

UNIVERSITY OF ZIMBABWE



'PUTTING MAN FIRST':
UNFAIR DISCRIMINATION AGAINST WOMEN IN FORMAL AND INFORMAL
MARRIAGES IN THE CITY OF HARARE'S LOW INCOME HOME OWNERSHIP
POLICY AND PRACTICE. THE CASE OF BUDIRO HIGH DENSITY SUBURB,
HARARE, ZIMBABWE

By

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Abstract

This research examines the various dimensions of unfair discrimination against women in formal and informal marriages in the City of Harare's low income homeownership policy and practice. It is based on a case study of Budiro a high density suburb of Harare, the capital of Zimbabwe. The research is based on a wide range of data collected using several interactive gender focused methodologies (especially the Women's Law Approach). Employed as a housing development officer in the Harare City Council, the writer demystifies the inherent male bias in 'man'-made (anti)-discrimination law and policy contained in various international and domestic legal instruments binding on Zimbabwe. He finds that this bias is blind to the vagaries of unfair discrimination against women in formal and informal marital unions in their quest to access housing, land and property rights through the low income homeownership housing schemes in Harare. Based on the research, the writer suggests urgent short term and long term legal and non-legal interventions to address and redress the discriminatory practices against women in formal and informal marital unions in City of Harare's low income homeownership housing development.

Dedication

To my wife, Blessing;

To my one and only daughter, Cheryl Rumbidzai;

To my two sons, Socrates Elphas and Michael Karl Marx;

To my mother, Cecilia ChingozhoroMahove, who said to me in 1988 'dzidzamwanagu. Vanhu vasinakudzidzavanonetsa' (Meaning, 'Go to school, my son and be learned. People mwho are not learned are a problem to society.') To her, at the time, being learned was the only way one could be properly socialised to be able to harmoniously coexist with others in society.

To my late father, Enock 'Dr Simbi', this work is a seed of your seed.

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List of abbreviations and acronyms

CABS	Central African Building Society
CBO	Civilian based organisation
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CoH	City of Harare
GoZ	Government of Zimbabwe
HCC	Harare City Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MLGPWNH	Ministry of Local Government, Public Works and National Housing
NHF	National Housing Fund
NHGF	National Housing and Guarantee Fund
PPP	Private public partnership
SDG	Sustainable Development Goal
SEARCWL	Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe
UDHR	Universal Declaration of Human Rights
USAID	United States Agency for International Development

List of international human rights instruments

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
International Covenant on Civil and Political Rights (ICCPR)
International Covenant on Economic, Social and Cultural Rights (ICESCR)
Universal Declaration of Human Rights (UDHR)

List of local legislation

Administrative Justice Act (Chap 10:28)
African (Registration and Identification) Act
African (Urban Areas) Accommodation Act (No. 6 of 1946)
Anti-Discrimination Act (Chapter 29:15)
Building Societies Act
Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution)
Customary Marriages (Chapter 5:07)
Housing and Building Act (Chap 22:07)
Land Tenure Act
Legal Age of Majority Act, 1982
Marriages Act (Chapter 5:11)
Model Building By-Laws, 1977
Prevention of Discrimination Act (Chap 8:16)
Urban Councils Act (Chapter 29:15)
Vagrancy Act

List of local policies

National Housing Policy (2012)
Transitional National Development Plan

List of cases

South Africa

Irene Grootboom v The Government of The Republic of South Africa CCT11/00

President of South Africa v Hugo 1997 (4) SA I (CC)

United States of America

Teamsters v United States 431 US 324 (1977)

Zimbabwe

Magaya v Magaya (unreported judgment No. SC-210-98)

Mike Campbell (Pvt) Ltd & v Republic of Zimbabwe 2008 (2) ZLR 343

S v Sithole 1996 (2) ZLR 575 (H)

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CHAPTER 1

1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

'Land and other natural resources are central to social and cultural identity and economic wealth, tenure arrangements in a society develop in a manner that entrenches the power relations between and among individuals and social groups.'

(FAO)

1.1 Introduction

According to the United Nations Conference on Human Settlements (UNCHS, 2000), domestic shelter is an important basic need in all societies and thus becomes an essential ingredient for the foundation required by all individuals (men and women) to participate effectively in the governance of society. Moyo (2014) adds that access to shelter is underpinned by two important factors. These are demand for shelter and affordability. Affordability has four critical components which are income distribution, cost of construction, rent propensities and financing terms (Kamete, 2006; Moyo, 2014). Moyo further argues that for housing policies to be effective, they must adequately address issues related to demand and affordability. However, a more critical aspect that has to be borne in mind concerns how housing policies are gendered because they have a significant bearing on the living conditions of the beneficiaries of social services like adequate housing. This study examines the impact of the City of Harare's (CoH) housing policy and practice on homeownership by women in formal and informal marital relationships from a gendered perspective.

1.2 Background to the research

A gendered urban housing delivery framework was inherited by the Zimbabwean government from the colonial past. Indications are that women have always suffered from a double-edged discriminatory urban governance practice. One dimension was based on race and the other on sex/gender. The one based on race was largely rectified soon after independence when the Government of Zimbabwe (GoZ) made adjustments to the urban planning and management system from one that was based on the principle of separate development to one based on inclusiveness.

However unfair discrimination in homeownership has always been a permanent feature of Harare's urban governance. In its most severe form, restrictive laws, such as the African (Urban Areas) Accommodation Act (No. 6 of 1946), the African (Registration and Identification) Act and the Vagrancy Act, were passed during the colonial era as a means of entrenching discrimination. Such discrimination was based on race and gender since in terms of these Acts, the presence of Africans in urban areas was regarded as temporary, hence housing for them had to be temporary. The African (Urban Areas) Accommodation Act in particular stipulated that only employed blacks could be allowed in towns and cities and it obliged local authorities to set aside urban locations for working Africans. The Act further obliged employers to accommodate their workers within their premises (Musekiwa, 1995 cited in Moyo, 2014).

According to Tibaijuka (2009), the provision of housing was largely tied to the employer and most of this housing was on a rental basis only as the African man was by and large expected to leave his wife or wives and children in the rural areas. Africans could not therefore buy houses or purchase land for development. Chitekwe-Biti *et al.* (2014) further argue that the underlying logic for the type and location of this discriminatory housing delivery framework was that the African was not a permanent resident of the town and was thus expected to be provided with rented accommodation accompanied by basic minimum social infrastructure for education, entertainment and health. The Labour and Economic Development Research Institute (LEDRI, 2011) concurs with Chitekwe-Biti (2014) and further argues that the African could only enjoy rights of use to property and not exchange rights as they were aliens of the city. Thus the African's rights to housing in the urban set up could only go as far as the use value of the property.

The type of housing provided was also tied and tailor made to suit one's marital status and even now, in some instances, this situation still persists. For example, Chirisa and Mutsindikwa (2011) contend that single men were expected to occupy rented accommodation in hostels, single quotas of general barracks. Those who were employed in European residential areas had housing provided for them in respective native village settlements with Mabvuku being earmarked for domestic workers working in low density areas in the north and east of the capital city, Harare (its pre-independence name was Salisbury), Dizvarasekwa being reserved for house domestic employees for western suburbs like Mabelreign and Marlborough, while those employed in the industrial sites were accommodated in Mbare,

Highfield and Glen Norah (UN Habitat, 2009; Moyana, 1984). It is important to note that so entrenched was the discrimination that the housing needs of the whites were separately catered for. As the private sector grew, the Building Societies Act was passed in 1951 to provide the financial framework for promoting housing for high income European earners (Munzwa and Wellington, 2010).

Following the attainment of independence in 1980, the Government of Zimbabwe embarked on a process of empowering the previously marginalised Africans through attempts to achieve what was regarded as growth with equity by abolishing the principle of separate development (Chinake,1997). The one city concept was therefore popularised as a desirable development agenda. The entry point to this was the repeal of discriminatory laws (Munzwa and Wellington, 2010). Similarly, housing policy and practice and strategies to provide access to low income housing rights also changed significantly. What did not change however, was the gendered dimension of housing provision.

The above efforts that sought to overturn the past housing injustices of the pre-independence era were amply captured in the immediate policies of the new government as part of the Transitional National Development Plan. Under this Plan, recognition was given to the need to mobilize resources for low income housing through public and private sector involvement (GoZ, 1982 as cited in LADERIZ, 2011). The main actors for the provision of housing under this framework were Central Government, local authorities, donors, major employers undertaking employer assisted schemes, land developers and building societies (Tibaijuka, 2009; LADERIZ, 2011). Under this arrangement, the government provided infrastructure, whilst local authorities provide land on which beneficiaries would build houses with loans accessed from building societies and in some instances with the assistance from employers (Mashoko, 2012).

Tibaijuka (2009) argues that the transition to majority rule made urban areas more accessible to the previously marginalised Africans resulting in an unprecedented wave of rural to urban migration typical of mega million cities created by the euphoria of independence (Chirisa, 2011). This delicate situation created serious problems including housing shortages, overcrowding, lack of basic infrastructure and squatter settlements (Tibaijuka, 2009). Similar occurrences in the explosion of urban populations were experienced in Indonesia 1945 and 1965 following Indonesia's attainment of independence (Tunas and Darmoyono, 2014).

Harare, like any other post independent urban city began to experience typical worldwide city problems like unemployment, poverty, unemployment, inadequate amenities and squatter settlements (Watson, 2014). These all had gendered implications that entrenched discrimination of woman particularly those in formal and informal marital unions.

One of the key responses to these problems was to have key policy shifts toward the promotion of homeownership. Most rented accommodation in African townships was converted to home ownership through the sale of houses to their sitting tenants. This key development in urban housing development substantially altered the urban economy as low income groups could now enjoy both the use and exchange value of their properties, thus enjoying economic rights over their properties. What did not change though was the discriminatory pattern in access to these socio economic rights associated with housing by women in formal and informal marital relationships. This situation obtained despite the government's emphasis on the promotion of social development and re-distribution of resources. The redistribution mantra did not consider altering relations at family level to guarantee equal access of housing, land and property rights by both men and women at household level.

Instead, the preoccupation of the GoZ under the era of low income homeownership housing development was to promote the servicing of land and the subsequent building of core houses in the former African townships. This led to a situation where the GoZ continued to expand the already established low income townships, at the same time inadvertently expanding the magnitude of the gender disparities in access to housing, land and property rights amongst woman in formal and informal marital households. According to Chitekwe-Biti *et al.* (2014), the situation above led to the city structure depicting different morphologies, one with very small plot sizes (approximately 200 square metres) and the other with very large plots of about an acre in the typical low density residential areas.

Under this homeownership policy thrust, the issue of gender based discrimination and location of housing was not a necessary policy problem for the state and hence did not receive the attention of the Government. The policy focus was on increasing the housing stock to meet the housing demand as more people continued to move into towns in search of jobs and also in attempts at exploiting the new opportunities created by the 'new democratic dispensation'. Under the low income homeownership, the GoZ's efforts to increase housing

appeared normal and natural, yet there were simmering gender inequalities. These inequalities in the access to housing, land and property rights meant that inequalities were perpetuated in the redistribution of real income and wealth in the urban system.

In the later years that followed independence, the national policy on housing was dominated by site and service schemes that emerged as the GoZ partnered with international agencies such as the United States Agency for International Development (USAID), World Bank and various other building societies. These collaborative efforts saw the birth and establishment of large low income high density residential areas such as Kuwadzana and Budiriro (LADERIZ, 2011). According to the GoZ (2012), this coincided with the establishment of the National Housing Fund (NHF) and the National Housing and Guarantee Fund (NHGF) and the deepening of the concept of core houses that was underpinned by the building brigade's delivery model. According to Kamete (1999), these efforts were targeted at ensuring that housing would become affordable. Thus the perceived middle and high income earners continued to be catered for wholly through private sector initiatives predominantly through the housing finance market whilst the low income earners were marginalised and were relegated to the benevolence of donor funding which had no obligation to look at the gender aspects of the low income delivery model, particularly as it relates to gender based discrimination in access to land, housing and property rights at household level.

Potts (2006) notes that as the housing demand swelled, coupled with the absence of suitable land for housing development, informal settlements, squatting and sub-standard housing in backyards started to emerge. Mutekede and Sigauke (2007) carried out a study that provides some interesting statistics. In their study, the existing housing stock stood at 409,000 in 1986 and of this total, 10,618 units were substandard with no piped water, sewerage or electricity. Chinake (1997) further points out that the above situation led to the GoZ adopting other policy options including, in 1992, the market based Economic Structural Adjustment Programme. Under this, the GoZ changed its approach to giving support to housing beneficiaries as they were weaned off. The beneficiaries had to play a significant role in the delivery of low income housing. This policy shift coincided with the worsening of the economic environment in Zimbabwe characterised by the complete withdrawal of public investment from housing. The traditional sources of housing finance for low income earners dried up as savings went down in an environment where from a lending perspective, low income earners were regarded as a high risk lending option. The state had to adjust its options

in home ownership housing delivery by adopting new initiatives and concepts to bridge the gap created by the non-availability of low income housing finance and the persistent housing demand. This situation naturally created unprecedented pressure on the government which ended up failing to look at the gender implications of the housing dilemma.

The net effect of the above situation was the GoZ's adoption of a new housing policy in 2012. The policy is considered to be pro-poor as it claims to protect the weak by embracing the non-state actors in the housing delivery process (GoZ). Higher priority was given to community based homeownership associations in the form of housing cooperatives and housing pay schemes mainly drawn from individuals whose houses had been demolished by Operation *Murambatsvina* ('Restore order') on 12 September 2005 (Potts, 2006; UN Habitat, 2005; Chipungu, 2011).

The main pillars of the national housing policy are as follows; -

- (a) Protection of vulnerable groups and no eviction without alternative space;
- (b) Facilitate partnerships amongst key players;
- (c) Guarantee security of tenure; and
- (d) Acceptance of upgradable infrastructure.

Despite these policy pronouncements, the broader issues still remain on how to provide access to socio-economic rights associated with affordable housing with freehold title to the urban poor. This dilemma has had serious effects on the physical development of the urban areas as informal settlements have mushroomed since poor households cannot afford the costs for the various services available in the city (Watson, 2009). Budiriro high density suburb to the west of Harare is no exception. Like any other hot bed of informal settlements, the suburb is characterised by substandard housing and inadequate basic infrastructure.

The suburb, like any other urban suburb in a developing country, is experiencing a dramatic increase in the proportion of women headed households. Although official figures from the 2012 national census in Zimbabwe estimate that the number of female headed households at 35% nationwide, chances are that the actual proportion is much higher.. However, in urban set-ups, the percentage drops slightly to between 18 and 26%. These women are undoubtedly found among the poorest of the urban populace and because of the current dire economic

situation being experienced in the country, these women are employed in the informal sector (as market or street traders) or as domestic workers. This socio-economic reality means that women heads of households not only face substantial difficulties in earning a living wage but are also exposed to difficulties in trying to secure shelter for themselves and their families.

Women's access to housing land and their ability to fund their shelter has been a prominent policy aspiration for the Zimbabwean government particularly under the provision of housing to low income families although its housing policies have remained largely gender neutral. This neutrality is evidenced by the fact that the housing policies and practices at both the central and local levels of public administration have tended to assume that the nuclear male headed family is the norm (Vakil, 1994). Scant attention has been devoted to addressing unique housing problems experienced by female headed households or even women in formally recognised marital relationships.

Examples can be drawn from the fact that women in unregistered customary marriages or lacking divorce papers are unable to prove that they are household heads and therefore have difficulties in registering on the housing waiting list in order for them to be eligible to receive a stand for homeownership housing development. The problem worsens for women employed in the informal sector and those employed as domestic workers. They have difficulties in registering on the housing waiting list since their jobs are not usually recognised as legitimate employment warranting attention in the allocation process. According to Vakil (1994), even women on the housing waiting list have little hope of being allocated a stand in the near future because the waiting list is growing longer and longer.

1.3 Statement of the problem

The object of feminist research in women's access to land and property rights has been the structure of social relations that contributes to female oppression (Moser, 1989). This focus entails confronting the theoretical issues raised by an analysis of socially and spatially specific relations between men and women in homeownership policy and practice. Despite the advances already made in integrating women's lives into urban studies, a large number of studies about women's access to land for housing development in the urban environment are not comprehensive in their analysis of the impact of social norms and relations between men and women in women's efforts to access land, housing and property rights (Kamete, 1999).

Munzwa and Wellington (2010) concur and submit that scholarly research evidence on women's access to land and property in urban areas is generally scarce and systematic assessments of the outcome and impact of housing delivery programmes targeted at expanding women's to land, property and housing are scarce. They argue that very few of them adopt a gendered approach particularly in developing countries in their analysis and assessments. The net result is that there has been a yawning gender gap in evaluating housing delivery policies and approaches and in interrogating inequalities inherent in homeownership policies and practices.

As a result, policy attention, programming and research on urban land-related issues has been scarce and sporadic, and even when these have been the object of interest, gender considerations have not featured prominently. In much of the published work on access to land in urban areas, gender remains neglected or is dealt with in an over-simplified way. This has therefore motivated this research which aims to review and expand on the existing patchy literature on the gendered discrimination against women in formal and informal marital relationships in the CoH's homeownership policy and practice.

Chenwi & McLean (2009) agree with the above observation and claims that the socio-legal context of urban housing delivery is fraught with inequities in access to housing and other attendant socio-economic rights. The two scholars decry 'the structural and systemic constraints experienced by women within the social structure' (2009, 518). According to the two scholars, persistent poverty is a perennial impediment in women's quest to access homeownership housing services, and adequate housing is nightmarish for women because of childcare needs, vulnerability to violence and risks of evictions.

Rakodi (2014) agrees and argues that the extent to which policies and laws address existing inequalities and redress gender inequality depends on political, social and familial relations and the extent to which women in formal and informal marital relationships have a voice in decision making. According to Rakodi (2014), the obtaining situation on the ground is that land registration and homeownership housing programmes, as well as land and planning policies, are not gender sensitive. Even when gender considerations are integrated into the home ownership policy architecture, such considerations have not always been implemented in practice.

Experience shows that the legal and policy frameworks for land management and property rights need to openly recognise women's rights thereby requiring gender-specific measures. These measures are linked to policy and practice. In other instances, measures are left to reforms in family and property law (Moser, 1999). However, reforms to property and family law are insufficient because they interact with policies and practices related to land administration, planning for increased housing supply and improvements to informal settlements. In order to benefit poor women, laws, governance and administrative arrangements that improve access to homeownership for poor residents in general are required. These have to be designed in such a manner that gender is mainstreamed into their design and implementation. If not, they will certainly not meet women's housing needs.

In addition, many of the reforms are legal and technical in nature, whereas access to and control over land and property is related to socio-economic characteristics of communities and is dependent on power relations at different levels of social interaction. These levels may be at family, community, city and or country levels (Moser, 1989). Any attempt at instituting reforms, including those that seek to increase gender equality therefore have to challenge deep rooted and entrenched vested interests. The impact of such changes thus depends on the outcomes of political processes and power struggles. Hence there is a need to ascertain the extent of unfair discrimination against women in formal and informal marital relationships in Harare's low income homeownership policy and practice.

On the local front, Zimbabwe has improved its legal framework for land administration and personal law to protect women's rights. However, inconsistencies between sources of law and individual pieces of legislation still remain (Rakodi, 1999). In addition, there are gaps between legal provisions and social norms and practices in access to homeownership for women informal and informal marital relationships.

Housing in Harare as a material, economic and social reality, is explicitly gendered, yet urban housing research has not focused on executing a gendered analysis of residents' experiences of housing, homelessness, housing policy and practice. Research efforts must also seek to foster a better understanding of the housing systems and procedures that would provide housing land for citizens of all income groups. Research efforts must also interrogate the full range of legal tenure and land transactions in a way that increases the accessibility of housing land by all marginalised groups in society. It is important for all marginalised groups to

receive adequate attention from many national governments, international agencies and researchers.

1.4 Objective of the research

In carrying out this research, my main objective was to examine the diversity of Harare City Council's (HCC) housing histories and trajectories and how they lead to the discrimination of women in formal and informal marriages under its homeownership housing approaches. This broad objective was further broken down into the following specific objectives.

Specific objectives:

- (1) To explore how HCC's home ownership policy and practice infringe on the rights of access to and control over land and property rights of low income women in formal and informal marriages.
- (2) To identify and explain trends of land ownership among low income women in formal and informal marriages.
- (3) To examine the legal and institutional frameworks and norms that determine the extent to which low income women in formal and informal marriages enjoy access to, ownership and control over land and property.
- (4) To identify and assess efforts to address the challenges encountered in access to and control over land and property by low income women in formal and informal marriages.

To achieve these objectives, I was guided by the following research assumptions and research questions.

1.5 Research assumptions

1. The colonial housing policy on low income homeownership housing delivery did not take women's property and land rights into consideration.

2. The allocation of low income homeownership residential land by the City of Harare (CoH) discriminates against women in formal and informal marriages on the basis of their level of income.
3. The administrative culture in the Harare City Council (HCC) inherently discriminates against low income women in formal and informal marriages in its allocation of residential land for homeownership housing development.
4. The HCC's administrative culture reinforces gender disparities and social inequalities between men and women in low income homeownership housing management.
5. Measures to eliminate discrimination against women in formal and informal marriages in CoH's low income homeownership housing delivery are possible and have been implemented but are not effective.
6. The CoH is breaching Constitutional provisions which protect women in formal and informal relationships from discrimination in low income home ownership housing delivery.

1.6 Research questions

1. Is it the case that the colonial housing policy on low income homeownership housing delivery did not take women's property and land rights into consideration?
2. Does the allocation of low income homeownership residential land by the City of Harare (CoH) discriminate against women in formal and informal marriages on the basis of their level of income?
3. Does the administrative culture in the Harare City Council (HCC) inherently discriminate against low income women in formal and informal marriages in its allocation of residential land for housing development?

4. Does the Harare City Council's administrative culture reinforce gender inequalities and social inequalities between men and women in homeownership housing management?
5. Is it the case that measures to eliminate discrimination against women in formal and informal marriages in CoH's low income homeownership housing delivery are possible and have been implemented but are not effective?
6. Is it the case that the CoH is breaching Constitutional provisions which protect women in formal and informal relationships from discrimination in low income homeownership housing delivery?

CHAPTER 2

2.0 RESEARCH METHODOLOGIES AND DATA COLLECTION

2.1 Research methodologies

2.1.1 *The women's law approach*

In an effort to unravel the dynamics of unfair discrimination against women in formal and informal marital unions in their access to land for low income homeownership residential development by the Harare City Council (HCC), an examination of the lived realities of women was pivotal. My entry point in employing this research methodology was to acquaint myself with the position of women in law, policy and society. The reason being that I had to be guided by women's lived realities in as far as unfair discrimination against women in formal and informal marital relationships is concerned in City of Harare's (CoH) low income homeownership housing delivery strategies are concerned.

Therefore, armed with this methodology, I took women as my starting point as they are the most affected by the discrimination in low income homeownership housing development. Since this method is anchored in empirical data drawn from the situation obtaining on the ground and the actual practical experiences of women in understanding women's position in law and society, I interviewed women and men and listened to them as they narrated their experiences in accessing low income homeownership from the Harare City Council.

I based my research on this method because it requires that research needs to be an interactive process in which data, theory and lived realities arising from norms and perceptions are incessantly and consistently engaged with each other (Bentzon *et al.*, 1998). It became easy for me then to select the appropriate data from the data I had collected and interpret it.

After interacting with situations that involved unfair discrimination of women in formal and informal marital unions in accessing land for low income homeownership housing development in Harare's low income homeownership housing delivery approach, I settled for this methodology because it allowed me unpack very effectively the dynamics and manifestations of unfair discrimination against women in this situation and point towards probable interventions which would help to alleviate their plight.

In my first attempts to carry out this research, I intended to research into unfair discrimination against women in formal and informal conjugal and reproductive relationships in accessing low income homeownership housing services from the Harare City Council. I struggled to explain my research thrust to my respondents until I consulted my supervisor who advised me to reword my research topic and my other research assumptions in order to make my research intentions clearer. My initial reaction to the challenge I was facing was to abandon the research topic altogether and focus on other areas. The way I had worded my topic and formulation my assumptions was making it difficult for me to reach my respondents. Each time I got an opportunity to have an audience with some of them they lost interest quickly and became annoyed by research that claimed to be focusing on 'women in conjugal and reproductive relations with men'. They felt that the research was either ambiguous and/or mischievous.

My supervisor advised me to reword my topic and reword my assumptions hence I was able to focus the research on unfair discrimination against women in formal and informal marital relationships. With this advice, I was able to explain that with formal marital relationships, the focus was on those forms of marriages registered in terms of the Marriages Act (Chapter 5.11) and the Customary Marriages (Chapter 5.07). The informal marital union referred to those other marital unions not recognised by general law but which society recognised even if no bride price had been paid.

The adjustment above was made possible by the fact that once one employs a women's law approach, one ceases to be a captive of one's hypothesis. Flexibility is allowed for one to adjust assumptions that are challenged. In my case I was able to surmount the challenges that arose from the ambiguity imposed by my research assumptions and was able to collect data in relation to the situation obtaining on marital associations whether or not they are recognised by law. As shall be demonstrated in my discussion about my research findings, the homeownership housing delivery is based on the marital status of relationships between men and women. I found that these relationships underpin even law and policy on land tenure systems in the Harare City Council and they gave me clues about emerging issues in this area. Resorting to the women's law approach, I was able to benefit from exercising an open mind which encouraged me to explore issues that were not in the initial scheme of my research.

Guided by the women's law approach I managed to establish theories that explained the deep rooted nature of the causes of unfair discrimination against women in formal and informal marital relationships in accessing low income homeownership housing services. One such theory was that of the role played by other women themselves either in their official capacity as Council employees involved in low income homeownership housing delivery or as intended beneficiaries of the process. The women's law approach being an interactive process, I was able to probe further the contribution of other women in unfair discrimination against women in formal and informal marital relationships in accessing low income homeownership housing services from the Harare City Council. I realised that women play a pivotal role in disadvantaging other women and in other cases in disadvantaging themselves by aiding unfair discrimination against other women in low income home ownership housing development in Harare. Empirical information was therefore useful in revealing this and the possible human rights violations, assessing the obligations of the Harare City Council and in drawing up possible recommendations for state compliance.

2.1.2 Gender and sex approach

The approach assisted in establishing which of the sexes between male and female is most affected by unfair discrimination in Harare's low cost homeownership policy and practice. Gender and sex analysis is concerned with the participation of men and women in shaping their lives including their access to rights, power and control over resources (Coates, 1999). Gender thus gives a description of the relations between men and women. These relations are the ones that give rise to the power relations in land tenure systems and the preferences in the allocation of land for low income home ownership residential development.

In carrying out this research, I was interested in the gender relations between men and women within the family institution and how these relations confer rights over property between men and women. Gender relations prescribe social rules that become law at customary level and these rules inform institutional decisions and culture in the allocation of resources. According to Coates (1999), gender determines the appropriate behaviour and attitudes and entitlements of men and women based on a life time socialisation process that teaches people born female or male to learn to be girls and boys and to grow up to become men and women (Katsande, 2005). During the study I discovered that men and women's gender roles affect how they make decisions either in acquiring or allocating resources. I was particularly interested in analysing how the social reproductive relations mirror the administrative relations that

ultimately shape decisions as to whom and to whom not to allocate to residential land for low income homeownership housing development in Harare's low income housing development/underdevelopment.

In Harare, access to land for low income homeownership housing development by women is determined by their marital status which is perceived to have a bearing on their affordability and eligibility. Decisions that unfairly discriminate against women on the basis of their marital status in low income homeownership are influenced by the legal status of their marital relationship. I observed that it is assumed that women benefit through their husbands. In polygamous situations men have the potential of becoming multiple owners of property through their other wives who are permitted to seek residential land for homeownership separate from their husband and his first wife.

Using this analysis, it became clear that power relations between men and women in marital situations confer rights and entitlements on men and women regardless of the legal status of their marriage. These perceived entitlements in turn form the basis of decisions as to whom to allocate land for low income homeownership development to. In most cases women in formal relationships only become active in claiming rights over the property upon inheritance or when they are forced to do so by situations that threaten the loss of property to the relatives of their deceased husband.

The gender and sex methodology assisted me in realising that in spite of the *Shona* saying, *musha mukadzi* (meaning, 'A home belongs to a wife') which prevails in the domestic sphere, in the public arena house ownership issues remain largely the preserve of men. This is evidenced by the fact that the majority of its members of the land allocation committee are men and that the woman committee member actively supports allocations to women in formal marital relationships. This reflects an indication that whilst women revel in the false sense of ownership of their home, the actual owners with legal rights over the land and property are actually their male partners. This gender appreciation of the roles of men and women also reveals that it is considered the responsibility of men to look after a place for homeownership housing development. Where women do so, it is deemed to be deviant behaviour hence decisions are by and large prejudicial to her interests as shall be discussed later in detail.

The gender and sex analysis also revealed that even if women are formally married, they still go through a rigorous verification process to ascertain whether or not their husband has sanctioned their appearance before the interview panel.

The gender and sex analysis revealed that there is a need for positive policies that specifically address women's access to land for homeownership residential development, policies that acknowledge the roles played by women in building houses and all the other efforts that women in marital relationships put into the entire homeownership value chain. These policies must include practices at decision making and implementation levels.

The gender and sex analysis showed that women's participation in homeownership development policy and practice is of paramount importance in changing the City of Harare's administrative organisational culture that is responsible for unfairly discriminating against women in City of Harare's low income homeownership policy and practice.

Gender and sex analysis of social and economic relations between men and woman in Harare was used to bring understanding to the nature of unfair discrimination in accessing low cost homeownership in Harare.

2.1.3 The human rights approach

In order to challenge unfair discrimination against women in formal and informal marriages manifesting itself in their lack of access to low cost homeownership, the human rights approach assists in tackling the problem of unfair discrimination from a holistic perspective. The research is about unfair discrimination against women in formal and informal marriages in low income homeownership housing provision. Non-discrimination housing provision by state actors forms the core of a human rights developmental approach towards a human rights city. To make a case for this research approach, I looked at the problem of unfair discrimination against women in formal and informal marital relationships from a holistic human rights perspective.

The approach also demands an analysis of the corresponding obligations of the government in line with internationally determined standards. The approach also enables the research to view individuals as holders of basic rights at the core of the process of low income urban homeownership housing development management. This focus directed the research on

issues of affordability, accessibility and availability of low cost home ownership by women in informal and informal marital relationships.

The relevance of a wide array of human rights in Harare's low income homeownership housing development process was emphasised in this research. I focused on issues to do with accessibility, availability and affordability of rights to land, housing and property by women in formal and informal marital relationships from a human rights point of view. Within Harare, I started by tracing the evolution of the discriminatory nature in low income homeownership housing delivery. Documentary analysis revealed that the unfair discrimination against women in formal and informal marital relationships is as old as society itself as it is rooted in perceptions about the position of women in society. I then proceeded to analyse how successive governments have excluded women from homeownership housing delivery. The study revealed that the discrimination of woman in formal and informal marital relationships is galvanised by the political economy of low income homeownership housing delivery.

Thus I found the human rights methodology persuasive in that the contemporary development process attaches greater importance to the individual human right entitlements as the starting point of achieving a human rights city, classified in terms of a world class city on account of its compliance with the basic tenets of the world's most liveable cities. This approach was instrumental in helping me inform people of their rights and entitlements and that they are therefore at the core of the urban low income homeownership housing development management process as opposed to being passive recipients of the development process.

The approach assisted in sensitising respondents on the importance of putting people first in all low income homeownership housing developmental processes. My assumption on possible interventions that were once implemented helped a lot as the study revealed that in 1999 demonstrations were held in response to the Supreme Court judgment of *Magaya v Magaya* (Unreported Judgment No. SC-210-98) that sought to prevent women from inheriting the owner occupied homes.

Using this rights based approach enabled me to realise that human rights issues have direct and indirect significant implications for a wide array of actors directly seized with the responsibility of availing land, housing and property rights. Governments as primary duty

bearers through their sub-national players are seized with the responsibility of taking concrete steps to protect, fulfil and respect the right of individuals of access to property. Furthermore, human rights also carry legal obligations to protect, promote and fulfil the rights of non-discrimination in access to land, housing and property by all citizens. Human rights further create obligations for duty bearers to act and right holders to exercise the rights to which they are entitled (Goonsekere, 2000).

To assess the extent to which the rights to land, housing and property are being infringed upon through unfair discrimination in Harare, I relied on General Comment No. 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Arising from the dictates of the human rights approach, I analysed the existing legislation and policy as well as human rights instruments in an effort to make a case for the unfair discrimination against woman in formal and informal marriages in the City of Harare's low income homeownership housing delivery.

2.1.4 Influence of actors and structures

Since public service homeownership housing delivery in Harare is a governance issue involving systems and structures in low income homeownership housing delivery, actors like the Harare City Council, Government Ministries and Departments as well as political parties and how they influence structures in the provision of home ownership were key to my research. This was particularly so because one of my assumptions was that the City of Harare's administrative culture inherently discriminates against women in formal and informal marital unions in low income owner occupied housing delivery. The reasoning behind this assumption is that homeownership housing delivery is purely a local governance issue. As such it demands that public funds be set aside for the provision of the right as well as measures to ensure that there is equality in accessing the right between men and women regardless of race, colour class, marital status, religion, creed, disability.

In establishing the facts on the ground, I analysed how actors like the Harare City Council, Government Ministries and Departments, homeownership associations, financial players as well as political parties influence and manipulate structures in the unfair discrimination against women in formal and informal marital unions in the provision of owner occupied accommodation. Based on how these actors influence each other, I came to the conclusion

that discrimination against woman on the basis of the legal status of their marital relationship is a direct product of a warped organisational culture and bureaucratic inefficiency.

2.2 Research design: Delineation of the study area

The research was carried out in Budiro high density suburb on the outskirts of Zimbabwe’s capital city, Harare. The suburb was established in 1987 and its development was accelerated under the fast track land reform programme. The suburb also experienced the experimentation and implementation of all the low-income home ownership housing delivery strategies currently employed by the City of Harare in its housing delivery mandate. This application of all the strategies being used to avail low income homeownership motivated me to select Budiro because it offers an opportunity to holistically interrogate all the strategies used in low income homeownership housing delivery and assess the extent to which they discriminate against women in formal and informal marital unions.

2.3 Data collection methods

2.3.1 In-depth interviews

I conducted in-depth interviews with respondents from the organisations reflected in Table 1.

Table 1: Showing respondents and their organizations with whom in-depth interviews were conducted

Interviewee Organization	Female	Male	Total
Ministry of Local Government, Public Works and National Housing (MLGPWNH)	1	1	2
City of Harare officials	9	3	12
Dialogue on Shelter	1	1	2
Confederation of Cooperatives Services Apex (COCSA)	1	2	3
Gender Links	1	1	2
Zimbabwe Women Resource And Network Center	1	0	1
Council Committees on Housing	0	2	2
TOTAL	14	10	24

2.3.2 Individual interviews

Table 2 reflects details of the respondents with whom I conducted individual interviews. They comprised a mixture of men and women, young and old. These interview respondents were selected at random, mostly at their homes, at Council offices as well as at housing pay scheme offices. I asked the respondents on their opinions and experiences in as far as access to homeownership for low income earners is concerned. I started the interviews by briefly stating the objectives of the study.

Table 2: Showing details of respondents seeking access to low-income homeownership with whom individual interviews were conducted

Interviewees	Female	Male	Total
Budiriro 1	8	2	10
Budiriro 2	8	2	10
Budiriro 3	8	2	10
Budiriro 4	8	2	10
Budiriro 5A	8	2	10
Budiriro 5A	8	2	10
Budiriro Extension	8	2	10
TOTAL	56	14	70

For guidance, I had to split the interview guide into five sections as follows:

- (1) Personal details. This section comprised inquiries as to the respondent's age, sex, length of time in the community, occupation and marital status and the legal status of the marriage for purposes of gender and sex analysis. The information was necessary to obtain an insight into which of the two sexes is mostly discriminated against in access to land and homeownership development and the implications of the disparate impact on the particular sex group.
- (2) Equal/non-discriminatory access to housing, land and property rights.
- (3) Direct, indirect and structural discrimination.
- (4) Equal participation and empowerment.
- (5) Due process and the rule of law.

After each interview the respondents were asked if they wanted to add anything further to their responses. The question was put at the end of the interview strategically to avoid disrupting the flow of responses to the standard questions. It is at this point that the issue of politics and exploitation of unsuspecting women by land barons became topical. The political dimension was not initially part of my assumptions but it ended up becoming topical and hence it is an emerging issue. I found the interviews to be useful because I could get clarity on certain ambiguous answers and I could also make necessary follow-ups.

2.3.3 Focus group discussions

Focus group discussions were held at Council offices and housing pay scheme offices. A total of three focus group discussions were held. The discussions were structured in the same manner as the interviews. The focus group discussions presented an advantage in which more depth was covered compared to interviews and opinions were tested and interrogated. From the discussions, I noticed that male and female participants had opposing views. Men expressed the view that there was no discrimination against women either as formally or informally married women. According to female participants, discrimination was rampant and mostly indirect as the selection criterion inadvertently excludes women. The debates became too heated and at some point became emotional such that I almost failed to control the proceedings. However, this method was useful in that it provided an opportunity to unlock the value and depth of the local understanding of issues relating to the rights and entitlements to non-discrimination and equality in access to homeownership.

2.3.4 Observations

These observations covered how allocations were done. I made these observations from an insider's point of view since I am employed in the City's Housing Department under the Housing Management Division's Research and Housing Development Section. I made observations during the selection interview process and during the proceedings of allocation committees. Observations covered how men and female respondents reacted during the interview process and how officials treat potential male and female beneficiaries. I also observed how male and female applicants are treated at the committee stage of the allocation process.

This technique for data collection was selected because it gave me the opportunity to obtain information directly rather than through reports compiled by others thereby making it more

reliable. Furthermore, observation as a data collection method has strength in that it paves the way for triangulation in verifying for accuracy of data. Of paramount importance is the fact that I was able to verify the accuracy of the data I collected because data collected from interviews and focus group discussions had the potential of biases and exaggerations particularly considering that some of the respondents knew me in my official capacity as a housing development officer responsible for managing housing pay schemes in the City of Harare.

2.3.5 Desk top review of policy and content analysis

I made further efforts to engage with the housing policy framework for the Harare City Council and the National Housing Policy (2012). This process involved looking at provisions relating to the entitlements of women in formal and informal marital unions in order to determine their implications from a non-discrimination point of view. This methodological approach was based on the submissions by Moyo (2014) who argued that policy research is a process of analyzing fundamental social problems in order to proffer recommendations for the alleviation of such problems to policy makers. Such an approach commences with the identification of a social problem which in this case is the unfair discrimination of woman in formal and informal marital relationships in City of Harare's low income homeownership policy and practice.

My analysis was based on a Basic Needs Approach. Under this specific policy provisions in the Harare City Council's housing policy were analyzed with the intention of measuring their strengths and weaknesses against non-discrimination provisions in relevant human rights instruments and practices in the socio-legal discourse.

The low income benchmark was based on the minimum wage policy which is generally set at the Poverty Datum Line. I relied on the theoretical underpinnings of The Basic Needs Approach. Upon using the Basic Needs Approach, I was able to interrogate policy papers and documents based on this approach's emphasis that policy and legal provisions must be able to fulfil minimum needs in homeownership policy and practice.

'Basic needs' are said to have been fulfilled when the needs of all sections of the population are satisfied (Moyo, 2014). In homeownership policy and practice, men tend to have an

unfair advantage over women particularly in accessing land, property and housing rights as a result of marital arrangements as shall be discussed later.

CHAPTER 3

3.0 LITERATURE REVIEW - ANALYSIS OF PRACTICE, LEGISLATIVE, POLICY AND CONSTITUTIONAL FRAMEWORKS - COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS FRAMEWORK

3.1 Introduction

A characteristic feature of the process of acquisition of land, housing and property rights under neo-liberal urban governance is the fragmentation of property and land law and discriminatory practices by authorities. This is particularly so in post independent Zimbabwe in which property law and property relations were underpinned by institutionalised discrimination based on gender and race based on the historical legacy of a racialized and patriarchal urban governance framework.

Initially overt unfair discrimination in the allocation of land for low income homeownership development facilitated a central strategy of the colonial neo-liberal urban governance, that of racialized separate development. Different categories of races in different social classes were afforded different and unequal rights on the basis of race, gender, income levels, marital statuses and nationality among other grounds for unfair discrimination by local authorities who unilaterally decided on what strategies to employ and which beneficiaries to include in low income homeownership housing delivery.

The above incites authorities to replicate family power relations that are based on the domination of husbands over their wives and which place wives on an unequal footing with their husbands. It escalates competition between women for the attention of men as a conduit through whom to access and control land and property rights. This competition forms the bias of patriarchal exploitation and rule of women in both formal and informal marital relationships.

This situation obtains despite the fact that the right to equality and freedom from unfair discrimination in the access to land, housing and property rights is embedded as a basic international, regional and national human right under various human rights instruments.

3.2 Defining discrimination

The legal definition of discrimination against women is provided in article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as follows:

‘For the purposes of the present Convention, the term ‘discrimination against women’ shall mean 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.’

Discrimination exists broadly in two forms, direct and indirect discrimination. Statute law in Zimbabwe provides for the right of equality and protection from both forms of discrimination in the Constitution and other various statute laws. Section 56 of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution) provides for protection from unfair discrimination on several grounds in the political, economic and social arena. Section 56(3) provides for the most comprehensive list of grounds of discrimination. It reads:

‘Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock.’

Section 56(4) is specific to both forms of discrimination that is direct and indirect discrimination. It provides that a person is treated in a discriminatory manner for the purpose of subsection 3, if such persons:

- ‘(a) are subjected directly or indirectly to a condition, restriction or disability to which other people are not subjected;
- (b) other people are accorded directly or indirectly a privilege or advantage which they are not accorded.’

Direct discrimination is also referred to as ‘disparate treatment’ in American jurisprudence. In *Mike Campbell (Pvt) Ltd & v Republic of Zimbabwe* 2008 (2) ZLR 343 direct discrimination occurs:

‘When a difference in treatment relies directly and explicitly on distinctions, based exclusively on sex (or any other prohibited ground) which cannot be justified objectively.’

This case shows that direct discrimination is open differentiation and distinction between men and women, thereby disadvantaging or privileging some based on one or more prohibited grounds. In the American case of *Teamsters v United States* 431 US 324 (1977) ‘disparate discrimination is the most easily understood type of discrimination’. The intention or purpose is irrelevant.

Direct discrimination is based on the Aristotelian philosophical concept of equality in which like is to be treated alike since it is assumed that all persons are equal bearers of rights. Social and economic differences between groups are not taken into consideration.

Indirect discrimination is also called substantive or *de facto* discrimination. In legal parlance, indirect discrimination was popularized in American jurisprudence after the removal of the racist laws of the Jim Crow policies (Gwisai, 2016). After the abolition of direct discrimination, the concept of indirect discrimination emerged to address situations where formal equality existed but in a context of a glaring absence of substantive equality. In the *Mike Campbell (Pvt) Ltd & v Republic of Zimbabwe* 2008 (2) ZLR 343 case cited above it was stated that:

‘Formal equality assumes that equality is achieved if a law or policy treats everyone equal in a neutral manner. Substantive equality is concerned in addition with the effects of laws, policies and practices in order to ensure that they do not discriminate against any individual or group of individuals.’

The above definition agrees therefore that indirect discrimination deals with the discriminatory effects of a law, policy or practice that, at face value, appears to be neutral. Thus indirect discrimination occurs when an authority applies a practice or condition that on the face of it appears to be neutral and it applies uniformly to everybody but in practice has the effect of disproportionately impacting on members of a disadvantaged group in unjustifiable circumstances.

In *President of South Africa v Hugo* 1997 (4) SA I (CC) it was held that unlike measures in direct discrimination where the intention is to achieve equality by treating everyone in the

same way, indirect discrimination recognizes that the equal treatment of unequal people may result in unequal results of unfair discrimination. It was held:

‘We need therefore to develop a concept of unfair discrimination which recognizes that, although a society which affords each human being equal treatment on the basis of equal worth and freedom is our goal, we cannot achieve that goal by insisting upon identical treatment in all circumstances before that goal is achieved.’

According to Dupper (2004:17), ‘substantive equality is sensitive to entrenched, structural inequality, focusing on the results or effects of a particular rule rather than the form it takes’. In this regard laws, policies and measures ought to be interpreted from a purposive point of view in which the realization of substantive justice and the elimination of entrenched discriminatory practices ought to be realized. In *S v Sithole* 1996 (2) ZLR 575 (H), Devitte J said:

‘The present Constitution...is a radical departure from an authoritarian past in which scant regard was paid to the rights of the individual and the role of the courts as guardians of the rights of the individual was marginalized. Our constitutional history enlightens us to the values on which the present Constitution is premised - but more important, it should alert us to the dangers of retaining the authoritarian traditions of the past.’

Gwisai (2016) argues that for people who have suffered considerable unfair discrimination in the past, it is insufficient for the law to eliminate the offending statutory provisions which caused it because unfair discrimination has stubborn ongoing negative consequences which are not immediately halted by the elimination of its causes. According to Gwisai (2016), if these consequences are not immediately eliminated, they have the potential to continue for a substantial period of time or even indefinitely. According to him, just as in the case of justice, equality delayed is equality denied.

Applied to the provision of low income homeownership, the above argument demands that a broad-based, inclusive and robust concept of and approaches to unfair discrimination need to be developed so that reasonable measures to redress past discrimination can be devised. Such an approach must recognize that ‘classification which is unfair in one context may not necessarily be unfair in a different context’ as was said in the case of *President of South Africa v Hugo* 1997 (4) SA 1 (CC).

3.3 International human rights law on equality and non-discriminatory access to homeownership

Various international human rights instruments have been developed over the years to provide for the legal framework of protection against non-discrimination in women's access to land, housing and property rights. The most specific of all the instruments is CEDAW. This Convention calls on States Parties to end discrimination against women in laws, policies, and practices, including through the adoption of temporary special measures. The Convention is the only international treaty specifically focused on preventing discrimination against women in a wide array of civil and political rights, economic, social and cultural dimensions of discrimination. One of CEDAW's greatest and fatal weaknesses is that it does not have quantitative indicators and as a result state parties often end up defining articles very narrowly. The other norms on equality and non-discrimination in access to land, housing and property rights are located in the United Nations General Recommendations. These General Comments have also become an important tool in interpreting CEDAW's application at national level.

CEDAW obligates States Parties to pursue both *de jure* and *de facto* equality (articles 2, 3, 4 and 5). The import of these articles when applied to urban homeownership is that State parties need to address challenges related to inequalities in urban land governance by opening themselves to amending legislative frameworks, and by proactively stimulating social change through positive discrimination. This entails targeting resources and developing specific policies that promote and protect women's land rights and gender justice in urban land governance.

The United Nations Committee on the Elimination of Discrimination against Women specifically recognizes that:

‘the right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.’

Women's rights to homeownership are explicitly and implicitly protected by various provisions in various international human rights standards and instruments. For example, article 17 of the Universal Declaration of Human Rights (UDHR) espouses the principle of

non-discrimination based on sex, in the enjoyment to property, food, and housing. Additional provisions and standards are identified below.

According to article 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states are called upon to ‘undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant,’ and prohibits discrimination based on sex. Similarly, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) also states that:

‘women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so.’

Article 3 of the International Covenant on Civil and Political Rights (ICCPR) also guarantees equality between women and men, and prohibits discrimination based on sex in article 2. Furthermore, article 26 of the ICCPR provides for equality before the law, and can thus be extended to apply to defending, protecting and safeguarding women’s right to non-discrimination and equality in economic and social rights in addition to covering civil and political rights.

The United Nations Human Rights Committee has further underscored that ‘during marriage, the spouses should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship’. This Committee specifically notes that women have equal rights to marital property and inheritance.

In General Comment No. 28 on the equality of right between men and women, the United Nations Human Rights Committee states that:

‘the right of everyone ... to be recognized everywhere as a person before the law is particularly pertinent for women, who often see it curtailed by reason of sex or marital status. This right implies that the capacity of women to own property, to enter into a contract, or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given together with the property of the deceased husband to his family.’

The General Comment also states that:

‘States must ensure that the matrimonial regime contains equal rights and obligations for both spouses, with regard to ... the ownership or administration of property, whether common property or property in the sole ownership of either spouse. States should review their legislation to ensure that married women have equal rights in regard to the ownership and administration of such property, where necessary. ... Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.’

3.4 Obtaining access to land and property by women in formal and informal marriages

The access to land with secure tenure by women in formal and informal marital relationships is influenced by the legal framework, social and familial relations and the opportunities available through various channels of land administration (Moser, 1999). The main sources of law that govern their access to and control over urban land and property include international treaties and national constitutions, land and property law, and family and personal laws.

Land law provides for the allocation, possession and transfer of property rights. Family law is concerned with marital relationships and inheritance, which are critical channels through which individuals obtain access to property. Sources of family law are pluralistic in nature. These laws may be driven by statute, customary law (which can be codified or not) and religious law. Legal pluralism and the complex and evolving nature of law frequently however result in ambiguities and inconsistencies between these different sources of law (Rakodi, 2014). Hence women in formal and informal marriages are more often than not subjected to unfair discrimination in subtle ways because the implementation and enforcement of laws is determined by political and economic interests and is inextricably linked to social norms and relationships existing in society.

3.5 The Zimbabwean Constitutional framework on access to low income home ownership

The Constitution of Zimbabwe provides for wide ranging provisions of equality and non-discrimination in the realisation rights to land, property and adequate housing by women in formal and informal marital relationships. Section 56 provides for their principal protection and guarantee against non-discrimination and equality in access to housing, land and property rights. The responsibility and obligation for the provision of the rights is placed upon every

person, natural and juristic including the state at all levels of government according to section 2(2) of the Constitution.

Access to land, housing and property rights is also anchored in the full participation and empowerment of women in formal and informal marital relationships. This is recognised by the Constitution of Zimbabwe which states, as part of Zimbabwe's national objectives contained in section 17(1), that the state must promote full gender balance in Zimbabwean society by promoting the full participation of women in all shares of the society on the basis of full equality with men. It must also take positive measures to rectify gender discrimination and imbalances resulting from past practices and policies (section 17(2)).

The Constitution also places an obligation on the state to ensure that there is equality of rights and obligations of spouses during marriage and upon its dissolution under section 26(c). However, this provision was placed in the national objectives. More compelling obligations are provided for in section 74 of the Constitution although they do not specifically address the right to housing.

The right to shelter is covered by section 28 where the state and all institutions and agencies of government at every level must take reasonable legislative and other measures, within the limits of the resources available to them, to enable every person to have access to adequate shelter. As is argued above, the Constitution shies away from providing a specific Constitutional guarantee to the right to housing in the Declaration of Rights which is the case with the South African Constitution which provides for the right to housing under section 26 of its Bill of Rights.

3.6 Housing and Building Act (Chap 22:07)

This Act is a key piece of legislation in the housing sphere and sets out the principles that underpin the realisation of housing rights. The Act however does not show any sensitivity towards vulnerable groups as it does not place a specific obligation on all spheres of government to prioritise the needs of the poor in housing development and to promote the housing needs of marginalized women and other groups disadvantaged by unfair discrimination. Instead the Act was enacted in order:

‘to provide for the establishment and control of funds related to housing and building; to define the purposes for which the moneys in each of the funds may be used; to authorize the Minister to make loans, give guarantees and other undertakings, acquire, let and dispose of immovable property, construct buildings and provide services, in certain circumstances and for certain purposes; to provide for an alternative procedure; to foreclosure in relation to certain loans in respect of which such guarantees have been given.’

Two funds set up under the Act are the National Housing Fund and Housing and Guarantee Fund which offered affordable loans in 1982. However, these two funds no longer function due to a lack of funding from the government.

3.7 Prevention of Discrimination Act (Chap 8:16)

Zimbabwe has specific legislation on the prevention of discrimination in the form of the Prevention of Discrimination Act (Chapter 8:16). The preamble to the Act indicates that the Act intends:

‘to prohibit discrimination on the ground of race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender and to provide a remedy for persons injured by such discrimination; to prohibit the promotion of such discrimination.’

Women in formal and informal marriages are protected by this Act in their attempts to acquire land, housing and property rights.

3.8 National Housing Policy (2012)

The major task of the post-independent government was to come up with specific policies and strategies to address and redress inequalities in the provision of housing (Moyo, 2014). The policy on homeownership was propelled to the level of an ideology as it was popularised to address issues arising from inequalities in housing provision in line with the human rights discourse. Equality and non-discrimination became issues in the development of the human rights movement and in the socio-legal discourse the two concepts have taken centre stage in the enjoyment and availing of socio economic rights to all citizens. Commitment to equality and non-discrimination was expressed in the National Housing Policy.

The National Housing Policy sets out key policy principles that are informed by Zimbabwe’s pre- and post-independent experiences (GoZ) and aimed at operationalizing the Habitat

Agenda and related international best practices. In clause 3.3 of the National Housing Policy its eight key policy principles are set out. These are:

- ‘(1) Conformity with the national Constitution’s Bill of Rights, which is operationalized through the national goal of **guaranteeing decent and affordable shelter**. *This is also part of the Government of Zimbabwe’s commitment to implement the Habitat Agenda through recognizing the provision of housing as a basic human right and need.* Such a rights based approach to the development and management of housing will foster:
 - (a) Using housing as **‘a building block of the nation’**, which further fortifies the view of housing as a right but also in relation to the role it plays in catalysing and sustaining economic growth and social stability.
 - (b) Promoting a people-centred housing development and management framework. This will be based on active encouragement and facilitation of citizens’ initiatives by the state.
 - (c) Facilitating tailor-made housing solutions based on socio-economic and environmental conditions and enhancing protection of the ‘right to the city’. The National Housing Policy emphasizes application of alternatives-based elimination of slum conditions.
 - (d) Guaranteeing fiscal space for housing development.
 - (e) Building awareness and mobilizing communities to access relevant services.
 - (f) *Adopting zero tolerance to discrimination based on gender, race, religion and socio-economic status.*
- (2) A partnering and facilitating approach to housing development and management that leverages community and private sector initiatives. A ‘continuum of options’ will be deployed tapping into complementary market and non-market solutions. This will be pursued through:
 - (a) Strengthening the role of local authorities (decentralization).
 - (b) Facilitating civil society participation in housing development.

- (c) Encouraging increased private sector participation.
 - (d) Revising the operationalisation of relevant regulatory frameworks and the associated institutions.
 - (e) Coordinating investment facilitation (by the whole of Government) to ensure that housing benefits from and contributes to national economic growth.
 - (f) Continuously adjusting institutional structures, relations and building relevant capacities.
- (3) Economic empowerment and skills development through full participation in the housing development and management.
- (4) Removing land and finance delivery bottlenecks using diverse instruments in a transparent and accountable manner. This will entail:
- (a) Building systems of monitoring and evaluation frameworks that promote mutual accountability for results.
 - (b) *Promoting equitable access to human settlement services and resources.*
 - (c) Effective use of targeted instruments like subsidies.
- (5) Enhancing flexibility and choice during implementation of housing initiatives within the framework of inclusive cities. This will involve:
- (a) Improving spatial/physical planning codes and making them responsive.
 - (b) Aligning, among others, planning, housing and economic policies.
 - (c) Supporting more housing design and development models.
 - (d) Researching into and developing options around an increased range of permissible building materials and construction models.
 - (e) Increasing opportunities for state and non-state partnerships.

- (f) Upgrading informal settlements and undertaking inner city renewal initiatives.
 - (g) *Improving location of new settlements in socio-economic terms to build inclusive cities.*
- (6) Adherence to environmental codes in terms of human settlement development and management for both state and non-state programs.
- (7) Enhancing sustainable housing initiatives in relation to:
- (a) Financial instruments.
 - (b) Employment creation.
 - (c) Information, communication and technology.
 - (d) Supporting robust and diversified housing market.
 - (e) Adjustment of state institutional arrangements accordingly.
 - (f) Devising a comprehensive plan for addressing national housing challenges.
- (8) Responding to the unique needs of rural and urban housing development and management dynamics. Rural and urban communities have peculiar and common capabilities and requirements. The policy will optimize capacity to respond to challenges and seize opportunities.’ (Emphasis added)

Clause 3.4 provides:

‘The application of these principles will be within a ‘whole of Government framework’ complemented by strong sub-national engagement facilitated by local government authorities.’

The National Housing Policy summarises the post-independent housing policies in clause 2.2 as follows:

‘Box 2: Main post-1980 housing policies

- (1) Home ownership for the majority conversion of rental to homeownership.

- (2) Establishment of the National Housing Fund and Housing and Guarantee Fund to offer affordable loans.
- (3) Supporting cost effective and labour-intensive construction modes, e.g., building & material brigades and co-operatives.
- (4) Facilitating civil society and private sector participation in low-cost housing.
- (5) Rationalizing building codes.
- (6) Introducing rent control regulations.
- (7) Initiation of rural housing programs.
- (8) Working with waiting lists for targeting.
- (9) Upgrading pre-independence houses in old 'townships'.
- (10) Informal settlement upgrading (Epworth).
- (11) Direct provision of housing by government.
- (12) Mobilization of international support (World Bank, USAID).'

The legal and policy framework governing women's access to land, housing and property rights is heavily influenced by the ideological context within which the laws and policies were crafted. Neoliberalism became a central ideology with its emphasis on upholding human rights. Homeownership provision in Zimbabwe was thus heavily informed by the human rights discourse whose development coincided with the major political and economic developments in the world particularly the Cold War era in which two fundamental economic systems were dictating the architecture of governance in the world. These two economic systems are socialism and capitalism. The contest between these two economic systems ended with the collapse of socialism and the triumph of capitalism. The form of capitalism in governance has been that of a neo-liberal nature and has underpinned most governance frameworks in the developing world. Zimbabwe is no exception as neoliberalism has greatly influenced core local relations in urban governance. The national homeownership policy prescriptions and practices at the national level substantially shape the homeownership policy and practice in Harare since Zimbabwe is a unitary state.

Soon after independence, the government of Zimbabwe embraced a governance framework which is premised on decentralisation under which service delivery functions of government

are devolved to sub-national levels of government. Hence the Harare City Council as a local authority has been seized with the mandate to deliver affordable housing to its residents. In this regard the Harare City Council has followed the homeownership housing delivery framework in discharging its housing delivery mandate and is guided by the prevailing land, housing and property administrative law.

The immediate housing policy prescription of the government of Zimbabwe two years after independence in 1982 was that all urban people must have a secure place to live in a healthy environment and within reach of work opportunities and essential services. This was followed by the housing for all by the year 2000 mantra. Housing for all implied both affordability and protection against arbitrary eviction, whether by agents of the state, private owners or people's own relatives. Deviations from these policy pronouncements were however rampant in the course of urban governance in Harare resulting in cases of unfair discrimination against women in formal and informal marital unions. This was evidenced, e.g., in the 1982 evictions preceding the Commonwealth Heads of Government Meeting in Harare, dubbed 'cleaning the streets for the Queen', and Operation Restore Order (*Murambatsvina*) on 12 May 2005.

3.9 Conceptualising homeownership

Moser and Felton (2010) argue that in general, the most desirable bundle of property rights is considered to be 'ownership'. According to Rakodi (1999), ownership is associated with a number of benefits over and above use value. For women in formal and informal marital relationships, the possibility of owning their own houses cannot be realised without access to land, and according to (Rakodi, 1999), land cannot be considered separately from what can be built on it (real property). The living environment that the house provides also has value, and this is influenced by the infrastructure and services available. Hence land and houses are central to homeownership.

Under urban land governance, ownership is often associated with 'title', which provides for the ownership to be both long term (often in perpetuity) and to be guaranteed by government or any other agent of the State. In practice, while most women in formal and informal marital relationships may wish to own property, their ability to do so is highly constrained by policy and practice.

Moser (1989) argues that a good starting point for understanding the current distribution of resources for homeownership, especially for women in formal and informal marital relationships, is to consider land and property rights to be part of their lives and livelihood strategies. Such analysis needs to disaggregate between women in terms of their location within an urban area, their household situation (including their migration experience and status, marital arrangements and life course) and their other social characteristics such as ethnicity, religion (Rakodi, 2014).

According to Moser and Felton (2010), most studies on the role played by land and housing in the livelihood strategies of poor urban people focus on ‘households’ - many of which only distinguish between male and female-headed households, and relatively few focus on the life courses and views of women in formal and informal marriages in those households under homeownership housing development.

3.10 Secure tenure

The types of land and property rights that provide urban residents with security and the delivery channels through which they are achieved varies greatly from place to place. According to the UNHABITAT (2011a, xii):

‘A person or household can be said to have secure tenure when they are protected from involuntary removal from their land or residence, except in exceptional circumstances, and then only by means of a known and agreed legal procedure, which must itself be objective, equally applicable, contestable and independent.’

Security of tenure therefore is key to ensuring the full participation of women in formal and informal marriages. Where there is insecurity in tenure arrangements, violence usually follows under disguised forms prompted by various planning and development control laws. The net effect of such situations is that of a discriminatory homeownership practice against women in both formal and informal marital relationships in that their interest in land and property is not fully protected hence their enjoyment of housing, land and property rights is seriously impaired.

3.11 Unfair discrimination in land and property law

In most African countries unfair discrimination is an outcome of a combination of imported legal systems and the existing customary or religious systems. These have given rise to considerable disabilities in establishing coherent land law. This is due in part to the different interpretations of concepts of tenure and ownership that exist across the different legal systems in these countries, and the different rights that are conveyed by different forms of landholding. For example, family versus individual and absolute possession in perpetuity versus use rights (Hallward-Driemeier and Hasan, 2013).

A study by Hallward-Driemeier and Hasan (2013) revealed that half of all countries in Sub-Saharan Africa (mostly those with common law systems) formally recognise customary law, and one-third exempt it from the principle of non-discrimination in family and inheritance laws. The study further alleges that legislation related to property rights and registration may discriminate against poor people in general and women in particular, explicitly or in practice.

According to UN Women (20110), cited in Chant (2013), most worldwide reviews of the equality of land laws consider the national situation. Relying on returns from nearly 150 cities in the developing world, this review found that in 40 percent of cases there were some or considerable legal impediments to women owning land.

According to Moser and Felton (2010), the effectiveness of the land administration system also plays an important role in determining the extent to which women enjoy their rights to land. The statutory requirements for proof of ownership and the procedures for registration are arguably onerous in most instances. Even where women have equal rights to property, their ability to realise those rights depends on how well the overall land administration system is designed (Rakodi, 2014).

3.12 Family and personal law

Provisions specifying how ownership rights apply to men and women during or upon the dissolution of marriage and in the case of inheritance may be established in property law and/or in family law (Rakodi, 2014). In many countries, and for certain groups within countries, customary or religious laws may prevail with regard to marriage and inheritance practices.

Marital property regimes govern how rights to property are allocated between men and women during marriage and following divorce or the death of one of the spouses. Community of property implies joint registration and administration of all property during marriage and provides each spouse with protection against the unilateral sale or mortgaging of marital property by their partner. It also provides for the equal distribution of marital property upon widowhood, divorce, abandonment or separation.

In many countries statutory laws are gender neutral, and may contain specific provisions promoting women's rights and/or gender equality. However, this is not sufficient to ensure that women enjoy equal access to property rights, and the relationships in which they are embedded and the norms that govern social interaction are important in analysing the equality or lack of it in homeownership. This is particularly so considering that even where joint title is encouraged and practised, the property rights and security of those living in male-headed households are determined not only by the governing law but also by social custom. While attitudes and behaviour are likely to change more quickly in urban than rural areas, urban populations in rapidly urbanising countries contain a large proportion of first generation migrants, and many urban households maintain ties with their rural areas of origin, so the social mores and practices of conservative rural societies may continue to have a strong influence on urban social practices.

3.13 Family and social relationships

In many parts of the world social disapprobation of women who remain unmarried, combined with economic disadvantage, disables many women from establishing independent households and, if they do, constrains their ability to afford land for homeownership housing development. As shall be discussed later, although women's financial and labour contributions are key to land and house purchase and construction, deep-seated attitudes and practices towards marital relationships and inheritance normally culminate in women losing their security following partnership breakdowns or bereavement, even in situations where statutory law is considerably egalitarian.

Family relationships and attitudes towards marriage and gender roles interact in complex ways with laws to influence men's and women's access to land and housing, their control over property, and their entitlement to inherit (Varley, 2006). Varley notes that the preference

for sons to daughters as heirs and for registering property documents in a husband's name largely hinge on the belief that it is the preserve of men to work and to house their families (Varley, 2010). Men's obligation to provide for their families legitimizes their assumption of ownership. Varley (2010: 91) elaborates that research suggests that 'many women do not assert their rights to property for fear of being seen as less than fully committed to the relationship'. According to Varley (2010), during the subsistence of the marriage, women can fulfil gendered expectations of their roles in the family without attempting to assert their rights, and it is not until the relationship ends in separation, divorce, or death that the right becomes relevant.

From the above, it is clear that family and social relationships are gendered, yet laws and regulations, administrative structures and processes, and arrangements for representation and decision-making often do not explicitly consider gender. Even when they do, and particularly if assumptions about gender relationships are implicit, the practices often reflect established social norms and arrangements. This is usually contrary to contemporary ideas and laws on and about gender equality as may be provided for, for example, in the international conventions to which most governments may have committed themselves.

CHAPTER 4

4.0. INSTITUTIONAL FRAMEWORK GOVERNING LAND ALLOCATION FOR LOW INCOME HOME OWNERSHIP HOUSING DELIVERY

4.1 The trajectory of low income home ownership housing delivery

As stated earlier, this study partly benefited from desk research in analyzing policy documents. However, an empirical study was also undertaken to support secondary data. All the secondary data that I accessed through desk research was stimulated by the primary data that I gathered first. Reference was made to this information by my key informants.

I found out that women's access to low income home ownership is informed by the historical, social and economic context within which women seek to access housing. Discriminatory laws, policies and practices have limited women's access to housing and other socio-economic rights. Such laws, policies and practices have disproportionately affected women in formal and informal marital relationships. These enduring laws, policies and practices have enduring historical, economic and social trajectories.

4.2 Historical context of discrimination in low income home ownership in Harare

The historical context of discrimination in low income home ownership in Harare is founded on the legacy of colonialism in homeownership. Colonial laws and policies restricted black urbanisation, particularly African urbanisation. These laws disproportionately affected women's access to housing (Nhekairo, 2012). Explicit laws and policies targeted to control the mobility of African women were enacted during the formative years of colonisation. These statutes made women dependent on their male partners or fathers for their right to access and stay in urban areas. In addition to explicit discriminatory legislation and policies, officials were conferred with vast discretionary powers which were often exercised in an arbitrary manner with negative consequences for women. The overall result was that many women were denied property, land and housing rights since they were not entitled to access urban areas in the first place. In cases where they have since been able to find housing, they have largely been relegated to the periphery of economic centres, and they have been exposed to poor quality housing.

4.3 Economic context of discrimination in low income homeownership in Harare

Women's economic realities have implications for their right to access housing. African women, as a demographic grouping, face higher levels of unemployment and earn less when employed due to their child caring roles and other related domestic responsibilities prescribed by gender relations. According to the Government of Zimbabwe (1996), there is a significant disparity in incomes between men and women with males earning an average 33% more than females. The need to undertake family care work prevents many women from looking after their children and taking up paid jobs due to interrupted work patterns. The interrupted work patterns also negatively impact mobility and earnings in the workplace and ultimately they also impact women's access to credit and their ability to afford housing.

The majority of the women in Harare work in the informal sector. The informal sector accounts for as much as 90% of all employment in Zimbabwe. This is because most people have resorted to self-employment having taken advantage of the ease with which the informal sector may be entered. Another crucial fact to note is that average urban incomes are more than double those of the rural areas and this has driven rural to urban migration. This coupled with the decline in agricultural production in rural areas has accelerated the rural push and urban pull factor for most women who flock to the urban areas in search of economic opportunities (GoZ, 1996).

4.4 Social context of discrimination in low income homeownership in Harare

The social context within which women seek access to housing is informed by factors such as patriarchy, customary and religious laws and practices, domestic violence and HIV/AIDS. In most societies, including Zimbabwe, patriarchal norms and values determine gender relations. These norms have serious consequences for women's access to land, property and housing rights. For instance, the research established that most male partners register homes in their own names thereby forcing women to forge and remain in relationships to meet their housing needs. Further it was clear that the homeownership housing policy and practice often favours couples in marriages with a formal legal status. Single female-headed households are frequently discriminated against in housing practices, as they do not fit the traditional concept of a family.

4.5 City of Harare's Low Income Homeownership Policy and Practice

The preamble to the Harare City Council's housing policy states:

'Harare must be a resilient, liveable and sustainable city, as prescribed by Sustainable Development Goal (SDG) number 11 which states, *inter alia*, that cities and human settlements must be made inclusive, safe, resilient and sustainable by 2030.'

A look at the housing policy document of the City of Harare tells a story worth a thousand words. The picture on the front cover of the policy document tells it all in that it clearly depicts that housing development is men's business. For example, one of the men is not wearing protective clothing to match his tools of trade. This is a symbolic warning that the contents of the policy the cover picture seeks to promote may also reflect a lack of concern for the task at hand.

The City of Harare's home ownership policy and practice is claimed to be predicated on the need to provide residential accommodation in an efficient, equitable and transparent manner. In doing so the practice on homeownership is based on four homeownership delivery strategies as outlined in clause 10 of the City's housing policy document. These are as follows:

- (i) Allocation of land to individuals.
- (ii) Employer assisted housing schemes.
- (iii) Private public partnerships (PPPs)
- (iv) Housing pay schemes

Three of the strategies need to be explained. They are employer assisted schemes, public private partnerships and housing pay schemes. *Employer assisted housing pay schemes* are employer led or driven. Employers mobilize funding for the requisite infrastructure under a stop order arrangement with the beneficiary. Under the *public private partnerships (PPPs)* strategy, the Central Government, private companies, donors and land developers partner with the Harare City Council to provide housing. In such arrangements, the City of Harare provides land, technical skills and expertise as equity, whilst the partner provides financial equity. *Housing pay schemes* are organized in the same way as housing cooperatives.

Members are drawn from the housing waiting list and these must be financially ready and willing to participate in this arrangement. They are allocated unserviced or partially serviced land and are organized into a community based organization called a housing pay scheme where they mobilize their resources to pay for the infrastructural development services before they can construct houses. Housing pay schemes are modelled around the delivery model of public housing programs. Historically public programmes to meet the housing needs of the urban poor have traditionally focused on subdividing publicly-owned land into serviced plots for ‘self-help’ house construction or the construction of complete housing units.

4.6 Regularizations

The City of Harare assumed a deliberate policy of regularising the illegal occupation of Council land as another yet temporary measure for providing low income homeownership housing delivery. Regularisation involves the formal legalisation of an area and registration of ownership typically to an individual on condition that they contribute fully towards the provision of both onsite and offsite infrastructural development services as well as the minimum super-structural development.

Regularisation is targeted at improving tenure security and access to formal credit and increasing investment in house improvements and/or infrastructure and in the economic status of poor households. In Harare, claims to land are complex since land is potentially valuable and there are multiple competing interests to the extent that regularisation is complex and takes years. Regularisation is easier where the original squatting/invasion had political backing or was politically tolerated.

The housing policy has a progressive provision that speaks of the Council’s intention to lean heavily on the economic blue print of ZIMASSERT and the Sustainable Development Goals (SDGs) of 2016. Prominent and relevant to this research is SDG No. 11 on sustainable cities and communities that are inclusive of settlements punctuated among other attributes by the desire to:

- (a) access to adequate, safe and affordable housing and basic services, and upgrading of slums; and

- (b) enhance inclusive urbanization and capacities for participatory, integrated and sustainable human settlements planning and management.

SDG No. 10 whose objective is to promote the reduction of inequalities in housing provision also informs the objective of this housing policy which has as its target:

‘the bottom 40% of the population for income growth and social housing and to promote social, economic, political and demographic inclusion of all.’

However, the policy contains some surprising glaring omissions. When it comes to the specific problems to be addressed, clause 4 of the policy omits the problem of unfair discrimination against women. Clause 5, which deals with the objectives of the policy, omits to mention the eradication of discrimination against women. Clause 7 which names the strategic partners of the City in its homeownership housing delivery mandate fails to specifically include the Ministry Responsible for Gender and Women’s Empowerment and instead only refers to ‘Central Government and (all other government departments).’

The housing policy emphasizes some grand aspirations under clause 11.1 which details its guidelines. These include the compulsory obligations for s providing solar geysers and planting trees on new residential stands among a host of other environmentally friendly terms. These provisions though noble, give the impression that when the policy was being crafted, environmental issues were given priority. There is no attempt in the policy guidelines to combat discrimination against women in the policy and practice on low income homeownership. Ignoring this important issue, clause 11.1.10 says:

‘In line with Council by-laws, council shall endeavour to ensure compliance with peaceful and environmentally friendly practices on anti-litter, pollution control and other nuisances.’

The allocation process is subject to conditions outlined in clause 13. Under this clause the allocation appears neutral in terms of its non-discrimination intention. It simply says for one to qualify for allocation, one has to be a first time home seeker aged 18 years and above, must be registered on the housing waiting list and must not own properties in areas covered by the Harare Combination Master Plan, i.e., in Harare, Chitungwiza, Norton, Ruwa and Epworth. Clause 13.2.6 however makes interesting reading. It says:

‘Where an applicant is married under customary law and the marriage becomes polygamous, the subsequent wife(ves) shall be allowed to join the housing waiting list independently.’

Another interesting clause when one considers the disparate impact of the housing policy on women in formal and informal marriages is on the criterion to be followed when allocating land for homeownership. Clause 14.6 says:

‘In all housing schemes, Council shall ensure 50%:50% (fifty-fifty) percent quota system for female and male allocation.’

Clause 14.7 goes on to articulate the criterion on ownership of property by spouses. It says:

‘Co-ownership by spouses of a residential property purchased from City of Harare shall be effected by applicants signing their agreements of sale. Provided that the application meet the allocation criterion set by the Council.’

4.7 Provisions violating women’s entitlements in City of Harare’s low income home ownership policy

The above policy prescriptions and other initiatives represent some positive steps taken by the Harare City Council in housing delivery. However, several hurdles remain in setting up a framework for the elimination of unfair discrimination against women in formal and informal marital relationships in homeownership. For example, it has been noted that title deeds are often still not registered in women’s names. The absence of any comprehensive policy that results in adequate Council-provided shelters for women who seek to escape situations of domestic violence points to a housing programme that is not sufficiently equipped to deal with one of the most pressing crises experienced by women and that is the crisis of substantive equality.

CHAPTER 5

5.0 A TALE OF TWO CATEGORIES OF WOMEN IN ACCESSING LOW INCOME HOME OWNERSHIP IN HARARE

5.1 Introduction

This chapter focuses on the experiences of the women of Budiro in accessing low income homeownership. The chapter will show how women in formal and informal marital relationships are discriminated against in low income homeownership housing development. The emphasis of the findings is placed on the housing waiting list, affordability challenges, funding options for housing provision, planning policies, policy on civil society participation, the administrative structure in place to guarantee women's access to homeownership and awareness of legislative and international declarations on equality in access to housing.

5.2 Governance and shelter management

The research revealed that there are various roles and relationships between various stakeholders in shelter provision and the administration of the available resources. In an interview with an official from the Ministry of Local Government, Public Works and National Housing (MLGPWNH), it was revealed that since 1980, Government policy on shelter provision and administration has been tenure focused meaning that every household was encouraged to own the residential property that they occupied. This was done through the adoption of the homeownership housing development management policy framework. According to this official, Central Government aims at achieving people oriented sustainable human settlement development. It was clear from the interview that based on this policy, local authorities are obliged to partner with the private sector, civil society, NGOs, civilian based organisations (CBOs), private households and the international community. These stakeholders are expected to unleash their vast untapped potential in the settlement management process.

Another official from the MLGPWNH revealed that despite local authorities being responsible for land and housing management in areas within their jurisdiction, Central Government arms have not fully relinquished some housing delivery tasks. This situation has tended to create bottlenecks in the delivery of land for low income homeownership housing development. This revelation was corroborated by a letter written to the local authority

advising that the Minister of Local Government, Rural and Urban Development was invoking section 314 of the Urban Councils Act (Chapter 29:15) to rescind resolutions of allocations by Council purportedly on the grounds of public interest.

5.3 Residual impact of the colonial policy on low income homeownership policy

One of the assumptions of the research focused on the discriminatory trajectory of the homeownership housing practice by the City of Harare. The assumption claimed that discrimination based on marital relationships is not peculiar to the post-colonial urban governance in Harare. According to the assumption, the colonial homeownership housing provision did not take women's housing, land and property rights into consideration.

From my research it emerged that during the pre-independence era, the urban poor remained largely excluded from the formal land allocation mechanisms. Women experienced greater discrimination due to their legal position as they were regarded as perpetual minors who could not enter into any contractual obligation without the consent of their husbands. The research established that the situation has not improved in recent years as women have experienced increasing difficulties as a result of their marital status.

In establishing the colonial situation of women in homeownership in Harare, I looked at documented information on homeownership in the City of Harare, then called the City of Salisbury. The desk research revealed that the position of woman in access to homeownership has not improved. A perusal of the homeownership files kept at the Department of Housing and Social Development in the City of Harare revealed interesting findings. On 3 February 1975 an advert appeared in the Rhodesia Herald inviting applicants for homeownership. The advert was gender neutral. A Mrs. E Alexander from the Audio Visual Services in the then Ministry of Education responded to the advert as follows:

‘I have in my employ an African woman who needs a home. There is some difficulty in her purchasing land because of her single state. I wish to buy land for her if it is possible to do so.’

The letter was answered by a Mr. F.P.F Sutcliffe, the then Director of African Administration. His reply read as follows:

‘I regret the delay in replying your letter of the 26th of February 1975.

At the present time there is no means whereby a European can purchase a house in the African townships. Homeownership stands will be available in the near future but in view of the substantial demand, it is likely that a single female will only receive a low priority.

I regret that at this time, I am unable to offer any further assistance.

Yours faithfully
.....’

The colonial legacy of discrimination based on marital status is further evidenced by a letter of application for homeownership by one T. Tunduwani on 11 April 1975. His application made reference to the earnings of his wife who was a nursing sister. Another letter dated 20 February 1980 which was a reply to an application for homeownership corroborates the discrimination based on marital status. It reads:

‘When vacant stands become available, they are advertised in the local press and you should apply for them at that time. To qualify one must be married, working in Salisbury, have a minimum salary of \$201 per month and be in a position to apply for a building loan from a building society....’

The above conditions were set for men. Only men could qualify for the homeownership schemes. The waiting list is also an inheritance from the colonial urban administration. Then it was called the priority rating.

5.4 The situation of women in post-independent Zimbabwe

Having reviewed the situation of women in formal and informal marriages during colonialism, I sought to find out if the situation had improved since post-independence. I was guided by my assumption that the administrative culture in the Harare City Council inherently discriminates against women in formal and informal marriages. The assumption was a follow-up to the assumption on the exclusion of women in the colonial low income homeownership housing schemes.

Responses reflect that culturally women are believed to be inferior to men. This is manifest in the low participation levels of women not only in the housing development sector but in other sectors like universities, schools, employment and politics. This situation results in their

achieving a low economic status. According to the 2012 census, women contribute less than 39% to the cash economy and comprise less than 10% of the paid labour force. The majority are unpaid family workers. This reality is not acknowledged by the City of Harare's low income homeownership housing development.

Data collected showed that soon after the attainment of independence in April 1980, a number of measures to address the situation of women's shelter needs were introduced. These measures were generally targeted at improving the status of women in Zimbabwean society. Several efforts were made by the Government of Zimbabwe at instituting reforms to address the overall situation of women including their housing situation. A respondent from the Ministry of Local Government's gender desk said that in line with improving the situation of women in post independent Zimbabwe, a Ministry responsible for Community Development and Women's Affairs was established. The Ministry was later incorporated into the Ministry of National Affairs and Cooperatives. The respondent further indicated that the efforts to uplift the status of women were later captured in the Transitional National Development Plan in 1982. The Transitional National Development Plan coincided with the adoption of the homeownership housing policy. The major thrust of the Transitional National Development Plan was the government's commitment to ensuring the elimination of all forms of discrimination including that against women.

The respondent further highlighted that the dependent status of women was also scrapped from the statute books as a result of the enactment of the Legal Age of Majority Act in 1982. The research further revealed that 1982 was an important year for policy prescriptions on the elimination of discrimination against women with the government welcoming the establishment and development of women's organizations and working groups and the participation of women on committees formulating government policy, for example, the Subcommittee on the Homeless.

In establishing the overall situation of women in post independent Zimbabwe, my intention was to establish the context within which Harare's post independent administrative culture for homeownership housing delivery was shaped. I first had to rely on some observations I made as an insider and which I mentioned earlier.

Prior to embarking on this study, I took time to observe the situation of women home seekers who sought residential land for high, medium and low density homeownership residential development from the City of Harare. Women seeking homeownership in medium and low density areas seemed to be presented with little challenge as the allocation is based primarily on one's financial status. I established that those who had the means to purchase had an advantage in housing crisis situations, even over men. The chances are about equal for both men and women in accessing medium and low density homeownership. I observed that challenges arise in the high density category where housing pay schemes, employer assisted pay schemes and partnerships are used as strategies to deliver owner occupied accommodation. I immediately developed an interest investigating the experiences of the common women in formal marital and informal marital relationships in their quest to access high density homeownership. My interest was on how these women fare in terms of access to low income homeownership particularly considering that affordability issues are given a high priority since allocation of land in Budiriro is based on the allocation of unserviced land. This is how I arrived at the idea of carrying out a study on unfair discrimination of woman in formal and informal marital relationships under the City's low income homeownership housing delivery.

Budiriro is a high density urban residential settlement composed of people from different social and economic classes. Some are medium and others are low income earners. According to rates accounts for residential properties in Budiriro, the settlement is comprised of over 33,000 housing units all occupied by low income earners. Budiriro 1 and 2 are composed of residents who were allocated owner occupied homes through the employer assisted housing schemes.

According to the National Report and Plan of Action for Human Settlements in Zimbabwe (1996), Budiriro high density suburb suffers from an urban sprawl crisis with densities ranging between 1,500 to over 3,000 persons per square kilometre.

The establishment of the suburb also benefited from the implementation of the homeownership housing development through housing cooperatives. The housing cooperatives present a clear testimony of the patriarchal nature of associations in that they entrenched discrimination against women. One woman I interviewed said:

'Ndozvamunoita imivanhu vekanzuru. Munotinyima mastands nekuti tiri vakadzi. Ingawani vana Manjengwa (not real name) makavapa wani. Mhosva yedu ndeyekuti tiri vakadzi chete here?'

(Meaning: 'This is how you do business, you Council officials. You deny us residential stands just because we are women. You allocated Mr. Manjengwa group yet we applied together. You denied us allocation just because we are women.')

Data collected indicated that the allocation of land for low income homeownership housing provision is fraught with unfair discrimination against women due to their marital status.

Another woman said:

'There is an inherent bias towards women who are married. Even if we apply together and we have exactly the same financial capability, Council will still discriminate against us because we are single. I think it has to do with our culture because the people who decide on allocations are also captives of the same culture. They cannot be seen to be promoting the disintegration of families. Their decisions against single women are meant to dis-incentivise those that are single or have single headed families.'

My findings revealed that the situation of women in Harare has not improved despite the improvement in the Central Government policy on homeownership. The Council's allocation procedures of Council still deprives women of their right to access a home:

'We are not secure in terms of allocation because *'baba ndivo sah'oh'o'* (the husband is the boss). Our insecurity is in two parts. First we cannot claim our rights to homeownership in the family we were born. Second we cannot also claim to the house that we built together with my husband because *'hapazi pamusha pangu. Ndirimutorwa sezvo ndichinzi muroorwa.'*

It emerged that in worst case scenarios when the Harare City Council deals with cases of urban sprawl through illegal land invasions in Budiro through regularizations, women suffer from forced evictions. A visibly charged 52-year female respondent had this to say:

'We suffer from a history of discrimination. We are afraid of eviction. Hence we end up losing money to whoever promises that we will have be secure we end up being exploited by land barons.'

Her response was that of most women impacted by the administrative culture of Harare City Council's in its delivery of low income housing.

5.5 Gender bias in land allocation

Gender bias in the allocation of land for housing was guided by the assumption and research question on the internal administrative culture inherently discriminating against women in formal and informal marital relationships. From the research, I also managed to establish that even if women in formal and informal marital unions are allowed to apply for accommodation in their own right, the women are still sometimes obliged to provide proof of marriage or divorce and in cases where her husband is the one registered on the housing waiting list, his wife must provide his written permission. A respondent drawn from Harare City Council's Housing and Social Development Department responsible for the management of the housing waiting list gave rough estimates to the effect that of the 90,000 registered applicants on the housing waiting list from June 2014 to present, only 16,4% are registered as 'married' women. According to the respondent, even though low income homeownership schemes have been rolled out, many women still find it difficult to raise the required deposits and payments.

These observations were supported by the submissions from a respondent from Dialogue On Shelter who suggested that women as a group have less access to housing than their male counterparts. She attributed this situation to the discriminatory guidelines for the allocation of residential land. She was of the view that although on their face the guidelines for access to low income homeownership prohibit indirect discrimination on the grounds of sex, their overemphasis on preference for applicants who are formally employed and who can demonstrate their employment status by the production of pay slips provides a fertile ground for indirect discrimination as most women are less likely to be involved in formal employment.

Another respondent from Budiriro said that even though there has been talk about a gender element in the Harare City Council's strategies for tackling of the housing crisis, a closer examination of the specific needs of women in formal and informal marriages indicate that the incentives for non-discrimination on the basis of marriage merely scratch the surface. Her justification for this argument was:

'While the Harare City Council has permitted women to apply for housing land for homeownership development on an equal footing with men and have tried hard to treat them fairly in assessments for allocation, invisible barriers

continue to discriminate against women in formal and informal marital unions from successfully securing land for homeownership housing development.’

The respondent attributed these ‘invisible barriers’ to gender biases in the process of allocating land for low income residential housing development. The biases are based on predetermined customary rules governing the tenure systems and entitlements to homeownership by men and women.

5.6 Reinforcement of gender disparities and social inequalities by Council’s administrative culture

Another assumption that guided the research focused on the administrative culture in Council reinforcing gender disparities and social inequalities between men and women in formal and informal marital unions. The assumption was based on the view that the administrative culture that governs low income homeownership housing delivery in the Harare City Council has an impact on intra-household relations between men and women. The findings clearly revealed that these intra-household relations often result in women’s lack of security.

Testimonies from respondents showed that women are vulnerable at a household level and that Council does not take this vulnerability into consideration in its allocation policy and practice. The responses showed that the administrative culture in Council reinforces stereotypes about access to rights to housing, land and property by men and women. These stereotypes justify inequalities in family and property ownership amongst women and men in formal and informal marital relationships. Evidence from my research reveal that stereotypes are at the centre of structural discrimination against women in formal and informal marital relationships. Established culture-based social order perpetuates inequalities based on stereotypical preferences in the provision of homeownership to men and women in formal and informal marital unions.

Focus group discussions and observations revealed that there are stereotypes associated with women’s access to land. It is assumed that once a woman is married, she automatically benefits through her husband. If she is not married, chances are that she may fare no better than her married sister by virtue of the intention of organized culture to preserve the institution of the nuclear family.

The discussions also noted that the City of Harare's allocation does not acknowledge that women's lack of financial ability to access housing schemes are partly due to their burdens of domestic work which do not allow them to engage fully in the lives of their communities. Responses from the focus group discussions also show that women depend more on their husbands economically and even for those who are not formally married, the economic demands of urban life prevent them from influencing important political decisions of a governance nature or from participating actively in public life and hence the policy and practice on homeownership is largely skewed in favour of men.

From the focus group discussions, it was further revealed that the administrative culture in the Harare City Council does not take into consideration the above vulnerable situation of women to the extent that the low income homeownership policy and practice in the Harare City Council reproduces gender disparities and reinforces the existing social inequalities between men and women in formal and informal marital relationships.

Responses from the Harare City Council officials differed to some extent from those expressed during the focus group discussions held with respondents in Budiriro. While the CoH has begun to recognise that women in formal and informal marital relationships form a vulnerable group, this has only occurred at policy level. Little has been done at the strategic implementation level as no efforts have been made to adapt its terms of access to housing, land and property rights for this group of women. In addition, I also discovered that no affirmative action plans have been put in place to cater for the needs of vulnerable citizens of the City as a whole in terms of low income homeownership housing provision. The data collected showed that the CoH respondents and the respondents from the focus group discussions drawn from the field study in Budiriro all agreed as to this lack of implementation.

The study also revealed that there are gender neutral household threats. Responses from a focus group discussion in Budiriro indicated that:

'The moment were allocation is done in the name of the husband, then the wife's peace, security and dignity vanishes. It's his house. Naturally *'pamba pake'* (meaning, 'It's his home'). So a woman can be chased away any time.'

According to the respondent, women in marital situations cannot contribute meaningfully because any dissenting opinion is perceived as opposition and an attack on the integrity of the husband.

The debates in focus group discussions also revealed that even the Council's selection interviewing process tends to be unconsciously guided by the nature of relations within the applicant's household because their line of questioning places emphasis on the status of the formal/informal marital relationship and the consent of the woman's husband. My observations on the manner in which these interviews are conducted established that when a female applicant indicates that she is married, follow-up questions on the status of the marriage and the whereabouts of the husband immediately follow. The interviewing officials demonstrated great determination to establish whether or not the woman's husband is aware of her attempts to acquire residential land. Sometimes officials even go to the extent of suggesting that they record the interview in the names of both the husband and the wife. This however did not occur with applicants who were husbands as it seemed to be assumed that if he were granted a stand his wife would automatically benefit.

An official from the Harare City Council's Housing and Social Development Department concluded that the low income homeownership housing provision in the Harare City Council reinforces gender disparities. The respondent remarked:

'If you are to ask my opinion on the matter, City of Harare's policy on homeownership is not divorced from the general customary rules of our society or be it an African society. There is a practice in the culture which places discrimination in equal access to land rights in general on the belief that men alone are responsible for the support of the family (women and children), and that he honourably does that. This is why the policy and practice on homeownership or custom should you wish, grants men greater access to the right to opportunities for homeownership with a claim on marital status being a priority. The assumption is also that women's practical ability to divorce their husbands diminishes if the system favours those in recognized marital unions.'

In terms of the overall low income homeownership housing management, the research showed that the administrative culture in the Harare City Council reinforces social inequalities and gender disparities even to the extent of supporting situations that increase women's land tenure insecurity. According to the research, women are still exposed to

obstacles which prevent them from achieving security of land tenure. An example was given of many women who have failed to find protection Council and have been evicted from their homes at their hands of their relatives during disputes surrounding inheritance.

A respondent also noted that in some cases selfish husbands have sold their homes without the consent of their wives or in cases where the women is widowed, properties have been sold without the permission of the surviving spouse. According to the respondent, it appears that the practices of handling deceased estates in the City's housing management functions, are still influenced by social norms and customary laws that were the basis of the provisions that were set out in section 13 of the now repealed African Marriages Act. This particular section stipulated that upon the death of the husband, the male family members administer the distribution of the estate.

It also emerged from the research data that there are times when women exclude themselves in response to the impact of the Council's administrative culture in providing low income homeownership.

5.7 Women's self-exclusion

According to a respondent from Dialogue on Shelter, the influence of stereotypes in broader Zimbabwean society prevents women from taking a leading role in accessing housing, land and property rights. According to the respondent, this lack of assertiveness occurs at household, institutional and political level. The respondent also claimed that women's limited participation in low income homeownership was due to the nature of politics in Zimbabwe. The respondent said:

‘Our politics is not yet mature because inter-party politics and intra-party politics do not permit [for] the full participation of women in homeownership housing provision; hence women tend to be more naïve in the low income homeownership game.’

She was also of the view women feel that they cannot take steps to access housing unless they first consult and obtain the permission of their husbands and families. Those who participate without first obtaining such authority are not married, have a dysfunctional marriage or are old. In general however men believe that they must be in charge, lead and control. According to her, women's lack of participation in accessing low income

homeownership is heavily influenced by the culture of indigenous Zimbabweans. According to this culture which permeates Zimbabwean society, only men are born to be leaders. She said that the culture is heavily underpinned by the Christian religion which is wrongly interpreted to mean that men are the head of the universe. She said that religious ‘misbeliefs’ are at the centre of the subordination of women and the issue of their access or lack of access to low income homeownership. She was of the view that all successful people in the Bible were raised in the homes of upright women and that ‘subordination’ refers to wives, not to all women. According to her homeownership must be availed to women of all categories, not only wives.

My research was also guided by the assumption that the City of Harare’s low income homeownership discriminates against women in formal and informal marriages on the basis of income status. The results show that income based selection criterion constitutes discrimination. A respondent made the following statement:

‘Council require that we must have personal savings for us to be eligible for allocation. Where do I get that kind of money? They want me to have a minimum of US\$1,500 for me to be considered for allocation. In addition, I must have proof of a stable source of income. But I am a domestic worker and I earnUS\$62. So where do I get that kind of money?’

The respondent’s views were corroborated by those of an official the Harare City Council’s Department of Housing and Social Development. The official said that low income homeownership housing provision was guided by Council’s housing policy. The official said:

‘The policy says we are guided by the possibility for affordability. This is why we give prospective beneficiaries at least six months as a minimum waiting period on the housing waiting list in Council. It’s a window for them to mobilize personal savings.’

From the research, the housing waiting list had 90,000 low income earners. Responses from other officials responsible for managing the housing waiting list in Council indicated that the housing waiting list as a targeting tool for potential low income homeownership housing beneficiaries presents another source of discrimination against women in formal and informal marriages based on levels of income.

A perusal of the housing waiting list application form supports the above submission by the Council official. The waiting list categorizes applicants according to income levels as indicated by preference for high, medium and low density residential stands. Further the waiting list requests applicants to place options for rented accommodation for those who cannot afford any of the three available homeownership options. Those in the high density option category are considered to be low income earners and are generally regarded as experiencing finance problems.

A further analysis of the housing waiting list management process reveals that on top of income levels, eligibility for homeownership is also premised on marital status and type of employment (formal and informal employment) in classifying potential beneficiaries on the housing waiting list. According to the Council officials, registration on the housing waiting list and allocations are based on a first come first serve basis in addition to one's income status.

I also observed that women applicants who were not yet married insisted that the allocation be registered in their husband's name, oblivious of the fact that such a record would mean that upon transfer of title by the Council the property would be registered in his name. Attempts to explain the significance of registering the property in the name of the women were not usually taken seriously.

5.8 Income based residential land allocation

On asking whether or not there is unfair discrimination against women in formal and informal marital relationships based on their income status, responses reflect that women lack the requisite financial capacity to acquire land. In order purchase land, they must be eligible to acquire loans or have adequate sources of income or be in some form of paid employment. I was told that the reason for this is that access to Harare City Council's low income homeownership housing is based on the principle of affordability. This limits the participation of women as formal employment is preferred and most women in the low income category work in the informal sector.

I gathered information on the strategy for low cost housing development in Budiriro in terms of the partnership between the Harare City Council and the Central African Building Society

(CABS). One of the requirements of this scheme includes a condition by CABS of a minimum monthly ‘mortgageable’ salary of US\$900 over a 10-year mortgage period. This requirement needs to be evaluated in the context of an average salary of lowest paid employees which is US\$297 per month according to the ZimStatFinScope Survey for 2017.

The monthly mortgage payments are pegged at between US\$240 and US\$306 subject to the production of proof of employment. Under the scheme couples in formal marital relationships can combine their salaries provided they are both formally employed. The combining of incomes by spouses directly discriminates against women of single-headed households.

5.9 Financial feasibility/affordability

On asking whether or not the determination of affordability entails both financial and non-financial contributions in accessing low income homeownership by men and women in formal and informal marital relationships, I was told that the policy looks at affordability in financial terms only. Non-financial contributions are ignored. Responses from Ministry and Council officials indicate that affordability is financial in its architecture. Thus the institutional culture does not take into account that other contributions such as the raising of children, caring for elderly relatives and the discharging of household duties are important and that these non-financial contributions by a wife enables her husband to earn an income and increase the value of the family’s assets.

From the above responses it became clear that the lack of access to low income homeownership for women in both formal and informal marital relationships is social and not economic. The reason for this is that there is a social cost associated with women’s participation in land acquisition; that men are not prepared to meet this social cost and that the policy and practice in the Harare City Council does not recognise this reality.

These findings resonated with an incident I observed in which a young woman of about 22 visited sought assistance from the Ministry of Local Government in order to have Council stop the repossession of a piece of land allocated to her husband. For the purposes of this research I shall name her Angela. Angela was referred to the Harare City Council for assistance. Upon arrival I referred her to the responsible office where she met the responsible Council official whom I shall refer to as Mrs Musafare. Angela looked worn out and nursing

an 8-month old baby girl. In stating her plight, Angela indicated that she was asking for the extension of her payment period to allow her to look after the required funds for the payment of the land intrinsic price of the allocated stand. Angela said she had paid US\$600 towards the intrinsic land price through the housing cooperative in which she is a member but the money had ‘disappeared’ along the way. Angela pleaded that she was working as a domestic worker and earned US\$100 and from this meagre salary, she looks after her terminally ill husband and her 8-month old baby.

Despite her emotional appeal, she did not receive a favourable response and one could tell from the agony written all over her face that the decision to repossess the stand was a death blow to her homeownership aspirations. Upon hearing the news, Angela could hardly summon the strength to lift herself out of the chair. The look on her face contrasted starkly with the bubbling face of her 8-month old baby who embraced all the officials in the office with a keen, innocent face, full of life and admiration and completely oblivious of the shattered hopes of yet another player in response to the Council’s imposition of the unbreakable rules of its allocation game. In fact, the Council official did nothing to cushion the blow as she bluntly met Angela’s plea with these unsympathetic words:

‘Umweneumweakauyanhamodzake project haifambi. Kutora mastands kunongotorerwamunhuwese. Kana zviremachaizvo tiri kutorera.’

(Meaning: ‘If each one of the beneficiaries brings his or her own problems forward, the project won’t move. Even the disabled are meeting their obligations because we are not giving any preferential treatment based on any personal and physical circumstances.’)

All pleas from the Angela fell on deaf ears. She even tried to appeal to Mrs. Musafare’s softer side by saying that she hoped she would understand her problem as she was also a woman and might also be a mother. This however did not yield any results either as, she was told, the stand was already classified for repossession.

Another emerging issue was the role of power politics in the low income homeownership housing provision. It emerged that Budiro high density suburb had become a hotbed of the ‘land issue’ in urban governance, and this explained why its pace of development was accelerated during the era of land invasions. I took an interest in this issue, did some research and discovered the following from my data collection from officials in the Harare City

Council. An official from the Harare City Council's Housing and Social Development Department said the Harare City Council has effectively surrendered its allocation process to land barons to the extent that all layout plans have 'beneficiaries' chasing after them. Some of them are more politically powerful and irresistible than others and hence allocation officials have fallen victim to political manipulation.

These submissions were supported by observations I made of a group of 'politicians' led by a Harare Provincial Chairperson of a political party which threatened to demonstrate against the officials involved in the allocation of residential land in Harare. The group threatened that the allocations that were being done sidelined them as the allocations favoured members of the other political party who represented the majority in the Council. The group further alleged that the allocations were also discriminating against members of their party on the basis of factional politics within their political party. They alleged that allocations benefit groups aligned to the faction in which the Minister responsible for Local Government belongs. The group cited cases in which the previous two Government Ministers responsible for local government had taken turns in abusing their office for the benefit of their own political party's factional interests by arm-twisting allocation officials in Council to abandon the normal allocation procedure and instead allocate stands to members of the party which supported their factions.

According to the group, the allocations had a serious negative impact on the political fortunes of their party in local government and parliamentary elections. The group argued that the two Ministers did not care about the outcome of elections induced by biased allocations as they represented constituencies outside Harare, one of them representing the Zvimba West parliamentary constituency and the other the Mount Darwin South parliamentary constituency.

The group proposed a solution in terms of which they would submit a list of their demands for cooperatives deemed to have been discriminated against in the allocation process. This proposal was agreed upon on the basis these cooperatives be allocated land as a form of legitimate compensation. In all its submissions, according to the respondent, the group did not mention anything about gender and I having probed further into the composition of the group, the respondent indicated that all its members were male. The respondent revealed that the group had amongst its members someone who claimed to be working for military

intelligence and threatened to invoke the ‘soldiers’ element should the officials fail to comply with their demands. The respondent explained that the ‘soldiers’ element referred to tactics similar to those which occurred in Zimbabwe on 15 November 2017 in which the Zimbabwe National Army launched Operation Restore Legacy that ended former President Robert Gabriel Mugabe’s thirty-seven-year reign of power.

5.10 Earlier interventions on achieving equality

Another assumption that guided this research concerned possible interventions to redress the discrimination against the women who are the subject of this research. These interventions were once implemented but had little success. In my findings, I found that after the Supreme Court ruling in *Magaya v Magaya* (unreported judgment No. SC-210-98) demonstrations had been held by women’s organisations at Town House. These demonstrations were later carried out at Africa Unity Square opposite Parliament. They were intended to urge lawmakers and policy makers to address the inequalities associated with access to housing land and property rights by women in both formal and informal marital relationships. I was told that prior to this case, women and other siblings could not inherit property. The first born son would exercise his right of primogeniture and inherit the property left by his father regardless of whether or not he was born in or out of wedlock.

The findings revealed that the City of Harare responded by coming up with a housing policy in 2003 that obliged officials to ensure joint ownership of properties in the transfer of title and in the application for land and at the signing of Agreements of Sale. The City of Harare further organised meetings through the District Officers in various residential suburbs that alerted residents to come forward and sign addenda to existing Agreements for properties whose titles had not yet been transferred into the husband’s name. From my research I gathered that the response to this measure was poor. This may have been attributed to the influence of culture since the decision to come forward and sign addenda would be made at household level and husbands obviously would have wielded much power in the making of such a decision.

The policy prescriptions on mandatory joint ownership suffered a major setback when the Harare City Council revised its housing policy in 2012. The new policy omitted the clause that mandated the joint ownership of property.

From the findings it is clear that the assumption on constitutional breaches on women informal and informal marital unions' human rights entitlements to housing, land and property rights was confirmed.

CHAPTER 6

6.0 DISCUSSION

'Homeownership is the most rewarding form of house tenure. It satisfies a deep and natural desire on the part of the householder to have independent control of the house that shelters him and his family. It gives him greatest possible security against the loss of his home ... if the householder buys his house on a mortgage, he builds up by steady saving a capital asset for him and his dependents.'

(DOE, 1971: 4)

6.1 Introduction

This chapter discusses some of the strategies, tactics and alliances that are being adopted to bring about legal reforms and to influence the content, design and implementation of housing policy in urban areas. It also identifies the implications for policy, legislation and practice, focusing on how gender can be mainstreamed into land and housing policies, what gender-specific measures can be introduced, the priorities for future research, and how the available data can be improved.

The above quotation is part of the policy paper that ushered in homeownership policy and practice in Britain. It was popularised by Boddy (1980). However what Boddy (1980) and many other British commentators overlooked are the obvious but blatant ideological assumptions about women's roles and family structure, also embodied in housing policy and in the so-called natural desires for ownership.

Work on home ownership by Rose (1980), however, presented an alternative but honourable exception. In a paper originally given to the Conference of Socialist Economists, she submitted that a theoretically informed and historically grounded appreciation of homeownership must embody an analysis of its contribution to the subordination of women. However, in her paper, she also believes that in certain aspects the home is a 'non-capitalist environment'. Thus she argued that a home may be a real refuge from workplace domination, and that its positive values should not be ignored by orthodox left or feminist theorists.

6.2 Making a case against the unfair discrimination of women in formal and informal marital relationships in low income home ownership policy and practice

Budiriro high density suburb is located some 20km west of the Harare Central Business District. It was established in 1987. To date the high density suburb has a total housing stock of over 30,000 houses. Its establishment is unique in the sense that its nomenclature is allegorical. The word Budiriro is a *Shona* word that denotes aspirations for progress. The Urban Councils Act (Chapter 29:15) empowers local authorities to name residential suburbs and streets in line with the developmental policy thrusts of the government. In this spirit Budiriro was named with a view to making the suburb a hub of progress in view of the fact that it was established seven years after the attainment of independence on 18 April 1980.

The developmental thrust then was to correct all injustices that the colonial administration was accused of hence the bold policy pronouncement by the Harare City Council that the message that was to be conveyed in its housing delivery mandate was that which leaned heavily on the need for a progressive society. From the onset therefore one would be forgiven for thinking that the situation obtaining in Budiriro would reflect a society based on non-discrimination in terms of housing delivery. An important feature in the establishment of Budiriro is also drawn from the fact that the suburb was established at the peak of the implementation of the homeownership housing delivery policy within a context of the rolling back of the frontiers of the welfare state. Thus different phases of the development of Budiriro tell a story of the development of a homeowner post-colonial urban population. The rolling of the homeowner housing delivery approach in Budiriro is critical to study since it captures the three main homeownership housing delivery strategies currently being employed by the City of Harare. These are the homeowner associations (housing cooperatives and housing pay schemes), the employer assisted housing schemes and the public private partnerships.

All of the above strategies have one striking feature in their centrality of the discrimination of women in formal and informal marital unions in terms of ownership of land and property. The discrimination is either *de jure* (direct) or *de facto* (indirect) as shall be argued later.

6.3 Putting home ownership for women in formal and informal marriages into context - Is there a human right to home ownership?

The Habitat Agenda adopted in Istanbul in Turkey in 1996 presented a global strategy on human settlements and recognised housing as a basic need and human rights (UNCHS, 2000). A secure place to live in is crucial hence the research adopted a human rights methodological perspective to give effect to housing as a basic human right.

Home ownership is anchored on the right to housing. The right to housing needs to be engendered as a socio-economic right. It is drawn from article 11.1 of the ICESCR. Home ownership encompasses rights to housing, equal access to and rights to land, participation and empowerment, the rule of law and due process. The right to housing is captured in various human rights instruments. Access to homeownership by women in formal and informal marriages is provided for under various provisions relating to land, adequate standard of living, and rights to property. However, the ICESCR's wording on the right to housing makes interesting reading with regard to unfair discrimination of women in formal and informal marriages. Article 11.1 of the ICESCR (1966) provides for the right to housing as follows:

‘The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for *himself and his family*, including adequate food, clothing and *housing*, and to the continuous improvement of living conditions.’

The article betrays a sense of unfair discrimination on the part of women in formal and informal marriages particularly when one considers that in its assumptions men are at the forefront in the provision of homeownership. The wording of the article could have been influenced by the fact that, at the time of the crafting of the instrument, assumptions over homeownership might have been limited to just a roof over one's head. However, one can still argue that the article gives a clear testimony that issues related to access to rights over housing, land and property are underpinned by relations at household levels and laws have been modelled around these relations.

From the literature presented in this research it is safe to argue that housing is not just the physical construction of dwelling units as it entails the performance of other functions in human existence. Owen (2000) and Griffin (2001) argue that housing performs functions

associated with material functions (shelter provisions), symbolic functions (status and class) and external functions (strategic location of housing in geographical space).

6.4 Why access to homeownership by woman informal and informal marriages should be a human right

Article 16 of the Maputo Protocol on the right to adequate housing provides:

‘Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, States Parties shall grant to women, whatever their marital status, access to adequate housing.’

In its General Comment No. 7, the CESCR gave a wide interpretation of the right to ensure that discrimination is eliminated in the process of affording the right to housing. Therefore, paragraph 7 of the CESCR’s General Comment No.7 provides as follows:

‘In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.’

Hence it is clear that a broader interpretation of the right to housing takes into consideration other attendant rights as was done in the context of adequate housing.

The human right to housing has also been linked to the right to adequate housing and this was elaborated in paragraph 8 of General Comment No. 4 of the CESCR which reads as follows:

‘Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute ‘adequate housing’ for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

- (a) Legal security of tenure;
- (b) Availability of services, materials, facilities and infrastructure;
- (c) Affordability;

- (d) Habitability;
- (e) Accessibility;
- (f) Location;
- (g) Cultural adequacy.’

These attributes form the core of non-discrimination against women in formal and informal marital relationships.

6.5 Duty to realise housing rights

This means that the state must create conditions through laws, budgets and other measures that enable individuals and groups to gain access to housing. Further, both the state and private actors such as banks and landlords must not prevent access to housing rights. The ICESCR recognises the particular vulnerability of women in forced evictions because of lesser property rights and vulnerability to violence. From an analysis of Council budgets proposed since 2014, it is clear that low income homeownership is given scant attention. No serious attention is given to any capital project of a housing nature of any form of tenure arrangements.

6.6 Trends in homeownership in Harare

6.6.1 Availability

Availability denotes the presence of homeownership facilities. It presupposes that there must be the presence of functionality and capability by state institutions to avail homeownership to women in formal and informal marital relationships (Rakodi, 2014). The facilities must be in tandem with the interpretation of homeownership as defined by the Committee (above). My findings show that low income homeownership falls short of the benchmarks required on availability.

6.6.2 The recognition, regularisation and upgrading of informal settlements

Given the growth and prevalence of informal settlements in Budiro not much attention has been given to how living conditions of people in Budiro may be improved. Views from the data I collected differ about the most appropriate way of tackling the problems, especially insecure tenure and inadequate services. Further the research established that not all informal settlements in Budiro are suitable for permanent settlement, because the land on which they are located is dangerous or zoned for other uses as is captured in the local development plans for the area.

In addition, responses from the Harare City Council officials indicate that well located sites which are illegally occupied are attractive to private developers, provided that their occupants are removed thereby setting the basis for administrative decisions to institute evictions by the Harare City Council. When relocation is pursued, compliance with laws and guidelines designed to protect occupiers is key, especially for women, are particularly vulnerable to abuses during and after evictions (COHRE).

6.6.3 Analysis of housing affordability in Harare

The National Housing Policy (2012) gives several indicators to measuring affordability. One such indicator is the house price to income ratio. This indicator provides public administrators with an overall view of the housing market. Where such a ratio is high, it gives pointers to the fact that households are facing serious problems in trying to afford housing. According to the Government of Zimbabwe, this ratio varies from 4.7 to 9.8 for low income earners in urban areas. A house-price market ratio of 9.8 times means that households in Harare pay 9.8 times their annual incomes to purchase a house, thus indicating that affordability levels are high.

My findings indicate that average incomes are around US\$297 per month for low income earners in Harare. An official from the Harare City Council said that the Council considers a minimum savings threshold of US\$1,500 per potential beneficiary. This expectation is applied across the board and does not consider personal circumstances. Such an approach when weighed against the economic situation of most women, discriminates against women in single headed households and those in informal marriages because the Harare City Council considers the combined savings of couples who are formally married under the facility for joint applications for homeownership.

Affordability can also be measured in terms of the construction costs through the determination of down market penetration. This measure is expressed as a ratio of the lowest ratio of the lowest price of a dwelling unit produced by private developers to annual household income meaning that the lower the ratio, the more affordable the new housing units being produced. My research produced interesting findings. It revealed that the houses that were constructed in Budiriro cost between US\$22,000 to US\$29,000 each as against the estimated minimum annual earnings of US\$3,564 based on the average monthly earnings of the lowest income earner of US\$297. Simple calculations using this ratio give an average

down market penetration of 8,1% which is nearly double the worldwide value of 4.4%. This finding reflects that low income houses in Budiriro are unaffordable. Cases of indirect discrimination therefore arise from the fact that those without combined incomes become ineligible. In fact, a visit to the project reflects a ghost town environment despite the fact that Council records indicate that the project intended to target the poor and land was sold at less than US\$1 (US\$0.50) per square metre to CABS in order to motivate the bank to provide affordable housing for the poor.

The findings also indicated that most women are lodgers. In fact, 89,7% of the women on the housing waiting list indicated on the waiting list forms that they were single and that they are lodgers. While the waiting list covers the rest of Harare, it still reflects a huge demand for housing by single female headed families. This finding means that their 'tenure status' for the present shelter needs is that of 'lodgers' as the majority of them indicated that they are lodgers on their application forms.

This status leads to another measure of affordability which is the rent price-to-income ratio. Statistics from the 2012 National Census indicate that only 30% of households among urban dwellers own their own houses in Zimbabwe with 40% being lodgers. According to the Consumer Council of Zimbabwe, average rentals for high density residential houses stand at US\$60 per room with an average family of six (6) occupying three rooms and thus requiring US\$180 per month on rentals. Based on an average income of US\$297 for a single headed household, this translates to a rent price-to income-ratio of 0,67 which is a high figure which indicates that most households may be spending more than 50% of their income on rentals.

Such a scenario places most women in a perilous position where they cannot afford to have personal savings which are deemed to be a prerequisite for eligibility for low income homeownership consideration by the Harare City Council. In this manner there are clear cases of indirect discrimination based on income and savings to a historically marginalised and disadvantaged section of the population in Budiriro under the Harare City Council's homeownership policy and practice.

The above situation in which the rent price-to income ratio is high naturally justifies claims by respondents that they are forced to survive on the strictest minimum in terms of accommodation. This leads to inadequacy of housing on the part of women in formal and

informal marital relationships. This inadequacy of accommodation is another measure which reflects on affordability and unfair discrimination against women in the Harare City Councils' home ownership policy and practice. Statutory Instrument 185 sets 3.6 square metres and 1.8 square metres as the minimum for adults and infants respectively in terms of the required floor area per person as a measure on adequacy of accommodation. According to Chapter 10 section 2(5) of the Model Building By-Laws of 1977 which govern construction standards in Harare, the minimum floor area for a habitable room is 7 square metres. For a household of six, occupying three rooms, the minimum floor area per person would be 3.5 square metres less than the prescribed occupancy floor area per person. The 3.5 square metres is a generous calculation in that it assumes that there is no any other movable property factored in the calculation. If the calculation considers the space occupied by the movable property acquired by the household, chances are that the floor area occupancy per person leaves single female headed families in situations of inadequate accommodation. This fact is overlooked by the housing policy for the Harare City Council yet it is a critical that accommodation be adequate for individuals to enjoy a full life with dignity.

Linked to the fact that 40% of the urban residents are lodgers, it essentially means that the majority of the citizens of the City are living below the minimum acceptable floor area per person. This is clear evidence of the violation of the right to adequate housing and personal dignity through inadequate housing. The housing policy for the Harare City Council ought to address this as a matter of urgency.

6.6.4 Housing provision in Harare

Housing provision is a product of the interconnectedness of various factors. The efficiency of a housing delivery system is examined based on a number of indicators. These indicators include but are not limited to land delivery and the land development system, the construction industry, housing finance, government involvement through taxes, subsidies and the regulatory system (Moyo, 2014). The Harare City Council like any other local authority in Zimbabwe is confronted with the challenges of dwindling financial resources for the provision of bulky housing infrastructure hence the overreliance on the provision of unserviced stands and the continued shortage of housing in Harare. Consequently, Harare has been failing in its housing production indicators.

According to the Government of Zimbabwe (1996: 7), ‘the housing production indicator measures the rate at which the housing supply system increasing, as well as replenishing itself. It also measures new housing units coming into the market’. From the research findings, I discovered that virtually there is no budget allocation to assist the Director of Housing and Social Development in ensuring that there is greater access to low income homeownership by women in formal and informal marital relationships.

Related to the housing production indicator is the serviced stands indicator. The serviced stands indicator gives a measurement of how the house production system performs in that the more the serviced stands become available, the better the housing production system. This research showed that low income homeownership is being solely done on the basis of allocation of wholly unserviced residential plots. No effort is being made to avail serviced land and cut on costs required for the full servicing of the allocated stands hence the emphasis on affordability and financial savings which eventually leads to unfair discrimination against women in formal and informal marital relationships on the basis of financial capability. From the collected data, the evidence points to high costs of acquiring land due to monopolistic practices in residential land development. The land delivery system is a major key to the determination of the cost of housing and housing production. Development permits and layout plans take a long time to be processed. It emerged from the research that political activists end up chasing after layout plans and later demand allocation as legitimate compensation for their efforts to speed up the regulatory procedures involved in preparing land for allocation under sections 151, 152 and 205 of the Urban Councils Act. This all occurs much to the detriment of women since they cannot participate meaningfully in acquiring housing, land and property rights once the process becomes political.

6.6.5 Insecurity of tenure as unfair discrimination in Harare’s low income homeownership housing practice

According to my findings, unfair discrimination takes many forms in Harare. In some instances, it assumes the form of forced evictions particularly in areas that are considered unsuitable for human habitation in terms of the planning requirements governed by development permits issued in terms of section 205 of the Urban Councils Act (Chapter 29:15). According to an official from COCSA, City of Harare’s homeownership delivery model (which emphasises allocating unserviced land to low income home associations) fuels illegal settlements especially in areas bordering areas allocated unserviced land. I found out

that the reaction of Council to situations where individuals go on to occupy unserviced land has always been that of demolitions. From the research it is evident that demolitions are carried out even if the particular piece of land was officially allocated to an individual but as long as there are no services in place demolitions are effected.

Paragraph 8.a of the CESCR's General Comment No. 4 (1991) offers the following protection:

'All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.'

Further paragraph 3 of the CESCR's General Comment No. 7 (1997) clarifies the term 'forced evictions' for the benefit of local authorities. It reads:

'The term "forced evictions" as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.'

6.6.6 *Forced evictions as external threats to households*

Unfair discrimination also poses external threats to households. Although the practice of forced evictions might appear to occur primarily in heavily populated urban areas, it also takes place in connection with forced population transfers, internal displacement and forced relocations (Khotari, 2004). These are often associated with violence and the City of Harare is looked upon as the monster. As such the majority of women I interviewed expressed the view that there is no remedy in place for those who suffer discrimination in the homeownership.

The research revealed that men have tended to resist instances of forced eviction through violent means. This submission was confirmed by a Harare City Council official who cited instances in Glen View and Budiriro High Density suburbs where forced evictions were resisted violently resulting in the Harare City Council abandoning the eviction exercise. I discovered that all these violent episodes lead to an indirect psychological mechanism that discourages women in formal and informal marriages from accessing low income

homeownership in Harare. However, according to the findings of the research, this option is not available to women as they are not able to engage in violence against the authorities.

6.6.7 Justification for forced evictions

I found out that where there is an overwhelming need for forced evictions, there is a need for the relevant authorities to ‘ensure that they are carried out in a manner warranted by a law and that all the legal recourses and remedies are available to those affected.’

These procedures, recourses and remedies include genuine consultations, notice, information, legal remedies, legal aid, compensation or alternative settlement and reasonableness and proportionality. All action should be taken in the day time and not at night. Findings from the research indicate that demolitions have been effected but not in line with the above stated procedure. Thus they constitute unfair discrimination.

6.6.8 Addressing unfair discrimination through the recognition of informal settlements

The quickest way of addressing discrimination in low income homeownership is by providing women in formal and informal marital relationships with greater security and improved services by recognising informal settlements. However, in Budiro I found that this is generally done informally, through a verbal promise that a settlement will be permitted to remain on its current site, either temporarily or permanently, particularly when elections are drawing near.

The evidence from both primary and secondary sources shows that recognition can increase perceptions of security sufficiently for residents to invest in their houses and negotiate with service providers (Varley, 2007). However, in practice because the promise is informal, it may not survive changes in political electoral outcomes, changes in personnel in the relevant government departments or policy towards informal settlements, or the prospect of a more lucrative use for the site concerned. The ultimate result has always been exploitation of women by land barons. Informal recognition therefore does not provide legal protection or long term security to women in formal and informal marital relationships. Therefore there is a paramount need for formal recognition.

6.6.9 Addressing unfair discrimination through regularisation of informal settlements

Determining eligibility for the issue of an offer letter to illegally settled land can be tricky especially to women in marital relationships, whether formal or informal. I established that the ability of residents, particularly women in informal settlements, to claim their rights as citizens and to demand services and defend themselves is dependent on government attitudes, their political connections and the nature and scope of community organisation. Although women generally lack a voice in the formal political system, grassroots organisation often depends heavily on their inputs. As argued by Rakodi (2014) in the literature review, one way of addressing discrimination would be to regularize informal settlements. These regularisations can be justified by the provisions in the Zimbabwean Constitution particularly under its national objectives. Section 28 of the Constitution of Zimbabwe provides for the state's objective to take 'reasonable legislative and other measures' in order to progressively realise the right to adequate shelter. The terminology implies that, in addition to legislative measures, administrative, judicial, economic, social and educational measures must be taken.

In the South African Constitutional Court case, *Irene Grootboom v The Government of The Republic of South Africa* CCT11/00, the Court indicated that the measures adopted must establish a coherent public housing programme directed towards the progressive realisation of the right of access to adequate housing within the state's available resources. The Court noted that:

'...legislative measures will invariably have to be supported by appropriate, well-directed policies and programmes implemented by the executive' (Para 42).

Policies and programmes must thus be reasonable both in their conception and their implementation.

6.6.10 Channels of supply for land and housing

Rakodi (2016) argues that in addition to laws and family relationships, the ability of women in formal and informal marital relationships to access land and housing depends on the availability of suitable land, the operation of property markets and housing law and policies. Results from the research are in line with sentiments by Rakodi (2016) who argues that while the private sector plays an important role in meeting the demand for urban land and housing, the need for public programmes to meet the homeownership needs of poorer households must

be in place. In practice, in urban areas of developing countries the need for affordable plots and dwellings is rarely met through formally regulated land subdivision or house construction by either the public or the formal private sector. Thus I came to the conclusion that a large proportion of residents, especially poor households, are compelled to seek accommodation through informal channels.

6.6.11 Formal private sector land and housing delivery

According to an official from the Ministry of Local Government, Public Works and National Housing (MLGPWNH), private markets in residential land and property are, in theory, underpinned and regulated by state law governing tenure, subdivision, transfers, regulation of use and property taxation.

The research however exposed that if women in informal marriages can afford to purchase property in such a market, they may be less constrained by discriminatory attitudes and administrative practices than in attempting to access homeownership through the Harare City Council. This finding resonates with UNHABITAT (2012: 28) which claims that the private market is less discriminatory in its availing of plots or houses compared to women accessing homeownership through customary channels or from public agencies.

In this study, I found that the legal, social and economic restrictions are more harmful to women than men, whether as household heads or individuals. For example, married women in practice are unable to borrow from formal institutions without spousal approval. There is also personal or social stigma associated with expressing a desire to own property in their own names. As a result, most are unlikely to be in a position to purchase land and property and in instances where they are bold enough to attempt to do so, they are met with 'silent disapproval' from authorities in the Harare City Council. This finding resonates with one that was done in Brazil (cited in Morais and Cruz, 2009: 278) where an analysis of data from the 2005 National Household Sample Survey revealed that:

‘... wealth is a good predictor of formal homeownership ... yet more vulnerable households, such as the poor ... and single women with children under the age of 14, have a higher probability of living in informal settlements, showing that they have limited tenure choice.’

6.6.12 Public programmes for land delivery to the poor

In a discussion I held with an official from the MLGPWNH, I found that these are usually common in the former planned economies. The official emphasised that in practice, efforts to subdivide and service publicly owned land in volumes sufficient to extinguish demand and at costs affordable to poor residents have yielded discriminatory results. In Budiro, the general shortages of affordable residential plots lead to ‘leakage’ up the income distribution of those supplied by Harare City Council resulting in a situation where few women in poor households have been able to access land and houses. Such findings confirm the arguments in General Comment which indicate that public programmes for land delivery discriminate against women in formal and informal marital unions.

Rakodi (2016) also claims that, almost without exception, public programmes deal with households. In the earlier colonial and post-colonial programmes in Harare, public housing for rent or sale was predominantly allocated to household heads in wage employment and in the names of the men. Most beneficiaries were men owing to their domination of wage labour markets, and joint titles were rare. Thus I came to the conclusion that nothing has changed in terms of improving access to homeownership for women in formal and informal marital relationships.

6.6.13 Analysis of women’s lack of land rights

The study showed that the root cause of discrimination against women in formal and informal marital relationships in their access to homeownership in Budiro is a pervasive patriarchy, expressed in stereotypes, attitudes, perceptions and norms. These generate legal, political and economic limitations to the advancement of women in formal and informal marriages. The findings are confirmed by Moser (1989) who argues that patriarchy and deep-rooted gender stereotypes are widespread and operate at all levels, from family to local community, from administration to broader governance, from public institutions to civil society and rural organisations.

The wording in article 11.1 of the ICESCR presupposes that discrimination is justifiable in women’s access to homeownership. From the findings it is clear that this mentality that informed states still dictates how women in formal and informal marital associations have access to homeownership. To address this, the City of Harare must take heed of the

interpretation provided by paragraph 6 of the CESCR's General Comment No. 4 (1991) on the right to adequate housing. The paragraph reads as follows:

'The right to adequate housing applies to everyone. While the reference to "himself and his family" reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of 'family' must be understood in a wide sense.'

It is clear from this interpretation that discrimination on any grounds in access to homeownership is not permissible. Individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. The interpretation directs the attention of state parties towards the provisions in article 2(2) of the ICESCR which states that the enjoyment of this right must not be subject to any form of discrimination. The wording of the housing policies and resolutions in the Harare city council must thus resonate with the aspirations expressed in this interpretation and must be couched in gender neutral language.

6.6.14 Housing paradigm shifts

The wording in article 2(2) of the ICESCR has implications at both private and public level. At the public level, access to land has to be guaranteed by legal documents like allocation letters. The findings from the Ministry indicate that security of tenure is in the form of allocation letters. At a personal level, women in formal marital relationships can suffer from forced evictions due to the lack of ownership owing to a disempowering allocation process. Efforts must be directed towards a homeownership practice that shifts from man and his household to individual, gender-neutral and non-discrimination – but no real attention to women's experiences. To engender the home ownership housing development policy and practice, the City of Harare must be guided by paragraph 8 of the CESCR's General Comment No. 4 (1991) which says:

'All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.'

CHAPTER 7

7.0 CONCLUSIONS AND INTERVENTIONS

7.1 Conclusions

From the findings, it is clear that women in formal and informal marital relationships are subjected to unfair discrimination by the Harare City Councils' low income homeownership policy and practice. The unfair discrimination is drawn from the prevailing administrative culture that was inherited from the colonial past. The organizational administrative culture in the Harare City Council also reinforces the gender imbalances and social inequalities between men and women in formal and informal marital relationships in their access to housing, land and property rights. Interventions were once attempted but could not succeed because the prevailing culture relied and still relies on customary norms and laws to prevent women in their quest from acquiring land, housing and property rights. Overall, there are constitutional and human rights violations against women in formal and informal marriages' access to housing, land and property rights.

7.2. Interventions

The alleviation of the plight of women in both formal and informal marital relationships in accessing homeownership involve both short and long term interventions.

7.2.1 Short term interventions

The situation of women in Budiro is so desperate that there is a need for short term interventions to redress cases of unfair discrimination against women in formal and informal marital relationships; there is a need for the Harare City Council, the Central Government and the other partners in housing development to pool resources for low cost housing finance and address issues of affordability that is used as the basis for unfair discrimination.

The research showed that women in formal and informal marital relationships suffer from unfair discrimination in access low income homeownership.

However, it must be noted that these are not sustainable solutions to the problem. There is a pressing need for long term interventions that are more sustainable.

7.2.2 Long-term interventions

7.2.2.1 Legal redress

Having been in social science practice for a long time and having been involved in urban local governance for the past fifteen years, I am of the strong view that the necessary starting point for the protection of the rights of individuals is the law. The law provides the last hope for those seeking to redress breaches of their human rights.

Although the Constitution of Zimbabwe does not provide for a direct human right to housing, land and property under its Declaration of Rights, it does provide for the right to shelter under section 28. In other countries where there is lack of an explicit reference to women's right to housing, land and property, cases have nevertheless been brought to court under related provisions. For example, in the *Grootboom* case (above), the Constitutional Court of South Africa interpreted the right to water, health and housing under section 26 of its Constitution within the context of the generous and wide meaning of the right to shelter under international law. Likewise Zimbabwe's Constitutional Court may adopt a similar approach if it were to consider section 28 of the Constitution of Zimbabwe and the right of women in formal and informal marital relationships to protection against unfair discrimination in accessing low income homeownership.

Progressive judiciaries, communities and individuals the world over have resorted to employing numerous progressive methods including public interest litigation to obtain legal redress to cases involving unfair discrimination against women in formal and informal marital relationships in accessing low income homeownership.

Zimbabwe's Anti-Discrimination Act (Chapter 29:15) provides for protection against discrimination in wealth creation public service provision. It can be improved to specifically address issues related to unfair discrimination against women on the bias of marital status or lack thereof.

The Urban Councils Act (Chapter 29:15) provides the legal framework for land law and the framework for alienation of Council land to beneficiaries. The powers of councils, including the Harare City Council, are provided for in the second schedule to the Act. Based on these provisions, the HCC may take measures to ensure that there is substantive equality between men and women in its homeownership policy and practice. The City's housing policy has

attempted to refer to a *de facto* equality in its 50:50 allocation framework hence if the Harare City Council so wishes, it can easily pass a resolution to cater for substantive equality for women in formal and informal marital relationships in accessing low income homeownership. This would not be *ultra vires* the Urban Councils Act as the Act provides for wide arranging powers to Council for providing all the services required of them in the best interests of its local inhabitants.

Harare City Council may also rely on section 2 of the Administrative Justice Act (Chap 10:28) as read with section 68 of the Constitution of Zimbabwe (which governs the making of administrative decisions) and henceforth make decisions that are favourable to women in any marital union in accessing low income homeownership. Issues of equality in housing can also be addressed through necessary amendments to the Land Tenure Act.

An application seeking a court interdict on behalf of the women in formal and informal marital unions in Budiro may thus be filed against the Harare City Council as the first respondent and the Minister of Local Government, Public Works and National Housing as the second respondent. The application may seek an order to make the respondents comply with the provisions of the Administrative Justice Act in ensuring that there is no unfair discrimination against women in formal and informal marital relationships in accessing low income homeownership.

7.2.2.2 Domestication of human rights instruments

Zimbabwe must make a move towards domesticating human rights provisions in public international law human rights instruments as this would ensure that the right to non-discrimination based on the legal status of the marriage is an explicit and justiciable right. The South African Constitution is an example of a constitution in which the right to housing is guaranteed as a human right under section 26 in terms of its Bill of Rights thereby giving solid legal status to the right to homeownership by South Africans.

The South African Constitutional Court case of *Grootboom* (above) demonstrates how the right to low income housing can be used as a legal tool to make a difference for women exposed to unfair discrimination in accessing low income homeownership on the basis of the legal status of their marital unions. In passing its decision in favour of the applicants, the Court relied on section 26 of the Constitution of South Africa which provides for the right to

housing albeit subject to the availability of resources. The Court also referred to the ICESCR as well as the CESCR's General Comment No. 4 which defines adequate housing.

7.2.2.3 Political will

The cause of unfair discrimination against women is the lack of political will. Land has been used as political capital and nothing can be achieved in the direction of substantive equality if there is no the requisite political will in achieving political effectiveness and effective governance.

7.2.2.4 Administrative reform

As demonstrated in the findings, unfair discrimination against women on the basis of the legal status of their marriages is propelled by the City of Harare's bureaucratic inefficiency in local governance. Thus there is a need for administrative reform. Those responsible for ensuring substantive equality in accessing homeownership must realize that access to homeownership is a human right and as such they must ensure that the City of Harare is a 'human rights city' by ensuring that the allocation and management of housing is a human rights exercise. Officials involved in the entire housing provision value chain must be obliged to recognize formal employment when considering the employment criterion. They must also be obliged to institute affirmative action for female headed households since they constitute over 80% of the women registered on the Harare City Council's housing waiting list.

Other strategies for administrative reform must encompass security of tenure for women in marital unions. For example, where Harare City Council still has control or interest in a stand, the sale or transference of the property must be fully endorsed by the spouse. This must be made a mandatory practice.

Administrative reforms must also entail that allocations are made on a joint ownership basis for married couples and that the title deeds for such properties are registered in the names of both parties.

The housing waiting list must also reflect gender disaggregated data so that the number of women who have been allocated stands for low income homeownership housing development is easily ascertained for ease of administrative adjustments to homeownership housing practice to align with human rights norms and standards.

Another strategy would be for the Harare City Council to change its rules surrounding housing pay schemes in order to allow families to become members rather than to allow one individual who is usually the father. If this is achieved women will be able to readily participate in homeownership housing initiatives.

7.2.2.5 Empowerment

Improving the capacity of women in Budiro is likely to ultimately lead to their empowerment. The most important thing is how to empower women in Budiro to participate in local land governance matters as a means of giving them the resources to push for substantive quality. Economic and political empowerment becomes a central strategy for ensuring that there is substantive equality in accessing low income homeownership. A special newsletter to regularly discuss topical housing issues can be started and run by both the Harare City Council and partners in low income homeownership housing development. These topical issues can cover pertinent gender issues in low income homeownership housing initiatives.

7.2.2.6 Building partnerships

Empowerment places women in formal and informal marriages on a better political and economic footing for influencing housing policy and practice to achieve substantive equality in access to low income homeownership. Once empowered, women in formal and informal marital unions can confidently build partnerships with the City of Harare as a service provider. Such partnerships may ensure that women are cushioned from unfair discrimination in accessing low income homeownership.

Other partnerships should be established between the Harare City Council and the Registrar's office to ensure that the housing waiting list and the registers of births, marriages and deaths become connected to each other. This will help to ensure that neither party to a marital union suffers any prejudice.

7.2.2.7 Capacity building

The research showed that the Budiro community has a high dependency culture. For them to access low income homeownership there is a need to promote self-reliance. Development planning and management can assist in availing opportunities for the women in formal and informal marital unions to be economically active and fare better in affordability assessments

in accessing homeownership. Investment in education and participation in governance matters can be the starting point for capacitating women and men in local governance to address cultural stigma associated with availing increased low income homeownership opportunities to women in formal and informal marriages.

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