzoka achiti nzvimbo*

ndakapihwa.’ He added that such a daughter, *‘Haachagoni kuchengeta musha achiti ndine kwekuenda.*’ He even wondered why returning daughters want land because to him they are confused and not so sure of what they want. He stated it this way, *‘Uku uri kuda kupihwa munda, uku uri kutarisira kuenda.*’ He emphasized that returning daughters may ask for land but he is quite certain they want to marry again.

Baba Chanda, another key informant who is also a headman emphasized that married daughters must stay wherever they are married and make the relationships work. They should not shuttle up and down between their natal and the matrimonial homes. He added that there are many issues at stake and daughters have to understand that they are destroying what was once a strong cultural practice. He lamented the extent to which daughters were cutting short their own access to land as well as fragmenting relationships. He said, *‘Vana vanofanira kukurira mumhuri yekwavo vachiziva hama dzavo.*’ Marriages have been very strong and culturally daughters are expected to stay in the matrimonial home and access land and resources.

Baba Tino, another respondent, explained that married daughters should learn to endure challenges in their marriages. He said, *‘Havazivi here kuti musha mukadzi. Uye chakafukidza dzimba matenga’* (meaning, ‘Married daughters have to be resilient and understand that marriage is for the strong willed.’) He said accepting returning daughters gives the impression that she can just go and come back whenever she pleases.

Mbuya Musa, wife of a cultural gatekeeper, emphasized that daughters should learn to endure challenges that come with marriage. She reiterated that she had to endure all sorts of challenges in order to defend her access to land because she was an orphan who had nowhere else to go. She added that at times challenges may cause sickness but daughters should understand that life has never been easy for a woman. She said, *‘Ivo vanasikana ngavazive kuti hupenyu hwemunhukadzi hauna kumbobvira huri nyore.’*

Baba Hove emphasized allocating land to returning daughters may discourage them from working at and building their marriages in the face of adversity and may result in putting pressure on scarce land. He then said that daughters of today lack the resilience that is necessary for a marriage. He said, *‘Ivo vanasikana vemazuva ano hameno kuti vakaita sei. Havadi kugara panzvimbo imwe chete.’* Another respondent who joined in the discussion

added that the problem is not about ignoring the rights of returning daughters to land but that if sisters are allowed to lay claim to ancestral land, there will be less land; in other words, the problem is the scarcity of land.

4.5 Stigmatisation and stereotyping

Baba Chanda one of the key informants outlined some problems associated with giving a returning daughter land. He said that some daughters return home bitter and unforgiving. He said that there was the risk of these daughters taking over family issues and causing havoc. He explained that the majority of them become sources of never-ending disputes that divide families. He added, '*Kugara tese kunounza kutadza kukoshesana.*' When families stay together strong ties are weakened especially when disputes arise.

Baba Chanda was also concerned about the embarrassment to the whole family if the returning daughter begins to date married men in the village. He emphasized that any mistakes made by the returning daughter were magnified and could cause problems. Families are quick to subject returning daughters to name calling and stigmatisation. All returning daughters are labelled and painted with the same brush. Most of the young returning daughters are stereotyped as prostitutes bent on destroying marriages. He also said that returning daughters should put a check on their behaviour.

Brother *Simba* cited examples of returning daughters who eventually engage in prostitution with married men in the same village. To him this is an addition to the stigma that comes with returning home. *Simba* wished daughters would endure in their marriages as coming back attracts labels and is a sure sign of incapacity to handle challenges within the union. Surprisingly he said men who pursue several women in the village are tolerated because they may want to be polygamists. *Simba* said, '*Varume vanobvumidzwa kuita barika. Mumwe anenge achida madzimai ngumi.*'

Baba Hove complained that returning daughters normally come back to create havoc and disorder. He emphasized that the return steals the family's peace. He said, '*Kumwe kuuya kuzofurufusha vanhu. Dzimwe nguva haatogariki naye munhu iyeye.*' He did not mince his words but clearly showed that returning daughters are quite a burden at times. He even said that sometimes giving patches of land to returning daughters is done reluctantly.

Most of the respondents preferred older to younger returning daughters as they cause less chaos within families.

4.6 Land protection

Baba Chanda, the village headman, explained that every man is obligated to protect land for the future male generations. He said that since land has been passed on to him by his forefathers, he also had to pass on the land to the next generation to avoid being branded him a weak man who failed to do his duty. He said, '*Murume rudziiko anoti kuvana vake handina minda yekukupai nekuti yakapera.*' Land has to be protected so that people of the same clan stay in one place and stop migrating in search of land. He added that every man fears being asked the question, '*Imi hamuna kupiwa minda nevabereki venyu here?*' The majority of men fear being asked if they did not inherit land from their fathers if they fail to protect land for the next generation of males in the family. He even said portions of land given to returning daughters have to be very small because every man fears being confronted by their sons if the land to inherit runs out.

Baba Chanda even said that if sons have children out of wedlock, the children will find their way to their father's village and may need land. He also said that issues of land are well protected because land continues to be given to the next generation of male children as an inheritance from their ancestors. On the second visit *Baba Chanda* pulled out a printed list of potential headmen and emphasized that all those men knew who owned which pieces of land in the village. There were no potential female leaders on that list.

Mai Ruth, one of the respondents said she noticed that brothers protect the land from so-called strangers who are their sisters' children. They emphasize and explain that inheritance of land in families is carried out through the male children. When a sister comes back with children, brothers go as far as letting it known that these children have no place in the homestead. Brothers make it plain that such children are not staying permanently. They always say, '*Ava vane kumusha kwavo.*'

Baba Gondo, a key informant, explained that it is not easy to give land to returning daughters with sons as there are possibilities of losing family land to the in-laws as at times relationships get strained in the future and after generations the history of the extended olive

branch is lost. Possible land and social disputes may occur in the future and no one may even remember or acknowledge the land sacrifices made for these strangers (the in-laws).

Baba Tazi, one of the respondents emphasized that giving returning daughters big portions of land depended on land availability. He added that land is fast becoming scarce. '*Vanhu ndivo vari kutowanda. Minda iri kungoramba iri mimwe chete iyoyo kubva kare.*' He also explained that the scarcity of land is making it difficult to give land to the children of returning daughters whom he said were expected to go and get portions of land around their father's compound.

Baba Jose, another respondent, pointed out that if the family does not have enough land allocating land to a returning sister becomes very painful. He added that there is always a wish that the sister would get married again so that there is enough land for both subsistence farming and a surplus of land to sell. He explained that land has been traditionally passed on from forefathers to sons and that is how it should be.

4.7 Daughters as mere helpers

Most of the respondents agreed that returning daughters can still be considered 'minors' if they return to the natal home.

Baba Tino, one of the respondents, explained that even if the returning daughter is given portions of land and she works hard and builds a beautiful house, culture still says the male children own the land and even what she has. He explained that even if she is old, coming back reduces her to the status of a mere daughter. He said, '*Adzoka kuzoita mwana wedu. Isu ndisu vanababa vake. Saka zvaawana ndezvedu.*' She is not allowed to give that to her children.

Mbuya Ishe added that at times old returning daughters are left to take care of the homestead belonging to one of her brothers. *Mbuya Shingi* agreed with *Mbuya Ishe* when she said that chances are that when parents are deceased a returning daughter may be asked to look after a brother's homestead even for life. She added that even if she becomes a good farmer she may still never earn the right to access and control land.

Mai Paul who is middle aged explained that returning daughters are considered helpers around the home. She emphasized that despite taking good care of the parents, they are not given priority when it comes to rights and entitlements to land. Daughters' concerns and needs are trivialised in the village. *Mai Paul* said, '*Mwanasikana anongdzikisirwa.*' She added that the issue of fair distribution of land and the contributions made by a daughter to the well-being of the family are two different issues that are not related at all. The distribution of land ignored and overlooked the land rights as well as contributions since these daughters were simply viewed as helpers. *Mai Paul* actually said, '*Kutoputsa wako musha uchinovaka yevamwe.*' She explained that returning home meant destroying one's own homestead in order to work on building one's brothers' homesteads.

4.8 Equal rights knowledge

Most of the respondents' homesteads had solar panels on the roofs and the majority had radios and phones. I asked if they had heard of equal rights or remembered the Constitution. The majority expressed knowledge of equal rights and a handful recalled the period when there was talk of the Constitution.

Mai Ruth responded that she had heard on the radio and television that men and women are equal in everything. She added that such equality did not exist in the allocation of land in the village.

Baba Gondo reluctantly agreed that he had heard about equal rights but admitted that there is a clash between the said equal rights and cultural norms and values. He explained that the issue of equal rights is a very difficult challenge which demands that he put aside inherited norms and practices that define his way of life and instead just grab and follow what appears to be a foreign teaching and a new way of doing things.

Brother *Simba* who was intrigued by the whole interview agreed that he had heard of equality between men and women but pointed out that there was a need to protect traditional norms and values from foreign intrusion. When asked whether he would also consider sharing cattle with a returning sister he was quick to say that beasts within the family were a male preserve. He argued that women and men in the *Shona* culture are not equal and this issue of equality disrupts inherited values.

Mai Paul confirmed that radios and televisions make them aware of the need to understand that all people are equal and that there is no need to discriminate against anyone. However she pointed out that land distribution practices gave preference to men. She even said getting into groups to discuss rights in the village would be a step towards asking for trouble with the headman. Mai Paul then said, '*Mwanasikana hupenyu hwake hwakaoma. Kungorarama achiitirwa zvinorwadza ongoshiwirira.*' She emphasized that life has always been difficult for daughters since they put up with hardships everywhere.

Both the headmen acknowledged having heard of equality but one was quick to point out that what is demanded is in conflict with the inherited traditional norms and values that need to be preserved.

4.9 Conclusion

This chapter discussed the realities that confront almost every daughter who decides to leave her matrimonial home and return to her natal home. It is quite clear that her challenges increase as her parents and brothers confirm that as daughters they have no land rights nor do they enjoy any entitlement to land in the natal home. It is also unfortunate that although some returning daughters are accommodated, their families actually believe that by doing so they are showing a lack of resilience (by not enduring with their marriages) and that they (such as returnees) are making matters worse by increasing pressure on their natal land.

CHAPTER FIVE

5.0 FINDINGS versus EXPECTATIONS

5.1 Introduction

This chapter focuses on a discussion of the lived realities documented in chapter four. The experiences of the returning daughter in Madamombe village may mirror the experiences of various women who are divorced and stay in their natal home. A number of human rights instruments, laws and policies are discussed to clarify as well as convey the fact that these practices of exclusion are against the principles of equality and non-discrimination. It is sad that the majority of returning daughters, feeling relieved at the hope of receiving support from their families, are quickly awakened upon their arrival to the reality that they now fall victim to cultural practices and religious beliefs that militate against their receiving a fair share of land rights and entitlements. In other words, they feel like they have jumped out of the frying pan (i.e., their matrimonial home) and into the fire (i.e., their natal home). Returning daughters find that their families forget all their former contributions and now consider them a burden, treat them with contempt and exclude them from basic family benefits.

5.2 Human rights and exclusion from land rights

Zimbabwe has signed and ratified a number of international and regional instruments that mandate the state to provide, protect and promote equal rights to all citizens without any form of discrimination. Some of the instruments have not been domesticated although a platform for discussing equality between men and women has been laid out because the Constitution which is the supreme law of the land is aligned to what is mandated in the covenants. Needless to say rural folk especially women continue to be marginalised and excluded from the nation's most important resources including land.

Returning daughters in Madamombe village are but just a handful of women whose lived realities are a reflection of the experiences of the majority of returned daughters in most of the villages in Zimbabwe. Exclusion from land rights and entitlements is discrimination that may result in the denial of most rights that are inter-related to access to land.

Zimbabwe is a member state of CEDAW. In this convention member states are obliged to condemn all forms of discrimination against women. The Convention has very elaborate approaches of making sure the rural woman is not marginalised and discriminated against. Member states agree to enact laws that protect women from all forms of exclusion as well as eradicate all customs and practices that result in the discrimination of women. The research findings in Madamombe village reflect that all these undertakings still only exist on paper.

The majority of respondents indicated that returning daughters did not have equal land rights with their brothers because they were discriminated against on the basis of gender. The communal areas still have customs and practices that exclude returning daughters from access to and control of land which is a very important source of livelihood for women in the communal areas. The fortunate returning daughters who get portions of land get it not by right but because families feel pressured into accommodating them. Returning daughters are stripped of any entitlements to land and they literally have their rights to land ignored and overlooked. Despite Zimbabwe's commitment to protect rural women from discrimination in all social aspects of life there is still son preference when it comes to land rights. Sons can control the land and to some extent 'own' it as they are the only ones to continue as the keepers of inherited land. Such a right has been denied returning daughters.

As a member state of the ICESCR, Zimbabwe guarantees according to article 2(2) that all people will enjoy equal rights without discrimination. Article 3 of this Covenant also mandates Zimbabwe to:

'Ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present covenant.'

Article 11 of the same Covenant obliges state members to:

'Recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.'

In the face of the experiences of the majority of returning daughters in this village enjoying such rights is still no more than a 'pie in the sky' dream. The marginalised returning daughters simply do not enjoy access to or control of land on an equal basis with men. The respondents asserted that returning daughters are allocated smaller portions of land. Some of

the portions are only for subsistence farming and there is no excess land to grow cash crops for sale. At times there is not even adequate food within female headed households and this has the effect of further reducing what is an acceptable standard of living. Some young returning daughters are even forced to leave for cities where they take up jobs as domestic workers because the small portions allocated to them are not enough to support them and their children.

Returning daughters are denied equal access and control of the land and since there is a son preference to land rights in the communal areas, there is the possibility of the majority of these daughters being poorer than their brothers. Returning daughters are exposed to a myriad of activities that are meant to show them that they do not have land rights in their natal home.

Zimbabwe is also a member state of the ACHPR. Its preamble reminds the African States that they ought to be:

‘Conscious of their duty to eliminate all forms of discrimination, particularly those based on ... ethnic group, sex ... religion or ... opinions.’

The state has not, however, implemented any programmes in the communal areas that have resulted in any adjustments to the forms of discrimination and exclusion of daughters from land rights that are embedded in cultural practices and traditional beliefs. In other words, Zimbabwe’s desire ‘to eliminate’ such practices has proceeded no further than its paper promise. Obligations concerning elimination of discrimination and the principle of equality are ‘parked’ in the Constitution.

In Madamombe communal area, returning daughters’ land rights and entitlements in the natal compound are ignored because of cultural norms and values. This is clearly an example of the ‘discrimination and harmful practices’ referred to in the preamble of the Maputo Protocol to the ACHPR of which Zimbabwe is a member:

‘Concerned that despite the ratification of the ACHPR and other international human rights instruments, ... women in Africa still continue to be victims of discrimination and harmful practices.’

There is talk of inherited structures and practices of land allocation and these exclude daughters. The respondents confirmed that daughters only have access to land in the matrimonial home. Access to land by daughters is through marriage. Divorce that is followed by returning to the natal compound results in the loss of access to land. Since land allocation customarily follows the patrilineal lineage, returning daughters' land rights are overlooked and there is no fair access to shared land.

Unfortunately in Zimbabwe, some harmful cultural practices have not been modified and this has resulted in returning daughters grappling with a variety of normative orders. African religious beliefs as well as cultural norms and values control daughters' access to land within families. The majority of people in Zimbabwe are not even aware of the human rights conventions that have been ratified. The little that is known concerning rights is not enough to replace the inherited land allocation practices. The state has not undertaken to collaborate with village leaders and educate the people in communal areas of their need to abolish cultural practices which continue to deny returning daughters land rights. Daughters still do not access resources on an equal basis with sons. Cultural practices leading to unfair distribution of land between sisters and brothers are still in place.

Zimbabwe is also a member state of the SADC Protocol on Gender and Development which is a regional covenant. The preamble encourages all member states to:

‘Recognise that social, cultural and religious practices, attitudes and mindsets continue to militate against the attainment of gender equality and equity.....’

The cultural gatekeepers, the villagers and the village heads in Madamombe communal area subject returning daughters to labelling and stigma because the nation has not been sensitised and educated on the need to observe the principles of equality and non-discrimination. Very little knowledge on equality of women and men is circulating in the communal area. This knowledge on equality is inadequate and may not result in the elimination of negative attitudes and language which are calculated to undermine women. Cultural norms and values create stereotyped gender name calling and ways of belittling women.

Underlying social attitudes behind labelling returning daughters as lacking resilience and endurance in marriage continues. Returning daughters lose land rights and are instead

labelled failures and weaklings. Returning home from a difficult marriage attracts labels and name calling. Within the village and the natal compound stereotyping and stigma follow the majority of returning daughters. The young are labelled embittered prostitutes who are bent on wreaking havoc in the village by destroying marriages. Some are unfortunate to be labelled creators of disputes and divisions within families. Far from receiving land rights and entitlements, returning daughters are instead demeaned and degraded. No programmes have been implemented to change such negative rural mind sets against them.

The state members are committed to:

‘Drawing up a plan of action setting specific targets and timeframes for achieving gender equality...’

The experiences of the returning daughters in Madamombe communal areas reflect that there were no commitments made to reduce the gender imbalance in rural land rights. Zimbabwe apparently signed the instrument simply out of political correctness. The agreed commitments disregarded the ground work to be covered given the short space of time the obligations were to be accomplished. Most issues concerning women are trivialised and ignored. Signing without considering the work involved to make changes for the benefit of women simply shows a lack of political will. This has left the majority of the returning daughters at the mercy of family norms and the common cultural practices in the village.

Men in Madamombe village actually withhold land from the returning daughters and their children. Most respondents emphasized that returning daughters do not have land rights or even the right to return to their natal home since such events disrupt efforts to safeguard land for the next generations of males. Instead of receiving rights to land, returning daughters women become targets of disrespect and negative attitudes which reduce them to no more than helping hands within their family.

Zimbabwe as a member state of SADC has been encouraged to recognise and deal with the social, cultural and religious practices that continue to create obstacles to gender equality. Married women are still denied rights to land upon divorce and as returning daughters. Daughters’ identities shift so that they are constantly denied access to land. When she gets divorced, her husband wants her to return to her natal home where he says she should receive

some land for her livelihood. When she arrives at her natal home, however, her own family prefer her to return to matrimonial home and survive any marital difficulties as a reward for which she will be able to access land. Eventually she stands at the crossroads between her two homes where she is forced to live a precarious life. Such social and cultural practices are the norms in this village.

Zimbabwe seems to share a common habit among most heads of states in Africa. African leaders culturally give and take at the same time. They commit to rights and entitlements for women on paper but take the matter no further. Women have always been viewed as second class citizens. While appearing to champion women's rights in writing on the public stage, male leaders continue to conspire against them in practice to ensure that they continue to benefit at the cost of women as they become increasingly impoverished. Social and cultural practices that deny women platforms of equality are indirectly reinforced when the state does not implement what is ratified.

Zimbabwe is also mandated to review all policies and laws that determine the distribution of resources and make sure there is no discrimination. The country has gender neutral laws that govern access to resources and this can be exploited to exclude women. It could be that Zimbabwe has a lot of stakeholders to involve in order to make the necessary changes in the land rights of women in rural areas. It may not be an easy task to implement obligations. Priority and will power is placed elsewhere. Unfortunately, there are few women in political positions of influence and no mechanisms yet to implement a change in all areas that can change the mindsets of villagers like those in Madamombe communal area. Laws dealing with communal land rights seem to be outdated and are not gender responsive enough to close gaps of inequality. Cultural practices reveal that there is very little that the government has started doing to fight discrimination when allocating land.

As a woman, I am compelled to ask what most women would ask, which is, 'Why?' Why do male leaders harbour the desire to convene high level meetings in plush hotels at very expensive resort destinations and deliberate on matters that concern women when their track record proves that they have never truly had any genuine intention of translating their 'talk' into their 'walk'. Why do men talk about challenges facing women when the women are not well represented? Why do African heads of states think that women will forever endure being neglected and not one day demand action?

5.3 Constitutional rights

According to Damiso and Stewart (2013), the Constitution of 2013 responded to international pressure and gave attention to sex and gender equality. The Constitution is the supreme law of the land and is superior to all the other laws. The principles of equality and non-discrimination between men and women in any situation and social setting are adopted from the ratified conventions. Section 56(2) of the Constitution reads:

‘Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.’

Section 56(3) echoes the obligations pronounced in CEDAW and CESC. R.

Different pressure groups are lobbying for the state to enact laws that deal with discrimination even when it comes to family issues at the rural level. Damiso and Stewart (2013) have pointed out that Zimbabwe does not hesitate to ratify conventions and yet lacks the will and machinery to domesticate the conventions into laws of the country. Unfortunately because of this habit, the majority of returning daughters in communal areas are exposed to and face discrimination and exclusion from the resources that are meant to assist their livelihoods.

Section 77 deals with the right to food and water. The state announces that every person has the right to (b) sufficient food. Despite this right being in the supreme law of the land, some unfortunate returning daughters in Madamombe communal area receive small portions of land for subsistent farming which are not large enough to generate surplus harvest which they can sell to but enough food to cover their basic needs. As a result most of them end up working in other peoples’ fields or, as pointed out by the villagers, get involved with married men whose assistance helps to sustain them.

Section 80(3) of the Constitution states:

‘All laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of the infringement.’

Needless to say that if the state had made an effort to sensitise, educate and carry out awareness campaigns on the significance of equality, returning daughters to this village would not still be groaning under the load of normative orders that perpetuate their exclusion from land rights and entitlements. Customs and traditional practices of denying returning daughters of land rights are persistent. No effort has been made to engage even the communal leaders in a dialogue to educate them of the significance of equality in distribution of land at family level. Even now the Communal land Act is still gender neutral and issues of equality in land rights are left out. So long as their rights remain unrealised, the fate of the returning daughters remains sealed and trapped in the endless written promises of the Constitution. Even when there is clear evidence of denial of access to a fair share of land on the basis of cultural practices in families, the relational theory explains why daughters will never dare think of taking steps to enforce their rights through the criminal or civil justice system (e.g., through the Constitutional): it would result in the unacceptable outcome of destroying sacrosanct family relations.

The majority of people in Madamombe village have heard about the Constitution but are not aware of all their rights under it. In their ignorance, most returning daughters are being unlawfully stripped of their rights to land and reduced to the 'hired help' of their family members rather than sharers with them in family land. Upon their return home from broken marriages, their family conveniently forgets all the help they had given them before they had left and got married and this is not taken into account when they return in need of a fair share of land. Daughters in this village have been socialised to internalise the belief that they are second rate and inferior to their male counterparts. Simone de Beauvoir's existentialist feminism theory rightly explains the position of daughters in Madamombe. Returning daughters endure such discrimination because they know that men within families have declared themselves as the 'self' and women are the 'other' who only receive what is left after the real person, the person who counts, has made his choices (Tsanga and Stewart, 2011).

The state has to be responsive to the needs of women in rural areas. As pointed out by Damiso and Stewart (2013), paper solutions alone without earnest implementation skills as well as the involvement of concerned stakeholders simply serves to perpetuate exclusion. Constitutional rights will remain unreachable and unattainable if this situation is allowed to continue. If rural folk are continuously denied full knowledge and involvement in the making

and enforcement of their rights then the plight of returning daughters will remain unchanged despite the existence of the written law. Law without action is dead. Every human being needs resources and equal opportunities. Returning daughters in this village are also entitled to these human rights. The continuous denial of their rights to land is totally unconstitutional and is keeping them in perpetual bondage to the rule of fathers.

5.4 Laws and policies

The Communal Land Act [Chapter 20:04]

As pointed out by Banda (2005), the obligations in CEDAW provide for new laws that regulate land rights and entitlements in families. State parties are mandated to enact new laws that promote the principle of equality and non-discrimination. Enacted laws should be followed by policies and guiding principles that ensure equality. Zimbabwe as usual, has not reviewed or repealed the laws that continue to exclude women from resources that are important for their livelihood. The same discriminatory laws still exist.

The Communal Land Act is quiet on land allocation in the communal areas. The law is somewhat gender neutral and seems to affirm the customary practice that favour son preference when accessing and controlling communal land. Instead of containing important provisions which should help guide communal leaders in allocating land so that there is equality, there are sections like 7 and 8. One is forced to believe that the state, based on its track record, is not honest and lacks the will power to change traditional practices that perpetuate the exclusion of rural returning daughters from land rights.

Section 8 shows that the state approves the way traditional leaders in communal lands allocate land to people. The rural council has to 'consult and cooperate with the chief' and it is quite obvious that chiefs allocate land according to cultural practices. The state has not yet made progress in negotiations with and education of rural leaders on issues concerning equality and non-discrimination. When councils consult chiefs on land allocation, the only knowledge chiefs have comes from their cultural beliefs. The headmen in Madamombe made it clear that issues of equality are quite foreign. They argued that the only heirs to land rights are male descendants. It becomes clear that a combination of such a law that is not explicit and the knowledge of traditional leaders leads to the denial of land rights to returning daughters.

The National Gender Policy (2013-2017)

The goal of the policy is to ‘eradicate gender discrimination and inequalities in all spheres of life and development.’ This goal appears all inclusive but rural women’s challenges and rights are excluded. Challenges faced by rural women that militate against their development are not referred to. The policy is silent over major issues of concern to the rural woman. There is reference made to the participation of rural women in the objectives for gender, environment and climate change. Most of the activities on equality involve urban women. The laws and policies do not focus on equality of allocation of land in the communal lands. Failure to address this issue of concern may mean total agreement with the traditional practices of land allocation. Despite the focus on development, there is an indirect pulling backwards because what is ignored is the most important aspect of rural development. The law fails to outline land rights of rural daughters making them vulnerable to a lot of challenges.

Figure 5: Diagram showing factors influencing the returning daughter’s access to land

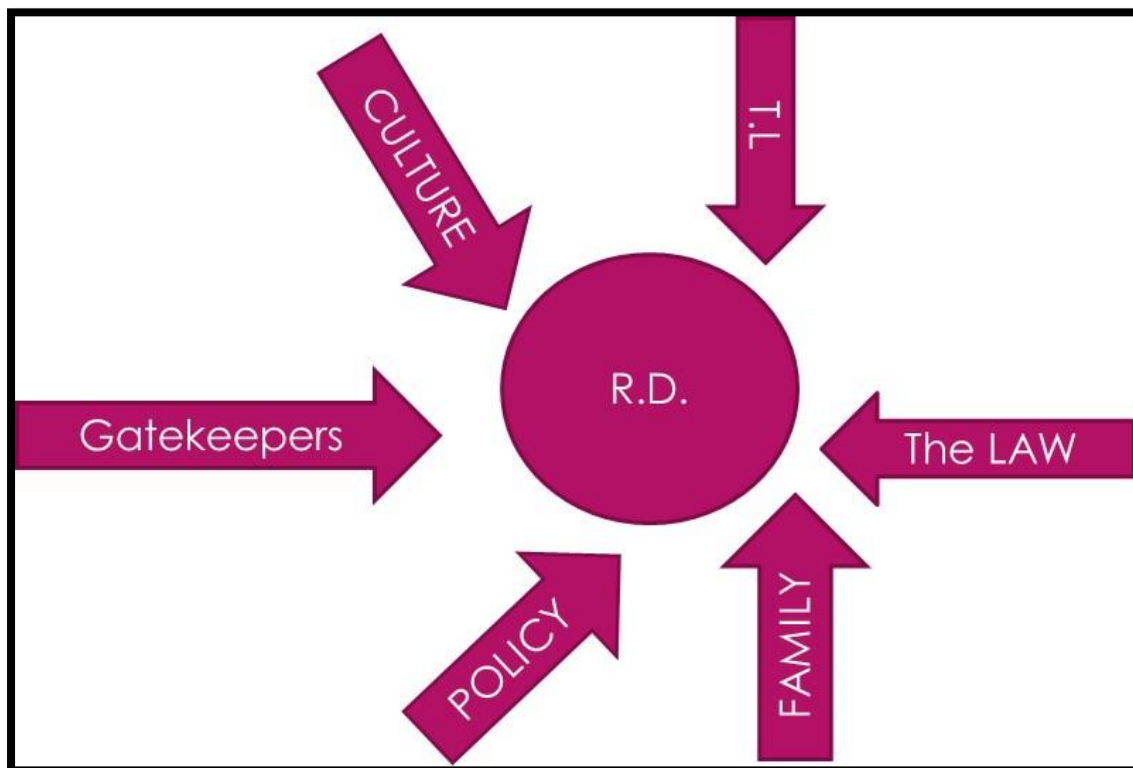


Figure 1 is a diagram illustrating the many factors that militate against the land rights of returning daughters in communal areas. The laws and policies do not align with what has been elaborated in the Constitution. Traditional leaders take advantage of this legal gap and continue to allocate land to sons as inherited from the forefathers. Despite the Zimbabwe having signed various international human rights institutions and made promises to its people in its Constitution, returning daughters land rights remain unrealised. The ‘vicious cycle’ of exclusion continues despite what promises to eliminate this has been made on paper.

5.5 Interventions

As pointed out by Banda (2013) most countries lack political will and this is the major obstacle towards gender equality. Banda emphasized that most states are major stakeholders who want to perpetuate unequal gender relations. Zimbabwe needs to prioritise issues of gender equity and equality. The state has to shed traditional practices that view women as the second sex. Focus should be on empowering women in rural areas if any serious development in this country is to take place. Some gender activists and feminists have suggested that if Zimbabwe is really honest about the cause of women, then it should also sign up to and become a state member of the Optional Protocol to CEDAW.

Traditional leaders and cultural gatekeepers should be engaged in negotiations towards ownership of rural women’s empowerment programmes. Banda (2013) suggested that there should be dialogue between the state and traditional leaders. Zimbabwe would make great progress if the state initiates discussions with rural leaders. Resistance to equality can be weakened if rural leaders feel they also own programmes that emancipate women within their communities. Kimani also added that there should be comprehensive cultural changes and traditional leaders have to be sensitised on the significance of women’s gender roles. Gender power relations also need to be addressed (Kimani, 2012).

Just before Madamombe, is Chanakira village which has a story that dates back in history maybe well before the ratification of some international conventions. As told by his descendants, the then Chief Chanakira gave land to his sister who had fled from a certain village together with her husband. This act by an influential figure in the village changed cultural practices in respect of land for returning daughters. In this village, returning daughters are said to have equal rights to land. The state can also group together traditional

leaders already practising fairness in the management of land rights to convince those with rigid unfair cultural practices to make adjustments that may benefit their own returning daughters. Talking about land rights of daughters is likely to become quite easy if it all starts with cultural gatekeepers sharing their practical knowledge and wisdom.

Kameri-Mbote also suggests:

‘Communities are to settle land disputes through recognised local community structures consistent with the Constitution that observes the imperatives of non-discrimination, participation, equity and fairness. Traditional disputes platforms set up to solve land issues should comply with the Constitution’ (Kameri-Mbote, Odote, 2013: 47).

It is about time the state makes contact with community leaders and works together with them so that fairness prevails in land distribution and disputes. Barnet recommends that African countries like Zimbabwe have a lot of ground to cover if there is going to be talk of changes for equality in communities. There is a need to improve the population’s knowledge of laws and legal systems. Non-government organisations should be allowed to carry out thorough education programmes to help people understand the nation’s laws. Zimbabwe can also come up with a variety of programmes on the radio. These programmes can educate people in communal areas on various laws that promote the principle of equality and non-discrimination. There is also a need to recognise customary marriages and legalise all of them. Zimbabwe can also have mobile registration vehicles that visit communal lands. When it is time for dissolution, equal sharing of property may also assist women who are forced to return to their natal home (Barnet, 2003).

As agreed by member states to various conventions such as CEDAW, the Maputo Protocol and the SADC Gender and Development Protocol, Zimbabwe needs to repeal laws that appear gender neutral and have legal gaps that can be exploited and interpreted to mean that returning daughters do not have land rights in communal areas. The Communal Land Act does not have any sections dealing with land rights in communal areas. The section that allows traditional leaders to make decisions on who has land rights indirectly perpetuates biased land rights in communal lands.

The Constitution that has incorporated the principle of equality and non-discrimination from international laws should be enforced as the bench mark of all laws including those that decide on land rights in the communal lands. The state should start making appropriate adjustments in its thinking and action in response to the social changes occurring in the lives of its people. This is an ideal response and similar to the development of customary laws which scholars have noted respond to the continuing evolving needs of communities. Strategies to accommodate such changes should also be made from time to time.

Kameri-Mbote explains that there is opposition to such moves from those who are already enjoying the rights that are also essential to women. These create major obstacles to the achievement of equality and non-discrimination. The writer suggests that there is a need for measures to challenge, involve and disarm custodians of culture (Kameri-Mbote, 2013).

There are quite a number of communities in Africa that are making adjustments to cultural practices and are becoming fairer in relation towards the observance of certain rights in communal areas. In Mpumalanga, Kalkfontein, South Africa, a communal leader in a peri-urban society was forced to give in to the demands of a number of single women who were demanding space to construct homes. The single women came together after realising that residential sites were being given to males only. The communal leader had to adjust the customary law so that it became more like a 'living law' responding to the needs of the community (Claassens, 2006: 42). In other cases in South Africa, like the *Bhe and Others v Khayelitsha Magistrate and Others* CCT 49/02, the special rights of inheritance by male members of family were overturned when the father of a deceased lost a case of inheritance to his granddaughters. *Shilubane and Others v Nwamitwa* CC03/07 is another case in which a daughter became chief of her community after the death of her father who was chief and did not have a male heir. This shows that there is a need to make proper and constant adjustments that match the changes taking place in the social life of a community.

UN agencies like UN Women, Food and Agriculture, UN Development Fund should be allowed to work together with interested NGOs to raise human rights awareness among rural women. Recently a stalemate between these organisations and the government had created barriers to interaction. Women groups and NGOs should just continue lobbying and putting pressure on the government to start dialogue with various traditional leaders so that there is a mutual understanding of the need to enact laws in order to exercise fair distribution of land in

communal lands. The NGOs are a necessary 'evil' that should continue to put pressure on the state so it can implement and monitor all the obligations in the human rights instruments on non-discrimination.

Women everywhere in the world even in Muslim countries are becoming exasperated by the unequal distribution of resources. Educating one another on the need to unite for a purpose may lead Zimbabwean women a step in the right direction. In Tunisia, Muslim women marched to parliament in Tunis to claim written laws that are clear about equal inheritance for daughters and sons. Presently, a daughter receives a half share of what is due to a son (Bouazza, 2018). Zimbabwean women can also benefit from observing and learning from successful activists all over the world. In the case of land rights there is a need to continue putting pressure on the powers that be for laws that clarify equal land rights in communal areas.

5.6 Conclusion

This on-going tug of war that continues to exclude women from the basic resources in communal areas needs to end. Women are humans too and what they are simply asking for their human rights. Patriarchy in all its forms should make adjustments and accept that women need to enjoy a certain acceptable standard of living too. The state has to be honest about giving land rights to daughters in communal lands. There is a need to be gender responsive and exercise political will by enacting laws and repealing all gender neutral laws that perpetuate discrimination. Although the passing of the 2013 Constitution has ushered in some positive changes in inheritance laws, the fact remains that the fate and woes of returning daughters have been ignored since the Communal Land Act has not been altered or reviewed.

In terms of section 7 of the Constitution, the Government is mandated to spearhead programmes that take the law to the people. This section shows that the state has promised to make awareness campaigns of the Constitution work together with various organisations in schools and communities. Such action is likely to bring about positive change on the ground especially if the National Gender Policy is amended to include passages that specifically benefit women in communal land in relation to their access to land rights. The development of families, communities and the country will move at a faster rate the state takes direct

positive action to remove some of the socially constructed obstacles that militate against the fair access of land by returning daughters.

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