

**UNIVERSITY OF ZIMBABWE**



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**‘A DIME IN FRONT OF THEM, BUT OUT OF REACH’: AN INVESTIGATION  
INTO WOMEN’S RIGHTS TO COMMUNAL LAND IN ZIMBABWE UPON  
DIVORCE AND SEPARATION. A CASE STUDY OF GUTUMUPANDAWANA IN  
ZIMBABWE.**

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**By**

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**A Dissertation submitted in partial fulfilment of the requirements for a Masters Degree  
in Women’s Law, Southern and Eastern African Regional Centre for Women’s Law,  
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## Abstract

**This research investigates how lack of access, control and ownership of communal land affects rural Zimbabwean women upon divorce and separation. The case study of women in GutuMupandawana reveals how communal land in rural Zimbabwe is governed and controlled by men within a strongly patriarchal society supported by customary laws and practices which only allow women access to it through their relationships with their husbands or other male relatives for the purposes of sustaining themselves and their families. This qualitative in-depth research employing the grounded women's law approach, among others, investigates the deep insecurities, fears and poverty experienced by these vulnerable women whose plight ultimately harms the welfare of their entire communities. Data for the research is collected from individual interviews and group discussions with rural women, men, cultural gatekeepers at village level (chief and headmen) as well as relevant government and NGO representatives. The findings show that despite the principles of equality and non-discrimination contained in Zimbabwe's Constitution and other human rights instruments to which Zimbabwe is a party, the operation of customary law continues to prejudice rural women who suffer its oppression most keenly upon divorce and separation. Under customary law rural women can never, in their own right, access, control or own land which is the most valuable resource on which rural livelihoods are based. They are akin to nomadic slaves owning little or nothing who are shuttled between their natal and matrimonial families to work the land for the benefit of male lineages. When divorce and separation terminate their continued access to their former husband's clan land to sustain themselves and their children, they are usually forced to return to their natal families for access to land under the control of their male relatives which may or may not be forthcoming. A number of legal and non-legal interventions are suggested to improve the lot of these women, particularly education programmes to inform them of their rights and to make their men folk more gender-sensitive and caring.**

**Declaration**

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

Signed.....

Date.....

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

Signed.....

Date.....

## ***Dedication***

*To my Mom, Priscillah Manyika, for being a rock, a mother and grandmother to my child when I wasn't there! To Ruvarashe Tayanna Mupindu, my little girl, you were the light and hope that kept and still keeps me going.*

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The research would not have been possible without the joint effort of a number of persons, including the cooperation of the Chiefs, Headman, the Government Officials, my respondents for leaving everything in such a busy season and talking to me instead. I also thank my key informants who had tight schedules but managed to squeeze me in and spare some time to talk to me despite their commitments.

I thank Victor Madondo my Brother and Friend in introducing me to all the relevant persons with no difficulties and making my research a swift and fun experience. They definitely do call you Mr Gutu for a reason.

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Ruvarashe my baby girl and my darling husband you thank you for the endless love and support, you two have a special place in my heart. Love you lotssss!!!

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To my friends and classmates, meeting you was an enjoyable experience that I will never forget. You will be missed.

## **List of abbreviations and acronyms**

ACHPR	African Charter of Human and Peoples' Rights, 1981 (ACHPR, Banjul Charter)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women, 1979
CEO	Chief executive officer
CLA	Communal Land Act [Chapter 20:04]
ICCPR	International Covenant on Civil and Political Rights, 1966
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
NGO	Non-governmental organisation
RDC	Rural District Council
UDHR	Universal Declaration of Human Rights
UN	United Nations
ZHRC	Zimbabwe Human Rights Commission
ZWLA	Zimbabwe Women Lawyers Association

## **List of definition of *Shona* terms**

<i>Lobola</i>	bride price
<i>Tseu</i>	a piece of land given to a woman as her own upon being married
<i>Muroora</i>	daughter in-law
<i>Mukwasha</i>	son in-law

## **List of legislation**

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

Communal Land Act [Chapter 20:04] (CLA)

Traditional Leaders Act [Chapter 29:17]

Customary Law and Local Courts Act [Chapter 7:05]

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

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

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

Beijing Platform for Action

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

International Covenant on Civil and Political Rights, 1966 (ICCPR)

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

Universal Declaration of Human Rights (UDHR)

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## **Executive summary**

The study was conducted in GutuMupandawana, a communal area, 220 km from Harare. The aim of the study was to expose the disadvantages and marginalization of women through the existing land tenure system that excludes women as independent right holders over communal land due to customary and traditional practices. Women's rights to access, control and ownership of communal land specifically clan land is problematic due to customary laws and traditions governing the allocation of such land.

Most rural women have no security of tenure owing to many factors, some being because of the historical background of land reform in Zimbabwe and the other that many societies in Zimbabwe perceive women as inferior to men. This is also largely a result of the patrilineal nature of the Zimbabwean society, which holds men in superior dignified positions and respect than women. Using various methodological approaches and methods which take women's realities as a starting point, the findings in the study reveal that the allocation of clan land is done in accordance to customary law, and it is discriminatory to women because under customary law women do not possess independent rights to access, control and ownership of land in their own right. Their access to land is made possible through negotiations within various relationships with men.

Combining the use of the Zimbabwean Constitution, regional and international instruments, the study reveals that the governance of customary law in allocation of communal land discriminates against rural women and their right to land which is contrary to human rights entitlements to gender equality and non-discrimination. This further infringes other human rights that women are entitled to such as the right to food and security, the right to adequate housing, the right to livelihood and right to compensation. Women's lack of access, control or ownership of land exposes them to abuses from men, which include, among others, exploitation of labour, verbal, emotional physical and economic abuse. According to the study's findings, women tend to stay at these homesteads because the land they have invested in is their only source of livelihood and they are dependent on that land to feed their family.

This study examines and analyses the challenges faced by divorced women or women who have separated from their husbands and their access to land and their ownership of land in their own right after the dissolution of their marriage. Communal land as stated before is a



resource that can be accessed by men; women have very limited options, most of which are very unfavourable. These include going back to their natal homes with their children under the care of their parents if they are still alive or under the care of their brothers or uncles. Women's deprivation of land divorce and separation reduce them to perpetual minors, as a result of which they continue to be treated like children in their natal homes because of their continuous dependence on men and their land. The exclusion of women from the allocation of land puts them in a more precarious position than the one in which they already find themselves.

The main factor relating to the deprivation of divorced women's access to land is the application of customary law to the allocation of communal land. Other factors include the failure of the laws to speak with one voice and one goal. The power yielded by Chiefs and what they represent as custodians of culture, exerts highly patriarchal norms and values which are gender discriminatory. In such cases most women have accepted the *status quo* as that which has always been and always will be. It discourages women from pursuing their rights over land independently, because there is a lack of behavioural change in terms of land allocation in communal areas.

The study also points out the failure of the state, through its institutions and agents, to implement the Constitutional provisions that protect women's rights to land and to align its laws in order to avoid conflicting legislation.

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## **CHAPTER ONE**

### **1.0 INTRODUCTION AND BACKGROUND TO THE STUDY**

#### **1.1 Introduction**

Land is an important source of security against poverty across the developing world, but in many places, unequal rights to land put women at a disadvantage, perpetuate poverty and entrench gender inequality (Alma, 2013). Most women in communal areas are dependent on land for their everyday survival of themselves and their families.<sup>1</sup> These women have no primary rights over communal land because customary law governs its allocation. Most women have rights of access,<sup>2</sup> very few have control<sup>3</sup> and none of them have ownership<sup>4</sup> of the land. The barriers that prevent women from realising and enjoying rights of access, control and ownership of communal land are many and will be explored and discussed in the later chapters of my findings. The main focus on my study was on clan land.<sup>5</sup>

#### **1.2 Historical background of the study**

The research focuses on the exclusion and discriminatory customary laws which deprive women of access to land rights upon divorce and separation. In their allocation of land customary laws and practices favour men over women. The study then examines the challenges faced by divorced rural women as a result of long-standing customary practices based on their sex and gender.

Customs and practices were distorted in the process of creating customary law in the colonial milieu (Law, 2011). Critics of early collections of customs observed that their sources were elderly males in positions of power who colluded with colonial governments and missionaries to exclude women and young males from power and resources (Stewart, 1997). Communal farming areas in Zimbabwe are a specific type of legal and political space which was

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

<sup>2</sup> Access to land in this study means usufruct rights, meaning rights which generally allow one to simply benefit from the use of land during one's lifetime.

<sup>3</sup> Control over land means the ability to make decisions over land and its products.

<sup>4</sup> Ownership of land refers to personal rights in land which gives individual rights to manage, administer and keep the land in trust on behalf of the state.

<sup>5</sup> Clan land is.

originally created by the colonial government. That government's land alienation and creation of labour reserves on marginal land for Africans created a vulnerable class of peasants on marginal land (Floyd, 1962). Customary tenure areas were structured to depend on wage employment for cash flows and agricultural inputs. The system further entrenched women's land rights vulnerability by allocating and registering land rights in the name of men (Anderson, 1999).

Access to land is hampered by the enforcement of traditional customs in the land allocation procedure and, customarily, land is allocated to males, a practice which automatically excludes women (Mushunje, 2001). Further, women's access to communal lands does not occur unless through male representation of some sort, and the women involved in this research confirmed as much.

Many authors and researchers have discovered that rural women are deprived of access, control and ownership of communal land as a result of discriminatory customary law practices. These rural women include single, divorced or separated women and as well as widows. They do not contest their deprivation as this has always been the custom.

Being a signatory to many international human rights conventions, the Zimbabwe government is obliged to protect, respect and fulfil the rights and entitlements of every individual despite sex, gender and culture. Customary law that governs the allocation of land in communal lands directly discriminates against women because of their gender and sex and their right to equality and non-discrimination are overlooked in the face of the customs which dominate them. Women do not occupy decision making positions since power is customarily placed in the hands of men.

Rural women are not a homogenous group. It is not every rural woman who is poor and dependent on a man for survival. It is not every rural woman who accesses land through relationships such as marriages and cannot independently fend for their families, but they are few and far between. In my research I did not focus on all rural women. For instance, some rural women have jobs as teachers and police officers. I focused more on rural women who are housewives or rural women who might engage in other trades for survival but mostly depend on fields as their source of survival. It is through the land that she gets food, shelter and sells any surplus harvest to pay for her children's education or other household needs.

This does not mean that rural women with formal jobs are immune, they also face the same land discrimination because they are women. However, some may live under better circumstances and be able to cope better upon divorce because they do not exclusively depend on their husbands and the land for their survival.

It is my belief that the research will help society especially divorced and separated women who will learn of their rights and entitlements to land upon the dissolution of marriage.

### **1.3 Statement of the problem**

According to section 2(1) of Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution), which is the supreme law of the land, ‘... any law, practice, custom inconsistent with it is valid to the extent of its inconsistency.’ Section 56(2) upholds the principle of equality and non-discrimination as it states that everyone has the right to equal treatment in all spheres of life, being equality in political, economic, cultural and social spheres. It further states the grounds on which no one is to be unfairly discriminated against which include, among others, sex, gender, marital status and custom. Section 80(3) of the Constitution further provides that all laws, customs, traditions and cultural practices that are inconsistent with its principles are void due to their inconsistency. This protects all rural women from any infringement of their rights to which they are entitled under the Constitution. However, section 8(2)(b) of the Communal Lands Act states that communal land shall be allocated in terms of custom and such custom discriminates against women.

In spite of such discriminatory customary laws and culture, Zimbabwe is a member of several international human rights instruments that seek to protect the rights of rural women. Article 17 of the Universal Declaration of Human Rights (UDHR) states that ‘everyone has the right to own property alone as well as in association with others.’ Article 3 of the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) also provides that state parties are obliged to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights. Article 19 of the African Charter of Human and Peoples’ Rights, 1981 (ACHPR, Banjul Charter) speaks of the equality of all people, that every person has the right to equal respect and that nothing shall justify the domination of one people by another. Both the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) and the Protocol to the African Charter of Human and Peoples’

Rights on the Rights of Women in Africa, 2003 (the African Women's Rights Protocol, Maputo Protocol) speak strongly against the discrimination of women, whether such discrimination is found in existing laws, customs or practices. They oblige states to abolish or modify such laws and practices. These two instruments go the extra mile by considering rural women as a group of women which needs unique consideration in view of the problems they face in the economic survival of their families.

The reality for rural women, however, is that the Communal Land Act [Chapter 20:04] (CLA) is used in the allocation of communal land and that Act requires that such allocation be governed by customary law. As a result, rural women are still denied access, control and ownership of communal land in their own right. According to the book, 'Land and property rights of women and orphans in the context of HIV and AIDS,' on the dissolution of their marriage, women experience a loss of land rights and associated livelihoods.

Since Zimbabwe is a patriarchal and patrilineal society, land allocation is traditionally given to male heads of families with women having usufruct rights (WLSA, 2001). Lack of access to resources on the part of women leads to extreme poverty, and this has negative repercussions on all those who depend on them (Kesby, 1999). Unequal rights to land put women at a disadvantage, perpetuate poverty, and entrench gender inequality in Africa (Hindin, 2002). Therefore there is a need for laws, especially customary laws, to be aligned with and implemented in accordance with Constitutional principles in order to improve the lives of rural women and provide them with security of tenure. The consequences of the disregard of rural women's deprivation of land is grave since they lead to serial violations of their livelihood and inevitably their right to health and dignity upon being forced to leave their homes and way of life upon divorce and separation.

#### **1.4 Objectives of the study**

My main objective of this research was to examine the impact of land discrimination against rural women with regard to access, control and ownership of communal land and the challenges they face upon seeking compensation for their contribution and developments to land upon divorce and separation.

The research was therefore guided by the following assumptions and research questions:



## **1.5 Research assumptions**

1. Some rural women are deprived of access to and control of communal land upon divorce and separation.
2. Some rural women are forced off communal land upon divorce and separation despite their investments in and developments made to the property.
3. Most women's dependence on men to access communal land perpetuates poverty.
4. Women's lack of meaningful compensation upon divorce disregards women's work on communal land.
5. There is a need for legal and non-legal interventions to improve women's access to communal land upon divorce or separation.

## **1.6 Research questions**

1. Are some rural women deprived of access to and control of communal land upon divorce and separation?
2. Are some rural women forced to leave behind their investments in and developments made to the communal land they tended upon divorce and separation?
3. Does most women's dependence on men to access land perpetuate poverty?
4. Does women's lack of meaningful compensation upon divorce disregard their work on communal land?
5. Is there a need for legal and non-legal interventions to improve women's access to communal land upon divorce or separation?

## **1.6 Study demarcation**

My research took place in GutuMupandawana under Chief Gutu. It is divided into wards and the wards I researched fall under Headman Gadzingo, Headman Mupandawana and Chief Gutu. Data was collected in all three wards including Gutu Growth Point, the Centre. I also had an opportunity to visit a shelter for victims of domestic violence whom I interviewed in Sote, which was 80km from Gutu Centre but still under GutuMupandawana. The study was conducted between November 2017 and January 2018. My Study in Gutu was focused mainly on rural women's access, control and ownership of clan land upon divorce and separation.

## **1.6 Chapter synopsis**

This thesis comprises five chapters. The first chapter outlines what prompted my interest in the field of my research. I look at the summary of my theoretical and conceptual framework, my main objectives and then my research assumptions and questions. Chapter two focuses on the methodological and theoretical framework, their significance in the research and the methods used to collect data and the emerging issues that popped up in the field which are important to outline. The third and fourth chapters cover the law, the gaps and my findings in the field. The final chapter focuses on the study's conclusions and recommendations.

## **CHAPTER TWO**

### **2.0 RESEARCH METHODOLOGIES, METHODS AND THEORETICAL FRAMEWORK**

#### **2.1 Introduction**

Using different methodologies and methods helped reveal not only the complex lived realities of the women who were the subject of this work, but they also helped me relate my findings to the theoretical frameworks that spoke to the women's circumstances on the ground. The methodological approaches and methods proved useful in unearthing what lay behind the challenges facing women in their access, control and ownership of land in GutuMupandawana. The purpose of these different methods, theories and methodologies is to understand the position of law and women in reality within the societies in which they live (Bentzon *et al.*, 1998: 81).

#### **2.2 Theoretical and methodological framework**

##### **2.2.1 *Liberal feminism and the law***

The discourse of liberal feminism argues that the most important goal of women's liberation is sexual equality or gender justice. Women's subordinate position as compared to that of men emanates from customary and legal constraints (J., 2011). They seek to free women from oppressive gender roles that have been used as excuses or justifications for giving women a lesser place or no place at all (J., 2011). This is true to a certain extent in this study as most women have been deprived of land because of their caring roles as wives and mothers. Rural women's gender has relegated them to a subordinate position in relation to men on whom they depend as the primary individuals who own land while they are limited to the enjoyment of rights of usufruct over the land. Culture which defines gender roles is the very reason why women are deprived of the right to own land to begin with as it is the very notion of a patriarchal society like Zimbabwe which intends to keep women in positions inferior to those of men. While liberal feminists argue that the law is the answer to equality, this, I contend, is far from the truth.

##### **2.2.2 *An insight into women's lived realities***

In my use of the women's law approach which enabled me to have a close interaction with women and lend an ear to their personal experiences, I discovered that law was not a solution

to their problem contrary to the sentiments of the liberal feminists. In Zimbabwe the law exists, both in the form of the Constitution which protects women and in the form of customary laws that discriminate against rural women and deprive them of access, control and ownership of land in their own right. These customary laws govern the allocation of rural women to rural land and in practice they prevail over the Constitution. This approach helped me to better understand the position of these women as it unravelled their lived realities of how they leave empty-handed upon the dissolution of their marriages without compensation despite the contributions they have made throughout their marriages. This confirmed both my first assumption that women are deprived of access to and control of land upon divorce and separation and also my second assumption that they leave everything behind and no compensation is given to them. It may therefore be disputed that the law is the answer to the problems faced by rural women.

Upon interviewing more women I found that they had no alternative livelihood apart from the land. The women's law approach helped me understand the value they attached not only to the land but to the labour they performed in taking care of their families, as wives, mothers and daughters-in-law. Important emerging issues were raised like *lobola*<sup>6</sup> which seemed to explain why women occupy a position far inferior to that of men and it also seemed to justify all the other injustices inflicted by men on women. The law is a starting point, but it is not the answer to the emancipation of women, especially in situations where there exists a dual legal system and customary discriminatory laws prevail over general laws.

The women's law approach helped me realise how trivial the issue of women's (as opposed to men's) lack of access to land was in comparison with how they expressed their hurt at being chased away from their home with no place to go. This gave me an insight into the attitude and opinions of institutions and their perspectives and how they responded to the women's needs and realities. In their view it is not land women needed but discipline to keep their husbands happy and homes properly maintained. This lends weight to the liberal feminist's argument that discrimination and gender bias in the law is a source of women's oppression which needs to be removed in order to achieve equality between men and women (Bonthuys, 2007).

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<sup>6</sup> *Lobola* means bride price.

### 2.2.3 *Marxist feminism and women's human rights entitlement*

Describing land from a Marxist-Leninist perspective, Gutto (1986) argues that:

‘He who owns land owns everything extending from the heavens to the depths of the earth.’

This conceptualization of land is almost totally consistent with the view held by many Zimbabweans today. Engels (1972) stated that the solution to the oppression of women by men was to eliminate private property. If there were no private property to be passed on, there would be no reason to maintain an oppressive nuclear family structure. In noting the interdependence of capitalism and patriarchy, Juliet Mitchell (1973) observed that there are four key structures all of which need to be transformed to eliminate women's oppression: production, reproduction, sexuality and the socialization of children. Human rights are a set of rights that accrue to anyone by virtue of being a human being without any regard to sex, gender, colour, religion, status and custom. The fact that men are the capitalists or possessors of resources oppresses women, creates inequality and eliminates them in the competition for such resources, relegating them to the private divide where their work is neither recognized nor appreciated.

My fourth assumption states that the lack of meaningful compensation of women disregards their work on communal land. Women's rights to land are clearly articulated and protected in various international and regional human rights instruments. The use of this approach critically examines the government, actors and society to see whether they are duly fulfilling, protecting and promoting the conditions of international and regional human rights standards. These instruments are very clear in relation to the obligation to realise women's rights to land which have hitherto been denied them due to the long tradition of men owning communal land. For example, article 14(1) of CEDAW urges states to take into account roles played by rural women in the economic survival of the family, including their non-monetized work. Further article 13(h) of the regional instrument, the Maputo Protocol, obliges states to take necessary measures to recognize the economic value of the work of women in the home. These are strides that the international community has taken to recognise the work done by women in the private sphere which has so far not been regarded as work by most of Zimbabwe's rural communities.

I therefore, investigated the extent to which Zimbabwean legislation on women's right to communal land complies with the relevant provisions of international human rights standards. As far as communal lands are concerned, there is non-compliance on the part of the Zimbabwean government to take into account the human rights entitlement of rural women. Article 7(d) of the Maputo Protocol states that both women and men must enjoy the equitable sharing of joint property derived from marriage and then article 16(h) of CEDAW states that both spouses have rights to ownership, acquisition, management, administration, enjoyment and disposition of property. However, this approach made me aware of the gap between what is expected of the state and what it has or has not done to change rural women's lives. These rights cannot be realised if the customary law that governs the allocation of land is not abolished or modified to accommodate women in the quest for equality between men and women in the allocation of communal land.

#### ***2.2.4 Existentialist feminism and the impact of structural barriers and their agents***

Simone De Beauvoir argues that, according to this theory, women are the second sex, that they are oppressed because man has declared himself *the self* and women *the other*. Women have internalized the point of view that man is 'the Essential' and women are 'the Inessential' (J., 2011). Through culture, men have been socialised to believe that are the owners of clan land in communal areas. In a patriarchal society men are the owners of their clans. They control the means of production and they are entitled to hold the land in their name in trust for the present clan and its future generations. This handing over of clan land from one generation to another is between men alone. According to Kamari-Mbote (2013), unmarried women are considered to be nomads in transition in this process. Simply because of their gender, it is men, on the one hand, who are the essential and possess and control all land, while the gender of women controls the fact that they can only access land through men even though it is they who work the land and cannot survive without it.

Women's marital status is critical to owning or accessing property (Kamari-Mbote), their limitation being that it is the patriarchal ordering, cultural practices and customs which relegate them to a subordinate position to men, perpetually poor and dependent upon them. It is in this way women will remain the inessential and men the essential. It is the duty of the rural woman to sacrifice herself for the men, and this is what most rural women do. They sacrifice themselves not only for their husbands but also for their family as their way of life. Existentialist feminism argues that feminine roles limit women's development, they

problematize wifing and mothering. Motherhood turns women into objects for cooking, cleaning, caring giving and self-sacrifice. If a society is patrilineal as GutuMupandawana is, men are the essential and this is mirrored by the reality that women cannot own or control communal land in their own right but are the inessential as they access the land in question through the men who are essential and are empowered to do so by customary law.

My use of the actors and structures approach helped me in identifying and interviewing the various actors involved in the communal land allocation process, and these were the Chiefs, the Rural District Council (RDC), the headman, and the District Administrator. Most of them were men and shared the some perspectives except the Assistant District Administrator who was a woman who shared the same sentiments as those of the bulk of the women. This exercise brought about a very important discovery of how the actors and their institutions are blind to the problem of the plight of women who lose access to communal land upon divorce and separation and its consequences, both of which should be studied and remedied. Interviewing the headman, chiefs and the RDC Official helped me understand their roles in the allocation of land process and the use of customary law and the Communal Land Act as their points of referral.

This brought out not only the power dynamics of the actors but also the influence of the actors in the community and their structures. It reflected how the patriarchal nature of the society determined the inferior position of women and their exclusion from the possibility of been given communal land in their own right. Structures such as the Community Courts and the RDC and its agents are custodians of culture and patriarchy which work together in the furtherance of men's concerns and demands and not that of women. It is important to note that generally my respondents, who were influential people who held important positions of power, supported and defended the *status quo*: they did not see the need for women to have land in their own right and stated that it was their culture and that was just the way things had always been. *Pachivanhuchedu*<sup>7</sup> became a justification of the way things are and how things should remain. The chiefs, the headman and the Rural District Officer Official not only had the power to distribute land but they also had the influence to facilitate the distribution of land to women if they saw the need to do so. They were structural barriers who believed that women cannot own land and caused women's under-representations in institutions that deal

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<sup>7</sup> Meaning, 'It is our culture.'

with land (Kameri-Mbote). This confirms my first assumption that rural women are deprived of access to and control of communal land upon divorce and separation.

The Gutu Magistrates Court was an important structure in assessing if women were approaching the court for recourse, if most women even had the information to pursue what they might have perceived as unjust in their denial to access land, control and own it upon divorce and separation. It was a structure that helped me assess if rural women approached the court for protection in terms of compensation upon divorce and separation. However, I was only able to use information provided by the Magistrate because I needed clearance from the Judicial Service Commission to access records of residents in the community, which I did not have.

### ***2.2.5 Radical feminism v African feminism***

The radical feminists argue that men have forced women into oppressive gender roles and sexual behaviour. They problematize men's control of women's bodies. The radical feminists complain of women's exploitation as housewives, mothers, and sex partners, describing marriage as the formalization of women's persecution.<sup>8</sup> Taking into account that women are not a homogenous group and that I am focusing on rural women, I am looking at the majority of these women as people who treasure family, community, alliance and connectedness (Nnaemeka). African feminism can be used to improve and further African women's situations. Western paradigms prefer individualism but this is not the case with women in the communal areas.

What I can agree with about radical feminism are the patriarchal effects on women. In my opinion women totally sacrifice themselves to building their homes and growing and improving their husband's clan. They work every day for their families but at the end of it all they leave with nothing sometimes after more than 40 years of labour because their rights of access to and use of land are extinguished upon divorce or separation. The radical feminists refer to this as martyrdom, it is a critical part of married life for African women and marriage still remains central to African or most rural women's lives, since community respectability is grounded upon it (Law, 2011). Unfortunately for women, this self-sacrifice is not necessarily reciprocated by the male members of the household, as intra-house inequalities in the sharing

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<sup>8</sup> Feminists theories.



of benefits from the household resources are common. When male wage earners are present in the household, they do not necessarily share their income with the women in the household, creating a poverty trap (Mushunje, 2001).

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

Legal pluralism<sup>9</sup> involves the intersection between statutory laws and cultural and religious norms and practices. In clearer terms, intertwined in most African countries is state law (general law) which includes the Constitution and statutes received system of common law, codification of customary law and the operative customs on the ground (Stewart *et al.*, 1997). Using this approach exposed the dominance of the application of customary law despite the Constitutional protection of women against cultural practices which are discriminatory. This made me analyse the consequences of the plurality of the legal system on rural women's access, control and ownership of communal land upon divorce and separation. Communal allocation of land is governed by customary law, which allocates land to men and not women due to its patrilineal nature, hence, the argument by the radical feminists that women are exploited as house wives, mothers and sex partners. It is women's relational nature and ascribed gender roles that make them prone to exploitation and abuse.

The duality of laws recognises that while Zimbabwe as a people have their own traditions and cultural values which they hold dear and need to be preserved, they need to operate alongside general law. The application of a dual legal system is not the problem. All that needs to be done is to identify and preserve those positive aspects of culture and eliminate the oppressive ones. The research showed that while rural women are conversant with their deep-rooted customary laws which keep them in bondage, they are almost totally ignorant of the general law which provides them with the means of escaping their plight.

Griffiths states:

‘The law is and should be the law of the state, uniform applied to all people exclusive of all other law, and administered as a single institution’ (Griffiths, 1997: 3).

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<sup>9</sup> Griffiths defines a situation of legal pluralism as one in which law and legal institutions are not all subsumable within one ‘system’ but have their sources in the self-regulatory activities which may support, complement, ignore or frustrate one another, so that the ‘law’ which is actually effective on the ‘ground floor’ of society is the result of enormously complex and usually in practice unpredictable patterns of competition, interaction, negotiation, isolationism and the like.

The dual legal system as evidenced by the research infringes rural women's entitlement to access and own land in their own right upon divorce and separation.

### ***2.2.6 The theory of hegemonic masculinities and sex and gender analysis***

Patriarchal norms use both religion and culture to cement inequality and male dominance. Patriarchy is legitimized by hegemonic masculinity which is based on the domination of men over women and is held together by gender consensus. It adjusts to challenges for its survival. This theory is true of the state of affairs and women's lived realities in the communal areas, in which cultural law is used as a tool to legitimise male dominance over women. Here land belongs to men alone through clans and women who are subjugated to inferior positions do not to question or challenge the *status quo*. This confirms the sex and gender analysis approach which I also used in my research.

In my use of the gender and sex analysis, I wanted to establish whether there is discrimination in ownership and access to communal land, and further who has more or exclusive access, control and ownership rights between women and men. This further confirmed my fourth assumption that women are dependent on men for their access to communal land which perpetuates poverty. During the research I was confronted with the dominant school of thought that women do not own land in their family home in their own right because one day they will marry. Yet, when they do marry they cannot claim any right to their husband's clan land because they do not belong to that clan. Then, upon divorce they are expected to return to their natal homes and negotiate access to land there. They are seen as women being 'in transit' (Kameri-Mbote, 2003) and within this context, I came to understand that their gendered roles as care givers imposed upon them a disproportionate burden upon separation to men. Most of the women stated that when they leave with their children, they lose the land, which is the very source of survival they need to continue caring for them. This revealed the severity of the implications of the marginalization of women due to patriarchy and customary laws that govern access, control and ownership of communal land.

## **2.3 Emerging issues**

My research design and research problematized the discriminatory nature of the allocation of communal land as rural women are excluded from access, control and ownership of

communal land in their own right. However, in my findings, the glaring issue of *lobola*<sup>10</sup> stood out and although not part of my research design, did prove very pertinent in the advancement of my study. There was a predominant view shared by most of my respondents that *lobola* seemed to justify the reason why women are not compensated upon divorce or separation, and it further justified the reason why women's work is undervalued and disregarded as important. There was a strange belief that the payment of bride price seemed to cover the labour of the women both during and upon the dissolution of a marriage. The non-payment of bride price meant that upon divorce women were deterred from freely leaving and returning and seeking help from their natal family. So what they demanded was payment of *lobola* as this enabled them to freely leave their husband's homestead and return to their natal homes having the security that bride price had been paid. However, this does not mean that bride price is paid for all women, since some leave even though no bride price has been paid for them. My observation nevertheless was that in GutuMupandawana the paying of bride price is considered very important, and proper procedures are required to be conducted both before and after marriage.

## **2.4 Data collection methods**

### **2.4.1 Population sample**

The total number of respondents I interviewed were 57, the selected sample of the research being government officials, a Magistrate, legal practitioners, Chiefs, Headmen, and a random sampling of rural women and men in order to obtain their opinions which were also important to the study.

### **2.4.2 Purposive sampling**

I approached the Chiefs and the Headmen as people who exercised authority over their people or subjects among whom they live. It was my assumption that they would help me in pointing out the relevant people I could approach whose situations were similar to the issues I was researching, but the challenge I had was that most of the Chiefs are old and because they deal with so many issues and people in court, they found it hard to recall such details or refer me to certain parties or families. Even when I returned to the field to wrap up, I approached a certain Chief who was one of my informants and he could hardly remember me or recognize

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<sup>10</sup> *Lobola* means bride price.

who I was. I had to reintroduce myself and explain my reason for visiting him and in response he said, 'Ah! I now remember.'

### ***2.4.3 Random sampling***

Having no clear strategy of how to locate and men and women about the research topic, I started visiting families randomly homestead by homestead believing that each family would help me by contributing with their experiences or their beliefs or their knowledge of what happened and who it happened to, and they did. In my research I realized that I was dealing with a very sensitive issue, since I was inquiring about issues to do with the dissolution of the very marriages in which most of the couples were still living. Indeed some women were shocked by the responses their husbands gave me on the subject and took them to heart realising what would happen to them if they were to divorce or separate in the future. Therefore most households were tense when I left but at least most women heard straight from their own husbands and knew exactly where they stood if their marriage also crumbled in the future. I felt bad for a while but I had to keep going, I had not come to burst their bubbles, I had come to learn of their lived experiences and the practices that existed upon the dissolution of marriages, as well as the chaos that ensued for women.

### ***2.4.4 Sources of data***

One of my oral sources of data was by way of written questions, to which only oral answers were produced. However, these written questions were only given to most of my key informants who requested to go through them in preparation for an interview they had already agreed to give. Data was collected from various sources which included married, divorced and widowed women who enjoyed user rights of their husband's clan land, married men, government officials, government Ministries that co-operate with each other to ensure women's enjoyment of their right to land, the District Administration, the Rural District Council, the Ministry of Women's Affairs, Gender and Community Development, and non-governmental organisations (NGOs) like Zimbabwe Women Lawyers Association (ZWLA), Zimbabwe Human Rights Commission (ZHRC), the Musasa Project and other respondents that included ordinary rural women on the ground with their different ages and rural men with their opinions about the issue.

#### ***2.4.5 Key informants***

I had a total of 15 key informants (Table 1). I had more male than female key informants in GutuMupandawana not because I chose this but because there are more men than women in positions of power. The Chief and the Headmen, the Chief Executive Officer (CEO) of the Rural District Council and the Magistrate in Gutu are all men. Women are under-represented in decision making positions and the only female key informant I had was an Assistant District Administrator. Since my key informants in Gutu were acting in their official capacities as state representatives, there was a need to treat their interviews with some circumspection (WILSA, 1997). Having interviewed these key informants I realized that they were gate keepers of the culture and tradition of the community and they were also in positions to perpetuate inequality through their beliefs. The aim of women's law is to acquire sound understanding of lived realities in order find solutions which will work towards real equality and liberation (Dahl, 1987).

#### ***2.4.6 In-depth interviews***

In-depth interviews create space for interviewees to express their views, experiences and responses to the issue being researched (WLSA, 1997). This method helped me in understanding the perceptions that my key formants held and their background and the positions of power they held. It helped me unearth the source of barriers and made me question how they could be possibly rectified or remedied. These interviews helped me as I witnessed people giving their perceptions or their knowledge or lack thereof of present laws and practices; pouring their hearts out over their thoughts and past experiences and what they thought would help women with the problem of being excluded from the communal land tenure system.

#### ***2.4.7 Focus group discussions***

I conducted focus groups and among others, were the women from the shelter (victims of domestic violence) and a group of women vendors I approached. With the aid of my questionnaires, I heard different views and opinions from a large audience. I had a group of 14 women who were free to talk as women without any fear or intimidation from a different audience. This helped grow my understanding of their lived realities and how they deal with such issues on a day to day basis.

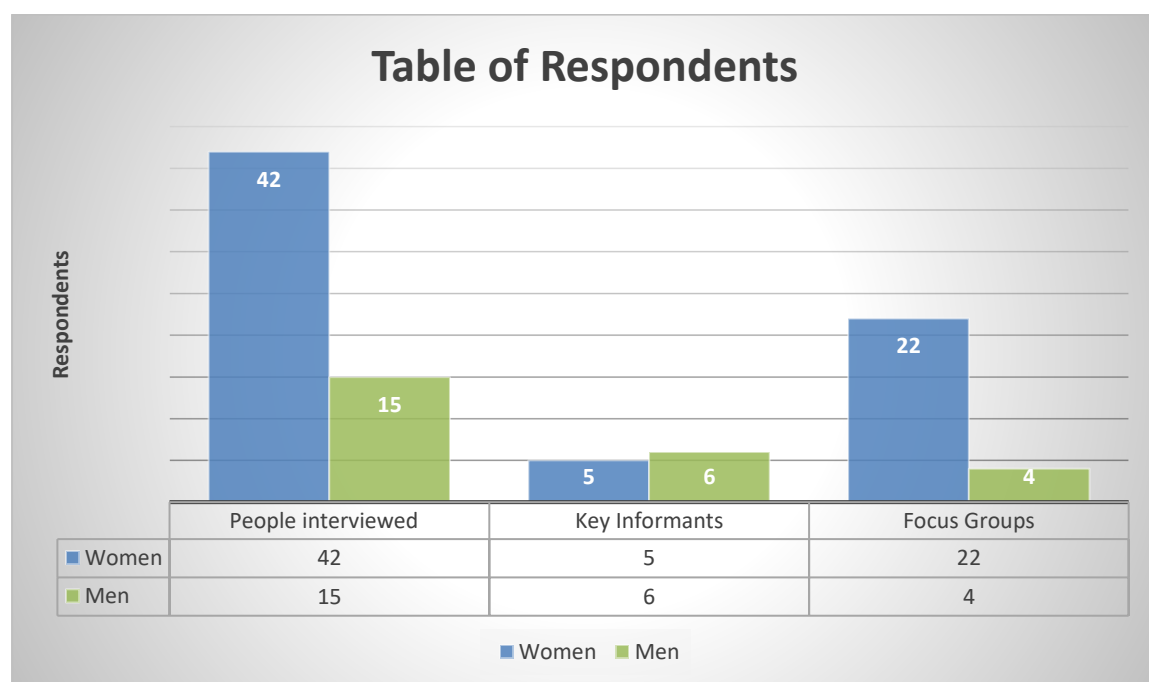
### 2.4.8 Observations

As I moved from village to village I had the opportunity to observe who was working on the land most of the time. It was my observation that women were the majority of people working on the land. I actually had an experience where I interviewed a couple and they were discussing that it was only the woman and her daughter who worked on the land and not her husband. In this situation yes, there was tension between the husband and wife, but I was more afraid of the woman than her husband. She complained that all he did was wake up and go out to drink beer while they tilled the land. She found my research interest in this topic an ideal opportunity to address her grievances and she seemed like a woman who could stand her ground. I also observed that there were cases such as this which show that not all women are controlled by men and that some women have the power to choose what to grow and where. The woman at this compound stated bluntly that she and her husband had divorced but that she would remain at the homestead for the sake of their children and because her husband had no power to chase her away as it was as much her home as it was his.

## 2.5 Table of respondents

Table 1 gives details of the respondents studied in this research.

**Table 1: Table of respondents**



## **2.6 Limitations of the study**

My study focuses on rural women's rights and entitlements to access, control and own communal land upon divorce and separation. I am focusing on rural women alone and their rights to clan land upon divorce and separation.

## **2.7 Conclusion**

This chapter discussed different methodologies, theories and methods that the research used to analyse and explore the realities of women in a society where land is distributed to men alone in GutuMupandawana. The following chapter reveals the findings of the research as well as a discussion and analysis of the data, the law and literature review.

## CHAPTER THREE

### 3.0 FINDINGS AND ANALYSIS: PART ONE

#### 3.1 Introduction

This chapter discusses the research findings and analysis. It attempts to answer the research questions posed in the first chapter. The revelation of the findings is based on women's realities brought about by the methodologies and methods that I used in conducting my research.

#### 3.2 Women's exclusion to access communal land

##### 3.2.1 Access to land through relations

The research revealed that, most rural women access land through marriage, divorce or as daughters and returnees.<sup>11</sup> The exclusion of women from being allocated communal land in their own right has been a problem encountered by rural women in GutuMupandawana who have been divorced or separated from their husbands.

The reasons that were proffered to me in the field as to why women cannot access land in their own right were that, firstly, women in their husband's homesteads are in-laws (*varoorwa*<sup>12</sup>) and are not considered part of the clan. However, when they were growing up back in their natal homes it was assumed that those same women would eventually get married and leave. Secondly, since women do not contribute to the growth of the clan at their natal homes they should be also deprived of land.

It is argued that it is not the women who belong to the clan but their children and they are the ones who have rights over the clan land because they carry the name of the husband's clan. It was my finding that the type of marriage has no bearing on rights to clan land because it is not part of matrimonial property. Therefore, whether one is in a civil or a customary marriage, clan land remains the land of the clan and out of the reach of daughters-in-law (*varoorwa*). Upon divorce a former wife is stripped of her former husband's name and all and any entitlement to his clan land and benefits that came with his name. Women access land as wives, and only upon divorce may they access their fathers' land as returnees, to take care of

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<sup>11</sup> Returnees, are women who are divorced or separated from their husbands and they go back to their natal homes.

<sup>12</sup> *Varoorwa* means daughters-in-law.



themselves and their children. Upon interviewing many women respondents in asking them what their recourse was upon dissolution of their marriages, their answers were:

‘I will go to my father’s house.’

That revealed that women accessed land through relations. However, there were other women who stated that they had nowhere to go to. Some of the reasons they gave were that their parents had passed away or had poor relationships with their brothers who might not welcome them home.

In analyzing the findings, I do share the same sentiments that unequal control of land is a critical factor which creates and maintains differences between women and men in relation to economic well-being, social status and empowerment (Ik Dahl, 2005).

Zimbabwe is party to numerous international and regional instruments that speak to women’s access to land. Therefore, it is important that we analyze our own laws that deal with women and their right to land.

Section 34 of the Constitution states that the State must ensure that all international conventions, treaties and agreements to which Zimbabwe is a party are incorporated into domestic legislation.

Section 14(c) states that when courts, tribunals, forums or bodies are interpreting the declaration of rights, they ‘must’ take into consideration international law and all treaties and Conventions to which Zimbabwe is a party.

In terms of section 46(c) of the Constitution consideration of international law is mandatory, it states that it ‘must’. Therefore, this reflects the importance of international law in Zimbabwe’s legal system.

The Universal Declaration of Human Rights (UDHR) states:

‘Everyone has the right to own property alone as well as in association with others.’

The ICESCR states:

‘State parties are obliged to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights.’

Article 19 of the ACHPR states:

‘All people shall be on an equal, they shall enjoy the respect and nothing shall justify the domination of a people by another.’

Despite the fact that Zimbabwe is a party to the above international instruments, most of whose provisions and rights have been incorporated in the Zimbabwean Constitution, communal land continues to be regulated by customary law which does not provide for equality and non-discrimination between men and women. In my findings and assessment, Chiefs were responding to my research with a general view that there was no problem or unjust laws concerning clan land because this had always been the practice. The ACHPR is clear that nothing shall justify the domination of one people by another.

### ***3.2.2 Women’s insecurity of land tenure and its consequences***

It was my findings that most women cannot be allocated land without male representation. A police woman stated:

‘If I go to the Chief today requesting to be allocated land, the first question I am asked is, “Where is your husband?” If I am divorced and without a husband land will not be allocated to me, I am expected to go back to my natal home.’

This is the experience of most rural women in GutuMupandawana, upon dissolution of a marriage. It might be said that their access, control and ownership of land is ‘skewed’. As a patriarchal society, clan land belongs to the clan’s lineage and there are perceptions that women do not contribute to the growth of the clan, so at their own natal homes they are not entitled to land and at the same time when they do get married into their husbands’ clan they still do not belong in their own right. As far as the girl child is concerned, she has rights over her fathers’ clan land as a daughter but the same fate awaits her, there is the assumption that she will get married hence she cannot and does not possess the same rights as that of the boy

child. The women have no security because in *Shona* she is called *mutorwa*<sup>13</sup> or *muwuyi*.<sup>14</sup> In other words, women are at a crossroads when it comes to their access and control of land. They are expected to return to their parents upon dissolution of a marriage. Most women stated that they did not have anywhere to go, not because they did not have clan land but because they might not be welcomed by their brothers and their wives due to strained relations. It is not all women who are able to go back to their parents, some will have died a long time ago and their siblings might not want them at the homestead. Most women stated that this leaves some women destitute because of the assumption they have a place to go back to and that they will be embraced.

It was my finding that for women to be allocated land, there has to be a problem in which chiefs and headman can intervene. I asked the Chief if women were allocated land in their own right and his response was:

‘Women get married they cannot access land from their husbands and have land that already awaits them.’

It was his contention that this shakes the very ground that marriage stands on. He stated that women having their own land either in their own right or land put aside for them at their natal homes shows that a woman is not truly dedicated to building a home and a life with her husband. He pointed to the contentious nature of the issue at hand. Upon further probing what was the fate of women who have divorced their husbands and had no place to go, his response was:

‘Every woman has a home to go back to.’

He added that in instances when she has returned home to seek a home for herself and her children, land will be allocated to her in her father’s clan land. If the father’s clan land is too small to accommodate her she can be allocated a piece of land by the Chief. After women being dependent on their husbands for access to and control of land it becomes a chain again as they seek land back home from their fathers upon the dissolution of a union to fend for their children. This keeps women in the state of perpetual minors.

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<sup>13</sup> *Mutorwa* is a person who does not belong, an alien within a family.

<sup>14</sup> *Muwuyi* is a visitor, a person who does not originate from the place in which they reside.

The current Constitution has not done enough to address women's rights to communal land. In fact the Constitution is silent on women's rights to communal land. Section 8(2)(b) of the Communal Lands Act stipulates that communal land can be distributed according to custom in consultation and cooperation with the chief. Consideration must be given to the continuous occupation in terms of custom. Since the Traditional Leaders Act [Chapter 29:17] tasks Chiefs with ensuring that communal land is allocated in accordance with the Communal Lands Act it reinforces the notion that the Rural District Council should have regard to customary law relating to the allocation, occupation and use of land in the area.

Provisions that can be used to question the unjust land distribution in rural areas is section 56 of the Constitution. This section prohibits discrimination on the grounds of custom, culture, marital status, among others. Due to the lack of alignment of the laws with the Constitution we still have statutes like the Traditional Leaders Act and the Communal Land Act which remain in force and in conflict with the Constitution which is the supreme law of the land. The Constitution falls short in clarifying women's land rights in the customary tenure regime, while the existing provisions do not adequately guarantee that the state will diligently enforce the legal and administrative procedures required to realize women's land rights and their empowerment in agrarian matters (WILSA, 2017).

The Customary Law and Local Courts Act [Chapter 7:05] is still in operation and gives power and jurisdiction to the Chiefs to handle matters. Section 16 of the Constitution itself limits the progressive efforts of the empowerment of women as it states:

‘The state and all institutions and agencies of government at every level must take measures to ensure due respect for the dignity of traditional institutions.’

Women's rights of access, control and ownership of land will be difficult to realise with traditional institutions that work as barriers against the emancipation of rural women.

Section 26(d) of the Constitution provides protection for spouses during and after the dissolution of marriage. It states that there should be equality between both parties during and after the dissolution of marriage. Since women have limited decision making rights regarding what crops to grow on what pieces of land (WILSA, 2017), the rights of usufruct held by

women is not enough security for them and their dependents when traditional structures dissolve (FAO, 2002).

One of my key informants tried to define 'clan land' the best way he could and said that it is family land which a clan occupies and distributes to other family members upon attaining marital status and to be clear it is men who are given this land upon getting married. The allocated land will be for homestead construction as well as cultivation. It is pertinent to note that this land remains in the same clan, it is handing over of this land from one generation to the other. It is passed down from the clan's descendents hence it is jealously guarded from foreigners. By foreigners he meant that it was guarded from any other person who is not of the same clan, a person who does not carry the name and blood of the clan. Women who are welcomed in these clans are taken to be part of the clan when there are relations that tie them to the clan. However, upon divorce the women become like foreigners and the relations that tie them to the enjoyment of clan land, or whatever this hegemony had offered them, ceases to exist. Hence, this is the reason why women are chased away and cannot claim rights over their husband's clan land. They leave everything behind, and are supposed to start afresh as hard as it might be to do so. This leads them into poverty and some even resort to prostitution to fend for their children, some informants stated. It is not an easy road for women. It is certainly an area that needs to be looked into so that measures may be taken to improve their lives.

While Zimbabwe, as a party to CEDAW, has made some strides in the protection of women in modifying its laws and abolishing existing laws that are discriminatory in accordance with the following provisions of the Convention:

- Article 2(c) of CEDAW urges state parties to undertake to establish legal protection of rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; and
- Article 2(d) emphasises that states must ensure that public authorities and institutions shall act in conformity with the obligation to refrain from any act or practice that is discriminatory; and

- Article 2(f) obliges states to modify and abolish existing laws and regulations, customs and practices which constitute discrimination of women;

these changes are taking time because it is much easier to put good intentions into writing than to implement them. Zimbabwe is faced with a dual legal system where general law and customary law are laws that work together. Infusing the two has been a great challenge. Although chiefs have the power to make these changes through the tribunals and public institutions they sit, their goal is not so much to eliminate discrimination but rather to be protective of their culture and prevent erosion of the culture they represent. In an article, Hellum and Katsande (2007) point to the need to analyse the complex legal situations that arise from the co-existence and interaction between international law, state law, and social and religious norms. As pointed out by UN Women, legal pluralities often constitute an obstacle for women's rights since local customary and religious forums often disregard the rights of women within the group and rely on discriminatory norms (Hellum and Katsande, 2007).

Insecurity of land tenure for rural women poses a threat to their social, economic and cultural livelihood due to their weak positioning as mere users and not owners like their male counterparts.

### **3.3 Rural women forced off land without compensation**

#### ***3.3.1 Culture as justification***

It was my finding that most disputes between spouses in GutuMupandawana are handled by Chiefs. Most women upon the dissolution of marriage leave with *maoko*<sup>15</sup> property. Upon asking men how and with what women should be compensated upon the dissolution of marriage, most of them questioned why she had to be compensated when she had been married. Apparently *lobola* was used to cover a lot of what a woman is said to be entitled to. Some answered and stated:

‘She goes with what she came with.’

This meant that a woman should leave empty handed. A young man asked me:

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<sup>15</sup> *Maoko* property is property that a woman is given as a matter of custom upon divorce.

‘Why should women be paid for them to come to my home and upon her going I am expected to pay her again?’

The raising of the issue of *lobola* brought with it differing and complex ideas and debates as to its interpretation and implementation from home to home.

My finding was that there is only one central court in GutuMupandawana. It is costly travelling to and from court considering how long it takes to resolve civil cases. Many women opt to leave without pursuing their matters concerning compensation. They either fail to pursue the case before the Chief’s Court or, having failed in that court, they fail to continue in the Magistrates Court. Many rural women stated that they are not prepared to take their husbands to court while they remained in their homes living among their relatives. They felt this way even though they believed they have a legitimate claim. Therefore as a result, many women just leave and go to their homes as expected. Most of them justify their actions by saying that they need to keep good relations with their former husbands and his relatives for the sake of their children.

### **3.3.1.1 Harassment of women**

What also emerged from my findings was the harassment that was exerted to force the rural women off their clan land and the further harassment they faced at their natal homes upon being returned from their husband’s homes. Most women stated that it was hard to stay at the husband’s homestead when they were clearly not welcome. Some had the courage to stay but they definitely stayed under a barrage of abuse. There are always ways to make a woman leave if they refuse to go, most women stated. When the whole clan does not want you there, surely if you truly treasure your life you will leave. Some stated that you can get poisoned or even beaten up at night and you can never really prove it was them or that they had something to do with it. So it is wise that a women leaves when she is not wanted in the home, for herself and her children’s sake. Upon returning to their natal homes, they also face ridicule, humiliation, name calling like return soldier and stigmatization. One woman also stated that your children would also be called *magora*,<sup>16</sup> because they are not part of the clan since they are children of a daughter; hence, they do not belong to the clan and whatever benefits accrue from living there is not rightfully theirs to enjoy.

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<sup>16</sup> *Magora* in this context means those who feast on what is not theirs.

### **3.3.1.2 Polygamy**

An emerging issue that kept recurring was the issue of polygamy. Some women stated that if their husband sought to have other wives they could do so without having to chase them away. A woman who was a deacon's wife stated that she would not leave under any circumstances if her husband took another wife. She stated that her husband was free to marry another woman but that she would remain on the land for her children's sake. It was the sentiment of many women respondents that their husband's remarriage would not prompt them to leave and that they would be prepared to stay regardless of the fact that another woman had come into their home.

During the research whilst conducting a focus group in Sote at a shelter for battered women, a women holding a baby who was barely a year old, stated that she was chased away from home by her husband. She was made to leave everything behind, and she said she felt it unfair as she crossed the border and engaged in buying and selling goods and thus contributed to their family's current status. But after her husband found a new young wife, she was chased away. She had bought a car but she could not drive, so she could not leave with it. Out of the pain she was suffering, she stoned the car. She was summoned to court for malicious damage to property. The registration book was in the name of the husband and she could not prove her contribution towards purchasing it nor the fact that she was the one who owned it. She stated sadly that she was likely to go to jail because in her statement she had agreed to the charge of destroying the car. After stoning the car, her husband physically assaulted her which led to her seeking protection at the shelter as she had nowhere else to go.

Section 2 of the Constitution clearly states that the Constitution is the supreme law of the land and that any practice, custom or conduct inconsistent with it is invalid to the extent of its inconsistency. Although this should be obeyed by all citizens and institutions, this research clearly shows that the law is and says one thing, the situation on the ground is quite another.

Furthermore, section 56 of the same Constitution contains equality and non-discrimination clauses. Firstly, it states that all people are equal before the law and have the right to protection and benefit of the law. Secondly, it states that women and men have the right to equal treatment, including the right to opportunities in political, economic, cultural and social spheres. It is an oxymoron to talk of equality between men and women in the cultural sphere, particularly patriarchal cultural sphere. Most women in the cultural sphere already occupy a



position below men. The subservient position of women already emanates from cultural norms and traditions. If gender comes in and places women in the private sphere, in this case where they do not even own land, they cannot be economically equal to men. Women are dependent on men to access land which in itself shows that the playing field is not equal. As far as political and social spheres are concerned, they are thoroughly dominated and influenced by men. Taking my research into consideration, the equal treatment of women and men is not easy to achieve in the allocation of communal land. This cannot be simply a matter of formal equality. Instead there is a need to take into account the disadvantaged backgrounds of women in order to achieve substantive equality because due to all the many barriers women face, they need a helping hand for them to achieve the equality and equity that is so desired.

Section 56(3) of the Constitution states the grounds on which discrimination is prohibited and they include, custom, culture, gender, marital status and many others. Article 1 of CEDAW defines 'discrimination' as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

We cannot even talk about equality in the circumstances of rural women who suffer many entanglements that prevent them from exercising their rights. The fact is that no equality exists. It is a clear straightforward indisputable fact that women cannot access land in the rural areas in their own right. This is in spite of the fact that Zimbabwe is a party to CEDAW which clearly spells out culture should not be a ground upon which women are discriminated against, and Zimbabwe has agreed to fulfil its obligations to protect, respect and fulfil its women's rights. Such a disturbing reality has prompted even the World Bank (2008) to observe that cultural or local prohibitions against women's ownership of land are more powerful than written laws that allow women to own land (WLSA, 2017).

### ***3.3.2 Adultery as an automatic bar to compensation***

The institutions that govern women's rights to communal land are the Chiefs, the headman and the Rural District Administrator who works in consultation with these Chiefs. During my research and speaking to the Chiefs, headman and even the CEO of the Rural District

Council, it was universally understood that if a woman commits adultery she cannot claim any compensation. However, as far as men are concerned, there was nothing to discuss because adultery is acceptable for them. A wife must accept and accommodate another wife if her husband wishes to marry again.

Fault-based divorce has been repealed by Parliament. However, as far as customary law is concerned, women are punished for what is considered 'wrong conduct' and this is, I am sure, a way to discourage them from engaging in practices which are believed to be unbecoming and unacceptable. While courts and other authorities are the very institutions which have been entrusted to facilitate empowerment, transparency, fairness and just affirmative action for marginalized groups such as women, the research findings showed that these institutions are doing the exact opposite. In my research I realized that the institutions that are governing communal areas are in fact institutions which are bent on guarding their custom whether such custom discriminates against women or not. They have been bestowed power to be custodians of culture and so most women continue to be governed by laws that are unfavourable to them.

Section 14(1) of the Constitution states:

'All institutions and agencies of government at every level must endeavour to facilitate and take measures to empower, through appropriate, transparent, fair and just affirmative action, all marginalized persons and communities in Zimbabwe.'

Section 17(1) of the Constitution stipulates:

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

Patriarchy is deeply embedded in communal areas due to the customary laws that are firmly in place there and even those who are Christians agree that women who commit adultery are forced to leave with nothing but their own personal belongings. They do not even have the right to take their children with them. So there is no equality either in the decisions governing the dissolution of unions nor in the institutions who make these decisions. They are culturally

oriented and they turn a blind eye to the interests of women or what they are entitled to purely as the result of a deed that is greatly frowned upon by the society.

## CHAPTER FOUR

### 4.0 FINDINGS AND ANALYSIS: PART TWO

#### 4.1 Introduction

This chapter is a continuation of the previous chapter which provides a comprehensive analysis of the research's findings as they relate to the application of discriminatory laws in Zimbabwe that have resulted in the problems that rural women encounter as part of their lived realities due to their exclusion from access to communal land in their own right.

##### *4.1.1 Women's dependence on men to access land*

Part of my findings showed that *tseu*<sup>17</sup> is given to a woman upon joining her husband's clan. It is usually a small field where a woman can grow a few crops for their daily needs. The Chief in Gutu explained that upon divorce or separation, the rights of the wife to this land are extinguished. It ceases to be hers because of the relationship of husband and wife between the parties has been extinguished by the dissolution of the marriage. Chigwedere states that the vegetable garden which was given to women as a piece of land was meant to provide for the immediate needs of her family (Mushunje, 2001).

The headman and Chiefs whom I interviewed stressed their disagreement with women having individual rights to land. They said that they feared that wives would cease being subservient and obedient to their husbands. They confessed that women owning land in their own right would make them independent of and rebellious towards their husbands as their own land would give them the security of a 'Plan B' upon which to fall back if the marriage did not work and this would change the meaning of marriage as they understood it. Marriage as it is currently understood and practised is an institution that is cherished and protected by Chiefs. Depriving women of land through which to protect the sanctity of their marriage will impoverish them and make them dependent on male links in order to benefit from land. Agarwa (1994) argues that the risk of poverty and the physical wellbeing of a woman and her children depends significantly on whether or not they have direct access to income and protective assets, such as land. Their access to land and control guarantees their rights with or without patriarchal lineage (Mushunje, 2001). Therefore it is true that land serves as a security against poverty, it is a means to supply basic needs (Ngubane, 1999).

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<sup>17</sup> *Tseu* means a piece of land given to a woman upon marriage to provide for her immediate needs.

I found that different age groups have different perspectives about life after dissolution of their marriages and that age has a strong bearing in dictating if a woman leaves or stays on matrimonial communal land. On the one hand, the majority of middle-aged women in their forties said that upon divorce, if relations were sour they would leave and start afresh or go to their parents' homes. Others, however, were of the view that they would not leave readily, especially after investing so much of their time and effort into their husbands' clan land. They said that they would only leave if their former husbands' relatives waged a war against them to the point that they feared for their lives or if relations were so strained that a normal life would be impossible to continue in their midst. However, on the other hand, young women in their twenties and thirties were not willing to remain on their husband's clan land upon divorce. Their views were that they would leave and start another life. This group had a certain independence and willingness to start over and had a different understanding and perspective that divorce was not the end of their life. Although they agreed that they might lose quite a bit by leaving, the little they had did not make staying the only option in the circumstances.

Women older than 50 stated that they would not leave their husband's clan land at their ages. I found this to be a group of women whom even Chiefs pity and sympathise with. Depending on the reason for their divorce or separation, most of these women who stay on their former husband's homesteads are tolerated. The reason why these women are treated differently from the younger women is that these older women do not pose a threat to the men by staying. Older women pose less of a threat to the men and their order within the homestead because such women are less attractive to them and they are unlikely to be promiscuous. That is why young women are chased away and told to return to their fathers' homes where they are told to find love and explore their options without disrupting the *status quo* of their former husband's clan and its life on its land. Such treatment is abominable. The reason that older women are allowed to stay is that they lack energy to start afresh and most do not still have parents they can possibly go to and start building a place of their own. This is a reflection of the deep embeddedness of patriarchy in the society.

Law is an important part of cultural hegemony that men have in our type of society, and a cultural hegemony means that a ruling group's special way of viewing social realities is accepted as normal and is, as a fact, subordinated by it. In this way law contributes to maintaining the ruling group's position (Dahl, 1987). There are gender based factors that lead

women into poverty and keep them there. Women's poverty is closely linked to their role in the family, particularly their caring roles and these include, among others, catering, cleaning, caring work and subsistence agricultural work (Fredman, 2016).

The human rights of women are being abused on a daily basis. What is often overlooked, however, is that the deprivation of land allocation to women not only replicates through generations but it leads to secondary poverty affecting their children and those dependent upon them. Chant argues that 'while responsibilities for dealing with poverty are becoming palpably feminized, there is no corresponding increase in women's rights and rewards' (Fredman, 2016). According to WILSA (2017), the injustice is that women make up an estimated 86% of people working on the land, yet they do not have individual access, control and ownership of land. Land, being a source of empowerment and representing a key factor in the struggle for equity and equality, its exclusion from women keeps rural women 'in their places' and thus becomes a way of maintaining the patriarchal ordering.

One then is forced to ask, 'Why the only free land which is rural communal land is the only land that culture seeks to protect?' Land that does not need finance to access it is the very land that women are prohibited from owning. While women and men can acquire any other land in their own right using finance, this is not the case with communal clan land. It is free. With the historical disadvantages women have had to overcome, it is obvious that it is these very women who are most in need of and most deserving of free land tenure, not a chain of descendents of men fighting to keep their culture uninterrupted to the detriment of rural women and perpetuating discrimination and poverty.

Article 5 of CEDAW demands structural change. It requires that State parties take all appropriate measures to modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and other practices which are based on the idea of inferiority or superiority of sexes or on stereotyped roles for men and women. The state has a positive duty to protect, promote and fulfil this right to non-discrimination for women and to ensure the development and advancement of women in order to improve their position to one of *de jure* as well as *de facto* equality with men (Fredman, 2016).

CEDAW specifically speaks of rural women in article 14(2). State parties are to take appropriate measures to eliminate discrimination against rural women on the basis of equality of men and women, and, further, to ensure that they participate in and benefit from rural development.

Looking at the situation of rural women in communal lands, they do not own the land as women in their own right due to the discriminatory application of customary law. Upon the dissolution of a marriage they walk away empty handed which weakens their position even further in relation to men as the latter are the only ones who can own and remain in possession of land. Article 14 of CEDAW requires that rural women's problems be taken into account. The fact that they cannot access land, control or own it upon dissolution of a marriage after as much as 30 or more years is problematic and such factors should be considered when trying to relieve their plight. There is a need to unearth the problems and come up with solutions to tackle the challenges of rural women who are one of the poorest categories of women, despite the fact they form the majority of people who work on the land in subsistence and commercial production.

#### ***4.1.2 Dependence and poverty***

Independent and effective land rights for women have been identified by researchers and policy makers as vitally important for family welfare, food security, gender equality, empowerment, economic efficiency and poverty alleviation (Agarwal, 1994: 2002). The problem seems to be that transfer of land within the native group, especially within the clan and the family, is an internal or private matter which is regulated by customary law and customary authorities (Ik Dahl, 2005).

The enjoyment of social, cultural and economic rights, including the right to an adequate standard of living, requires that everyone enjoys the basic rights of subsistence and these include access to and protection of land (Ik Dahl, 2005). These rights are inter-dependent in that they constitute an interrelated and indivisible whole, setting standards that have a bearing on land reform in terms of non-discriminatory principles of distribution, and the establishment of secure tenure on an equal basis (Ik Dahl, 2005).

Remaining in the home after family breakdowns (caused by divorce or the death of a spouse or father) creates an insecure environment for daughters as well as their mothers. This type of

vulnerability frequently hinges on notions that women are family members ‘in transit’ while land must remain in the family (Ik Dahl, 2016). According to Musembi, discrimination against women is also produced and sustained by stereotypes and beliefs contained in other moral codes such as community customs and religious norms (Musembi). If human rights are to be meaningful in women’s lives, the state must take positive steps to remove barriers and facilitate the exercise of fulfilling women’s rights not to be discriminated against or marginalized because they are merely women (Fredman, 2016).

According to the book, ‘Land and property rights of women and orphans in the context of HIV and AIDS,’ on dissolution of marriage, women experience loss of land rights and associated livelihoods. Zimbabwe is a patriarchal and patrilineal society, land allocation is traditionally given to male heads of families, with women having usufruct rights (WLSA, 2001). Lack of access to resources by women leads to extreme poverty, and this has negative repercussions for all those who depend on them (Kesby, 1999). Unequal rights to land put women at a disadvantage, perpetuate poverty, and entrench gender inequality in Africa (Hindin, 2002).

In a report compiled by the Zimbabwe Women’s Resource Centre and Network (1994), 23% of the women in communal areas had secondary access to land rights, and married women had no rights to land, except through their husbands (Mushunje, 2001).

Women’s failure to access land does not only limit their ability to alleviate their poverty but they also fail to access financial loans because they have no control over the resource they produce. In addition they would also be unlikely to secure a male relative to stand as guarantor for them. The continuous application of customary law through various practices has led to a chain of injustices for rural women in GutuMupandawana. Women’s communal land rights and tenure are being infringed. According to Tsanga (2001), women are excluded from communal land because land is allocated customarily to heads of households who are primarily male. So, in a nutshell, women’s access to loans and other credit facilities for agricultural improvement has been constrained by the inability of women to gain access to land which means that women will continue being poor and marginalized (Sachs, 1996).



### ***4.1.3 Poverty and gender***

The traditional approach, which is practised in the rural areas, is to send divorced women to their natal homes where their fathers or brothers are expected to support them materially including giving them land for agricultural activities (Paradza, 2010). According to the Development District Officer at the Ministry of Women's Affairs I interviewed, the choice of marriage, be it customary or civil, has no bearing upon communal land. Upon the dissolution of the parties' marriage, clan land is not up for distribution. It is not matrimonial property. The woman leaves the land behind, even the rights she had over the land as a whole. She ceases to have those rights because they are dependent upon existing relations. Speaking on women's poverty he stated that the burden to ensure the survival of the family lies with women. He stressed that it is sad that upon leaving, many of these women leave with the burden of providing for the children when their source of survival which is the land they worked on has been stripped from them upon divorce or separation. So this puts women in a very difficult position, hence the poverty that comes with trying to fend for a family without the resources to do so.

The issue of gender cannot be ignored as a factor contributing to depriving women of the right to access, control and own land in their own right in the communal areas. The systematic differences between men and women lead to structural inequalities and to poverty because women's access to land and control over its use are the basis for food and income production in rural areas, and more broadly, for household wellbeing. Rural women are dependent upon their husbands for land because it is the same land on which they depend for survival and withholding access to such land therefore presents a crisis for them while threatening their very subsistence (Kurebwa, 2013).

There is lack of gender parity with regards to access and control of land in the communal areas in GutuMupandawana upon divorce and separation. Rural women are not entitled to land under customary tenure rules and as a result the number of rural poor continues to rise in Zimbabwe (Paradza, 2010).

The issue of maintenance seemed to be a problem because most parents were concerned about how young men were handling the matter. Most girls who claimed maintenance from the fathers of their children who had refused to marry them after having impregnated them, sought maintenance. Upon making application for maintenance, most of the young men were

said to be fleeing to South Africa to avoid responsibility. I was given five examples of young boys who had to flee from Gutu and cross the border because they could not maintain their children. This is not only robbing Gutu of these young men, stated one old man, but it also leaves young women with children they cannot fend for. This then results in a disproportionate increase in the caring burden on young women who are now forced to rely on their disgruntled and disappointed parents for their care and that of the grandchild or grandchildren. This then led to the revelation of the kinds of choices that are then taken by these young women. Prostitution becomes their source of income, especially in the city centre. They are driven into prostitution by poverty, illiteracy and needing to fend for their children in whichever way they can.

## **4.2 ‘The price tag of women’s work’: The injustices in the disregard and undervaluing of women’s work upon divorce and separation**

### ***4.2.1 Introduction***

Women’s work is hard to quantify and value, it is work that has not been given due regard because of the nature of it being in the private sphere. This is one of the reasons why it is undervalued, and at times, not regarded as work at all.

The problem is not in the difference between men and women. The problem is how they are mutually ranked, and that in society’s evaluations of the sexes, women’s qualities, characteristics, values and activities are systematically subordinated to men’s (Jaggar, 1983:85). Helga Hernes describes how women are often considered ‘mini-persons’. They have little moral aptitude, little intellect, little right to property and equality within certain limits.

### ***4.2.2 The price tag and its true cost to women***

One middle aged woman in Gutu stressed how oppressive man can be in her experience. She said that a man can tell you to go with whatever you came with. She asked a very pertinent question:

‘Considering the fact that you have been staying with a man for more than twenty years, what clothes and blankets will you still have in 20 years that you came with?’

Since the answer is usually nothing, this simply means that as a woman, you will go and you will leave with nothing.

The District Development Officer stated that since it is hard to attach a price to developments made on communal lands, no compensation is paid to most women. He said, however, that the attitude and approach to compensation differs from family to family. An elderly woman stated that the issue of divorce is very painful because while sometimes, some women do receive some compensation upon divorce or separation, in most cases, the compensation is in no way equal to the amount of work a woman invested in her home and the clan as a whole during all her years of marriage. She stated in *Shona*, '*Kana waroorwaroorerwamhuriyose*,'<sup>18</sup> meaning that a daughter in-law does not work for her family, she works for all her in-laws because she does not only belong to her husband, she belongs to the clan.

Women's work is hard to value, meaning it is hard to attach a price on it. It is so undervalued that it is taken for granted as daily duties and obligations as far as most of my respondents were concerned. In my research in Gutu most women stated that, they built their kitchen huts alone from scratch. First, they clear the virgin land, then they go to the river and fetch river sand using a wheel barrow. They make the bricks themselves with their own hands, and it is a time and energy consuming process which means they have to postpone doing their other responsibilities. They then search for firewood and grass to thatch the kitchen and they may have to walk long distances to collect them. They walk maybe more than 5 km some women stated and you have to go to and fro until you have enough materials to build the hut. While doing all this work of walking long distances to assemble all the relevant material, some women have children on their back, the grass for thatching on their head, their back aches and their feet hurt but they have to work for their family.

Most of the women are the last to go to sleep at night, but the first to wake up in the morning because they are not only mothers but wives and daughters' in-law as well who must meet the family/clan's expectations of them. To build the hut, they have to fetch water in buckets on their head, until they have enough for the day's work. The distance to fetch the water might be at a river that may be far away. This is not the only water required, her husband and

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<sup>18</sup> *Kana waroorwaroorerwamhuriyose* means if you are married, you cease to belong just to your husband, you also belong to the whole clan.

children need to bath and be prepared for work and school, food needs to be cooked, the yard needs to be swept clean. The field also needs her attention. All these demands are placed on one woman. In the field, I witnessed one woman who was making a kitchen floor herself, not using cement but mud. It is difficult to quantify or value all this work, the amount of water, sand, grass and wood fetched, the time and energy worked, the distances walked and the toll it takes on the body. There are many women who develop all types of injuries due to the effort they put into building their homes. Some now cannot walk properly since their backs are damaged and others have been bitten by snakes while gathering grass and wood.

None of this is appreciated or taken into consideration in the process of quantifying the value of work done when computing compensation. Upon divorce and separation the rural woman not only loses the hut she has built on her husband's clan land, she leaves her sweat and blood, and is expected to start afresh at her natal home. She leaves behind work that cannot be measured in the form of compensation of belongings. These are the lived realities of most rural women. Upon divorce and separation, they have no security, no land and no meaningful compensation for all the work they have rendered during their marriage.

Sandra Fredman argues that, '... divorce, widowhood, separation and teenage parenthood are major triggers of women's poverty in a way that they are not for men' (Fredman, 2016). This is true relating to rural women and men. Upon divorce it is the women who have to leave and start afresh, not the men. He stays put on his clan land and benefits from whatever joint work and investments have been added to the land by both parties during the subsistence of their marriage. With no economic value given to unpaid work, women's contributions remain invisible (Fredman, 2016). I was also saddened to realise that even the women themselves do not value their own work. They should appreciate themselves and their work as being important enough to justify receiving meaningful compensation or comparing it with the work of their husbands. Their blind adherence to culture and the way they have been socialized blinds them to just how important they are to the everyday running of their rural homes. Their failure to question is because they see nothing to question. They and everyone else accepts it as tradition and the unquestioned practice is that upon divorce you and most women leave with nothing. Women's work needs to be valued and appreciated, even though it is very hard to give their work a value. In my research many of my respondents, both women and men, considered that women's work were mere duties or obligations that had to be done.

‘If they were not to do that work, who else was to do it? They are daughter in-laws, there are certain expectations they have to meet and as wives and mothers.’

With no economic value given to women’s work and with no land which they can rightly call their own, they become and remain trapped in the snare of poverty. The fact that they do not own land robs them of the ability to act as equal partners with men in economic transactions, like the ability to offer collateral for bank loans to expand from subsistence to commercial farming, thereby giving them the opportunity to become independent and professional farmers in their own right. The Chiefs I interviewed voiced concerns against women owning land separate land from that of their husbands’ clan land. They said that it shook the very ground on which marriage between husband and wife is based. It would lead to wives not being fully committed to making a home with their husbands. In their view, women should be fully committed to their marriage and their husbands’ clan land. In my view, this means that as land remains a resource exclusively in the hands of men, women will remain their subjects, working the land, improving it and surviving from it but never able to own it. in other words, unless their lived reality changes, women will stay trapped in poverty.

Article 14(1) of CEDAW stipulates that state parties are to take into account problems faced by rural women and the roles they play in the economic survival of their families including their non-monetized work.

Article 16(h) of CEDAW states that the same rights must exist for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

Bare footed, heels cracked, clothes drenched in sweat, rural women work the land. This is not all she does: she also takes care of her family, and she fetches water for her garden, bathing, cleaning and washing. She has been working on this land for more than ten years and it has become a part of her. This land is not only the place she calls home, it is her source of survival, her sweat and blood. It just takes a very strained relationship with her husband to drive her away! To where? And how? To start from scratch with what and with whose help? These are all the questions I was asked by the rural women I interviewed. These are the lived realities of most married rural women living on their husbands’ clan land. They have no security of tenure of land, their stay is determined by their husband and his relatives and by

old age and nothing is guaranteed. Depriving women of security to access communal land has caused gross human rights infringements, it has discriminated against rural women leading to their marginalization in all spheres of their lives.

Article 13(h) of the Maputo Protocol obliges states to take necessary measures to recognize the economic value of the work of women in the home.

In General Recommendation No.21, the Committee recognized that property rights on the break-up of marriage should not depend only on the financial contributions of spouses. This ignores the unpaid work of women (Fredman, 2016).

It should be noted that women are the reason why men gain status that bestows on them the right to be given land to build his home, but upon the woman having contributed to the allocation of land from the clan to her husband, she has no right over that land. Women seem only to be used as vehicles to facilitate the granting of men land by the change of their status to husband or father. In other words, a man cannot acquire this land in the absence of a wife. If a man is to have another wife, he is given more land to accommodate her and therefore his territory grows as he marries more women. Yet, upon divorce and separation, the very women who have made the growth of their husband's matrimonial wealth possible, leave with nothing. So, while husbands benefit from everything, their wives seem to lose out on everything.

Even though I am focusing on rural women, it is important to know that wealthier urban women also frequent their husbands' rural homes and there they sink boreholes and build bigger and better homes to accommodate themselves and their growing families. Yet, their plight is not that different from their rural counterparts in that upon divorce or separation, they also cannot claim for the borehole they drilled or improvements made to their husbands' clan land. Once again, according to culture, communal land is not part of matrimonial property which may be shared between husband and wife when their relationship comes to an end. One of my key informants observed that there can never be meaningful compensation. Who is it meaningful to? The lifelong efforts invested in land by most women is hard to quantify. The reason why women leave everything behind is because what is usually offered to them as compensation is an insult to the blood and sweat they put into the building of their family and matrimonial home.

### **4.3 Effectiveness of legal and non-legal remedies in securing land tenure in communal land in GutuMupandawana for women**

#### **4.3.1 *Love, life and loss***

Upon marriage women are welcomed into their husband's clan. It is love that brings them together and a woman becomes a wife, mother and an in-law. The marriage bestows upon the wife the right of access to land but they only enjoy rights of use over the land. Such are the realities of their lives as they work on the land to provide for their families. It is only upon divorce and separation that women face not only the loss of their marriages but also the loss of their access to land for their livelihood, as they are usually asked to leave the land without any compensation.

People adhere to certain practices and compensating a woman who has been adulterous is most unlikely. A certain Church Bishop observed that adulterous women will have already disgraced themselves and their husbands as a result of their misconduct. Therefore, they leave with nothing and cannot complain about being unfairly treated. He asked rhetorically, 'What could be more unfair and humiliating than the conduct of an adulterous wife?' With such practices and beliefs it is in my opinion that there is a need to interact closely with the society and to start working for behavioural changes and attitudes about how women are treated. Religion is also playing a role in maintaining patriarchal tendencies, which keep women in inferior positions and punish them for disobeying certain laws. Due to these intersecting oppressions or semi-autonomous social fields,<sup>19</sup> women are being greatly influenced and controlled by religion on the one side and culture on the other, and thus further reinforcing patriarchal norms and practices to women's detriment.

When I asked the Chief what legal and non-legal interventions he considered were necessary, he bluntly stated that giving women land was not the answer. In his view, protecting the sanctity of marriage was of the utmost importance. He stated that women ought not to have land in their own right, as they would not be well settled in their husbands' homes. He said that giving women land would not support the continuance of marriages in the community. He explained that women have no rights over their fathers' land because they are not

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<sup>19</sup> Moore defines the semi-autonomous social field as one that 'has rule-making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance.'

responsible for the growth of is clan, and that is why they are only accepted back upon divorce and separation because they ought to belong elsewhere.

Apart from all the Chiefs I interviewed, there was one who was liberal and minded to change the plight of rural women. He pointed out that the issue is of paramount consideration, and it should not be taken lightly or be ignored. He stated that men should make an effort to contribute to the good standard of living for their families upon divorce and separation. Yes, there is a need for the law to help women get that help, but men should not wait to be coerced to take care of their own family. Culture urges men to take care of their families not to neglect them. He also stressed that there should be more frequent meetings with the Magistrate to fully inform Chiefs of people's rights and that they should protect and not infringe people's rights.

Through the responses I got during my research, they mirrored how deeply rooted patriarchy is. The non-legal interventions that were being considered were that women have to learn to be the women that they are expected to be in order to keep their homes. Women were asked to go back to the traditional way of doing things which was to respect their husbands, to know their place, to be submissive to their husbands and to be good wives. It was most men's views that if women wanted to continue to have access to and control of land, what was needed to be done was to respect the sanctity of marriage and keep their marriages to prevent them from being forced off their husband's homestead. The notion that they should have their own land in their own right was not anything they saw as possible or necessary.

Article 1(f) of the Maputo Protocol defines discrimination as any distinction, restriction or differential treatment based on sex, whose objectives or effects or effects destroy the recognition, enjoyment or exercise of fundamental freedoms by women in all spheres of life.

And:

Article 7(d) of the Maputo Protocol states that State parties shall ensure that women and men enjoy the same rights in case of separation and divorce or annulment of marriage, and that both parties shall have the right to an equitable sharing of joint property deriving from the marriage.



The Zimbabwean legal framework that protects women against discrimination is embedded in the Constitution. The problem is that there are no clear clauses that speak directly to rural women's plight, stating their entitlements to communal land. Women's rights and entitlements in the Constitution should not be left to interpretation to conjure up rights of women to land.

As far as communal land is concerned, women do not have the same security and enjoyment of rights to such land in comparison with men. Upon separation of the parties, though it is demanded that there be same rights in the Maputo Protocol and the Zimbabwean Constitution there exists no right of equitable sharing of joint property. In most situations there is joint effort in building a home but upon divorce and separation communal land is State land and is not available for matrimonial distribution. It is clan land and whatever was invested in it stays on the land and benefits those who own and have power over the land. There exists no equality from the very inception of the marriage.

When I asked my respondents whether there is any need for legal and non-legal interventions to improve women's disadvantaged position in GutuMupandawana, some stated that women need to accumulate resources independently and that they should be respected and their work valued. *Lobola* was often pointed out as the root of almost any form of women's subordination to and marginalization by men. In my observation *lobola* seemed to give men a sense of power and authority over women; it came with certain expectations and demands. When I spoke to some women they seemed to have lost confidence and hope in both the law and non-legal mechanisms to change their lives for the better in terms of their independent access, control and ownership of land in their own right.

It was my respondents' opinions that women need to be protected adequately upon the dissolution of their marriages. Compensation should not be denied women as it should be used to enable to give them a start with a new life after leaving their husband's homestead. Some appealed to their natal families claiming that they should have the right of return because there is an assumption that women are always welcomed back to their father's home but women's circumstances are different. Some women stated that they were raised by their mothers and had never known their fathers, and that since their mothers had remarried did not believe that any longer had an automatic right to their stepfather's home. Another scenario was that when a returning daughter's parents may have passed away and the family clan land

is now in their brothers' or uncles' control. It is not always the case that they may welcome them back and assist such returnees with their children as sometimes the strained relations between them do not make this possible. Women are not a homogenous group, their circumstances always differ, and some women may be worse off than others even to the point where they and their children are destitute and have nowhere to turn for help. One woman explained that before her father died he left each of her children with a piece of clan land. Therefore upon divorce she would not expose herself to any harassment and would gladly leave her husband's homestead because she had a place of her own waiting for her at her natal home.

Figure 1 is a photograph of the house of a returning daughter built by her in natal home on land allocated to her and her children and she built a very beautiful small house. She was also given land for cultivation and she explained that she now works and takes care of her family. Not all women are accepted back and supported by their natal families until they are able to manage on their own. Circumstances of women differ, but the common disadvantage they all suffer is that culturally land is not given to them as women.

**Figure 1: Photograph of a returnee woman's home**



#### **4.3.2 Inheritance**

One of the emerging issues that I came across in the field was the issue of inheritance. I spoke to some women who were chased away from their homes after the death of their

husbands. The in-laws were chasing them away armed with all sorts of false allegations like adultery and witchcraft as a pretext to grab for themselves all that they could from the women. Husband's relatives even harass and chase away divorced women, widows with or without their children and young widows who refuse to marry a relative of their deceased husband (Kurebwa, 2013).

#### ***4.3.3 Under-representation of women in positions of power***

The under-representation of women in positions of power was an emerging issue that I observed. The only woman who was in a position of power was an assistant District Administrator. I did not know if the District Administrator was a man or woman. In Gutu Mupandwana, the CEO of the Rural District Council, the Chiefs, the Headmen and the Regional Magistrate were all men. Even the District Development Officer who assisted me from the Ministry of Women's Affairs, Development and Gender was a man. There is a need for women to be part of the rural leadership system because there were no women in power. For women's interests to be protected there is a need for women to hold positions of power to support the interests of other women. Feminist consciousness raising is centred on the need to understand the substantive and procedural legal disabilities that women have suffered. Women too need to be aware of their own and others' situations otherwise there will be no impetus to change (J., 2011). Women are not a homogenous group, some urban women might understand the plight of rural women but some might not even know the problems they encounter in terms of land tenure during and upon dissolution of a marriage.

Some said that there is no gender balance in these institutions, and that the cultural system needs to be replaced by another system in order to accommodate women and give them equal rights with men. This kind of thinking which came from an older man really got me interested in the fact that more men should be eager and hungry for change to protect their fellow women. The old man stated:

‘These women are just not our wives [whom] we divorce; these women are our sisters, our daughter our granddaughters; so there is [a] need to protect them as our own.’

The issue of women having land rights in communal lands is both complicated and controversial but there is a need to create a neutral space. Having seen how the law operates and the effects it has, it is clear to me that it, the law, is not the answer; there are certain semi-

autonomous social fields<sup>20</sup> that are in play and contradict the law. So there is a need to marry or fuse the two, as suggested by Hellum and Katsande (2007). This will be a process and will take time. At the moment the law is ahead of the social realities and practices at the grass roots level and change often provokes rebellion. There is no need to completely disregard culture as being totally irrelevant and oppressive. The idea is to amalgamate the two systems and in some intermediate space find common ground between them to promote the betterment and improvement of women's lives.

#### ***4.3.4 Non-awareness of rights***

Another emerging issue was that of women's unawareness of their rights to land and to compensation if the parties had both contributed directly or indirectly to movables such as cattle and other investments made on the home. I would prefer to use the word non-awareness rather than ignorance of women of their rights. Upon speaking to the women, they were unaware as to how to proceed and they also emphasised the barriers they faced including the lack of resources to continuously pursue their matters at the Magistrates Court. Their choice not to pursue their rights but rather to leave peacefully was due to their strong relational nature.

Having become aware that their ignorance or unawareness of their rights as women was one root of their problems, my respondents called for civil society and government interventions to take the law to the people. However, before this can be done, the communities' gatekeepers, its traditional leaders, and the customary law that governs communal lands that are in place should be modified to embrace change of certain practices, because if the root cause is not cut out, change will not be realized among the women who deserve it. Chiefs are culture-driven, they believe that men own everything. They are guided by cultural values, they need legal training and they need to be gender-sensitized.

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## **CHAPTER FIVE**

### **5.0 CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Introduction**

Clan land has always belonged to the men in Zimbabwe. However, with the coming of the 2013 Constitution one would have expected that women would now enjoy the same benefits as men but that is not the case. Women remain deprived of the right to own communal land in their own right through Rural District Councils which work together with Chiefs to allocate and control communal lands according to archaic cultural customs, traditions and practices.

The silence of the law pertaining to women's rights to communal has not only perpetuated poverty, but also permitted husbands to exploit married women's labour; upon divorce they leave with nothing. Rural divorced women like many other women in the communal lands are women whose ability to access land is severely curtailed because all rural women depend on their marriages to access land. This right comes to an end upon the dissolution of marriage. A historical background on the laws governing communal land was necessary to see what strides, if any, the state has taken in its development and empowerment of women.

#### **5.2 Conclusions**

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

1. Are some rural women deprived of access to and control of communal land upon divorce and separation?

It is concluded that rural women are deprived access and control of communal land upon divorce and separation. This further results in their losing their livelihood as most of them depend on the land for the survival of themselves and their families. In terms of the laws that govern the distribution of communal land which is customary law, land is not allocated to women. They only possess secondary rights as they access this land through their relationships with their husbands, fathers or other male relations. This has kept women marginalized and in inferior positions for they cannot compete for resources with men because land is a resource that they cannot have in their own right. This is in violation of not

only international legal frameworks to which Zimbabwe is a party but also its own Constitution which is the supreme law of the land.

2. Are some rural women forced to leave behind their investments in and developments made to the communal land they tended upon divorce and separation?

It is concluded that, in terms of the traditional practices upon dissolution of a marriage, a woman is supposed to leave her husband's homestead. Whatever has been developed or whatever efforts that have been jointly made to develop the homestead stays on the homestead and in most cases, little or no compensation is given to the women. The application of customary law in the allocation of communal land has always prejudiced most rural women. They do and cannot own land under the present system and whatever remains of women's labour and material work during the years of their marriage remains behind and benefits the man, his homestead and his clan. Whatever is done on and to the land stays on the land. So upon divorce a woman leaves with her children but is literally stripped of all assets, the most important of which are her home and the land, often the sole source of livelihood she has poured herself into for years to sustain herself and her family. Yet she is still expected to maintain herself and her children without access to land.

3. Does most women's dependence on men to access land perpetuate poverty?

It is concluded that women are dependent on men for access to land in communal lands like GutuMupandawana where my research was conducted. They depend on men to access land on which they in turn depend for their survival. Upon divorce and being chased away, they lose the land on which they had been dependent for their day to day survival and upkeep this plunges them into poverty. Therefore rural women's access, control and ownership of land will go a long way in alleviating poverty and remedying the gender imbalance that exists.

4. Does women's lack of meaningful compensation upon divorce disregard their work on communal land?

Conclusively, women's work is undervalued and not regarded as being important. Women's work is seen as part of her duty for which she should receive no compensation. The payment of bride wealth or *lobola* also seems to justify the non-compensation of women's work upon

divorce and separation. Upon divorce and separation, women's labour and entitlements are non-negotiable especially in adulterous situations; they are forced to leave with nothing.

5. Is there a need for legal and non-legal interventions to improve women's access to communal land upon divorce or separation?

In conclusion, there is a need for both the intervention of law and non-legal interventions.

### **5.3 Recommendations**

From the above findings and conclusions, the following recommendations are made:

1. Are some rural women deprived of access to and control of communal land upon divorce and separation?

The Constitution in place is insufficient to realise the principles of gender equality and non-discrimination among urban and rural Zimbabweans. There is a need to put in place other measures, like institutional training and monitoring mechanisms within institutions that handle land issues so that gender equality and non-discrimination of rural women are integrated at all stages of formulation and implementation of programmes in tandem with the Constitution. Gender sensitization training in land issues needs to take women always as the starting point given their historical disadvantage and discrimination in land rights.

It is recommendation that land rights of women be redefined and the concept of women and communal land in Zimbabwean laws, policies and practices be seriously revisited. There is a further need to amend the Communal Land Act, Traditional Leaders Act and the Customary Law and Local Courts Act [Chapter 7:05] and align them with the Constitution.

It is recommended that the Zimbabwean laws clearly articulate the land rights of women in legislation, specifically addressing rural women's access, control and ownership of communal land.

2. Are some rural women forced to leave behind their investments in and developments made to the communal land they tended upon divorce and separation?

It is recommended that women be compensated for their direct and indirect contributions. The courts must quantify and value women's work in communal lands so that they do not have to leave with nothing upon divorce and separation.

It is further recommended that there is a need to organize workshops for both governmental and non-governmental officials for information dissemination.

3. Does most women's dependence on men to access land perpetuate poverty?

It is recommended that customary law governing the administration and allocation of communal land which discriminates against women (because it gives men control over decisions regarding land contrary to Constitutional provisions) be modified since it gives men an advantage over women.

It is recommended that there is a need to bridge the gap between the private and the public sphere.

4. Does women's lack of meaningful compensation upon divorce disregard their work on communal land?

It is recommended that, upon dissolution of marriage in the rural areas, the equitable sharing of property must be exercised. Chiefs through training should be able to apply laws that are not arbitrary to women but are just and fair for both parties.

It is recommended that there is a need for law reform to unlock the perceived impossibility of rural women to access land in their own right.

5. Is there a need for legal and non-legal interventions to improve women's access to communal land upon divorce or separation?

It is recommended that there is the need to sensitize traditional leaders and find common ground for women to be able to access communal land upon divorce and separation. There must be a fusion of general law and cultural law for the emancipation and betterment of women's lives.



It is recommended that, there is a need for the state and its agencies and civil society to work together and take the law to the people. Both men and women should have the right to be informed and they should be well versed in what the law requires. Information dissemination should benefit not just women but the community at large and have an impact in changing attitudes. There is a need to value women's work through consciousness raising.

It is recommended that there is a need for the incorporation of socio-economic rights in the Constitution

## **Bibliography**

Fredman, Sandra. 2016. Cambridge Books Online. August Thursday . Accessed August 04, 2016. <http://dx.doi.org/10.1017/CB09781139540841.011>.

Ikdahl, Ingunn. 2016. Cambridge books online. August 04. Accessed April 15, 2018. <http://dx.doi.org/10.1071/CB09781139541.013>.

Ingunn Ikdahl, Anne Hellum, Randi Kaarhus, Tor A. Benjaminsen, Patricia Kameri-Mbote. 2005. "Human rights, formalisation and women's land rights in southern and eastern Africa." Norway.

J.E, Tsanga A & Stewart. 2011. Women and Law: innovative approaches to teaching research and analysis. Harare: Weaver Press.

Kurebwa, Jeffrey. 2013. "Who Owns the Land? Rural Women'd Access to and Control of Agricultural Land in the Madondo Communal Lands Of Gutu District, Zimbabwe." International Journal of Science and Research 8.

Musembi, Celestine Nyamu. n.d. "Pulling Apart? Treatment of Pluralism in CEDAW and in Maputo Protocol."

Mushunje, Mildred T. 2001. Women's Land Rights In Zimbabwe. Harare: Basis Management Entry.

Stewart, Julie E. 1997. "Why i Can't teach customary law." Zimbabwe Law Review.

WLSA. 1997. Paving a way forward. Harare: Women and Law southern Africa Research Project.

Bentzon, A.W et al (1998) Pursuing Grounded Theory in Law Oslo TANO- Aschehoug: Harare, Mond Books.

Hellum, A, and Katsande, R. (2007). Gender, human rights and legal pluralities in southern Africa: a matter of context and power'. In: Corradi, G. et al., eds. Human rights encounter legal pluralism : normative and empirical approaches. Oxford and Portland, OR, Hart Publishing.

Kameri-Mbote P Women, Land Rights and the Environment: "The Kenyan Experience", in 49(3) Development (2006) p.43-48

Nnaemeka O, Nego Feminism "Theorizing, Practicing and Pruning Africa's way In Chicago University Press (Winter 2004) p. 357-385.