

**The Policy and Legislative Framework for Zimbabwe's Fast Track
Land Reform Programme and its Implications on Women's Rights to
Agricultural Land**

BY

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**Thesis submitted in fulfilment of the requirements of the Degree of Doctor of
Philosophy in Law**

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2017

Dedication

To my two mothers, Betty Takaidza Nhengu (Gogo Dovi) and Felistas Dzidzai Nhengu (Gogo Banana) - Because of you, I believe in love.

To my late brothers Thompson, Thomas Hokoyo and Munyenyiwa Nhengu; I know you would have been so proud of this accomplishment.

To my late father, VaMusarinya, In everything I do, I always remember that “*ndiri mwana wa Ticha Nhengu*”

Acknowledgments

For any work of this magnitude, there are always so many people who contribute in many but unique ways in making the assignment possible. If I were to mention all the people that played a part in small and big ways in making this dream a reality, it would be such a long list. To all of you, I say, *thank you*.

I am grateful to my supervisors, Professor Julie Stewart and Professor Anne Hellum for your guidance, patience, commitment, for the occasional “wake-up” slap and for meticulously combing through the many chapters and versions of this thesis which I produced along the way. Thank you for believing in me and for assuring me that with hard work, I could do it.

I would also like to thank Professor William Derman of the Norwegian University of Life Sciences for his advice on my thesis and for providing me with volumes of useful reading material on the Zimbabwean land question.

Dr Amy Shupikai Tsanga (University of Zimbabwe and now Judge of the High Court of Zimbabwe), Dr Ellen Sithole (University of Zimbabwe and currently Deputy Chairperson of the Zimbabwe Human Rights Commission), Dr Alex Magaisa (Kent University), Professor Patricia Kameri-Mbote (University of Nairobi and Strathmore University), Professor Lilian Tibatemwa-Ekirikubinza (Makerere University, and now Judge of the Supreme Court of Uganda), Professor Bonita Meyersfeld (University of the Witwatersrand) and Dr Ngeyi Ruth Kanyongolo (University of Malawi, Chancellor College) all provided useful insights on my thesis during the SEARCWL PhD seminars.

I would like to thank the Norwegian Ministry of Foreign Affairs for providing funding for my studies.

My family played an important role in ensuring that I completed my studies. To my husband Stanley, I am grateful for the many “garage sessions” and the confidence you had in my ability to see this study through. To my daughters Ruvarashe and Farirai, thank you for the many telephone calls, messages and “chats” when I was away at the University of Zimbabwe or down under in the villages and farms in Masvingo during my field research. Finally the “farm thing” or the “farm story” is done and we can now have more time to play. To my son Mufaro, thank you for acknowledging that your mother is intelligent and for always confidently telling me that I would make it. My brother Julius, I am grateful for your love and patience, your input as my research assistant and for virtually donating your car to this project. My brother Collins and Mai Hesed, thank you for doing the school run between Harare and Kyle College in Masvingo where you would hand over the kids to Mukoma Juri and Mai Tafadzwa. Your love for my children made it possible for me to concentrate on my studies. To my young sisters, Sekai, Rudo and Harugumi, thank you for always checking on me and the progress on the PhD, with the occasional “Doc” taunt which always helped in spurring me forward. My big sisters, Ottilia (Mai Chikomwe) and Bessie (Mai Moyo), I got this far because of your love and support as I was growing up and for giving me the little things that every young girl would wish for. Gogo Dovi and Gogo Banana, thank you for the packed lunch of mealies and pumpkins as I left in the mornings for my fieldwork and for the warm bath water, boiled over firewood when I returned in the evenings. To my nephews and nieces, I will always remember the “happy birthday” songs with muffins as birthday cakes during my February sojourns at the University of Zimbabwe

To the staff at SEARCWL; Blessings Tsomondo, Rudo-Bonzo-Makunike, Johnson Chingozho, Sesedzai Munyaradzi, Cecilie Mariri and Primrose Zikiti, your support was invaluable.

I would like to thank Justice Thoba Poyo-Dlwati (South Africa) and Mrs. Kondwa Sakala-Chibiya (Zambia), both past presidents of the SADC Lawyers' Association for their support as I struggled with balancing my job, my family and my studies. As women bosses, you understood the challenges of holding a full time job, studying for a PhD and nurturing a growing family. I may not have said it enough then, but I would like to say it now; thank you very much. I am grateful to my late colleague, Mmakwena Rabele whose support for the short period that I worked with her was invaluable. My colleague Prudence Mabena took over that mantle and has been my ever-cheerful cheerleader.

To my fellow PhD students at SEARCWL; Rosalie Kumbirai Katsande, Renifa Madenga, Catherine Makoni, Annette Mbogoh and Elizabeth Lwanda-Rutsate, thank you for the many insightful engagements in the “PhD” reading room and during the PhD seminars. I remember the many days of the seminar presentations and the dreadful “electric chair” as we faced our Professors, but it has all been worth the while.

My circle of friends, Anna Mutavati, Catherine Makoni and Revai Makanje-Aalbaek, all I can say is thank you my friends. Sekai Muchena, you will always hold a special place in my heart.

My respondents at various levels were instrumental in providing the requisite information that made it possible for me to write this thesis. To my women respondents on the farms and in the communal areas of Masvingo, thank you for your hospitality and for taking me into your confidence.

Above all, I thank God the Almighty for giving me the strength and the wisdom as I worked on my thesis.

Declaration

I, Mekanatsa Makonese declare that the work submitted in this thesis is my own and it has never been submitted for a degree course in any other University. Where information has been obtained from other sources, I verify that this has been revealed.

Signed.....

Date.....

List of Acronyms

AIDS- Acquired Immune Deficiency Syndrome

ACHPR- African Charter on Human and Peoples' Rights/African Court on Human and People's Rights

ASA- American Sociological Association

BSAC- British South Africa Company

CAMPFIRE- Communal Areas Management Programme for Indigenous Resources

CBNRM- Community Based Natural Resources Management

CLA- Communal Land Act

CSCFAZ - Commercial Sugarcane Farmers' Association of Zimbabwe

CEDAW- Convention on the Elimination of all forms of Discrimination Against Women

COPAC- Constitutional Parliamentary Committee

DA- District Administrator

DCJ- Deputy Chief Justice

DLC- District Lands Committee

DTZ- Development Trust of Zimbabwe

ECA- Economic Commission for Africa

EISA- Electoral Institute of Southern Africa

EU- European Union

FAO- Food and Agricultural Organization of the United Nations

FGD- Focus Group Discussion

FGDs- Focus Group Discussions

FTLRP- Fast Track Land Reform Programme

GMB- Grain Marketing Board

GNU- Government of National Unity

GoZ- Government of Zimbabwe

HIV- Human Immuno Virus

HRC- Human Rights Council

HRW- Human Rights Watch

ICCPR- International Covenant on Civil and Political Rights

ICESCR- International Covenant on Economic Social and Cultural Rights

ILO- International Labour Organization

JA- Judge of Appeal

LAA- Land Apportionment Act

LAMA- Legal Age of Majority Act
LHA- Lancaster House Agreement
MDC- Movement for Democratic Change
MDC-T- Movement for Democratic Change- (led by Tsvangirai)
MDGs- Millennium Development Goals
NGO(s)- Non-Governmental Organisation(s)
NLHA- Native Land Husbandry Act
PLC- Provincial Lands Committee
PA- Provincial Administrator
PG- Provincial Governor
RAU- Research and Advocacy Unit
RDCs- Rural District Council(s)
RDCA- Rural District Councils Act
SADC- Southern African Development Community
TCPL- Total Consumption Poverty Line
SEARCWL- Southern and Eastern African Regional Centre for Women's Law
TTL(s)- Tribal Trust Land(s)
TTLA- Tribal Trust Lands Act
TLA- Traditional Leaders Act
UDHR- Universal Declaration of Human Rights
UDI- Unilateral Declaration of Independence
UNDP- United Nations Development Programme
UN-Habitat- United Nations Human Settlements Programme
UNICEF- United Nations Children's Fund
UPR- Universal Periodic Review
UZ- University of Zimbabwe
VA- Village Assembly
VIDCO- Village Development Committee
WAG- Women's Action Group
WB- World Bank
WCoZ- Women's Coalition of Zimbabwe
WLLG- Women and Land Lobby Group
WLZ- Women and Land in Zimbabwe
WHO- World Health Organisation
ZANU (PF)- Zimbabwe African National Union (Patriotic Front)

ZESA- Zimbabwe Electricity Supply Authority

ZFWT- Zimbabwe Farm Workers' Trust

ZINWA- Zimbabwe National Water Authority

ZNLWVA- Zimbabwe National Liberation War Veterans Association

ZWLA- Zimbabwe Women Lawyers' Association

ZWRCN- Zimbabwe Women's Resource Centre and Network

ZSCDA - Zimbabwe Sugarcane Development Association

Abstract

This study explores the rights of Zimbabwean women to access agricultural land on the basis of equality with men and in their own right under the country's Fast Track Land Reform Programme (FTLRP). The focus is on the policy and legal framework that governed the land reform process between the years 2000 and 2015 and how the legal framework interfaced with different women's lived realities in their efforts to access agricultural land and effectively utilise it. To understand the lived realities of the different women during the process, field research was undertaken in three resettlement sites in Masvingo province namely, the Hippo Valley Sugar Estates, Chidza and Lothian Farms and Ward 16 in Masimbiti, Nuanetsi Ranch. Three communal land sites in Chivi District namely Sese, Shindi and Gororo and one site in Masvingo District, namely Musvovi were identified for purposes of comparing the situation of women who went to the new resettlement areas with that of women who remained behind in the communal areas.

My argument in this study is that failure to address factors that affect women as women led to their discrimination and ultimately failure for women in different social and marital status categories to be treated on the basis of equality with men during the country's FTLRP. These factors included the failure to create a conducive policy and legal environment for the participation and recognition of women in the land reform programme. The absence of such a framework in turn led to the emergence of a number of challenges that worked against women's opportunities to engage with the FTLRP. Such challenges included the violence that accompanied the first stages of the FTLRP, the emergence of a state of legal pluralism, failure to recognise the value of women's unpaid work and contribution to the FTLRP and the emergence of power dynamics that stifled women's participation in the process. The result was that women got only about 12% of the land that was available under the A2 resettlement scheme and 18% of the land that was available under the A1 resettlement scheme. Those that managed to get land continued to suffer discrimination as women after their settlement on the farms. The discrimination included limited access to agricultural resources by women when compared to men and failure to include women in the farm level governance structures, yet such structures played a key role in determining access to farming resources after settlement, which in turn determined the level of success in one's farming endeavours.

In order to address these challenges, I argue that new laws and programmes must address the shortcomings that were inherent in the FTLRP. I identified the 2013 Constitution of Zimbabwe and Statutory Instrument 53/2014 as important instruments that seek to address the rights of women to agricultural land. The 2013 Constitution has important and progressive provisions, which if fully implemented can address the issue of discrimination against women and the need for women to be treated on the basis of equality with men generally but also in relation to access to land. I also argue that S.I 53/2014 is progressive in that it acknowledges the rights of women to fast track land. It however protects existing entitlements to land acquired under the FTLRP. The result is the entrenchment of men's rights over the land since the bulk of the land went to men under the FTLRP. The mere recognition of women's rights to land without the provision of an attendant framework to ensure access to land by women therefore fails to address the inherent inequality and discrimination faced by women in accessing land. The land audit, if and when it is implemented is an opportunity to identify available land and make sure that most if not all of that land is given to the women of Zimbabwe as an attempt to even out the gender skewed access patterns post fast track. The research generally contributes towards the growing literature on the Zimbabwean FTLRP but specifically contributes towards an understanding of the role of policy and law in addressing gender disparities in land reform, acquisition and allocation in post-independence Zimbabwe

A limitation in the research was that the fieldwork was undertaken in a small and limited geographical site and in one province of Zimbabwe. As a result, the findings, conclusions and recommendations may not necessarily reflect the reality in every part of the country.

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Chapter 1: Introduction

1.1 Introduction

This thesis seeks to interrogate the land question in Zimbabwe with a focus on the Fast Track Land Reform Programme (FTLRP) and how the policy and legal frameworks governing the programme as well as access, ownership and control¹ patterns impacted the agricultural land rights of different categories of women. The categorisation of women in the study is based on different characteristics such as marital and social status, political affiliation and age. The research therefore looks at the land rights of married, divorced, widowed and single women as well as women with children and childless ones. It also looks at different social categories of women such as women in different income groups, women in majority and minority ethnic groups, farmworker women, young and older women as well as women in different political formations. The land question is interrogated using the FTLRP² lens with a view to understanding this epoch in the history of Zimbabwe and its impact on women's land rights. The thesis provides a multi-level and multi-layered analysis of the land question and its impact on women's rights to access agricultural land on the basis of equality with men with a particular focus on the period from the year 2000, during which the implementation of the FTLRP was begun and 2015 when field research on this thesis was completed. The research focuses on women as individuals but also as part of systems, societies, families and communities. It recognises that women are not a homogenous group and therefore the discrimination that they face is not frozen in time, space and circumstances. At the same time there is need to explore the collective discrimination faced by women because they are women and the differentiated discrimination or privileges that women experience because of their different social and marital positions. The comparison between women in different social and status groups is therefore

¹ The terms ownership, access and control are key in this research and will be defined and explained later in Chapter 2

² For the purposes of this research, a characterization of what the FTLRP is will be provided in Chapter 2.

useful in exploring the sameness³ and difference⁴ between women. This helps to explain how women from certain social and status categories may suffer from discrimination on the basis of their gender, their ethnic background and their social situation, leading to intersectional discrimination.⁵

It is acknowledged that whilst land may be immensely local and concrete, the process of land reform often translates into a very legalistic affair, attracting profound international attention as a result (Ikdaahl, 2013:169). Questions are often asked and rightly so, regarding the legal processes that are followed in land reform programmes worldwide, the fairness and levels of inclusivity of the processes and the attendant human rights and rule of law approaches that are employed. The land question in Zimbabwe has not been an exception, starting from the days of colonialism to the present day modern post-colonial nation state of Zimbabwe.

Whilst recognising the historical nature of the land question, the focus on the period between 2000 and 2015 will help in understanding the cumulative impact of the FTLRP on women's rights to agricultural land during these years. The thesis will consider the existence or otherwise of normative national and international policy as well as legal or human rights frameworks for the implementation of the programme. It will trace the link between the FTLRP period and the history of land ownership in Zimbabwe. This approach is informed by the realisation that the current land discourse in the country has been influenced by over a century of land policy and law making which created access, control and ownership patterns that have a bearing on the extant state of affairs. The analysis of the pre 2000 period will therefore be necessary in order to locate the current land debates within a broader historical context. The thesis will provide a

³ The "sameness" approach in relation to women posits that women are similar in all significant respects or characteristics to warrant them receiving similar treatment.

⁴ The "difference" approach contends that women are not homogenous but that they have differences based on class, race, level of education, marital status and other differentiating characters and as a result, giving women similar treatment given these differences can create injustices and exacerbate inequality.

⁵ Article 14, CEDAW

chronological account of a still unfolding policy, legal and developmental process, as the implementation of the FTLRP in Zimbabwe was by no means the conclusion of the country's land related legal developments and the place of women therein. Although the government regularly announced in the early to mid 2000s that the land reform programme had been concluded⁶, subsequent and even current developments show that the land issue in Zimbabwe is far from resolved. Events in the country support the view that the land reform process in Zimbabwe will be more drawn out before it is logically concluded.⁷ The coming in of a new Minister of Lands and Rural Resettlement following the 31 July 2013 harmonised national elections reinforced the view that the land reform and redistribution exercise is work in progress. The Minister embarked on a series of policy and legal changes including the promulgation of a land occupation permit and regulatory framework⁸, issuing new permits⁹ and hinting on the implementation of a land audit process.¹⁰ The issuance of new permits followed the promulgation of Statutory Instrument 53/2014, Agricultural Land Settlement (Permit Terms and Conditions) Regulations, 2014.

⁶ For example, The Utete Land Reform Commission in its report, indicated that in a meeting with the then Vice President Joseph Msika in 2002, the Vice President had suggested that the land reform programme had been concluded satisfactorily

⁷ On the 8th of February 2016, the Minister of Lands, Land Reform and Resettlement was quoted in the media as saying the land resettlement programme was "almost" complete but went on to say that an envisaged land audit might unlock more land for resettlement. Effectively therefore the land reform and redistribution programme remains unresolved in the country (see The Herald, 8 February 2016 "Fast Track Land Reform Over: Mombeshora").

⁸ Agricultural Land Settlement (Permit Terms and Conditions) Regulations, 2014, Statutory Instrument 53/2014

⁹ The President of Zimbabwe, Robert Mugabe launched the roll out of the new format A1 resettlement permits on 2 July 2014 at Chipfundi Resettlement Farm in Lions' Den, Mashonaland West Province. The permit sought to replace the old offer letters that were given through the District Administrators' Office.

¹⁰ In June 2014, the Minister of Lands, Land Reform and Resettlement announced that government was undertaking an interim audit which had revealed anomalies in the manner in which the FTLRP was implemented, including allocation of land to 10 year old children (see The Mail and Guardian 10 June 2014, "Audit reveals children given farms in Zim land reforms")

The constant fights by various individuals over farms,¹¹ the withdrawal of offer letters by government¹² from some of the beneficiaries and a court decision that has resulted in a former white commercial farmer taking back his land are all indications of a programme in a state of flux.¹³ It is therefore important in all these developments, to locate the place of women in relation to land ownership, access and control in Zimbabwe. In particular it is essential to determine how women have fared in the latest programmes to be implemented by the government in a country that has ratified and adopted international women's human rights instruments.¹⁴ Zimbabwe has affirmed the equal rights of women and has promulgated laws¹⁵ to protect the rights of women. More significantly the country has a Constitution¹⁶ that asserts not only the rights of women generally, but also specifically places an obligation on the State

¹¹ For example, in an article titled "Zim- land issues still a legal minefield" *The Mail and Guardian* Newspaper of 30 May 2014 chronicled a fight pitting ordinary land reform beneficiaries, against a senior army officer and the son of a deceased senior ZANU PF official over lot 15 and 16 of Earling Farm in Mvurwi, Mashonaland Central Province which had spilled into the courts. One of the most talked about cases was that of the Zimbabwean First Lady Grace Mugabe's eviction of families from the Manzou Farm in Mazoe District of Mashonaland Central Province in January 2015 to pave way for a wildlife sanctuary that she intended to establish on the farm. The families had resettled on the farm during the peak of the chaotic farm invasions in the year 2000, only for them to be evicted 15 years later to pave way for a more powerful prospective land beneficiary

¹² The biggest such withdrawal was in May 2014 when government withdrew 25-year leases from senior ZANU PF, government and military officials who had benefitted from the Save Valley Conservancy, in Chiredzi District, Masvingo Province under the wildlife based land reform programme. Some of the senior officials whose offer letters were withdrawn included former Masvingo Governor Titus Maluleke, ZANU-PF Central Committee member and former deputy Minister Shuvai Mahofa (later Minister of State for Masvingo Province), ZANU PF Politburo member Nelson Mawema, former Chiredzi South Member of Parliament Ailess Baloyi, former Chiredzi North Member of Parliament Ronald Ndaba and army Major-General Engelbert Rugeje. (See story "Bigwigs booted out of Save Conservancy" published in the Herald of 10 September 2014)

¹³ In a case pitting a former white commercial farmer, Heather Guild against two new farmers that had been allocated her farm, Irene Zindi and Fungai Chaeruka, High Court Judge Nicholas Mathonsi on 26 February 2014 handed back the farm to the former owner because the two new settlers were not utilising the land. In the judgment, the Judge said that those farmers who were not using land obtained under the FTLRP should have the farms withdrawn from them. It was the first court sanctioned return of a farm to a previous white owner and was therefore a significant ruling.

¹⁴ For example, the Convention on the Elimination of all Forms of Discrimination (CEDAW) 1979, and the SADC Protocol on Gender and Development, 2008

¹⁵ For example the Legal Age of Majority Act of 1982

¹⁶ Constitution of Zimbabwe Amendment (Number 20) Act, 2013. This was a total amendment of the former (1980) Constitution as the former Constitution was repealed and substituted by the 2013 Constitution. Different provisions of the 2013 Constitution came into effect at different times. Some of the provisions came into effect on 22 May 2013, the day when the Constitution was gazetted. Others came into effect on 22 August 2013, upon the assumption of office by the President elected in the first elections after the promulgation of the Constitution as provided for in Section 3 (2) of the Sixth Schedule of the 2013 Constitution. In addition, the Constitutional Court as provided for in Section 166 will only be effectively constituted seven years after the publication date (Section 18 (2) of the Sixth Schedule)

to ensure that women have equal access to resources including land.¹⁷ Even though the provision on equal access to resources, including land for women is in the section on National Objectives and therefore does not confer a right on women, it places an obligation on the State to take practical measures at every level to ensure that women have equal access to resources, including land. The National Objectives are also not referred to as non-justiciable in the Constitution, and therefore arguably the State could be called to account for its failure to act as required. Litigation could be used to compel the State to act appropriately where it fails to do so. As such, the National Objectives must “be protected by interpreting the wide justiciable rights” (Kondo, 2017:175) in the Bill of Rights so as to promote wider enjoyment of human rights by the citizens.

The research will make reference to the pre-colonial period in relation to customary land rights for women. More focus however will be on state led statutory legal developments, which are analysed starting from the period of the colonial governments through to the post-independence Government of Zimbabwe. This analysis will help in unpacking how successive land policies and law making informed the treatment of women during and after the FTLRP in relation to access to land. Successive governments both before and after independence used traditional governance structures (Chingarande, 2009:6) dominated by male chiefs, headmen and village heads¹⁸ who protected male privilege in the name of tradition and custom. As such a family based land rights system, which focused on a male head of family as the owner of the land was promoted by both the colonial government and Zimbabwe’s post-independence government. Precise attention to an inclusive and legislated approach to women’s right to agricultural land in Zimbabwe only began in 2005 with the promulgation of Section 23 (3a) of the Lancaster

¹⁷ Section 17 (1) (c)

¹⁸ Whilst addressing the 2012 Annual Chiefs’ Conference held in Bulawayo in March 2012, the President of the Council of Chiefs, Chief Fortune Charumbira told the gathering that there were only six female chiefs in the country and that 10 years earlier, the country had no female chief.

House Independence Constitution¹⁹ of 1980 (hereinafter referred to as the 1980 Constitution) through Constitutional Amendment Number 17, following demands by women and women's organisations to be recognised in land redistribution in the country.²⁰ I refer here to an inclusive approach because as will be shown later in this research, under pre-colonial and colonial customary law, single, widowed and divorced women under Shona customary law were often able to access land in their own right. Using this customary approach, the immediate post independence land reform programme also considered access to land by single and widowed women. As an example, under this customary law approach, married daughters who got divorced had the right of return (Stewart and Tsanga, 2007:412, Peters and Peters, 1998:187) to their natal homes, where they were often allocated land to farm, build homes and reside with their children if they had any. Widowed women on the other hand were allowed²¹ to retain the agricultural land that they were using with their husbands during the husbands' lifetime without interference from family and community. As the late Chief Jonathan Mangwende²² of Zimbabwe said, at customary law:

There is no estate until the surviving spouse dies. In the case of a widow, she remains, or ought to remain on the land and farm as she had done or she and her co-wives had done previously (Stewart and Tsanga, 2007:413)

These measures provided protection to widowed, single and divorced women with regards to access to land and other resources. Married women on the other hand suffered more serious prejudices that inhibited their access to land in their own right as they were expected to access land as appendages of their husbands. Arguably, married women more than single and widowed

¹⁹ However, even with the new provision on the rights of women to access agricultural land on the basis of equality with men, the ongoing conflict between women's rights and customary law was evident. The Constitution still retained old provisions that allowed women to be discriminated against on the basis of customary and personal law in all other applicable aspects of their lives.

²⁰ Essoff S (2013) chronicles how the women's movement organised around the land question, forcing the government to make concessions with regards to women and access to land.

²¹ But this was and has not always been the case as in some cases women were evicted from the land by the marital family. There was therefore a gap between what ought to have happened and what often happened in reality.

²² Chief Mangwende was then the President of the Zimbabwe Council of Chiefs and he made these remarks during a meeting between members of the Ministry of Justice legal drafting team and women lawyers during negotiations on the reform of Zimbabwe's laws on inheritance. He died on 17 December 2013

women had to mediate their access to land through husbands and often on the shadows and margins of the law. Divorced women also faced challenges, especially with regards to accessing communal land that belonged to their husbands' clans. They also faced challenges with regard to equitable sharing of property upon divorce leading to loss of valuable agricultural land on which they depended for their livelihoods. This was because it was socially difficult for them to stay at their husbands' clan land/rural home after divorce.²³

1.2 Land and History in Zimbabwe

The formal legal developments on women's land rights in Zimbabwe like in many African countries have been greatly influenced by the country's colonial history. The post-independence government however also had a significant role to play, especially in relation to its failure to remove the repressive colonial legislation from the statute books after independence. The courts also played a role, especially in situations where the courts upheld discriminatory practices against women on the basis of customary law and other practices. Historians and researchers have consistently shown that the version of customary law that has been adopted in Zimbabwe and other African countries following colonialism was far removed from the customary law that was practiced in pre-colonial society. Many scholars have regarded this version as an "invented" version of customary that has been used to undermine the rights that women otherwise enjoyed in pre-colonial Zimbabwe and Africa. Martin Chanock, one of the leading scholars on this subject posits that the customary law of contemporary Africa was born in and shaped by the colonial period. In the area of family law, Chanock argues that the resultant customary law was a reaction by older men to the loosening of control over women and a weapon in the battle against the economic independence of dependants, (Chanock, Undated: 80). Building on this argument Banda notes that:

African men, (in collusion with the white colonial governments) fearful of losing power and control over women restated a version of customary law rooted less in fluidity of daily practice but more in an assertion of a draconian version of custom that kept women in their places. (Banda, 2005:18)

²³ See for example the case of *Khoza vs. Khoza*, HC-B-106

Damiso and Stewart, (2013:456) also note that equality between men and women in Zimbabwe remains incomplete due to pervasive cultural relativism and the colonial history of the country. In particular the white colonialists did not give black women equal rights with black men due to the perceived cultural resistance from men. This was a political consideration as the colonialists feared that promotion of women's rights would lead to rebellion against the colonial government by the men (Damiso and Stewart, 2013: 456). The desire for political power by the colonial government and that for control over women by the African men led to a marriage of convenience between African and European men. Thus a wrong practice that viewed women as "perpetual minors" was passed off as an African customary way of life (Jeater, 1993:85). This perpetual minority of women therefore meant that women remained the responsibility of one or other male guardian, be it their father, husband, son or uncle and could not attain economic, social or personal independence. They therefore required the consent of their guardian to get married, whilst their economic assets effectively belonged to their guardian. This mutilated version of customary law, whether codified or uncodified is today more often than not the version that is used in dealing with the issue of women's rights to property at customary law as opposed to the progressive version, or the pragmatic approach taken in daily lives which often gives women power, authority and autonomy to own and control property including land. In her 1999 Research, Hellum noted that in Africa the dual colonial legal system with its differentiated application for indigenous and European people in the area of personal law was largely disappearing (Hellum, 1999:126), especially at a formal level through statutory interventions. At a substantive and practical level however, legal pluralism remains in place. In this regard, Rautenbach (2010) is of the view that legal pluralism in the context of South Africa at least "is a reality that is closely interwoven with the daily lives of all South Africans." (Rautenbach, 2010:145). As such, at a practical and implementation level, the problem of discrimination against women remains. As a result, even with the various statutory enactments

seeking to subordinate customary law to human rights and the Constitution,²⁴ the reality is that women still face considerable discrimination on the basis of erroneous interpretations of customary law.

Contrary to general assumptions about women's rights at customary law, in traditional Shona customary law, a woman and not a man was allowed to individually own property and had sole control over such property throughout her lifetime (Gudhlanga and Makaudze, 2012:11). Although men owned and controlled considerable property, such property was viewed as being owned or controlled on behalf of families, clans and communities.²⁵ On the other hand women's property was owned by women in their individual capacity and in their own right. Such property was derived from or grown through *mombe yeumai*²⁶ and *maoko*²⁷ property amongst others, both of which recognised the woman's efforts, often sole, in the acquisition of such property. It was only with the advent of colonialism that women were regarded as perpetual minors and therefore incapable of owning property in their own right. As Beneria and Sen argue, European colonial rule therefore, "rather than being a "liberalizing" factor for African women, contributed to their loss of status" (Beneria and Sen, 1981: 280-281)

Resultantly, the colonial system had little consideration for female agricultural systems resulting in the land reforms that were introduced by colonialism divesting women of their land

²⁴ Section 63 (b) of the 2013 Constitution whilst recognising everyone's right to participate in the cultural life of their choice emphasises that the enjoyment of such a right must not infringe the provisions of the Constitution.

²⁵ This is why customary inheritance law dictated that a man inherited a deceased male relative's property not as his sole property but in trust for the dependents of the deceased

²⁶ Traditionally this is a cow that is given to a woman by her son in law upon the marriage of her daughter. It is a token of appreciation by the son in law to the mother in law for giving birth to and for raising up the daughter (his wife). The cow and its progeny are the woman's sole property for which she has total control. It is often believed that using *mombe yeumai* by the woman's husband's family or her children without her authority can lead to avenging spirits if she dies before it is replaced. Upon her death, in the absence of a will, the woman's natal family has absolute powers to determine how the cow, its progeny and related property will devolve.

²⁷ *Maoko* property is property derived through the woman's skills such as midwifery, pottery making, weaving and traditional healing. The property acquired in this way was traditionally treated the same way as *mombe yeumai* with the woman and her natal family in the event of her death having absolute authority and control over the property.

rights as the settlers viewed land ownership and agriculture as a men's preserve (Beneria and Sen, 1981: 281).

Peters and Peters note that:

The land and income rights Shona and Ndebele women enjoyed in pre-colonial communities, however, were threatened by foreign intervention into African societies. Settler colonialism in Southern Rhodesia (Zimbabwe) served to compromise the rights of women in Shona and Ndebele societies, as policies privileged male landholders rather than Shona and Ndebele female farmers. (Peters and Peters, 1998:187-188).

In addition to land, any property that women acquired or contributed in acquiring was therefore regarded as the husband's property resulting in their work, roles and efforts not being accorded individual recognition.

1.3 The Influence of Colonial Customary Law on Policy-Making and Women's Land Rights

The colonial customary law approach as outlined above was subsequently embraced and used at policy and law making levels by successive colonial and post-colonial governments. The result was colonial and post-colonial legislation that pushed a view that customary law did not provide for women's rights to land. The 1980 Constitution²⁸ of Zimbabwe and other statutes that upheld customary law in matters of personal law also perpetuated this view. Section 23 (3) (b) of the 1980 Constitution allowed for discrimination on the basis of customary or personal law and this had a profound and negative effect on the rights of women to enjoy property rights on the basis of equality with men. The effects of such legal provisions were different for different categories of women. For example, married women in post independence Zimbabwe were often required to live in the shadows of their husbands and to access resources such as land through their husbands as a result of such legal provisions.²⁹ As such there was a continuity of a system of law that infringed on women's rights through upholding discriminatory practices and justifying them on the basis of customary law. The continuation

²⁸ The Lancaster House Constitution that came into force in on 18 April 1980

²⁹ For example the immediate post independence land reform programme focused on providing land to single (unmarried, widowed, divorced) women whilst married women were expected to access land through their husbands as the heads of households

of the discriminatory practices took place despite a significant discontinuity occasioned by the transition of the country from colonialism to independence.

As indicated earlier, express legislative provisions to outlaw discrimination on the basis of customary law in access to land were made in 2005 through Section 23 (3a) of the 1980 Constitution. Challenges however still remained with regards to women's rights at customary law generally. This was because the general provision which allowed discrimination against women on the basis of customary law and personal law in all other aspects of their lives still remained in the Constitution. As a result, the requirement not to discriminate against women on the basis of personal or customary law only in relation to accessing fast track land did not address the structural legal challenges that led to the perpetuation of discrimination against women in all other spheres of life. Was this new provision with regards to access to fast track land for women therefore half-hearted, an add-on and a concession by Government in response to women's demands for land? Did this help at all in changing the social perceptions with regards to women's rights or it actually worked to perpetuate such perceptions? Could the discontinuity at law, small as it was, therefore have masked continuity in practice due to the perception that custom, customary law and patriarchy were not ready to fully embrace the rights of women? Could it be that the lack of change was because customary law is a social and legal construction and its implementation is highly dependent on who in society has the power to interpret and implement it? These are some of the issues that this research will seek to address in subsequent chapters.

Questions also need to be asked about whether adopting and promoting living customary law which takes into account the lived realities and lives of communities would be useful as opposed to taking a legalistic approach and seeking to legislate acceptance of the rights of women by society. This is line with the receptor approach which in relation to implementation of human

rights obligations recognises that “in Eastern and Southern states, international human rights obligations can be more fully implemented through local social institutions.” (Zwart, 2012:546). The receptor approach and the utility of living customary law will however need to be assessed with the realisation that whilst flexible in some instances, in other instances communities’ living customary law and local institutions can be more rigid and more discriminatory towards women when compared to the State and National Courts’ version of customary law (Hellum and Derman, 2013:158) as well as provisions of international human rights law. In addition, the rights of women to land did not entirely rely on the law but also required institutional and infrastructural set-ups, without which it was difficult for the women’s rights to land to be fulfilled. One might ask whether these institutional and infrastructural set-ups were in place to aid in the FTLRP and protect the rights of women? Laws are a basic condition but can the laws achieve the results on their own? Some authors for example have posited that political will to provide the necessary infrastructure is very critical (Ik Dahl, et al, 2005: xi).

To its credit, the Constitution of 2013 expressly provides for women’s rights to land under the FTLRP whilst also expressly outlawing discrimination on the basis of customary law. It has extensive provisions in relation to women’s rights to land, with a focus on land acquired under the land reform programme for resettlement and agricultural purposes.

Section 17 (1) (c) of the 2013 Constitution provides that:

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

whilst Section 289 (c) provides that:

The allocation and distribution of agricultural land must be fair and equitable, having regard to gender balance...

The 2013 Constitution in the two provisions quoted above refers to both gender equality and gender balance. The ILO has defined gender equality thus:

...gender equality, or equality between men and women, entails the concept that all human beings, both men and women, are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles and prejudices. Gender equality means that the different behaviour, aspirations and needs of women and men are considered and valued and favoured equally. It does not mean that women and men have to become the same, but that their rights, responsibilities and opportunities will not depend on whether they are born male or female (ILO, 2000:48)

As such, gender equality between men and women in the context of the FTLRP implies equal treatment in accessing land regardless of sex or gender. The 2013 Constitution in demonstrating what gender balance should look like states in Section 17 (1) (b) that:

The State must take all measures, including legislative measures, needed to ensure that-

- (i) both genders are equally represented in all institutions and agencies of government at every level; and
- (ii) women constitute at least half the membership of all Commissions and other elective and appointed governmental bodies established by or under this Constitution or any Act of Parliament

Whilst this provision relates to gender balance in representation, the important concept to be gleaned is that gender balance entails equality or parity in numbers between men and women, boys and girls in the allocation of positions or in access to resources. With specific reference to access to land, Section 289 (c) of the 2013 Constitution recognises gender balance as a guiding principle in the allocation of agricultural land. Gender balance in land allocation in Zimbabwe would therefore entail parity in numbers in terms of access to the same type, sizes and quality of land amongst other considerations. In essence this would mean that access to A1 and A2³⁰ land by women and men in the country has an allocation rate of 50% for each gender.

The constitutional provisions referred to above were supported by the creation of constitutional institutions to ensure their implementation. Amongst these institutions are the Zimbabwe Gender Commission and the Zimbabwe Land Commission.³¹ The Gender Commission is

³⁰ The two main models that were used to effect the fast track land reform programme were the small scale A1 model (either as self-contained or villagised allocations) or the large-scale A2 model. However according to Scoones et al (2011:2) "in practice, the distinction between these models varies considerably, and there is much overlap." In my study area, A1 allocations ranged in size from between 6-32 hectares and yet A2 farms in the sugarcane estates in Chiredzi were as small as 18 hectares.

³¹ Provided for in Section 245 and Section 296 of the 2013 Constitution respectively

established specifically to monitor and ensure gender equality.³² The Land Commission is also mandated to give recommendations to Government with regards to the elimination of all forms of unfair discrimination, particularly *gender discrimination*³³ (emphasis added) in relation to access to land. Although it took long for Government to operationalize the two commissions after the promulgation of the Constitution in 2013, the Zimbabwe Gender Commission was finally established in June 2015 and the Zimbabwe Land Commission in June 2016. Before the establishment of the Gender Commission, the Ministry of Lands and Rural Resettlement had started putting in place legal instruments that sought to address gender inequality in access to resettlement land in the form of Statutory Instrument (S.I) 53/2014. The S.I provided for the rights of spouses and children in relation to resettlement land. Whilst resettlement land cannot be owned and therefore cannot be sold, the permit holder (at least on paper) has rights over the land, in particular access and control rights. For example, a beneficiary of land under the FTLRP can, at least on paper, use their interest in the land as security³⁴ if they borrow money from banks and other financial institutions. In addition, the permit holder can with the consent of the minister cede, assign, hypothecate or sublet their piece of land to another person. On the face of it therefore, this gives some value to the land regardless of the lack of ownership title.³⁵

At the time of the announcement of the new permit system by the government, the Zimbabwe Indigenous Women Farmers Association Trust President, was quoted in the Herald Newspaper as welcoming the development and expressing the view that it was “a positive move towards women’s empowerment”. She said:

³² Section 246 (a)

³³ Section 297 (1) (c) (ii) (A)

³⁴ Section 7

³⁵ Section 6 (2) of the regulations states that “for the avoidance of doubt, it is declared that a permit holder does not have title over the allocated land, that is to say, he or she may not sell the allocated land, but may however, transfer, lease, hypothecate, bequeath or otherwise encumber the allocated land in the manner provided under Section 7”. Section 7 then emphasises that no such transactions can be entered into without the authority of the Minister of Lands and Rural Resettlement.

The fact that the document recognises the spouse shows that Government is concerned about women. We have lots of cases where women lost farms after the death of their husbands and this will no longer happen. (The Herald, 23 May 2014)

This optimism however needs to be weighed against what is transpiring in reality in terms of practice and implementation by many of the actors. These include the state, family and other institutions such as the courts and how they are ensuring or hindering access to fast track land by women. Does the jurisprudence that is emerging from the courts,³⁶ for example show that the progressive provisions in the Constitution that should enable access to land by women are bringing real change to women's land rights? Or does the road to actualising this right remain twisted, arduous and littered with obstacles? In this regard there is need for example to determine whether and how the courts have been dealing with fast track land cases. A question also has to be asked about whether courts at various levels have clear and unequivocal jurisdiction to deal with fast track land disputes. Are other institutions such as the District Administrator or the Ministry of Lands and Rural Resettlement adequately playing their role in ensuring access to land by women and in the resolution of fast track land related disputes?

1.4 Objectives of the Study

There is a significant body of research on the Zimbabwean FTLRP. Part of this existing research has managed to establish the level of access to agricultural land by women under the programme at both national level (Utete, 2003) and in geographically limited areas (Scoones, et al, 2010 and Matondi, 2013). There is convergence on the prognosis that women did not benefit from the programme on the same scale as men in terms of quantity, quality and value of agricultural land acquired. The findings from Scoones et al (2010) in their research in Masvingo Province showed that 8% of A2 beneficiaries were women, 14% in A1 villagised schemes were women, 13% in A1 self- contained were women and 15% in the informal schemes³⁷ were women. The

³⁶ For example the case of *Chombo vs. Chombo* HH 336/2014 and *Chiwenga vs. Chiwenga*

³⁷ Informal schemes were allocations that were not officially recognised by government. They were not declared illegal but at the same time, there was no discernible government involvement in the schemes over the years. For example unlike formal schemes, there was no pegging or allocation of plots in these schemes.

access levels were therefore not only low when compared to men, but women were more concentrated in the lower value allocations such as informal schemes as opposed to the prime A2 allocations. Matondi (2013) and Hanlon et al, (2012) also reached the conclusion that women had not benefitted from the FTLRP as much as the men in the country. Having realised this, the overall objective of this study therefore is to identify, analyse and understand the legal, political, economic and social factors that prevented women from participating in or benefitting from the FTLRP on the basis of equality with men. Based on those findings the research seeks to provide recommendations on how these factors can be addressed in future to enable women to benefit equally in the allocation of agricultural land.

To achieve this overall objective, the research will seek to address the following sub-objectives:

- i. To analyse the role of formal/state law, customary law, cultural norms and practices and legal pluralism in determining access to agricultural land by different categories of women in Zimbabwe under the FTLRP;
- ii. To determine the governance structures that were in place during the FTLRP and those that were established after the programme and how they impacted on different categories of women in relation to their rights generally and their agricultural land rights in particular;
- iii. To understand the effect that violence and breakdown of the rule of law had on preventing different categories of women from participating in the FTLRP;
- iv. To understand the concepts and application of gender roles, women's unpaid work and its value and how this contributed towards limiting or increasing access to agricultural land by women; and
- v. To analyse the role of family relations and consequences of marriage, divorce and death in influencing access to resources and access to fast track land by women.

1.5 Problem Statement

It has been noted that:

In Zimbabwe most women do farm their husband's land but they do not have any form of title (deed or customary acknowledged right) to that land. (Mutopo, 2011:1026)

The Food and Agricultural Organisation (FAO) of the United Nations (UN) has also noted that lack of tenure security affects women's role as food producers and as a result:

“Gender differentiated rights to land have implications on rural food security and nutrition as well as on the wellbeing of rural families and individuals.”³⁸

This has been a challenge in Zimbabwe's history, particularly after the advent of colonialism as women were often treated as minors who could not own property in their own right. The 2000 FTLRP was, at least at face value, supposed to address these challenges and promote access to land by women in light of its stated objective of addressing historical imbalances. Research has however shown that despite this stated objective, the inclusion and participation of women in the programme was minimal because at most, only 18% of the beneficiaries of the programme were women.³⁹ There were many contributors to this state of affairs, as this research will show. One of these was the starting point at policy level, which was erroneous in that in a country in which women constitute 52% of the population, only 20%⁴⁰ of the available land was set aside for women. This was the same percentage of land that was set aside for war veterans who constituted less than 1% of the population at independence (at approximately 65,000)⁴¹. The number of war veterans had naturally reduced further due to death by the time of the implementation of the FTLRP with Raftopoulos and Savage (Eds) (2004:64) putting the

³⁸ See <http://www.fao.org/gender/landrights/home/en/>

³⁹ The Report of the Presidential Review Committee on the Implementation of the Fast Track Land Reform Programme (the Utete Commission, 2003) indicates that women-headed households who benefited under Model A1 constituted only 18% while women beneficiaries under Model A2 constituted only 12%.

⁴⁰ Land Reform and Resettlement Programme – Revised Phase II

⁴¹ The Zimbabwe Statistical Agency (Zimstat) Preliminary Report on the 2012 census indicates that during the 1982 census, the first census to be carried out after independence, the population of Zimbabwe was around 7,35 million whilst Chitiyo T.K (2000) notes that in 1980 at independence, there were approximately 65 000 Zimbabwe African National Liberation Army (ZANLA) and Zimbabwe People's Revolutionary Army (ZIPRA) guerrillas. The guerillas, later to be known as war veterans therefore constituted approximately less than 1% of the population at independence.

figure at around 50,000 in 2004. Yet the war veterans at less than 1% of the national population were targeted to receive the same amount of land as 52% of the population. Whilst women participated in and played a significant role during the war of liberation as guerillas, their numbers were small compared to men.⁴² As such, the war veterans' beneficiary category as a point of entry for women in accessing land would always mean that less women than men would benefit. In addition, the gender roles that women continued to play even during the war such as keeping the supply lines open to the male fighters, teaching in the refugee camps and nursing the sick and war injured made it difficult for women to be recognised as war combatants and war veterans when it came to access to land under the FTLRP. As Chogugudza notes:

At the end of the war, these tasks were seen to have been merely women's patriotic duty and not in any way equal to actual engagement in the struggle, thus making it very difficult for women to receive compensation since only those who had fought in real combat were being recognised.⁴³ (Chogugudza, Undated: 44)

The specific quota allocation for war veterans under the FTLRP was meant to compensate them for their role in the armed struggle. Unfortunately, for women fighters, the image of the war veteran was male and many women that deserved to benefit were left out as underlined by Chogugudza above. The policy and conceptual framework for access levels for women under the land reform programme was therefore skewed from the onset of the programme.

Respect for women's rights to land in their own right, bearing in mind the different categories to which women belong therefore remains an issue that needs to be effectively addressed. In addressing the land needs of women, there is need to ensure that women are treated on the basis of equality with men in this regard. Without addressing the social, political and economic issues that have a bearing on the realisation of women's land rights, policy and legislative changes

⁴² The ZANU PF Department of Women /ZANU PF Women's League stated that at independence, 25-30% of the ZANLA Army was made up of women (See Liberation Through Participation: Women in the Zimbabwean Revolution (Undated)

⁴³ Women also ran into several risks from the Rhodesian security forces in these situations, especially when they were delivering supplies, housing and protecting combatants.

important as they are, will not effectively address the problem on their own. There is therefore need for a holistic approach to addressing women's rights generally and women's rights to agricultural land specifically. An assessment and understanding of the issues that prevented women from accessing land on the basis of equality with men under the FTLRP is therefore an important aspect of this equation.

This is necessary in light of the realisation that many Zimbabwean women like in many African countries depend on land as their source of livelihood and that of their families (Mutopo, 2011, Actionaid, 2015). Without land therefore, women, in particular rural women are unable to enjoy their right to food or economic development. Land produces food but the produce from the land is also often sold to supplement incomes that help women and their families in paying for other necessities such as school fees and medication. The failure by the FTLRP to address these issues means that women will continue to live on the margins and sidelines of the country's socio-economic platforms since land forms the mainstay for the majority of Zimbabwean women's participation in the country's economy and society. As such the programme should have and must continue to focus on availing land to women, which in turn will help in the economic and social development of the women in the country. A policy and legal framework that addresses women's rights to land and that is fully implemented has been lacking in the country yet such a framework would be key in addressing land access challenges that are faced by women.

1.6 Contextualization of the land Question – An Introductory Review of the Literature

Zimbabwe's land question has been the subject of debate, research, legal and policy interventions and government sanctioned commissions of enquiry right from the early years of colonialism. A discussion of the land issue in Zimbabwe would not be complete without the various policy and legislative interventions that accompanied the land dispossessions and subsequent reforms. Whilst the colonial government's policy and legal interventions were focussed on dispossessing the black indigenous populations of their land, the unfairness of this

was apparent to the black majority population, and to some within the settler community. The majority within the settler community however supported the land apportionment and racial segregation that was brought about by these policy and legislative provisions as they had the effect of supporting their privileged positions. As a result, whilst the government was promulgating and implementing the policies and laws, researchers were focussed on analysing the implications of these policies and laws from various perspectives, with early researchers and writers consumed mainly by the racial, economic and political aspects of the land issue. On one hand researchers such as Whaley, a Senator in the Rhodesian Senate justified racial segregation and land apportionment on the basis that:

The belief is that the co-existence of people comprising a number of groups can only be achieved when groups and communities have the rights and the opportunities to preserve their own identities, their own traditions and their own customs. (Whaley, 1972:32).

On the other hand, other settlers such as the Chief Native Commissioner for Mashonaland, W. S. Taberer had a different view. Taberer

Was uncompromising on his attack on the reserves system. He regarded them as a means of demoralisation, of excluding Africans from the “beneficent” influence of the white man. (MacKenzie, Undated:83)

His counterpart, the Chief Native Commissioner for Matabeleland Taylor, “attuned himself more to Company [British South African Company (BSAC)] policy” (mainly as a way of protecting himself following previous blunders in the administration of the native issues in the region. (MacKenzie, Undated:83)

The Morris Carter Commission which was established in 1924 to undertake an enquiry into the appropriateness of land segregation recommended such segregation in its report in 1925 with a further recommendation that:

The reserves would be maintained around 21 million acres, the European areas would be 48 million acres, the Native Purchase Areas 7 million acres and almost 18 million acres would be left for future assignment for every race. (Rifkind, 1968:36)

With the establishment of the Morris Carter Commission and its recommendations, came the birth of the 1930 Land Apportionment Act (LAA). Even the missionaries who had initially supported land apportionment, ostensibly for the protection of the black majority population from the marauding European settlers, opposed both the recommendations and the subsequent LLA. The contestations around the land issue were an everyday issue, especially if one considers that the Carter Land Commission was the fourth such Commission in Rhodesia since the formal establishment of the settler colony in 1890. The first Land Commission was established in 1894 through an Order-in-Council with a focus on Matabeleland leading to the establishment of the Gwai and Shangani Reserves in Matabeleland. By 1897, there were contestations within the settler community over the appropriateness of the establishment of the two reserves leading to the establishment of the Martin Investigation which was led by the Deputy Commissioner of Southern Rhodesia, Sir Richard Martin. According to Rifkind, Sir Richard Martin's Report:

Was extremely critical of Company (BSAC) practice and policy and was the first of a long line of findings that have condemned Rhodesian Land Policy...the land in question had never been considered desirable either by European or Matabele as witnessed by the fact that the Land Commission chose these areas because there had been no European claim to it...The fact that unallotted land was scarce should not have influenced the Commission as their job was to find suitable land for natives, and not merely in the unallotted areas. (Rifkind, 1968:21)

However by 1898, an Order-in-Council extended the establishment of reserves to the Mashonaland Regions (effectively to mean the rest of Southern Rhodesia.) and in 1923, the status of the reserves was firmly contained in the Constitution that brought Responsible Government to Southern Rhodesia.⁴⁴ In 1910, a Native Affairs Committee of Enquiry was set up. Commissioned to inquire into and make recommendations on native issues generally, the

⁴⁴ See <http://www.colonialrelic.com/appendix-vi-the-land-tenure-act-1969-and-the-land-apportionment-act-1930/>

land issue inevitably formed part of the issues that were under discussion. The conclusions of the Committee “hinted at possible land segregation and apportionment” (Rifkind, 1968:26). The number and frequency of the Commissions and Committees to deal with the land issue was therefore an indication of the fact that the land issue was an emotive issue, as it continued through the rest of the colonial and post-colonial period in the country. With the LAA firmly in place, it could have been hoped that the issue was addressed, but that was not to be. Subsequent legislation, attempting to fine-tune the legislative framework on land included the Land Tenure Act, 1969, the Native Land Husbandry Act, 1951 and the Tribal Trust Lands Act of 1965. The full import of these subsequent colonial land laws is discussed in Chapter Four of this thesis.

It is therefore no surprise that post-independence, the land question continued to attract researchers’, policy and legislative attention. In terms of legislation, and other than the Constitutional provisions on land, in 1981, the Communal Land Act was enacted, effectively turning the Tribal Trust Lands into communal land and repealing the 1969 Tribal Trust Lands Act. In 1985 the Land Acquisition Act was enacted allowing Government to acquire land on a “willing seller-willing buyer” approach in line with the provisions of the Lancaster House Agreement and the 1980 Constitution that brought independence to the country. Discussions leading to the Lancaster House Agreement inevitably had considerable focus on the land question as a point of discussion. As in the colonial period, the independence Government of Zimbabwe also established its own commissions of enquiry into the land issue, starting with the Rukuni Commission (1994) and the Utete Commission in (2003) as will be discussed later in this thesis.

As with colonial research and commentary, initial focus of research post-independence was on the legal, racial, political and economic aspects of the land question. Researchers such as

Tshuma (1997) tackled the challenges of racial inequality in land distribution patterns from a legal perspective and the impact of this inequality on the country's social, economic and political terrain. At the turn of the millennium research focused more on the emerging contestations around land ownership and land redistribution as the country embarked on the FTLRP. Focus at the initial stages of the FTLRP was again on the racial, social, economic, legal and political issues. Moyo and Yeros (2005) focussed on racial and class inequality in land ownership and the resultant social, political and economic imperatives and how the inequalities had partly contributed towards the chaos that became a part of the FTLRP. Other researchers such as Gonese and Roth (2003) and Kinsey (2004) sought to measure the economic benefits of the 1980s land reform programme and provided a comparison with the FTLRP of the 2000s. With the coming in of the FTLRP, researchers also began to look at the land issue from a gender and women's rights perspective. Gaidzanwa (2004) looked at the land issue in relation to electoral politics in the country and how the issue of land had been and could be used to woo the female voter. Hellum and Derman (2004), Mushunje (2001) and Mutopo (2011) all focussed on gender based land access and ownership inequalities post fact track.

A decade after the FTLRP, some researchers' narrative began to change, with a focus on extracting the positive gains that they argued were beginning to manifest as a result of the programme. Scoones, et al (2010) in their research in Masvingo Province concluded that the narrative of the FTLRP as a total disaster was false as the programme presented a more complex and nuanced outcome. They stated that:

It is too early to draw up a definitive balance sheet on Zimbabwe's land reform, but there have been benefits and opportunities, as well as costs, challenges and pitfalls. (Scoones, et al, 2010:2)

This view was picked up by Hanlon, et al (2013) who in the concluding chapter of their book (Chapter 13) argued that the land was “occupied and productive” They stated in support of this view that:

A decade after *jambanja*⁴⁵, Zimbabwe’s agricultural production has largely returned to the 1990s level. Small-scale black farmers...now produce together almost as much tobacco as the big white farmers once did. (Hanlon, et al, 2013:4)

Yet other researchers took a more cautious approach, stating that “Ten years after the fast track land reform programme in Zimbabwe, its outcomes remain uncertain and contested.” (Matondi and Dekker, 2011:1) and sought instead to propose a land rights and tenure system that could spur agricultural production and farmer investment through the provision of tenure security.

My study on the rights of women to agricultural land under the FTLRP is therefore undertaken with full acknowledgment of the existing body of work on the subject. It is on the basis of the existing research that this study builds a new body of knowledge focusing on the land policy and legal frameworks as well as norms and practices at various levels of government and society and their implications on women’s rights to agricultural land in Zimbabwe. This analysis is undertaken with a view to understanding the factors that led to women acquiring only a fraction of the land that was available for distribution under the FTLRP and the challenges that were faced by the women who acquired land as they sought to effectively utilise their land. The study will also seek to establish how women fared socially, economically and politically in the new settlements that were established after the FTLRP. This is in line with the longitudinal approach of the study, which was undertaken with a realisation that access to land cannot be the end of a land reform programme. The research is premised on the supposition that there are various aspects of the land reform programme that have not been fully explored by other researchers yet they need to be investigated in order to understand the lived realities of different women in

⁴⁵ In relation to the FTLRP in Zimbabwe, this term relates to the violent actions that were perpetrated against the white commercial farmers during their evictions from the farms

their interactions with the country's FTLRP before, during and after accessing or failing to access the land. These include the following:

- i. The effectiveness or otherwise of the legal and policy framework in creating suitable conditions for women to access agricultural land under the FTLRP;
- ii. The manner in which different actors exercised visible, invisible and hidden power, power relations and attendant dynamics at various levels of government and society, at different stages of the FTLRP and in different geographic settings where land was made available and distributed under the programme;
- iii. The impact of multiple systems of laws and norms and the attendant creation of multiple rules, regulations and institutions for the implementation of the programme on women's rights to land and to participate in the governance of the new farming areas; and
- iv. The impact of women's unpaid work and their multiple roles on their opportunities to engage with the FTLRP and the value or absence thereof given by society and the State to such roles in determining access to, control over and ownership of land by women under the programme.

All these are facets of the FTLRP, which need to be adequately explored in order to understand how they impacted on women's access to land at various stages of the land reform programme and in women's various social and family circumstances. In many ways, these aspects can continue to have a negative impact on women's chances of accessing land even in a different social, political and economic environment in Zimbabwe. The findings of the study if taken into consideration in policy and legislative formulation as well as the practice environment can help women in benefitting from future land reform and reorganisation programmes.

1.7 Outline of the Thesis

This thesis is divided into nine chapters. The first chapter is a general discussion on the land rights of women and how the current state of affairs has evolved through policy and legislative changes, social and cultural evolution as well as the development of practices. The chapter also addresses the objectives and justification of the study, the problem statement that the research seeks to address as well as a brief contextualisation of the land question in the country. The second chapter focuses on research methods and methodologies, research questions and assumptions, theories and theoretical frameworks as well as the field work experiences. In the third chapter, I discuss the international women's human rights framework with a focus on the right to land. The fourth chapter is on the legal history of the land issue in Zimbabwe and how this legal history, policy and law making impacted on women's rights to land in the country. Chapter five focuses specifically on legal pluralism and farm level governance institutions and patterns of inclusion and exclusion for women land beneficiaries. Chapter six addresses the gender dynamics of power and decision-making processes under the FTLRP and how these impacted on women's ability and capacity to access land under the programme. Chapter Seven is an analysis of women's unpaid work, gender and multiple roles and how this impacted on women's access to land under the FTLRP. It is followed by Chapter eight which explores the role of the family and the family life cycle, that is during the subsistence of a marriage, at divorce and at death in addressing women's access to land and other property. The research concludes with Chapter nine which provides concluding observations and recommendations on the findings and outcomes of the research.

Chapter 2: Research Methodological Frameworks, Research Methods and Data Collection

2.1 Introduction

This chapter covers the methodological (theory and analysis of how the research proceeded), methodical (techniques used for gathering evidence)⁴⁶ as well as conceptual frameworks used in the study. The research was carried out using both legal analysis and social science analytical frameworks. The legal analysis focused on primary sources of law such as statutes, the Constitutions of Zimbabwe and attendant amendments over the years, case law as decided by the higher courts in the country as well as international treaties and how these could be applied to the subject of my study.

The bulk of the data used in the research emanated from a longitudinal fieldwork research spanning four years and seven months; starting in September 2010 and ending in April 2015. I studied the research area and the respondents during this extended period for both consistency and variations. The fieldwork was complimented by the use of various theoretical and conceptual frameworks to analyse the meaning and impact of the fieldwork findings on women's land rights in Zimbabwe generally and under the FTLRP in particular. The Chapter also provides a detailed description of the strategies and approaches used in carrying out the research, the processes and procedures that I followed in order to access the geographical research area and the respondents, fieldwork experiences and the various difficult and oftentimes pleasant encounters. The chapter also addresses the methods used for data collection and analysis.

⁴⁶ See Harding S (ed) (1987).

2.2 Research Assumptions and Research Questions

As I embarked on this study, my initial focus was on establishing the number of women that accessed land under Zimbabwe's FTLRP relative to men nationally and in my research area of Masvingo Province. This focus however shifted as soon as I began my literature review as the available literature revealed that many studies, including a government-sanctioned enquiry (The Utete Commission of 2003) had long established that women had fared badly when compared to men in the country in acquiring land under the FTLRP. My new focus after this realisation was to establish the reasons behind this state of affairs and the challenges and obstacles that women faced in their efforts to access land under the programme. A particular focus was on the role played by the law in creating this state of affairs. Using available literature and my own personal knowledge and experiences of the FTLRP as it began to unfold in the country in the year 2000, I developed the research assumptions and research questions as detailed below to help me in undertaking the study.

2.2.1 Research Assumptions

The assumptions that I eventually developed and which underpinned the field research therefore were that:

- i. Women with different statuses and in different social categories had different experiences with access to and control over land under the FTLRP;
- ii. Women acquired less land, low value land and low quality land compared to men;
- iii. The violence and lack of legal and policy direction that prevailed during the initial phases of the FTLRP prevented women from effectively participating in the programme;
- iv. Women's gender roles and non-recognition of women's unpaid work contributed towards their low levels of land acquisition and access;
- v. The differences and similarities between women were an important factor in determining their levels of access to land;

- vi. Both Zimbabwe's general law and customary law provisions contributed towards the low levels of access to land by women;
- vii. The governance institutions and structures that were established during and after the FTLRP were not suited to promote women's rights generally and women's land rights in particular as well as their right to participate in relevant governance structures;
- viii. The family unit and circumstances of marriage, divorce and death impacted on women's rights to access land; and
- ix. The dominant power relations and decision making processes that were at play at various levels during the FTLRP undermined women's chances and capacities to effectively participate in and benefit from the FTLRP.

In order to test these assumptions, I developed research questions as detailed below to aid in the investigation of the issues under study.

2.2.2 Research Questions

As underlined in Chapter 1, the overall objective of this study is to identify, analyse and understand the factors that precluded women from participating in or benefitting from the FTLRP on the basis of equality with men, with a view to identifying ways of improving women's land rights in Zimbabwe. The role of the law and legal pluralism in creating the situation that impacted on women's land rights is considered as a critical aspect of this research. The overall research question that needs to be answered in order for the overall objective of the study to be realised therefore is "*what factors impacted on women's ability to access land on the same basis as men under the country's FTLRP?*" This question is asked with a realisation that other researchers as detailed in Chapter 1 have already concluded that women also "somewhat" benefitted from the FTLRP in Zimbabwe, though not on the same level as men. As a result, there is need to understand the differentiated nature of the benefits for women and men in terms of quantity and quality of land obtained. This has to be viewed in light of the population ratio of men and women and other special interest groups that were targeted as

beneficiaries under the programme. The overall research questions will be supported by several research questions and sub research questions as outlined below:

- i. Main Research Question Number 1: Did women acquire less land, low value land and low quality land compared to men?**

Sub Research Questions

- What kind of land did women acquire compared to men in terms of quantity, value and quality?
- Did the land allocation process give preference to men ahead of women?

- ii. Main Research Question Number 2: How did the violence and breakdown in the rule of law during the inception phase of the FTLRP affect women's capacity to negotiate access to, control over and ownership of land under the programme?**

Sub Research Questions

- Did the breakdown of the rule of law lead to the creation of implementation, policy and institutional barriers to land rights for women?
- How did the creation of plural systems, multiple structures and multiple actors impact on women's right to access land on the basis of equality with men?
- Did the violence that accompanied the initial phases of the FTLRP constrain women from benefitting from the FTLRP?
- Who controlled the law and its implementation at the multiple levels of operation during the FTLRP?

- iii. Main Research Question Number 3: What value and recognition was given to the specific roles that women played during the FTLRP both on the farms and in their homes?**

Sub Research Questions

- What kind of roles did women perform on the farms during the farm invasions?
- What kind of roles did women perform in the home as the men went out to invade the farms?
- How did gender roles affect women's ability to participate in the farm invasions on an equal footing with men?
- Were the roles that women played in the process given similar recognition and importance compared to the roles that were predominantly performed by men?
- What effect did the roles that were played by the different genders have on actual land allocation and accumulation by the different actors?
- Was there a government policy or strategy in place to address gender roles and their impact on women's ability to access land under the programme?

- iv. Main Research Question Number 4: Did women's differences and similarities determine their ability or inability to access land under the FTLRP?**

Sub Research Questions

- What differences and similarities existed between and amongst women who participated in or were affected by the FTLRP?
- How did these differences and similarities impact on women's ability to assert their land rights and claims?

- What differences or similarities existed between men and women during the programme?
 - How did these differences impact on their ability to assert their claims to land?
- v. **Main Research Question Number 5: Did Zimbabwe’s statutory and customary law contribute towards the low levels of access to land by women?**

Sub Research Questions

- What role did the existing statutory and both formal and living customary law provisions play in determining women’s rights to access land?
 - Were there efforts by the State to determine the adequacy or otherwise of the existing legal framework in facilitating women’s rights to access land and making the necessary adjustments to the laws?
 - Did the laws directly discriminate against women and their rights and fail to address issues of substantive equality?
- vi. **Main Research Question Number 6: How did the plural land governance institutions, structures and laws impact on access to land and attendant resources by women?**

Sub Research Questions

- What role was played by general law, cultural and traditional practices, living and formal customary law and local norms in determining access to land under the FLTRP?
- Which institutions were involved in allocating land, determining and identifying beneficiaries and registering rights to land and how did these institutions address the rights of women to land under the programme?

- How did farm level governance institutions evolve on the farms during and after the farm invasions and what role did the general law, customs, norms and practices play in the creation of the these institutions?
 - Did the method of constitution and composition of farm level governance institutions encourage or limit women's chances of participating in these institutions?
 - Did the failure by women to participate in the farm level institutions impact on their capacity to access land, manage the land as well as inputs and the resultant produce?
 - Is a state of legal pluralism beneficial to women in the process of negotiating access to resources such as land?
- vii. Main Research Question Number 7: Were marriage and family relationships factors in influencing or enabling women's access to land and attendant resources?**

Sub Research Questions

- Was the family unit an enabling or constraining factor in women's efforts to access land?
- What role was played by the extended African family in facilitating access to land by women?
- Was it easier for married women or women in other sexual relationships with men to access or obtain land compared to single women?
- What impact did divorce have on women's land rights as wives and daughters?
- What impact did death of a husband or father have on women's land rights as wives and daughters?

- viii. Main Research Question Number 8: Did the dominant power relations and decision making processes that were at play at various levels during the FTLRP undermine women's chances and capacities to effectively participate in and benefit from the FTLR?**

Sub-Research Questions

- What levels and forms of power did women engage and negotiate with under the FTLRP?
- Was there any effort by any actors to give ordinary women the capacity to negotiate with different forms of power at the various levels they interacted with during the FTLRP?
- Were women successful in their engagements with the different typologies of power and at different levels for land acquisition?
- Did the need to engage with the different typologies and levels of power impact on different women differently?
- Was power used as a tool to deny women their right to access land on the basis of equality with men?

To answer some of the main research questions, I conducted fieldwork in multiple locations in Masvingo Province in Southern Zimbabwe between September 2010 and April 2015. These locations included Chidza and Lothian Farms in Masvingo District, Masimbiti area in Ward 16 of Chiredzi District in Nuanetsi Ranch and two areas/sections in the small scale A2 commercial sugarcane farms in the Hippo Valley Sugar Estates (Musisinyani and Farm 54) in Chiredzi District. As will be detailed later in this research, these locations were systematically chosen in order to meet the objectives of the research in line with the assumptions as provided below. Land beneficiaries were from other areas in the country, both urban and rural. I therefore

identified their source areas to determine the push or retaining factors for different categories of women that led them to either leave their original homes and settle on the farms or stay at their original homes and not move to settle on the farms. To track these trajectories, I interviewed women and men in the Chivi Communal areas in Sese, Gororo and Shindi Communal lands, in Masvingo District in Musvovi Communal lands, Chiredzi Town and Masvingo City. Other respondents, in particular key informants who could provide a broader national perspective to the research were identified further afield in Harare.

2.3 Methodological Approaches

2.3.1 Women's Law Approach

The Women's Law approach has been defined as "a woman centred legal discipline which takes women's actual lived experiences and life situations as a starting point for the analysis of the position of women in law and society" (Bentzon et al, 1998:91, Dahl, 1987:12). This perspective calls for the examination and understanding of how women are considered in law and how the law corresponds to the reality of women and their needs (Dahl, 1987:12). Thus in an analysis of the complex relationship between law and life in relation to women, the starting point for the examination must be in life rather than in law. This comes from a realisation that the legal system historically was constructed by men and for men and reflecting the opinion of men. This meant that the legal system provided solutions to conflicts of men and responding to the needs and demands of men (Berg and Gundersen, 1990: 117). What the law says about women is therefore of limited use for women unless juxtaposed with their actual reality in their everyday lives.

In examining women's lived realities, I also considered that women are not a homogenous group but that they are generally differentiated by many factors including their relational lives,

age, sex, class and race amongst many differences, often leading to intersectional discrimination for many women. In this regard Hellum et al (2007:xviii) emphasise that it is important to have closer consideration of intersectionality because:

Women suffer hardships and injustices not only because they are discriminated against as women but also because of their class, race, age, religious or ethnic backgrounds or sexual orientation.

This intersectionality and the differences amongst women need to be examined and addressed in law, policy and practice to ensure enjoyment of rights by women across overlapping disadvantages. Emphasis should also be placed on changing regressive social norms and moving beyond mere legal reforms and amendments on paper to specifically target changes in practice, and addressing the multiple forms of disadvantage that women face (World Bank, 2014: 28)

As the CEDAW Committee has noted, intersectional discrimination compounds the negative impacts of discrimination on the women concerned in that the sex and gender discrimination that women face is inextricably linked to other factors such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity.⁴⁷ This according to the CEDAW Committee requires State parties to address the intersecting forms of discrimination through legislation and other means (Freeman et al, (eds), 2012:70). This approach reinforces the provisions of Article 14 of CEDAW which recognises the intersecting vulnerabilities faced by women, especially those living in rural areas. In General Recommendation Number 34 on the Rights of Rural Women, the CEDAW Committee urges State Parties to recognise the fact that rural women are not a homogenous group. As a result they often face intersecting discrimination based on descent, ethnicity, religious affiliations, disability and age amongst other factors. Banda (2012: 359) notes that:

Rural living increases women's socio-economic disadvantages due to lack of access to services including health, education, water, sanitation and transport. Their vulnerability

⁴⁷ CEDAW General Recommendation Number 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, Para 18

to poverty is further exacerbated by legal and social policies that exclude them from land ownership and deny their rights to voice their opinions in development planning and in local government. Other factors including disability and age have also been identified as having disproportionate impact on rural women”

In my area of study the intersectional discrimination that women faced was, in addition to those differences outlined above, also linked to other factors such as political affiliation and whether or not they were former farm workers, foreigners or Zimbabwean nationals. Such differences and intersecting identities were a determinant factor on whether women were able to get land allocations or whether they could be evicted from land that they already owned or had access to in order to pave way for different categories of men and women.

I examined the practical and actual challenges faced by women in their efforts to access land under the FTLRP and their efforts to balance their land seeking exertions with their everyday lives. This helped in unpacking whether the land rights of women as provided for in legal, constitutional and international human rights frameworks were actually utilised for the benefit of women. Using the women’s law approach my research focussed on the situation of women on the ground as the starting point and linked their situation with the provisions of the available laws, policies and prevailing practices on access to land and resources under the FTLRP. This was important in an environment where laws and policies both colonial and post-colonial were not made with women in mind and in situations where they were in place, were often disregarded. This led to the creation of multi-sectoral vulnerabilities for women. The ensuing laws were a mixed pot. Some were outright discriminatory. Others were overlooked in many contexts and in other situations gender-neutral laws had the effect of discriminating against women in practice.

The focus of the international women’s rights system for example has been on identifying the lived realities of women in the world and coming up with laws that address this situation or

repealing those laws that entrench discrimination against women.⁴⁸ This however has to be undertaken with a realisation that changing the laws is just the beginning in addressing discrimination against women but not adequate on its own. As such, the CEDAW Committee in General Recommendation Number 28 has noted that changes in law must be accompanied by:

Appropriate measures, such as comprehensive action plans and mechanisms for monitoring and implementing [the laws], which provide a framework for the practical realization of the principle of formal and substantive equality of women and men.⁴⁹

This means that substantive equality goes beyond law-making to include women's actual lived experiences and in the process considering the effect of laws, policies and practices in the enjoyment or absence of the relevant rights (Banda, 2012:380).

Kameri-Mbote in her research in Kenya illustrates how the women's law approach is important in buttressing the point that there are structural problems in women's lives and society at large that are beyond law. She notes that such structural problems can only be effectively addressed through empirical grounded research that recognises women as the starting point in such research. The research must in turn inform legal and policy changes as well as practice in order to effect change for the benefit of women and other marginalised segments in society (2002:5). In line with this understanding, during my fieldwork, I took women as the starting point in unpacking the situation of women and their experiences, realities and struggles in their efforts to access, utilise and benefit from land under the FTLRP. This was done with a realisation that

⁴⁸ For example, in Paragraph 232 (d) of the 1995 Beijing Declaration and Platform for Action, State Parties commit themselves to review national laws including customary laws in the areas of family law, civil, penal, labour and commercial law in order to ensure the implementation of the principles and procedures of all relevant international human rights instruments by means of national legislation, revoke any remaining laws that discriminate on the basis of sex and remove gender bias in the administration of justice. Subsequent international law making on the subject of women and women's rights in Africa and the SADC Region through the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol, 2003) and the SADC Protocol on Gender and Development (2008) have sought to address the status of women with regards to law making as well.

⁴⁹ CEDAW General Recommendation Number 28, on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, Para 24.

a programme of the importance and magnitude of the FTLRP must consider women's lived realities at conception and during implementation. Whilst, I maintained this focus on women and kept a women centred approach, I also combined this with a gendered approach which examined women's lived realities and their relationships with men in families, in the community, at state level and in other institutional set-ups at local and national level. This relational approach shows that the focus on the husband-wife relationship as is done by international law often obscures the entitlements and challenges that derive from relationships in the extended family [and in the community] (Hellum and Derman, et al, (eds) 2013:136). This approach also helps in analysing the role played by men in these relationships in facilitating or hindering women from realising their rights. Such men could be in the nucleus family set-up or could be extended family members, community or national leaders. This is because in African societies, individual and communal rights and obligations co-exist, hence the need to consider relationships based on both marriage and kinship and how such relationships influence the position of women and men whilst shaping their gender relationships (Bentzon, et al, 1998:26). This was also linked with the receptor approach, especially its recognition of the tendency by African societies to "rely on and invest in their local community, in particular in their extended family rather than in far away State institutions" (Zwart, 2012: 555). Zwart also notes that:

The African approach focuses on collective survival rather than pursuing individual self-interest...individual rights exist within the context of the group and therefore must always be balanced against the collective interest (Zwart, 2012:555).

This approach however needs to be closely assessed to ensure that the oppressed in that society do not sacrifice their own rights for the benefit of the dominant and the collective.

Paradoxically the women's law approach helped as an escape valve in dealing with the emotive land issue in a politically charged environment, particularly with the local communities. This

was because of the entrenched and long-held perception that women's issues are "non-threatening" and are "non-political,"⁵⁰ Due to this perception, communities were able to provide information on the land issue, a subject that was otherwise subject to political, governmental and local level embargoes and contestations. The embargoes and contestations arose from the fact that land reform related research initiatives were viewed with suspicion by the State, which regarded such research as designed to pass on vital information to hostile local and foreign interests.⁵¹ On their part, land reform beneficiaries viewed any probes into their access to land, how they accessed it and how they were utilising the land as efforts meant to reverse their gains or to determine their land utilisation levels with the aim of repossessing land that was not being fully utilised.⁵² The fear of repossession of underutilised land was evident amongst the beneficiaries who lamented lack of governmental support for their farming initiatives thereby leading to poor productivity. They therefore argued that government should not repossess their land even if they were not fully utilising the land as this was due to a lack of resources to deploy towards their farming initiatives. Other resettled farmers lamented the supposed government position that permits and 99 year leases would only be given to those who were fully utilising their land, arguing that the world over, the success of a farmer was often spurred by governmental support through subsidies, loans and other input support

⁵⁰ My research between 2010 and 2015 coincided with a prolonged period of serious political polarization in Zimbabwe, particularly between the main rival political parties, Zimbabwe African National Union (ZANU PF) and the Movement for Democratic Change (MDC). This polarisation started in the late 1990s and continued to exist at the time I was finalising my research. This was despite the fact that the two parties were in a coalition government between 2009 and 2013 and therefore supposed to be working together at policy level. The land reform issue was often a subject of much ideological and policy differences between the two political parties and a position for or against the programme often led to one being identified with either ZANU PF (if for) or MDC (if against).

⁵¹ My first encounter with government bureaucracy was through a meeting with the Deputy Provincial Administrator of Masvingo Province when I visited the Benjamin Burombo House, the seat of provincial government in Masvingo Province on 6 September 2010 to introduce myself and the purpose of my presence in the Province. I was met with hostility and a downright refusal to provide any information on the land reform programme unless I got written authorization to undertake the research from the Ministry of Lands and Rural Resettlement Head Office in Harare, some 300 kilometres away.

⁵² In addition, farmers in the A2 sugarcane allocations also reported that Government had intimated that only those using their land productively would be issued with 99-year leases. As such they viewed any questions on their land allocations as part of the assessment to determine productivity and ultimately the issuance or denial of 99-year leases.

schemes.⁵³ As such a research approach that targeted the general land reform programme without the women's law slant was bound to solicit resistance for these stated reasons.

The perception of women's issues, women's law and women's demands as non-threatening and non-political or a soft subject as shown during this research could be interpreted as one of the reasons why it often takes long to address women's needs by the politicians, the State and the community generally. This is because of a belief that women's issues cannot rock the power 'boat' or threaten the status quo. As a result, in an environment of competing needs, other issues that are considered as "serious" and a threat to political power and political power bases are given preferential treatment compared to issues that solely affect women.

With the above realisation in mind, my starting point in carrying out my research was the identification of women land owners/occupiers on the farms that I visited before I extended the research to other actors including men. The men that were targeted included the following:

- the women beneficiaries' family members such as sons and husbands
- traditional leaders
- war veterans
- government employees working in the Ministry of Lands and Rural Resettlement at national, provincial and district level
- the district and provincial administrators
- agricultural extension workers
- employees of non governmental organisations
- fast track land beneficiaries

⁵³ Interview with Mr. FC, Masvingo Provincial Administrator on 6 September 2010 and Mr. FZ on 10 February 2012

The women's law approach was also useful in obtaining the cooperation of women respondents, as women viewed the research as important in that it specifically targeted women and their experiences in interfacing with the country's FTLRP.

In preparation for fieldwork, I analysed available literature and laws on women and women's rights. Using this analysis, I gathered information on the ground focussing on the lived realities of women, their personal experiences with laws generally and with laws and practices that governed the FTLRP specifically. This helped in identifying the existence or otherwise, as well as the implementation or otherwise of a policy or legal framework that could help women in accessing land under the FTLRP. In turn the findings on these issues provided a basis for policy, legal and practice recommendations that could address women's land rights through women focussed law reform.

The women's law approach however presented a number of challenges as well. The major challenge was that a women centred approach on the new farms raised expectations from both men and women that I would address the numerous operational and economic problems that the women were facing, thereby raising ethical challenges for me as a researcher. The challenges that were identified ranged from agricultural related ones such as lack of farming inputs, to general socio-economic problems including payment of school fees for children, access to water, medication, disgruntlement with limited government interventions in providing the necessary resources on the farms and disputes over plot boundaries. During one focus group discussion in Nuanetsi Ranch's Ward 16 that was composed mainly of women, a man from the resettlement scheme came and said that he had come to "register" his mother because she was too old to walk to the meeting place. When I enquired about what he wanted his mother to be "registered" for, his response was that he had assumed that since women were gathered at the village meeting place, they were being registered to receive aid from donors. When I indicated

that I was purely undertaking academic research, he wanted to know what direct benefit would be derived by the women from this research. Similar sentiments were expressed by other respondents who believed that it was of no benefit to them to be interviewed without getting anything in return. However, I explained to the respondents that I could not provide any immediate tangible benefits during the research but that the findings were important in creating knowledge that could lead to possible changes in laws, policies and practices in favour of women's land rights in future if these were embraced by policy and decision-makers in the country.

In some instances men viewed the focus on women negatively, arguing that I was influencing women to rebel against men, usurp men's duties and responsibilities and disobey orders and instructions from their husbands by focusing on women's rights issues or what they termed "Beijing".⁵⁴ The men argued that women were fighting to be "like men" yet in terms of religious and cultural norms, they could never be like men. In relation to access and ownership of land, the men argued that women could not own land as it was not their responsibility to ensure that families were properly provided for but the responsibility of men as heads of families. The men quoted Bible verses in supporting this position and also provided historical narratives to support the cultural dimension of their argument. They gave narratives on how certain chieftainships were identified with certain land areas before the land was taken away by the white colonialists. As such, if the land belonged to a chieftainship, it could only be "owned" by men who belonged to that particular chieftainship and women had no business fighting for land under such circumstances. As such, instead of ensuring that women were the starting point in the research and in the general thinking amongst the beneficiary communities, the land reform catchment communities and other stakeholders involved in the FTLRP, the women's law approach brought

⁵⁴ Beijing was in reference to the 1995 4th World Conference on Women, which was held in Beijing, China. The term has been used in a derogatory way in Zimbabwe, particularly by men to refer to any women's rights issues or to women's rights advocates.

about negative perceptions. Such perceptions included cultural, religious and societal stereotypes that viewed women who sought to acquire land under the FTLRP as renegades who wanted to usurp men's "natural" roles and compete with men in arenas that did not concern women.

2.3.2 The Grounded Theory Approach

I linked the Women' Law approach with the Grounded Theory⁵⁵ approach through engaging empirical knowledge about gender relations and local practices and procedures in a continuous dialogue with theoretical overviews and concept building (Bentzon,1998:25). The Grounded Theory was important in that it involved my going into the field and collecting data as without data, there is no project (Robson C, 2011: 407) thereby playing a critical role in ensuring that women's lived realities are captured. As I began my studies, my uninformed assumption was that a maximum of six weeks of field research would be adequate for me to gather enough data for my thesis. This proved to be a gross understatement when I went into the field for the first time as I realised the magnitude of field research that was required in order for me to undertake a meaningful study and develop a credible thesis. Ultimately my study became longitudinal in nature, taking four years and seven months of constant field visits and data analysis to help me in writing my thesis. This helped in assessing how the day to day relations that women had with men as wives, mothers, sisters, daughters and as part of communities influenced their level and type of access and allocation of land and attendant resources under the FTLRP. It also helped in identifying the daily routines that women engaged with as part of their survival strategies, their positions in the communities they lived in and their daily interactions with culture, custom, State and laws and how this influenced their access to land and the nature of such access. I linked this approach to international treaty law on women's rights where it has been recognised

⁵⁵ Robson C argues that the Grounded Theory is not a theory in itself except perhaps in the sense of claiming that the preferred approach to theory development is via the data you collect. The approach helps more in generating a theory which relates to the particular situation forming the focus of the study rather than it being a theory in itself. In that sense Grounded Theory is about creating a foundation on a developing theory on the lived realities experienced..

that law on its own is not adequate to address the challenges of discrimination that women face but that this should be linked to actual realities. According to Leckie,

The fundamental innovation of the substantive model of equality is to use the conditions of women's actual lives rather than the wording used in laws as the true measure of whether equality has been achieved (Leckie J, 2013:99).

The United Nations has also acknowledged that law and policy formulation without adequate implementation does not help in addressing the human rights needs of women. In light of this realisation, the United Nations Human Rights Council at its 15th Session adopted Resolution 15/23 to establish a working group to address the issue of ending discrimination against women in law and in practice⁵⁶

Utilising grounded theory in an iterative process also helped in selecting research areas, research questions and objectives and gaining the acceptance and trust of my research respondents. In engaging in an iterative process, I went back to the field constantly to cross check facts and investigate emerging trends and issues and follow on developing stories. This created a relationship with respondents who even though reluctant to provide information at first, became more trusting and open upon the realisation that the research was genuine and sought to obtain a correct picture of the lived realities of the respondents over a long period of time. Initially reluctant to speak to me about the land reform programme, the resettled respondents later developed a close relationship with me and opened up to provide significant information without hesitation. This trust and relationship was apparent when I went into the field in February 2012, March 2014 and April 2015 during the peak of the farming seasons. Some respondents insisted on me visiting their fields when I found them at home in order for me to see the progress that they were making in their farming activities since my previous visits or how the drought had devastated their crops during the 2015 farming season. They exhibited

⁵⁶ Human Rights Council, 15th Session, Resolution 15/23 on Elimination of Discrimination Against Women

pride and happiness with their success on the farms during the good years and lamented the effects of the drought on their farming endeavours during drought years. Often as we walked to the fields, this provided a valuable opportunity for me to ask my research related questions through conversations in an environment that was less formal and less indicative of a purely impersonal research centred agenda. During the good years, a visit to the field often meant that I was given fresh farm produce such as mealies, pumpkins, and sweet reeds to take away with me as a gesture of goodwill from the respondents. Taking an interest in the situation and lives of the respondents was therefore a way of identifying with them and gaining their trust and confidence. Whenever I was in the field during the farming seasons, it also meant that more often than not, I would find my respondents busy in their fields as different farming activities such as planting, weeding and harvesting were underway during different stages of this period. Finding the interviewees in the fields required to me “feel the hoe”⁵⁷ (*kuhwa badza*) and therefore provided another opportunity to interact with the respondents in a way that they understood and appreciated. This is because:

It is impossible to control the relationship between the researcher and the researched but it is vital to develop the trust and confidence of those with whom interviews are used (Burgess, 2002:85)

Developing the trust of my respondents was therefore an outcome of grounded theory whilst at the same time ensuring the effective gathering of relevant and useful information for the research. The repeat visits to the field were particularly essential in cross checking, re-checking and confirming information. I approached my research subjects with an open mind and made efforts to listen to their stories and experiences with the FTLRP as farm invaders, as wives and daughters and as beneficiaries of the process and took their stories as the basis for asking next questions, for following up and for seeking clarification. Although, I had an outline of issues

⁵⁷ This is a Shona customary practice where one is required to participate in work or chores that one finds people engaged in, as a way of respecting and appreciating their chores. Feeling the hoe, therefore literally means taking the hoe from the person you are visiting and weeding the fields for a while. Targeted interviewees usually warmed up to me after this gesture and were prepared to talk.

and questions that I wanted answered, I approached the interviews from an unstructured entry point to ensure that the interview process focused on the interviewees and their lived realities as opposed to purely on what I wanted answered. I also constantly compared the various perspectives that I gathered from my respondents over time to determine if there were any changes or inconsistencies and sought clarification in situations where there were changes by reminding them about what they would have said in previous conversations. In addition, the differences or similarities in the respondents' stories always made me curious and I sought to understand such differences or similarities by referring my respondents to the views of other respondents and asking them to respond to such views. In some instances due to the political sensitivity of the FTLRP, I could sense that the respondents were not being frank and open in their responses, especially in group settings. In such instances, I would seek to speak to some of the respondents at another time individually and in different settings, leading to different and often more honest responses. This approach also helped in triangulation of data as this provided an opportunity to compare, contrast, verify and re-evaluate the data from different sources.

The grounded theory approach also assisted me in analysing the actual practices in relation to fast track land, that is how the land was obtained or accessed, how it was controlled and utilised against the general narrative on the FTLRP by the government and other actors such as war veterans. When I established a local level dynamic, I would then refer to the policies, laws and literature to determine the similarities and differences between what was happening and what was written down in these various sources. Examples included government pronouncements on procedures for the allocation of farming inputs and implements and the actual procedures that were followed on the ground or a policy on 20% allocation of land to women against criteria that was used by the lands officers which educed no special effort to allocate land to women. There was therefore a constant cross-referencing between theory in law and texts and practice.

2.3.3 Legal Pluralism

Legal Pluralism can be defined as the existence of multiple systems of law⁵⁸ and normative values within one geographic area or territory. It is predominantly widespread in former colonies in which the law of the former colonial power exists side-by-side with traditional legal norms. Griffiths defines legal pluralism as “the state of affairs for any social field for which behaviour pursuant to more than one legal order occurs (Griffiths,1986:2).

The same author describes the different forms of legal pluralism and makes a distinction between “weak” legal pluralism and “strong” legal pluralism. He defines the two forms thus:

Legal pluralism besides referring in a “strong” sense to a sort of situation which is morally and even ontologically excluded by the ideology of legal centralism, a situation in which not all law is State law nor administered by a single set of State legal institutions and in which law is therefore neither uniform nor systematic- can also refer within the ideology of legal centralism to a particular subtype of the sort of phenomenon regarded as law. In this “weak” sense a legal system is pluralistic when the sovereign (implicitly) commands different bodies of law for different groups in the population (Griffiths, 1986:5).

Strong legal pluralism therefore creates a diverse range of systems that stretch the meaning of law beyond the conventional understanding that entails rules that are accepted by and solely administered or enforced by the State. It includes rules and norms that are outside the State-centric sphere, which are not recognised by the State and which are not administered by the State. “Weak” legal pluralism on the other hand entails a State acceptance, recognition and application of different legal systems for different segments of society. Griffiths notes that there is a “recognition that State law may be only one of a number of elements that give rise to a situation of legal pluralism” (Griffiths, 2002:289).

This means that in a pluralist legal setting, citizens are governed and controlled by different normative orders, each order playing a different or separate but often important role in the lives

⁵⁸ Law on the other hand has been defined as referring to “rules and regulations that govern human conduct or other societal relations and are enforceable by the State. It is the quality of enforceability by the State that distinguishes law from other rules..... It is, in fact, the sole factor of enforceability by the State that determines whether a rule is law or not” (Madhuku L, 2010:1)

of the citizens. In many instances, citizens' preferences on the systems of law to use vacillate between two or more of these systems, depending on their views on which system is likely to be more advantageous at that point and in relation to the particular issue at play. In this regard, I linked legal pluralism with the actors and structures analysis, focusing on the women and their relationships with other women and with men, as well as women's social embeddedness. This assisted in detecting the norms, expectations, social and economic imperatives which influence problem solving and dispute resolution (Bentzon et al, 1998:100). The focus in this regard was on the women's interactions with the plural institutions and players that influenced access to, retention and utilisation of fast track land and how women negotiated their way around and with these actors and structures in order to benefit from the process.

Zimbabwe's formal/State legal system is a weak form of legal pluralism. Statutory provisions dealing with choice of law principles are a reflection of this weak form. For example, Section 3 of the Customary Law and Local Courts Act: Chapter 7:05 states that:

- Subject to this Act or any other enactment, unless the justice of the case requires otherwise,
- a) Customary law shall apply in civil cases where:
 - i. The parties have expressly agreed that it should; or
 - ii. Regard being had to the nature of the case and surrounding circumstances, it appears that the parties have agreed that it should apply; or
 - iii. Regard being had to the nature of the case and surrounding circumstances, it appears just and proper that it should apply

The Act therefore gives a stratified and ranked scenario of when and how an individual can make a decision on which law to use. In the event of disputes or uncertainties on which law to use, the courts often step in to make a determination on choice of law issues. The choice of law is however simply made between two systems, that is the State's formally recognised versions of customary law or the general law.

The normative order that takes precedence or that is given prominence often differs in time and space, circumstances and purpose for which the order is being invoked or applied. The existence

of pluralist forms of law particularly in the “weak” sense has been a source of discrimination against women for a long time in Zimbabwe in that the customary norms have mostly been confined to personal law and family law from where most of the discrimination against women emanates. At the beginning of the implementation of the FTLRP, this state of affairs was starkly illustrated by the provisions of the Constitution which recognised both customary law and general law, but which allowed for discrimination on the basis of personal law or customary law.⁵⁹ Although issues of lack of access to land by women cannot be entirely blamed on the existence of customary law as one of the plural systems that impact on women, this research seeks to establish that such a system played a role in creating this state of affairs. This legal position has however been changed with the promulgation of the 2013 Constitution, which now provides that customary law should be subordinate to the provisions of the Constitution and human rights obligations on non-discrimination.⁶⁰ Specifically before the year 2000, the country operated under a weak form of legal pluralism but this shifted into a strong form of legal pluralism post 2000 with the coming into play of various structures and rule making actors, including in the area of land reform.

Besides the formally recognised customary and general law sources of law, there were also various semi-autonomous social fields and norms that regulated the behaviour of women and impacted on their land rights claims even in situations where the legal systems were otherwise in their favour as will be shown later in this research. Stewart and Tsanga have given an account of how customary law regimes are highly complex and problematic in situations where there

⁵⁹ Section 89 of the 1980 Constitution stated that “subject to the provisions of any law for the time being in force in Zimbabwe relating to the application of African customary law, the law to be administered by the Supreme Court, the High Court and by any courts in Zimbabwe subordinate to the High Court shall be the law in force in the Colony of the Cape of Good Hope on the 10th June, 1891, as modified by subsequent legislation having in Zimbabwe the force of law. The same Constitution provided in Section 23 (3) (a) and (b) that “nothing contained in any law shall be held to be in contravention of subsection (1) (a) [the non discrimination provision] to the extent that the law in question relates to any of the following matters- (a) matters of personal law; (b) the application of African customary law in any case involving Africans or an African and one or more persons who are not Africans where such persons have consented to the application of African customary law in that case.

⁶⁰ Section 80 (3)

are mixed social and legal regimes, with the family embedded in such a mix (Stewart and Tsanga, 2007: 410-411). This is often the result of a system that embraces the modern concept of individuality without letting go of the customary system of the extended family, and the attendant view of an individual as being part of a community and not an isolated being. As a result women struggle to identify a system that best addresses their needs without antagonising people who apply and control the various norms, practices and institutions that they rely on for their social and economic capital. In her research in Hanna Nassif in Dar es Salaam, Tanzania, Ikdahl concluded that the milieu of diverse social and economic positions, power and plurality of norms lead to circumstances where different women face different threats, have different options and corresponding differences in the strategies that they employ to secure their tenure on land (Ikdahl, 2013:189). It must also be realised that because of the relationships in which women are often embedded, their rights to land are often mediated as community and group rights, making it necessary to understand those relationships as a precursor to understanding the challenges or opportunities that women have in accessing land (Hellum, 2013:135). In this regard, the FTLRP could not be viewed as an individual enterprise by women, but one that was mediated by many actors and structures, including family, community and national level leaders.

2.3.4 Multi-Level Women's Human Rights Approach

I used the multi-level women's human rights approach in this research by exploring the internationally, regionally and locally prescribed human rights standards and measuring the enjoyment of such standards by women in relation to access to land. This approach situates international instruments and institutions such as CEDAW and CEDAW Committee,

in a legal landscape where States are under interacting international, regional and national obligations to respect, protect and fulfil women's rights to equality and non-discrimination (Hellum and Aasen, 2013:3).

I looked at international and regional human rights instruments to determine what is provided for in relation to women's rights generally and their rights to land specifically. I also examined the Constitution of Zimbabwe and in particular the Declaration of Rights at the national level to ascertain provisions for women's rights to land and juxtaposed these with women's grounded and lived realities at the local level. In my research this entailed analysing the provisions of the Constitution as well as the national, regional and international human rights frameworks. This helped in determining how the FTLRP addressed the rights of women regarding access, control and ownership of land at national level. It also assisted in understanding women's interactions with institutions and structures for managing the process and their rights as individuals seeking to access land and as part of families and communities at the local level. Women in my research area also had to grapple with the recognition of their work as a contribution to the FTLRP and the family economy, their position as leaders in the farming communities and their rights to fast track land upon divorce or death of a spouse or parent. In this regard the women's multi-level human rights approach intersected with other theories such as the women's law approach and the grounded theory approach in determining the perspective from beneath. Using this approach, I was able to determine the relevance or otherwise of the international human rights frameworks to women in reality. I evaluated the international human rights framework in relation to the legal and constitutional developments in the country, their application and their effect in positively influencing women's rights to land and the elimination of discrimination against women in access to land. This has to be viewed in light of the developments at the UN level, where efforts are constantly made to ensure the development of:

a comprehensive normative and legal framework for human rights which clearly identifies the content of the rights and the steps that should be taken to realise them (Waldorf, 2007:5).

The concept as put forward by Waldorf denotes that the international human rights framework is not simply there to state the rights but to ensure that those rights are enjoyed by humans. Whilst several of the international human rights instruments recognise the rights of women to non-discrimination, it is the 1979 Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) that put together a set of generally accepted values specifically targeting the rights of women and where substantive as opposed to formal models of equality for women were enunciated. Similarly, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) at the African level, learning from CEDAW and other international human rights instruments seeking the protection of the rights of women, sought to contextualise women's rights in the African setting. This was necessary in order to address the human rights challenges that women face in an African context.⁶¹ The observance of the provisions of these international instruments is critical in ensuring that all human beings are treated equally regardless of their status, race, gender or any other differentiating characteristic. In line with general human rights perspectives, the multi-level women's human rights approach that I used in this research stems from the realisation that all human beings are born equal in rights and dignity.⁶² As such they should be accorded equal treatment and be given equal recognition in law, programmes and practices that are implemented by the State and non- state actors alike⁶³.

The human rights approach and framework with regards to women's land rights will be explored further in Chapter 3 of this research.

⁶¹ The Preamble of the Maputo Protocol seeks to contextualize women's human rights to the African set up by amongst other things recognising "the principle of promoting gender equality as enshrined in the Constitutive Act of the African Union as well as the New Partnership for Africa's Development, relevant Declarations, Resolutions and Decisions, which underline the commitment of African States to ensure the full participation of African women as equal partners in Africa's development"

⁶² Article 1 of the Universal Declaration of Human Rights

⁶³ Section 44 of the 2013 Constitution is incisive in this regard. It clearly states that the Declaration of Rights applies to the State and all other entities, real or juristic. This was a clear departure from the previous situation in that with the 2013 Constitution, the human rights obligations apply both horizontally and vertically.

2.3.5 Legal Doctrine

Legal doctrine has been defined as the currency of law, implying the existence of laws, rules and standards and their interpretation and application by the courts (Tiller and Cross, 2006:1.) The precedents that are set by the higher courts in the process of interpreting and applying the rules, laws and standards are expected to be followed by the lower courts in many (common law) jurisdictions and outside the boundaries of that jurisdiction. In addition, there is also a recognition that basic principles of law are key regardless of whether they are embodied in precedents or not. Barring ideological differences in the interpretation of rules and standards by the courts, the legal doctrine's precedent oriented approach would imply a determinate, uniform and ascertainable standard that is easily enforceable, implying positive law as applied by the courts. In reality, however, questions have been asked about what State law is especially when looking at the application and interpretation of statutory, general and customary law both simultaneously or consecutively. The realist scholars of law have been pursuing this theory with a view to establishing a realistic description of the law, particularly as it relates to women and women's rights. The women's law approach which was developed by Dahl, Bentzon and Hellum and adopted by Southern and Eastern African Women's Law Scholars stands as one of the biggest contributions to this school of thought. Taking the same approach a step further, Tsanga and Stewart (2011) recognise the need to place equal emphasis between the law and on the lived realities that women experience in the application, or as is often the case, the non-application of the law.

The question of what State law is, is therefore a critical one to ask in the case of Zimbabwe's FTLRP where laws, norms and standards were set by different people as the programme unfolded whilst often ignoring State law and its interpretation and application by the courts. Whilst the State attempted to put in place various laws and institutions over time to manage access, control and utilization of the occupied land, this was often with limited success,

particularly at the beginning of the FTLRP. This was because the attendant violence and land grabbing led to various law and norm making scenarios outside the unitary State approach that had significant influence in the actual land access and allocation processes. It has from a legal positivist approach, which defines law as the law that is sanctioned through the State legal machinery, been argued that:

it is not the effectiveness of rules or their goodness/badness that determines the legal quality. It is, in fact, the sole factor of enforceability by the State that determines whether a rule is law or not... What distinguishes a legal rule from any other rule is that a legal rule is one that is recognized as law and is enforceable by the State (Madhuku, 2010:1).

The enforceability of rules by the State is therefore more important than the creation of the rules when it comes to determining what law is and the utility of law for the citizens. In essence therefore, questions have to be asked about whether the failure by the State to create State enforced rules on one hand and the creation of rules that were enforced by actors other than the State on the other hand suggest that there was no law to guide the FTLRP, especially at the beginning of the process.

The question “what is law?” therefore arose, especially when looking at both the theories of legal pluralism and legal centralism⁶⁴ and the practices that were taking place with regards to access to resettlement land. Under the circumstances, could there have been a universally accepted agreement or understanding of what was law, what was recognised, enforceable and enforced? What were the legally recognised institutions and which actors and structures were legally recognised or could enforce that which was viewed as law by the different actors and structures? Whose recognition was required in order for the normative order to be given the status of law in the different contexts? Was it State recognition, political party recognition, war

⁶⁴ Legal centralism is viewed as the dominant tradition amongst academic lawyers. It starts from the premise that “state law or state recognised and enforced law is the most important normative order and all other norm creating and enforcing social fields, institutions and mechanisms are either illegal, insignificant or irrelevant” (-Bentzon A, et al, 1998:31)

veterans' recognition, the land beneficiaries' recognition or recognition by society at large? To date, some beneficiaries of the programme find themselves being evicted from the land that they were allocated. This is because the process that was followed was not fool-proof. Some of the beneficiaries even had doubts about the legitimacy and legality of this process from the beginning. Yet they went ahead and participated in the process because of the assurances of legality and authority that was given by the various actors playing lead roles in the land allocation exercise.

In addressing the question of what law is, I had to consider State-court/official law whether general or customary. I also had to consider the living customary law which is less rigid and is adjusted at the local level to address the emerging demands and needs of women and communities. To determine this question, I analysed the events that took place and were taking place with regards to the FTLRP. This was important in order to understand the position of women therein and in the process juxtaposition this with the international human rights framework, the Constitution of Zimbabwe, national statutory law and customary law and the sources of such laws and their application by the courts. In essence therefore there were multiple layers of law, various law and norm creators and various norm and law enforcers. These layers of law, the norm and law creators and the law and norm enforcers were both formal and informal and had to interact with the living customary law that women experienced.

In terms of the role of international human rights law, I looked at the methods of adoption of such laws in Zimbabwe as a dualist country which requires domestication of the laws through legislative intervention before they can become fully enforceable. In this regard, the question to be asked is, what does it mean and what has it meant for Zimbabwe when an international human rights instrument has been signed and ratified by the country but not yet domesticated through Parliament. I then assessed the formal laws that were made around land reform in the

country and whether they embraced the spirit of the international human rights legal framework, in particular those that Zimbabwe has ratified and the role of the courts in interpreting these laws and rights as provided in customary, national and international law. In making this analysis, I interrogated the sources of law in the country including the international human rights instruments, the Constitution of Zimbabwe, Acts of Parliament and subsidiary legislation, case law and customary law provisions as well as scholarly writings on the law generally and women's law specifically. An important aspect of this analysis was, in relation to the provisions of the 2013 Constitution of Zimbabwe which specifically enjoins a court, tribunal, forum or body when interpreting Chapter 4 of the Constitution which is the Declaration of Rights to "take into account international law and all treaties and conventions to which Zimbabwe is a party"⁶⁵ This entails an obligation to consider the provisions of international law when dealing with and interpreting the rights of individuals. This provision was a marked departure from the 1980 Constitution, which did not place any such obligations on any entities when interpreting and dealing with the provisions of the Declaration of Rights. The expectation and understanding therefore is that Zimbabwe as a country should be more embracing towards international law and the universality of human rights following the adoption of the 2013 Constitution.

2.4 Key Concepts and Terms Used in the Study

There are a number of concepts and terms that are central to this study and which are a constant thread throughout the thesis. An understanding of these concepts is important in order to have a clearer understanding of the ensuing chapters. In this section therefore, I provide a synopsis of these concepts and how they are used in the study.

⁶⁵ Section 46 (1) (c).

2.4.1 Fast Track Land Reform Programme

Many actors, including the State, researchers and ordinary people in Zimbabwe and elsewhere have used the term Fast Track Land Reform Programme to such an extent that there is a temptation to accept that everyone is clear about what this term entails. For many, the process that began in the year 2000 with the farm invasions and the subsequent stepping in by Government to regularise and rationalise the invaded/ or acquired farms is regarded as the FTLRP. But there is no clarity with regards to the end date of this process making it difficult to determine with certainty what the FTLRP was or is. For example, Matondi states that “The FTLRP has been inscribed on Zimbabwe’s political and socio-economic map since 2000. (Matondi, 2013:1).

The reference to the start date of the programme without an end date suggests that the programme did not have an end date. In explaining this state of affairs, Matondi further states that:

The period for the FTLRP remained open, with the dates on which to conclude it constantly changing until the Government decided to remain silent on the issue (Matondi, 2013:259).

On its part, the Government defined the “fast track” strategy as a plan to speed up delivery of land and settle 30,000 families “as soon as possible”. At first, the plan also entailed the acquisition of 841 farms “or more”. (Accelerated Fast Track Draft Programme Document, 2000:5). But the reality is that this plan was not followed, the farm invasions spiralled out of control, more farms were “acquired” or invaded than was initially planned and Government was forced to follow what was happening on the farms as opposed to managing and directing the process. In this regard the Government “Legitimatised the violent farm invasions through an accelerated resettlement programme named “Fast Track”. (Masiwa, 2004:14).

The result therefore is that to date, it remains difficult to ascertain whether the FTLRP has ended or not. Many senior government officials declared that the FTLRP had ended in the early to mid 2000s⁶⁶, even though the reality showed otherwise. For the purposes of this thesis, I will therefore refer to the period between 2000 and 2015 when I finished my fieldwork as part of the period in which the FTLRP generally was being implemented, bearing in mind that the finalisation of the programme, if it ever happens, will go beyond the finalisation of this study. With regard to specific farms, case studies or individuals, I will refer to the period after allocation of land by State or other actors and settling on the farm as the end of fast track. Anything that happened after that will therefore be regarded as having happened post fast track for the specific farms, cases studies or individuals concerned.

2.4.2 Power

The Concept of power was an important analytical and theoretical tool that I used in this research. Power has been defined as “the ability to influence [or control] the behaviour of people.”⁶⁷ It is also a function of the relationships between and amongst individuals as well as between and amongst individuals and institutions. With a focus on the FTLRP, it was important to understand how the various typologies of power (“power to” “power over”, “power with” and “power within”) (Gaventa, 2006:24) and dimensions of power (visible, invisible and hidden) (See Andreassen and Crawford, 2013:5) played out in the lives of women. It was also important to analyse how women engaged with power, worked around power and relationships and whether they were involved and participated in decision making at various levels. These levels included the international, national, community and family ones. In particular, it was important to analyse the spaces that were available during the programme and whether women

⁶⁶ For example, in 2002, the then Vice President Joseph Msika was quoted as saying the FTLRP had been concluded but as late as 7 February 2016, the Minister of Lands, Land Reform and Resettlement, Douglas Mombeshora indicated that the FTLRP was “almost” complete, meaning that it was still work in progress on the part of government.

⁶⁷ See <https://www.boundless.com/sociology/textbooks/boundless-sociology-textbook/deviance-social-control-and-crime-7/the-conflict-perspective-on-deviance-63/power-and-inequality-379-8673/>

had an opportunity to interact and engage with actors relevant to the land reform programme in those spaces. If women had such interactions, were they able to interact and engage as part of the decision-makers and leaders? Did they merely do so from the sidelines, on the margins and as outsiders? How easy was it for women to engage with the different forms of power that existed during the programme?

Gaventa's power cube was an important analytical tool that I utilised in assessing the dimensions and typologies of power as well as the levels, the nature and forms of power relationships, spaces for engagement and the actors and structures that women had to engage with at the various stages of the FTLRP. An analysis of the work of human rights Non Governmental Organisations (NGOs) by Hellum et al (2013) also provided me with an understanding of the power dynamics that women's rights NGOs in particular had to grapple with in their efforts to ensure that women accessed fast track land on the basis of equality with men. Chapter 5 of this research addresses the issues of power and power relationships that women engaged with under the FTLRP in greater detail.

2.4.3 Equality and Non-Discrimination

The concepts of equality and non-discrimination were important analytical approaches that I used in this research to determine women's level of access to land on the basis of equality with men. The Maputo Protocol in its definition section defines discrimination against women as:

Any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life"

The Southern African Development Community (SADC) Protocol on Gender and Development defines discrimination as:

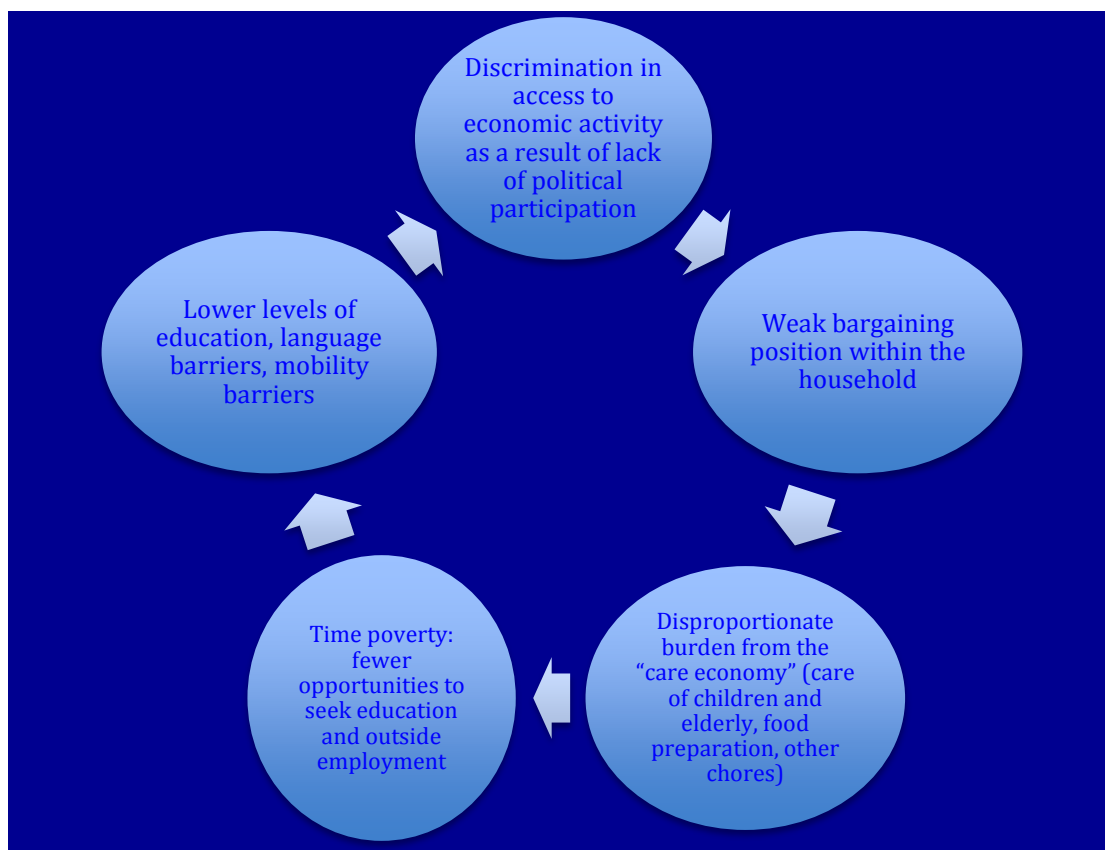
Any distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise, by any person of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

In essence therefore discrimination has the effect of impairing women's opportunities and their right to equal treatment whilst non-discrimination ensures that women are not unfairly disadvantaged because of their sex or gender. However in order to understand the pervasive nature of discrimination against women, my analysis also took cognisance of the broader and expanded concepts of discrimination, including the aspects of direct and indirect discrimination.⁶⁸ This understanding was important in ensuring a realisation that discrimination against women is not always overt but that it often comes in covert ways, which nonetheless have equally if not more devastating consequences for women. Often the factors that fuel discrimination against women are pervasive and interlinked, leading to what has been termed a cycle of discrimination.⁶⁹ The United Nations Special Rapporteur on the Right to Food has provided a graphical illustration of this cycle as shown in Figure 2.1 below. In this cycle, the causes and effects of discrimination are in constant interplay creating a structure that continually undermines the rights of women, making it difficult for women to escape this stranglehold.

⁶⁸ The CEDAW Committee in General Recommendation Number 25 states that "Indirect discrimination against women may occur when laws, policies and programmes are based on seemingly gender-neutral criteria which in their actual effect have a detrimental impact on women. Gender-neutral laws, policies and programmes unintentionally may perpetuate the consequences of past discrimination. They may be inadvertently modelled on male lifestyles and thus fail to take into account aspects of women's life experiences which may differ from those of men. These differences may exist because of stereotypical expectations, attitudes and behaviour directed towards women which are based on the biological differences between women and men. They may also exist because of the generally existing subordination of women by men."

⁶⁹ Although the concept of the "cycle of discrimination" is used herein in relation to the right to food, it is on the basis that the right to food is often closely linked to the right to land.

Figure 2.1: The Cycle of Discrimination



Source: Human Rights Council, 2012 (Report of the United Nations Special Rapporteur on the Right to Food on Women's Rights and the Right to Food)

Equality therefore plays an important role in ensuring that the factors that lead to the development of a cycle of discrimination against and amongst women are curtailed and addressed. In addition, equality leads to the recognition of women's rights and plays an important role in ensuring that women are not discriminated against, are not unfairly treated and are not given second class positions in society when compared with men. The SADC Protocol on Gender and Development defines equality as:

A state of being equal in terms of enjoyment of rights, treatment and quantity or value, access to opportunities and outcomes, including resources.

Equality therefore entails equal development for both men and women in various spheres of life, be they social, economic or political spheres. In addressing the issue of equality, the CEDAW Committee has taken the view that a purely formal legal or programmatic approach

is not adequate in ensuring that women have de facto or substantive equality with men. What is required instead is empowerment through the provision by State Parties to the CEDAW of an enabling environment for the achievement of equality. This entails a realisation that giving women treatment that is equal to men is not enough but that the biological, socially and culturally constructed differences between men and women are taken into consideration, their implications understood and measures taken to ensure that these are taken into account in determining programmes to address the equality challenges that women face.⁷⁰ The introduction of temporary special measures, or positive discrimination to “level the playing field” and to bring women to a substantially similar level with men becomes an important strategy in such situations.

2.5 Sources of Data

In carrying out the empirical research, I used various sources of data that helped me in gathering information on women and how they fared under the FTLRP. The sources of data were both primary and secondary in nature. The fieldwork formed the largest portion of my primary sources of data as I obtained first hand accounts of what transpired during the FTLRP from the beneficiaries, non-beneficiaries, land officials, traditional leaders and war veterans amongst others. Literature review focusing on historical accounts and scholarly interpretations of the land question in Zimbabwe generally and the FTLRP in the country specifically were important sources of secondary data. To ensure the effective utilisation of secondary data, it became important to assess and validate such data. This was done through seeking confirmations from primary sources but this also often led to a reverse process of validating data from primary sources through information available from secondary sources. Below, I detail the main sources of data used in this study

⁷⁰ CEDAW General Recommendation Number 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, Para 8.

2.5.1 Primary Sources of Data

The primary sources of data that were used in this research were mainly interviews with the following actors:

- Women who did not acquire land under the FTLRP, such as farm worker women and women in the communal areas;
- Different social and status categories of women land beneficiaries under the FTLRP;
- Male land beneficiaries under the FTLRP;
- Non Governmental Organisations working in the area of Women's Rights, Human Rights and Land Rights;
- State Actors including staff of Ministry of Lands and Rural Resettlement, Provincial and District Administrators and Agricultural Extension Officers;
- Local traditional and statutory leaders including chiefs, headmen, village heads and councillors;
- War Veterans and War Veteran Leaders;
- Leaders of farm level institutions such as the Committee of Seven and the Farmers' Associations; and
- Informal actors including army personnel dispatched in the resettlement areas as ZANU PF campaign agents and "base commanders"⁷¹

These various actors provided different perspectives, views and their understanding of the FTLRP and the position of women therein.

2.5.2 Secondary Sources of Data

The secondary sources of data used in the research included the following:

- The Print Media

⁷¹ The term "base commander" was used during Zimbabwe's (1966-1979) liberation struggle to refer to the guerilla leaders during the war. As a result, when the FTLRP started, it was modeled around war time organisation and leadership, leading to the identified leaders at every farm (the base) during the farm invasions being referred to as "base commanders"

- Electronic media for example internet, radio and television
- Literature for example scholarly articles on the FTLRP, women's rights to land and human rights generally.

2.6 Choosing the Research Area

My choice of research area was influenced by a number of issues ranging from practical and methodological considerations as well as the relevance of the research area in answering my research questions. I chose to research in my home province of Masvingo in Southern Zimbabwe on the assumption that it would be easier for me to carry out my research because of my familiarity with the general cultural, physical, and social terrain. This familiarity with the area helped in that even without the necessary government clearance, I often managed to carry out interviews with resettled farmers and other respondents in all the four targeted districts of Chiredzi, Masvingo, Mwenezi and Chivi.

In Chiredzi District for example, during one field visit, I managed to remain in the field and continue with my research despite the obvious land related tensions prevailing in the district following an attack on senior district lands, police and government officials on one of the farms close to my research area⁷². This would not have been possible without the necessary acceptance by the people in the research areas and familiarity with the general cultural, social and political situation. This familiarity meant that I was given assurance of my safety by my respondents as they contended that the government officials had been attacked because they had threatened the livelihoods of the resettled farmers by threatening to evict them. My presence in the area was viewed differently as I did not pose similar threats and my family could be

⁷² The Chiredzi District Administrator, the District Lands Officer, Police Officer Commanding Chiredzi District and 10 other members of the Chiredzi District Lands Committee were severely assaulted and hospitalised and their cars damaged a week before I went into the field for the first time for attempting to evict "illegal settlers" from Lundi Block, part of the Nuanetsi Ranch. I was advised of this development before going into the field and therefore had to be cautious whilst in the field and seek assurance of my safety from community leaders. The story was also reported in the Herald of 31 August 2010.

traced to the province, they said.⁷³ However, even with this familiarity and knowing some of the Government officials, obtaining Government held information was more often than not a very difficult task. This was because of the general atmosphere of secrecy and uneasiness surrounding the FTLRP and discussions on the issue.

An equally important reason for choosing the research area was its diverse natural geographic regions and the attendant diverse agricultural activities which helped in determining the distribution of women on different farm allocations depending on the prevailing farming and economic activities, land values and farm sizes. This was important in helping me to answer the question on whether or not women accessed similar land sizes and same value land when compared with men. Farming activities in the province range from crop farming at subsistence and commercial level, cattle ranching, wildlife ranching as well as plantation agriculture in the sugar estates. I therefore sought to explore the types of treatment that women got during the FTLRP in accessing and benefitting from land allocations and utilization in the different farming and cropping lots. For example, it was necessary to assess whether women benefitted in the same way as men from sugarcane plots, a high value and economically viable farming option as opposed to the small scale villagized allocations. In addition, I needed to determine whether women received the same treatment in accessing farming resources, in attaining leadership positions on the farms and in influencing the general social and economic structures as they developed on the farms. This was a necessary consideration in light of the research questions focusing on power and power relations and their impact on securing women's land rights and entrenching such rights at the farm level amongst other considerations. These questions could be adequately answered by analysing land allocations in the three districts of Mwenezi, Masvingo and Chiredzi. Masvingo District has both large scale and small scale farms that have both crop farming and cattle ranching as their core farming activities. Chiredzi District

⁷³ This assurance was given by Village Head M1 a leader in the community during an interview on 7 September 2010, providing me with the sense of security that I needed to continue with my research

is well known for its large scale sugar plantations. During the FTLRP however land allocations in the district were made for both sugarcane farming and small scale villagized resettlement. Mwenezi District was well known for its cattle and wildlife ranching before the FTLRP. It is also home to the Nuanetsi Ranch, one of the biggest cattle and wildlife ranches in the country before the onset of the FTLRP with a total hecfrage of 386,000 that was subdivided into 7 sections as shown in Table 2.1 Below.

Table 2.1 Subdivision of Nuanetsi Ranch

Section	Area (Hectares)
Ngundu	31 623.50
Tokwe	39 437.50
Lundi	28 437.50
Mtirikwe	37 687.50
Chingwizi	56 376.50
Mbizi	57 562.50
Nuanetsi and Matibi	87 750.00
Bubye	51 125.00
Total	386 000.00

Source: Ministry of Lands and Rural Resettlement; Masvingo Province

My preliminary fieldwork covered nine farms spanning the three districts of Masvingo, Chiredzi and Mwenezi, with different schemes namely A1 self-contained, A1 villagised and A2 small scale commercial (in the sugar estates in Chiredzi) and the large scale cattle ranches in Mwenezi District. The nine farms that I initially focussed on were Chidza Farm, Lothian Farm and Chidza Extension Farm in Masvingo District, Altonbeck and Mlanganisi Farms in Mwenezi District, Nuanetsi Ranch in Mwenezi District and (Sections 1 and 2, Farm 54 and Musisinyani Farm/Buffalo Range) in Chiredzi District. This was in addition to the rural areas of Sese, Shindi and Gororo in Chivi District as well as Musvovi in Masvingo District. Although I could not ascertain the initial (before land redistribution) sizes of the farms that I visited, I managed to get the size of the Nuanetsi Ranch from the Masvingo Provincial Lands Office. At 386,000 hectares, it is one of the biggest single land holdings in the country. In addition, I also followed some of the respondents to urban areas namely Masvingo, Chiredzi and Triangle either because that is where they normally stayed or worked or that is where I could locate them during the time of my fieldwork. Some key informant interviewees were resident in Harare, a

distance of 400 kilometres from Chiredzi, my furthest research point. I therefore realised after this preliminary fieldwork that the research area was too big and could not be effectively covered. I eventually narrowed down my field research areas to concentrate on four areas in three districts covering two A1 villagised farms (Chidza Farm in Masvingo District and Masimbiti area of Ward 16 of Chiredzi District in Nuanetsi Ranch), one A1 self-contained farm (Lothian Farm in Masvingo District, adjacent to Chidza Farm) and two areas with small scale A2 commercial farms in the Hippo Valley Sugar Estates (Farm 54 and Musisinyani/Buffalo Range) in Chiredzi District in order to address these questions. I maintained the rural areas of Sese, Gororo, Shindi and Musvovi in order to understand the pull and push factors during the FTLRP as well as the urban areas of Chiredzi, Masvingo and Harare in order to follow up on some of the beneficiaries of fast track land or to interview some key informants.

Table 2.2: Location of Final Research Sites

Province	District	Name of Research Site	Type of Research Site (Farm (A1/A2), Rural/ Communal Area or Urban Area)
Masvingo	Masvingo	Chidza Farm	A1 Villagised Farm
		Lothian Farm	A1 Self Contained Farm
		Musvovi Communal Lands	Rural/Communal Area
		Masvingo Town	Urban Area
	Chivi	Sese Communal Lands	Rural / Communal Area
		Shindi Communal Lands	Rural/ Communal Area
		Gororo Communal Lands	Rural /Communal Area
	Mwenezi	Nuanetsi Ranch (Ward 16, Masimbiti)	A1 Villagised Farm
	Chiredzi	Farm 54	A2 Farm
		Musisinyani Farm (Buffalo Range)	A2 Farm
Chiredzi Town		Urban Area	
Triangle Town		Urban Area	
Harare	Harare	Harare City	Urban Area

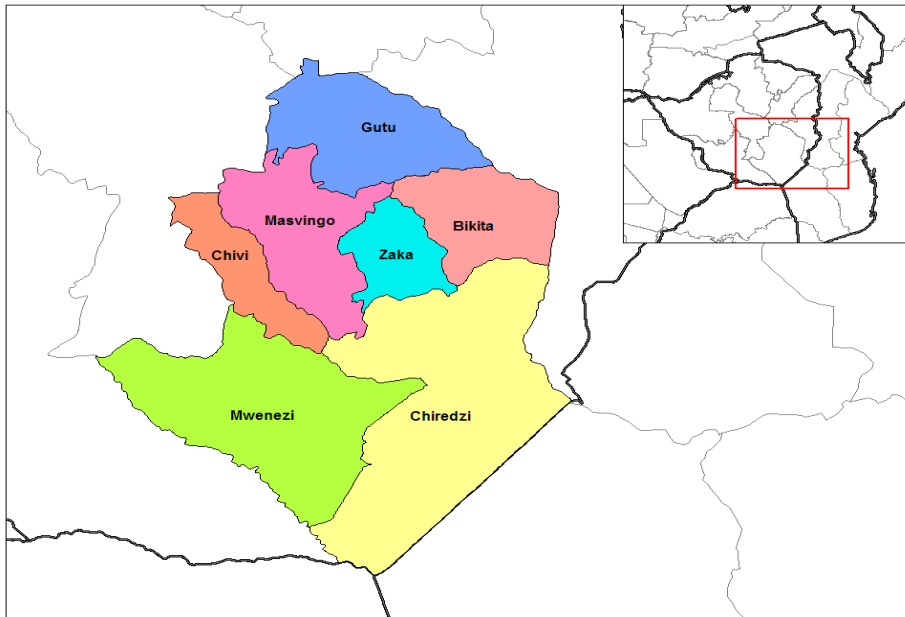


Figure 2.2: Map of Masvingo Province, Source https://en.wikipedia.org/wiki/File:Masvingo_districts.png
 The map shows Masvingo Province, which is composed of seven Districts. The three districts that are the focus of this research are Chiredzi (Yellow), Mwenezi (Green) and Masvingo (Pink). The other districts though not directly part of the research are also important as “catchment districts” because a significant number of resettled people migrated from those districts. In terms of catchment related research my focus was on Chivi and Masvingo Districts.



Figure 2.3: Map of Zimbabwe showing Masvingo Province in relation to other provinces in the country. Source: <http://zimbabwe7.wildlifedirect.org/files/2009/10/zim-map-with-label.jpg>

Below, I provide a detailed description of the final locations of my research.

Chidza and Lothian Farms are two adjacent farms in Masvingo District located at the junction of the Masvingo-Mutare and Chivhu-Chiredzi Highways. Lothian Farm was previously owned

by a white commercial farmer Roy Miller and the farm was subdivided into 32 hectare plots at the time of the FTLRP and allocated to 31 beneficiaries. The new occupants of the farm told me that Mr Roy Miller was believed to be staying in Clipsham Park in Masvingo Town. No one knew the exact location. Only one male former farm worker who used to work for Mr Roy Miller as a cook managed to get a piece of land when the farm was taken over. His grandchildren who were using the farm whilst he worked in a restaurant in Masvingo Town reported that their grandfather was given a piece of land by the farm invaders because he cooperated with them and cooked food for them from the farmhouse kitchen whilst they camped at the farm. The other farm workers who had supported the former farm owner were all chased away when the farm was taken over by the farm invaders.⁷⁴

Chidza Farm was previously owned by a white commercial farmer named John Bolland. When the farm was acquired under the FTLRP, about 30 families were allocated 15 hectare plots whilst the former commercial farmer was allowed to retain 500 hectares of the farm, apparently because of his specialised skill in breeding Brahman cattle. At the time of the research, Mr Bolland had died and his farm was being managed by his daughter and her husband. Amongst the 30 families that were allocated land on the farm, there were no former farm workers

Nuanetsi Ranch is a highly contested wildlife and cattle ranch which was bought by the late Vice President of Zimbabwe, Joshua Nkomo and registered in the name of a trust, called the Development Trust of Zimbabwe (DTZ). As I was finalising my field work, the ownership of the ranch was highly contested between the Government and the managers of the ranch following a decision by the Government to resettle victims of the Tokwe-Mukosi Dam flooding

⁷⁴ Interview with RS on 2 April 2015 at Lothian Farm

in 2014.⁷⁵ A third force in the control of the vast ranch was Mr Billy Rautenbach⁷⁶ who had entered into an agreement with DTZ to develop a sugarcane plantation and an ethanol processing plant on the ranch. Although the project had failed fully to take off at the time of the research, some work had already been done. This included the construction of workers' houses, an office block and an engineering workshop. However these structures were already showing signs of disrepair, with some of them having been vandalised.

The involvement and presence of Mr Rautenbach in the Nuanetsi Ranch was the subject of various political contestations as he was supported by some in the ZANU PF Government whilst other members of the party and resettled farmers opposed his ethanol project.⁷⁷ These contestations led to anxieties amongst the settlers as they feared for the security of their stay on the farms. They also blamed government's reluctance to give them offer letters 14 years (in 2014) after they resettled on the farm on these contestations as there was no clarity on how these issues would be resolved.

⁷⁵ The Tokwe-Mukosi Dam was constructed by the Government on the confluence of the Tokwe and Mukosi Rivers in Chivi District, Masvingo Province starting in June 1998 under the stewardship of an Italian Civil Engineering Company, Salini Impregilo Engineering. A number of villagers were to be relocated from the dam floodplain in a phased programme lasting about 4 years after the completion of the dam as the dam filled up with water, and placed the villagers in the path of the floodplain. However, villagers had to be forcibly removed before time in 2014 when an uncharacteristically heavy rainy season for the perennially drought prone area flooded the homes that were in the dam's floodplain ahead of the planned period and also collapsed part of the dam wall leading to downstream flooding. The villagers were moved to the Chingwizi Section of Nuanetsi Ranch in addition to others that had been moved earlier and settled in other sections of the vast ranch including in my research area (ward 16 of the Ranch). At the time of the research, villagers indicated that many more people were going to be displaced as the Government was planning to develop a tourism industry around the dam including a wildlife park and tourist accommodation facilities.

⁷⁶ The same businessman also operated an ethanol plant in the Chisumbanje area of Manicaland Province in Eastern Zimbabwe where villagers were displaced to make way for the plant and the sugarcane fields. The plant called Chisumbanje Ethanol Plant was operated under the auspices of Green Fuels.

⁷⁷ On the 16th of December 2014, the *Newsday* carried a story headlined "Rautenbach's Mwenezi ethanol project gets nod". In the story, the paper reported that the new ZANU PF provincial Executive which was installed following the ZANU PF succession fights of 2014 had promised Mr. Rautenbach that his multi-million dollar ethanol project would go ahead. The new ZANU PF Provincial Executive claimed that the previous Executive had been sabotaging the project with the paper pointing out that the start-stop implementation of the project was due to factional fights within ZANU PF.

Farm 54 and Musisinyani/Buffalo Range in Hippo Valley Estates are located adjacent to the Tongaat Hullet owned sugarcane plantations in Chiredzi District. Not all the plots that were allocated to beneficiaries were being utilised and irrigated as sugarcane plantations before the fast track land reform programme. As a result some of the beneficiaries in these allocations were given undeveloped dryland⁷⁸ plots which they had to clear on their own and install the necessary infrastructure including irrigation facilities. Farm 54 was a previously self contained sugarcane plantation owned by a farmer known as Robert Staira to the locals and who was an outgrower for the Hippo Valley Sugar Milling Company, a privilege that was inherited by the new twenty two (22) beneficiaries on the farm. At the time of the research the new farmers indicated that they did not know where Robert Staira had gone after the acquisition of his farm although rumour had it that he had migrated to Mauritius. The owner of Musisinyani was a multiple farm owner in the district and had been allowed by government to keep one of his farms where he was rearing cattle.

There were three former farm workers still at Musisinyani Farm. All three of them were however previously employed at different farms and were now working as farm workers for the new farmers at Musisinyani Farm. One farm worker lamented the fact that when the farm allocations were done, farm workers were not considered. This was because they were viewed with suspicion due to their relationship with the former farm owners. She indicated that some of the farm workers (she only knew of 3 males) eventually managed to get land during the later stages of the land reform programme but such land was located “*kumakombo*” or dryland and not the irrigated sections of the sugar plantations.⁷⁹ In this case, a few farm workers got the land but unfortunately got poor quality land when compared with other beneficiaries in that their allocations were undeveloped and had no irrigation infrastructure.

⁷⁸ These were plots with no irrigation infrastructure and therefore the farmers depended purely on rainfall to grow their crops

⁷⁹ Interview with GM on 3 April 2015 at Musisinyani Farm

The Shindi, Gororo and Sese communal areas in Chivi District and the Musvovi Communal areas in Masvingo District were targeted because they were amongst the catchment areas⁸⁰ for the resettled farmers, particularly those in Nuanetsi Ranch and the Hippo Valley Sugar Estates. The purpose of extending my fieldwork to these communal areas was to understand the source areas of my respondents on the new farms, the socio-economic and political realities in these areas and their influence on the decisions that women made regarding whether or not to relocate to the new resettlement farms.

2.7 Field Procedures and Processes

In preparation for fieldwork, I obtained letters of introduction from my research institution, the University of Zimbabwe (UZ)'s Southern and Eastern African Regional Centre for Women's Law (SEARCWL). The letters were addressed to various government departments at Provincial and District Levels in Masvingo including the Provincial Administrator (PA), the Provincial Governor (PG), the District Administrators (DA) for Masvingo, Mwenezi and Chiredzi Districts, the Chief Lands Officer (who is the head of the Ministry of Lands and Rural Resettlement at the Provincial level) and the District Lands Officers for Mwenezi, Masvingo and Chiredzi Districts. I also enlisted the services of my brother, a teacher who had taught in various districts in the province for over 16 years as a research assistant to help in navigating the bureaucracy at both provincial and local levels that I would inevitably encounter. Although I am a "daughter of the province" with considerable knowledge of the terrain and people in some of the government offices, I no longer stay in the province and had not been staying there for over 20 years at the time I commenced my study. I therefore needed an individual with hands on experience and up to date information about the happenings and developments in the province to help me in navigating the province. In addition, I also identified some people that I

⁸⁰ These were the areas from where most former rural area dweller beneficiaries of the FTLRP who settled on the Nuanetsi Ranch and the Hippo Valley Estates originated from

knew who worked in the various government departments to accompany me when going to the different high-level offices. In some instances however, my connections with the Province and its people did not count for much at the government bureaucratic level as will be explained in my section on challenges that I encountered during fieldwork.

During the course of my fieldwork, I stayed with my mother and stepmother in Mashamhanda Village in Chivi District where I grew up. I would drive into the field in the morning and come back home in the evening, with the longest distance that I had to drive from my parents' home being just over 130 Kilometres to the Hippo Valley Sugar Estates in Chiredzi District. Nuanetsi's ward 16 was about 80 kilometres away whilst the Chidza and Lothian Farms were about 100 kilometres away from my rural home which became my field research base. Masvingo Town, which housed the Provincial Government Offices for Masvingo Province including those for the Provincial Governor, the Provincial Administrator, the Ministry of Lands and Rural Resettlement and the District Administrator for Masvingo District was located 55 kilometres away.

Whilst I enjoyed being a "child" once again as I was staying with my mother and step mother, the attention I got from the village for my extended stay also helped me to get significant information as people enquired about the reason for my prolonged presence. Community members were used to my visiting for a few days before returning to the different bases where I had settled over the years. Relatives and other village members came to my parents' home to greet me whilst I also visited some of the relatives in their homes to exchange courtesy greetings. As we exchanged greetings and pleasantries, I also explained the reason for my presence in the village, leading the people to provide important and useful insights about the land reform programme.

Three people from our village benefitted from the fast track land reform programme, all of them in the high value Hippo Valley Sugar Estates. One was the Member of Parliament for the constituency between 2000 and 2008, during the peak of the land reform programme, another one was a retired teacher who had worked in Triangle Town for a long time and the third one also worked in Triangle⁸¹ Town for several years before obtaining the piece of land. At the time of finalising the study, the third beneficiary had died and his farm had been taken over by his son. The three beneficiaries were all men and either had political influence, had connections of value or had a relationship with the sugar estates due to their work history in the area. The atmosphere of trust and familiarity with the village and its people therefore made it easy for the people to give me their insights and opinions on the issue in a free and unguarded manner because they regarded me as one of them. This was very important especially in relation to the land issue considering the political tensions and mistrust that still existed at that time in the country as a whole and in rural areas in particular. Violence often broke out particularly on the farms and in rural areas as a result of the political tensions and political rivalry.

2.8 Challenges faced during fieldwork

Whilst I had assumed that some familiarity with and understanding of local leadership structures and local political and social dynamics at various levels in the province would guarantee my access to documentary information and key informants, the reality during the fieldwork was however a mixed bag. I faced various challenges at various levels including in accessing government held information, in obtaining government approval to carry out interviews in the field and in explaining how my research would address the glaring and urgent needs and expectations of my respondents.

⁸¹ Triangle was one of the two urban settlements that developed around the sugarcane industry in South Eastern Zimbabwe. The other one was Chiredzi. Triangle Town was also named after the major sugarcane growing and sugar producing company, Triangle Limited. At the time of research, the Triangle Sugar Company was wholly owned by the Durban based South African Sugar conglomerate Tongaat Hullet, which also owned 50.3% of the Hippo Valley Company, another sugar producing company located within the same area. During the research, it was often difficult to distinguish between the operations of Triangle and Hippo Valley or the sugarcane plantations that belonged to each of the two entities.

2.8.1 Negotiating State Bureaucracy and Managing Suspicions

Generally, the provincial and local leadership were willing to provide me with the research information. Some however told me that they were compelled by civil service regulations to seek permission from the parent Ministry at the national level.⁸² For example, when I visited the Provincial Government Office, the PA was not in the office and I was therefore ushered into the office of the Deputy PA. After explaining my mission and presenting my letters of introduction from SEARCWL, he advised me that I needed to go back to Harare to get research permission from the Ministry of Lands and Rural Resettlement as such permission could not be granted at the provincial level. As I was leaving the offices, I was however fortunate enough to meet the PA as he was coming into the office and he granted me the interview.⁸³ After the interview, the PA stamped all my letters of introduction that were addressed to the various provincial and district officials, signed them and endorsed them with the words “please assist with the research”. These were two people from the same office who however responded both positively and negatively to my request for research information.

After my interview with the PA, he phoned the Permanent Secretary in the Ministry of Lands and Rural Resettlement in Harare to advise her about my presence in the Province and my research objectives. He was unfortunately advised that I should go back to Harare (about 300 kilometres away) and seek the necessary clearance from the Ministry at national level because the information I was looking for was “classified”. I later realised that this policy was often so entrenched that even at the lowest levels; officials required clearance before any information could be released. The Councillor for Ward 16 in Chiredzi District for example indicated that while he had all the information that I required on land access patterns for men and women with him, he could not give me that information unless clearance was obtained from the DA. The

⁸² This was the Ministry of Lands and Rural Resettlement

⁸³ He even commended me for undertaking the research in Masvingo Province my home province, pointing out that it was through research such as this that government would be able to get the necessary information to assist in policy formulation and in the development of the province.

DA in turn could not give permission unless authorised by the Provincial Administrator, who in turn required authority from the Permanent Secretary.

During attempts to interview the DA for Masvingo District and the Chief Lands Officer for Masvingo Province, I was surprised to learn that they had been given a directive not to provide me with any information on the land issue. When I went to their offices, a few hours after interviewing the Provincial Administrator, I was surprised to learn that they had already been telephoned from “somewhere” and advised not to talk to me. They however refused to divulge the details of the person who had telephoned them. I faced similar challenges in subsequent field visits. For example on 13 February 2012, the DA for Chiredzi District whom I knew personally as she was a distant relative refused to provide me with information unless I phoned and got clearance from the PA. I immediately phoned the PA and he advised me that I should drive to Masvingo, the capital of the province to apprise him of how I had utilised the information that I had previously received from him before any further information could be made available. I offered to apprise him over the phone to save on time but this suggestion was turned down. I however decided not to go, as this was 175 kilometres from Chiredzi and decided instead to use the time to engage with the farmers in the research area instead of focusing on obtaining government held information. As Burgess has noted:

Access to situations in research is defined by the institutionally powerful who not only grant access to research sites but also to individuals and research materials (Burgess, 1984:159)

This is despite the fact that often the people that one seeks to access have no objections to being interviewed or “accessed” as was the case with the beneficiaries of the FTLRP.

With regards to compliance with the directive from the Permanent Secretary after my interview with the PA and since I was in Masvingo, 300 kilometres away, I sent family members who were in Harare with a letter from SEARCWL to the Ministry of Lands and Rural Resettlement

seeking the necessary permission for me to proceed with the research. They were however advised that I should go to the Ministry in person. I subsequently visited the Ministry⁸⁴ when I happened to be in Harare and managed to speak with the Permanent Secretary who advised me that the information that I was seeking was “classified” and as such, she wanted to consult with her directors before making a decision on whether or not to supply the information. I was advised to come back another day. When I did, the permanent secretary advised me that she had not yet made the necessary consultations.⁸⁵ I made a third attempt and I was asked to come back another day.⁸⁶ I therefore realised that accessing information from and through this office was difficult. As a result, I had to devise other ways of obtaining the information including consulting public records, other researches and researchers, individuals and NGOs that had worked on the land issue previously and some of the Government officials that were prepared to provide the information anonymously⁸⁷. Previous government-led land audit and land commission reports also worked as authoritative reference points in carrying out the research.

2.8.2 Addressing the Needs and Expectations of Respondents

In a country and research area that faces many social and economic challenges, my presence in the field was viewed by many of my respondents as an opportunity for them to have some of their immediate and very pressing challenges addressed as indicated above. These ranged from provision of medication for the sick, assistance in obtaining the relevant documentation for the newly resettled farmers, assistance with food and school fees for children as well as taking complaints to “those above” from the new farmers. It was not enough for me to explain to the respondents that I was carrying out the research as part of my studies and that hopefully the

⁸⁴ On 22 September 2010

⁸⁵ On 24 September 2010

⁸⁶ On 14 February 2012

⁸⁷ Due to requests for anonymity by some of the respondents, the research uses initials to identify all the respondents for uniformity. The initial M (surname) is used by many people in the research area and therefore a number has been allocated to the different respondents to make a distinction amongst them.

recommendations from the study would one day be adopted by the relevant authorities for the benefit of the respondents and that of many other Zimbabweans.

As a Women's Law researcher and faced with this predicament, I therefore often returned from my field research trips with a deep sense of helplessness and despair. During my first visit to Chidza Farm,⁸⁸ I came across a very sick woman. She could hardly speak. I could hear her groaning from a grass-thatched hut on the compound as I spoke to her younger co-wife in the shade outside. She told me that the older co-wife had been sick for more than a week but they did not have the resources to take her to hospital. I had a packet of "Panado"⁸⁹ pain tablets, which I often carried with me when going into the field in case I suffered from a headache. I pulled the packet from my bag and handed it over to the younger co-wife. She was clearly grateful and asked for my totem⁹⁰. She thanked me using my totem, said that I had been God-sent to deal with their predicament and not that I was simply a researcher. I realised on my part however that what I had done was likely to be of very little help as the pills, which were meant for mild pain, were unlikely to be of any help considering that the ill woman was in very serious pain. This was just one of the situations wherein I found myself questioning the relevance of my study to the everyday needs of the women that I came into contact with. Other respondents asked me to take their concerns to government with regards to lack of support on the farms, others complained about village heads who were treating them unfairly and the majority expected me to provide them with inputs and other necessities for their farming endeavours.

⁸⁸ On 15 September 2010

⁸⁹ The manufacturers of "Panado" advise that the medication is "Recommended for relief of mild to moderate pain and fever such as headaches, toothache and pain associated with colds and flu." (See <http://home.intekom.com/pharm/adcock/panadoco.html>)

⁹⁰ In the Zimbabwean Shona culture, it is a display of the highest form of gratitude or appreciation when a person thanks a benefactor using the benefactor's totem.

2.9 Research Methods

In undertaking the research, I used various and multi-dimensional research methods in order to understand the lived realities of women in the country under the FTLRP. These methods included in-depth individual interviews, key informant interviews, focus group discussions, observations, historical narratives as well as a review of literature and secondary data. An in-depth analysis of the methods used in the research is provided below.

2.9.1 In-depth Individual Interviews

In-depth individual interviews were held with various people in and outside the research areas as indicated earlier in this Chapter. Respondents for the in-depth interviews in the field were identified from focus group discussions and followed up for individual interviews. Others were identified through a “referral” system as respondents would refer me to other members within and outside the community who could provide the required information. The in-depth interviews were held with both men and women in the research areas. The interviews sought to collect data on a number of issues. These included where the interviewees originally came from, why they had relocated, the processes that they had to follow in order to acquire land, the role of various individuals and institutions in the FTRLRP, social, political and economic relationships, life on the new farms and access to agricultural and other resources post settlement amongst other issues. Due to the longitudinal nature of the research, the in-depth individual interviews were held at different times over a period of four years and seven months with the same and sometimes new interviewees.

Although I had a prepared set of questions ahead of the interviews, I used these as a guide, but allowed the interviews to proceed in a free-flowing way. Follow-up questions often came out of the responses provided by the interviewees.

2.9.2 Key informant interviews

A key informant interview has been described as a structured conversation with people with a specialised knowledge about the subject area that one intends to research on. Key informant interviews allow a researcher to explore a subject in greater depth (Education Development Centre, 2004:1). In my research, key informant interviews were held with relevant government officials, local leaders and NGO officials. The Government Officials included Officials in the Ministry of Lands and Rural Resettlement, the PA, Deputy DPA, DAs and Agricultural Extension Officers. The local leaders that were interviewed included village heads, headmen, chiefs, war veterans and other community leaders, whilst the NGO focus was on those that worked in the areas of women's law and rights, community development, agricultural development as well as environmental and natural resources governance.

I organised the key-informant interviews in advance, including requesting for an appointment and preparing the research questions and interview guide. In some instances, the key informant interviewees requested for the interview questions in advance to allow them to prepare for the interviews and these were sent through electronic mail or as hard copied depending on the circumstances. In such instances, the information that was given during the face-to-face interviews solicited the relevant specialised information that I was seeking from the interviewees, as they would have taken time to reflect on the questions and prepare for the interviews.

The key informant interviews also helped me in the formulation of recommendations arising out of this study given the specialised information that the interviewees had about the FTLRP the position of women therein. In a few instances, the interactions with the community leaders through the key informant interviews also assisted in mobilising the community and rallying them around the research through the influence of the key informants.

Some of the scheduled interviews with the key informants, in particular government officials, did not yield required results as explained above. However, the refusal and reluctance by government officials to provide information also provided an insight into the whole process around the FTLRP. The attitude lent credence to some of the research findings on reasons why some people that were really enthusiastic and serious about acquiring land failed to access land under the fast track land reform programme whilst people that were viewed as undeserving managed to get the land. For example, questions have to be raised about how open the process was and how much information ordinary members of the public were given about the process. In addition, if the process was as fair as government claims it to have been, why would government officials be reluctant to provide information on the process? Another question that needs to be asked is whether information on a national programme of the magnitude and relevance of the FTLRP should be regarded as classified or should be in the public domain. It was therefore important for me not to view these government officials' attitude as a snub but to analyse such behaviour and how this could have contributed towards the failure or success by women in the country in accessing and benefitting from the country's FTLRP.

2.9.3 Focus Group Discussions

Focus group discussions helped me to gather views, opinions and perceptions around the FTLRP from different people in group settings. The first such discussion was in the Nuanetsi Ranch's Ward 16, in Masimbiti.⁹¹ This first session was an unplanned one. As I interviewed a village head designate in the area early in the morning, he advised me that residents of the village were going to meet later that morning at the village meeting place to discuss their views on the constitution making process since a constitution consultation meeting was to be held in the area the following week. I could therefore take advantage of that meeting to interview the residents at the meeting place. I managed to have a focus group discussion with 41 women and

⁹¹ On 7 September 2010

13 men. After the discussion the women that formed part of the discussion offered to mobilise other women so that they could come for another discussion the following day. I visited the area the following day and managed to have two focus group discussions of 36 people each consisting of both men and women. In addition, I held other focus group discussions in subsequent field visits in Musvovi, Gororo, Sese and Shindi Communal Lands and at Lothian Farm. Local townships⁹² also proved to be useful areas for information gathering whether informally or after tracing male key informants to the townships, where they would have gone for beer drinking and social interactions with other villagers. Below is a table providing information on the FGDs that I held for the duration of the research:

Table 2.3: Focus Group Discussions

Date of FGD	Place where the FGD was held	Number and Gender of Participants
7 September 2010	Masimbiti, Ward 16, Nuanetsi Ranch	41 women, 13 men
8 September 2010	Masimbiti, Ward 16, Nuanetsi Ranch (2 separate groups)	63 women, 9 men
23 April 2011	Musvovi Communal Lands, Masvingo	3 women
24 April 2011	Gororo Communal Lands, Chivi	7 women, 1 man
6 February 2012	Shindi Communal Lands, Chivi	4 women
12 March 2014	Lothian Farm	4 women
15 March 2015	Sese Township	16 men

2.9.4 Observations

Observations in research are used to gain close and intimate familiarity with a chosen group of individuals. My observations were carried out secretly as the gathering that I chose to observe was the Constitutional Parliamentary Committee (COPAC) outreach meeting at Masimbiti Centre in Chiredzi District on the 13th of September 2010. Although it is an ethical requirement to advise the researched people of the presence of an observer for research purposes⁹³, this was not possible in this particular instance because of the sensitive nature of the gathering. Whilst

⁹² A township in this case refers to a rural shopping centre. The types of shops that are found at townships include small grocers', bottle stores/beer halls and butcheries. Townships are smaller than growth points and usually consist of just a handful of these shops.

⁹³ See <http://research-methodology.net/research-methods/qualitative-research/observation/>

under normal circumstances this would be regarded as a public gathering where everyone would be free to make their contributions, the story was different for the COPAC outreach meetings. These meetings in most parts of the country were characterised by political tensions and local people were suspicious of any strangers who appeared at the local outreach meetings as these were viewed as outsiders who wanted to bring in foreign ideas to their local contributions. The meeting that I attended for example degenerated into chaos towards the end when the villagers accused the COPAC outreach team of supporting the opposition Movement for Democratic Change (MDC). I therefore had to be as discreet as possible to avoid raising unnecessary ructions with the local people. In order for me to reach the meeting venue, I parked my car at a homestead about 3 kilometres away and walked to the venue on foot as my car was registered in Botswana where I was resident at the time. A foreign registered vehicle was therefore likely to raise the suspicion of the people. When the meeting became chaotic towards the end, I quickly walked to the main road and flagged down a car which took me to where my car was parked so that I could get away from the scene as quickly as possible. Although it was a single observation on the constitution making process, it was helpful in that I carried it out in a resettlement area and therefore discussions around the FTLRP and access to land were important to the participants of the COPAC meeting.

The main objective in attending the COPAC outreach meeting was to assess how people in my research area responded to the Constitutional Talking Points Number five, 10 and 11 which dealt with the issues of women's rights, land rights and empowerment of previously disadvantaged groups respectively.

2.9.5 Historical Narratives

Historical narratives are the re-telling of true stories or of events that happened in the past. These can be told in a dry factual manner or they can be narrated manipulatively to evoke certain emotions and intended reactions. Historical narratives are constructed in order to

legitimize present claims based on recognition of past access rights. In this study, life historical narratives were mainly obtained from key informant interviewees such as traditional leaders and senior government officials.

However, in analysing the narrative, it is important to understand the motive behind the construction of the narrative as often such narratives are used to manipulate others and protect the power interests of the narrator and those that she or he deems to represent (Nemarundwe, 2003:63). It is also critical to analyse on whose behalf the narrative is being told. In the case of the land issue in Zimbabwe, the narratives have focussed on how colonialists throughout the years of colonialism robbed native Zimbabweans of their land through a systematic and violent land grab exercise that condemned the locals to marginal and overcrowded areas with poor soils. Whilst this narrative is correct, this research seeks to analyse the timing of its telling, the intended audience and motive and how it eventually influenced the events that unfolded in the country's FTLRP and attendant implications for women's rights to access, own and control land in the country. Traditional leaders also gave historical narratives as they sought to support their claims over certain areas that were occupied by new settlers during the FTLRP. The traditional leaders sought to prove that their ancestors occupied those areas in order for them to claim or to be given authority over such areas by the government.

I also obtained life history narratives from the other informants, and in particular the land beneficiaries who provided information on what pushed them to grab land, invade farms or apply for land, depending on their individual or group situations.

2.9.6 Literature Review/Secondary Data

Literature review discusses published work in a particular area of research as a guide to laying a foundation for future work in the same area. In the same vein, research does not have a start or an end; researchers build on and develop work that has already been done by others in order

to add on to it, thus providing more resources for other researchers to build on (Harvey, 2010, Unpaginated). I therefore carried out extensive literature review on the land question in Zimbabwe, women's rights to land and other resources, general human rights discourse and the applicable legal regime in the area of study. The land question in Zimbabwe has attracted international attention and therefore scholarly and other writings on the issue by both locals and foreigners are in abundance. In line with this abundance of literature is also an abundance of viewpoints on the FTLRP. Such information therefore had to be thoroughly assessed and required cross-referencing amongst various authors as well as with primary sources of information. Relevant information on women's rights to land and property rights was found in books, newspaper, bulletins and journals amongst others and this information forms a critical part of the body of this thesis.

2.10 Efficacy of the Methodologies and Methods

The process of identifying suitable methodologies and research methods for a chosen area of study is always a major challenge, especially at the onset of the research when a researcher is still grappling with the research issues and not very conversant with the research area, the people, the terrain and the likely responses from the intended targets. Below is an outline of the efficacy and challenges of using the various selected research methodologies and methods utilised in this thesis.

2.10.1 Efficacy of Research Methodologies

I used the women's law and grounded theory approaches amongst others in carrying out this research. These are important in that they seek to address the needs of women and help to identify the situation of women while ensuring that their rights and needs are the starting point. These approaches therefore helped me to focus on the women and their rights and needs as the starting point without being swayed by any other competing interests that were obvious during the research period such as the communities' general need for resources and solutions to their problems. It is however a challenge to use these approaches in a society that does not view

women's needs as important or rarely regards women's rights as human rights. Sometimes, introducing the subject of women and their rights in certain instances can lead to arguments that can completely derail the research agenda. Some men and women in the country, in both urban and rural areas, hold the view that women and their rights are subordinate to men and their rights. It however remains an important approach to use in this research because it helps to identify the social and cultural barriers that hinder women's opportunities to access property and other resources even in national programmes like the FTLRP, which should benefit all citizens. I also used the receptor approach and its emphasis on the use of local institutions to ensure the implementation of international human rights including women's rights at the local level. A shortcoming of the approach was that it was still being tested for efficacy and the fact that the use of local level institutions to implement human rights requires strong monitoring to ensure that the application and implementation of the rights is not manipulated for the benefit of a few powerful individuals within the community.

2.10.2 Efficacy of Research Methods

One challenge that I faced was that of identifying and demarcating the study area whilst ensuring that it is representative of the issues that the research sought to address. Whilst the FTLRP was implemented in every province of the country, it was not possible for the research to cover the whole country during the data gathering stage. Even the one province that I was researching in is too large to be effectively covered. Yet it is important for the various types of resettlements under the FTLRP to be assessed in order to provide a comparative analysis of how women fared in accessing and benefiting from land under the different resettlement types. Failure to provide such a wide coverage is therefore a limitation.

Interview or discussion based research methods provide an opportunity to gather different views from a wide range of people. However, a challenge when researching on the FTLRP in Zimbabwe like in any other politically charged research issue or area is that people's views tend

to be clouded by political affiliations. As a result, one has to carefully consider and analyse all responses and the circumstances under which the information is provided in order to get a correct picture. In some cases, interviewees outrightly refuse to talk or provide the requested information. One therefore has to devise indirect methods of obtaining the information including from other sources or through an indirect approach to the subject. In other situations, even after explaining the purpose of the research, some respondents were not convinced that this was the real reason, and therefore chose to provide clearly misleading information. During focus group discussions for example, respondents would all support a certain political position with regards to the land reform programme, for fear of being labelled sell-outs, anti-government or anti-land reform which often carried various consequences including losing one's land allocation. Approaching the same respondents in individual interviews often elicited different responses, as the threat of being labelled by other respondents was no longer present. Other respondents exaggerated their poverty and lack, with the hope that my research would occasion donations, prompted by their exaggerated situations of dire need. I therefore had to understand these dynamics in order to sift through the information for accuracy and often had to verify such information through repeat interviews or with other informants through a data triangulation process.

Literature review provides an opportunity to understand the dominant thinking in a field of study. One challenge in researching on the FTLRP in Zimbabwe is that there is an abundance of literature on the subject with divergent views and conclusions on the subject from various researchers and authors. As a result, streamlining the information to ensure that it addresses the needs of the study became a difficult challenge. I therefore had to carry out extensive and thorough fieldwork of my own in order to collect and analyse data that could assist me in answering the research questions and ultimately understand the positions that have over the years informed the different and varied thinking on the FTLRP.

2.11 Conclusion

The findings presented in this thesis are specific to my research area because this is where the focus of investigation was. However, some of the conclusions from the research were reached based on information obtained from or through interaction with national level actors and structures in both the State and non-state sectors. Although the focus of my research was in a specific area, national level actors provided a general overview of the FTLRP at the national level. As such the findings from the research can be useful as a starting or reference point in the event of similar or related research seeking location specific findings in other parts of the country.

Chapter 3: The International Legal Framework on Women's Rights and Access to Land

3.1 Introduction

This chapter focuses on the international legal framework dealing with women's rights generally and women's rights in relation to land specifically. The chapter assesses the difference between "women's right to land" and "women's right to access land on the basis of equality with men" with a realisation that in a strict sense, there is no "right to land" under international law (Gilbert, 2013:115). It analyses key international women's rights instruments such as CEDAW, the Maputo Protocol and the SADC Protocol on Gender and Development to determine how these instruments provide for women's land rights. In addition, the work of the CEDAW Committee through its General Recommendations and Concluding Observations is also analysed. The focus is on assessing how the Committee has addressed the issue, interpreted the CEDAW in relation to women and land, and investigated the level of compliance by State Parties with the provisions of the CEDAW in relation to women's right to own, access and control land in their own right. The Chapter also assesses the place and role of soft law instruments such as the Beijing Declaration and Platform of Action and Agenda 21.

3.2 Land as a Women's Human Rights Issue

There is no right to land that is codified in international human rights law (Wickeri and Kalhan, Undated: 1). As such it would be a misnomer generally speaking to refer to women's rights to land just like no other person is guaranteed a right to land in terms of international law. There are however rights that can be derived by women in relation to land such as the right to access land on the basis of equality with men⁹⁴ and therefore a right not to be discriminated against on the basis of gender or sex in land matters. In addition it must also be realised that access to,

⁹⁴ For example Article 14 (g) of CEDAW requires women to have "equal treatment in land and agrarian reform as well as in land resettlement schemes". This does not confer a right to land for women but a right to be treated equally in schemes addressing issues of access, ownership and control over land.

ownership of and control over land impact on other important rights that are conferred on women in terms of international law. These include the right to food, housing, water, development and work amongst others. Land therefore plays an important role in ensuring that these other rights as enshrined in national and international law are enjoyed and realised by women. International women's rights law therefore emphasises the need for women to access land on the basis of equality with men, realising its role as a precondition to the enjoyment of other rights.⁹⁵

Land can be looked at from various angles and in relation to different contexts. Land can be viewed as an economic resource, as a source of livelihood and a pointer to other basic rights such as the right to food and shelter. Land can also be used as a measure of the application of the human rights principles of equality and equity in relation to access to, control over and ownership of resources, particularly between men and women. The result is that States have to regulate these competing needs for and demands over land in any setting and in doing so, laws and law making become necessary instruments for regulation. The international human rights framework often plays an important role in directing States in law making by providing standards that are generally and universally acceptable and applicable in relation to protection and promotion of various rights. In the sections below, I provide an analysis of the various international legal instruments that have a bearing on women's rights generally and on women's rights in relation to land specifically.

3.3 A synopsis of Zimbabwe's Position in Relation to key International Human Rights Frameworks and Compliance Mechanisms

The United Nations System is credited with creating norms and values at the international level that can be replicated at the local levels in an effort to improve the human rights of all. The table below show the status of Zimbabwe with regards to signing, accession to or ratification

⁹⁵ See for example, CEDAW, Article 14 (h) Agenda 21, Article 32.6 (d), Maputo Protocol, Article 19 (c) and Article 15 (a)

of key international women’s human rights instruments at international, African and SADC level.

Table 3.1 Zimbabwe’s adoption of Key International Gender and Women’s Rights Instruments

Instrument	Date of Signing	Date of Accession/ Ratification
Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)	-	13/05/1991
Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW Optional Protocol)	-	-
Protocol to the African Charter on Human And Peoples’ Rights on the rights of Women in Africa (Maputo Protocol)	18/11/2003	15/04/2008
The Southern African Development Community (SADC) Protocol on Gender and Development ⁹⁶	2008	2009

In line with these international instruments, the Government of Zimbabwe has put in place national mechanisms to protect the rights of women. These include the National Gender Policy of 2004. A second Gender Policy was adopted by Government in 2016. The constitutional dispensation brought about by the 2013 Constitution in particular ushered in an important internal step that widely addresses issues of gender equality and women’s rights.⁹⁷ The establishment of the National Gender Commission⁹⁸ itself a product of the 2013 constitutional dispensation was also an important step in ensuring the creation of a dedicated institution for the promotion of gender equality in the country. The establishment of the Zimbabwe Land Commission in June 2016 and its gender equality obligations in dealing with land issues, including access to land as provided for in the Constitution is also expected to provide the impetus to women’s land rights in the country. In addition, Zimbabwe’s state reporting obligations to international treaty bodies such as the CEDAW Committee and the Universal Periodic Review (UPR) of the United Nations (UN) Human Rights Council (HRC) amongst others are also critical in monitoring and enforcing compliance. It is crucial to note that the

⁹⁶ The Government of Zimbabwe signed a revised Protocol in August 2016

⁹⁷ See Sections 17, 80, 245-247 of the 2013 Constitution

⁹⁸ Following the promulgation of the Zimbabwe Gender Commission Act, potential commissioners for the Zimbabwe Gender Commission were interviewed by Parliament in March 2015 signaling progress and concerted efforts towards the establishment of the Commission. The Commissioners were eventually sworn in in June 2015, signaling the beginning of operations by the Commission.

Constitution has already addressed many of these issues. The focus should now be on implementation and more importantly on changing of mind-sets.

The failure by the country to ratify the Optional Protocol to CEDAW however means that Zimbabwean citizens cannot take communications before the CEDAW Committee for adjudication, as the Optional Protocol is the instrument that provides for communication procedures on CEDAW related complaints. This has the effect of limiting the options that are available for women in their efforts to seek compliance with CEDAW and women's rights provisions generally. Similarly Zimbabwe has also been slow to ratify and adopt other international instruments and frameworks that allow citizens to seek redress outside of the national framework. For example, Zimbabwe has not ratified the Rome Statute establishing the International Criminal Court and the country has been at the forefront of urging other African countries not to ratify the Rome Statute and those that have ratified to withdraw from the Statute⁹⁹.

Likewise the country has not made a declaration in terms of Article 34 (6) of the Protocol Establishing the African Court on Human and People's Rights which allows individual citizens and Non Governmental Organisations (NGOs) access to the African Court against their States. Although the country signed the protocol on 9 June 1998, it has not ratified the protocol.¹⁰⁰

An advisory opinion can however be sought from the court by Zimbabwean organisations, provided such organisations are recognised by the African Union.¹⁰¹ Zimbabwe has also led the SADC Heads of State and Government in their crusade to disband the regional court in Southern

⁹⁹ Whilst speaking in his capacity as the newly inaugurated African Union (AU) Chair at the closing ceremony of the 24th African Union Summit in Addis Ababa, Ethiopia, on 31 January 2015 the President of Zimbabwe Robert Mugabe urged the AU to pull out of the ICC. He repeated this position at the 25th Summit of the AU in Johannesburg, South Africa on 15 June 2015

¹⁰⁰ See <http://www.achpr.org/instruments/court-establishment/ratification/>

¹⁰¹ Article 4 (1) of the Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights

Africa, the SADC Tribunal as a way of stopping citizens from utilising the court.¹⁰² A proposed new protocol on the SADC Tribunal which was signed by the SADC leaders in August 2014 has taken away the *in personam* jurisdiction of the Tribunal and will leave the Tribunal as an interstate court. The common thread in all this is that by not adopting or by stifling these mechanisms, the Government of Zimbabwe makes it difficult for citizens to take cases of human rights violations before extra-territorial judicial and quasi-judicial bodies for adjudication. As a result, this limits the mechanisms that are available to citizens, including women for the enforcement of their rights.

3.4 Individual Versus Group Rights in International Law

One of the issues emphasised in the African context and the African human rights system is the relationship between the individual and society. This brings into prominence issues of African culture, tradition and custom and the responsibility of the individual towards society and in particular the family. The African Charter on Human and Peoples' Rights (ACHPR) (or African Charter), adopted in 1986, underscores the tension between individual human rights and group or peoples' rights (ACHPR and IWIGIA, 2005: 72). The human rights of women epitomize questions about the relationship of the individual to the group and in the African context culture comes into play to reinforce group rights as opposed to individual rights. There are divergent views on the role of culture in oppressing women in the African context with some scholars arguing that culture does not oppress women whilst others attribute the general marginalisation of African women to cultural beliefs, customary law and traditional value systems (See for example the different views of Nyamu-Musembi (2013) and Mutua.)¹⁰³ The emphasis that is placed by the African Charter on society and duties of individuals towards other individuals,

¹⁰² This was after the Tribunal had issued a series of judgments against the Government of Zimbabwe, which the Government of Zimbabwe did not agree with including one in the case of *Mike Campbell Pvt (Ltd) and Ors v Republic of Zimbabwe SADCT 02/2007* where the Tribunal ruled that Zimbabwe's FTLRP was illegal and racist. Instead of complying with the Tribunal's decisions, the Government of Zimbabwe sought ways to have the Tribunal disbanded instead, including putting forward the argument that the Tribunal was improperly constituted. See also <https://www.hrw.org/news/2011/08/11/sadc-qa-tribunal>

¹⁰³ See <http://hdr.undp.org/sites/default/files/mutua.pdf>

the family, society and the State therefore has been viewed as potentially undermining the rights of women because family, culture and society often form the epicentre of women's oppression.

Article 27 (1) of the African Charter States that:

Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community.

Combined with Article 29 which enjoins individuals to promote positive cultural values,¹⁰⁴ these provisions can have the effect of undermining the rights of women by requiring them as customary law and practices would, to uphold the needs and requirements of the family, society and community at the expense of their own rights and individual goals.¹⁰⁵ As a result such an approach may often lead to women considering it as necessary and “natural” to concentrate on working for the family and the community without putting much emphasis on the benefits that they derive at a personal level from the work that they do. This debate also links with the international debate on the value of women's unpaid work¹⁰⁶ within the family and family structures and the need to value such work in economic terms. In the case of the FTLRP there is need to assess whether the contributions by women in various facets of the process were viewed by women and other protagonists as being for women's own benefit or for the benefit of the family and community and how this impacted on women when it came to land allocation. African culture and its application has also often been misinterpreted and used selectively thereby leading to the preservation of cultural and customary norms that perpetuate the

¹⁰⁴ This is replicated at the national level in Zimbabwe with Section 16 of the 2013 Constitution enjoining the State and all institutions and agencies of government to promote and preserve cultural values and practices which enhance the dignity, well-being and equality of Zimbabweans

¹⁰⁵ However authors such as Zwart have taken the viewpoint that the collective plays a more effective role than the individual in ensuring the implementation of human rights at the local level. He takes the position that “human rights ideas displace alternative visions of social justice that are less individualistic and more focussed on communities and responsibilities” (Zwart, 2012:567)

¹⁰⁶ The CEDAW Committee in General Recommendation Number 16, on Unpaid Women Workers in Urban and Rural Family Enterprises concludes that unpaid work equates exploitation of women.

superiority of men over women whilst undermining the value of women, their work and their status in society.

In addition, whilst the ACHPR urges the promotion and preservation of positive cultural values¹⁰⁷, it has to be noted that culture, tradition and customary law, in addition to having been distorted by colonial masters in cahoots with African men during the colonial period, are not coherent or homogenous and are often interpreted differently depending on time, space and context. However with the promulgation of the 2013 Constitution in Zimbabwe, this can be countered at least on paper, by Sections 16, 56 and 80 (3) of the 2013 Constitution. Section 16 places an obligation on the State and all its institutions to:

promote and preserve cultural values and practices which enhance the dignity, well being and equality of Zimbabweans.”

Section 63 (b) is more important in this regard in that it confers a positive right on the people “to participate in the cultural life of their choice” as long as such enjoyment is consistent with the rest of the provisions of the Declaration of Rights.

Section 56 (the equality and non-discrimination clause) on the other hand prohibits discrimination on various grounds, including on the grounds of custom or culture. This is supported by Section 80 (3) which states that:

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

The human rights infringements that women face on the basis of culture have therefore been largely countered by the provisions of the 2013 Constitution, although the enjoyment of these rights by women in their lives might be far from becoming a reality. As Fox argues:

Women's human rights activists do indeed emphasize the idea of personal autonomy, precisely as a means of addressing the oppression of individual women within the family unit where women's human rights are frequently violated through domestic violence, restrictions on access to resources, and in matters of marriage, divorce, and property

¹⁰⁷ Article 29 (7)

rights. In other words, the human rights of women epitomize questions about the relationship of the individual to the group.¹⁰⁸

In addition, it must be realised that the oppression of women in Africa does not only take place within the family context, but within the wider society and community and is often encouraged through the communitarian approach to the existence of the person. It is within this understanding that women whilst not being encouraged to disregard their responsibilities towards family, society, State and community should be encouraged to consider their individual interests and strive to achieve for their person first in order to be of help to the family, society, State and community at large. Responsibility towards society, family and State should therefore not be interpreted to mean the relegation of women to the status of lower class citizens who work for the benefit and recognition of others without any recognition coming their way. In addition, it is important for the State to create laws, policies, programmes and conditions that allow the individual and in particular women to thrive as individuals both within the family and within wider society. In line with this approach, it is commendable to note that newer women's rights instruments that were developed at the African and SADC regional level address the needs of women as individual beings and not as members of a group or community.

The Maputo Protocol¹⁰⁹ which is an amplification of the women's rights provisions in the African Charter on Human and People's Rights¹¹⁰ deals specifically with the rights of women with a focus on eliminating discrimination against women¹¹¹ and ensuring that women participate in various social, cultural, economic and political spheres on the basis of equality with men. In addition, the SADC Gender Protocol is a newer instrument when compared to CEDAW and the Maputo Protocol. As a result, it has managed to address new and emerging

¹⁰⁸ See <http://www.africa.ufl.edu/asq/v2/v2i3a2.htm>

¹⁰⁹ The Protocol was adopted in Maputo on the 11th of July 2003 and became effective on the 25th of November 2005

¹¹⁰ The Charter was adopted on 27 June 1981 and entered into force 21 October 1986

¹¹¹ Article 2

issues impacting on women's rights such as the impact of HIV and AIDS¹¹² on women's rights and the rights of women to access information and communication technology.¹¹³ Unlike the CEDAW and Maputo Protocol, it also initially provided timelines for the achievements of set implementation targets, a provision that was widely used by women's rights organisations in the region to develop structured monitoring mechanisms for the implementation of the protocol.¹¹⁴ The provision of implementation targets placed emphasis on the fact that paper laws without implementation did little to enhance the rights of women. The provision of implementation targets in the protocol however became a major point of disagreement between SADC Governments and women's rights organisations in the region, leading to the removal of the implementation targets in the revised 2016 protocol. SADC Governments argued that the provision of targets in the protocol placed pressure on them to implement the protocol and should therefore be removed, yet this was precisely the reason behind the initial inclusion of the targets.¹¹⁵

With regards to property and land rights, both the Maputo Protocol and the SADC Gender Protocol, like CEDAW address the issue of discrimination against women in land ownership and the need to ensure their tenure security.¹¹⁶ They also provide for the need to promote women's access to and control over productive resources such as land and guarantee their right to property¹¹⁷. Failure to recognise women's work and the multiple gender roles that women have militates against their chances of accessing productive resources including land. Soft law instruments such as Agenda 21 also identify the burden of domestic work on women as an

¹¹² Article 27

¹¹³ Article 31

¹¹⁴ For example, the Genderlinks' SADC Gender Protocol Barometer which benchmarks progress by SADC countries towards achieving each of the 28 targets of the SADC Gender Protocol by 2015 (See <http://www.genderlinks.org.za/page/sadc-research>)

¹¹⁵ Interview with Genderlinks on 2 September 2016. Genderlinks is a SADC regional organisation which has over the years played an important role in tracking the implementation of the SADC Protocol by Member States through the annual SADC "Gender Barometer"

¹¹⁶ Article 18 (a): SADC Protocol on Gender and Development

¹¹⁷ Article 19 (c): Maputo Protocol

obstacle to sustainable development and calls for the recognition of such work in resource accounting mechanisms.¹¹⁸ In addition, Article 13 (h) of the Maputo Protocol reaffirms the need to:

Take the necessary measures to recognise the economic value of the work of women in the home” and the need not to stereotype the roles of men and women¹¹⁹

whilst the SADC Protocol on Gender and Development enjoins state parties to:

Conduct time use studies by 2015 and adopt policy measures to ease the burden of the multiple roles played by women¹²⁰

The significance of these provisions is the recognition of the roles that women play, the work that they do and the fact that women’s work should be given due recognition and not be relegated to a lower status whilst men and their work and the roles that they play in the home and in society are given undue prominence. Non-recognition of women’s work and their roles disempowers them in many spheres whilst the significance that is given to men’s work and men’s roles allows them to be empowered and to access influence in society, as well as power and key resources in the process. The multiple roles that women play also make it difficult for them to engage in public spaces and undertake economic and other activities that are critical for their empowerment. The recognition of women’s work also leads to a recognition of their role in the acquisition of personal and family property. This is important in ensuring that women do not lose out when it comes to sharing or distribution of property upon death and divorce and are accorded equal rights in the utilisation of matrimonial property during the subsistence of a marriage.

3.5 Discrimination on the Basis of Marriage

Marriage as an institution is recognised and protected in international law and consequently in some national constitutions¹²¹. Yet, the institution of marriage can lead to discrimination against women who amongst other things face challenges in their efforts to access land and other

¹¹⁸ Article 24.8 (e)

¹¹⁹ Article 2 (2): Maputo Protocol

¹²⁰ Article 16: SADC Protocol on Gender and Development

¹²¹ For example in Section 26 of the Constitution of Zimbabwe

resources as a result of gender-based discrimination. This is despite the protection that is accorded to women in marriage in international law and in the national Constitution in Zimbabwe¹²². CEDAW defines "discrimination against women" as:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹²³

The specific reference to marital status as a prohibited basis for discrimination against women in CEDAW is pertinent in the Zimbabwean land reform discourse where married women were differently impacted on in comparison to their single counterparts and married men when it came to land allocation.¹²⁴ The discrimination is based on the stereotypical assumption that married women are looked after by their husbands. As such, there is a view that it is not their responsibility to look for or aspire to acquire resources such as land, businesses or employment since their husbands who are presumed to be the heads of households, must provide for their financial needs. This is an issue that CEDAW addresses by outlawing the perpetuation of stereotypes that inhibit women in the social, economic and cultural spheres. Article 5 (a) of CEDAW urges State parties to modify social and cultural patterns of conduct of men and women, so as to eliminate prejudices, customary and all other practices based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. Whilst acknowledging the general discrimination that women workers faced in the civil service in Rhodesia, Kufakurinani noted that married women fared worse when compared to single women because it was believed that their primary focus should be housewifery as opposed to employment (Kufakurinani, 2012:116). A similar approach was employed in the first phase of the land reform programme soon after independence where single and widowed women, though

¹²² Section 56 (3) of the Constitution of Zimbabwe prohibits discrimination on the basis of marital status

¹²³ Article 1. A similar definition is provided in Article 1 (f) of the Maputo Protocol but the SADC Protocol on Gender and Development excludes the issue of "marital status" in its definition of discrimination.

¹²⁴ According to Byrnes A in Freeman A, et. al (2012:61) "Prohibition of Discrimination against women irrespective of their marital status, could protect married women against discrimination basis of their marital status as compared to women who are not married, as well as by comparison with married men"

still faring badly when compared to men in accessing land, were treated more favourably compared to their married counterparts (Ik Dahl et al, 2005:76). However even with the progressive provisions in international law, and corresponding legal and policy pronouncements at national level, the challenges still remain for married women in Zimbabwe in relation to access to land and other productive resources. This thesis will therefore seek to understand how these challenges impacted on married women in relation to the FTLRP.

3.6 The Value of Unpaid Housework and Domestic Work

Whilst a detailed analysis of the value of women's unpaid work and implications for access to land under the FTLRP will be provided in Chapter 6 of this thesis, I seek in this section to provide a general overview of this concept in international law. The CEDAW does not specifically refer to the recognition of the value of housework in determining the rights of women to property acquired during the subsistence of a marriage. It however refers to the need to recognise the value of work that women carry in the non-monetised sectors of the economy¹²⁵ and for that value to be recognised in national economic statistics. This is also addressed in the CEDAW General Recommendation Number 17.¹²⁶ In addition the CEDAW Committee in General Recommendation Number 21¹²⁷ specifically addresses the need to recognise the value of unpaid domestic work in determining women's rights to marital property. The recommendation states in part that:

Historically, human activity in public and private life has been viewed differently and regulated accordingly. In all societies women who have traditionally performed their roles in the private or domestic sphere have long had those activities treated as inferior. As such activities are invaluable for the survival of society, there can be no justification for applying different and discriminatory laws or customs to them. (Para 11 and 12)

The CEDAW Committee therefore recognises the need to give equal value between the work that is done by women in the private domain and the work that is carried out by men in the

¹²⁵ Article 14 (1)

¹²⁶ General Recommendation Number 17, on the Measurement and Quantification of the Unremunerated Domestic Activities of Women and their Recognition in the Gross National Product.

¹²⁷ CEDAW General Recommendation Number 21, on Equality in Marriage and Family Relations

public domain, bearing in mind that both contribute towards the development of families, societies and nations. In addition, although referring to rural women in particular, the Committee in the same General Recommendation has noted that:

In some countries, on division of marital property, greater emphasis is placed on financial contributions to property acquired during a marriage, and other contributions, such as raising children, caring for elderly relatives and discharging household duties are diminished. Often, such contributions of a non-financial nature by the wife enable the husband to earn an income and increase the assets. Financial and non-financial contributions should be accorded the same weight. (CEDAW General Recommendation Number 21, Para 32).

Regional instruments on the African continent that were adopted after CEDAW make specific reference to the value of domestic work in determining contribution towards the acquisition of matrimonial property. The Maputo Protocol enjoins state parties to “take the necessary measures to recognise the economic value of the work of women in the home”¹²⁸ whilst the SADC Protocol on Gender and Development urges state parties to recognise the economic value of and protection of persons working in the agricultural and domestic spheres.¹²⁹

Domestic work is therefore recognised in international law as contributing towards the acquisition of family assets of economic value and the general development and wellbeing of families, society and nation. The principle of non-discrimination plays an important role in this regard (Ikdahl, 2013:5), especially in as far as it relates to equal treatment of women and men.

3.7 Customary Law and Legal Pluralism

Customary law, culture and tradition are often a hindrance to access to land and other resources by women in Africa. The international human rights system acknowledges the importance of culture and tradition to any community and civilization but also accepts that if left unchecked, culture and tradition can have a negative impact on women, including in the areas of access to land and other economic resources. The approach taken by the international human rights system is therefore to outlaw “harmful” cultural practices and their negative implications on

¹²⁸ Article 13 (h)

¹²⁹ Article 19 (2) (c) of the SADC Protocol on Gender and Development

women's rights.¹³⁰ In its interpretation and consideration of harmful cultural practices, the CEDAW Committee has acknowledged the existence of cultural barriers that prevent women from owning land (Holtmaat, 2012:157). Amongst these is the cultural practice of preventing women from inheriting land after the deaths of their husbands. Whilst this is an issue that has been addressed by key instruments¹³¹ at the African and SADC level, it is the CEDAW Committee that has addressed the specific right to inherit land by women in its 2015 CEDAW Communication regarding land inheritance by women in Tanzania.¹³² In that Tanzanian case, the two women that brought the communication before the CEDAW Committee had been evicted from their homes by their husbands' families following the husbands' deaths. This, it was purported, was in line with the country's customary law provisions. After exhausting local remedies, including approaching the Court of Appeal without obtaining the relief that they were seeking, the two approached the CEDAW Committee for relief. Their case was amongst other issues based on the following:

- i. In terms of the codified customary law of Tanzania (Local Customary Law (Declaration) (No. 4) Order, inheritance rules are patrilineal and Rule 27 provided that:

With regards to the inheritance of widows, the widow has no share of the inheritance if the deceased left relatives of his clan; her share is to be cared for by her children, just as she cared for them" (CEDAW, Communication Number 48/2013¹³³, Para 2.3)

¹³⁰ Article 5 (a) of CEDAW, Article 2 (2) of the Maputo Protocol,

¹³¹ For Example Article 21 (1) and (2) of the Maputo Protocol provide that:

A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it and that women and men shall have the right to inherit, in equitable shares, their parents' properties. Article 10 (1) (c) and (e) of the SADC Protocol on Gender and Development also give the widow the right to continue staying in the matrimonial home after the death of a husband and the right to an equitable inheritance in the estate of her husband.

¹³² Views adopted by the Committee at its 60th session (16 February- 6 March 2015) in relation to Communication Number 48 of 2013, submitted by E.S and S.C (represented by the Women's Legal Aid Centre and the International Women's Human Rights Clinic) against the Republic of Tanzania

¹³³ CEDAW/C/60/D/48/2013 Communication No. 48/2013

- ii. Customary law prohibited women and daughters from inheriting clan land and granted them limited inheritance rights given that it provided a ranking system that gave preference to male relatives such as sons, fathers and brothers at the expense of female relatives such as mothers and sisters. (See Para 2.4).

In declaring these provisions to be discriminatory against women¹³⁴, the CEDAW Committee stated that:

The State party, by condoning such legal restraints on inheritance and property rights, has denied the authors equality in respect of inheritance and failed to provide them with any other means of economic security or any form of adequate redress, thereby failing to discharge its obligations under articles 2 (c), 2 (f), 5(a), 13 (b), 15 (1), 15 (2), 16 (1) (c) and 16 (1) (h) of the [CEDAW] Convention (CEDAW Communication Number 48/2013, Para 7.9).

In essence, the CEDAW Committee concluded that by restricting women's inheritance rights, the Tanzanian customary law provisions infringed on the women's rights to legal protection and not to be discriminated against. The Committee also concluded that Tanzania failed to take appropriate measures to modify or abolish existing laws, regulations, customs and practices, which constituted discrimination against women. In addition, the ruling also highlighted the need to give the same rights and responsibilities to men and women during the subsistence of a marriage and upon its dissolution (either through divorce or death) and the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property (Para 3.3) As such even though CEDAW itself does not specifically refer to the right to inheritance, as does the Maputo Protocol and the SADC Protocol on Gender and Development,, the observation by the CEDAW Committee in this communication reinforces this right for women.

¹³⁴ Arguably Zimbabwe has addressed most of these issues and apart from the problems of polygyny under Section 68 of the Administration of Estates Act is compliant at least on paper with the CEDAW conclusion

The position taken by the CEDAW Committee in arriving at this conclusion was in line with similar pronouncements by the Committee in General Recommendations Number 21 (1994)¹³⁵ and 29 (2013)¹³⁶. In General Recommendation Number 21, the CEDAW Committee emphasised the need for state parties to ensure that men and women in the same degree of relationship with a deceased person are entitled to equal shares in the deceased's estate and that they are accorded an equal rank in the order of succession.¹³⁷ As such a son and a daughter or a father and a mother are entitled to receive the same share and the same ranking in determining their inheritance from a father or a son respectively. The same General Recommendation also notes that in certain situations women are given limited and controlled rights to inheritance and in the case of widows, the inheritance rights fail to recognise the principle of equal ownership of property acquired during marriage. The General Recommendation concluded that such practices must be abolished (Para 35). This is an important recommendation, especially in the African context where customary law and practices entail that any property that a woman acquires during the subsistence of a marriage is regarded as the husband's property. Not only does this disadvantage a woman during the subsistence of a marriage, but it also similarly disadvantages her after the death of a husband as "property grabbing" relatives treat all the property that would have accrued during the subsistence of a marriage as belonging to their deceased male relative. An understanding that matrimonial property belongs to both spouses will therefore go a long way in addressing some of the challenges upon death of one of the spouses if observed and respected.

¹³⁵ Para 34 and 35

¹³⁶ Para 50

¹³⁷ General Recommendation Number 21, Para 34.

In General Recommendation Number 29,¹³⁸ the CEDAW Committee built on the general principles and jurisprudence that was enunciated in General Recommendation Number 21. In particular the Committee noted that:

Under customary forms of landholding, which may limit individual purchase or transfer and may only be subject to right of use, upon death of the husband, the wife or wives may be told to leave the land or may be required to marry a brother of the deceased in order to remain on the land. (Para 50).

The CEDAW Committee in General Recommendation Number 21 therefore condemned such practices and imposed the following obligations on State Parties in relation to the rights of women:

- i. Equal treatment of surviving female and male spouses;
- ii. That customary succession to use rights or title to land cannot be conditioned on forced marriage to a deceased spouse's brother (levirate marriage) or any other person, or on the existence or absence of minor children of the marriage;
- iii. That disinheritance of the surviving spouse is prohibited; and
- iv. That "property dispossession/grabbing" is criminalized and that offenders are duly prosecuted (Para 50)

These provisions go a long way in protecting the property rights of both men and women in the event of death of a spouse. However given that women are more affected than men in the event of a spouse's death, the provisions play an important role in ensuring that the rights of women are protected in such circumstances.

3.8 Violence Against Women

In General Recommendation Number 19¹³⁹, the CEDAW Committee recognised violence as a form of discrimination that seriously inhibits women from enjoying their rights and freedoms on the basis of equality with men especially when the violence is directed at women because

¹³⁸ Paragraph 50

¹³⁹ 11th Session, 1992

they are women or when it disproportionately affects women. The consequences of violence generally and violence against women specifically are that it maintains women in subordinate positions, limits their participation in political and public life and in the attainment of work and access to resources.¹⁴⁰ In addition, the Committee also defined violence against women as a form of discrimination against women in that it denies women many fundamental rights and freedoms including many that may not be explicitly mentioned in the CEDAW (Byrnes, 2012:64). The Beijing Declaration and Platform of Action considers violence against women as a critical area of concern, requiring action by various actors including governments and non-state actors.¹⁴¹ The violence that women experience and suffer from can be both interpersonal and structural. Often, it is the structural violence that leads to the perpetration and perpetuation of interpersonal violence against women.

In defining structural violence, a leading author on violence, Galtung has propounded that:

There may not be any person who directly harms another person in the structure. The violence is built into the structure and shows up as unequal power and consequently as unequal life chances. Resources are unequally distributed...Above all, the power to decide over the distribution of resources is unevenly distributed” (Galtung, 1969:171)

The existence of such a structure is usually in favor of men who have access to resources, the power to distribute the resources, more and better education, political influence and general control over institutions and processes. In such a situation, women become vulnerable, dependent, have weak bargaining power and are therefore vulnerable to violence and abuse. The structural violence may lead to interpersonal violence where physical force is used on and to harm women because of this vulnerability. The World Health Organisation (WHO) defines interpersonal violence as:

The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation. (Krug, et al (Eds), 2002:5).

¹⁴⁰ CEDAW Committee General Recommendation Number 19, on Violence Against Women, Para 11).

¹⁴¹ Article 44, Platform of Action

The end result is that women, as the ones on the receiving end of violence are unable to participate in economic activities that should otherwise enable them to prosper and break the cycle of poverty and violence. Fear and embedded bottlenecks result from the existence of structural violence whilst fear and violence related sicknesses are a real impediment to participation in situations where physical violence is used. It is in this context that the violence that accompanied the initial stages of the FTLRP in Zimbabwe must be analysed, especially bearing in mind that the violence was a perpetuation of a culture that dated back to the country's liberation struggle which was fought between 1966 and 1979.

3.9 Women's Right to Food and Relationship with Access to Land

The right to food is intricately linked to access to land, particularly for rural women. The right to food is extensively provided for in international law¹⁴² and in the jurisprudence of various treaty bodies. The 2013 Constitution of Zimbabwe also provides for the right to food¹⁴³ by stating in Section 77 that:

Every person has the right to sufficient food...and the State must take reasonable legislative and other measures within the limits of resources available to it, to achieve the progressive realisation of the rights set out in this section.

The right to food in the Constitution is also closely linked with the rights to “safe, clean and potable water.” This is the first time in the history of the country that both the right to food and the right to water have been recognised in the Constitution. This section will however focus on the right to food because of its more direct link to access to land.

A Research by the United Nations Human Rights Council Advisory Committee on Rural Women and the Right to Food concluded that in order for women to enjoy their right to food,

¹⁴² For example, Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 15 of the Maputo Protocol, the Preamble of CEDAW and Para 108 (a), 147 (j), 281 (a) of the Beijing Declaration and Platform of Action

¹⁴³ In the same Section 77, the Constitution also provides for a right to safe, clean and potable showing the inextricable link between the right to food and the right to water.

there is need for them to have access to income generating sources such as land and to enjoy inheritance rights amongst other necessities. The same research also concluded that any exclusions or restrictions based on gender that are suffered by rural women in their efforts to access resources that are necessary in order to enjoy their right to food violate this right (UN Human Rights Council 2012:5). In such instances, State parties therefore have an obligation to enact laws that ensure property and inheritance rights including in relation to land in order for women to enjoy their right to food. The UN Special Rapporteur on the Right to Food has emphasised this, noting the need for gender-sensitive agricultural policies that ensure women's full participation in the economy and women's right to inherit and possess land and access other productive resources (UN Human Rights Council, SP Rapporteur on the Right to Food, 2012:14). Noting the key role played by land in ensuring food security for women, the Special Rapporteur noted that:

Land is more than an economic asset that women should be allowed to use productively. It is also a means of empowerment, as the greater economic independence that results from land ownership enhances the woman's role in decision-making and allows her to garner more social, family and community support. (Ibid, Page 16).

In assessing the availability or otherwise of the right to food for rural women, it is important to recognise the intersectional discrimination that these women face as women but also as rural dwellers. Both situations present considerable challenges leading to the women suffering discrimination because they are women but also because they stay in rural areas which experience serious challenges in relation to customary land rights and general unavailability of goods and services. Hellum in this regard notes that:

Although the Women's Convention does not explicitly refer to intersectional discrimination suffered by women by virtue of their sex and other status, it recognises that different groups of women such as.....rural women.....may be subject to intersectional discrimination based on both their sex and other characteristics. (2013:613).

In addition, the CEDAW Committee in General Recommendation Number 28 Para 18 also flagged the importance of intersectionality as a basic concept in understanding the scope of

obligations of State Parties in relation to the elimination of all forms of discrimination against women as contained in Article 2 of the Convention. This entails an understanding of the fact that:

Discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. (Para 18)

As such, the issue of intersectional discrimination places women in multiple difficulties, as they have to grapple with discrimination at multiple levels and in different situations and contexts. Women face these multiple forms of discrimination in relation to access to land, including in the area of inherited land where laws still discriminate against women based on various grounds such as sex, marital status or origin. Coupled with customary and traditional practices in many rural areas, the ingredients for denying women access to land and the attendant food insecurity become a harmful combination for many women. The UN Committee on Economic, Social and Cultural Rights has observed that intersectional discrimination is a challenge in the enjoyment of economic, social and cultural rights and that such multiple discrimination has a distinctive and peculiar impact on individuals and therefore requiring special “consideration and remedying”.¹⁴⁴ The land rights of rural women are often entwined with intersectional discrimination.¹⁴⁵

In line with this approach the Food and Agricultural Organisation of the United Nations (FAO)’s Voluntary Guidelines on the Right to Food, adopted in 2004 play an important role in characterizing and demonstrating the relationship between access to land and access to food. The adoption of the Voluntary Guidelines was hailed as an important development in the human rights arena for several reasons. Firstly, the guidelines signaled the genesis of substantive discussion of human rights issues within FAO. Secondly, it was the first time that countries in

¹⁴⁴ Committee on Economic, Social and Cultural Rights, General Recommendation Number 20 on Non Discrimination in Economic, Social and Cultural Rights, Para 17

¹⁴⁵ See CEDAW Article 14 and CEDAW Committee General Recommendation Number 34 on the Rights of Rural Women

the world took steps to negotiate and agree on measures to take in order to ensure the enjoyment of an economic, social and cultural right, that is the right to food (FAO, 2006:iii). The Guidelines had a particular significance for women in the world in that they “represented a step towards integrating human rights into the work of agencies dealing with food and agriculture” (FAO, 2006:iii). Although the Voluntary Guidelines are not legally binding on States, they provide a practical human rights based tool that can be used at the national level in developing related guidelines, policies, programmes, laws and activities for the achievement of the right to food in the context of food security. Hinged on four pillars of food security namely; availability, stability of supply, access and utilisation, the Voluntary Guidelines emphasise the importance of access to resources and assets, including land by women and other vulnerable groups. In this regard, the Voluntary Guidelines enjoin States to:

promote women’s full and equal participation in the economy and, for this purpose, introduce, where it does not exist, and implement gender-sensitive legislation providing women with the right to inherit and possess land and other property. (Article 8.6)

The guidelines therefore recognise the importance of land in ensuring full economic participation by women leading to the enjoyment of their right to food and the role of enabling legislation in ensuring that this is achieved.

3.10 Right to Participation

Public participation is an important principle in the promotion of the rights of citizens, especially in situations where life-altering decisions or developments that impact citizens are to be taken by the State. The principle of public participation is closely tied to the principle of non-discrimination, which seeks to:

[emphasise] process rights for all groups, including the right to expression, accountability, information and participation for all groups regardless of gender, colour, tribe or physical condition. (Chiweza et al 2015:267).

Public participation therefore seeks the involvement of all parties affected by a decision or a development without discrimination or exclusion. The availability of accurate and adequate

information is a critical element in ensuring that the persons participating in public decision-making are well informed and take their decisions based on this information. A number of international women's rights instruments place considerable emphasis on the rights of women to participate in decision making and the need for access to information in the process.

In this regard, CEDAW in its preamble notes that:

the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.”

The Beijing Declaration and Platform of Action, also picks up the importance of women's participation in decision-making, stating in part that:

Women's empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace (Article 13, Declaration)

Article 9 (2) of the Maputo Protocol enjoins State Parties to “ensure increased and effective representation and participation of women at all levels of decision-making.”

whilst the SADC Protocol on Gender and Development enjoins State Parties to ensure the equal participation of men and women through the development of policies, strategies and programmes that engender such participation (Article 13 (2)).

The international human rights framework on women's rights to participation and decision-making is therefore clear and unequivocal. Yet, looking at land reform programmes in Zimbabwe, the 1980's land reform programme was highly centralised and controlled by government and lacked a legal framework for beneficiary participation and access (Ikdahl et al, 2005:76). The position for women was compounded by the fact that there was limited participation by women in the government level decision-making forums such as the lands officers or the district administrators. Having realised that women did not participate in the

1980s land reform programme on the basis of equality with men, this research using the international human rights frameworks on women's rights to participation will seek to establish whether the situation was different for women under the FTLRP. This approach is informed by the realisation that after the early independence land reform programme, Government must have identified shortcomings that needed to be addressed in future land reform efforts. Having identified lack of participation by women as one such shortcoming, Government would therefore be expected to address the issue in subsequent land reform efforts. But was this the case or the *status quo* in relation to women's participation was maintained? This is one of the key issues that this research seeks to determine.

3.11 Conclusion

The international human rights framework is important in setting standards for the protection and promotion of human rights. In relation to women's rights, the international women's rights framework has played an important role in setting the parameters that have led to an increase in awareness of the rights of women and the need to promote and protect such rights. National legislation has often been developed using these standards to ensure that women enjoy their rights as enshrined in international law. Though often inadequate, and often not implemented, the national legislation is however a good starting point in engendering the rights of women and provides a basis for women to demand their rights. The following chapter will assess the national laws seeking to protect women's rights in Zimbabwe and their role in promoting and protecting these rights as provided for in international law.

Chapter 4: Women, Land and the Law at the National Level

4.1 Introduction

This Chapter provides a critical analysis of the law in as far as it relates to equality and inequality between men and women generally and with regards to access to, ownership of and control over agricultural land in the history of Zimbabwe. An understanding of the role of law in the history of the country and the rights of women to land therein is important because it was the law that was used to assign rights and also to deny the same rights to different people at different periods in the country's history. In addition, where law was absent, rights were similarly impacted on, and in many instances, the absence of the law or lack of observation of existing laws had negative impacts. The recourse to laws and the law making processes becomes necessary in order to emphasise the role that clarity of law and policy as well as the effective enforcement of same can play in ensuring the creation of requisite social, economic and political conditions for the upholding of rights and responsibilities. These rights and responsibilities are conferred on various actors including the State and citizens acting as individuals or as a collective. It however must also be realised that often laws can be used to legitimise ordinarily illegitimate acts, with citizens required to obey unjust laws under the guise of the rule of law. When such unjust laws are foisted on the citizens, the result is a state of "rule by law" as opposed to rule of law in that to be considered legitimate laws must be just, reasonable and must promote and not impede the enjoyment of human rights. In this regard the Constitution is an important instrument in promoting the rule of law in that:

A Constitution must...aspire as far as possible to meet the standards set out under international human rights charters and agreements since these contain universally accepted principles and values. (Magaisa, 2011:59)

Both the colonial land acquisition process and the FTLRP in Zimbabwe were implemented under a state of affairs where laws were promulgated, some in retrospect in order to legitimise arbitrary land acquisition. Citizens were obliged to obey the unjust laws under the guise of the

rule of law. In such a situation it was, and would be difficult to enforce not only the rights of women but also the rights of the generality of the citizens in relation to access to, ownership of and control over land. The FTLRP like the colonial land grabs brought to the fore the issue of the rule of law and how lack of rule of law impacts on the enjoyment of human rights by the generality of the citizenry. In its implementation of the FTLRP, the Government argued that the land issue could not be resolved through the courts or the rule of law as it was a political and not a legal issue. The Minister of Justice, Legal and Parliamentary Affairs in 2000 at the peak of the farm invasions summed up the attitude of Government towards the rule of law in relation to the land question thus “The rule of law that is based on unjust laws is founded on quicksand and will not last”¹⁴⁶

The failure by the Government to observe the rule of law, though ostensibly justified by the need to address historical injustices on its part, meant that the application (or lack thereof) of the law generally and the observance of human rights (or lack thereof) in the whole land reform programme became a defining aspect of the programme. It would have been difficult for the government to openly defy the rule of law as it did whilst at the same time requiring citizens to obey the country’s laws in relation to the programme. Taking a cue from the approach taken by the State, some of the citizens that participated in the land reform programme therefore did so through farm invasions, violence, intimidation and outright disregard of the rights of other citizens, both white and black, men and women, young and old. Whilst these acts may have appeared to be only directed at the white commercial farmers, the reality is that they negatively impacted on the rights of other groups of citizens such as farm workers and women. These citizens failed to get State protection in relation to their right to work, right not to be discriminated against and right to be free from violence amongst others, the same violations that the white commercial farmers faced.

¹⁴⁶ The Herald, 10 July 2000, See also Hellum and Derman, 2000, Ikdahl et al, 2005

Although it is generally recognised that the availability of laws and policies that promote women's rights does not necessarily lead to the observance of women's rights, it has to be acknowledged that the complete absence of such frameworks or the presence of unclear or unjust frameworks can lead to increased marginalisation of women and total disregard for their rights. In recognising the importance of law in promoting women's rights, Article 3 of CEDAW urges states parties to put legislative measures in place in various areas including social, political, economic and cultural areas in order to ensure total advancement and development of women. Creating laws that recognise women's rights in various facets of their lives signifies the genesis of the State's commitment to the rights of women, creating rights and obligations that the State and citizens alike must abide by. If these rights are not realised, citizens can demand that the State plays its part in promoting, fulfilling and respecting¹⁴⁷ those rights. Laws therefore are important in developing and promoting a culture of respecting women's human rights, even though the laws may only be the beginning of such a process. In creating the laws, the principles of human rights, equality and justice are important to ensure that by giving rights to one section of the citizenry, the rights of any other section are not impacted on except as permissible under just law. Below I provide an analysis of the country's national laws with a view to establishing their level of compliance or otherwise with the international human rights framework on the rights of women. In this regard and as was discussed in Chapter 2, an understanding of what law is or was in the context of the FTLRP will be helpful in determining some of the factors that hindered, or where they did, helped women in accessing land under the programme. In particular, it will be important to understand law with regards to how it created relationships between women and the State, between women and society and between women

¹⁴⁷ According to the United Nations, "By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights." (http://www.un.org/en/documents/udhr/hr_law.shtml)

and their families and the rights that derived from such affiliations in relation to land. State and living customary law, general law, statutory law and international law will all be analysed in relation to the rights they confer on women and how these rights were applied in the context of the FTLRP. The concepts of access, control and ownership as conferred and defined by law will be explored in this and subsequent chapters. Below, I provide an overview of these three concepts as well as other key concepts that help in defining the relationship between women, land and the law.

4.2 Women's Rights of Access to, Ownership of and Control over Land

The concepts of access, ownership and control are used in this section with a focus on how they have been applied in the legal framework governing the FTLRP in Zimbabwe. This is in view of the understanding that law is a tool that can empower or disempower its subjects in the quest for access to [ownership of and control over] resources. In interpreting the concepts of access, ownership and control in relation to the law, there is need therefore to realise that there are different legal orders that can be used to allocate resources (Kameri-Mbote, 2006:43). An understanding of the rights that are conferred by law to individuals and in the context of this research to women with regards to resources such as land helps in determining the empowering or disempowering nature of the existing laws [or absence of such laws) in any set-up. Access, ownership and control are key concepts in understanding the gender dynamics and underlying women's rights issues in relation to land. Access to, ownership of and control over land by women are moreover mired in challenges emanating from the historical, legal, cultural, political and societal context in which the discussion is undertaken, amongst other considerations. Although the terms are often used interchangeably or with limited distinction, in reality they mean different things and confer different rights on individuals.

4.2.1 Access

Access to land has been defined as “the availability of land for utilisation” (Kachika, 2009:25). Often women can only access land through male figureheads of one kind or another, be they husbands, fathers, sons or uncles (Kimani, 2012). As such, access to land by women is often a function of relations at family level and in society and the reciprocal obligations that women have towards those that enable them to access land (Peters and Peters, 1998: 187). Efforts to create laws that enable access to land by women must therefore be cognisant of the societal ordering and how that ordering impacts on the application of the laws in reality. Often laws that are created with the intention of providing equal access to resources such as land for women and men yield very differentiated outcomes upon application in a gendered context. Gender neutral laws can therefore not be expected to make real difference in terms of access to land for women because there are structural barriers that impact on women’s ability to enjoy those rights (Kameri-Mbote, 2006:44). Such barriers can include customary law and cultural constraints, lack of resources (which are necessary in order for one to acquire other resources), lack of participation in decision-making at community and national level as well as lack of knowledge and information about available opportunities. In many instances however, women are able to access the land without owning or controlling it, leading to their alienation from the means of production and the paradox of women working on land that they neither own nor control. The result is that their tenure on the land becomes tenuous and they have no control over both the means of production and the produce from the land. In essence therefore, mere access confers the least of rights that women can have in relation to land and other environmental resources.

4.2.2 Control

Control is a function of and is determined by the power to distribute and redistribute land access rights to members of society (Kameri-Mbote, 2005:6). Those that have control over land also have the ability to determine how it’s used and by whom and for what purposes. Often those that have control over the land, be they individuals, the State, business, communities or

traditional authorities may also exercise one form or other of control over the produce from the land. For example under the FTLRP, at one point, farmers who had accessed land under the programme were required to sell part of their maize to the State owned Grain Marketing Board (GMB) as a way of “registering their presence and productivity on the land.”¹⁴⁸ This was despite the fact that the State owned entity offered a lower prize for the maize compared to private buyers, and often took long to pay the farmers. As such, given a choice, the farmers would have preferred to sell their produce to the private buyers, at a higher prize and receive their dues immediately.¹⁴⁹ However, because the State owned and therefore controlled the land, there was a threat that those who failed to sell the maize to the GMB risked failing to be captured in the database of productive farmers and resultantly risked losing the acquired land. The result was that the State managed to force the resettled farmers to sell their maize to the State in order for them to continue utilising the land.

Men who control land on which their wives work also determine what is to be planted, where and when, and often have the final say on how the produce is used. Control therefore confers rights that are higher than those derived from mere access even though such rights are lower than the rights of ownership. In the case of the FTLRP such control was conferred through offer letters, certificates of occupation or leases, which implied that those in whose names the documents were registered had more rights than those who were merely occupying or utilising the land without similar documentation. In many instances, the beneficiaries of the FTLRP actually believed and continue to believe that they own the land through the offer letters, certificates of occupation, leases and permits, oblivious of the real legal position, which states that the land they occupy is State land. They therefore act as owners would, exercising significant control and decision-making with regards to the land.

¹⁴⁸ Interview with Mr. FZ on 10 February 2012 in Masvingo Town.

¹⁴⁹ Interview with Mr. FZ on 10 February 2012 in Masvingo Town.

4.2.3 Ownership

Ownership confers the most absolute of rights over property including land. Under Zimbabwean law:

The right of ownership over property of whatever nature confers the most complete and comprehensive control one can have over property. The right of an owner of land, for instance, to sell that land is almost untrammelled. It is also a cornerstone of the law of property that ownership of land is proved by way of registration of title. Thus, whoever has his or her name endorsed on the deed conveying title is at law *prima-facie* recognized as the owner of the land with the most complete and comprehensive control over that land (Muchawa, 2005:4).

Therefore, barring a few exceptions, a property owner has unimpeded rights to use, enjoy, alienate and destroy their property.

However recent thinking and scholarship on ownership and land rights is challenging the notion that ownership implies the total exclusion of other people to that which is owned (Derman, 2013:39) but instead focuses on community and shared ownership. Having said that it must be realised nonetheless that in terms of the law, fast track land cannot be owned by the beneficiaries as it is State land. Section 290 of the Constitution provides that all land that was acquired under the FTLRP continues to be vested in the State whilst Statutory Instrument 53/2014 states that:

For the avoidance of doubt, it is declared that a permit holder does not have title over the allocated land, that is to say, he or she may not sell the allocated land. (Section 6 (2))

The highest form of right that permit holders can have over fast track land is therefore the right of control over the land, which falls short of the right to alienate. The control however remains important in the context of the FTLRP as it gives the right holder authority on when and what to plant as well as to decide what happens to the produce including what to sell and to at times, whom to sell to. The question that this research seeks to answer is “is this control over fast track land exercised by men or by women in Zimbabwe bearing in mind its importance in ensuring productivity and success as a farmer?” If control is the highest form of right that can be

conferred on beneficiaries of the FTLRP how does lack of control impact on those that use/access the land (in particular women) without control over such land? The challenge of limiting the rights that women can derive in relation to land in Zimbabwe as in many other African countries is a relic of colonialism with its creation of perpetual minority status for women and the notions around how women's rights in land were assumed to be derivative in relation to communal land. Schmidt, 1986 describes how in 1924, the Native Commissioner of Sinoia (modern day Chinhoyi) justified the minority status of women in a letter to the Superintendent of Natives thus:

The native woman of today has not the brain power or civilization of the mothers and grandmothers of the present-day white generation; her brain is not sufficiently balanced to allow her to think and act in all matters for herself, and I consider the male should be encouraged and assisted to exercise tutelage, within all reasonable bounds, over his womenfolk (Schmidt, 1986:4)

However, post-independence, questions have to be asked about whether laws, policies and practices have done anything to address this problem. Are there laws and policies in place to address this challenge at all? If the laws are in place, are they adequate in addressing this challenge and are they being implemented to ensure that access to land (in particular fast track land) and control thereof benefits both men and women in the country on the basis of equality.

4.3 The Zimbabwean National Legal Framework

Having provided an analysis of the international legal framework with regards to women's land rights in Chapter 3, below I provide an analysis of the Zimbabwean legal framework with a view to juxtaposing this framework with international human rights law.

At Independence in 1980, Zimbabwe needed to correct the imbalances created by the colonial regime in relation to land and land rights. I therefore begin the section below with a history of the land question in Zimbabwe in order to understand the developments that took place over the years and the role of the law in all these changes along the way. It should be noted that women's land rights were not a part of the pre-independence considerations, and post-

independence, the primary focus was on taking the necessary legal and practical steps to empower the black majority, a process that did not directly embrace the needs of women in relation to access to land. In explaining this state of affairs, Ikdhahl et al state that:

The Zimbabwean Government's land redistribution programme that followed independence in 1980 set out to effect post-conflict reconstruction and redress the racial inequalities that followed 90 years of colonial rule. (Ikdhahl et al, 2005: 75).

In essence the programme focused on addressing race-based inequalities and ignored other bases of inequality such as those based on gender and sex. The human rights based approach, especially in relation to the rights of women as outlined above was therefore the least of the worries of the post-colonial state in relation to land redistribution.

4.4 A Brief History of the Colonial Land Laws and their Impact on Land Ownership by Women

The colonial government in Zimbabwe like in many other colonial states used laws and law making to control ownership, distribution and the relationships that individuals had with land. The focus of the colonial government in this regard was on using the law to expropriate land from the black people and distributing it amongst the white settlers. In the same vein, the law was used to segregate the black and white people by physically categorising the places where the different races could or could not live, own or occupy land. Below I provide an outline of some of the laws that were promulgated by the colonial government to serve these purposes.

4.4.1 The Land Apportionment Act of 1930 and the Native Land Husbandry Act of 1951

The Land Apportionment Act (LAA) of 1930 and the Native Land Husbandry Act (NLHA) of 1951 were amongst the most far-reaching colonial pieces of legislation regarding land rights and land relations in colonial Rhodesia.¹⁵⁰ The purpose of the LAA was to formally separate

¹⁵⁰ Modern day Zimbabwe was known as Southern Rhodesia and Rhodesia during different periods of colonialism

land that could be owned and/or occupied by black and white people in the country. In this regard, the Act mostly favoured whites and in particular white males in their land acquisition ventures with little regard for black people, both male and female and white females. It gave some leverage to black males over their black female counterparts but this was insignificant compared to the land that was available to white males in the country. The Act segregated land into white areas, native areas, native purchase areas and forest and parks areas. The same Act also to some extent enabled some black males to own small-scale commercial farms in the native purchase areas known in the Shona language as “*kumatenganyika*”, literally translated to mean, “to purchase the land”. Such land was however allocated in marginal areas when compared to the prime locations of the large-scale commercial farms that were owned by whites. A few blacks were given access to the native purchase areas and the majority to what were commonly known as the Tribal Trust Lands (TTLs). The focus of the Act was to create clear racial segregation in land ownership and occupation with the majority black population confined to the marginal areas whilst the Europeans acquired prime land. The effect of the Act was to apportion land in the country in the proportions provided in Table 4.1 below after 1930:

Table 4.1: Land Classification According to the Land Apportionment Act, 1930

Category	Square Miles	Acres	Percent of Country
European Areas (including all urban areas)	76,796	49,149,174	51%
“Native Reserves”	33,011	21,127,040	22%
Unassigned Area (including game reserves/parks)	27,802	17,793,300	18.5%
“Native Purchase” Area	11,663	7,464,566	7.8%
Forest Area	923	590,500	0.6%
Undetermined Area	107	88,540	0.1%
Total Land Available for African Use	44,674	28,591,606	29.8%

Source: Government Of Zimbabwe, 2003: Report of the Presidential Land Review Committee on the Implementation of the Fast Track Land Reform Programme, 2000-2002 (‘The Utete Report’)

The LAA was further amended in 1941 and 1950 to reinforce the racial segregation in terms of both ownership and occupation of land in the country.

The NLHA had the aim of enforcing private land ownership whilst at the same time introducing conservation methods and limiting the number of livestock that the black people could own as

a way of managing the limited grazing land which was available in the reserves or black areas.¹⁵¹ The law was eventually repealed in 1961. The creation of the native purchase areas through the LAA and the NLHA however, allowed the elite blacks that could afford to purchase commercial farming land to do so but they still owned land on a smaller scale compared to their white commercial counterparts. The main determinant in accessing land in the native purchase areas was the financial capacity of a black individual to buy the land. Gaidzanwa (2011:4) notes that:

Small scale commercial farms were developed to cater for the small group of black people who could afford to buy land from the State.... Women's access to land was mediated through their relationships with men. The men who could afford to purchase the land would internally subdivide some land for use by their wives. (Gaidzanwa, 2011:4)

The LAA and the NLHA therefore did not cater for the land needs of black women due to their limited financial means since women had and continue to have a lower financial standing when compared to men. The opening up of the native purchase areas was therefore of little help to black women as they did not have the means to acquire land through purchase. The discrimination faced by women in this regard was therefore intersectional as it was apparent at multiple levels including their gender, ethnicity, race and economic status. In addition, these were women in a colonial state where their rights were doubly infringed upon, as they were beholden to two patriarchs in the form of the colonial masters as well as their male kith and kin. As such, it was difficult for black women to acquire resources independent of the men and this challenge affected married women more than their single, widowed or divorced counterparts. In the communal areas, land was accessed through a clan system, whose mediators were male chiefs and headmen as well as the male leaders of individual households and extended families. As such whilst the main focus of the two pieces of legislation at face value was racial segregation in ownership and occupation of land, the women suffered a double jeopardy of being discriminated against on the basis of gender and being compartmentalised on the basis of

¹⁵¹ See <http://www.raceandhistory.com/Zimbabwe/factsheet.html>

race. The result was that it was difficult for women to access land even in the most marginal of places because of their race, gender and lack of resources. With these policies, by 1980 when Zimbabwe gained independence from Britain, the land distribution pattern in the country was as shown below:

Table 4.2: Land Holding Structure in Zimbabwe at independence in 1980

Land holding category	Percentage holding	Land
Large Scale Commercial Farms (owned by about 6000 mostly male white commercial farmers)	39	
Black Small Scale Commercial Farms (owned by about 8000 mostly male black small scale commercial farmers)	4	
Communal Lands (where 4 million black people lived)	41	
National Parks and State Forests	16	

Adapted from Huddle N (Undated: 65)

4.4.2 Male-led Institutions During Colonialism and the Rights of Women to Land

During the colonial period, male leaders both at community and family level led a patriarchal conspiracy on the suppression of women to serve both the colonial interests and the males' desire to control women in the home/family and the community at large. On the part of the colonial government and in their efforts to maintain a grip on the indigenous population, the enactment of both the LAA and the NLHA were used to rejuvenate the institution of traditional leadership following years of efforts by the same colonial government to weaken it. During the early years of colonialism, traditional leaders were undermined and weakened by the colonial government because they were seen as a rallying point for resistance against colonialism. (Murisa, 2009:87-88) However with the promulgation and implementation of the LAA and the NLHA, there was increased recognition of traditional leaders by the colonial government and an increased role for chiefs and headmen in the management of the native reserves (Kramer, 1998:84). Like in other colonial African States, they were used as civil servants for the colonial administration through the indirect rule system and were given responsibilities in the collection of taxes, enforcement of law and order, production of cash crops and mobilisation of labour (Economic Commission for Africa (ECA), 2007:7)

In addition to the powers that were bestowed on traditional leaders through the implementation of the LAA and the NLHA, the Unilateral Declaration of Independence (UDI) in 1965 and the rising tide of black nationalism saw the colonial government giving increased authority to the traditional leaders. This was necessary in order to get the traditional leaders' support in the face of the resultant political challenges. Under the Tribal Trust Lands Act of 1967, the traditional leaders' powers to allocate land within the TTLs was once again restored (Chigwata, 2010:23). The Tribal Law and Tribal Courts Act of 1969 also increased the powers of chiefs and provided for wider application of customary law (Goldin and Gelfand, 1975:6) as enticement for wider cooperation with the colonial government. That this new approach was to get the support of the chiefs in the light of nationalist fight for freedom is supported by the Goldin and Gelfand who argue that previously;

Traditional native leaders were mistrusted after the rebellion [the 1896-1897 rebellion by the Shona and the Ndebele against the administration of the British South Africa Company (BSAC)] and consequently their power, appointment and tenure of office were clearly defined, controlled and regulated. The duties assigned to them were primarily designed to use them for the maintenance of law....The administration was primarily concerned with security and the political and economic control of natives and not with the preservation of customary laws and tribal courts. (Goldin and Gelfand, 1975: 6).

Therefore after taking away the powers and authority of traditional leaders at the beginning of colonialism, the colonial masters saw an ally in the same traditional leaders with the rising tide of nationalism in the 1960s. As such, in response to the threat of loss of political and economic power due to the call for independence by the nationalists, after 1960, the status of traditional leaders was improved and the application of customary law also became more widespread with the result that the

importance or significance of customary law [was] greater and more significant.....than at any time since European occupation. (Goldin and Gelfand, 1975: 6).

However with the increasing cooperation between traditional leaders and the colonial masters, traditional leaders were viewed by their subjects as collaborators in the exploitation of the black people by the white colonial government. As Matsyzak puts it:

The pre-independence government utilised traditional leaders as primary policy implementers (particularly in regard to land), and they were given extensive powers as means of exercising authority over the rural populace (Matsyzak, Undated: 4)

However, whilst the traditional leaders could during the colonial period help in land related policy implementation including environmental conservation, they did not have control over the actual land. The NLHA was a response to the overpopulation challenges that were emerging in the communal areas following the promulgation and implementation of the LAA. The main aims of the NLHA as propagated by the colonial government were:

- i. To put in place good farming practices and a system of land conservation
- ii. To ensure that livestock in any given area was compatible with the area's holding capacity (effectively leading to destocking in the native reserves as excess livestock had to be disposed of)
- iii. To provide individuals with grazing rights and
- iv. To reallocate arable land into compacted and sustainable economic divisions whilst at the same time registering individuals' land allocations.¹⁵²

The NLHA also sought to adjust land tenure relations by handing individual title to black peasant farmers over small parcels of arable or grazing land in the native purchase areas.

The NLHA was viewed as a progressive piece of legislation by the colonial government in that it sought to ensure effective and viable farming methods for the black population. The argument by the colonial government was that the wasteful and unstructured manner in which land was utilised by the black population resulted in artificial land shortages in the TTLs. On the other hand, the majority black population who were meant to benefit from the Act resisted its implementation. The major challenges related to destocking as this resulted in the drastic

i. ¹⁵² See www.colonialrelic.com/appendix-vii-the-native-land-husbandry-act-1951

reduction of black people's animal herds. The destocking exercise by the colonial government was meant to allow the small portions of land that were in the hands of black people to hold the livestock. Secondly, although the law had some semblance of positivity, it could be regarded as illegitimate as it was built on the foundations of a profoundly discriminatory Act, the LAA that had literally crowded the black population in small and unviable farming units whilst dispossessing them of their vast tracts of land. The argument by the black people, which fed into the nationalist narrative, therefore was that their problems stemmed from the land dispossessions that had led them to be crammed into small areas of land. These small pieces of land were in turn increasingly unproductive due to degradation, which was induced by the overcrowding. In this situation of resistance and dissatisfaction, the colonial government therefore regarded traditional leaders as the foot soldiers that could keep the people in line in the communal areas to stem their resistance to colonial rule and policies.

It must however be acknowledged that before the advent of colonialism, traditional leaders played an important role as custodians of the land on behalf of their people (Murisa, 2009:87). Even as the colonial government took away prime land from the black people and placed it in the hands of the white people, it did not totally divest traditional leaders of their powers in land management in the TTLs. However, although traditional leaders were left with some residual power over land and land related matters, they by and large did not have power to allocate such land, which was defined as legally belonging to the State and not the blacks or the traditional leaders. The black people were therefore given usufructuary rights and not ownership rights over the land with traditional leaders playing an administrative role over the land together with other statutory institutions. The relevance of traditional leaders in governance issues, including land management in the colonial state was for example displayed in their inclusion as ex-officio members in institutions such as the Native Boards (headed by the District Commissioners) which were responsible for the Management of the native areas (See Murisa, 2009:103). The

traditional leaders' role however still remained diminished by the acquisition of their land for white settlement as well as reduced powers as judicial authorities, especially in criminal matters as colonial power became entrenched in Rhodesia.

As traditional leaders [and men in general] lost their land and power to the white colonial masters, one way of pacifying them was to give them control over women and children with the argument that this was in line with customary law and traditional practices. This led to the marginalisation of women in various aspects of their lives including in family relations and property rights such as land rights. Schmidt notes that:

During the colonial era in Southern Rhodesia, African Chiefs, headmen, and other senior men, European capitalists and the colonial state collaborated in their efforts to control the behaviour of African women. Whilst African men sought to reassert their waning authority over women, their services and their offspring, European men had a different agenda. In the economic realm, they were concerned with obtaining cheap African male labour. If it took the regulation of female sexual practices to achieve this objective, the State was prepared to pass laws to that effect. (Schmidt, 1992:121)

This viewpoint is shared by Chanock, who argues that:

But the African Law of modern Africa was born in and shaped by the colonial period. I think it can be shown that in the areas of criminal law and family law, African law represents the reaction of older men to a loss of control over wrongdoing generally and, as more acutely felt, to a loosening control over women. (Chanock, 1978:80)

Other researchers on the development of African law such as Hellum share the same view. Hellum underlines the independence that African women showed by running away from their male chaperons such as fathers, brothers and husbands to go to the mines, towns and mission stations as a threat to male patriarchal control. This led the African male elders and chiefs to collaborate with the colonial regime with the aim of regaining control over their wives and daughters with the help of the colonial State (Hellum, 1999:112). This control over women was not confined to their sexuality but touched on other aspects of their lives with the intention of making women entirely dependent on men. The challenge in this collusion between the African men and European settlers was that “harmonising the African and European systems of social control became an exclusively European responsibility” (Mittlebeeler, 1976:10) thereby

leading to serious distortions of African custom and practices. The law making process extended to women's productive labour on the land and reproductive labour in which they produced and raised labour for their husbands' families and for the colonial State. To achieve this, women had to be economically dependent on their husbands and the elders of the clan. One way of ensuring this was to deny them access to land in their own right whilst guaranteeing that they worked on their husbands' or clan land. Law making on marriages was used to achieve these objectives. Laws such as the Native Marriages Ordinance of 1901 and 1917 and the Native Adultery Punishment Ordinance of 1916 were used to control women's sexual and reproductive rights. Through the Native Marriage Ordinance, the marriage registration certificate was used as a pass document and women without the certificate could not be allowed on the mines, European farms or town areas. As a result those without the certificate could easily be identified and sent back to their native areas (Schmidt, 1986:10). This meant that the movement of women was strictly limited and they could only move with the consent of their husbands, and in the case of unmarried women, their fathers or other male guardians.

The Native Adultery Punishment Ordinance provided that:

Any native who commits adultery with a native married woman, or who induces a native married woman to leave her husband for the purpose of illicit sexual intercourse, or harbours her for the like purpose, against the will of her husband, shall be guilty of an offence, and upon conviction shall be liable to a fine not exceeding £100, or, in default of payment of any fine inflicted, to imprisonment with hard labour for a period not exceeding one year. Any native woman who is a consenting party to any of the above acts shall be liable to the like penalties.¹⁵³

This law and its provisions were meant to give African men the satisfaction that if they left their wives in their native areas whilst they went in search of paid employment, their wives would be protected thus ensuring labour for the colonial State. The Attorney General of Rhodesia, Mr

¹⁵³ Section 1

Tredgold in support of this law pointed that this was supported by the native males who felt that “their whole family life is being disturbed and that they dare not leave their homes in search of labour.”¹⁵⁴

The Native Registration Act of 1935 controlled women’s movement, which could only be sanctioned with the consent of their husbands or some male authority. The colonial government justified these male controls over women on the basis of custom. This led to the confinement of women to the native reserves where they worked their husbands’ and clan land and produced and raised the much needed family and colonial labour. The colonial state also concentrated available “native” land in the hands of the men through laws such as the LAA and the NLHA.

The above controls over women brought together white males and black males, even though this was for completely different reasons. With economic interests at heart on the part of the white settlers and the need to regain control over “their” women on the part of African men and traditional leaders, the law-making process was therefore effectively used in controlling women’s productive and reproductive capabilities. The control over married women’s sexuality became highly political when African men complained to the colonial authorities that their wives had become too independent and were running away with foreigners, mainly from the then Northern Rhodesia and Nyasaland who were settling in Southern Rhodesia in search of employment on the farms and in the mines. Between 1903 and 1911 Several Native Commissioners brought the dissatisfaction of the African men over their lack of control over their wives to the attention of the national authorities in Southern Rhodesia stating in their

¹⁵⁴ See The Natives Adultery Punishment Ordinance (Zimbabwe) 1916 Criticisms by Native Commissioners, Matabeleland, on the Native Affairs Committee of Enquiry, 1910 no date, pres August 1911. A3/3.18. Available Online: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Flearn.gold.ac.uk%2Fpluginfile.php%2F446073%2Fcourse%2Fsection%2F61146%2FNAPO%2520Southern%2520Rhodesia%2520debates.doc>

reports the need for adultery to be criminalised. The Native Commissioners even postulated that adultery had economic consequences for the colony of Southern Rhodesia stating that:

The evil [of adultery] is becoming very wide-spread and even influencing married men in regard to the question of seeking work away from their kraals” Mittlebeeler (1976:124).

By 1912 the Government was considering legislation to criminalise adultery and by 1916 the Native Adultery Punishment Ordinance was passed. In seeking the passing of the legislation, the Attorney General of Southern Rhodesia again appealed to the economic interests of the Europeans by arguing that the passing of the legislation would make the African man secure and encourage him to seek employment outside his kraal as he needed to be convinced that the Government did not excuse the act of adultery (Mittlebeeler, 1976:125) and therefore that if he left his kraal, his wife would not commit adultery in his absence. In essence “the pivotal point as it turned out, was the status of the woman, for the purpose of the Act was to control married women and not married men or single women” (Mittlebeeler, 1967:125)

The concentration of land in the hands of male traditional leaders and male heads of households was therefore used to control women as the lack of control over productive land meant that women lacked economic independence. In the end successive legislative and policy positions during the colonial period made it difficult for women to own or control land in the country leading to marginalisation of women in land related matters. To this day as Paradza notes, male dominance in communal areas (former TTLs) is based mainly on the governance of agricultural resources (Paradza, 2010:24) and these include land, livestock, draught power and related resources.

4.5 The Post-Independence Legal Framework: 1980-1999

Due to the colonial governance system that created inequality and abused the rights of citizens, at independence Zimbabwe had a significant policy, legislative and practical task to reverse the exclusions and injustices of the colonial era. Combined with issues such as governance and representation in Parliament for black and white people, the land question in Zimbabwe was

one of the key issues that required to be addressed when the country attained independence in 1980. Protection of the land rights of the white minority whilst at the same time making land available to the landless black was a delicate balancing act that the new government had to grapple with. For the first 10 years after independence therefore, the Government of Zimbabwe could not compulsorily acquire land, but could only do so on a willing seller-willing buyer basis. This was occasioned by a constitutional provision, which stated that:

Every person shall be protected from having his property compulsorily acquired except when the acquisition is in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilisation of that property in such a manner as to promote public benefit *or, in the case of under-utilised land* (emphasis mine), settlement of land for agricultural purposes. Once property is wanted for one of these purposes, its acquisition will be lawful only on condition that the law provides for the prompt payment of adequate compensation and, where the acquisition is contested, that a court order is obtained. A person whose property is so acquired will be guaranteed the right of access to the High Court to determine the amount of compensation.¹⁵⁵ (Lancaster House Agreement (LHA), 1979:19)

As a result, land acquisition could to a large extent only take place with the consent of the owner and focus of land acquired for resettlement purposes was on under-utilised land. If there was no consent or the land was fully utilised, the implication was protracted court proceedings and the payment of hefty compensation by the government in the event that the courts confirmed the acquisition. The new independence government therefore had to wait for a period of 10 years until the constitutional provision could be amended to allow for a more sustainable approach to land acquisition. In 1990 the constitution was amended through Constitutional Amendment Number 11 to allow government to compulsorily acquire land, provided adequate compensation was paid. In 1992, the Land Acquisition Act (of 1986) was repealed and a revamped one introduced to provide government with more flexibility in land acquisition, including compulsorily acquiring land when it was required for various purposes by the Government. The Preamble to the Act stated the purpose of the Act as:

¹⁵⁵ Lancaster House Agreement 1979

To empower the President and other authorities to acquire land and other immovable property compulsorily in certain circumstances; to make special provision for the compensation payable for agricultural land required for resettlement purposes.¹⁵⁶

The focus of these amendments was effectively on making it easier for government to acquire land for resettlement and other legally permissible purposes. However, this more flexible legal regime to land acquisition still required that the law and proper procedures¹⁵⁷ be followed before land could be compulsorily acquired and that any person whose land was so acquired had to be paid prompt and adequate compensation.

The law-making process at this stage had as its main objective the need to smoothen and improve the land acquisition procedures with limited attention being paid to the need for inclusive and egalitarian distribution or reallocation of such land afterwards. The needs of potential beneficiaries or their identification and categorisation along gender lines for example were therefore largely left unaddressed. As a result, both the 1992 Land Acquisition Act and Constitutional Amendment Number 11 did not directly address the rights of women to agricultural land. This was a serious shortcoming given that consecutive colonial legislative provisions had undermined black women's land rights much more than black men's.

At independence any land rights for women therefore were to be inferred from subsidiary policy documents such as the beneficiary selection criteria of the Land Reform and Resettlement Programme Phase 1 whose focus was on the land needs of the marginalised and the need to decongest the country's communal areas. The following criteria was to be used in selecting beneficiaries:

- Landless people/families

¹⁵⁶ Preamble, Land Acquisition Act: Chapter 20:10

¹⁵⁷ For example, Sections 5, 6, 7 and 8 of the 1992 Land Acquisition Act: Chapter 20:10 provide detailed procedures that have to be followed in the event of a compulsory acquisition including publishing the notice of acquisition in the Government Gazette and in local newspapers and giving the owner of the land that is targeted for acquisition an opportunity to object to such acquisition.

- Unemployed and poor families prepared to relinquish all land rights in communal areas
- Returning war of liberation refugees
- Experienced communal farmers prepared to relinquish all land rights in the communal areas
- Communal farmers with master farmer certificates
- Single women (widowed and divorced)

(Source: Zimbabwe Land Reform and Resettlement Programme: Phase I, 1980-1997)

In 1996, war veterans were introduced as a separate beneficiary group (Kinsey, 2004:1676) and widowed and single women were also allowed to apply for land in their own right as long as they qualified under the other listed criteria (Hellum and Derman, 2004:1798, Ik Dahl et al, 2005:75). This approach still prioritised the man as the head of the family thereby discriminating against married women and in turn reinforcing the long held attitude of putting forward men as family heads and women only heading families in the absence (physical or death) or incapacitation (physical or mental) of men. Nonetheless the beneficiary selection criteria as stated above if implemented would have meant that women were in a position to benefit from the process under the circumstances given that they formed the majority of communal areas inhabitants, were landless, unemployed and poor and also formed a sizeable population group of returning refugees after the war. The Food and Agricultural Organisation (FAO)¹⁵⁸ estimates that 80% of Zimbabwean women live in communal areas where they constitute 61% of the farmers and provide 70% of the farm labour.¹⁵⁹ At independence in 1980, 80% of the country's population with women and children forming the majority were living in communal areas (UN Secretariat/Malaba, 2006:6). The International Labour Organisation (ILO) and the Government of Zimbabwe have also noted that:

¹⁵⁸ <http://www.fao.org/docrep/v9101e/v9101e01.htm>

¹⁵⁹ Essof S (2012:43) also acknowledges that women constitute 70% of people living in rural areas in Zimbabwe

The feminisation of poverty in Zimbabwe manifests itself through a higher prevalence rate of poverty among female-headed households (both *de facto* and *de jure*) with 68% of all female-headed households living below the Total Consumption Poverty Line (TCPL) in 2003. Thus poverty has a “rural face and a woman’s face. (GoZ, ILO Undated: 6).

Chadya in her work on women’s migration during the liberation struggle demystifies the long held theory that women’s migration in Zimbabwe and in the rest of Southern Africa was largely influenced by male migration patterns. She highlights how the liberation struggles were very gendered to the extent that women in the rural areas faced severe gender based violations by both sides of the war forcing them to migrate and become internally displaced refugees in the capital Harare (and other urban areas). This was because:

The recruitment of women as cooks, laundresses, porters, and, occasionally, as intelligence gatherers, made them particularly vulnerable as both sides accused them of fraternizing with the enemy. Women suffered from the brutalization of their bodies, from beatings, torture, and sexual abuse. It was to escape this situation that many “voted with their feet” as they sought sanctuary in urban areas such as Harare. (Chadya, 2007:33)

The key issues that can be deciphered from the above are that:

- i) There was a high concentration of women in the communal areas at the dawn of independence in 1980
- ii) There was and continues to be prevalence of poverty within women-headed households; and
- iii) There were a sizeable number of women that were displaced during the war and therefore became returning refugees at the end of the war.

All these criteria by and large matched the situation of women in the country at independence in 1980. This meant that a communal areas-targeted, pro-refugees, pro-poor and pro-unemployed scheme on access to land as envisaged by the State at the time of creating the land reform policy through the Land Reform and Resettlement Programme Phase 1 should inevitably have benefitted women if the beneficiary selection criteria was properly followed.

Policy and legal frameworks as well as the grounded reality however showed that priority was given to men in accessing land, resulting in women's access to land being mediated mainly through their relationship with men (Hanlon, 2013). The family law and women's rights provisions in the country and not the land acquisition and redistribution law provisions therefore ended up playing a more significant role in determining women's land rights in the country during the immediate post independence era. This legal framework focused on the majority status of women, the rights of women to benefit from property acquired during marriage and their rights to inherit property as wives and daughters amongst other issues. Thus the legal framework and the jurisprudence that emanated from the courts though not consistent showed that there were efforts to ensure that women were treated on the basis of equality with men or at least that the debate on the status and rights of women was maintained in the country. The laws and court decisions that addressed the rights of women and therefore impacted on their rights to land and other property are detailed below.

4.5.1 The Majority Status of Women

The Constitution of Zimbabwe (1980) did not prohibit discrimination on the grounds of sex and gender. It was only many years later through Constitutional Amendment Number 14 (in 1996) that prohibition of discrimination on the grounds of gender was included in the Constitution (Madhuku, 2001:6). However, even with this new provision, there were a number of situations where discrimination on the basis of gender was permissible. The Constitution did not consider it discriminatory if the act of discrimination was applied in matters of personal law or in the application of customary law.¹⁶⁰ The result was that women faced discrimination even after the 1996 amendment in that in many instances it was and to date continues to be in the areas of customary law and its application in areas of personal law such as inheritance, marriage and

¹⁶⁰ Section 23 (3) (a) and (b)

divorce that African women are most discriminated against¹⁶¹. The 1980 Lancaster House Constitution at independence made little provision for the protection of women's rights and when such protection was eventually provided by prohibiting discrimination on the grounds of gender, in reality the Constitution entrenched existing discrimination against women by allowing discrimination on the basis of customary and personal law. Section 23 (3) (a) and (b) of the Lancaster House Constitution stated that:

Nothing contained in any law shall be held to be in contravention of subsection (1) (a) [which prohibited any discriminatory laws] to the extent that the law in question relates to any of the following matters—
a) matters of personal law; and
b) the application of African customary law in any case involving Africans or an African and one or more persons who are not Africans where such persons have consented to the application of African customary law in that case.

With such a provision in the Constitution, the promulgation of the Legal Age of Majority Act (LAMA) (1982), which provided all Zimbabweans with full adult status upon attaining the age of 18 therefore did not fully address the issue of women's majority status, especially at customary law. At least this is what emerged with hindsight because the Act worked for a while. Though hailed as a landmark law and a beacon¹⁶² in the protection of women's rights in the country, the tension between this Act, the Constitution, customary law (in particular the distorted version of customary law) and attitudes was palpable. The Act gave all people majority status upon attaining the age of 18 regardless of gender, race or the provisions of customary law amongst others. Initially the courts in the country supported the majority status of women under LAMA. Some of the cases that were decided by the courts were those of *Chihowa vs. Mangwende*¹⁶³ and *Katekwe vs. Muchabaiwa*.¹⁶⁴ In the first case, the courts used the LAMA to eliminate discrimination between male and female children in succession by stating that the Act provided for equality between sons and daughters. Using the same Act, in

¹⁶¹ However the 2013 Constitution expressly addresses these issues, although the reality and even in some existing legislation does not meet the non-discrimination and equality requirements of the Constitution.

¹⁶² See <http://www1.umn.edu/humanrts/iwraw/ww12-3-99.html>

¹⁶³ 1987 (1) ZLR 228 (S)

¹⁶⁴ 1984 (2) ZLR 112 (S).

the second case the court ruled that upon attaining the age of 18, a woman became totally emancipated, did not need a guardian nor could a father sue for adultery or ask for lobola without the consent of his daughter. The effect of the two judgments was to give equal status to men and women and require them to be treated on the basis of equality in all spheres of life, including at customary law.

However the tension between the Act and the Constitution, and in particular with regards to the relationship between women's rights and customary law came to the fore in the celebrated case of *Magaya vs. Magaya*.¹⁶⁵ The issue for determination by the Supreme Court on appeal was whether at customary law, a daughter could inherit her father's property (in this case a house), when the father had male children (even though younger). A lower court had ruled that the daughter could not at customary law inherit from the father when there were male children from the same father. The ruling of the lower court as shown in the main judgment stated in part that "Venia is a lady and therefore cannot be appointed to her father's estate when there is a man" (Page 103)

Arguing on the basis that to deny a woman the right to inherit on the basis of her gender even at customary law was discriminatory, the daughter appealed against the decision of the lower court. She argued that the decision of the lower court was against international human rights standards that the country was party to and that it went against the provisions of the LAMA, which removed the perpetual minority status that women were imperilled to. In dismissing the application by the daughter, the Supreme Court (as per Mucchechete JA) held that:

On the intention of the Legislature in passing the Majority Act, my view is that although it wanted to emancipate women by giving them *locus standi* and "*competencies*" in all matters generally, especially under common law, it was never contemplated that the courts would interpret the Majority Act so widely that it would give women additional rights which interfered with and distorted some aspects of customary law. (Page 112)

¹⁶⁵ 1999 (1) ZLR 100 (SC)

In essence therefore the Supreme Court reversed previous decisions that had given women equality with men in all aspects of their lives as provided for by LAMA. To illustrate this, Hellum et al (2007:xxxix) note that “The Supreme Court started off on a progressive path at independence but veered off this path when conservative and patriarchal forces took the helm.”

The decision sparked widespread criticism globally as it was viewed as many steps backwards with regards to the promotion of women’s rights in the country. The United Nations Human Settlement Programme (UN-Habitat) called the decision “notorious” (UN- Habitat, 2002:11) whilst Zimbabwean women and women’s rights organisations took an unprecedented step to demonstrate at the Supreme Court of Zimbabwe against the decision (The Herald, 18 December 2002).

The consolation factor with regards to women and inheritance at customary law however was that the decision was taken after the promulgation of Amendment Number 6 to the Administration of Estates Act, Chapter 6:01. The purpose of the amendment was to give rights of inheritance to both male and female children as well as the spouse under customary law. The Magaya case was only decided as it was because the facts giving rise to the litigation had taken place in 1990 (that is the death of the parties’ father) and as such could not have been decided using the 1997 law on intestate inheritance at customary law. In recognising this fact in the Magaya case, McNally JA stated that:

The statutory amendment [Legal Age of Majority Act] had to co-exist with customary law. It did not replace it [customary law.] So the majority status of women had to co-exist with customary law...If no suitable male heir were available, a woman could lawfully be appointed heir. But the customary law preference for a male heir was not eliminated. (Page 116)

After stating the above, the learned JA went on to say:

Happily, these conflicts have now been resolved by the new Part IIIA of the Administration of Estates Act, introduced by Act 6 of 1997. If there are problems in future, the Act will provide a fresh starting point for their solution. (Page 116)

The net effect therefore was that the Magaya decision had a profound negative effect on Venia Magaya as an individual but its wider application was limited by the statutory amendment of 1997, which widened the rights and scope for inheritance by females at customary law. This approach has been adopted under new legislative provisions (S.I 53/2014) on inheriting rights to fast track land as will be detailed below.

4.5.2 Married Women’s Rights to Matrimonial Property

The Matrimonial Causes Act, Chapter 5:13 of 1985 clearly recognises the role of domestic work in contributing towards the acquisition of resources of economic value within the family setting. The Matrimonial Causes Act applies to marriages solemnised in terms of both the Marriage Act, Chapter 5:11 of 1964 as amended through Act No. 18 of 1989 and the Customary Marriages Act, Chapter 5:07, Ordinance No. 5 of 1917 as amended through Act No. 6 of 1997. The Matrimonial Causes Act states that in making an order for the sharing of property upon divorce, a competent court shall, amongst other issues take into consideration:

The direct or indirect contribution made by each spouse to the family, including contributions made by looking after the home and caring for the family and any other domestic duties”¹⁶⁶

The Act is gender neutral and therefore this and other provisions are equally applicable to both men and women in the marriage. The Act is however specifically instrumental in providing women who often work at home and are therefore not formally employed or have no direct monetary contribution to make towards the acquisition of matrimonial property with protection in situations where a marriage is dissolved. In Zimbabwe like in many African settings, women especially in rural areas tend to be less educated than men (Zimstats, 2016:28-29)¹⁶⁷ or lack the

¹⁶⁶ Section 7 (4) (e)

¹⁶⁷ The Zimstats 2016 Report “Understanding Gender Equality in Zimbabwe: Women and Men Report 2016” shows that “women were more likely to have completed lower levels of education than men. A higher proportion of men than women had attained lower secondary, upper secondary and tertiary levels of education”

resources to start formal or informal businesses (Chopamba, 2010:64) resulting in them working in the home more often when compared to men. As a result, women with no formal employment or “housewives”¹⁶⁸ are often regarded as “not working” despite the work that they perform in maintaining the home, looking after children and the husband, cooking, washing and other household chores. Recognising these chores is therefore important in empowering women and creating an understanding that the work performed by women in the private domain is a pre-requisite for the work that men perform in the public domain thereby contributing not only to the family economy but to the national economy as well. This is as provided for in international human rights law detailed above.

One of the problems in relation to land is that the woman’s work in relation to agricultural production tends to be lumped together with other housework. Katsande in her research in Mutoko, north-eastern Zimbabwe concluded that all the women that she spoke to were actively involved in both housework and work in the irrigation plots that they ran with their husbands but they could not separate household work in the home with productive work on the irrigation plots (Katsande, 2014: 121). Both household and other household linked contributions such as working on an income generating family plot, field or farm are therefore to be considered when a court makes a determination on the sharing of matrimonial property upon dissolution of a marriage. This recognition can also be given strength by the fact that household work and care work often prevent women from participating in activities outside the home that would otherwise allow them to directly acquire resources of economic value. The availability of this provision in Zimbabwe’s statutory law is therefore a progressive indication of commitment to women’s human rights provisions, at least in law. The implementation of the provisions has been noted in court decisions relating to the distribution of matrimonial property upon divorce mainly because this is the area of law in which the provisions are emphasised. In the case of

¹⁶⁸ The Cambridge Online Dictionary defines a housewife as a woman whose [work](#) is inside the [home](#), doing the [cleaning](#), [cooking](#), etc., and who usually does not have any other [job](#)

*Usayi vs. Usayi*¹⁶⁹, a husband argued that his wife was not entitled to 50% of the value of their matrimonial home upon divorce because she had not made any financial contribution towards the acquisition of the property. The Supreme Court in making a ruling in favour of the wife had this to say:

How can one quantify in monetary terms the contribution of a wife and mother who for 39 years faithfully performed her duties as wife, mother, counsellor, domestic worker, house keeper, day and night nurse for her husband and children? How can one place a monetary value on the love, thoughtfulness and attention to detail that she puts into all the routine and sometimes boring duties attendant on keeping a household running smoothly and a husband and children happy? How can one measure in monetary terms the creation of a home and therein an atmosphere from which both husband and children can function to the best of their ability? In the light of these many and various duties how can one say as is often remarked: “throughout the marriage she was a housewife, she never worked?” In my judgment, it is precisely because no monetary value can be placed on the performance of these duties that the Act [Matrimonial Causes] speaks of the “direct or indirect contribution made by each spouse to the family, including contributions made by looking after the home and caring for the family and any other domestic duties. (Page 688).

The court in the same case also emphasised the need to understand that “in the majority of marriages, the spouses assume equivalent, though different, duties” which are nonetheless “equally beneficial to the welfare of the family” (Page 688).

The Matrimonial Causes Act and its interpretation by the courts therefore have helped in emphasising the importance of household work in the acquisition of productive and valuable resources and highlighting that work done by partners in a marriage relationship might be different but is of equal importance. In adopting the approach set out by Ncube W (1989), the court noted that it is usually the contribution of the wife on the domestic front that frees the husband to work outside the home. The question that needs to be asked however is how similar principles can be applied in other areas of women’s lives. These include the promulgation and implementation of economic policies by government with a view to addressing the work of

¹⁶⁹ *Usayi vs. Usayi* 2003 (1) ZLR 684 (S)

women and gender roles as impediments to accessing productive resources. Such recognition in economic policies is important in ensuring that national policies address the special needs of women thereby ensuring that programme and policy implementation can work around these challenges. For example, under the FTLRP, there was no policy in place to anticipate these impediments for women and therefore provide an enabling environment for their participation in the programme. Unless the women made themselves available in the public space through participating in the farm invasions, there was no policy framework in place to identify the women that were excluded from the farm invasions and the reason for their exclusion with a view to addressing the impediments so as to increase participation by women. Enquiries into the marital status of the beneficiaries could also have been undertaken with the aim of ensuring that married people would have the acquired piece of land registered in the names of both spouses. The provisions of the Matrimonial Causes Act can therefore be deployed in ensuring that using the marriage relationship, women can access, utilise or acquire the rights to the land gotten and registered in their husbands' names under the FTLRP. This has to be done bearing in mind that invasions were supported by women who carried out different but equally important and complimentary roles to the land acquisition process.

4.5.3 Inheritance by Wives and Daughters

Intestate inheritance often presents challenges in Zimbabwe regardless of whether the estate in question is administered in terms of customary law or general law. Often there are contestations with regards to the claims of various beneficiaries, whether genuine or not. The general law position has however been better defined in the country's legal history- barring potential opportunists taking their chances to benefit from a deceased estate.

The Deceased Persons Family Maintenance Act, Chapter 6:03, the Deceased Estates Succession Act, Chapter 6:02 and the Administration of Estates Act, Chapter 6:01 all provide

for access to the estate of a deceased person by his/her wife/husband and children but also include other dependants. The Deceased Persons Family Maintenance Act's purpose is to:

make provision for maintenance out of the estate of a deceased person for certain members of his family; and to provide for matters incidental therewith or connected thereto.¹⁷⁰

The Act applies to both testate and intestate estates with the focus being on ensuring that persons that were dependent on a deceased person during his/her lifetime are able to continue deriving a livelihood from his/her estate after his/her death. The Deceased Estates Succession Act only applies to intestate or partially intestate estates with its focus being on ensuring that there is equitable distribution of an estate where a person who was in a civil marriage at the time of his/her death dies without a valid will or a will that does not deal with all of the property in a deceased estate.

The Administration of Estates Act regulates the administration of deceased estates generally. The Administration of Estates (Amendment Act) Number 6 of 1997, which inserted Section 68 into this Act provided for regulation of intestate succession in estates that were formerly regulated by customary law. The amendment went a long way in ensuring that women married under customary law, regardless of whether the marriage is registered or not and their children are able to inherit from a deceased man if he dies intestate. This was a major achievement for women's inheritance rights in Zimbabwe as the amendment removed previous impediments which favoured male relatives of a deceased male to inherit his property under customary law. As such, this amendment allowed wives and daughters to inherit from their husband or father respectively.¹⁷¹

¹⁷⁰ Preamble

¹⁷¹ This addressed the impediments that women, in particular daughters faced as highlighted in the Magaya case.

4.6 The FTLRP and its Aftermath: 2000-2015

Building on the laws that were promulgated in the years after independence and the court decisions that were delivered by the courts as they interpreted those laws, I will in this section consider how the existing legal framework impacted on women's rights to land during the fast track period and subsequent years. I will also analyse how laws that were promulgated between 2000 and 2015, and the decisions that were made by the courts during this period impacted on women's rights to agricultural land under the FTLRP. The focus will be on family relations during the various stages of a marriage; that is during the subsistence of a marriage, upon divorce and upon death of a spouse. I will also look at marriage in its various forms in Zimbabwe; that is whether the marriage is at civil or customary law or whether it is a monogamous or polygynous one. This distinction is necessary as each of the variations involves differences in rights and entitlements to the spouses and children in the marriage set-up.

4.6.1 Who got the Land? Some Statistics on Access to Fast Track Land Between Men and Women

Research has shown that after the FLTRP, land remained in men's hands. For example, the Utete Report puts the access levels for women at 18% in the A1 small-scale allocations and 12% in the A2 commercial allocations (Utete Report, 2003:25). Matondi and Dekker's observations on the issue are that:

Women did not equally benefit from the redistribution of land compared with men, when looking at the allocation of plots to men and women respectively, the majority of the plots have been allocated to men. (Matondi and Dekker, 2011:20).

Scoones et al, (2010:54-55) identifies women's levels of benefiting as being 12% of his total research sample. Women represented 8% of A2 beneficiaries, 14% of A1 villagised beneficiaries, 13% of A1 self-contained and 15% in the informal settlements. Moyo and Yeros put the figure at 16% stating that:

The false assumption has been that heads of households are typically men and that women in need of land are married or otherwise access land through various family links. (Moyo and Yeros (2005: 196.)

The figures show that there was disproportionate benefit by men under the FTLRP and that even for the women that benefitted, they tended to be concentrated in the low value and highly insecure allocations such as the A1 villagised schemes or the informal schemes that were not recognised by Government. Government officials in Zimbabwe have also acknowledged that women in the country have been left out in the FTLRP.¹⁷² My preliminary field scoping in Masvingo Province revealed a similar state of affairs as detailed in Table 4.3.

Table 4.3: Percentage Access by Women compared to men in preliminary field scoping locations¹⁷³

Name of Farm	Average Plot Size (Hectares)	District	Type of Allocation	Main Farming Activity	Number of Plots	Number of Women who accessed land in their own right	Percentage of Women who accessed land in their own right
Lothian	32	Masvingo	A1	Crop Farming (maize)	28	5	17.8
Altonbeck	70	Mwenezi	A2	Cattle Ranching and crop farming	63	1	1.6
Chidza Extension	8	Masvingo	A1	Crop farming (maize)	20	2	10
Chidza	15	Masvingo	A1	Crop Farming (maize)	31	3	9.6
54, Hippo Valley	Varying	Chiredzi	A2	Sugarcane farming	32	5	15.6
Musisinyani, Buffalo Range	Varying	Chiredzi	A2	Sugarcane farming	22	2	9
1, Hippo Valley	Varying	Chiredzi	A2	Sugarcane farming	7	0	0
2, Hippo Valley	Varying	Chiredzi	A2	Sugarcane Farming	*	*	*
Masimbiti, Nuanetsi Ranch	6	Mwenezi	A1	Crop farming (maize)	*	*	*

* Information could not be ascertained

¹⁷² In a Parliamentary workshop organised by Women and Land Lobby Group in 2002 to review the land reform programme and its impact on women, the Minister of State for the Land Reform Programme, who was also the Gokwe East MP, Flora Buka, said that the chances for women to get land were now slim even if they held workshops demanding to be allocated. She was quoted in the media as having said at the workshop "I have been carrying audits to verify if women got land and I have realised they are not getting land (Quoted in Pasura D, 2010).

¹⁷³ This scoping was undertaken between 6 and 20 September 2010

Historical figures show that before the FTLRP, white women farmers owned only 4% of the commercial farmland whilst women accessed 5% of the land that was distributed during the 1980s land reform programme (Hanlon et. al, 2013:161). Effectively therefore, history and research have shown that women in the country have not owned, accessed or controlled land on the basis of equality with men. However, since the land is currently in the hands of men, what legal measures have been and can be taken to ensure that women are able to benefit from that same land, especially within the family set-up?

4.6.2 Rights of Spouses and Children to Fast Track Land

In the section above, I highlighted the role of the Matrimonial Causes Act in clarifying the property rights of married persons in relation to property acquired during the subsistence of a registered marriage.¹⁷⁴ The recognition of the need for equity in ownership and distribution of matrimonial property during and after the subsistence of a marriage was a key aspect in the development of Statutory Instrument 53/2014, one of the major pieces of legislation in determining rights to land acquired under the FTLRP. The Statutory Instrument seeks to define the rights and obligations of permit holders in relation to land acquired under the FTLRP, as well as the rights and obligations of the permit holders' children, spouses and other dependants both during the permit holder's lifetime and after his or her death. Section 4 of the Statutory Instrument states that "Every permit is issued for the benefit of the permit holder and his or her dependants".

¹⁷⁴ It however must be realised that the majority of women in the country are in unregistered customary law marriages, which do not provide them with the same level of protection. A constitutional interpretation of Section 56 of the 2013 Constitution, which among other things prohibits discrimination on the basis of marriage, would suggest that even women in unregistered customary law union should be accorded the same treatment. A determination of this issue by the Constitutional Court may be useful in providing the required clarity.

The importance of this provision is that whilst the permit is issued to an individual, all of the individual's dependants must benefit from the allocated land. Dependants in this case would include the spouse(s) and eligible children (including children born outside marriage) of the beneficiary of fast track land. This buttresses the concept that land must benefit the whole family and not just an individual, as should be the case with other resources on which families are dependent for their sustenance. The S.I also extensively addresses the position of spouse(s) of a land beneficiary or permit holder during marriage, at divorce and upon death of the permit holding spouse. It also addresses the rights of a permit holder if he/she acquired the land and was issued with a permit before getting married.¹⁷⁵ The instrument gives a spouse married after the acquisition of a permit a joint and undivided share in the piece of land upon getting married to a land beneficiary or permit holder. These provisions are generally in line with the property rights of spouses as provided for in other pieces of legislation in the country such as the Matrimonial Causes Act, the Maintenance Act: Chapter 5:09 of 1971 and the Deceased Estates Amendment Act, Number 6 of 1997.

In terms of the S.I 53/2014 the greatest protection for spouses in the event of a divorce is available when they are all or both signatory permit holders. The instrument states in this regard that:

If it happens that both of the divorcing spouses are joint signatories of the permit then, neither of the signatory permit holders shall have a unilateral right to *compensate* the other for his or her assessed share under the permit in order to become the sole permit holder.¹⁷⁶

The effect of compensation for an assessed share in terms of the S.I is that the compensated spouse is required to vacate the land. Where one spouse is the sole signatory permit holder he or she has got an automatic and unilateral right to compensate and evict the non-signatory

¹⁷⁵ Section 12 states that "If a signatory permit holder was not married at the time the permit is signed by him or her, but subsequently becomes married, his or her spouse shall be deemed to hold an equal joint and undivided share in the allocated land"

¹⁷⁶ Section 14 (2) (a)

divorced spouse even though he or she has an equal joint and undivided share in the land. The divorced spouse can therefore only stay on the farm after divorce if he or she has not been compensated for his or her assessed share of the value of the land.

With joint signatory permit holding rights on the other hand, the parties have to agree on whom between or amongst them will be compensated and vacate the land and who will stay on the land. In the absence of an agreement, the decision on who between or amongst the permit holders has the right to compensate the other or others for their assessed share is determined by an arbitrator. The permit holders must agree on the arbitrator and where they cannot agree, the arbitrator is chosen by the Minister in terms of the Arbitration Act (Chapter 7:02). The arbitrator's decision will be based on who amongst the parties has been most responsible for the development of the piece of land in question.

The Statutory Instrument therefore protects women's rights to fast track land upon divorce, although the rights of non-signatory spouses are limited, compared to those of signatory spouses. To ensure that such rights are protected to the maximum level possible, women are therefore encouraged to insist on joint registration as co-signatories of permits for resettlement land and government must facilitate such registration. I would argue that this is necessary because the biggest threat to women's security of tenure and right to resettlement land regardless of their recognition in the new permits and leases as co-beneficiaries are their husbands and the threats are stronger when the husbands are alive than when they are dead.¹⁷⁷ This has been reinforced by the courts in their pronouncements with regards to the status of resettlement land in divorce cases. In the case of *Chombo vs. Chombo*¹⁷⁸, the courts emphasised

¹⁷⁷ The responses of men to their wives staying on the farms after divorce as gathered during fieldwork will be discussed in later chapters of this research

¹⁷⁸ HH 336/2014. The husband in the case was a Government Minister.

that resettlement land is not matrimonial property and therefore cannot be part of the inventory of property to be shared in the event of a divorce. The court stated that:

The truth of the matter is that [the farm] does not [fall into the property regime of the marriage] and no amount or quality of evidence or argument can drive it from the position in which it is into becoming party of the parties' matrimonial property. Government allocated the farm to the parties on the basis of the lease agreement which plaintiff (husband) concluded. It is taken as a given that a lease confers upon the parties to it personal and not real rights. (Page 5).

This interpretation by the courts in essence denotes that the person in whose name the lease or permit is registered ultimately has the rights over the property and is entitled to retain such property in the event of a divorce to the total exclusion of the spouse. Although the Ministry of Lands and Rural Resettlement had in the *Chombo vs. Chombo* case confirmed to the wife that she was a co-lessee together with her husband, a position which the court agreed with, the court went further and took the view that "co-leasing" was only possible during the subsistence of the marriage as the entitlement was given to a spouse. After divorce such person would become an "ex-spouse" and would therefore have no entitlement as a co-lessee. The import of this decision therefore is that whoever comes on board as the spouse of the lease-holder or permit-holder would be the co-lessee or co-permit holder and not the ex-spouse during whose tenure as a spouse the lease or permit agreement with the Government was concluded.

This conclusion is line with current policy and legal provisions relating to the rights of spouses over resettlement land. It is however an unfortunate position for married women as it entails that despite putting considerable efforts in the development of a farm acquired under the fast track land reform programme, they are bound to lose the farm upon divorce if they are not the principal lessees with the Government or signatory permit holders. In the *Chombo vs. Chombo* case, the court acknowledged that "the parties were serious farmers whose production on the farm was significant" with the wife concentrating on managing the production on the farm whilst the husband was responsible for sourcing the requisite financing for the farm. The person

who was working on the piece of land therefore was the wife but this was not enough to make her retain the farm or part of it because she was not the principal lessee. The decision of the court in this case must not be left unchallenged and be allowed to remain as a precedent in the country's legal system. A challenge on the constitutionality of this decision must be taken before the country's Constitutional Court so that the provisions of the 2013 constitution with regards to equality and non-discrimination and the rights of women generally and in relation to access to agricultural land under the FTLRP can be interpreted by the country's highest court. The unfettered rights given to a signatory permit holder in terms of S.I 53/2014 to compensate and evict a non-signatory permit holder also need to be challenged in light of the disproportionate effect this has on women (as in the majority of cases they are the non-signatory permit holders), leading to indirect discrimination against women with regards to access to land.

A court decision similar to that of *Chombo vs. Chombo* which allowed a husband to retain a farm acquired under the FTLRP because he was the registered lessee was also made in the high profile case of *Chiwenga vs. Chiwenga* which led to the wife being publicly evicted from the farm.¹⁷⁹

¹⁷⁹ The divorce trial of the case of *Chiwenga vs. Chiwenga* in which the husband was the Commander of the Zimbabwe Defence Forces was carried out in camera after the husband applied to the court to bar the media from the proceedings. As such little is known about how the trial proceeded and information only became publicly available after the trial. The extent of the information that is in the public domain is on the sharing of the two's vast wealth and the public eviction of the wife from the farm and other properties that the two owned. The eviction from the farm, which was carried out using the army and not the High Court's Deputy Sheriff as required by the law, was criticised as another example of lack of rule of law in the country.



Picture 4.1: Jocelyn Chiwenga being denied access to a farm she previously owned with her husband: The picture above was published in the Daily News (<https://www.newsday.co.zw/2014/09/12/chiwenga-evicts-estranged-wife-farm/>) with the caption “Jocelyn Chiwenga being denied entry into the family’s Dockson Farm in Goromonzi on Wednesday by army personnel”

Mere recognition of a spouse on the lease agreement or permit is therefore currently not adequate to protect a wife in the event of divorce. Joint registration would be helpful even though some researchers have argued that joint registration is not enough to protect women.

The argument is that:

Although joint title with a spouse is better than none, often it is better for women to have individual title as this gives them greater autonomy to make decisions and choices about land use priorities, output control, to escape marital conflict and to have secure access to means of earning a living in the event of marital break-up or a spouse’s death. (Mehra, 1995:5).

However, it has to be accepted that whilst land registration for women in their own right would be ideal, this may prove difficult in the case of Zimbabwe’s fast track land because as already indicated above; most of the land has already been allocated to men. Other means of benefiting therefore have to be devised for women. This includes ensuring that women are recognised in all tenure systems to existing land allocations and that women receive equal protection before the courts in disputes concerning fast track land. This consideration is important in light of international women’s rights treaties that recognise the right of women to benefit on the basis

of equality with men from land and agrarian reforms. To emphasise this requirement, the CEDAW Committee in General Recommendation Number 21 (13th Session, 1994) dealing with equality in marriage and family relations urges-

Countries that are undergoing a programme of agrarian reform or redistribution of land among groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men. (Para 27)

Despite these provisions at international law, the reality in relation to fast track land is that the rights of spouses who are not signatory permit holders are not adequately protected in the event of a divorce under the current legal regime. This, as indicated above, has a disproportionate impact on female spouses given that the bulk of the land acquired under the FTLRP has been allocated to men. Whilst I acknowledge that S.I 53/2014 has gone a long way in giving recognition to spouses, and in particular wives in relation to fast track land, the fact still remains that in situations where the spouse is a non-signatory permit holder, such recognition only remains meaningful for as long as the marriage subsists. The indirect discriminatory effect of the statutory instrument therefore has to be addressed, either through an amendment that makes joint signatory permit holding compulsory for married couples or a constitutional challenge that seeks to declare this provision and the interpretations that have been given by the courts so far invalid.

Given the wide *locus standi* interpretation that was provided by the Constitutional Court (per Malaba, DCJ) in the 2016 judgment in the case of *Mudzuru and Anor vs. Minister of Justice, Legal and Constitutional Affairs, N.O and Ors*,¹⁸⁰ it has become easier to lodge cases in the public interest alleging infringement of the fundamental rights and freedoms enshrined in the 2013 Constitution. The Constitutional Court of Zimbabwe in that case ruled that:

The liberalisation of the narrow traditional conception of standing and the provision of the fundamental right of access to justice compel a court exercising jurisdiction under s 85 (1) of the Constitution to adopt a broad and generous approach to standing. The

¹⁸⁰ CCZ 12/2015

approach must eschew over reliance on procedural technicalities, to afford full protection to the fundamental human rights and freedoms enshrined in Chapter 4. A court exercising jurisdiction under s 85 (1) of the Constitution is obliged to ensure that the exercise of the right to access to judicial remedies for enforcement of fundamental human rights and effective protection of the interests concerned is not hindered, provided the substantive requirements of the rule under which standing is claimed are satisfied. (Page 14)

In addition, the court emphasised that s 85 (1) (d) of the Constitution is premised on the broadest conception of standing with a primary purpose of ensuring effective protection of any public interest that has been affected or can be potentially affected by an infringement of a fundamental right or freedom (Page 15). Critically the court recognised the need for the public interest test to cover:

cases of marginalised or under-privileged persons in society who because of sufficient reasons such as poverty, disability, socially and economically disadvantaged positions, are unable to approach a court to vindicate their rights. (Page 17)

As such in the context of the FTLRP, the wide standing interpretations and the realisation that women when compared to men, form the majority of the people on the farms that are affected by poverty as well as social and economic disadvantage provide a compelling reason for women's rights organisations in the country to challenge the provisions of S.I 53/2014 and the decisions of the High Court in the Chombo and Chiwenga cases. This is important as the cases have the effect of infringing upon the rights of and discriminate against women in access to land, albeit indirectly.

4.6.3 Inheritance Laws and Implications for Women's Access to Agricultural (Fast Track)

Land as Widows

Land acquired under the FTLRP is State land and therefore cannot be inherited or bequeathed in a will by passing on ownership. Section 290 (1) of the Constitution emphasises that all agricultural land is vested in the State. The rights accruing to a beneficiary of land under the programme can however be inherited or passed on from one person to another.¹⁸¹ Such rights can be transferred, hypothecated, leased or disposed of. This is because the tenure system that

¹⁸¹ Section 294 of the Constitution

the government is following, though largely unclear at the moment, has been devised in such a way that it does not give rights of ownership over the land to the new beneficiaries. The 25-year lease (for conservancies and other wildlife based farms) and 99-year lease are the major tenure instruments used in the A2 farms, both small scale and large scale. The beneficiaries under the A1 Schemes occupy the land on a permit system or through offer letters. In both cases, the land belongs to the State and beneficiaries have user rights. The challenge however still remains in that both tenure systems are considered insecure in relation to the overriding rights of the government over the land. Section 294 of the Constitution clearly states that:

The State may alienate for value any agricultural land vested in it, whether through the transfer of ownership to any other person or through the grant of a lease or other right of occupation or use, but any such alienation must be in accordance with the principles specified in Section 289.¹⁸²

In essence therefore, the State has an overriding right to determine who accesses agricultural land and how such land is utilised. In this regard, Government has consistently threatened that it can withdraw the leases and the permits at any time and for any reason that Government considers appropriate. Rights of occupation under the A1 allocations appear to be less contentious because of their lower value compared to the A2 allocations where disputes continue to surface between the government and beneficiaries, between and amongst beneficiaries and between and amongst relatives in the event of a beneficiary's death. The high value of A2 allocations means that when initial beneficiaries die, the farms attract attention from other people, including from outside the family seeking economic benefits from the farms.

¹⁸² The principles enunciated in Section 289 include the following:

- i. The finite nature of land resources and that land forms part of Zimbabweans' common heritage
- ii. Every Zimbabwean citizen has a right to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of agricultural land regardless of his or her race or colour
- iii. Fair and equitable distribution of agricultural land, having regard to gender balance and diverse community interests
- iv. A land tenure system that promotes productivity and investment
- v. Use of agricultural land must promote food security, good health and nutrition, generate employment and protect and conserve the environment for future generations
- vi. Rights to use or occupy agricultural land may not be deprived of arbitrarily

Access to fast track land after the death of the initial beneficiary is currently murky if the developments identified are anything to use as an analytical basis. The major challenge seems to be that despite the various efforts to regularise and bring certainty and finality to the land reform programme, fast track land remains a highly politicised commodity and the locus of many battles and conflicts. For example, following the acrimonious succession wars in ZANU PF and its December 2014 congress, former senior members of the party who were expelled from the party have faced threats and uncertainties regarding the land that was acquired during the FTLRP. There were many instances of reinvasions of these farms and constant threats of dispossession by both ordinary ZANU PF supporters and senior party leaders against the expelled members.¹⁸³ This creates continued uncertainty over the programme and questions about who has rights over the land, what these rights are and how far the rights can extend. Do the ruling party and politicians define these rights or should set and determinable national policies and laws mould them? Whilst the contestations referred to above were and remain mainly at a political level, the uncertainty over the entitlements to fast track land has an impact on general security of tenure and certainty in the land reform programme for beneficiaries. In this section, I will however concentrate on the legal framework governing property rights upon death within the family set-up and how this affects access to agricultural land. It however has to be borne in mind that such a framework can be disregarded in an environment where law is not observed and the rule of law is absent. As such, for example, there is no guarantee that after the death of a fast track land rights holder, the laws of succession as envisaged in fast track land legislation and general laws on succession in the country will determine the next rights holder.

¹⁸³ For Example in 2015, the Manicaland Provincial Affairs Minister, Mandiitawepi was reported to be after the former Minister of Presidential Affairs, Didymus Mutasa's farm. The planned takeover followed the expulsion of Mutasa from ZANU PF (Newsday, 5 May 2015 "War vets, youths block Chimene from taking over Mutasa's farm", Nehanda Radio, 5 May 2015, "Chimene takes Mutasa farm). Another expelled senior ZANU PF member, Themba Mliswa ended up in court after his farm was invaded by ZANU PF supporters (Zimbabwe Newsday, 6 May 2015, "High Court orders ZANU PF youths off Mliswa's farm, The Chronicle, 6 May 2015, "Mliswa wins court case"). In Masvingo, an expelled former Minister of State for Provincial Affairs for Masvingo Province, Kudakwashe Bhasikiti's farm was also being earmarked for acquisition after his fallout with the party (Southern Eye, 3 June 2015, "Party hawks eye Bhasikiti farm")

S.I 53/2014 is insightful with regards to rights to fast track land following the death of a signatory permit holder. Section 13 (1) clearly states that following the death of a signatory permit holder, the rights under the permit will devolve upon the surviving spouse in a monogamous marriage. The situation regarding the rights of spouses in a polygynous marriage will be detailed later in this chapter.

The rights however also come with responsibilities in that the surviving spouse is responsible for fulfilling the terms and conditions attached to the permit, including obligations to the Minister or any third party (Section 13 (1) (c) (ii)). The conclusion that can be drawn from this provision is that the policy position is similar to the trend in the country where the surviving spouse in an intestate estate is expected to be the main beneficiary of an estate. In the same vein, a surviving spouse to a signatory permit holder to fast track land has overriding rights to inherit the rights to fast track land in the absence of a will.

4.6.4 Polygyny and Access to Land by Women in Polygynous Marriages

Whilst I have addressed the impact of marriage and family relations on access to land by women generally, the issue of polygyny deserves separate and detailed attention. This is because polygyny has the effect of complicating the marriage relationship, yet it is a daily reality for many women in Zimbabwe as in many other African countries. The FTLRP has not been immune to this issue but before getting to the issue of fast track land, it is necessary to analyse polygyny and its implications on access to resources for women from a Zimbabwean legal and historical perspective.

The Administration of Estates Amendment Act Number 6 of 1997 recognised polygyny in inheritance. This of course was in addition to the recognition of polygyny in the Customary Marriages Act. In trying to address the rights of spouses in polygynous marriages upon the

intestate death of a spouse, Amendment Number 6 of 1997 provided a formula for inheritance by the surviving spouses with seniority in the marriage being given weighty consideration. The underlying point however is that all the recognised wives in a polygynous marriage were entitled to inherit from their husband following his death thereby giving implicit endorsement to the practice of polygyny.

In line with this historical legal position, recent law making on access to resettlement land in Zimbabwe has continued to recognise the rights of subsequent wives in polygynous marriages upon divorce and upon death. Polygyny has for a long time been a bone of contention for Zimbabwean society, a legal minefield for the courts and the legislature and an administrative nightmare for the Executive at both central and local government level as they try to determine the rights of spouses in polygynous marriages, especially upon divorce or death.

S.I 53/2014 provides a formula for rights to fast track land in a polygynous marriage by classifying wives in such marriages according to their seniority and whether or not they were married to the permit holder at the time the permit was issued. In essence, this classification provides the following rights to the different categories of spouses:

- i. Spouses (in both monogamous and polygynous marriages) that were already married at the time of issuance of the permit have an equal joint and undivided share over the piece of land without conditions if they were married for a period of at least 12 months before the issuance of the permit. If they were married for less than 12 months at the time of issuance of the permit, they will only hold equal joint and undivided shares if they are co-signatories on the permit¹⁸⁴ or unless the husband agrees for them to be so recognised;

¹⁸⁴ Section 10 (1)

- ii. Subsequent spouses in a potentially polygynous marriage are referred to as subsequent non-qualifying spouses, meaning that they can not hold an equal joint and undivided share in the allocated piece of land or be registered as such on the permit unless the husband and senior wife or wives as the case may be consent to that.¹⁸⁵ Such consent is to be given in the form of a sworn affidavit,¹⁸⁶ and
- iii. Spouses can also be joint signatories of the permit in which case they have similar rights and obligations over the allocated piece of land.

In the event of divorce, signatory permit holders in polygynous relationships have the same rights as signatory permit holders in a monogamous relationship. In addition, similar principles of compensation also apply for spouses in a polygynous union upon divorce in the event that they have to be compensated in order for them to vacate the fast track land.¹⁸⁷ Upon death of a signatory permit holder S.I 53/2014 provides that the rights to fast track land shall devolve in equal joint and undivided shares amongst the surviving spouses in a polygynous marriage¹⁸⁸ and so would the attendant obligations in relation to such land.¹⁸⁹

The law therefore protects the rights of wives in a polygynous marriage although such rights are dependent upon a number of issues such as when the wife was married in relation to the time of the issuance of the permit, whether the wife is a first or subsequent wife and whether or not the wife is a signatory or non-signatory permit holder.

4.6.5 The Rights of Women as Daughters

There has been considerable violation of women's rights in Zimbabwe in the name of culture or customary law. The anti-gender based discrimination law making process in the country in

¹⁸⁵ Section (11) (1) (a) and (b)

¹⁸⁶ Section 11 (2)

¹⁸⁷ Section 14

¹⁸⁸ Section 13 (1) (a) (i)

¹⁸⁹ Section (1) (a) (ii)

the years after independence was therefore sometimes countered by patriarchal, societal, religious and cultural considerations, some of which were constitutionally entrenched. As explained earlier, until the promulgation of the 2013 Constitution discrimination on the grounds of customary or personal law was constitutionally allowed. Whilst the rights of women as wives were contentious in terms of the laws of the country, the rights of women as daughters especially in relation to inheritance remained equally tenuous, with the courts reinforcing such inequality and discrimination as shown in the case of *Magaya vs. Magaya* above.

The result therefore was that until the Administration of Estates Act, Amendment Number 6 1997, the law and the courts though ambivalent at times, upheld the idea that a girl child could not inherit from her father at customary law ahead of male children of a deceased. The changes that were made through this amendment in 1997 were reinforced by the 2013 Constitution and subsequent legislation as there is now more recognition of the rights of female children, including their rights to inherit from their parents. The protection in the Constitution of 2013 comes from various provisions, which amongst other things outlaw discrimination on the basis of sex or gender¹⁹⁰ and prohibit cultural practices that infringe on the rights of women as well as any laws that discriminate against women on whatever grounds.¹⁹¹

In line with this view, S.I 53/2014 also recognises the rights of all children, whether male or female to inherit rights in fast track land. Section 15 (b) provides that:

For the avoidance of doubt, it is declared that during the lifetime of a permit holder, the dependents of the permit holder do not have any joint or undivided share in the allocated land, but may in certain circumstances succeed to or inherit such share in accordance with Section 13.

Section 13 on the other hand provides that in the event that a deceased person does not have any spouse but leaves behind dependents, *each* such dependent succeeds to or inherits a joint

¹⁹⁰ Section 56 (3)

¹⁹¹ Section 80 (3)

and undivided share in the allocated land.¹⁹² The reference to “each dependent” in the provision therefore places no limitations based on the gender of such a dependent. The S.I also places no limitations based on customary or cultural considerations, a common limiting factor to inheritance in most Zimbabwean families. The question that remains therefore is on how this provision is applied by the beneficiaries of fast track land. Do parents find it acceptable to allocate their rights in fast track land to a daughter ahead of a son or to both daughters and sons in equal shares? This thesis will seek to answer this question in Chapter 8.

4.7 Conclusion

This Chapter has evinced that the law has been a key instrument in determining the rights of women to property and land in the history of the country. The colonial legal regime sought to portray women as perpetual minors who constantly required chaperoning from males and could therefore not own land in their own right. The immediate post-independence government sought to free women from this colonial legacy and with the promulgation of the Legal Age of Majority Act in 1982, removed the minority status from the necks of women. This new viewpoint seemed to hold for a while with the courts giving progressive court judgments that emphasised the need for women to be treated on the basis of equality with men. The cases of *Katekwe vs Muchabaiwa*, *Murisa vs Murisa* and *Gonye vs Gonye* amongst others played an important role in reinforcing these rights. However, unexpectedly and contrary to the positive trajectory that the courts had adopted, in 1999 the face of patriarchy reared its ugly head again in the case of *Magaya vs. Magaya*. The lesson from the Magaya case is that despite positive legal provisions, women need to constantly guard against the dangers of male decision-makers using or abusing their positions to protect male privilege and male dominance over women.

For example, the 2005 Constitutional amendment gave women equal rights with men in relation to access to agricultural land acquired under the FTLRP. But the approach was piece-meal in

¹⁹² Section 13 (b) (i)

that discrimination against women on the basis of personal or customary law was maintained in the Constitution. Such an approach showed the reluctance of the State, patriarchy and society at large to fully embrace equality between men and women.

Total legal transformation, at least on paper, in relation to women's rights was realised with the coming into being of the 2013 Constitution which emphatically outlawed discrimination on the grounds of sex and gender, including under personal and customary law. This positive approach was maintained in the area of access to agricultural land under the FTLRP with S.I 53/2014 seeking to ensure that women are not discriminated against especially in marriage, upon divorce and in inheritance matters with regards to fast track land. The only challenge however is that the legal framework addresses issues of formal equality only. By not recognising the unique challenges that women face in their efforts to enforce their rights, the paper changes in the Constitution and statutes might not change the situation of women.. The battle therefore remains in ensuring that after the granting of formal equality between men and women in law, substantive equality is realised through the creation of conditions that make it possible for women to enforce and enjoy their rights in reality and for society and patriarchy to embrace and accept the rights of women.

Chapter 5: Legal Pluralism and Institutional Frameworks for Women's Participation in the FTLRP

5.1 Introduction

This chapter will analyse the application and utilisation of different norms and institutions ranging from legal, customary, family and local community practices and their implications on women's participation in the FTLRP. This assessment will be undertaken against a backdrop where the FTLRP was viewed by the State, actual and potential beneficiaries as a means to transforming the lives of and empower previously marginalised people in Zimbabwe.¹⁹³ As such an assessment of the norms and institutions that were at play in the distribution of land is necessary in order to gauge their conformity with stated and perceived objectives of the FTLRP. These norms and institutions were used in allocating, accessing and utilising land. They were also used in managing farm inputs, handling and distributing produce and in managing relationships and conflicts on the farms.

Often referred to as the "Third Chimurenga or revolution"¹⁹⁴ or a continuation of the war of liberation (Hellum and Derman, 2004:1790) the unstructured manner in which the fast track land reform programme was executed led to the creation of many actors, norms and institutions. This in turn resulted in the creation of legal pluralist structures in the implementation of the programme. The chapter will explore the resultant structures that were used to access or acquire land and to sustain the ability or otherwise to hold onto the land and effectively utilise it after

¹⁹³ Land Reform and Resettlement Implementation Plan, Phase II

¹⁹⁴ Chimurenga is a Shona word meaning "war or uprising" and therefore by naming the land reform programming as the "Third Chimurenga" the ZANU PF Government and its supporters projected this programme as a continuation of the First and Second wars of liberation and a fight against the last bastions of colonialism as represented by the ownership and control of land by the white minority. EISA has noted that "In opposing a court application by the white farmers seeking the removal of the farm invaders, the then Attorney General Patrick Chinamasa argued that farm occupations by liberation war veterans and ZANU-PF supporters was an extension of Zimbabwe's 1970s liberation war. Further, Chinamasa asked the High Court to free the police from the obligation to evict hordes of occupiers from the farms" (<http://www.content.eisa.org.za/old-page/zimbabwe-farm-occupations-and-breakdown-rule-law>)

acquisition. The chapter will also explore the tussle for control over resettlement land by different actors ranging from government, traditional leaders, war veterans and the newly resettled farmers. It considers how plural laws, governance systems, norms and customs were used to lay claims to the land. It also assesses how the same laws, governance systems, norms and customs were used to claim farm leadership or farming inputs and implications of these contestations on the rights of women under the programme.

The chapter will be linked with subsequent chapters focusing on power, the value of women's unpaid work and the implications of family relations in the land access matrix. This approach is taken on the realisation that legal pluralism is a common thread running through the issues that are raised in subsequent chapters of this research. For example, the existence of a plurality of norms and institutions is essentially a question of power and attendant struggles including the subject of dominance and control in the institutions created to deal with the land issue. Such dominance and control determined and in some instances, continue to determine who in the institutions has the power to create and interpret norms relating to access and control of land and the institutions. Did women have such power and control and did they participate in norm and rule-making and in institutional set-ups? The discussion on women's unpaid work is also closely associated with the presence of plural norms and institutions, especially in light of the interpretation of who owns women's labour and the fruits of such labour as envisaged by international and human rights law, general law and the expectations arising from cultural, family and community requirements. Familial set-ups and relationships as illustrated in Chapter 8 are also influenced by legal pluralism, as families are social fields that are affected by various norms and institutions.

In an attempt to dissect the above issues, the main research question that this chapter seeks to answer is *“How did the plural land governance institutions, structures and norms impact on*

access to land and attendant resources by women?” In order to break down the key issues that required investigation, the main question is supplemented by the following sub-research questions:

- i. What role was played by general law, cultural and traditional practices, living and formal customary law and local norms in determining access to land under the FLTRP?*
- ii. Which institutions were involved in allocating land, determining and identifying beneficiaries and registering rights to land and how did these institutions address the rights of women?*
- iii. How did farm level governance institutions evolve on the farms during and after the farm invasions and what role did the general law, customs, norms and practices play in the creation of the these institutions?*
- iv. Did the method of constitution and composition of the farm level governance institutions encourage or limit women’s chances of participating in these institutions?*
- v. Did the failure by women to participate in the farm level institutions impact on their capacity to access land and manage the land as well as inputs and the resultant produce?*
- vi. Is a state of legal pluralism beneficial to women in the process of negotiating access to resources such as land?*

The questions will be answered with a view to determine whether women were excluded from governance and decision making institutions and if so whether this had any impact on their capacity to effectively manage and utilise their land, market their produce and benefit from or access and control agricultural inputs. In addition, did this have any impact on women’s general productivity on the farms? An understanding of the impact that this state of affairs had on women will also help in identifying the reasons behind this state of affairs.

5.2 Legal Pluralism and Women's Rights

The discourse on and need for implementation of women's human rights principles and standards has gathered momentum in the global context, with a view to universal application of the espoused rights. However, the reality is that although women are viewed as individuals by the international and national citizenship law, who must be treated as such and enjoy their human rights as provided for in law, in reality they are also situated in family, community and religious relationships as well as political and economic settings (Hellum et al, 2007:xix). Such settings determine the day-to-day lived realities of women and the context in which their rights can be enjoyed or compromised. For example, in line with the receptor approach:

Members of societies that revolve around the family and the community often express the view that individuals should not only serve their own interests by claiming rights, but should also contribute to the commonwealth by fulfilling duties and by discharging obligations (Zwart, 2012:551)

Whilst such an approach could serve societies well by ensuring that all members play a role in looking out for the next person, in many settings the sacrifices are often expected to come from one group in society in particular the women. They are expected to discharge their duties and obligations for the good of society, whilst the men in the same communities focus on self-fulfilment and personal development.

As a result understanding the plural legalities and gendered realities in which women's human rights are situated helps in identifying strategies, creating links and threads as well as routes for manoeuvring in ensuring that women's human rights as espoused in national and international law can become a reality to be enjoyed by women. It is in this context that women negotiated access to land under the FTLRP and engaged with norms and institutions that determined their access or lack thereof. The question that has to be asked and answered is whether the mere

legal, policy and political pronouncements that emphasised the principle of “land for all”¹⁹⁵ translated into the enjoyment of that right by women on the basis of equality with men? Or were these provisions mediated by other normative conditions, institutions and structures that determined the practicalities of rights enjoyment or lack thereof in reality?

5.3 Land Governance Pre and During Colonialism

Chapter 4 of this research addressed the issue of laws and some of the institutions that were used in determining access to land in the country’s history. It has been postulated that much of the complexity of land rights and tenure systems particularly in former colonies is the result of the co-existence of different systems in the regulation of such rights (Runger, 2006:4). The creation of such systems can be through state centric initiatives but in many instances is driven by citizens and communities in response to their everyday lived realities or changes in society. Both state centred and citizen driven legal, institutional and governance systems can lead to the creation of legal pluralism albeit to varying degrees and in different forms.

The existence of strong legal pluralism as defined in Chapter 2 means that communities, whilst outwardly placing themselves under state law, are in reality usually guided by sets of rules and norms that are germane and more agreeable to themselves as communities compared to the state recognised and state enforced laws. In essence therefore “strong” legal pluralism creates varied systems of laws as well as norms that are applied at different levels. “Weak” legal pluralism is strongly linked to colonialism in many of the Eastern and Southern African countries, including Zimbabwe. “Weak” legal pluralism emerged during the process of creating a governance structure that could accommodate the dictates of the new colonial masters without necessarily obliterating the cultures of the indigenous people by creating different context, location and person specific rules and laws. Such legal pluralism was of necessity an accommodation of

¹⁹⁵ One of the FTLRP slogans was “ivhu kuvanhu” translated to mean, “Land to the people”. At face value, this slogan implied that every Zimbabwean and in particular every black Zimbabwean had the right to get land under the programme.

some of the indigenous laws by the colonisers and allowing such to exist side by side with western or euro centric laws subject to what was termed “the repugnance rule”¹⁹⁶.

In terms of land tenure systems, the colonial state was at this point concerned with maintaining political stability by not upsetting the customary communal system of land ownership. This in turn led to the creation of parallel state recognised systems that allowed individual ownership of land for the white settlers and insisted on communal ownership for the black population.

“Strong” legal pluralism on the other hand recognised that in addition to both the indigenous and euro-centric systems of law that were recognised by the State, there were other classifications of rules and norms that governed people in their everyday lives and which resonated with the people more than the recognised laws and rules.

These applications may not necessarily have the effect of law in a sense that is recognised by the state but can have greater influence, can be more acceptable and widely applied within a given community. Often the state recognised legal pluralism refers to the simplistic “dual systems” (Rautenbach, 2010: 3) theory of legal pluralism without taking into account the many religious, cultural and “living” customary practices of the people. The many systems and practices that come into play create what have been referred to as “semi-autonomous social fields” which exemplify the complexity of societies in general. These fields

Can generate rules and customs and symbols internally but are also vulnerable to rules and decisions and other forces emanating from the larger world by which they are surrounded. The semi-autonomous social field has rule making capacities and the means to induce and coerce compliance but it is simultaneously set in a larger social matrix,

¹⁹⁶ The repugnance rule or repugnance clause was introduced in Zimbabwe (then Southern Rhodesia) during the infancy of colonialism through the Southern Rhodesia Order in Council of 20th October 1898. Section 50 of the Order in Council stated that “In civil cases between natives, the High Court and the Magistrates' courts shall be guided by native law so far as that law is not repugnant to natural justice or morality.” The clause and the resultant doctrine emphasised that customary law principles were not enforceable in any courts of law if they were contrary to public policy, contrary to good morals, or justice and equity. The doctrine has often been criticized for measuring African legal standards using an imposed European legal standard (See Taiwo E. A, 2009: Repugnance Clause and its impact on Customary Law: Comparing the South African and Nigerian Positions- Some Lessons for Nigeria)

which can, and does affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance. (Falk Moore, 1973: 720).

A dissection of the state of affairs prevailing in the new resettlement areas shows the development of a field similar to the one described by Falk Moore, in that at a time when the new settler communities were trying to establish themselves, they were often forced to create norms and standards that were not only influenced by themselves but also by external forces. Such external forces were in the form of the State, traditional leaders and new comers to the farms amongst others. As such, the communities were in flux, adapting and changing the norms to suit the conditions and situations as they arose on the new farms.

As such, like in the rest of colonial Africa, legal pluralism in its various facets is very apparent in the management of land in Zimbabwe. The implications for women have been varied. Often negative implications arise in situations where State centric “weak” legal pluralism is dominant. The elevation of “weak” or “state” legal pluralism against “strong” legal pluralism by patriarchal colonial masters and patriarchal traditional leaders in some instances led to the centralisation and usurpation of the law by the powerful (ECA, 2007:7). This was because these institutions sought to appropriate the definition and application of law that excluded other forms of laws as a way of exerting control over weaker people in society. Using this approach the colonial masters and traditional leaders in Zimbabwe, as in the rest of Africa, created a set of laws that excluded women from having independently exercisable rights in land or decision-making on land issues. This was contrary to the pre-colonial legal order that recognised women as having independently exercisable rights in land and decision makers in the utilisation of land due to their central role in food production as was shown in Chapter 4. The result was that women’s labour continued to be appropriated in agriculture and food production in colonial and post-colonial Zimbabwe without corresponding power, authority and decision-making over land, production and the produce from the land. Yet in pre-colonial Zimbabwe, women exercised considerable control over land and the produce therefrom. Resultantly, “the value of

women's productive labour in producing and processing food established and maintained their rights in the domestic and other spheres." (Africa Resource Centre, 1999)

In turn, the maintenance of these rights in the domestic and other spheres and the women's control over land, agricultural produce, production and food distribution also gave women political power and political participation in the family, community institutions and economy. (Africa Resource Centre, 1999). However, the advent of colonialism brought about a different understanding of the African economic, social and political systems and the role of women therein as highlighted in Chapter 4. Building on Chanock's theory, which states that the African law of today was born out of the colonial period (Chanock: 1976:80), Dore argues that

The most far reaching inventions of tradition in colonial Africa took place when the Europeans believed themselves to be respecting age-old African custom. What were called customary laws, customary land rights, customary political structure and so on, were in fact all invented by colonial codification. (Dore, 2002:2)

This comes with negative implications for women's social, economic and political rights. As there is a strong correlation between one's social and economic standing and political participation, the result was that the alienation of land as the biggest economic resource from women also whittled down their political participation and involvement in decision-making. As such by the time of the FTLRP in Zimbabwe, women's socio-economic and political rights had been seriously eroded, despite the liberation wartime rhetoric that used the post-independence gender equality ideology as one of the rallying points in support of the war.

5.4 Plural Legalities on Land Governance in Post-Independence Zimbabwe

The development of the theories of legal pluralism was influenced by the need to demystify and debunk the belief that central state law or legal centralism was the only system that governed people and societies. Writers such as Jackson, suggest that in advancing this idea, writers sought to break out of this mould and mind-set and:

Insist that the juristic definition of law was under-inclusive and that below, outside, and all around the State were other "forms," "systems" and reglementary regimes over which the state neither exercised complete control nor had the ability to eradicate. (Jackson, Undated: 2).

This cemented the viewpoint that law does not necessarily control society but that society often controls law and its formulation. The resultant regimes are neither uniform nor universally applicable and often have weak or strong application. In that sense legal pluralism is justified as a strategy of governance to accommodate the variances in population that come about as a result of custom, religion, ethnicity or different locations within the same state. The result is that many contemporary states have:

A plurality of [property] ideologies, legal institutions [and legal regimes], often rooted in different sources of legitimacy, including local or traditional law, the official legal system of the state, international and transnational law and religious legal orders. (von Benda-Beckmann F and K and Wiber, 2006).

By the time of independence in Zimbabwe, the country had in place this assortment of laws, norms and systems governing the people, emanating from the co-existence of customary and common law but also the development of various normative approaches by communities at the local level. It was also a period when the international human rights and legal order was flourishing, thereby creating another layer of rules and normative orders that the country was under an obligation to follow. Today both women's rights and land issues in Zimbabwe are supposed to be governed not only by local laws and normative orders but also by international human rights and legal systems that the country is a party to.

5.5 The Implementation of the FTLRP and Implications on Creation of Governance Institutions

Whilst law has over centuries been held responsible for the maintenance of male hegemony over resources, politics, society and women, law can similarly play an important role in disentangling women from oppression, otherness and giving them equal opportunities with men. This is particularly possible and achievable in an era where national governments and the international community are pushing for the treatment of women on the basis of equality with men. This is based on the presumption that upon promulgation, the law is then implemented.

The law, in the sense of rules created, implemented, enforced and monitored by the State is important in creating systems that can bring about the desired changes, including creating a culture of respecting and observing women's rights. Chaos and the absence of laws can therefore make it difficult to create institutions that can fully integrate women into national programmes. With proper planning and forward-looking strategies, laws can be developed based on the lived realities of citizens including women to ensure that their rights are protected. One lesson learnt from the 1980s land reform programme in Zimbabwe is that there was limited access to land by women under the programme (Hanlon et al, 2013). The next phase of the land reform programme in the form of the FTLRP was therefore an opportunity to use such lessons to ensure that women would benefit on the basis of equality with men through the creation of laws, policies and programmes aimed at addressing these challenges with emphasis on the law as a social change instrument. Institutions governing developments on the farms therefore had to be established based on the law and respect for such law. An understanding of the stage at which the laws were brought into play in governing these institutions is therefore important in determining the relevance, timeliness and efficacy of those laws in creating functional, effective and sustainable institutions. In addition, the development of localised land management institutions, in this case at the farm level, is important in ensuring that the actual users of the resource determine the rules of utilisation and engagement. It must also be accepted that without a clear law and rule based process for the development of such institutions, the marginalised may continue to be marginalised whilst those with power and authority may continue to dominate without any checks and balances that the law can otherwise provide.

By way of comparison, the South African land restitution programme was embedded in deep customary claims that could have made it difficult for women to access land on the basis of equality with men. This was because claims to land were based on tribal, clan and chieftainship affiliation. Such a process reinforced patriarchal claims to the land and therefore had the

potential to discriminate against women on the basis of customary laws and practices that inhibit women from claiming lineage land both within their natal and married families. However the promulgation of laws such as the Restitution of Land Rights Act of 1994 and the Communal Property Associations Act of 1996 and their implementation ensured that there was a clear policy and strategy for women's inclusion and participation in the land claims and restitution process. Using these laws, the Government of South Africa created a Land Reform Gender Policy which:

set out a set of gender sensitive guidelines to be mainstreamed at all levels of the three main areas of land reform: land restitution, land redistribution and land tenure reform. (Hellum and Derman, 2010: 208).

Whilst the actual participation by women in these processes was not guaranteed by mere legal and policy enactments, the stage for their participation was however set through clear legal and policy provisions that encouraged and actively sought to ensure such participation. In addition, the role of civil society in the process allowed recognition of women in the land claims processes in that the concerns of women in the clans and communities were taken into consideration. It is an accepted fact that the land restitution process in South Africa has not met the desired results of the programme in terms of changing ownership patterns that are currently skewed along racial, class and gender lines. For example in its 2011 Green Paper on Land Reform, the South African Government acknowledges this fact and proposed the development of a new pragmatic but fundamentally altered land tenure system for South Africa.¹⁹⁷ However, even whilst acknowledging the shortcomings of the initial land restitution efforts, the Government of South Africa in this Green Paper, realised that land reform must address not only class and race relations, but gender inequalities as well. The recognition of the need to address gender inequities in land reform and ownership has therefore been a consistent policy thread in South Africa's land reform efforts after the end of apartheid. The need to address

¹⁹⁷ See the South African Green Paper on Land Reform, 2011 by the Department of Rural Development and Land Reform.

gender inequality in access to agricultural land was however not a consistent policy issue in relation to Zimbabwe's FTLRP.

Table 5.1 below shows that there were different stages in the development of the farm based land and resource management institutions and each stage and each resultant institution brought different dimensions to women's participation in the institutions and attendant processes. The underlying factor was that the institutions developed on a piecemeal basis and as the social, political and economic conditions on the farms changed. Often the drivers of the institutions, especially the early ones, were the settlers themselves through the leadership of the war veterans, with the government lending support through the Ministry of Local Government, Rural and Urban Development and the Ministry of Lands and Rural Resettlement, albeit only at a later stage. As such government only formally intervened when the new settlers had already organised themselves socially, politically and economically. Even though government intervention led to some changes in this social, political and economic organisation on the farms, such changes took long or were merely cosmetic as some of the leaders in the early farm institutions assumed leadership in the new institutions and merely changed titles. For example in some instances, base commanders merely assumed leadership as Chairpersons of the Committees of Seven when they were introduced at the instance of Government or as village heads in situations where villages were eventually created. As a result, the women who were excluded in the early institutions though not openly barred from participating in the new institutions in some cases, were often disadvantaged by this earlier exclusion as it created a state of affairs that favoured those that had assumed leadership positions from the beginning.

Table 5.1 below shows the various stages in the development of farm based institutions from the time of the farm invasions until the time that I was undertaking my fieldwork. These stages were deduced from my fieldwork findings and what transpired in my research area. However

other researchers have also come across similar or related structures in their research in other parts of the country (Scoones, et al, 2010, Matondi, 2012). As such these stages could have been applied with slight variations in other parts of the country. The important aspect to note is that the manner in which these farms based institutions were established and evolved over time did not encourage the participation of women as leaders.

Table 5.1: Stages in the Development of farm based governance institutions between 2000 and 2015

<i>Stage</i>	<i>Name/Type of Institution</i>	<i>Main Actors</i>	<i>Composition</i>	<i>Farm Type</i>	<i>Method of Constitution</i>
1 Farm Invasions and initial settlement	Bases	War Veterans	1. Base Commanders and other war veterans	A1/ A2	Self-proclaimed/ self-imposed
2 Settlement	Committees of Seven (7)	War Veterans New Farmers	1. Chairperson 2. Treasurer 3. Secretary 4. Women's Representative 5. Youths' Representative 6. Committee Member 7. Committee Member	A1/ A2	Election
3. Establishment and Production	Villages (To include Village Development Committees (VIDCOs) and Village Assemblies (VA))	Traditional Leaders New Farmers	1. Village Head (Viewed as a traditional leader) 2. Treasurer 3. Secretary 4. Messenger 5. Committee Member 6. Committee Member	A1	Appointment (village head) and election (other members)
	Farmers Associations	New Farmers Traditional Leaders	1. Chairperson 2. Deputy Chairperson 3. Treasurer 4. Secretary 5. Section (Farm) Representatives 6. Committee members Traditional Leaders	A2	Election and Self-Imposition (for Chiefs) with muted support from Government

At the time of the research, it was difficult to determine with certainty when each institution was established due to passage of time but also because these developments were not uniform across locations.

The above institutions were often created one after another, but sometimes existed simultaneously as the creation of a new institution did not automatically mean the disbandment of the previous one. As a result, different institutions developed across different land reform models and across farms within the same models, sometimes overlapping each other. This was mainly due to a lack of a clear structure or policy directive at the national level to guide the new farmers in the constitution and creation of these institutions.

With time, it also became apparent that there was no coordination on roles and responsibilities in the land reform process even within the top echelons of government, leading to misunderstandings and at worst to confusion that impacted negatively on the new farmers.¹⁹⁸ Below, I provide a detailed analysis of each institution, its development, the means of constitution and the resultant impact on women's participation and involvement in the farm-based institutions following the FTLRP in both A1 and A2 farms in the research area.

5.6 On Farm Manoeuvres, Manipulations and Strategic Positioning in Both A1 and A2 Farms

5.6.1 The War Veterans and the Bases

The veterans of Zimbabwe's war of liberation were important protagonists in the farm invasions and the FTLRP generally. For example in February of 2000, war veterans launched attention grabbing farm occupations in the country's Masvingo Province. They had over the years propounded a clear position on land, which focused on large-scale expropriation of white land without compensation (Matondi, 2012:21). They were therefore often viewed as the *de facto* leaders of the farm invasions, land allocation and distribution and the champions of the land reform programme in the country. This was evident in both A1 (Chidza Farm, Lothian Farm and Masimbiti in Nuanetsi Ranch) and the A2 (Hippo Valley Estates, Farm 54 and Musisinyani area) in my research area as the war veterans played an important role in coordinating the farm invasions and the initial settlement. The A1 farms were small-scale farms, some in villagised models whilst others were self-contained. The sizes of an A1 farm in my research area ranged between 6 hectares (Masimbiti in Nuanetsi Ranch) and 32 hectares (Lothian Farm in Masvingo District), and anything in-between. The A2 allocations are generally viewed as commercial in their operations but with varying sizes. The A2 farms that were the subject of my research in

¹⁹⁸ In an article titled "New Land Permits for A1 Farmers" on 1 July 2014, the *Newsday* quoted the Minister of Lands, Land Reform and Resettlement Dr Douglas Mombeshora as saying that "In the past, before we came up with this permit, there were various letters that were issued at the district level by the DA which falls under the ministry of Local Government, Public Works and Urban Development and as such we had no control over them. It created a lot of challenges and we realised that at times the district administrator would just unilaterally issue land without the concurrence of the district lands committee."

Hippo Valley were small scale in operation and small in size as well, with some as small as 18 or 20 hectares. The distinguishing factor with the A1 farms was therefore not the size but the nature of the farming operations taking place on the piece of land. The A2 farms in Hippo Valley were regarded as such (commercial) because they were sugarcane plantations in which farmers grew sugarcane for commercial purposes.

During the early stages of the farm invasions and occupations, the war veterans often unilaterally created rules that everyone on the farm was expected to abide by and they were generally accepted as the leaders of the land invasions process. To sustain support for the farm invasions, the war veterans used violence, intimidation, political rhetoric and often whipped emotions through the invocation of the memories of both the first and second Chimurenga wars, the relationship between land and traditional religion, i.e. the need to appease the spirits of the ancestors and the departed war comrades. Mr FZ one of the key war veteran leaders at Lothian Farm had this to say:

We had to teach people about the history of Zimbabwe and the war of liberation. This helped them to understand why the land reform programme was important as the war was fought in order for us to get the land. These teachings were given during meetings to discuss land allocations, to plan our future on the farms but also during the “pungwes” (all night vigils) at the farms.¹⁹⁹

Mr FZ emphasised that the spirits of the war dead would not rest until the war of liberation had been taken to its logical conclusion through the return of land to the black majority. My interactions with him showed that war veterans developed institutions that were modelled along wartime institutions, in particular the bases, which were headed by the war veterans themselves as base commanders. Mr FZ was the base commander at Lothian Farm at the time of the farm invasions although he had relinquished that position with the coming in of new institutional structures on the farm.

¹⁹⁹ Interview with Mr. FZ in Masvingo Town on 10 February 2012

The wartime institutions that were established at the beginning of the farm invasions were still evident in Nuanetsi Ranch's Masimbiti area/Ward 16, as the area had not yet been pegged and reallocated by government. The other settlers portrayed the "base commander" of Kugarahunzwanana Village in Ward 16, Mr OC as a strongman. The settlers were reluctant to discuss the land issue with me before obtaining his approval. When I eventually spoke to him he gave a narrative of his role during the farm invasions, in particular the fact that it was him and a few other men, mostly war veterans who led the invasion of the area. He indicated that when the other people came in to join them, they had already put rules in place on how the land invasion and allocation process was to be governed. The "new comers" therefore had to abide by those rules. He emphasised that this was necessary in order to ensure "order and discipline" so that the land reform programme could not be derailed but be seen through to its logical conclusion.

The development of the wartime types of institutions and the rise of the war veterans as the *de facto* leaders of the farm invasions and land allocations gave them incredible power and authority which were seldom questioned by the farm invaders during the farm invasion stages of the FTLRP. This was despite the disquiet about the manner in which the war veterans were directing the processes on the farms. Whilst the war veterans viewed their iron grip on the process as necessary in order to instil "order and discipline" on the farms, the other settlers viewed this as oppressive and unfair although they could not say it openly. Mrs. MN who was part of the invaders in Nuanetsi Ranch but had since retreated to her rural home in the Musvovi Communal Lands echoed a sentiment that was shared by other women:

The war veterans were the ones who controlled the process and many people complained that it was not being done properly and that the war veterans were abusing people and forcing them to do things that they did not want to do. At one time we were forced to go and block the main Ngundu-Chiredzi Road²⁰⁰ at Masimbiti. We were even told that we were supposed to dig up the tarred road so as to prevent the white farmers from accessing

²⁰⁰ The Ngundu-Chiredzi Road is a national highway that links the country's sugar producing district of Chiredzi with the rest of the country and in particular with Masvingo, Harare, Bulawayo and the Beitbridge border with South Africa.

their farms.²⁰¹ We were told that this was a war and that we had to do those things if we were to win the war. They said if you did not participate in the “war”, then you would not get the land.²⁰²

The Nuanetsi Ranch allocation was an A1 allocation but women in A2 allocations confirmed similar experiences. Mrs. C whose allocation was in the A2 sugarcane plantations in the Musisinyani area of Hippo Valley spoke of how war veteran leaders forced farm invaders to stay on the farms to keep the numbers of farm invaders high.²⁰³ This was done to give the impression that there were multitudes of people in need of land as demonstrated by their camping on the farms. Mrs. MN, from Musvovi Communal lands, quoted above, also reported that war veteran leaders stopped farm invaders from visiting their rural homes without permission and beyond the number of days allocated to visit the rural areas (at most two days). She said the war veteran leaders argued that if people stayed away from the farms for long periods, this would deplete the numbers of people camping on the farms and give the impression that the farm invasions were not popular. She reported that the war veterans assumed unquestionable power and one was either forced to accept their leadership and instructions if they wanted land, or if they disagreed, to leave the farms and return to their original homes. Mrs. MN was one of the farm invaders who found the situation on the farms untenable and as a result returned to her rural home in Musvovi Communal Lands. She also complained that the war veterans used threats and intimidation to collect contributions in cash and kind for various “projects” on the farms but such contributions were never properly accounted for. However, because the war veterans were the authority on the farms, the people had to follow such instructions.

²⁰¹ The settlers did not however dig up the road, showing that this was mere rhetoric on the part of the war veterans

²⁰² Interview with Mrs. MN in the Musvovi Communal Lands in Masvingo District on 23 April 2011

²⁰³ Interview with Mrs. C, on 10 February 2012 in Masvingo Town

Given this state of affairs, how then did the absence of a clear policy on the development of farm institutions at the beginning of the farm invasions impact on women's participation as "base" leaders and as individual contributors to the developments that were taking place on the farms? My analysis of the narratives by the respondents shows that the implications for women were as detailed below:

- i. There were generally fewer female war veterans than male war veterans on the farms just like during the war. As such, the imposition of war veteran leadership on the farms and not opening up to other non war veteran settlers meant that the institutions were dominated by men;
- ii. The war veteran leadership style was non-participatory in that they imposed themselves on the other settlers and often imposed unilateral decisions on the other settlers, who were then expected to abide by these decisions; and
- iii. Women who were not represented in the war veteran centred base management committees were often forced to accept decisions that were made by a few male war veterans without consulting the women (and other men).

The invocation of African traditional religion, the spirits of the war dead and their relationship to land as a basis for the farm invasions also guided developments on the farms, including those related to leadership and institutional development during the early days of the farm invasions. As the farm invasions were viewed as a way of appeasing the ancestral spirits and the spirits of the war dead, the invaded land therefore acquired a religious and spiritual importance. Whilst the war veterans used these notions to ensconce themselves in power, the religious and spiritual appeal also had the effect of marginalising women in the process. According to Taringa and Sipeyiye:

Among the Shona [the biggest ethnic group in Zimbabwe], traditional ownership of the land does not correspond to the Western capitalist notions of a tract of land belonging to one principal person. Rather, it has relational connotations to the chief, the village head

or head of the family, and thus in each case to the ancestors. (Taringa and Sipeyiye, 2013:56),

Although evidence from my fieldwork showed that fast track land acquired a less significant spiritual or traditional meaning when compared to communal land, war veterans who partnered with traditional leaders, particularly chiefs in this endeavour, constantly evoked the concept of land as belonging to the ancestors. The spiritual and religious slant to the land issue also meant that traditional leaders as a result acquired an upper hand over the other claimants to the land, including the war veterans.²⁰⁴ When the chiefs came into the picture, the war veterans were forced to take a back seat and allow the chiefs to take the lead, especially when the chiefs claimed the land as an ancestral right, a position which commanded more authority and which the war veterans could not similarly use. As such cession of authority to the chiefs by the war veterans was not voluntary but was necessitated by these seemingly superior justifications.

The conclusion that can be drawn from these actions therefore is that there was a lot of manipulation, manoeuvring and strategic positioning by the war veterans, sometimes working with traditional leaders to establish their grip on power. The liberation war and its remnants, politics, tradition and religion were all used at different stages and whenever convenient to justify the war veterans' leadership in the farm invasions. This left women with no discernible entry point as leaders and participants in the farm based institutions during and even after the FTLRP. The absence of a clear policy position on farm level institutions and their gender composition at the time of the farm invasions made it possible for the manipulations to thrive and for justifications to be proffered for the continuity of a state of affairs that excluded women whilst perpetuating male hegemony and privilege.

²⁰⁴ For example in an interview with Mr. FZ on 10 February 2012, he spoke of how he was sidelined from farm leadership by the traditional leader in his area despite the fact that he had been at the forefront of the farm invasions, organising and settling people at Lothian Farm. However because the traditional leader concerned claimed that the land in question belonged to his ancestors, he eventually took over as the main authority over the land.

5.6.2 The Committees of Seven (7)

As the new settlers established themselves on the farms, and the hype and violence of the farm invasions subsided, the farm institutions had to morph into more inclusive and more representative entities. My fieldwork findings evinced that often this was through State directives as initiated by civil servants. When I started my fieldwork in September 2010, some of my research sites such as Chidza Farm, Lothian Farm and the sugar estates in Chiredzi already had new and more representative farm level institutions. Efforts to establish institutions such as Committees of Seven had started as early as 2002 and by 2010 the institutions were in place and identifiable, in particular on the farms that had been properly pegged and allocated to the beneficiaries by Government.²⁰⁵ However, some of the farms such as Nuanetsi Ranch were still grappling with this challenge and were still led by the war veterans that had spearheaded the farm invasions. On the farms where more inclusive farm institutions had developed, this was mainly because the original war veteran leaders were increasingly under pressure from the State and the other settlers to include other people on the farms into the leadership structures. This was to ensure that the institutions were representative of the various social, political, age and gender variations.

The Committees of Seven, which were modelled around the Village Development Committees²⁰⁶ of the communal areas were therefore established on the new farms through the insistence of Government bureaucrats such as the lands officers, the District Administrators and the District Lands Committees (DLC). The Committees of Seven thrived in the A1 farms such as Chidza and Lothian in Masvingo District when compared to the A2 farms in the sugar estates where a different institutional set up in the form of farmers' associations was emerging.

²⁰⁵ Interview with Mrs. RM 2 on 9 September 2010

²⁰⁶ The Village Development Committees were first introduced through the Prime Minister's Directive on Decentralisation of 1984, which sought to improve grassroots participation in local level governance institutions. The Directive was later incorporated into law through the Rural District Councils Act Chapter 29:13 and the Traditional Leaders Act: Chapter 29:17

However because these institutions were developed on the foundations of the war veterans' power, they did not completely shed the war veteran label with the Chairpersons of these committees sometimes being the base commanders or the war veterans who led the farm invasions on the various farms. In many instances the Chairpersons of the committees also morphed into the Village Heads following their appointment as such by the Chiefs.²⁰⁷ At Lothian and Chidza Farms, at the beginning of my research in 2010, two of the chairpersons of the Committees of Seven were the war veteran leaders of the invasions on the respective farms. By April 2015 as I was concluding the field research, one of the initial Chairpersons was now a village head after his appointment as such by Chief Chikwanda in Chidza Farm. He was still the Chairperson of the Committee of Seven by virtue of his position as the Village Head as it was now a requirement on the farms that the village head must lead the Committee. This tallied with the situation in the communal areas, where the village head chairs the Village Development Committee.²⁰⁸ The other war veteran leader at Lothian Farm had however fallen by the wayside because he had publicly disagreed with Chief Chikwanda. One of their areas of disagreement related to the issue of traditional leadership on farms. The war veteran leader argued that there was no place for traditional leadership institutions on the new farms as the new farms were a different social and economic structure when compared to the communal areas where the traditional leaders were institutionalised. The committees, however, still managed to bring about a different dimension that allowed for the representation of various interest groups. They were therefore often composed of youths and women's representatives alongside the Chairperson, the Treasurer, Secretary and committee member (s).²⁰⁹ The inclusion of women and the youths was an affirmative action effort, which however did not

²⁰⁷ The separation of roles and responsibilities between the Committee of 7, and in particular the Chairperson and the village head was a contentious issue up to April 2015 when I was concluding my field research leading to conflicts in the governance of the farms. Sometimes the chairperson of the Committee of 7 was also the village head, which made the situation easier but where they were two different people, the tension was evident.

²⁰⁸ Section 17 (3) of the Traditional Leaders Act states that "The village development committee shall be presided over by the village head."

²⁰⁹ Interview with Village Head M2 in Chidza Farm on 13 March 2014

yield much as it often ended with the inclusion of the women and the youths in the mandatory positions and not in the broader leadership positions on the farms. At Chidza Farm, the Committee of Seven had two women out of the seven members. The women held the positions of Secretary and ordinary committee member. At Lothian Farm, the Committee of 7 had one female member who was an ordinary member. The representation of women on the Committee of Seven was however not an easy issue. Women were included mainly because State bureaucrats demanded it or because it had become an expectation for women to be represented on these committees in line with government or political party pronouncements on gender equality and inclusion. Elections still had to be held and often women ended up with remnants, normally securing positions of Secretary, ordinary committee member or in a few instances Treasurer.

The A1 farm settlers appeared to be more accommodating of women in leadership structures when compared to the A2 settlers in the sugarcane farms where the elections for positions were more competitive and vicious campaigns were the order of the day.

The A2 sugarcane farms were also highly politicised when compared to the A1 farms, with leaders in the sugarcane plots often linked to the ruling ZANU PF party.²¹⁰ A respondent in Chidza Farm Mrs. RM2 attributed the absence of women in the Committee of Seven to the fact that “women do not support or vote for each other”. She therefore said it was difficult to stand for election when you knew that you had no support. Mrs. M1 from Farm 54 in the Hippo

²¹⁰ During Interviews with plot owners in Farm 54 in Hippo Valley on 3 April 2015, one of the interviewees Mrs. C gave an account of how the previous chairman of the Zimbabwe Sugarcane Farmers’ Association, Mr. AH had used his affiliation to ZANU PF to swindle the farmers’ association of its funds from the farmers’ membership contributions. He had since been ousted from the leadership of the association. Ironically at the time of his ousting, Mr. AH had been linked to a faction of ZANU PF that was linked to the ousted Vice President Joyce Mujuru. I asked Mrs. C why Mr. AH had not been ousted from his leadership position in the farmers’ association before his problems in ZANU PF since he was alleged to have been abusing the association’s funds even then and she indicated that he was untouchable at that point in time. However, once he had lost his influence in ZANU PF, it became easier for the farmers to deal with him for his transgressions and remove him as the chairperson of the association.

Valley Sugar Estates gave an account of how she stood for election into the Committee of Seven twice but failed on both occasions. She only managed to get a leadership position as a village head years later after she had paid a head of cattle that was demanded by the Chief in order for her to be appointed as the village head. To her therefore, it was easier to “buy” the leadership position as a woman if you had the resources than to stand in an election against men. In April 2015 during my final research visit to farm 54, Mrs. M1 had finally been elected into the farmers’ association leadership following the ouster of the previous committee led by a Mr AH. She attributed her subsequent election into the farmers’ association committee to her role as a village head, which had allowed her to show her capabilities as a leader. As a result when elections for farmers’ association leadership came, people felt more confident to vote for her because she had proved herself as a leader.

Some of the war veterans however still maintained their grip on the farms by virtue of being the Chairpersons of the Committees of Seven and often clashed with any institutions that seemed to threaten their power on the farms. Traditional leaders were often the targets of the war veterans’ disapproval in instances where the traditional leaders side-lined the war veterans. Some of the war veterans also had an influence on who could be elected into the other positions of the Committees of Seven, depending on when the person joined the farm invasions. People that were amongst the initial farm invaders and settlers on the farms were favoured to take leadership positions. According to Village Head M1,²¹¹ during my preliminary visit to Nuanetsi Ranch’s Masimbiti Area/Ward 16, the reasons for choosing the people that camped on the farm ahead of anyone else was that they had shown bravery by being the pioneers of the land invasions and were therefore capable of leading the rest of the new settlers on future issues relating to the land that they had acquired. An analysis of these early invaders however shows

²¹¹ Interview held on 7 September 2010

that such a criteria led to the maintenance of the status quo with regards to the dominance of men over women in these institutions. As Village Head M1 said:

There were no women in the groups when we first came. At first there were a few groups scattered on different parts of the vast Nuanetsi Ranch and we were staying in grass and wood make shift shelters. The groups that I am aware of were four. We were between 16-20 men per group and each group had at least one war veteran.²¹²

The emphasis on early settlers as the new representatives of the new farmers on the Committees of Seven, therefore maintained the gender imbalance in the governance structures that had been initiated by the war veterans, whilst at the same time ensuring positions for the war veterans in the new structures. Women were few or non-existent amongst the early settlers and were therefore side-lined during the election process. As such whilst the idea was noble and the elective nature of constituting the committees implied that there was democracy in the committees, by favouring the early settlers, it meant that the *status quo* was maintained. The women and the youths were only likely to be elected if they represented the respective groups but would find the system skewed against them in relation to election to any other position on the committees outside the quota allocations (Women Representative and Youth Representative positions on the Committee).

During the March 2014 fieldwork, it was apparent that during the preceding election year, the Committees of Seven had been hijacked by the ruling ZANU PF party for political reasons ahead of the 31 July 2013 national elections. This was apparent in Nuanetsi Ranch's Masimbiti Area/ Ward 16 where the respondents could not distinguish between the Committee of Seven and the ZANU PF cell structures and leadership²¹³ thereby placing another layer of authority

²¹² Interview with Village Head M1 on 7 September 2010

²¹³ The cell is the ZANU PF party's basic unit of organising at the local level. According Article 16 of the ZANU PF Constitution (Paragraph 138), a cell is also variously referred to as a Village Committee and its Executive Committee is composed of 7 members. The party regards the cell as "the vanguard of the Party at the level of the village and the community, representing its interest, expressing its aspiration and mobilizing the membership to work together for their area's development. (www.zanupf.org.zw) Last accessed on 2 July 2014

on the new farmers and adding to the creation of “strong” legal pluralism. I also established that the role of the Committee of Seven and the cells were mixed up, especially when it came to the distribution of food relief, inputs and other donations regardless of the source of the donations. The overlapping leadership in both the Committees of Seven and the ZANU PF cells also meant that the same people could often be found in both institutions, making it difficult for the settlers to make a distinction between the purely community centred Committees of Seven and the politically centred ZANU PF cells.

In the final analysis, the Committees of Seven maintained the exclusion of women as leaders on the farms through the following ways:

- i. They conferred considerable power on the war veterans, the majority of whom were men;
- ii. They insisted on rewarding the early settlers or farm invaders, who were again mainly men due to the reasons elaborated in Chapter 6;
- iii. Whilst appearing to be democratic in nature by ensuring that the Committees would be constituted through elections, the non-elective aspect of the chairperson’s position in later years through the imposition of the village head as the chairperson limited the chances of women to get that position as very few women were village heads;
- iv. The politicisation of the Committees meant that more men would be involved in the structures as men are generally more involved in active politics as compared to women; and
- v. The election process though giving a semblance of democracy was steeped in patriarchy, which failed to recognise female leadership resulting in women being given window dressing positions simply to satisfy quotas and expectations of women’s presence in the structures.

The outcome therefore was an institution that was male dominated and one that marginalised women and their contributions in the development processes on the farms.

5.7 The Role of the Committee of Seven on the Farms

The Committee of Seven played various roles ranging from initial allocation of land before pegging and re-allocation by government, settling land boundary disputes as well as negotiating with government at district and provincial level on issues affecting the specific farm and the settlers.²¹⁴ The committee was also responsible for the coordination of resource mobilisation by the new farmers. According to settlers at Chidza and Lothian Farms, the committee and in particular the chairperson would also disseminate information relating to availability of donated inputs such as seed maize and fertilisers and provide information to the settlers on when and where such inputs would be distributed to eligible beneficiaries. They would also advise of availability of inputs at the GMB depot in Masvingo and advise the farmers on the requirements for accessing the inputs. Such requirements included monetary contributions by interested settlers so that together they could make bulk payments for the inputs and hire vehicles to ferry the inputs from Masvingo and deliver them to the farm. The Committee and in particular the Chairman was also responsible for liaising with the Government Departments in Masvingo including the Provincial Governor and his Office, the Provincial Administrator, the District Administrator and the Ministry of Lands and Rural Resettlement. The Committee was also responsible for negotiating with the Ministry of Lands and Rural Resettlement Officers on pegging the plots and the District Administrator to issue certificates of occupation/permits.²¹⁵ The Government Departments in turn worked with the Committee to disseminate government

²¹⁴ The Committees undertook these duties over a number of years although it was difficult to ascertain the exact years or timeframes during which the different tasks were performed.

²¹⁵ These roles were held by the war veterans at the beginning of the farm invasions (in particular land allocation and liaison with government for pegging) and were taken over by the Committees of 7 as soon as these were established. At Chidza Farm, this was around 2002 and the Committees of 7 continued with some of these roles such as liaison with Government entities for inputs and marketing throughout my research period.

policy and information and to encourage and remind the settlers on the farms to pay their land tax. As such the committees played a multi-faceted role, ranging from political, administrative, social and economic on the farms. They were therefore strong governance institutions, which allowed order and authority to prevail on the farms, especially after the initial chaotic farm invasions.

5.8 The Role of the Committee of Seven in Nurturing Democracy, Participation and Women's Involvement

The Committees of Seven was one of the localised farm management and governance institutions as they were farm based. The role of community institutions in fostering democracy in natural resource management in Zimbabwe is well documented. Initial Community Based Natural Resources Management (CBNRM) institutions in Zimbabwe focused mainly on wildlife management, with the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) being the premier initiative for such management.²¹⁶ The differences that can be discerned between natural resources management (in particular wildlife) under the CAMPFIRE programme and land management under the FTLRP is that the former focussed on management of common property resources. The later provides for some exclusivity in the utilisation of the land in that whilst the land belongs to the State, it is allocated to individuals for exclusive use, especially in the A1 self-contained and the A2 allocations. The individualisation of access and utilisation of the land under the FTLRP therefore in a way overrode the traditional collective natural resources management approach. In both cases however, the concepts of local level democracy, institution building, representation, responsibility over and derivative benefits from the resource are emphasised. Chimuka (2013:65) highlights that participation should go beyond a government-citizen relationship but must also look at the lower tiers of social conformations. This he says is important because:

²¹⁶ The CAMPFIRE Concept was initiated in the early 1980s by Zimbabwean conservationists who saw the benefit of localised natural resources management in improving rural livelihoods (see www.campfirezimbabwe.org)

Participation in forums outside government may be very helpful in training citizens to engage government over public policies. Thus the social institutions with which the citizen first comes into contact are crucial in teaching that individual to make collective decisions and this may be handy when that individual takes up decision-making in regional and national politics. (Chimuka, 2013:65)

This means that the local level natural resource governance institutions whilst playing an important role in local management, also play a role in “grooming” local people to engage with national or “higher” politics for their benefit and that of the communities they serve. Involvement and exclusion at this local level therefore also determines individual and collective exclusion and inclusion at national level politics, decision-making and participation. The exclusion of or limited inclusion of women in these institutions therefore impacts negatively on their local level participation, inclusion and decision-making processes and also has the effect of undermining their contribution at the national level, both as leaders and participants in the development process. It is therefore important for the Committees of Seven to be transformative institutions that create conditions of equality for women on the farms. This can be done by ensuring that the committees are fully democratised to allow for free participation by all interested members of the farm communities, either as elected members or as voters. In addition the committees should provide for and observe affirmative action provisions to allow increased participation for women in line with the provisions of the 2013 Constitution²¹⁷ and international women’s rights laws. At the same time, it is important to ensure that the work, structures and composition of the Committees are not manipulated for partisan political interests but are used for the benefit of all members of the new resettlement communities. The 2013 Constitution of Zimbabwe is a particularly important instrument in ensuring equal political and institutional representation for women. The Constitution whilst generally calling for equal representation for women also specifically provides that all institutions that are established by the Constitution must ensure 50% representation for men and women. A reading of this provision therefore

²¹⁷ Article 17 (1) of the 2013 Constitution enjoins the State to ensure that there is gender balance in Zimbabwean Society whilst Article 17 (2) enjoins the State to take positive action to rectify gender discrimination and imbalances resulting from past practices and policies.

shows that the spirit espoused by the Constitution is that there should be equality in representation for men and women in all institutions that involve citizen participation. Such representation can therefore not be confined to the national level but must be extended to local level institutions. Adopting this approach will ensure the representation of women in local level institutions such as the Committee of Seven in the farming areas.

5.9 The Farmers' Associations in the A2 Sugarcane Farms

The A2 sugarcane farms in Hippo Valley, like the A1 Chidza and Lothian farms also had farm-based committees, although the farm based committees were often overshadowed by the Farmers' Associations. The Farmers' Associations were composed of farmers from several farms in the Hippo Valley Sugar Estates and beyond. The farmers' associations in my research area were called the Zimbabwe Sugarcane Development Association (ZSCDA) and the Commercial Sugarcane Farmers' Association of Zimbabwe (CSCFAZ). Some of the functions of the farmers' association were similar to those of the farm committee or the Committee of Seven but were exercised at a higher level or as an appellate structure. The Association was involved in dispute resolution if a dispute could not be resolved at the farm level. It also focused on ensuring equitable use of resources such as irrigation water and tractors from Hippo Valley Estates Ltd. The Association also negotiated with government for inputs, ensuring that the farmers got proper documentation for their plots including the 99 year leases and negotiating with Hippo Valley Estates on sugarcane prices, inputs distribution and accurate deductions for inputs received against the sugarcane supplied to the company under a contract farming arrangement. Disputes that normally arose related to plot boundaries, access to the farmhouse and allocation of houses in the workers' compounds. The Association therefore played an important social, economic and political role in the lives of the farmers. At the time of my research, the farmers in Hippo Valley were involved in a dispute with Hippo Valley Estates (Ltd) over the pricing of sugarcane as well as non-payment for sugarcane by-products such as

molasses. According to the farmers, the Hippo Valley Company was under-weighting their sugarcane resulting in reduced prices and was also refusing to pay them for the molasses. They argued that this was because the chemist that was used in determining the weight and value of the sugarcane and by-products was a Hippo Valley Estates employee and there was no farmers' representative during the weighing and valuing process. The farmers' association was therefore putting measures in place to hire an independent chemist to represent them during the following harvest and sugarcane selling season. The Association was also responsible for negotiating for the supply of inputs through the cane contract farming system from Hippo Valley Estates and ensuring that the deductions made against farmers' sugarcane deliveries for the inputs supplies were accurate. The types of inputs that were supplied included seed, fertilisers, tillage (tractors) and chemicals.

As such the Farmers' Association was an important representative body for the sugarcane farmers. Its composition, operations and functions therefore were also an important indicator of the role of and participation of women in the sugarcane industry and the level of benefit accrual from the industry. Below, I make an assessment of the institution of farmers' association and the impact of its operations on women.

5.10 The Composition of the Farmers' Association and its Implications on Women's Participation in the Sugarcane Industry

The farmers' association in the sugarcane farms was composed of sugarcane farmers across the entire sugarcane farming area. Farmers could belong to an association of their choice, meaning that farmers from the same farm could belong to different farmers' associations. Members paid annual membership subscription fees to the association to enable it to have the resources to undertake its mandate. Each association had a constitution that governed its operations and attendant issues. The leadership of the association was elected and every member of the association was eligible to stand for election and to vote. The Chairperson of the ZSCDA was male although there were female committee members in the association. Two of my

interviewees Mrs. M1 and Mrs. M2,²¹⁸ were Committee Members in the two associations; ZSCDA and CSCFAZ respectively. With regards to election of women to leadership positions in the Association, one of them highlighted that it was very difficult for women to be elected to the Association Chairperson's position, which was occupied by men in both associations. She attributed this to the fact that people, both men and women found it difficult to vote women into leadership positions, as they believed that men were more capable leaders when compared to women. Clearly therefore gender stereotypes had a role to play in marginalising women in leadership as opposed to similarly situated men on the farms. As Rhode and Kellerman have noted, this results in women being "grossly underrepresented at the top and overrepresented at the bottom of the most influential leadership hierarchies." (Rhode and Kellerman, 2006:1)

As a result, despite the apparently inclusive election processes, invisible power in the form of societal prejudice arising from gender stereotypes regarding women's leadership capabilities often militated against their election into higher positions of authority. The Deputy Chairperson of one of the farmers associations, the ZSCDA, Mr C believed that women on the sugarcane farms did not have the requisite education and skills to run an association that required sophisticated understanding of the sugarcane industry and high level negotiations with government and professionals at Hippo Valley Estates and the milling company. A senior army officer before retiring to take up farming on a full time basis, Mr C said:

Whilst people may campaign for positions in the Farmers' Association leadership, the reality is that the farmers simply look at capability and vote for people that they believe can represent them and articulate their issues. Remember that some of the women who got farms here were communal areas peasants before coming here. Can such a person lead the sugarcane farmers and understand the attendant issues? They can't because their level of education is very limited and it translates to low leadership qualities as well. The capable female leaders are the new generation of women yet the women who got farms here are older women who do not have such skills. The issues relating to sugarcane farming and the general ownership issues in this area are complicated and require sophisticated people to deal with them.²¹⁹

²¹⁸ Interviewed on 6 February 2012 at farm 54 and Musisinyani (Hippo Valley) respectively

²¹⁹ Interview with Mr. C on 10 February 2012 in Masvingo Town

My assessment however was that there were many educated women with the requisite leadership skills to take up leadership positions in the farmers' associations. Some of my respondents had previously stood for election but had lost to men. These included Mrs. M1, a businesswoman, Mrs. C, a former nurse and Mrs. M3, who was a former Member of Parliament, a Deputy Minister and had been appointed to the position of Provincial Minister of State for Masvingo Province at the time of concluding my field research. Yet the male leadership as exemplified by Mr C chose to see the incapability of these women in order to justify their own occupation of leadership positions. The profiles of some of the women given above clearly show that some of them were highly educated whilst at least one had held high-level government positions over time. With such qualities then, the argument that the women were incapable of leading a farmers' association could not hold.

It was clear that occupying such positions brought advantages for the occupiers, including the few women who managed to have these positions. The occupation of such positions provided relationship-building opportunities with influential decision makers and institutions at various levels as they carried out their duties as farmers' representatives. Such relationships often came in handy when one required services on their own farms outside the business of the association.

Mrs. M2 said:

I am an executive committee member in our association and an Area Chairperson for Hippo Valley West...My role as an Area Chairperson is to ensure that farmers' needs are met so that they are successful in their farming. Sometimes some of the members in a group that uses a particular engine [for pumping irrigation water to the fields] do not make their contributions for electricity or water resulting in the electricity or water being disconnected. In such instances, as the chairperson of this area, I am obliged to visit the Zimbabwe Electricity Supply Authority (ZESA) or the Zimbabwe National Water Authority (ZINWA) and negotiate with them on behalf of the farmers so that they reconnect the water or electricity, otherwise the farmers' crops will be affected...I therefore work very closely with the service providers. It was because of the relationship that I established with ZINWA whilst representing the Hippo Valley West farmers that it was easy for me to get irrigation water connected to my farm when I made an application for a water connection.²²⁰

²²⁰ Interview with Mrs. M8 on 6 February 2012 in Musisinyani area (Hippo Valley)

Mrs. M2 therefore used her position as an area chairperson to build relationships and networks with key institutions and service providers in Chiredzi whilst carrying out her duties as a farmers' representative and was able to exploit those relationships for her own benefit when the need arose. The old adage "its not what you know but whom you know" proved correct in her case as she was able to get irrigation water quickly enough and put her land under irrigation. When she settled on the farm, her plot had no irrigation and she was relying on dry land farming which impacted on her yields. Research has also shown that business development and success is highly dependant on networks and relationships with relevant individuals and institutions (Cruickshank and Rolland, 2006:64). Using the network approach to entrepreneurship, researchers have shown that business people require ideas and resources from outside their environment to start up and succeed in their businesses (Abou-Moghli and Al-Kasasbeh, 2012:1).

Mrs. M2 was able to utilise networks that she built as a farm leader at a lower level compared to the Farmers' Association. It therefore means that involving women in the higher-level farm institutions can provide them with even greater benefits, as they are also able to interact and network with people in higher positions who have influence and capacity to assist. The exclusion of women in these institutions has the opposite effect on their success as farmers, especially in the sugarcane farms, which are run purely as business enterprises. At the same time the men's high level of involvement in these institutions increases their ability to use these positions and attendant networks to grow their businesses leading to self-fulfilling evaluations by society of women as failures without recognizing the obstacles they face and the advantages that men acquire as a result.

Overall however, women in the A2 farms were no better positioned when compared to women in A1 farms when it came to leadership positions. The same stereotypes that women settlers

faced applied in both A1 and A2 allocations. Women were viewed as generally incapable in both instances and where they managed to take up leadership positions in the Farmers' Associations or Committees of 7, they were given peripheral positions, limited recognition and treated as a necessary inconvenience by both men and other women settlers. The general default approach of allocating women only the positions that were a requirement from government such as those of "gender representative" and very little more was an indication of the reluctance to embrace women in the farm level leadership positions. Beyond the government-required representation, if women got other positions, they were support roles such as secretary or treasurer and in my research area, never the chairperson's position. The secretary's position was given mainly because taking minutes and "typing" them afterwards was seen as a woman's job, whilst the Treasurer's position was given to women because women were believed to be trustworthy and therefore unlikely to steal the associations' money.²²¹

5.11 The role of the Institution of Traditional Leaders (Chiefs, the Headmen and the Village Heads on the New Farms)

As was shown in Chapter 4 of this research, the institution of traditional leadership has over the years changed and morphed in substance, structure, role, meaning and how it is perceived by different people and institutions. At various stages in the history of Zimbabwe, efforts have been made to do away with this institution or at least to whittle down their powers. The reality however is that traditional leaders have always managed to emerge out of any efforts to suppress the institution with remarkable influence and capacity to control the social, economic and political developments around them and of the people that fall under their jurisdictions²²². Even with changing legal fundamentals, the reality with regards to the powers and roles of traditional

²²¹ This was the view expressed by Mrs. M8 on 6 February 2012 during an interview in Musisinyani area, Hippo Valley

²²² For example, consecutive legislative reforms in post-independence Zimbabwe grappled with the issue of the powers and authority of traditional leaders, initially focussed on whittling down these powers and ultimately seeking to give back the traditional leaders their authority. The laws included the Chiefs and Headmen Act of 1982, Chapter 29:01, the Traditional Leaders Act of 1998, Chapter 29:17 and the Communal Lands Act of 1982, Chapter 20:04 and the attendant amendments.

leaders is not always informed by the provisions of the law but by other factors including the prevailing political imperatives at any given time. Scoones et al for example have noted that:

While formal legal systems have changed, the *de facto* situation is that “traditional” or “customary” systems of land allocation, universally overseen by men as headman or chiefs, favours the allocation of land to men” as heads of families. (Scoones et al, 2010:55).

The above viewpoint was inherited from the colonial period but continues to be a reality for many women. The conclusion reached by Scoones et al above was similarly observed by Ik Dahl et al (2005) when she noted in relation to communal land that:

With some individual variation, land is allocated to the head of the household. Neither married nor single women are seen as heads of households. In the event of divorce or death, women are expected to leave the property. Depending on the attitude of the local chief, some divorcees are able to negotiate their position. (Ik Dahl, et al, 2005:72-73)

These findings show that the practice with regards to allocation of land and the patriarchal view of traditional leaders in Zimbabwe does not recognise the changing nature of the “head of the family” in contemporary Zimbabwe just like in many other societies. Yet women are increasingly taking on the “head of family” role and attendant responsibilities whether they are married, single, divorced or widowed thereby justifying allocation of land to women in their own right. In her report on single headed households O’Laughlin (1997:5) notes the existence of *de jure* and *de facto* women heads of household in Southern Africa depending on whether women were heads of households in their own right or were forced by circumstances such as migrant labour patterns to be heads of households. The migrant labour phenomenon has increased in Zimbabwe in the years starting from 2000 as the economic situation deteriorated forcing many people both men and women to migrate in search of better economic fortunes within the SADC region and beyond. This period also coincided with the FTLRP, meaning that a dogmatic approach to men as heads of households for purposes of land allocation would leave many women heads of households out of the land allocation equation. The HIV/AIDS pandemic has also led to women increasingly assuming heads of household roles as widows following the deaths of their husbands (Makura-Paradza, 2010:81).

The “male head of household” concept was applied in the 1980s resettlement programme where research showed that 98% of married beneficiaries had the land permits registered in the name of the husband (Peters and Peters, 1998:193). Although the 1980s resettlement programme recognised the eligibility of widowed and single women for the purposes of access to resettlement land and obtaining permits in their own names, access by married women remained problematic (Ik Dahl et al 2005:74). However even then, with a policy position that seemed to perpetuate the customary “male head of household” in families with a husband and a wife, traditional leaders were not given any prominent roles in the resettlement areas of the 1980s.

With the increasing quest for power and influence by traditional leaders in the fast track resettlement areas, questions have to be asked about whether the demands of the traditional leaders in these new areas are possible and realistic. For example, can the communal areas mode of life be replicated in the fast track resettlement areas without upsetting the nature of these settlements and the somewhat liberal attitude towards women (in particular single and widowed) and their roles in these areas? Is it possible to have traditional authority over individualised access regimes to land in the new resettlement farms? Do these areas in any way resemble the traditional community organizational structure that made it possible for traditional leaders to preside over the people and the natural resources in communal areas? Or, if the traditional leaders are to preside over the resettlement areas and their inhabitants, can they do so without any transformation of the institution to suit the circumstances prevailing on the new farms?

This thesis has established that traditional leaders and in particular chiefs are keen to establish their authority and control over the new resettlement areas. However their control, authority and leadership seems to be a forced arrangement with the traditional leaders drawing the

authority more from themselves and from the government as opposed to the people²²³ or even the law. In addition, their role in resettlement land remains problematic at law, with the Constitution of 2013 confining their land responsibilities to communal land.²²⁴ As a result, the authority of the chiefs is at best ambivalent and at most forced on the settlers. Realising the potential of the Constitution to make or break their authority over land, traditional leaders vowed not to support the Constitution when a draft was released in 2012, which did not fully provide for their roles.²²⁵ The tussles over the land by the various traditional leaders show an eagerness that goes beyond mere claim to ancestral land but a desire for power, control and authority. Chief Chikwanda (Gutu District) was claiming authority over an area that includes my two research farms of Chidza and Lothian whilst the Triangle and the Hippo Valley Sugar Estates allocations had a number of chiefs claiming authority over the area. These included Chief Sengwe (Chiredzi District), Chief Tshovane (Chiredzi District) and Chief Bota (Zaka District). The same state of affairs also prevailed in the Nuanetsi Ranch. Ms FS,²²⁶ an Agricultural Extension Officer in the Nuanetsi Ranch had this to say:

²²³ Traditional leaders can only have jurisdiction over resettlement areas if such resettlement area is declared by the Minister of Local Government to be under the jurisdiction of a particular traditional leader. However, in an interview with the President of the Chiefs' Council in Harare, on the 28th of February 2014, he explained that despite the widespread perceptions that Government was helping traditional leaders in stamping their authority on the new farmers, this was a recent development. He said that at the beginning of the FTLRP, the Government side-lined traditional leaders in favour of war veterans and other institutions. As such the resistance being faced by traditional leaders in enforcing authority on the new farmers was caused by their late entry into the farms after certain practices and institutions had already been entrenched. He indicated that even by the time of the creation of the 2013 constitution, there was reluctance to give traditional leaders power over resettlement land leading to traditional leaders publicly rejecting the draft constitution in July 2012 as it excluded all areas outside of communal areas from the jurisdiction of traditional leaders.

²²⁴ Constitution of Zimbabwe, 2013 (Amendment Number 20), Section 282 (1) provides for the roles of traditional leaders and states amongst others that they have a role "in accordance with an Act of Parliament, to administer Communal Land and to protect the environment" (Section 282 (1) (d))

²²⁵ In a report titled "Chiefs to Push for a No Vote" the Herald of 3 August 2012, reported that Chiefs were not happy with the draft constitution, which did not give chiefs jurisdiction over land. Chief Musarurwa, of Mashonaland East was quoted as saying jurisdiction over land was supposed to be a preserve for traditional leaders and that "What they have done is taking us back to the land apportionment era where the colonialists demarcated land and gave chiefs authority over communal land only. People spoke during the outreach that they wanted chiefs to have authority over land. Even COPAC did not tamper with that but the management committee removed that".

Chief Chisunga of Mashonaland Central was quoted as saying "We expect the principals to restore what was said by the people during the outreach. We expect the draft constitution to have what the people said especially on jurisdiction over land. Everyone knows that the land both communal and commercial are under chiefs but this was taken away from us."

²²⁶ Interview held on 7 September 2010

This area originally belonged to the Njajena people before it was taken by the white colonialists. However, at the moment many chiefs are laying claim over the area. These include Chiefs Nyajena (Masvingo District), Tshovane (Chiredzi District) and Shindi (Chivi District). Some of the settlers therefore forum shop for the chief that they want to deal with depending on where they think they will receive favourable treatment. But from what I hear the rightful chief for this area should be chief Nyajena of the Moyo totem.

The traditional leaders themselves were therefore unclear (or pretended to be unclear in order to push their luck) about their areas of jurisdiction on the new farms, thereby placing a real challenge to their basis of leadership, which is the need to preside over clan land and its inhabitants. These challenges exacerbated the contested nature of their leadership on the new farms as the new settlers argued that traditional leaders could not preside over land that did not originally belong to their ancestors.

However, control over fast track land had financial advantages for the chiefs hence their fight over the land as they were often paid by the new settlers for attending meetings on the farms or for allocating leadership positions on the farms such as village headship.²²⁷ Bearing in mind that the chief and the village head in Zimbabwe are normally male, this arrangement put the men on a leadership pedestal on the farms when compared to women. The ancestors on the other hand are also represented through lineage by the senior males of that particular lineage. As such women had no place in this leadership hierarchy and were therefore not expected to make decisions or participate in decision making processes as the war veterans and chiefs partnered to invoke the spirits of the ancestors to justify the land invasions, leadership on the farms and their grip on power.

²²⁷ As shown later in this chapter, the chiefs required at least one head of cattle from potential village heads. Failure to avail the head of cattle meant that one was automatically disqualified from obtaining village headship. The new resettlement areas were therefore a source of wealth for the traditional leaders under whose “jurisdiction” the farms fell.

The exclusion of women in leadership based on ancestry in Zimbabwe relates to both women born within the lineage and those married into the lineage. Women married into the lineage are in fact totally excluded from participating in any spiritual or religious ceremonies of their married families because they are regarded as “*vatogwa*” (aliens) and can therefore not communicate with the spirits of their husband’s families, which can only communicate with and protect those that they are related to. Schmidt (1992:17) confirms that although a woman stayed and laboured with her husband’s kin, she remained an outsider amongst his relatives. Her husband’s ancestral spirits would not protect her even though she was staying amongst her husband’s relatives but it was expected that her own ancestors would instead be responsible for her protection and wellbeing. However, the invocation of these arguments should not have been a justification for control by the traditional leaders as the new farmers originated from diverse locations throughout the country and in most cases with no identifiable ancestral link to the land that they were allocated.

5.12 The New Farmers’ Views of the Role of Traditional Leaders on the Farms

Both male and female new farmers were generally of the view that traditional leaders had no role to play on the new farms because of a variety of reasons. These included what they regarded as a changing (what they viewed as modern) settlement system and the fact that they were not related as settlers and neither were they related to the chief. As a result, the chief could not be their traditional leader. Their view was that a traditional leader should preside over a clan that is composed of people the majority of whom are not only related to each other but are also related to the chief herself/himself. The following three excerpts from interviews highlight these views.

- i. At Lothian Farm, a war veteran beneficiary had this to say about the traditional leaders and the customs that they were imposing on the new farmers:

The traditional leadership structures that are being imposed on us are interfering with our businesses because that is what I call my farming. It's a business and I run it along business concepts. The traditional leaders are ordering people not to work on *Chisi*²²⁸ or if a member of the chief's family dies he declares a mourning period (*Mahakurimwi*).²²⁹ What *Chisi* and which *Chisi* do we observe when we all come from different areas with different days for *Chisi*. That is why there is no *Chisi* in urban areas because people there come from different communal areas. The traditional leaders must understand that the people on the farms are bound by different customary systems and therefore they cannot impose one system on us. In addition, while we are being forced to observe *Chisi* on our farms, the shops at the local business centre will be open and buses will be plying their routes as normal. That means our farming business is not taken seriously and other businesses will be making money whilst ours will be "closed". This impacts negatively on our productivity.²³⁰

- ii. In Nuanetsi Ranch an interviewee Mrs. GJ when asked about her views on the role of traditional leaders on the farms had this to say:²³¹

The Chief was recently assaulted at the shops after he demanded the payment of a goat that he had previously imposed as a fine after a trial at his court. The person had not paid the fine and when the chief demanded the goat after meeting him at the shops, he was then assaulted. People no longer have respect for chiefs.

- iii. On one of the visits to Mrs. JC's plot in the Hippo Valley Estates, I asked her about the developments that had taken place on the farm since my last visit the previous year. Amongst other things she said:

Chief Tshovane is also increasingly getting involved in our affairs here in the sugarcane plots. It never used to be like that. He now attends our farmers' association meetings. I do not know if it is a good thing or a bad thing.²³²

Murisa T (2009:292) provides a view from his research areas (Goromonzi and Zvimba Districts in Mashonaland East and West respectively), which shows that the State had created the

²²⁸ *Chisi* is a day that is set aside every week as a traditional "holiday" where communal area inhabitants are not allowed to carry out any economic activities, in particular farming related activities. The people are still allowed to carry out other activities such as fetching firewood. If a person is caught carrying out prohibited activities on *Chisi*, the chief or the village head fines them. The *Chisi* day is different from communal area to communal areas.

²²⁹ *Mahakurimwi*, literally meaning "no farming" is a mourning period that is declared by the traditional leaders following a death in their area. The area covered by and the number of days for the *Mahakurimwi* declaration depends on the social standing of the deceased. If the deceased was a member of the chieftainship family, the whole area under that particular chieftainship has to observe the *Mahakurimwi* and the period is longer. Where the deceased was an ordinary person, the *Mahakurimwi* is confined to his or her village and is normally for a day or two. Similarly if the deceased was a child the *Mahakurimwi* may only be observed on the day of burial.

²³⁰ Interview with Mr. FZ on 10 February 2012

²³¹ Interview with Mrs. GJ on 25 April 2011

²³² Interview held with Mrs. JC on 6 February 2012

impression that the role of traditional leaders in the new resettlement areas was similar to their role in the communal areas. This resulted in land beneficiaries accepting these institutions as part of local administration in the new resettlement areas and not questioning the manner of appointment or the manner in which they exercised their authority in land administration. The opposite is however true for my research area, where the new farmers were increasingly critical of the role and relevance of traditional leadership structures in the new resettlement areas. The first statement highlights the fact that the traditional leader (chief) was viewed as largely irrelevant and therefore an unwelcome distraction in the work and lives of the new settlers. The major challenge was that the chief wanted to maintain traditional approaches, beliefs and customs to managing the resettlement land and its inhabitants, yet these no longer resonated with the reality. In the second instance, the chief had lost his authority and respect to the extent that an inhabitant assaulted him. In traditional Zimbabwean society, it was taboo to assault a chief and such actions would lead to banishment from the chief's area. But what authority could a chief use to banish an inhabitant from a resettlement area given that it was not the chief who had resettled that person in the first place? Could the chief have claimed resettlement land as "his area"? The report from Mrs. GJ showed that after being assaulted, the chief in embarrassment rode his bicycle away and left the shopping centre.

In the third instance, the new farmers struggled to find the relevance of the Chief in the farmers' association meeting because the meetings were for people who had plots on that particular farm and the chief was not one of the beneficiaries at that point in time.²³³ He was therefore insisting on being part of an institution that did not require his involvement. The Farmers' Association leadership had specific titles and responsibilities yet no clear responsibility could be assigned to the chief in terms of the farmers' association institution.

²³³ In September 2012, Chief Tshovani and his subjects later invaded one of the farmhouses in Hippo Valley Estates demanding that it should be allocated to the Chief. (See The Herald 6 September 2012 "Tshovani Villagers Besiege Farm House")

The issue of traditional leaders' claims over land has become topical in Zimbabwe with reports that chiefs are claiming control even over urban areas, including Harare.²³⁴ This is despite a clear constitutional position confining traditional leaders to communal land²³⁵ except in defined circumstances when Government designates resettlement land as being under the authority of a defined traditional leader. There are political underpinnings to this development. The major one relates to the role that traditional leaders have played in keeping the ZANU PF Government in power and their support for the land reform programme on the basis that it is a programme to reclaim ancestral land and empower indigenous Zimbabweans. As such traditional leaders have become increasingly powerful, receive a sympathetic ear from Government and often make claims and demands over land and other resources such as minerals, increased government allowances, motor vehicles and even electrification of their homes²³⁶ outside of wider community related developmental initiatives. It is against this background that traditional leaders are making claims over land that was previously not under their jurisdiction such as urban land and resettlement land. Often when such claims are made, the Government is left in a difficult situation, as it has to balance the traditional leaders' demands between political expediency and the legal, economic and social realities. As will be shown herein, a mere claim to land by the traditional leaders on the basis that the land previously belonged to their ancestors does not automatically mean that the land can be under their jurisdictions. Considerations in such instances include counter-claims by neighbouring chiefs, the legal processes that are required to place such land under the jurisdiction of the chief concerned and the appropriateness in terms of prevailing socio-economic activities of placing such land under the jurisdiction of

²³⁴ The Daily News of 5 November 2013 carried a story titled "Chief lays claim to Harare CBD" in which story it was reported that Chief Chinamhora claimed that his territory included the Africa Unity Square in Harare's CBD stretching to the botanical gardens just after President Mugabe's official residence. On 3 February 2014, the Daily News carried another story titled "Chief Zvimba, Old Mutual in Land Wrangle". In that story it was reported that Chief Zvimba was laying claim to 6,4 Hectares of Land in Harare City's Budiro High Density Residential Suburb.

²³⁵ Section 282 (1) (d) of Constitution of Zimbabwe, 2013 (Amendment Number 20)

²³⁶ For example see the story titled "Chiefs hold ZANU PF to ransom" in the Financial Gazette of 7 August 2014

traditional leadership. Regarding the legal requirements, Section 29 (1) (a) of the Traditional Leaders' Act: Chapter 29:17 states that:

After consultation with the rural district council and the chief of the area concerned, the Minister may, by notice in the Gazette, declare that any area of resettlement land;
(a) shall fall under the authority of such chief as he may specify in the notice.

As such a mere claim by a traditional leader over resettlement land does not mean that such land can legally be under such a traditional leader's jurisdiction without the requisite gazetting and compliance with the legislative processes. However the average inhabitants are not aware of this and this is how the chiefs, knowing the limits at law, are able to impose their will on the people.

The fact that government has not stopped traditional leaders from laying claim to resettlement land is therefore more for political considerations than due to recognition of their claims. This was emphasized during an interview with a district lands officer in Masvingo. He indicated that:

Traditional leaders have no role to play in the new farms. As far as we are concerned as government, the Traditional Leaders' Act has not changed and therefore traditional leaders have no jurisdiction over the new farms. The new farms are under the Ministry of Lands and Rural Resettlement and the DA's office. I know that the chiefs have been campaigning to be given power over the new farms, even the A2 farms but what we know is that there is a different kind of authority there. Even the old resettlement areas like Bhuka²³⁷ do not have chiefs. Some of the chiefs here in Masvingo have even come to us so that we could show them their new boundaries incorporating the new resettlement areas but we have refused. They even have disputes amongst themselves as chiefs but we have said as Government we will not get involved. However we allow them to behave as if they have some authority because we can't antagonise them now before the elections. After the elections, we will set the record straight unless the relevant legislation is changed. There are Committees of Seven on the farms and these are the ones that deal with farm specific issues and not village heads. Usually it's just that the person who chairs the Committee of Seven often ends up declaring themselves as village head and sometimes the chiefs come up with their own nominees for the village head and headperson and it creates problems. The bottom line is that as the Ministry of Lands and Rural Resettlement, we do not recognise these traditional structures but the Committees of Seven. The traditional leaders are just imposing themselves.²³⁸

²³⁷ Bhuka is a resettlement area created in the early 1980s and situated about 20 Kilometres from Masvingo Town along the Masvingo-Beitbridge Road

²³⁸ Interview with DM on 10 February 2012 in Masvingo Town

This assertion corresponds with the view of the President of the Chiefs' Council who said that Government was reluctant to give traditional leaders any authority over resettlement land.²³⁹ The complaints by the traditional leaders, including their rejection of the draft Constitution which did not recognise the traditional leaders' role in resettlement areas led to a shift in Government's approach, especially as the 2013 elections approached, leading to some concessions with regards to their role in land management in resettlement areas. By 2014, traditional leaders were making concerted inroads into the new resettlement areas, appointing village heads on the farms in order to consolidate their power.²⁴⁰ An interesting finding at this point was that traditional leaders required people to give them one head of cattle in order to be appointed as village heads. All the village heads that I interviewed confirmed that they had to pay "a token of appreciation" to the Chiefs in order to be conferred with village headship.²⁴¹ It meant that only those who had cattle could qualify to be appointed as village heads and those without such means could not. This impacted mainly on married female aspirants whose property was viewed as their husbands' and therefore amounting to indirect discrimination for women. One female village head in Farm 54 of Hippo Valley Estates who was a widow confirmed that she had paid the herd of cattle to Chief Tshovani. Another woman, who had been approached by the Chief to take up the village headship however said:

²³⁹ Interview with the President of the Council of Chiefs on 28 February 2014

²⁴⁰ During the 28th February 2014 interview, the President of the Council of Chiefs, Chief Fortune Charumbira conceded that different traditional leaders were appointing village heads on the same farms due to contestations over the areas of influence and in some instances, the Ministry of Local Government was not helping the situation as they gave traditional leaders authority over certain areas without consulting the local people or following the law. He indicated that if Section 29 of the Traditional Leaders Act, which requires the gazetting of resettlement land first before a traditional leader could have authority over such land were followed, all the confusion on the farms would be removed.

²⁴¹ This in my view however, was a clear case of corruption and also went against the provisions of Section 281 of the Constitution, which provides for principles that traditional leaders must abide by in executing their duties. One principle provides that traditional leaders must act in accordance with the Constitution and laws of Zimbabwe. The requirement to pay the Chief in order for one to be made a village head is not provided for in any law. Section 11 of the Traditional Leaders Act: Chapter 29:17 provides for the appointment of village heads and makes no reference to payment to the Chief as a prerequisite for appointment. The practice also led to discrimination against those who could not afford to pay/give the head of cattle to the Chief, in particular women.

I was approached by the Chief but could not pay the one head of cattle because as a woman, I do not have a kraal even though some of the cattle in the kraal²⁴² are mine that I received as bride wealth for my daughters through *mombe yeumai*. My husband was away at the time I was called to accept the nomination by the Chief but I registered my husband as the village head instead because he is the one who owns the cattle and could therefore use the cattle to pay the chief. My husband has since taken up the village headship. I am an active community member and that is why the chief had chosen me but the need to make the payment was the stumbling block. I am still a member of the School Development Committee because at least I am not required to pay anything in order to hold that position and the community recognises my leadership abilities.²⁴³

All in all, three women were in three different situations on the issue of village headship as detailed in Table 5.1 below. The underlying factor was that single women were able to take up leadership positions and make decisions to pay the demanded head of cattle to the Chief without any obstacles. Married women however had to decline appointment to village head positions in deference to their husbands. The two married women that I spoke to were unhappy with this state of affairs but were of the view that they could not take up the positions ahead of their husbands. The issue of control of resources was also a factor in determining whether or not women could use the resources to acquire leadership positions.

Table 5.2: Women's Experiences with regards to village headship

Name	Location	Situation with regards to village headship
Mrs. M1	Farm 54 Hippo Valley Estates	She was a widow and had paid the required one herd of cattle to the Chief. She had the autonomy to make such a decision in the absence of a husband
Mrs. M4	Masimbiti Area, Nuanetsi Ranch	The Chief identified her for village headship due to her community activism. However she turned down the nomination in deference to her husband because in terms of customary law, all the cattle in the home belonged to the husband and she could therefore not pay the required one head of cattle to the chief unless the husband gave authority. However because the husband also had an interest in the position, he paid the herd of cattle and took the village head position instead.
Mrs. M5	Masimbiti Area	Her husband deserted her soon after they resettled on the farm in 2000. At the time of my first interview with her in September 2010, she indicated that she had no knowledge about the whereabouts of her husband. The husband was later located in a hospital in South Africa after he had been involved in a car accident and injured his spinal code, which left him paralysed ²⁴⁴ . Mrs. M5's son travelled to South Africa in 2012 and brought Mr M5 back home. When she was nominated for village headship, she declined the nomination in deference to her husband because she said she didn't want him to think that she was disrespecting him because of his disability. The husband was duly appointed the village head but Mrs. M5 was carrying out all the duties of the village head because the husband was bedridden.

²⁴² A kraal is a cattle pen. In Shona she said "*handina danga*" meaning that she did not have any cattle since all cattle in a home are presumed to be a man's.

²⁴³ Interview with Mrs. M4 on 10 March 2014

²⁴⁴ When I visited Mrs. M5 on 11 March 2014, I could find her at her home and had to follow her to the local shops where she had gone. Mr. M5 was however at home. I sat in the living room of their home and spoke with him whilst he lay in his bedroom. He then told me that he was bedridden due to the accident in South Africa, which left him paralysed.

The narratives above illustrate and reinforce the notion that women can only take up leadership positions in the absence of men and in particular husbands or with their consent. Secondly control of and access to resources has an implication in the institutionally intricate resettlement areas in determining access to leadership positions as chiefs require payment (or a bribe) in order to give a person a leadership position.

5.13 Conclusion: A New Paradigm for Women's Land Rights?

Can the apparent reluctance to recognise traditional leaders' authority in resettlement areas by both government and the new settlers help women in their claims to resettlement land in any way? Do the new institutions emerging on the farms provide better opportunities for women to engage with land issues and take up leadership positions? Researchers have often disagreed on the role of customary law, traditional leadership and customary land rights on women's right to access and control over land. Some have argued that customary law and in particular the common property regime that is promoted by customary law, as opposed to formalisation ensures that there is no individualisation of land and other common property resources. Such individualisation processes it has been argued, often leave women exposed as all available land is often concentrated in the hands of male individuals who can afford to engage with the formalisation process and have the resources to make payments if and when they are required. In reference to the Registered Land Act of Kenya, Kamari- Mbote (2005-9:8) notes that the registration process had the effect of excluding women from ownership of land as women only had user rights whilst the men had rights of allocation. In line with traditional and customary practices, when registration takes place, only the males in the family in the form of husbands or eldest sons end up with their names on the registration documents thereby excluding women. This often results in wives, sisters or other women in the family facing evictions by the registered males, a situation which was not prevalent in African traditional communities of old where female members of a family who were in need of land were always assured of acquiring land both in their natal and married families. Tsikata and Whitehead (2003:69) have

documented how gender specialists are divided on the role of customary and statutory law in protecting women's land rights. They argue that:

Gender specialists are divided. Some argue that a reformed and strengthened customary law is in women's interests, but the majority reject this and instead argue for women's land and property rights to be enshrined in statutory law.

Would women therefore benefit from a static customary law application, like the one being insisted on by the Chiefs in my research area in terms of accessing land? Would a reformed customary law and traditional leadership approach be more helpful instead or would State intervention and statutory provisions on women's access to land and interactions with resettlement land and related institutions be better? Just like in the observations made by Whitehead and Tsikata, there are mixed views about the role of customary law and traditional leaders in the new resettlement areas by various actors. The settlers in my research area were agreed that the traditional leadership institutions, their approaches and customary law were irrelevant and retrogressive. In terms of the role of traditional leaders in women's participation in the on-farm governance institutions, one of my respondents Mrs. GJ said:

The Chief came a few years ago and presided over the election of our village leaders. We have a village head, a village treasurer, a village police officer (messenger) and a committee member. The election of the leaders was basically a men's affair as they elected each other. The chief told us that a woman could not be elected to the position of village head but could be elected to any other position. However, still we ended up with men only in the Committee of Seven because eventually no woman was elected at all.²⁴⁵

The chief therefore presided over and insisted on a process that entrenched customary values that undermine women's participation in leadership institutions and political processes in the new resettlement areas. It was clear from the beginning in this case that women were regarded as not eligible for a traditional leadership position such as that of village head. Although the other elective positions were open for women to contest, these were lower level positions. In addition, the approach that had already been taken during the election of elevating men over women as the ones eligible for the position of village head in the Committee of Seven meant

²⁴⁵ Interview with Mrs. GJ on 25 April 2011

that the stage was already set for the exclusion of women in the process. The fact that the traditional leader and the men on the farm openly declared that the village head's position was not open to contestation by women shows a realisation by the men of the need for gender equality in filling the leadership positions, but also a deliberate decision to suppress the participation of women. This indicates that if traditional leadership as an institution is transferred without reformation from the rural areas to the new farm areas, the institution can play a negative role in the empowerment of women in these areas as leaders, community builders, community participants and in their ability to effectively utilise their land.

However, like the scenario described by Whitehead and Tsikata, there are activists who believe that traditional leaders and the institution of traditional leadership can play a positive role in empowering women on the new farms. These arguments are based on the realisation that the institution of traditional leadership has in many instances been transformed despite the provisions of statutes and the fixated interpretations that are given by some traditional leaders on the role of women in customary settings. In an interview with the Zimbabwe Women Lawyers' Association (ZWLA) Officers on 6 November 2013, they argued that traditional leaders are easier to work with in addressing the needs of women on the new farms because traditional leadership as an institution has been in existence for a long time. In addition, the ZWLA Officers also stated that traditional leaders have a clearer mandate compared to all the other institutions that are mushrooming on the new farms. They argued that the proliferation of new and often competing institutions such as the Committees of Seven was a challenge because they did not have a set mandate or guidelines to follow when undertaking processes such as dispute resolution. As such outcomes of such dispute resolution efforts were diverse, unpredictable and based on very fluid and highly discretionary decision making processes. Often the Committees of Seven were influenced by relational underpinnings on the farms resulting in a decision making process that was highly compromised by conflict of interest and

the need to preserve certain relationships on the farms. As such, according to ZWLA, the solution lies not in doing away with the traditional leadership institutions in the new resettlement areas but in recasting and modernising their mandates. This is a view that is shared by authors such as Zwart who argues in support of the receptor approach that:

If social institutions are inadequate...they should be reformed rather than replaced. In other words, in order to bring about social change, legislation should add to, rather than replace the existing customs (Zwart, 2012:561-562)

In particular the process must involve awareness raising among the traditional leaders on women's rights, changing land access and utilisation concepts, the role of women in food production and food security, in the national economy and their role as family heads, in raising children and in contributing towards the family and national economy amongst other things.

The reservation expressed by the new farmers regarding the role of traditional leaders in the new resettlement areas can therefore be addressed by giving particular attention to the provisions of the Constitution of Zimbabwe. The Constitution already provides considerable direction in addressing the institution of traditional leadership to ensure that it meets the demands of contemporary Zimbabwean society with regards to gender equality and women's rights, land access and management and leadership in society amongst other issues. The constitutional provision for traditional leaders to treat all people within their areas fairly and equally²⁴⁶ is significant. This coupled with the removal of the previous constitutional provisions that allowed for discrimination on the grounds of customary or personal law in the 2013 Constitution²⁴⁷ means that the State, traditional leaders and other State institutions in Zimbabwe

²⁴⁶ Article 181 (c)

²⁴⁷ Section 56 (the non-discrimination clause) and Section 80 (3) which states that "All laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of the infringement" are also important in entrenching the rights of women and in placing a duty on traditional leaders to safeguard, protect and promote the rights of women.

can no longer afford to be indifferent on the issue of discrimination against women, be it at customary law or general law. Nyamu- Musembi argues compellingly that it is not the existence of legal pluralism or multiple systems of law *per se* that causes problems, but the exemption of such systems to legal or constitutional scrutiny as provided by the “exemption clauses” in various sub-Saharan Constitutions. This she says is a problem because:

Through the constitutional exemption of personal law from scrutiny, States have availed themselves of a ready excuse for doing nothing to redress the discriminatory impacts of the application of religious and customary laws. (Nyamu-Musembi, 2013: 200).

I agree with Nyamu-Musembi and the view taken by ZWLA as detailed above. Traditional leaders and traditional leadership institutions, customary laws and practices or legal pluralism are not necessarily the impediment to women’s enjoyment of their rights in accessing land under Zimbabwe’s land reform programme. Such systems can actually be beneficial to women. The challenge lies in ensuring that the systems are subject to legal and constitutional scrutiny, are modernized and in sync with contemporary Zimbabwean society and attendant developments. In the same vein, other institutions that have emerged on the farms such as the Committee of Seven and the Farmers’ Association must also be subject to the laws and Constitution of the country with regards to the manner in which women are treated in those institutions.

Chapter 6: Gender, Power and Decision-Making Processes under the FTLRP

6.1 Introduction

This Chapter seeks to analyse the power relations, power dynamics and the decision-making processes that women engaged with at various stages of the FTLRP. The underlying assumption in this chapter is that the dominant power relations and decision making processes that were at play at various levels during the FTLRP undermined women's chances and capacities to effectively participate in and benefit from the FTLRP. The major research question that the chapter seeks to answer is *“Did the dominant power relations and decision making processes that were at play at various levels during the FTLRP undermine women's chances and capacities to effectively participate in and benefit from the FTLR?”*

The specific questions that the chapter seeks to answer are:

- i. What levels and forms of power did women engage and negotiate with under the FTLRP?*
- ii. Was there any effort by any actors to give women the capacity to negotiate with different forms of power at the various levels they interacted with during the FTLRP?*
- iii. Were women successful in their engagements with the different typologies of power and at different levels for land acquisition under the FTLRP?*
- iv. Did the need to engage with the different typologies and levels of power impact on different women differently?*
- v. Was power used as a tool to deny women their right to access land on the basis of equality with men under the FTLRP?*

The above assumption and attendant research questions are held with a conscious realisation that different women had different capacities and were differently situated, resulting in differentiated outcomes with regards to benefits derived from the FTLRP. As such in many

instances there was no *de jure* discrimination between women and women and between men and women in terms of the normative rules, but the fact that they were differently situated in the world in which the rules operated is what resulted in discrimination for many women in reality (Farha, 2008: 561). Ikdahl aptly captures the dynamics of unequal power relations between men and women by stating that legislation addressing the issue of land and property is often gender neutral but in reality it interacts with gendered local norms (Ikdahl, 2013: 169). This resonates with the position taken by Dahl, (1987:51) that Women's Law must be cognisant of the relationship between "law in books" and "law in action". This means that male cultural hegemony has to be overcome, in particular because it is often accepted as normal, even by those that are subordinated by it (Dahl, 1987:3).

Learning from the above therefore, there is need to understand the inequality and discrimination fundamentals that are usually at play in land reform, redistribution and access processes to ensure that women are not lost through the nets in such processes. Levels of access to resources, nature of property rights and the quality of property that is accessible to men and women are important indicators in understanding the implications of gender inequality and discrimination as well as unbalanced power relations on women's property rights. As highlighted by Hirschon;

Much feminist writing is in essence an attempt to grapple with issues of power in the relative positions of women and men. Whether expressed in terms of patriarchy, sexual asymmetry, female subordination or male dominance, questions regarding power lie at the heart of many discussions of gender relations. The issues related to power involve the ability to act autonomously, to command compliance from others or to control their actions. In this respect 'property', however it is approached and whatever its constituents, is a crucial indicator of the balance of power between women and men. (Hirschon, 1984:1).

The above observation by Hirschon needs to be juxtaposed with the position of women in Zimbabwe under the FTLRP, in particular when analysing issues of autonomy, command and compliance that women had to wrestle with in respect of their relationships with men as individuals and men as groups in families, in communities and in decision-making structures

that existed in male dominated national and local land related institutions. Power relations and decision-making processes are critical facets of any social, political and economic transformative process as the FTLRP was. This is because such a process of transformation must accomplish the “eradication of gender biases in access to and control over economic resources, and in the decision-making processes that shape policies” (Opendemocracy.net, 4), including those relating to land and the economy. Power, whether ideological, political, economic or social has the effect of giving some people greater authority over definitions and interpretations compared to others (Agarwal, 1997:21). In the case of women and access to resources, such definitions and interpretations can have the effect of sidelining women from the processes that enable access to resources.

The focus of the chapter will be on decision-making and power relations at the national, provincial, local community and family level as well as the international level. It is recognised that international power dynamics and relationships in particular between Zimbabwe as a nation state and the international community had a bearing on the manner in which the FTLRP was implemented. This in turn had implications for women at the local level. It is therefore necessary to engage with and understand the decision-making and power relations at the various levels and during the different stages of the land reform programme because high-level decision-making processes and actors during the FTLRP had an implication on the decisions that were taken by women at a very local level. This was in relation to decisions that were taken by women at a personal level, within the family or at local community level in an effort to claim their land rights. In making this analysis, one has to be conscious that rights claiming can be a highly political process as opposed to a legalistic or technical one (Andreassen and Crawford, 2013: 5). It is important to also understand that decisions that are taken at a very high level, especially those that are politically inclined can be reached without regard to the technical or legal imperatives that must normally guide decision-making. However, although such decisions

are taken at the highest level, they normally affect citizens at the lowest rungs of the social, political and economic strata. Women are often negatively affected by such decisions because of their concentration at the lowest of these rungs. This chapter will also seek to assess international high level decision making processes and how women whether as individuals or groups engaged with power at the international level. Such engagement with high-level power will be analysed for implications on women on the farms and in the villages as they sought to engage with the land reform programme and the attendant power dynamics at the local and family levels.

6.2 Formal Equality, Discriminatory Reality

The FTLRP at the political level gave the impression that every black Zimbabwean who was in need of land was eligible to access land as long as they wanted the land (Machingura, 2012:267). Theoretically therefore, both men and women were supposed to benefit equally from the land reform programme but in reality women were side lined (Stewart and Damiso, 2013:468). With slogans such as “*ivhu kuvanhu*”²⁴⁸ (land to the people), dominating the discourse at the political level, the impression at face value was that this was a programme for everyone and that land would be easy to get. By 2005, the Constitution of Zimbabwe had been amended to provide that women must be treated on the basis of equality with men in relation to access to resettlement land. Ostensibly, therefore, at this stage in the land reform process, there was no discrimination in accessing land as long as one was an indigenous Zimbabwean. In reality however, both gender and racial discrimination existed and still exist²⁴⁹ in Zimbabwe’s approach to access to agricultural land, sometimes covertly and in other instances more overtly. In terms of gender related access to land, the gender-neutral assertions have been

²⁴⁸ Maposa R. S (2012:70) acknowledges that “First and foremost, the notions of *ivhu kuvanhu*, that is, land to the landless, has always been a sensational electoral cry to contending political stakeholders in the Zimbabwean context”

²⁴⁹ For example, the Herald of 15 October 2013 reported that Movement for Democratic Change (MDC) officials who approached the Government to be allocated land were advised that all available land had been exhausted but that if they could identify land that was still occupied by whites and inform the government, then they could be considered for allocation on such farms

and continue to be met with gendered realities and power relations that make it difficult for women to compete for land on the basis of equality with men. In fact, in contemporary societies, such a seemingly inclusive approach is what allows discrimination to fester as the discrimination is not very blatant but is often obscured by the non-discriminatory language of laws, policies and practice (Farha, 2008:561). The effect is gender-neutral laws that result in *de facto* discrimination as the law fails to correspond to women's reality and needs (Dahl-, 1987:12).

As Andreassen and Crawford note;

Rights are often denied in the first place by structural inequalities and dominant power relations, and that realising rights is thus dependent on addressing and challenging those same structural inequalities and power relations in ways that shift the distribution of power in society in favour of relatively poor and marginalised groups. (Andreassen and Crawford, 2013: 5).

The above views need to be analysed in view of the experiences of the majority of women under the FTLRP in order to assess and understand the inequalities that existed between women and men in various positions of authority and relationships from the family to the national level. This state of affairs also has to be viewed from the understanding that the claims for land by women were made in a plural legal environment with various norms, laws, actors and structures displaying often-overlapping power and decision-making authority as shown in Chapter 5. The plural nature of the interactions had both positive and negative outcomes for women, even though the negatives outweighed the positives as will be shown in this chapter.

6.3 Conceptualising Power and the FTLRP

Power is a term that is often used and applied in different social, political and economic contexts, relationships and engagements. Power can be defined as “the capacity or ability to direct or influence the behaviour of others or the course of events”²⁵⁰. Power and the exercise thereof can be both negative and positive in application and outcome. Negative power is seen as coercive and constraining and is often exercised by those in positions of authority such as

²⁵⁰ Definition from <http://www.oxforddictionaries.com/definition/english/power>

the State over other less powerful members of the community. Positive power on the other hand emphasises the capacity and capabilities of different individuals and actors. Such capacity is often given to the less privileged, less influential and marginalised in society through processes of empowerment (Andreassen and Crawford, 2013: 5, 6). As such negative power implies keeping those in subordinate positions in check by constantly reminding them about who is in control. Positive power on the other hand entails ensuring that the marginalised and vulnerable are able to overcome their marginalization and vulnerability and make an impact for themselves and their communities. This is realized through exercising power from within to make a difference through processes of empowerment and capacity building.

Power also comes in different dimensions and typologies, the understanding of which is critical in comprehending the relationships that exist between and amongst different people or groups of people in society. Lukes (1974, 2005) has provided a classical analysis of the three dimensions of power by categorising these as visible, invisible and hidden. All these three dimensions of power are regarded as negative in nature as they exist in an environment where people are subject to domination and often acquiesce in that domination (Dowding, 2006:136) either willingly or because they have resigned themselves to the domination and subordination that they are exposed to.

Visible power plays itself out in public bodies such as legislatures, local government bodies, local assemblies, or consultative forums.²⁵¹ These institutions are expected by law, constitutions (both national and institution specific) and principles of good governance and participation to be transparent, fair and inclusive in the manner in which they manage the affairs that affect their constituent members, followers, supporters and others who are subordinate to them. This is because these are viewed as existing for the public interest and decisions and

²⁵¹ www.powercube.net

policies that come out of these institutions are supposed to address and reflect the diversity of the people that look up to these institutions for their social, economic and even political challenges to be addressed. However even with fair laws, clear decision-making structures and institutions and guidelines on decision-making processes, there is seldom a level playing field. As such strategies for social justice that target this high level of power have to focus on the who, how and what of decision making processes so that these processes are more accountable to the poor, the vulnerable and the marginalised in society (VeneKlasen, 2006:39). Often decisions that are taken through the exercising of visible power are influenced by invisible and hidden power making their public face only a façade of the hidden and invisible power that pulls the strings behind the scenes.

Invisible power entails the circumstances in which awareness of one's rights and interests are hidden through the adoption of dominant ideologies, values and forms of behaviour by comparatively powerless groups themselves in a process that can be equated to internalization of powerlessness. This results in resignation to the *status quo* and an acceptance by the oppressed that the oppression they experience is irreversible and beyond their control.²⁵² VeneKlasen concluded in relation to the three dimensions of power that invisible power is the most treacherous and insidious because it forces people to think in a certain manner resulting in the dominant viewing themselves as superior and the oppressed as destined to be inferior. As a result this kind of power determines the “psychological and ideological boundaries of participation” (VeneKlasen 2006:40) by putting the powerful and powerless in their respective “positions”. In this way,

Hidden forms of power are used by vested interests to maintain their power and privilege by creating barriers to participation, by excluding key issues from the public arena, or by controlling politics ‘backstage’ (www.powercube.net).

²⁵² www.powercube.net

This way the powerful, whether people or institutions, maintain their influence over who gets to the decision making table and what gets on the agenda for discussion (VeneKlasen 2006:39).

In addition to Lukes' three-dimensional approach, power can also be understood in terms of its typologies namely "power to" "power over", "power with" and "power within". Gaventa, explains these concepts as follows:

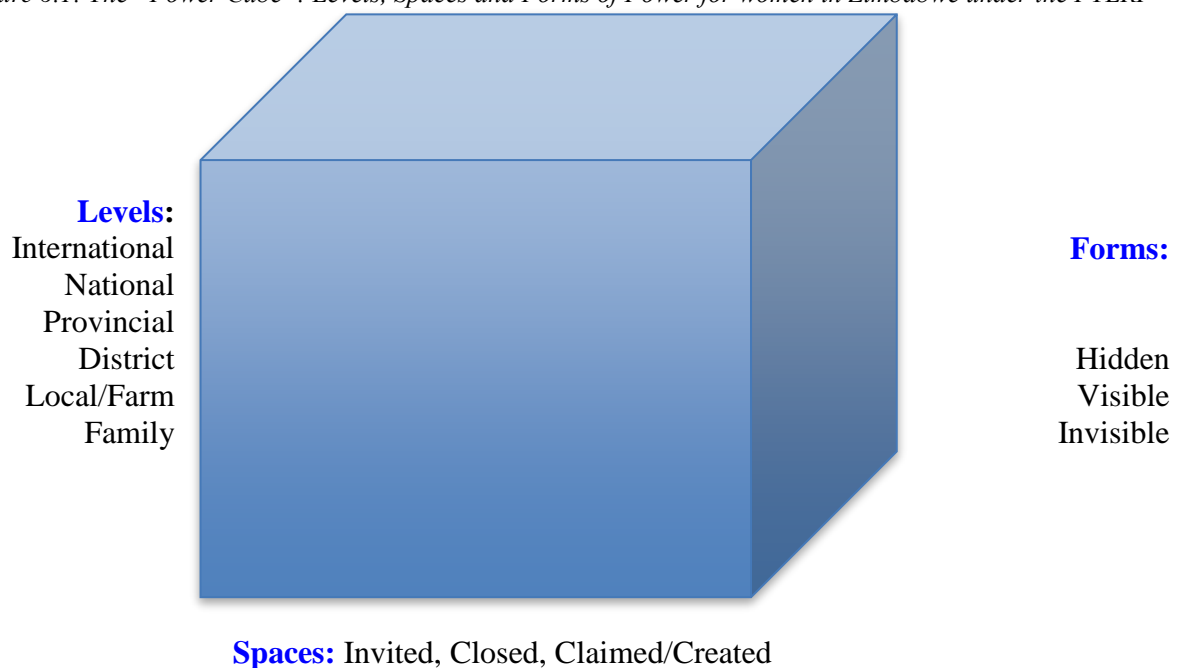
"Power over" refers to the ability of the powerful to affect the actions and thoughts of the powerless. The "power to" is important for the capacity to act; to exercise agency and to realise the potential of rights, citizenship or voice. "Power within" often refers to gaining the sense of self-identity, confidence and awareness that is a precondition for action. "Power with" refers to the synergy which can emerge through partnerships and collaboration with others, or through processes of collective action and alliance building. (Gaventa, 2006:24).

By improving the vulnerable and marginalised people's capacity and agency "power to" is a positive type of power in that it ensures that the poor and the marginalised are able to act on issues in order to improve their situations. "Power over" where the powerful forces are able to secure the compliance of the less powerful is negative power in that there is domination over the poor, the weak, the marginalised and the vulnerable by the powerful, the elites and those in control of coercive state, economic and social machinery. "Power with" and its collaborative, social mobilization and alliance-building nature is positive and important in ensuring that communities can come together to demand their rights including participation in decision making, choosing their leaders and choosing the battles that they want to fight. It also helps communities and different social groups to identify their common challenges and impediments to enjoying their rights and approach those challenges and impediments from a collective position. "Power within" is equally positive in that it empowers individuals and provides them with the means and the confidence, which determines their capacity and potential to act upon the world. (Andreassen and Crawford, 2013: 7).

In relation to the FTLRP in Zimbabwe, it is important to understand how the various typologies and dimensions of power played out and how women engaged with the power, worked around power and relationships or whether they were involved and participated in decision making at the international, national, community and family level in furtherance of their right to land. In particular, it is important to analyse the spaces that were available during the programme and whether women had an opportunity to interact and engage with actors relevant to the land reform programme in those spaces. If the women made such interactions, were they able to interact and engage as part of the decision-makers and leaders or they merely did so from the sidelines, on the margins and as outsiders? How easy was it for women to engage with the different forms of power that existed during the programme? Gaventa's power cube is an important analytical tool that I will utilise in assessing the dimensions and typologies of power as well as the levels, the nature and forms of power relationships, spaces for engagement and the actors and structures that women had to engage with at the various stages of the FTLRP. The forms and spaces of power as articulated by Gaventa remain relevant to my study and have therefore been retained in the adapted power cube. However the levels at which women in Zimbabwe had to engage under the FTLRP were different in that for most of these women particularly those on the farms and in rural areas, there was limited international and national level engagement, which was apparently a relational platform for the elite in the form of women's rights groups and organisations. For the local level A1 or A2 farmer, her engagements and interactions were at the provincial, district, local and family level with limited national level engagement and no international engagement at all. In order to make the "power cube" relevant to my study and relevant to Zimbabwean women under the FTLRP, I added other levels of power, namely: provincial, district and family. This was necessary because these levels of power played a more prominent role in facilitating or constraining women's access to land as opposed to the national and international levels, which are emphasised in Gaventa's original power cube. I have also taken cognizance of the fact that the original power cube was used to

analyse power within groups and organisations, but I will in this research also seek to deal with the issue of power at the individual level. This, however, is not to minimize the effect of globalization in blurring the link between the local and the international. Therefore in adopting this approach, I am acutely aware of the possibility of downplaying the role of this important level of engagement for Zimbabwean women in general and the women in my study area in particular in their efforts to access land. The need to include the family as the lowest level of power in my study is informed by the realisation that gender specific power relations and contestations play themselves out in more private or “intimate” spaces, hence the need to start the power analysis at that level while public spaces of participation may focus on contestations between local, national and global arenas as locations of power (Gaventa, 2006:27)

Figure 6.1: The “Power Cube”: Levels, Spaces and Forms of Power for women in Zimbabwe under the FTLRP



Adapted from Gaventa (2006:25).

The international level in the power cube will be retained simply because power relationships at that level often had implications for women as they engaged with power and decision-making at the more localized level. Decisions that were made at the international and national level

often called for implementation at the local level and it was at these levels that women were impacted on by the high level power and decision-making processes.

Over the years, State reporting to the CEDAW Committee has been an important decision-making process at the international level that has had implications for women at the local level in Zimbabwe. This is because the CEDAW Committee often seeks to come up with comments and concluding observations to positively impact on women at the local level and in relation to their lived realities. In its Concluding Observations to the combined 2nd, 3rd, 4th and 5th periodic reports by Zimbabwe to the CEDAW Committee in 2012, the Committee flagged the inequality and discrimination that women faced in access to land and other resources, including under the country's land reform programme. The Committee noted that despite the 20% quota reserved for women under the country's land reform programme, actual statistics showed that only 10% of the land available under the programme was given to women.²⁵³ The Committee called upon Zimbabwe as a CEDAW State Party to "Eliminate all forms of discrimination with respect to ownership, co-sharing and inheritance of land" and to "Monitor the implementation of the Land Reform Program to ensure that the quotas for women are achieved"²⁵⁴

The implementation of this recommendation would be a good example of international engagement with power that results in local level implementation and advantages for women. The concluding observations were arrived at following engagement and representations to the CEDAW Committee by Zimbabwe as a State Party, which had produced its report through a consultative process that involved national human rights and women's rights civil society organisations. In addition, civil society in the form of women's rights and human rights organisations at both national and grassroots levels also produced a shadow report to

²⁵³ Concluding observations of the Committee on the Elimination of Discrimination against Women, Zimbabwe, /C/ZWE/CO/2-5, Para 35

²⁵⁴ Concluding observations of the Committee on the Elimination of Discrimination against Women, Zimbabwe, /C/ZWE/CO/2-5, Para 36 (a) and (b)

CEDAW²⁵⁵ which also played an important role in informing the CEDAW Committee about the human rights reality of women in Zimbabwe and therefore had a bearing on the ensuing concluding observations. It has been observed that CEDAW reporting has the effect of pushing governments to action in order to comply with the women's rights dictates of the Convention as a way of pre-empting the reporting and the shadow reports by NGOs. State parties would be seeking to be seen as compliant both by the CEDAW Committee and the international community. Effectively this provides opportunities to raise women-specific issues and press for legal and constitutional reform (Stewart and Damiso, 2013:476).

6.4 Grappling with Power in its Different Forms, at Different Levels and in Different Spaces

In order to understand the power dynamics that women had to grapple and engage with during the FTLRP, I will seek in this section to locate different women within certain spaces and their relationship with different forms of power as it played out at different levels. This analysis will therefore focus on the following:

- i) How Women's groups addressed visible and hidden power at the local, national and international levels. The women's groups that I will focus on in this analysis are the Women and Land Lobby Group (WLLG), which later changed its name to Women and Land in Zimbabwe (WLZ), the Zimbabwe Women Lawyers' Association (ZWLA) and the Zimbabwe Women's Resource Centre and Network;
- ii) The women on A2 farms and their experiences with visible, invisible and hidden power; and
- iii) Women on A1 farms and their experiences with visible, invisible and hidden power.

In respect of all the categories of women and women's groups, this chapter also seeks to analyse the power that was exercised over them, the spaces that were available for them to participate in the FTLRP and attendant decision making, the exercising of their "power with" and the

²⁵⁵ The report was produced by the Zimbabwe Women Lawyers' Association (ZWLA) and represented the views of ZWLA and 26 other national and grassroots organisations

“power within”, efforts at imparting “power to” and the impact of those power dynamics on their efforts and ability to access land.

6.4.1 Women’s Organisations Engaging with Visible Power at the National and International Levels and Hidden Power at the Local Level

Chapters one and four of this research provided a background to the land question in Zimbabwe starting from the colonial period through to the implementation of the FTLRP with a particular focus on the legal imperatives that have informed access to land in the country over the years. This chapter narrows its focus to the policy and decision-making processes around the FTLRP and how women engaged with those decision-making processes. The decision-making processes were influenced by the State’s position at the national level and the obligations and interactions of the State at the international level as influenced by international human rights law and rule of law considerations. Although made at a very high level, the decisions that were made at this level regarding the country’s FTLRP had implications for women in practice. This was the case especially in relation to women’s interaction with the process and their rights and ability to acquire land on the basis of equality with men. At the same time the complexities of engagement at this level made it difficult for the individual women to engage with the visible State power and the international community, leaving such tasks to women’s groups and women’s rights organisations such as the Women and Land Lobby Group (WLLG)²⁵⁶ and the Zimbabwe Women Lawyers Association (ZWLA) amongst others. These organisations were perceived as having the skills and resources to engage with and influence visible power for the benefit of the generality of the women in the country. However, whilst efforts were made to engage with visible power, the highly contested, chaotic and often violent manner in which the

²⁵⁶ This was a network, which was spearheaded by women’s rights organisations in Zimbabwe to advocate for women’s land rights through advocacy and legal and policy reform recommendations. The lead organisations in this initiative were the Women’s Action Group (WAG), the Zimbabwe Women’s Resources Centre Network (ZWRCN), Rudecon Zimbabwe and the Zimbabwe Farm Workers’ Trust (ZFWT). Individual activists also participated in the initiative (See Essof S, 2013:45)

FTLRP was implemented created a murky policy, legal and implementation environment which made it difficult to easily identify the sources of power and decision makers at the local level.

With the understanding that gender neutral laws on their own were not adequate in providing a level playing field for access to land by women, some women's rights organisations in the country made efforts to engage with visible State power in an effort to ensure substantive equal treatment for women in access to land. The engagement started at the point of conceptualisation of Phase II of the Land Reform and Implementation Plan through to the implementation of the FTLRP. The WLLG, ZWLA and the ZWRCN²⁵⁷ were some of the organisations that engaged with visible state power to address women's land rights under the FTLRP. Whilst ZWLA, (established in 1992) and the ZWRCN (established in 1990) had long been in existence at the time of implementation of the FTLRP, The WLLG was formed in 1998 by women, with support from donors, with the sole objective of ensuring women's rights to access land on the basis of equality with men under the country's land reform and redistribution programme. ZWLA and ZWRCN on the other hand were specialist general women's rights, gender and development organisations²⁵⁸ and as such were mandated by their objectives to address any issues impacting on women's rights and gender equality.

The establishment of the WLLG happened at the height of policy formulation and discussions towards the implementation of Phase II of the Land Reform and Resettlement Programme. Some of the strategies used by the Group to capture the attention of the State and its institutions included critical analysis of state policies on land reform, analysis of the laws and the Constitution and their implications on the equal treatment of women in access to land. They also organised public meetings where they invited State officials to address women about their

²⁵⁷ Whilst the three organisations amongst others raised the issue of women and access to land under the fast track land reform programme as an advocacy issue through engagement with the State, it was the Women and Land Lobby Group that was at the forefront of this campaign

²⁵⁸ See <http://www.zwrcn.org.zw> and <http://www.zwla.co.zw>

land rights and providing feedback to the State institutions following such interventions. For example, on the 9th of August 2000, the WLLG organised a meeting for women at the Sheraton Hotel in Harare, where they invited the then Vice President of Zimbabwe Joseph Msika to address women on their land rights (Hellum and Derman, 2000:15). The WLLG was one of only 5 national civil society, agricultural and business organisations to address the all-important 1998 International Donors' Conference on Land Reform and Resettlement²⁵⁹ thereby showing its capacity to engage with visible power at the highest level.

ZWRCN started working on the issue of women's rights to land in 1994 with their active participation in the Mandivamba Rukuni led Land Commission²⁶⁰ from 1994-1998 and in the subsequent government's Justice Chidyausiku led Constitutional Review Commission which resulted in the rejected 2000 draft constitution (Essof and Chigudu, undated). ZWLA with its specialist legal footprint led the legal reform agenda on the rights of women with a focus on Section 23 of the 1980 independence constitution, which permitted discrimination on the basis of personal or customary law, a provision that could be used to deny women access to land under the FTLRP. The ZWLA advocacy process for the amendment of Section 23 began as far back as 1999 with the Justice Chidyausiku led Constitutional Review Commission wherein individual ZWLA members lobbied for the amendment of the Section (Hellum, 2013:35). Goebel (2006:143) notes that this engagement led to concessions in the development of land reform policy documents that recognised the rights of women to equal access to land, though only to a certain extent. By 2001, government policy direction recognised the need for joint registration between spouses for land acquired under the country's land reform programmes. By 2005, the arguments that were being advanced by the women's rights organisations that

²⁵⁹ Communiqué Issued at the End of the International Donors' Conference on Land Reform and Resettlement September 9 - 11, 1998 - Harare, Zimbabwe. The other organisations to address the Conference were the Commercial Farmers' Union, The Indigenous Commercial Farmers Union, The Zimbabwe Tourism Authority and the Zimbabwe Farmers' Union.

²⁶⁰ The Commission was set up by the President of Zimbabwe to look into appropriate agricultural land tenure systems in the country and presented their report and findings to the country in 1994

Section 23 of the Constitution which allowed for discrimination on the basis of personal law and customary law was detrimental to women's right to be treated on the basis of equality with men in access to land were gaining traction with the State. This led to an amendment to Section 23 (3) of the Constitution in 2005 through Constitutional Amendment Number 17 by inserting Section 23 (3a). Through this amendment, for the first time the Constitution recognised the right of women to be treated on the basis of equality with men in accessing resettlement land by outlawing discrimination on the basis of customary law in the allocation of resettlement land. However, whilst the policy and legal documents were being changed to accommodate the issues raised by the women's rights organisations in their engagement with the State, there were no corresponding tangible implementation efforts to translate the policy and legal changes into access to land for women. For example, despite government concessions on the need for joint registration of acquired land under the FTLRP, by 2012²⁶¹, government officials responsible for land redistribution and registration were not implementing the policy consistently or at all. The government officers responsible for land allocation at the local level indicated that whilst they had heard about the government "talk" of allocating 20%²⁶² of available land to women, such a position never went beyond verbal announcement, mainly by politicians at political gatherings. As such there was no implementation document that guided them in that direction during the actual land allocation process.

The engagement with visible power by the women's rights organisations therefore focused purely on high-level visible power but failed to address other forms, levels and dimensions of power that needed to be engaged with in the fast track land reform matrix. For example during my fieldwork, respondents in both the rural areas and the farms knew very little about ZWRCN and WLLG, although they had knowledge of ZWLA and its work. This was despite the fact that the WLLG for example was specifically established to address women's land needs under

²⁶¹ Interview with Mr. DM, a Lands Officer in Masvingo Town on 10 February 2012

²⁶² Interview with Mr. DM, a Lands Officer in Masvingo Town on 10 February 2012

the FTLRP. The women knew about ZWLA as a generalist women's rights organisation but had no specific knowledge of ZWLA's work with regards to access to land by women. Mrs. TM of Chidza farm had knowledge of ZWLA and its work in the sphere of women and girls' inheritance rights leading her to conclude that upon her death, all her 11 children both male and female should somehow benefit from the land if they had an interest in farming. Men also knew about ZWLA and its women's rights programmes and in particular those relating to divorce, maintenance and inheritance. Mr. CM²⁶³, a headmaster at a primary school in the research area, although not entirely agreeing with some of ZWLA's pronouncements especially those relating to sharing of property upon divorce, agreed with ZWLA's work in teaching women about their inheritance rights. Both men and women in the research area therefore knew the role of ZWLA as a women's rights organisation. Most of the information about the work of ZWLA reached the women and men that were interviewed through radio educational programmes by the organisation and through radio news giving women valuable information on their general rights.

The information by all the three organisations on fast track land was however limited or non-existent or unavailable for the resettlement and rural women except as could be deciphered from other women's rights issues that ZWLA addressed such as inheritance rights and sharing of property upon divorce. Given the complex nature of fast track land in terms of the legal landscape and attendant ownership contestations, such generalist information was not helpful to women who faced challenges during and after the acquisition of land under the FTLRP, either by the women themselves or other people through whom they could claim occupation, utilisation or access to the land. The failure by the women's rights organisations to directly engage the ordinary land seeking woman on the land question therefore meant that there was no capacity building and knowledge transfer [power to] to give the land seeking women adequate "power within" and "power with" to claim their rights to land under the FTLRP. The women on the farms and those

²⁶³ Interview held on 14 March 2014 in Masimbiti, Nuanetsi Ranch

in the rural areas seeking land under the land reform programme therefore relied on available systems and structures, which were male centered and male dominated leading to their marginalization. These structures included the State institutions, the war veterans or the farm level institutions that determined access to and allocation of the land.

6.4.2 A1 Women Engaging with Hidden and Invisible Power at the Local Farm and Family Level

Despite the initial chaos, violence and lawlessness that characterised the FTLRP through farm invasions, the State stamped some form of power and authority over the process the moment it made a decision to condone the invasions and take sides with the farm invaders. State structures at district and provincial level such as the district and provincial lands officers from the Ministry of Lands and Rural Resettlement, the Provincial Governors and the District and Provincial Administrators from the Ministry of Local Government stepped in to “regularise and rationalise” the process.²⁶⁴ At this stage, the government encouraged people to stop the farm invasions and instead apply to government for land if they wanted land.²⁶⁵ Such calls were, however, largely ignored as the farm invasions continued, with the invaders hoping to be allocated land on the farms that they would have occupied. This convenient chaos created fertile ground for the exercise of hidden power as murky local level power dynamics emerged at the farm level. The A1 farmers in my research area were mostly affected by this state of affairs where decisions on access to land were made at the local farm level and less for the A2 farmers

²⁶⁴ Interview with Mr. FC, Provincial Administrator for Masvingo Province on 6 September 2010. There was no set time frame for the intervention by the Government officials. On some of the farms, the intervention and regularization and rationalization was undertaken soon after the frenzy of the farm invasions and violence had subsided but on others (for example Masimbiti in Nuanetsi Ranch), the formal intervention had not been completed in April 2015 as I was winding up my field research

²⁶⁵ Interviews with Mrs. C in Masvingo Town and Mrs. M1 in Chiredzi Town. Both were land beneficiaries in the Hippo Valley Sugar Estates. They indicated that they were told by government officials to stay outside of the sugarcane estates and the farm compounds but to apply for land through the District Administrator. It was only after they had been advised that their applications were successful, had been shown their pieces of land (and a corresponding house in the workers' compound where applicable) and an offer letter that they were allowed to move onto the allocated piece of land

where decisions on land access were more centralised at national or provincial level and based on clearer though not often followed criteria. In situations where it was followed, the criteria was beneficial to some women, particularly those in already empowered positions who were able to identify the power sources and engage with such power at provincial and national level. The empowered women included the educated, the resource endowed and the well connected who were able to use their “power within” to negotiate their way around and access land. Such empowered women were fewer amongst the A1 farmers who relied on and followed available structures in order for them to access land. As such even with the government’s apparent stamping of authority on the A1 farms, the reality was that local farm level institutions and individuals ruled the day. It was their decisions in the absence of perceptible rules that were in many instances then rubber stamped by the lands officers and district administrators who would allocate land as per list of beneficiaries and attendant allocations agreed on at the farm level.²⁶⁶ A1 women therefore had to negotiate with the farm level power, which included the war veterans and other male leaders. In many instances they were happy to receive any land that came their way, given the view that women were regarded as followers of a process that was led by men.²⁶⁷ The hidden power of farm leaders therefore triumphed over the visible state power on the farms. This was because state level institutions were given directions by the local farm level leaders on how land allocations were to be carried out and who would benefit from the land allocations, as well as the particular pieces of land that each identified person would get.

Similarly, invisible power played a role in the land allocation patterns on the farms. The inferior perception that women held of their role in the farm invasions and occupations was born out of

²⁶⁶ Interview with Mr. FZ, war veteran leader at Lothian Farm in Masvingo Town on 10 February 2012. This was confirmed by Mr. DM, a lands officer at the Masvingo Provincial Lands Office in an interview in Masvingo on the same day

²⁶⁷ Interview with Mrs. PC at Lothian farm on 9 September 2011 who viewed the role of women in the farm invasions and occupation as complimenting that of men who were regarded as the main protagonists in the process.

invisible power in the form of traditional and cultural beliefs that place women in inferior positions compared to men. As such the women viewed their roles in the farm invasions as insignificant compared to those of men and were also prepared to accept less valuable land compared to what the men got simply because they viewed men as superior beings as will be detailed in Chapter 7. Invisible power also played a role at the family level. This was seen in situations where women allowed land that was allocated to them to be registered in the names of husbands and sons because traditionally a woman is not expected to own or control land, when there are men in the family.²⁶⁸

Following court challenges²⁶⁹ by the white commercial farmers over the invasions and compulsory acquisition of land, the government also put in place a number of laws through Parliament aimed at protecting existing farm invaders from eviction (Rural Land Occupiers (Protection from Eviction) Act: Chapter 20:26) and providing some guidance over future land acquisition processes. Amendments were made to the Land Acquisition Act: Chapter 20:10 and the Constitution through Constitutional Amendments Number 16 and 17. The essence of these laws was to entrench the farm invasions and the compulsory land acquisition approach and set the tone and mode of compensation for acquired land. Effectively the government through these legal enactments concluded that the State would not pay compensation for the acquired land, but that compensation would be the responsibility of the colonial master Britain, with the Government of Zimbabwe only providing compensation for improvements made on the farms. The power that was exercised by the State in this instance was visible in that it invoked the role of the legislature and supposedly open decision-making processes to enact laws that governed the process. On the other hand, the power was negative in nature in that it was prescriptive and

²⁶⁸ For example, following the death of her husband, one of my respondents Mrs. EM of Lothian Farm registered the piece of land in the name of the eldest son, TB. The son was not staying on the farm but was working in Mutare Town, about 300 kilometres away. Her argument was that as the eldest son, he was entitled to have the piece of land registered in his name even though she was still alive.

²⁶⁹ For example the case of the Commercial Farmers Union v. Minister of Lands 2000 (2) ZLR 469 (S) challenged the acquisition of white commercial farmland by the government.

authoritarian, requiring compliance from those at whom it was directed (power over). History has shown that land laws have been about serving the interests of the dominant because land statutes as products of politics have over the years been enacted to benefit the ruling group (Mushunje, 2005:13). For women in Zimbabwe, the question that arises therefore is whether the State through its exercise of visible power and the legislative authority was able to provide clarity of process and purpose to help in their land acquisition efforts. The answer is in the negative in that for many women, the process still remained unguided and unclear as no specific legal provisions were put in place to facilitate gender inclusive land reform. This was the case even after the enactment of Constitutional Amendment Number 17 of 2005²⁷⁰, which outlawed gender-based discrimination in land allocation or land reform processes. The enactment of this provision without corresponding access to land by women reinforces the idea that there is a difference between legal recognition and the enforcement of legally recognised rights and entitlements. The exercise of visible power by the State in such instances is therefore often countered by hidden and invisible power, which reflects the reality for the citizen who despite public law making and policy pronouncements is unable to benefit from such pronouncements due to local power dynamics.

6.4.3 A2 Women Engaging with Visible Power

This research shows that, it was the empowered women who exercised their “power within” and managed to engage with visible state power in a discernible way, specifically those in the A2 sugar estates. This is not to say that women in A1 farms did not engage with visible power. They did but such engagement was limited when compared to the women in A2 farms. The women in A2 farms reported that the institutions, actors and structures that they dealt with in order to access A2 farms were discernible, targetable and identifiable although they were not always easy to approach and engage with. This was because the spaces that were provided to

²⁷⁰ Article 23 (3a) (brought by Constitutional Amendment Number 17 of 2005) states that “...in implementing any programme of land reform the government shall treat men and women on an equal basis with respect to the allocation or distribution of land or any right or interest therein under that programme”

engage with such power were limited in nature or inaccessible due to distance and structural barriers such as self-importance by the actors involved, politics and political identity of the women farmers. Politics and political identity became the hidden power that influenced the accessibility or otherwise of visible power. As will be shown in Table 6.1 below, the politically connected women found it easier to engage with visible State power and institutions compared to those that were not politically connected. Generally however, the A2 women made efforts to identify and use available policies and institutions to acquire land under the programme as tabulated in Table 6.1 below. The table details the processes that A2 women had to follow as they engaged with visible state power during the FTLRP. The table will also highlight that because the women were engaging with visible state power, they were aware of the levels to engage with as a result of “invitations” into certain spaces by the government as it called on qualifying citizens to apply for A2 farms. The results for the women were however not predictable as the visible state power was often met by hidden or invisible power that often proved to be more potent. This resulted in the rights of women to access land on the basis of equality with men being challenged by either invisible or hidden power.

Table 6.1 Specific Experiences of engaging with visible power by women in A2 allocations to access land under the FTLRP

Interviewee	Level of Engagement	Space and Basis of Engagement	Result
Mrs. AM	I was staying in Chiredzi Town at the beginning of the farm invasions. I got an application form from a friend who encouraged me to apply for land when it was announced that people could apply for land in the sugar estates. I hand delivered my application form directly at the Masvingo Ministry of Lands and Rural Resettlement Provincial Offices. In 2001, when they announced that the successful names were out, I went to the D.A's office in Chiredzi and my name was on the notice board as one of the successful applicants. By then the offer letter was already at the D.A's offices.	It was government policy that applications for A2 farms would be centralised and decided on at the provincial level ²⁷¹ through the Provincial Lands Committee (PLC). The District Lands Committee could identify suitable land and beneficiaries but the ultimate decision was made at the provincial level. With this knowledge and information at hand, Mrs. AM knew that she could hand deliver her application at the centre of power and decision-making to ensure that it was received. This also reduced delays that could be encountered through district level submissions and possible non-delivery of her application through process inefficiencies.	By hand delivering her application at the Ministry of Lands and Rural Resettlement Offices in Masvingo Mrs. AM was certain that her application had reached the correct office and on time. As a result her application was processed and she was able to get a farm
Mrs. C	I was allocated a plot that had a farmhouse but a senior army officer; Major General M came and took the farmhouse away from me. I went to the Ministry of Lands and Rural Resettlement Offices in Chiredzi for them to come and resolve the issue but I did not win the case. The land officers said Major General M was entitled to use the farmhouse and he continued to stay there. The farmhouse is part of the 25 hectares that I was allocated and is even surrounded by my plot but because he took it, I am now left with 22 hectares. He is even farming around the farmhouse, further encroaching into my plot. I requested him to at least give me the tool sheds so that I could convert them into my accommodation but he refused. He has instead allocated these to his workers as their accommodation. I then went to the Masvingo Provincial Governor for assistance and he	The District, Provincial and National Lands Committees formed an appeal structure on land disputes. A2 Land beneficiaries were encouraged to approach these structures for dispute settlement on the farms. When the District Lands Committee failed to resolve the boundary issue at the local level, Mrs. C approached the Provincial Governor of Masvingo Province who chaired the Provincial Lands Committee. After failing to resolve the issue, the Provincial Governor referred the matter to the National Lands Committee who made a determination in favour of Mrs. C's adversary, a senior ZANU PF and army officer.	Despite her spirited efforts to utilise visible power to retain the farmhouse, Mrs. C lost her case. This was a clear case of an effort to engage with visible power when there were hidden power influencers. ²⁷² Mrs. C however used the existence of policies and known decision-making structures to present her case and exhaust all available remedies.

²⁷¹ Mr DM, an official in the Masvingo Office of the Ministry of Lands and Rural Resettlement on 10 February 2012 who highlighted that "The District Land Committee is responsible for recommending A2 farmers that can be allocated land but the actual allocation for A2 farms is carried out by the Provincial Lands Committee", confirmed this.

²⁷² Mrs. C's efforts to engage with the visible and formal structures for dispute resolution in this case were not successful because she was dealing with a high ranking army officer, who was well connected, a senior ZANU PF member, a war veteran and could therefore use his hidden and behind the scenes power and high level associations and connections to influence the decision of the visible power structures that were in place.

	in turn requested people from the Ministry of Lands and Rural Resettlement and National Lands Committee in Harare to intervene but still I lost my case.		
Mrs. M2	For a long time almost half of our farm was not being used as it had no irrigation water and this was a challenge for me. My husband died before we could install irrigation infrastructure on that section of the farm but I have since managed to connect the water and the irrigation system. As a result, I can now irrigate my crops day and night. My husband had initially applied for irrigation water to ZINWA ²⁷³ but we stopped the process after he got sick. On June 6, 2011 I reapplied and on the 30 th of September of the same year the farm was connected and could therefore be irrigated. As a result, I am producing more on my farm.	Mrs. M2 had the knowledge that in order for her to access water for irrigation on her plot, she had to approach the Zimbabwe National Water Authority (ZINWA), a statutory institution mandated with the management of water and issuance of water permits for the utilisation of water for various purposes.	She was granted the permission to connect water for irrigation on her plot, and her productivity was improved as she could utilise more land on her plot.

The experiences detailed above show that “power within” was an important attribute in determining access to A2 farms by women as it gave women the agency to tackle the various aspects of such engagement. This is further discussed below.

6.4.4 The A2 Women’s “Power Within” and its Utilisation in Engaging with Visible State

Power

The processes that women grappled with as presented in Table 6.1 were not simple and straightforward despite the fact that the dominant power that they engaged with was visible power. This is because whilst the land acquisition process was itself sometimes backed by legislation, flawed as it was, the actual land allocation itself had no legal backing other than the offer letter that one was given as authority from the State to occupy the land (Matondi, 2012: 59). Even in a normal and functional legal environment, engaging with visible State power is

²⁷³ The Zimbabwe National Water Authority, a statutory body tasked with the management of water in the country in terms of the Zimbabwe National Water Authority Act: Chapter 20:25

often a daunting task that is time consuming, bureaucratic and requires considerable resources, determination and a certain level of issue and context appreciation to see the process through. This is more so when the engagement is by individual citizens. The challenges can therefore only be expected to be myriad and complex in an environment where the law is either non-existent, is disregarded or is unclear like was the case under the FTLRP. As a result, in order for them to be able to engage with visible state power as they did, the three women discussed in Table 6.1 had to possess certain qualities, which most women seeking to acquire and keep land under the FTLRP did not have. In particular, the women exercised their “power within” and displayed a level of empowerment that allowed them to engage with visible power. As individuals they possessed attributes with a bearing on their sense of ability and capability to engage with the system. This allowed and gave them the potential to act upon the world” (Andreassen and Crawford, 2013: 7). This is because “power within” entails the existence of a certain level of empowerment that provides a person with the agency to act on issues, negotiate with processes and institutions and challenge dominant ideologies, dominant power relations and the status quo with a view to enforcing their rights and entitlements. In the cases of the three women discussed above, their empowerment was mainly in the form of their relatively high level of education, financial resources and other high value assets. Their high level of education allowed them to understand issues related to the FTLRP whilst their financial capacity provided them with the ability to fund the engagement processes. Below I provide a brief description of the social, political, economic and educational statuses of the three women, which I argue, had the effect of empowering them thereby providing them with “power within” and agency that they were able to utilise to benefit from the programme.

Mrs. AM

At the time of applying for a farm, Mrs. AM was married to a businessman who operated a chain of grocer's shops at various growth points²⁷⁴ in Masvingo Province. She was educated up to Ordinary Level and had been instrumental in helping her husband set up the shops. She decided to apply for land in her own name because her husband's interests were in his retail shops' business and not in farming. She however had a passion for farming, which she said she acquired from her father in law who was a successful "master farmer"²⁷⁵ in their village. When her husband died, she inherited the shops, the majority of which she was now renting out, except for one shop in Mkwazine that she was operating herself. She also owned other assets including motor vehicles and immovable property in urban areas.

These attributes had the following effects in relation to her engagement with visible power as she sought to acquire land:

- i. She used her education to compile the application for an A2 sugarcane plot, which required completing a detailed application form and preparing a business plan. As part of the application, she also needed to present a convincing argument to show that she could effectively utilise the farm by providing proof of financial resources, an acceptable level of education and experience in running a business.
- ii. She used her education to identify the relevant institution to engage with and in this case it was the District Administrator and the Ministry of Lands and Rural Resettlement at the Provincial Level.
- iii. She used her resources, such as a motor vehicle and money to travel to Masvingo Town from Chiredzi Town, a distance of close to 200 kilometres, to personally submit her application at the Provincial Offices of the Ministry of Lands and Rural Resettlement. This ensured that her application was received at the correct office. It also eliminated delays that could be occasioned by submitting the application at the district level for transmission to the provincial level for assessment. This was

²⁷⁴ A growth point is a rural service centre in Zimbabwe, which is developed around the administrative centre of a rural district. The centre normally comprises of retail shops, government offices and other services such as a clinic/doctors' rooms or hospital.

²⁷⁵ The Master Farmer concept originated from colonial Rhodesia and focused on giving specialized farming skills to identified communal farmers who had the potential to excel in their farming. The Master Farmers were expected to use modern and scientific farming methods as a way of improving smallholder agriculture. The certificate was also required for the early resettlement programmes as a pre-requisite for land allocation.

particularly important because according to Mrs. AM, many people submitted applications for A2 land under the FTLRP but never received any acknowledgement of receipt of such applications by the government. It has never been clear to these applicants whether or not their applications were transmitted from the districts to the provincial level for assessment or just piled at the district offices and never acted upon.

Mrs. C

Mrs. C was a retired nurse, who at one time had worked in the United Kingdom. She brought a considerable amount of money from the United Kingdom that she invested in a restaurant/nightclub business, a haulage trucking business and in her farming activities. She also had a commercial property in Masvingo Town and a residential property that was her normal place of abode in the same town. Her farm supervisor and other workers stayed and worked at her sugarcane plot in Hippo Valley and were responsible for the day-to-day management and farming activities at the farm. She was also a high-ranking ZANU (PF) official in the Province, occupying the position of Provincial Treasurer of the Women's League. In addition, she was the Provincial Chairperson of the Zimbabwe War Collaborators' Association, a ZANU PF linked organization. As such she had the "power within" that she derived from her education, her economic strength and her political positions and connections.

Using this "power within" she managed to do the following:

- i. Her education and appreciation of issues helped her in identifying the role of the Ministry of Lands and Rural Resettlement in boundary disputes under the FTLRP and approached the lands officials at the local district level, as was the procedure. The decision at this level was not in her favour and she was able to follow the appeals processes up to the national level in order for her case to be considered.
- ii. She also used her political position to approach the Provincial Governor of Masvingo who in turn referred her case to the national level.
- iii. The fact that she had businesses and a house in the provincial capital where she was staying made it easy for her to access the Provincial Governor's office, which was located in the same town to present her case, a difficult fit for aspiring women farmers who stayed in communal areas far away from the city which was the centre of power.

- iv. Her financial resources enabled her to meet the expenses associated with the appeal process from the local district level up to the national level.

Although she lost her case, she used her status and the “power within” to exhaust all available remedies as she tried to defend the farmhouse, which she believed she was entitled to. When one unpacks the power dynamics that were at play however, it emerges that Mrs. C was not only dealing and negotiating with visible power, but hidden power as well. Her adversary was an influential war veteran in the province and a retired army major general who was also a senior official in ZANU (PF). My impression and assessment of the situation was that he exhibited “behind the scenes” capacity to influence visible power to make a decision that was favourable to him thereby highlighting the fact that the dimensions of power often have overlaps and are not always clear cut and easily determinable. This was because the decision taken by the various levels in the appeals process were not consistent with the approach which was used in the allocation of farmhouses during the FTLRP. Often the person allocated the plot with the farmhouse on the resettled farm was also allocated the farmhouse unless it was deployed as a social service centre such as a school or a clinic. The important point however is that Mrs. C utilised her “power within” to challenge what she believed was an infringement on her entitlements in a situation where other women without the same level of empowerment would have easily given up. This case confirms findings from key informants that decision-making in situations where there are disputes is highly politicised and often in favour of men both in family and other situations because the power holders and decision-makers are often male. According to ZWLA, politics is a major determinant factor in land dispute resolution and the men happen to know each other very well within the political circles, from local up to national level. As a result, men use these relationships to their benefit and to the detriment of women.²⁷⁶

²⁷⁶ Interview with ZWLA Programmes Coordinator and Legal Officer on 6 November 2013 at the ZWLA offices in Harare

Mrs. M2

Mrs. M2 was a seasoned sugarcane farmer who had been in the sugarcane business for close to 30 years at the time of the interview. She started sugarcane farming in Mkwesine in 1982. She had also accumulated considerable financial resources and assets from her sugarcane farming over the years. Following her husband's death, she was able to continue with sugarcane farming at their new plot in Hippo Valley as well as pursue the irrigation installation project that her husband had started.

The knowledge and resources that she possessed enabled her to do the following:

- i. She was able to identify the appropriate authority to engage with in order for her to access water for irrigating her plot.
- ii. She utilised her financial resources once the authority was granted for her to lay the infrastructure that was required for the irrigation system to function, after which she was able to utilise a bigger portion of her plot, produce more and further grow her financial capacity.

The situation and advantaged position of the three women therefore enabled them to effectively use their "power within" to access land and other resources that they required for their agricultural initiatives.

6.5 General Implications of Power Dynamics and Relationships for Different Women under the FTLRP

The three women highlighted above displayed a high level of capacity to engage with visible power in order to meet their set objectives of acquiring land and other resources as well as ensuring the utilisation of such land once acquired. This ability to engage with power was enabled by either their high level of education, access to valuable economic resources or high-level political connections all of which helped them in acquiring high value land. This in turn helped them to continue improving their already relatively better economic positions compared to women who accessed land in the A1 allocations or those who failed to access land. However, it must be realised that due to their generally low social and economic status, not many women in the country were able to engage with power to the extent displayed by the three women above or at all. My interactions with women in the A1 farms showed that even their acquisition of

land in the A1 and not A2 farms, was not by design but was a result of their lack of capacity and the necessary agency and resources to engage with the land allocation system and meet the requirements for one to acquire land in the high value A2 farms. As a result, for the women in the A1 farms, it was a matter of saying “at least I got something” and resigning themselves to that state of affairs. As I will show in Table 6.2 below there were major differences in reasons for accessing land between the women in A2 farms and those in A1 farms. The women who acquired land in the A2 farms regarded their access to land in these farms as a business opportunity and focussed on utilising the land from a business perspective. Whilst a few of the women in the A1 farms also regarded access to land in these resettlement areas a business opportunity, the majority had basic survival reasons including building a home, growing enough food, securing land as their children’s inheritance and escaping from social problems in the communal areas. Others saw this as fulfilling the gains of the liberation struggle. If their farming endeavours on the new settlements allowed them to harvest a surplus for sale, that was merely a bonus and not necessarily the initial reason for their land acquisition or the aim of their farming endeavours. The outcome therefore was that the majority of women in the A1 allocations failed to engage with the FTLRP in a manner that allowed them to derive maximum benefits from the land, despite their best efforts.

In many African societies including Zimbabwe, women generally occupy subordinate positions that are entrenched by invisible power through gender stereotyping and socialisation. This in turn makes it difficult for them to effectively engage with power and participate in decision-making processes. Because of economic handicaps for example, women find it difficult to make important economic decisions. Without economic power, women also lack power in other aspects of life (Hutson, 2007:2) leading to their subordination and discrimination. In the end, women’s subordination and gender discrimination mutates into women’s dispensability under a “development” which suppresses, excludes and devalues

women.” (Shiva, 2004: unpaginated). This exclusion is more evident in situations where the allocation of high value economic resources such as land is at the centre of the power relations. As a result, even though men with limited education, financial resources or political connections, also faced similar challenges under the FTLRP, such challenges have to be viewed from the perspective that women in general are more marginalised and excluded relative to men. Such exclusion and marginalisation stems from patriarchal power relations that lead to the domination of men over women “power over’ at various social, economic, cultural and political levels. This is because although the original meaning of patriarchy was of “rule of fathers”, its meaning has metamorphosed in contemporary society to mean the “power over” women by any powerful adult males including bosses at work, leaders in society, in politics and in government, brothers, husbands, sons and uncles in the home and male community leaders amongst others, in what has been called “the men’s league” or the “men’s house” (Mies, 1986:37. See also Chakona, 2011:13). The patriarchal society and the power it wields over women therefore ultimately has the effect of control and domination over women, including the views that they hold about themselves, their capabilities and capacities and their rights and entitlements.

Table 6.2 Initial Reasons for acquiring land by women in the A1 and A2 Schemes

Reason	Number of Respondents asked the question on A1 Farms	Number of Respondents asked the question on A2 Farms	YES		NO		% YES		% NO	
			A1	A2	A1	A2	A1	A2	A1	A2
To build a home	8	5	7	1	1	4	87.5	20	12.5	80
To grow food	8	5	6	0	2	5	75	0	25	100
To escape social problems	8	5	1	0	7	5	12.5	0	87.5	100
To leave an inheritance for children	8	5	4	0	4	5	50	0	50	100
Business Enterprise	8	5	2	5	6	0	25	100	75	0

Table 6.2 shows that under the FTLRP, in a general sense, women were forced to be content with accessing land as a basic survival resource which they could deploy purely for basic

survival purposes and not for upward social and economic mobility. Such social and economic mobility was possible if women were able to access prime and economically viable land, were able to consider access to such land as a business opportunity and had the necessary resources to fully and effectively utilise the acquired land as business enterprises. Women could harbour such ambitions if they were able to access high value land and were in possession of the requisite economic, political and social capital that could allow them to effectively utilise the land. The table above illustrates this point and underlines the fact that access to high value land in the A2 farms was critical for women’s economic empowerment through the creation of business enterprises. However many of the women in Zimbabwe failed to access land or accessed land on the A1 farms which they regarded as a basic survival resource. Data released as late as July 2013 as tabulated in Table 6.3 shows that indeed very few women benefitted from the FTLRP. This data confirms findings by various researchers in the country as highlighted in Chapter 3, which show that women as a category were losers under the programme when compared with men. Table 6.3 below shows the percentage of land allocation to women in both A1 and A2 farms as a percentage of the total number of land recipients and also in relation to other social groups that benefitted from the FTLRP in the country, such as war veterans.

Table 6.3: Land Reform Beneficiaries by 2013

Beneficiaries (households)	A1	A2	Total
War veterans	32,550	3,793	36,343
Women	13,020	1,517	14,537
Youths	651	76	727
Mixed beneficiaries	116,529	13,580	130,109

Source: Table adapted from the ZANU (PF) 2013 Election Manifesto (Page 57)²⁷⁷

²⁷⁷ These statistics must however be taken with skepticism considering that they were presented by ZANU (PF), a party that rode on the “successes” of the land reform programme as an election rallying point. The point to be emphasised from the statistics is the skewed access levels for women when compared with other social groups that are highlighted in the Table.

6.6 War Veterans' Power Versus Women's Power

Table 6.3 shows that in both A1 and A2 allocations, the percentage access for women as a total of the beneficiaries under the programme was 11,17%, an insignificant figure when considering that women in Zimbabwe constitute 52% of the population (GoZ/UNDP Fast Facts, MDGs, Ndulo Undated: 194). Therefore, despite ZANU (PF), GoZ, researchers (for example Scoones et al 2010, Hanlon et al, 2013), hailing the land reform programme as a successful empowerment model for the indigenous Zimbabweans, the programme clearly failed to address gender inequalities in terms of access to land by women thereby perpetuating the skewed gender based power, land, property, social and economic relations in the country. This is particularly evident when the access levels for women are juxtaposed against the access levels for war veterans who formed 27,9% of beneficiaries under the A1 resettlement schemes, 27,9% under the A2 scheme and 27,9% of the total land beneficiaries under the programme as shown in Table 6.3. As indicated in Chapter 1, the number of war veterans was at most 65,000 and therefore less than 1% of the total national population at independence. The access rate for war veterans was therefore disproportionately high compared to other interest groups and in particular women and the youths.

In addition, research has shown that women war veterans did not benefit from the FTLRP in the same way as their male counterparts as they were often left to access land through men who were considered to be heads of households in the allocation process (Mushunje, 2005:24). In essence therefore the benefitting war veterans were male as opposed to female. The access by male war veterans was possible because there were deliberate and consistent efforts and pronouncements from the highest offices in government in support of the war veterans' land claims. This followed the war veterans' display of power and their ability to challenge government over the years on a number of issues including failure by government to give them due recognition for the role that they played in the war of liberation. They staged many protests and issued threats to government culminating in government's capitulation in 1997 when it

gave the war veterans a fifty thousand Zimbabwean dollars (\$50,000) lump-sum payment each as pensions for their role in the liberation struggle. This provided the war veterans with the impetus to continue with more and grander demands, including the demands for land as they realised that their threats and demonstrations could produce results. Sadomba and Andrew describe this situation thus:

The war veterans' movement first engaged the state in a "no-holds-barred" meeting on 25 April 1992, making their demands to President Mugabe. With Chenjerai Hunzvi at the helm of the ZNLWVA, their strategy became more militant and included direct confrontations. They organised street demonstrations, locked Ministers and top ZANU (PF) politicians in their offices, disturbed an international conference and a Heroes' Day speech by Mugabe, interrupted court sessions and besieged the State House. (Sadomba and Andrew, 2006:9)

The President and GoZ yielded to the War Veterans demands and promised them 20% of all land to be redistributed under the FTLRP (Sadomba and Andrew, 2006:9). As Table 6.3 shows, the 20% figure was surpassed and the war veterans got 27% of all the land that was distributed under the FTLRP. The success of the war veterans in obtaining land can be attributed to their successful deployment of their "power with" to mobilise and confront visible State power at the national level. The militant nature in which they confronted visible power showed that their collective resolve was so immense that it had the capacity to effectively challenge State power and threaten the continued existence of the government of the day. The State was, therefore, left with no choice but to yield to the demands of the war veterans and give them the land.

Similarly, women and the women's movement in Zimbabwe did not sit on the side-lines and simply watch the events of the FTLRP go by. Women participated in the farm invasions although in smaller numbers compared to men as discussed in Chapter 7. They were also in many instances pushed out of the farms after their initial participation because of the gendered realities that confronted them. The fact that they participated in the farm invasions and stayed on the farms when they could shows that they had the resolve to acquire land. As a result of the harsh gendered realities that they met before and during the FTLRP, women realised that their

best option lay in having a government initiated and implemented programme that would deliberately target women as beneficiaries during the FTLRP. Engaging with power through advocacy and lobbying for women's access to land was therefore the women's best strategy. Subsequent to the 1998 Donor Conference on Land Reform, and at which the WLLG gave a presentation to highlight the land needs of women, government promised women 20% of the available land and joint registration for married spouses (Matondi, 2012:188, HRW, 2000:39)²⁷⁸ but these promises and commitments were never translated into policy (Mushunje 2005: 19) to ensure implementation in favour of women. This was despite the WLLG and other women's groups in Zimbabwe such as the Women's Coalition of Zimbabwe (WCoZ), ZWLA and ZWRCN continuing to engage with government on the need for gender equity in land redistribution. In some instances women's lobbying and advocacy on access to land seemed to produce the opposite results with senior government officials apparently at odds with women's demands for land. For example in 1998 when the late Vice President of Zimbabwe, Joseph Msika, was a senior minister responsible for resettlement, he was quoted as insisting that government would not follow a policy of joint registration of land for married couples and would not prioritise single women and women heads of households in land allocations. His argument was that such an approach would give women too much freedom, was anti-culture and would invite the wrath of Zimbabwean men against the government.²⁷⁹ This was a case of both invisible and visible power at play as culture and gender stereotypes were employed by senior government officials to deny women land and trivialise their demands for the resource. The invisible power also manifested in visible ways as senior government officials developed publicly enunciated positions that were influenced by their own perceptions of culture, tradition and gender stereotypes resulting in the undermining of the rights of women. In February 2010,

²⁷⁸ Media and research reports also indicate that President Mugabe and the Government of Zimbabwe had promised women 20% of the land. (See for example www.womennewsnetwork.org and GoZ, Ministry of Women's Affairs, Gender and Community Development (<http://213.55.79.31/beijing/beijingplus15/Questionnaire/DAW/English/Zimbabwe.pdf>)

²⁷⁹ Irin News Africa, 4 December 2002

media reports stated that the then Women Affairs, Gender and Community Development Minister Olivia Muchena had rejected calls by the WCoZ for an urgent land audit to pave the way for a fresh farm redistribution programme that would address gender imbalances in land ownership. The Minister was quoted as insisting that women's land needs had been met because government had put in place a policy requiring that 20% of the land to be redistributed must be given to women. The Minister stated further that an 18% allocation threshold for women had since been met under the programme²⁸⁰. The ZANU (PF) government has over the years consistently rejected calls for a land audit²⁸¹ and therefore the Minister of Women Affairs was apparently at odds with the women's movement, fellow women and their demands in order to support the party or Government position of opposing any calls for a land audit. This was hidden power at play as political party politics pulled the strings behind the scenes and, dictated government responses to women's legitimate demands for land. The party power and party politics therefore proved to be more potent than the women's movement and their pursuit for women's rights to land. In addition, the State could afford to ignore the women's voice and their power, because they did not present any compelling threat to those in government, when compared to the war veterans. The war veterans' power came from the fact that they had fought in the war of liberation, had shown renegade characteristics by defying and belittling the government, the President of the country, senior government officials and even the judicial system. They therefore had displayed the capacity and potential to threaten the existence of the government of the day.

²⁸⁰ The Zimbabwean, 15 February 2010.

²⁸¹At its 5th Ordinary National People's Congress held in Harare from 9th -13th December 2009, ZANU PF resolved that it would not support the land audit and other reforms as enshrined in the GPA until the west had removed its targeted sanctions. In January 2010, the Minister of Agriculture, Joseph Made was quoted as telling the United States of America Ambassador to Zimbabwe that no land audit would be undertaken in Zimbabwe until Sanctions had been removed (See www.insiderzim.com/stories/1935-no-land-audit-until-sanctions-are-lifted). The position has been held by ZANU PF for a long time and as late as 8 March 2012 on the ZBC programme "Economic Forum", Minister of State Security Didymus Mutasa insisted that the three land audits that had already been undertaken by government had shown that there were no multiple land owners in Zimbabwe and as such there was no need for another land audit. This was despite the fact that the 2008 GPA recognized a land audit as one of the key issues that the GNU was required to address in order to deal with some of the imbalances that existed in the country.

6.7 Turning the Negative Tide of Mobilising Women's Power and Neglecting them when the Battle is Won

In light of the disregard for women in access to land by those in power and authority, one must then ask the following questions:

- i) Would it have made a difference in land access for women if women as a group had adopted a more militant approach, similar to that of the war veterans as opposed to lobbying and negotiating with power?
- ii) Will it help women to access land and for women to be recognised generally if they shake off the peace builders tag that they are associated with in pursuit of a more vicious approach in claiming their rights?

Nhongo-Simbanegavi highlights how during the war of liberation both the nationalists and the settler governments used the men's perceived inborn capacity for violence to recruit them for armed combat whilst women were recruited and mobilised as providers of care and comfort (Nhongo-Simbanegavi, 2000:14). Such care and comfort included provision of food to the fighters, caring for the wounded and acting as sex providers to the fighters on the battlefield, in the villages and in the training camps. The result was that in independent Zimbabwe, the men who were at the frontline were given hero status as the liberators of the country which had attendant economic, social and political benefits whilst the women who provided non-combat but essential services were seen as non-essential and were often passed off as having been refugees during the war. This "non-essential" tag for women despite their constant mobilisation for national and political purposes has persisted over the years. For example, for more than three decades after independence, women have been an essential cog in the political party system in the country both as members of political parties and voters and therefore often mobilised to support the political parties at election time. However, just as happened after the war of liberation itself, the state and patriarchal political power are quick to entrench themselves and forget the women and their contribution as soon as the battle is won. (Mies, 1986: 175). During the liberation struggle, women sustained the

struggle on the “home front” by ensuring that whilst the men were away, homes were kept and maintained, children were looked after, agricultural production in the rural areas continued and that the guerrillas were fed, clothed and taken care of. (See Staunton, 1990²⁸²). A woman with a gun in her hands and a baby on her back was the standard image by which a link was made between national liberation and women’s liberation (Mies, 1986: 175, Lyons, 2004: xix) by showing the dexterity of women and their capabilities as both mothers and liberation war fighters. But soon after the war, men, the State and political power quickly took over and women were forced to recede and coil back into their “natural” roles because the men were once again available to take up “their roles” and power as national leaders and heads of families. For example, after the war of liberation, the Government of Zimbabwe could not provide enough wage labour to the ex-guerrillas resulting in the Government giving the scarce paid jobs that were available to men rather than women (Mies, 1986: 196). This meant that available resources were given to the men and the women would only benefit if the men had had their share and were satisfied with it. This is the same way in which women are treated before and after elections. They play an important role as campaign leaders, party supporters and voters and are promised a lot of things by the politicians. “Women’s projects” spring up everywhere, only to be abandoned as soon as the election is over. The 2013 election was a critical one for the major political parties that were involved and as usual, women were men’s “political fodder” and were encouraged to vote for the parties on the promise of gender equality and the promotion of women’s rights. The parties’ election manifestos had clear gender equality clauses that were designed to get the women’s attention. The ZANU PF manifesto stated in part that:

²⁸² Irene Staunton’s compilation, “Mothers of the Revolution” gives detailed first hand accounts by various women about the role they played during the war of liberation. These included looking after the children, the homes and feeding the freedom fighters, amongst other things, in support of the struggle. The women took up these roles when they realized that the battlefield was coming to their homes without them physically taking up arms to fight in the war. All the women whose narratives are given in the compilation stress that were it not for the women and the role that they played, the liberation struggle would not have been won or at least not within the time that it was won.

Inspired by the heroism of Mbuya Nehanda against colonialism and the historical fact that women fought side by side with their male counterparts during the liberation struggle, the goal of gender equality is profoundly embedded in the Zimbabwean mind-set. It is for this reason that every ZANU PF policy seeks gender equality as an aspiration of the liberation struggle. ZANU PF has raised the status of women by championing gender equality through laws, empowerment programmes and promotion of women in sectors and positions previously held by men only. Examples include a woman Vice President since 2005,²⁸³ female judges, and pilots to mention a few. The party will consolidate programmes to economically empower women, build strong families and develop [co]mmunities where men and women, boys and girls are equal partners and beneficiaries in development. (ZANU PF, Elections Manifesto, 2013: 21).

The MDC-T's election manifesto was more up to the point in relation to women and access to land and stated that the party would:

Implement a fair and equitable land policy to cultivate an efficient, just and people driven agro-economy by [ensuring] equitable access to land for all irrespective [of] race or gender (emphasis mine). (MDC, Election Manifesto, 2013: 13)

In addition, before the elections, the preceding Constitution making process and in particular the adoption of the 2013 Constitution saw women and women's issues being central to the constitution-making discussions. Concessions were made on all sides of the political divide, including those relating to women's rights to land. However even with the women's land rights entrenched in the 2013 Constitution, without mobilising to ensure that this provision is implemented, women risk getting only limited gains from the emerging constitutional dispensation, only to be remembered as the next election approaches. Using the provisions in the 2013 Constitution and without necessarily using violence like the war veterans, women can use their "power with", to mobilise and threaten to withdraw their vote and political party support if their land needs are not adequately met by the time of the next election. This is because patriarchal State and political power will only yield to women's power if such power has the effect of threatening their own power positions as political and government leaders. Currently, the treatment of women as typified by their failure to access land under the FTLRP shows that women are treated as "not dangerous" and therefore the State, political parties and

²⁸³ The same woman Vice-President was removed from the ZANU PF and country's vice-presidency the following year and replaced by a man.

other male leaders can afford to disregard women and their rights. But, are women able to mobilise more as women than as members of political parties in pursuit of a common demand and right? For example would Zimbabwean women collectively use their “power with” to withdraw from supporting political parties and withholding the power of their vote in order to fight a common goal of accessing land?

When I went into field in March 2014, it was just seven months after the country’s general elections, which were held on the 31st of July 2013. It was clear that the land issue was a major campaign point for the two main political parties, ZANU (PF) and MDC (T) during the election period. The land campaign issue however gained traction in favour of ZANU PF mainly amongst the beneficiaries of the FTLRP who supported the party in return for holding on to their allocated pieces of land.²⁸⁴ There was no corresponding backlash, amongst the women who failed to acquire land, which would have resulted in protest voting against ZANU PF for failing to provide land or a favourable voting pattern in support of the MDC (T), which was promising a land audit and the implementation of a land reform programme that would benefit many more citizens.²⁸⁵ The issue of access to land for women therefore failed to act as a rallying point for women as political party allegiance proved to be more important than the land needs of the generality of women. Women took a political party aligned position in their voting patterns as opposed to a women’s rights and a women’s issues one.

6.8 Access Patterns and Access Challenges as Indicators of Prevailing Power Relations

²⁸⁴ On Page 55 of its 2013 Election Campaign Manifesto ZANU PF pointed out that “One clear current achievement of ZANU PF, whose benefits have become self evident and widespread, with far reaching positive implications over the next five years is the indigenization of land and the empowerment of newly resettled farmers.”

²⁸⁵ In its election manifesto the MDC had the following to say in respect of land reform: “Since its inception the MDC has believed access to land and the enhancement of agricultural productivity is central to our sustainable development and the eradication of poverty. Unfortunately, land has been a source of conflict, corruption, and abuse of power preventing the population from utilizing the resource to their benefit. The MDC will implement a fair and equitable land policy to cultivate an efficient, just, and people-driven agro-economy” (MDC, 2013:12)

An analysis of the reasons why women failed to access land on the basis of equality with men, as detailed below, will show that the women who accessed land in the A1 farms were not necessarily content with the plots that they accessed. They however lacked the necessary “power within” to engage with the processes that would have allowed them to access land in the high value A2 farms. Similarly, some women who remained in the communal areas were also desirous of acquiring land either in A1 or A2 farms but were in an even more invidious position in relation to their capacity and power to engage with the relevant processes for various reasons. Box 6.1 details some of the reasons obtained from the field on why women in the A1 allocations in my research area failed to access A2 plots and why those in the communal areas who failed to access land at all were in the position that they found themselves in.

Box 6.1: Reasons provided by women on why those on A1 farms failed to access A2 farms and why others completely failed to access land under the FTLRP

Reasons why women in A1 farms failed to access land in A2 farms

- Lack of information on processes to be followed
- Lack of resources to fulfil resource capacity requirements which were a condition for accessing A2 farms
- No political connections to facilitate access to high value A2 plots
- Complicated application procedures requiring high levels of education and resources to hire technical expertise to draft business plans where they were required.

Reasons why some women completely failed to access land despite their wish to access land

- Lack of information on processes to be followed
- Lack of resources to clear plots, construct new homes and invest in production on the new farms
- Fear of violence on the farms
- Viewed the ability to benefit as linked to party politics and political connections and therefore gave up in trying to acquire land if they had no connections
- Complicated application procedures for A2 farm applications
- Old age
- Gender roles inhibiting participation (for example looking after children and the home whilst the men went out looking for land)

Box 6.1 relates to women who accessed land in A1 farms and those in communal areas who completely failed to access land. Both categories of women were marginalised and disempowered in various social, economic and political spheres. The women in the A2 farming

areas, as exemplified by the women highlighted in Table 6.1 were grappling mostly with visible power, which they were able to effectively engage with. Reasons given by women in the A1 farms for failing to access land in the A2 farms and those given by women in the communal areas for completely failing to access land show that these women were faced with all three dimensions/forms of power which they had to grapple with, often with limited success. The following section will analyse the reasons that were given by the women in Box 6.1 as contributing to their failure to access land. I argue that these reasons centred on power, power relations and power dynamics. Three of these challenges namely lack of information, lack of resources and the political nuances that influenced access to land were common to women in both A1 farms and communal areas. Issues of old age and fear of violence mostly affected the women in the communal areas who completely failed to access land. Gender roles though equally inhibiting for women and a centre of serious power contestations will not be dealt with in this section as the issue is extensively covered in Chapter 7.

6.8.1 Women in A1 Farms and Communal Areas Struggling to Engage with Visible Power

One of the key issues that this research seeks to highlight is that women are not homogenous and undifferentiated. Rather their heterogeneity as women denotes that they are differently impacted on by similar issues and comparable challenges. Although 'women' as a category provides a convenient catch-all term, 'women' like 'property' should be subjected to analytical scrutiny (Hirschon, 1984:3) in order to understand the situation that each woman and different categories of women find themselves in. This means that any study that focuses on women must analytically scrutinise the distinctions that exist between and amongst women in order to understand their situation. Power and power relations are a category of analysis that highlights the implications of women's differences and how they respond to issues and challenges. In the section above, I highlighted the manner in which women in A2 farms engaged with and challenged dominant power as they sought to carve a place for themselves in the high value A2 sugarcane farms. On the other hand, the reasons given in Box 6.1 by women in the A1 farms

and communal areas on why they did not benefit as they wished from the FTLRP show that they were differently placed in relation to the dominant power relations that were at play. The women in A1 allocations were therefore not as able as the A2 women beneficiaries in engaging with or using their own power to leverage their positions in the land allocation process. This section will therefore seek to analyse how power and power relations affected this category of women and the differences in responses when compared to the A2 women beneficiaries.

Despite the fact that the national policy and institutional systems, power structures and decision-making centres on the land reform programme were the same, women in the A1 allocations and those in communal areas who failed to access land were not able to effectively engage with this power. Below I provide an analysis of how each of the impediments highlighted in Box 6.1 above were related to power and decision making under the FTLRP.

6.8.2 Lack of Information on Processes to be Followed

Both women in the A1 resettlement allocations, who wanted to but failed to access A2 farms and those in communal areas who completely failed to access land cited lack of information on the programme and processes that were supposed to be followed as a reason for their failure. Yet to a disinterested onlooker information on the FTLRP in Zimbabwe was abundant, judging by the television and print media coverage that the issue received both nationally and internationally. However, the available information and the manner in which it was packaged and conveyed was not appropriate in helping women to participate in the programme and make the necessary informed decisions. Effectively therefore women, particularly those in communal areas had no useful information to help them in the process. This lack of information meant that they did not have the necessary “power within” to engage with visible power and the land reform process. This led to their exclusion despite their apparent need to participate in and benefit from the programme. Often availability of information is important for participation in programmes at various levels as well as in making informed decisions because as is often said

“information is power.” In addition, information on the FTLRP was not transmitted to the citizens through formal government channels. The available information was also not consistent or clear and was often appropriated by local strongmen such as war veterans and traditional leaders. This meant that women amongst other disadvantaged people were not able to access clear, unambiguous and reliable information to assist them in making decisions with regards to the FTLRP. When asked about how they acquired information about the FTLRP, respondents identified their main sources of information on the land reform programme including the farms that they could go and invade as following:

- i. Family members
- ii. The local war veteran and
- iii. Fellow villagers.

Some of the purveyors of the information on the programme would in turn indicate that they had received the information from other people or from media reports that showed how people in other parts of the country were on a mission to reclaim their ancestral land through farm invasions. The lack of properly conveyed information by the government on the programme was therefore a handicap in empowering women to effectively participate in the programme. In addition, some of the local strongmen who held the information used it sparing and strategically to benefit their kith and kin and those close to them first before they could provide the information to the generality of the people from outside their immediate family, friends and village system. My interviewees as shown by the excerpts below exposed such practices:

Ms AS- Musvovi Communal Lands: The war veterans in this village simply went to invade the farms first and came back later to take their friends and relatives. That is how some of the people in our village managed to get land.²⁸⁶

Mr DB: Bejani Village, Shindi Communal Lands: We hear that war veterans got bigger plots compared to other people and hoarded it. They would then allocate the land to other people of their choice. In our area, there is no war veteran so there was no one to lead us to the farms and in the land invasion process. No one in the village knew where to go or

²⁸⁶ Interview held on 23 April 2011. Her narrative showed that there was no readily available information on the programme, and only those whose relatives and friends were influential or had the information on the programme such as war veterans were able to benefit.

how to go about the process. As a result, we didn't get a chance to also get land. If you know how it's being done, please tell us so that we can also go and get land. [referring to me]²⁸⁷

The reality therefore was that people in the communal area did not have the requisite information on the FTLRP. Whilst the lack of information might have been the same for men and women in the communal areas, the situation was mitigated for the men in these settings by the social settings, which allowed men to socialise and meet other people outside the home. Such meeting places included the workplace, the local township, political meetings and other social settings. The townships in particular worked as points of convergence and sources of information for men in rural areas as they spent considerable amounts of time at these centres drinking beer, socialising or merely lazing around. A newspaper that arrived from the urban area via a community member who would have gone to town, a visitor to the area, or arrived with a bus driver en-route to a destination further down the road or highway was read by many men at the township, as is exchanged hands throughout the day. These men would then be the custodians of the information on the FTLRP as read in the newspapers and would recount the news to their wives, mothers and sisters when they went back home. Even then, such information as read and recounted by the men to the women did not provide details about how the land could be accessed. Instead the information related mainly to particulars about how the farm invasions were progressing in other parts of the country or what the senior political figures in the country were saying about the programme. Focus was on the empowerment and anti-colonialism rhetoric, the propaganda on the need to remain patriotic and the need to support President Robert Mugabe, ZANU PF and the land reform as an empowerment tool. In the same vein, state television provided constant jingles reminding people to stay resolute in support of

²⁸⁷ Interview held on 6 February 2012

the land reform programme. Songs such as “*Rambai Makashinga*”²⁸⁸ and “*Hondo Yeminda*”²⁸⁹ were a constant feature. But was this information going to help the women in accessing land?

Properly packaged and properly conveyed information was important for women’s participation and inclusion in the FTLRP, yet it was lacking. In recognition of the importance of information in decision making with a focus on the environment and natural resources, the United Nations (Rio) Declaration on Environment and Development, urges state parties to the declaration to ensure public awareness and citizen participation in decision making processes through ensuring appropriate access to information and ensuring that information that is held by public authorities is made widely available.²⁹⁰

These undertakings have been adopted at the African²⁹¹, SADC²⁹² and the national level in Zimbabwe through legislation such as the Environmental Management Act: Chapter 20:27²⁹³. It was therefore important for government to ensure that information on the FTLRP was properly conveyed through appropriate and reliable channels in order for the marginalised such as women to access and act on that information in making decisions on whether and how to participate in the programme. The involvement of the appropriate government officials at the local level in rural areas where the availability of media such as televisions, radios and newspapers is limited was critical for information on the FTLRP to be properly conveyed to the women and other people in the rural areas. The lack of information therefore disempowered

²⁸⁸ Shona for “stay resolute”

²⁸⁹ Shona for “the land war”

²⁹⁰ Principle 10

²⁹¹ Article 9 of the African Charter on Human and People’s Rights states that “Every person shall have the right to receive information”

²⁹² Article 31 of the SADC Protocol on Gender and Development states that “state parties shall put in place information, communication and technology policies and laws in the social, economic and political development for women’s empowerment.....These laws and policies shall include specific targets developed through an open and participatory process, in order to ensure women and girls’ access to information and communication technology.

²⁹³ Section (4) (1) (b)

the marginalized rural women, making it difficult to gather the “power within” and the wherewithal to engage with visible power.

6.8.3 Lack of Resources

A second common challenge by the women in A1 farms and those in communal areas inhibiting their participation in the FTLRP was lack of resources. For those in A1 farms who wanted but failed to access land in the A2 farms, they required resources to demonstrate that they had the means to utilise an A2 farm and to engage the services of experts to assist them in the development of a business plan if they could not do it on their own. A business plan was one of the requirements when applying for an A2 allocation, (although not necessarily followed in all cases). Hanlon, et al, note in relation to land allocation in the A2 farms that:

The Ministry placed advertisements in the main national newspapers inviting people to apply, and application forms required a business plan setting out cash flow and budgets as well as specifying the applicant’s income, property, experience, qualifications, and training. Applicants were required to have their own resources for farming without government support. Special consideration was given to war veterans, war collaborators, ex-detainees, and women. (Hanlon, et al, 2013:85).

This observation was confirmed by the Masvingo PA, who stated that:

In order to access an A2 farm, one had to show capacity to farm and the level of capacity would also impact on whether one would get a ranch or a commercial cropping farm. Capacity was determined by relevant educational qualifications, financial and other capital resources amongst other things. This was also one of the reasons why less women benefitted in the A2 farms because not many of them could meet these requirements and criteria for allocation.²⁹⁴

However, even though government as confirmed by the PA was acutely aware of the challenges faced by women in relation to these requirements, there was no deliberate effort to ensure that women were assisted to correct the obvious unfairness that would arise from not taking a conscious decision to treat them differently and favourably in the land allocation process. Other than in the A2 allocations, women in the communal areas lacked basic resources for simple

²⁹⁴ Interview held on 6 September 2010

actions that would assist them to get established on the new farms. Such resources were required for land clearing, tillage, building homes and buying inputs necessary to initiate their farming activities on the new farms. As a result, they simply stayed away from the process. The net effect in the context of the FTLRP was to alienate the land users and food producers from the land. Utete (2003) highlighted the gender disparities in access to land under the FTLRP and the effect on gender equality, women's empowerment and the fight against the feminization of poverty amongst the rural women in Zimbabwe. The Utete Commission report in this regard recommended the need for government to seriously reconsider the status of women with regards to the FTLRP. The report highlighted the need to recognize the "historically diverse and pivotal role of women in all aspects of agriculture in the communal lands and the need to strike an overall gender balance" in the agricultural sector by implementing measures that would ensure equity in, and the effectiveness of, the agrarian reform in the country. In addition, the report highlighted the need "to ensure the survival and stability of the growing number of families in rural areas headed by women". The report noted further that children were also increasingly heading households as a result of the devastation faced by society and communities as a result of the HIV and AIDS pandemic. This requires ensuring that the agrarian reform's gender imperatives were kept topmost in transforming the agricultural sector in the context of the FTLRP. The Commission acknowledged that despite the low levels of access by women at only 18%, the agrarian reform constituted an important vehicle for economically empowering women (Utete, 2003: 6).

Chapter 7 of this thesis highlights how lack of resources affects women's efforts towards acquiring resources such as land that would assist in economically empowering them. This further entrenches women's lack of autonomy and ability to create a power balance that allows them to negotiate and participate in decision-making in the home, in the community and at the national level. In relation to the reasons given above for failure to access land, lack of resources

also tied into the issue of complicated application procedures because with financial resources, women could acquire the services of experts to assist them in compiling the applications. Education was also a critical resource and power source that many of the women lacked. With education, it would have been easier for the women to compile the requisite applications. The “Human Capital Theory asserts that education creates skills, which facilitate higher levels of productivity” amongst the people that have them in comparison with those who do not (Oxaal, 1997:3). But it has also been proved that in developing countries, women typically receive less education than men. Although Zimbabwe has the highest literacy rate in Africa at 92% (KPMG 2013), this could not have had a significant impact on women’s ability to negotiate their land rights under the FTLRP, especially if one considers what this literacy means. Zimstats, Zimbabwe’s official statistical agency defines literacy as

The ability to read and write, with understanding, a simple statement related to one’s daily life. It involves a continuum of reading skill and often includes basic arithmetic skills (numeracy). In Zimbabwe, persons aged 15 years and above and have completed at least grade three of primary education are considered to be literate. (Zimstats, 2012:24).

A grade three primary education (the official literacy threshold as highlighted above) would not have helped in the application process for the A2 farm allocations, as the process was complicated. A higher level of education was therefore necessary and yet the higher the educational qualification level, the fewer the women that are found at that level. According to the same report, “school enrolment from primary level up to Form 3 shows gender parity...however, from Form 4 to tertiary level, enrolment is still in favour of males”. (Zimstats, 2012:29)

Zimstats also notes that “In the age groups below 45 years, there is gender parity in literacy. However in older age groups, literacy is generally higher in men than in women” (Zimstats, 2012:24). In 2000, the United Nations estimated that 60% of Zimbabwean women were illiterate (UN, 2000 quoted in Mushunje 2005:39) with women in the rural areas being the most disadvantaged and women generally leaving school earlier than their male counterparts

(Mushunje, 2005:39). In my research area, of the 19 female interviewees who were in control of the piece of land that they occupied (single, widowed, allocated in own right) only 6 were below the age of 45 giving a percentage of 13.3. This shows that the majority of the people that made an effort to access land were in the older age group, which had limited education. As such, they were disadvantaged in their interaction with the land reform process in the high value A2 allocations, as the process required a high level of education in order for one to appreciate it. The statistics in Table 6.3 above show that the age group that benefitted the most from the FTLRP was not young as the youths acquired only 0.558% of the available land.

The mere act of occupying land also required resources especially in relation to farms that were far away from one's normal place of abode. Money was required for transport and for food amongst other necessities. Such distant occupations were therefore difficult without financial resources. As a result many of the distant land occupiers were men who were occupying on their own behalf or as proxies of the elite who for one reason or another were not prepared to camp on the farms as land invaders (Matondi, 2012:23). Respondents showed that whilst the actual land was presented as a free commodity that was there for the taking, in reality the invaders were required to contribute resources, in particular money for various issues on the farms. These included "bus fare" for war veterans and other leaders in order for them to travel to the government administrative centres both at district and provincial level. The trips were made for the purposes of negotiating and conferring with bureaucracy, making enquiries about progress with regards to pegging, offer letters and inputs and presenting disputes or any other challenges experienced on the farms for resolution. Contributions were also required when the "designated"²⁹⁵ chief for the area was visiting so that the farm invaders could present the chief with a token of appreciation upon his departure. The amounts to be contributed were arbitrarily set by the war veterans and other leaders on the farms and there was no accounting afterwards.

²⁹⁵ The issue of the authority of the traditional leaders over resettlement areas was an emotive and unresolved one at the time of the land invasions and remained so during my entire research period

One was required to pay in order to remain part of the programme or any particular group camping on the farms. The power that the war veterans and farm leaders had over the other farm occupants meant that the occupants were coerced into making the contributions or risked losing their allocated piece of land or not being allocated land in situations where parcelling had not yet taken place. Mrs. JC from the Musvovi Communal Lands whilst giving an account of the various reasons that led her to leave a farm after being part of the invaders for a while recounted the problem of lack of resources and the coercive money collection methods thus:

The other problem was that whilst the farms were on the face of it being given for free, people were required to contribute money towards a lot of things, for example for the war veterans and other leaders to go to the government ministries in Masvingo to process the papers. If there were visitors especially people from government ministries in Masvingo or the Chief, people would be asked to contribute towards their food, transport or a gift. The war veterans were the ones who commandeered everything and led the collection of contributions. Those who failed to pay the money were pushed out and those who paid stayed in. At the end of the day therefore your money talked.²⁹⁶

It therefore meant that without the resources, staying on the farms was difficult, and for many women this formed one of the bases on which they were eventually elbowed out of the farms and the FTLRP.

The issue of resources continued to plague women even after settling on the farms as access to resources determined their productivity and their capacity to securely hold on to the pieces of land that they had been allocated. For example, productivity in A2 farms was a pre-requisite for obtaining a 99-year lease, a tenure system that was considered as optimal since it provided the possibility of acquiring farming resources through bank borrowings and other farm input credit providers. The tying of the issuance of the 99-year lease to productivity was detrimental to women who continued to struggle to get the requisite resources to make it on the farms. Availability of resources therefore proved to be an important source of power on the farms as

²⁹⁶ Interview held on 23 April 2011

it opened up numerous social, economic and political possibilities for those that had the resources, whilst closing the same for those that did not possess the resources.

6.8.4 The Role of Politics, Political Power and Political Relations

The role of politics and the fact that the FTLRP was a political process and power game cannot be overemphasised. Moyo highlights this point by saying:

It makes no sense however, to pretend that the land question is not a political issue, and that it should only be addressed following purely economic logic...the land issue is a political issue, which has to be addressed with full cognisance of the political problems it invokes. (Moyo, 1995: 17).

As such, the politics of the day played a key role in determining how the FTLRP was implemented and eventually who benefited from the programme and how they benefitted. Initially, the political schemes around the FTLRP centred purely on power games and ensuring an electoral win by ZANU PF as the 2000 elections loomed. However with time, the politics of patronage and reward, political party affiliation, social and blood relationships amongst others kicked in thereby determining access and benefit under the programme. Although the government consistently denied that access to land was done along partisan political lines and that all citizens were eligible to benefit from the process, the perception and reality in the field and as evidenced by other researchers tell a different story.²⁹⁷ Political power, whether personally held or through proxy or association, was in reality and in the public perception one of the major (but not sole) determinant factors in whether one accessed land or not. As Matondi posits;

Land allocation under the FTLRP was not expected to benefit everyone because the land acquired was limited...this meant that a specific number of people could benefit, and, naturally, some people would not benefit. In a context in which land as a resource was limited and there were many people competing for access, it meant allocation became a

²⁹⁷ In addition, as the ZANU PF party started fighting along factional lines in 2014 and 2015, senior ZANU PF members opposed to former party and State Vice President Joyce Mujuru and former party Secretary for Administration and Minister of State Security Didymus Mutasa publicized how Didymus Mutasa amassed land under the FTLRP and allegedly gave some of the farms to his relatives (some of them staying in the United Kingdom) as well as his girlfriends. Effectively the ZANU PF members confirmed what opponents of the land reform programme have been saying all along, that is the process was abused, with the bulk of the prime land being acquired by ZANU PF members and their cronies. See for example, *The Sunday News*, Sunday 18 January 2015, "Mutasa land scandal unearthed" and *The Herald*, 28 January 2015, "Mutasa in another land scandal". State newspapers carried both reports.

political act of balancing multiple interests. Some politicians sought to influence land allocation as a basis for building their support base” (Matondi, 2012:52)

In addition, the same author states that there is no doubt that many people who wanted land used the political approach to get land and that there was nothing extraordinary about the political routes that were taken by beneficiaries in order to access land (Ibid, 74). Despite this reality, Matondi and other researchers (Scoones et al, 2010, Moyo and Yeros, 2005) downplay the impact of this political approach to land allocation by arguing that at the end of the day it was the ordinary person and not the so-called “cronies” that benefitted from the land. My argument however is different, and it is that political power and connections, political influences and political relationships had an impact on how the marginalised, and in particular women, related to and approached the land reform programme. It impacted on how they made decisions on whether or not to participate in the programme and if they were to participate, the best political strategy that they had to employ in order to benefit. Those with political affiliations dug up those affiliations whilst those without, were forced to fake such affiliation in order to be accepted as beneficiaries. At the end of the day, the ordinary person might have benefitted but at what cost?

Some of the respondents for this study, particularly those in the communal areas were not comfortable with disclosing their political affiliation. Those in the new resettlement areas were more forthcoming. They openly showed that they belonged to ZANU PF or were close to senior ZANU PF officials and war veterans. They also wanted to clearly show that they managed to access land because of their political affiliation to ZANU PF, senior ZANU PF members or war veterans. In some instances, the political party power was not overt but was utilised in a hidden manner by influencing the people at national and local level that were responsible for land allocations through behind the scenes manoeuvres. Box 6.2 below shows how some of the respondents used political affiliations and relationships to negotiate access to land.

Box 6.2 Examples of how women in my research area benefitted from political connections or relationships and personal political affiliations to ZANU PF and Senior ZANU PF officials

- Mrs. PC (A1 Allocation): She was assisted to get a 32 hectare plot in Lothian Farm by her late husband's younger brother Major General C who was a war veteran and a senior army officer. Major General C took Mrs. PC to the farm and introduced her to the war veteran (Mr FZ) who was in charge of the land occupations on that particular farm. The war veteran promised to allocate a piece of land to Mrs. PC once the allocations started and encouraged Mrs. PC to camp on the farm with the other invaders. Mrs. PC then camped on the farm together with other farm invaders after these introductions and was allocated her plot when the time for allocations came.
- Mrs. M9 (A2 Allocation): She was assisted by her brother in law, a Major General who was a senior army officer and at one time was a ZANU PF Member of Parliament in Bikita District to get a plot in the sugar estates. The brother in law also acquired a plot in the sugar estates.
- Mrs. RM 2 (A1 Allocation): She inherited the farm from her husband who was a war veteran. The husband died a few years after they had settled on the farm but the farm was still registered in the late husband's name at the time of the research.
- Mrs. C (A2 Allocation): She was a senior ZANU PF official in Masvingo Province. She was the ZANU PF Provincial Women's League Treasurer and the Provincial Chairperson of the Zimbabwe War Collaborators Association, a ZANU PF affiliated organisation. She had direct access to the Provincial Governor, a key actor in the allocation of A2 farms as the chairperson of the Provincial Lands Committee.
- Mrs. GM (A1 Allocation)- She was "encouraged" by her brother who was a ZANU PF Member of Parliament in Mwenezi to go and camp on the farms when the invasions started as he assured her that she would get an allocation on the particular farm that she camped on. She got a plot when the time for allocation came.

The overrepresentation of politically connected individuals when compared to other citizens on the farms therefore gave credence to perceptions and conclusions that access to land under the FTLRP was to a large extent politically determined. As such, space for participation by non-affiliated individuals and in particular women was compromised despite what appeared to be open invitations for people to participate in the programme by government. Although Government has stated that belonging to ZANU PF was not necessarily a pre-requisite for one to access land and that this was a mere perception by Zimbabweans and the international community, the over-representation of people affiliated to or claiming to be affiliated to ZANU PF was apparent during fieldwork.²⁹⁸ As a result, sometimes interested non ZANU PF beneficiaries of the programme played the political card and created spaces for participation for

²⁹⁸ These included the war veterans and other community leaders on the farms, such as village heads and members of the Committee of Seven. Other beneficiaries also spoke of their own or their friends' or relatives' affiliation to ZANU-PF as an enabling factor in their accessing land.

themselves in order to access land by claiming to belong to or by participating in ZANU PF programmes and political activities, even in situations where they did not belong to ZANU PF. During a FGD in Nuanetsi Ranch in September 2010 as I undertook my preliminary fieldwork, participants outdid each other in publicly praising and thanking the President of Zimbabwe, Robert Mugabe for giving them land. It was clear during this FGD that the public nature of the discussions necessitated that people publicly proclaim their allegiance and publicly acknowledge the person or entity they attributed their land acquisition to, lest they be mistaken for belonging to the opposition or be accused of not being grateful to President Mugabe and ZANU PF. Such tags could lead to one being “chucked out” of the farms by the war veterans, traditional leaders or other local strongmen. Similar praise singing was not necessarily present during individual interviews that were held in private with the same individuals where the respondents were honest about their situation. This showed that the purpose of the public display of allegiance was a strategy against displacement.

As stated above, some researchers have argued that ordinary people and ordinary women benefitted from the FTLRP as compared to the so-called “cronies” or elites (Scoones, 2010, Mutopo, 2011). Mutopo for example argues that:

The fast track presented a life opportunity for most women that had never happened in the history of land relations in Zimbabwe. In comparison to the land resettlement programme in the 1980s and 1990s, the number of women gaining access to land has escalated under fast track, which may be attributed to changes in the way the societies are evolving. (Mutopo, 2011:1023)

Whilst, I acknowledge that more women acquired land under the FTLRP as compared to the early post independence land reform programme (5% according to Hanlon, et al, 2013) and indeed during the colonial era, this analysis fails to appreciate the fact that women generally still acquired a fraction of the available land and that “ordinary” women often acquired “left over” land in many respects. It is my argument that there is no justification for this state of affairs to be perpetuated, especially during a period of radical reform such as the FTLRP whose

mission was to dismantle the status quo and usher in a new era of empowerment for the marginalised. The findings in the research area mirror the findings by Matondi (2012:185) in Mazowe District where ordinary women indeed got land but often acquired marginal land after the men and the elite women, often with political affiliations were satisfied with their own allocations. In many instances the ordinary women came on the scene at a later stage for various reasons as will be shown in Chapter 7. In the sugarcane estates, the names of the female beneficiaries that were mentioned during interviews and discussions sounded like the “who is who” in the Masvingo Provincial ZANU PF Party structures including political leaders, former MPs, cabinet ministers, wives, daughters, sisters and sisters in law of high ranking party and military officers as well as senior civil servants. Political affiliation, political power and access to sources of power and decision-makers therefore had a significant bearing on access to land by women. Yet it has been highlighted that women in politics or with affiliation to high level political figures are very few in Zimbabwe, a point that was confirmed by the Masvingo PA during interviews as highlighted above.²⁹⁹ In addition national statistics show that the level of participation by women in national level politics is also very limited as highlighted in Table 6.4, which shows the level of representation of women in Parliament between 1980 and 2005.

Table 6.4: Women’s participation in legislative bodies in Zimbabwe from 1980 to 2005

	1980-84	1985-90	1990-95	1995-00	2000-5
House of Assembly: Total	100	100	150	150	150
Men	91	92	129	128	136
Women	9	8	21	22	14
% Women	9	8	14	14.1	9.3

Source: Gaidzanwa R, 2004, Page 45

The table clearly shows that during the peak period for the FTLRP between the years 2000-2005, the rate of women’s representation in Parliament had dropped from a high of 14.1% in the period 1995-2000 to only 9.3%. Whilst it is acknowledged that the mere presence of women in Parliament or other national decision-making bodies does not directly correlate with the

²⁹⁹ The PA highlighted that political party politics played a role in the A2 land allocation process and that fewer women actively participated in party politics at the higher level when compared to men, which explained their marginalization in the land allocation process.

creation or implementation of gender sensitive laws and policies, their contribution both qualitatively and quantitatively can still play a role in influencing the formulation and interpretation of gender sensitive laws and policies (Mushunje, 2005:33). The limited representation for women in politics and other decision-making bodies often filters down to other aspects of women's rights and in this case the right to land due to the influence that politics, political affiliation and often outright political patronage can play in determining access to resources. The Masvingo PA confirmed this causal connection between politics and access to land for women during an interview in September 2010 when he said "In many cases, business and political leaders monopolized access to land under the programme, and there are not many women in those circles"³⁰⁰

The conclusion therefore is that politics and political power was a key determinant in women's ability to negotiate access to land. Women who were actively involved in politics at the high national level or those related to or associated with men who possessed such political power found it easier to use this power to access land compared to women who were not. Decisions on their access to land were often made at the national or provincial level following hidden or behind the scenes power negotiations. After such negotiations, directives for allocation would be given and implemented at the local level. However, because not many women had access to such power, this was reflected by low levels of access to land, especially in A2 farms. Ordinary women often had to use their ingenuity to create spaces for participation for themselves in the FTLRP by feigning ZANU PF affiliation and participating in ZANU PF activities. Faking ZANU PF affiliation often continued well after someone had been allocated land because the threat of eviction for lack of allegiance was always present.

³⁰⁰ During an interview at the PA's offices in Masvingo Town on 6 September 2010

6.8.5 Old Age³⁰¹

Old age is associated with a number of challenges, amongst them limited access to resources at a time when the elderly are most in need of such resources. Often there is a perception and assumption that the elderly do not need certain services and resources or that they are too old to require resources such as land because they cannot work the land. Their age makes it difficult for them to engage with processes and power or interact with decision-makers resulting in them being side-lined. In relation to land under the FTLRP, there was no policy in place targeting the elderly as beneficiaries. Elderly women therefore faced intersectional discrimination by being discriminated against as women and again being discriminated against because of their age and the perception that they were too old to farm and hence did not require land. The lack of infrastructure, lack of resources, lack of proper implementation plans and the violence associated with the programme were some of the major reasons why elderly women failed to participate in the FTLRP or were easily elbowed out as they could not cope or compete to access land without government assistance and special targeted allocation of land. Yet the elderly and in particular the older women in Zimbabwe have borne the burden of looking after grandchildren following the decimation of a generation by HIV and AIDS. In Zimbabwe as in other Africa countries, it is estimated that:

60% of orphaned children live in grandparent headed households. It is often older women who provide this care: households headed by older women are twice as likely to include orphans as those headed by older men. (HelpAge International, 2008:5).

Sadly, the elderly are forced to shoulder such responsibilities without the requisite resources or special attention in access to resources such as land. It emerged during my research however that the elderly were prioritised in the allocation of farming inputs such as fertilisers and seed. However this was not the case in relation to allocation of high value resources such as farming implements, tractors and combine harvesters that were distributed under the various

³⁰¹ The Constitution of Zimbabwe regards an elderly person as someone above the age of 70 whilst HelpAge International regards a person over the age of 60 as elderly and in need of special treatment and attention. I have used the 60 years in this research to regard a person as elderly in line with international standards.

government programmes to capitalise the agricultural sector. In both the communal areas and new resettlement farms, these high value resources were mostly allocated to senior ZANU PF party members and to local leaders and elites such as traditional leaders, war veterans, business people and ZANU PF councillors. In my research area, older women in both the new farms and in the communal areas who failed to access land under the FTLRP were looking after grandchildren who in most instances were struggling to obtain food and other resources for their upkeep. The interaction of some of these older persons with the FTLRP and attendant resources is detailed below:

Mrs. MM (Musvovi Communal Lands)

She did not provide her age, as she did not know when she was born. I however estimated her age to be over 70. She had this to say about her interaction with the FTLRP:

I think that I will not manage in the new farms, as a lot of labour is required for one to make it. I can't clear the fields or start building a new home now. If I am given a piece of land and there is a big tree who will cut it for me? If I had a son, maybe things would have been different for me. I stay here with 5 grandchildren following the death of two of my children. One is in Form 6 and the other 4 are in primary school. This home that I am currently using belongs to my late son. He died together with his wife and therefore I have to look after their children and I have to look after the home as well.³⁰²

Mrs. MM's concerns with regards to fast track land related to her inability to establish herself on the new farms due to the amount of physical work that was required in order for one to settle on the new farms. She could not perform this physically exacting work due to her advanced age.

Mrs. RM1 (Musvovi Communal Lands)

67 Years Old

She said:

³⁰² Interview held on 23 April 2011

My field is very small and given a chance to go to the farms, I would want to go. The soils here are exhausted and it has been long since we were assisted with inputs by the government. Most of the time when the inputs come, it is the village head that gets the inputs. As a community that has stayed together for long, we however help each other. For example, we combine our cattle and take turns to plough each other's fields. We also borrow seed from each other and there is no pressure to return the seed. One can even return the seed the following farming season. As widows, we really want to participate in the FTLRP because that's the only way we can raise our children and grandchildren since farming is our lifeline. I actually went and got a field during the FTLRP but when I came back to the village to check on my home, I found the plot allocated to another man upon my return to the farm. I tried to reason with him and asked him to leave my plot but he threatened me and I had no choice but to leave. I wanted to come and check on my home because the farm was just a forest. I could not risk my home under the circumstances. Yet there was no one to hold onto the plot whilst I came to check on the home. Probably if there had been widowed leaders in the process, they would have appreciated the challenges that widows were facing and we would not have lost the plots that were allocated to us initially.³⁰³

Mrs. RM1's challenges in interacting with the FTLRP were manifold due to being a widowed elderly woman, which divested her of the "power within" to engage with the process. She made an effort to participate in the land invasions but was elbowed out by a man who used his power as a man to threaten her out of the farm. She also attributed her failure to access land to widowhood and lack of a support structure that could otherwise have been available if her husband was alive. She noted that her husband could have shared the responsibilities of looking after their rural home whilst claiming a piece of land in the new resettlement areas. Her husband could also have stood up to the man who wrested the piece of land away from her. In addition, in the rural areas, the rural elites such as the village heads were benefitting from government assistance at the expense of the elderly. The lack of representation for the widowed and the elderly in decision-making bodies was also an area of concern according to Mrs. RM1 because she believed that such representation would have resulted in the articulation of issues of concern to widows and the elderly.

³⁰³ Interview held on 23 April 2011

In the final analysis therefore, there were no support structures and policies for the elderly in the FTLRP who were left to their own devices in negotiating with power and creating spaces for participation in a very hostile environment. This environment was characterised by violence, staying in the open whilst camping on the farms, travelling long distances and queuing for long hours amongst other impediments. National and international legal provisions however require the State to make special provisions to ensure that the rights of the elderly are respected. The Constitution of Zimbabwe, 2013 enjoins the State and its institutions to take reasonable “measures to secure respect, support and protection for the elderly persons and to enable them to participate in the life of their communities”, including through the provision of facilities that allow them to engage in productive activities.³⁰⁴ The Protocol to the African Charter on the Rights of Women in Africa provides special protection for elderly women.³⁰⁵ It states that state parties must provide protection “to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment” amongst other protection measures. However the lack of specificity and detail in these broad frameworks often means that implementation is problematic. This calls for the need to develop specific implementation legislation and guidelines using the constitution and international instruments as a guide.

Statistics show that:

Older women tend to live longer than older men, with a life expectancy at 60 of a further 17 years. They continue their domestic and subsistence farming roles. Increasing numbers of older women whose adult children have migrated in search of work or have died as a result of HIV and AIDS are bringing up grandchildren too. (HelpAge International, 2008:1-2).

This therefore means that government policies and programmes must pay special attention to older women. In Zimbabwe, the majority of these older women stay in rural areas, with 70% of

³⁰⁴ Section 21

³⁰⁵ Article 22

Zimbabwean women estimated to be rural dwellers. The mainstay of the rural economy is agriculture and the older women continue to work in the fields to sustain themselves and their families, including grandchildren. The agrarian reform, which sought to transform the rural economy, therefore left elderly women vulnerable by not providing them with land. Yet their livelihoods are land dependent and the traditional social structures that used to support the elderly have largely disintegrated. Kollapan notes that:

While in traditional African societies older persons were generally supported and cared for by their children or extended family, the changing societal dynamics brought about by among other factors, globalisation, urbanisation and the HIV/AIDS pandemic has impacted negatively on the cohesion of the family and its ability to create a nurturing and enabling environment for the protection of older persons. Under these circumstances there is clearly a need for increased state intervention in support of the elderly based on universal human rights norms and standards. (Kollapan, 2008:1).

State intervention therefore was and remains an imperative in the country's land reform agenda, bearing in mind that age discrimination affects women more than men and that the older women lack the power and capacity to negotiate access to land without the assistance and intervention of the State. The human rights dispensation that has been ushered in by the new Zimbabwean Constitution bodes well for creating and implementing frameworks for the protection of the rights of the elderly in access to land, especially considering that this is the first time in the history of the country that the rights of the elderly have been enshrined in the Constitution.

6.9 The Family as a Locus for Power Contestations

Invisible power in the FTLRP was more dominant at family and community level, with women often impaired in their land access efforts by contestations around culture, religion, tradition and societal expectations on the roles and "acceptable" behaviour of women. As highlighted in

Chapter 7, “the land had its owners”³⁰⁶ and the owners were men who were also leaders in the community and in the home. It has been argued that:

Women's struggles for human rights often position them in opposition to family and social networks where their roles and rights have been defined; however, because of the sanctity of the family, they often choose not to seek empowerment and freedom which sets them against their kin [and family]. (Fox, Undated, Unpaginated).

As a result of this state of affairs, the family is a critical contributory institution towards the internalization of powerlessness by women. Does this mean therefore that the family is inimical to women's empowerment? The answer is that in many instances and situations, yes it is but this can be changed, as the family is the place where individuals should learn the importance of the rights of all members of the family as individuals and part of society and community. It is also in the family where love and care should be nurtured and where values that promote respect, love and care can be imparted. As Coomaraswamy (1994: 52-53) has noted “The law should protect and privilege that kind of family and no other.” The reality however is that that kind of a family is difficult to come by, with the standard family being one that promotes patriarchy and the rule of men over women. The public face of the men as the heads of the family and the men as the breadwinners even in situations where the bread in reality is being put on the table by the women predominates. For example, in Africa and indeed in Zimbabwe's agricultural economy, the women work the land to ensure that families are fed and where possible that there is surplus for sale to meet other family needs such as hospital bills, education and clothing amongst others. Yet, at the end of the day, their labour and the output from the farms is appropriated by the men, and the women are expected to accept that state of affairs.

As such, my fieldwork evinced that if married women played a role in the acquisition of land, the credit was supposed to go to the husband by ensuring that the acquired land was registered in the name of the husband. This ensured that power and control remained in the hands of the

³⁰⁶ Kameri-Mbote P's article “The Land has its owners: Gender issues in land tenure in land tenure under customary law in Kenya” highlights the perception that in African society, land is regarded as a male resource and not one to be owned by women.

husband and women would not assume too much power and control, which had the effect of emasculating men. The push by men to have land that was acquired by women registered in men's names was also meant to ensure that they displayed some semblance of power and control over their wives and families. That outward display of power was not meant for their wives and immediate families but rather for other men on the farms and within the wider communities such as the communal areas where they originated. Phrases such as "*anogara pamunda wemukadzi*"³⁰⁷, as highlighted in Chapter 7, were often used by men during my fieldwork to describe other men, whether married or not, who were staying on farms that were registered in their female partners' names. This implied that the men staying on their "wives' farms" were not men enough in that the powerful person within their relationships was the woman as she was the one who "owned" the land. Johnson has described this effect of power and patriarchy vividly when he posited that:

The cycle of control and fear that drives patriarchy has more to do with relations amongst men than with women, for it is men who control men's standing as men. With few exceptions, men look to other men- not women- to affirm their manhood. (Johnson, 1997:56)

Johnson further states that men use women as badges of success in as far as this aids in enhancing their status before other men by displaying that they are the authority over such women. In this regard:

People routinely compliment a man married to a beautiful woman, for example, not because he had a hand in making her beautiful but because he has proprietary rights of access to her. In contrast, people are much less likely to compliment a man whose wife is financially successful- especially if she earns more than he does- because this threatens rather than enhances his status as a real man. (Johnson, 1997:60)

The man's pervasive and underlying feelings of being threatened by a woman's economic power and access to resources lie at the heart of the need for power, control and dominance

³⁰⁷ When translated from Shona to English, this means that "he is staying on a woman's farm"

(Gordon, 1996:105). Men influence and determine the behaviour of other men in a culture and social environment that glorifies validation and approval from other men in relation to men's masculinity, power and control over women and resources. Though invisible, these social and cultural elements are inherently powerful and ubiquitous, commanding compliance from both men and women, especially at the family and community level.

It is this power that directly or indirectly pressurised women to register land that they had acquired in their own right in a husband's or son's name and the men gladly accepting or demanding to have that land registered in their names.³⁰⁸ The woman agreed or even offered to register the land in the husband's name because society made her to believe that she could not have land when the husband did not have any and that failure to register land in the man's name would raise his ire. For the man, the issue was that it was demeaning that the wife outmanoeuvred him in the first place when she managed to acquire land ahead of him as the husband and the "breadwinner". The resultant contestations and struggles are therefore a manifestation of the struggle for power and control within the household. These contestations often spill into the community with a spirited fight by the man to show other men within the community that he is still in control within his household, despite the reality showing otherwise. But do men in general and those responsible for policy and programme implementation at government level appreciate the nuances and understand these dynamics enough to detect these undertones and ensure that in the end, women are not unnecessarily prejudiced by having their "bread taken away from their mouths".

One of my male respondents Mr FZ had a biblical justification for this state of affairs. He did not see anything wrong with women "offering" to have land that they have acquired registered in their husbands' names because "the Bible never gives the responsibility to feed families to

³⁰⁸ See for example the case of some of my respondents referred to above (Footnote 268)

women”. To him therefore having the farm registered in the name of the husband was only “following God’s Constitution”³⁰⁹ and giving men their rightful positions as required by the Bible.

A worrying finding was that even government officials had a superficial approach to the issue of women “offering” to register land in the husband’s name. Once a woman made this “offer”, the government officials responsible for implementing the FTLRP would not interrogate the issue further but would be glad to grant the woman “her wish”. Mr DM, an official in the Ministry of Lands and Rural Resettlement in Masvingo had this to say:

If a woman who has acquired land offers to register the land in the name of the husband, which they normally do, we carry out her wish. It’s only in situations where the husband is forcing the woman to register the land in his name and the wife is not willing to do so that we intervene to make sure that the woman’s rights are protected.³¹⁰

The protection that was accorded to women was therefore not adequate under the circumstances as what was manifested as willingness to register land in the husband’s name was not always what it appeared to be. In many instances women lack the “power within” to fight the invisible power and the invisible pressures that come from customary, community and religious expectations from a married woman.

6.10 Conclusion

Power in its various dimensions and at various levels played a critical role in determining access to land by women under the FTLRP. Physical power in the form of the pervasive violence that accompanied the farm invasions had the effect of closing out spaces for participation in the

³⁰⁹ Terms borrowed by author from Kameri-Mbote P and Oduor J.A’s “Following God’s Constitution: The gender dimensions in the Ogiek Claim to Mau Land” in Hellum A, et al (2007) Human rights, plural legalities and gendered realities: Paths are made by walking.

³¹⁰ Interview held on 10 February 2012 in Masvingo Town

programme for women. It was visible power that determined the policies that were made regarding the FTLRP from the national to the international level. Hidden power however often determined whether or not the policies were implemented, with institutions outside of formal State authority ruling the day at the local level. Invisible power on the other hand played on the women's minds, forcing them to internalise beliefs, customs and practices that led to their subordination and exploitation by men in the home, in the community and even at the State level. Women's organisations sought to engage with visible State power in order to change the fortunes of fellow women under the programme. But the failure to translate this engagement into empowerment or "power to" for the women meant that the local women lacked the "power with" or "power within" to engage with the system and benefit from the programme.

Chapter 7: Women's Unpaid Work, Gender and Multiple Roles and their Effect on Access to Land

7.1 Introduction

This chapter explores women's work, their gender roles and the multiple nature of these roles and how women's work and roles impacted on their access to land and attendant resources under the FTLRP. Two underlying assumptions will be addressed in this chapter. The first assumption is that women's gender roles and non-recognition of women's unpaid work contributed towards their low levels of land acquisition, or women's access to poor quality and marginal land when compared with men. The second assumption is that the men who occupied the farms could not have succeeded without the female productivity and the role the women played in the home and on the farms. I will thus critically examine women's roles during the FTLRP and whether these roles received concomitant value in recognition of their contributions.

The major research question that this chapter seeks to answer is whether any value or recognition was given to the specific roles that women played during the FTLRP both on the farms and in the homes. In addition, where any value or recognition was given did this translate to access to land by women on the basis of equality with men?

The specific questions that need to be asked and answered therefore are:

- i. *Did household work and gender roles prevent women from camping on the farms during the farm invasions?*
- ii. *For the women that braved the occupations together with men, what was their major role on the farms and how was this role perceived both by the women themselves and the fellow male land invaders in relation to land allocation?*

Unpacking these assumptions and questions will help in understanding the gendered challenges that women encountered in the initial stages of farm occupations and how the hindrances faced at this stage of the process had a long term impact on land access patterns for women. From a general perspective in the Zimbabwean context, the roles that women engaged with during the farm invasions, replicated women's roles during the war of liberation. Chadya in relation to the liberation struggle notes that:

Maintaining pre-war gender roles, women were, first and foremost, recruited as cooks. At *pungwes* (night parties) women were addressed broadly as parents, and, more specifically, as *anamai* (mothers), albeit revolutionary ones. ZANU leaders emphasized this iconography by talking about how women were "breastfeeding the revolution." Invocation of this motherhood image was meant to appeal to women's maternal instincts; women became mothers of the guerrillas in the sense of being the key providers of food. (Chadya, 2007:31)

As this Chapter will show, these gender roles were not thrown away, but were invoked and appealed to every time the ZANU PF Government through its various appendages such as the war veterans and other political actors wanted the support of women in achieving set objectives. The maternal instincts of women had to be appealed to during the farm invasions to ensure that they supported the male farm invaders by providing food, looking after the children and maintaining the homes as the springboards and sustainers of the farm invasions. And in the same way that women were quickly gotten rid of after the war of liberation, so was the lack of recognition of these gender roles during the land allocation process under the FTLRP as men got the bulk of and prime land when compared to women. Realising the importance of women, their work and their role in the land reform programme, the male process leaders in the FTLRP gave lip service and feigned praise to women in order to have them on their side, but this did not always translate to recognition in the land allocation process.

This thesis reveals that as time progressed, broad based legal and constitutional frameworks to address women's rights and gender equality aspects in accessing fast track land began to emerge. However, this was at a later stage in the programme and better planning on the part of

government at the inception of the programme would have assisted women in obtaining land in their own right. A legislative framework at inception, including statutory and subsidiary legislation acknowledging gender inequalities in access to land and providing guidelines on addressing these inequalities would have been a starting point. This would have been complimented by practical guidelines and procedures on land acquisition and allocation that provided for the specific needs of different categories of women in an effort to ensure their participation in the process.

7.2 Accessibility of Farms and Services and Effects on Access to Land for Women

It has been established through research that:

women are not only tied up with day-to-day responsibilities for children and domestic services, but also restricted in their access to essential and strategic resources” (Brown, 1994:8) as a result of the tie down.

The “burden being placed on women as providers of family subsistence has resulted in a lack of long intervals of concentrated time.” (Bukh, 1979: Unpaginated). This is one of the obvious and direct impediments inhibiting women from bettering living conditions for themselves and their children. This means that women have very short periods of time in between the multiple domestic and reproductive roles that they have to perform in a single day, making it difficult to engage in any activities outside the home without compromising these domestic and reproductive roles. Making the services and resources available closer to women’s homes will therefore assist in ensuring that women have access to them. In the case of the FTLRP in Zimbabwe, there was however a challenge in that women’s domestic and reproductive roles were not considered by policy makers and the implementers of the programme as a barrier to women’s access to land. A perception by one of the government bureaucrats was that women did not participate in the farm invasions or in applying for land because they did not want the land. In an interview with a Provincial Lands Officer in Masvingo, his view regarding the limited access to land by women was that women did not want to wait in queues and as a result, the men who queued ended up acquiring the land. He said:

Women are generally not aggressive in terms of acquiring resources. For example if there are queues, women just leave the queues and you will find that most of the people that would remain queuing are men.³¹¹

This view did not take cognisance of the asymmetrical gender relations between men and women, the different roles that they have to play within the household and the implications in terms of confinement and seclusion of women. Men have a more public life and are therefore able to act in the public sphere. The same Provincial Lands Officer was also of the view that women compared to men were not following up on the applications for land lodged with the DAs as part of the FTLRP. To him, this was an indication of women's indifference as far as accessing land is concerned, yet the same household and reproductive work that women had to engage in limited the time that was available to them to make follow ups with the relevant authorities. The nearest administrative offices were located in Masvingo or Chiredzi, a distance of approximately 20³¹², 40³¹³ or 60³¹⁴ kilometres from my different research points. Going to the service centres to check on the status of their applications by the women would therefore entail travelling away from their homes. Coupled with the transport challenges³¹⁵ that prevailed in the country during the period of economic meltdown which coincided with the FTLRP, this would have meant spending an entire work day away from home for the women thereby affecting their household and reproductive work. In many instances the follow-ups did not lead to success at first attempt. It therefore meant that women had to make repeat visits to the relevant offices to seek assistance. This situation was more difficult for women with younger children who required constant care and attention. Providing farms and the attendant services closer to the homes of these women was therefore one way of improving their access to land

³¹¹ Interview with Mr. DM on 10 February 2012 in Masvingo Town

³¹² Distance between Farms 1, 2 and Musisinyani in Hippo Valley and Chiredzi Town

³¹³ Distance between Lothian and Chidza Farms and Masvingo Town

³¹⁴ Distance between Ward 16, Nuanetsi Ranch (Masimbiti) and Chiredzi Town

³¹⁵ Dubbed the "lost decade" by major international institutions including the African Development Bank, the period between 2000-2008 saw a significant deterioration in the economy, service delivery and infrastructure of the country. The public transport sector collapsed as operators battled with shortages of fuel, spare parts and other operational challenges making it difficult for members of the public to travel from one point to another. For example Mbarara T. C (2006:123) notes that negative macro-economic fundamentals including inflation and erratic fuel supplies had negative implications on the transport sector in the country.

by cutting down on the need to travel long distances to access the land and related services. In my research on accessing forest resources by rural women in Zimbabwe³¹⁶ in 2007-2008, I made similar observations in relation to the challenges that women faced in accessing administrative centres to apply for permits to harvest forest resources. I noted then that:

travelling to the service centres takes women away from their homes for long periods of time leaving their families and homes unattended. The other chores that they have to perform in the home are also disrupted. As a result they might never apply for the permits or might give up before they accomplish the task. (Makonese M, 2008:57).

This is because the resources and time required to follow the process through are not always available to women. These challenges are therefore not confined to accessing one type of resource as it has emerged that women faced similar challenges in their efforts to access land and attendant services under the FTLRP.

7.3 Understanding “Occupation” under the FTLRP

The term, “farm occupation” has been variously used, by researchers and ordinary people alike, in relation to Zimbabwe’s FTLRP. However in order to understand the gender dimensions of the FTLRP, I will analyse this term in relation to the findings in my research area, both in the A1 farms and the small scale A2 sugarcane farms. This is important because for women who remained behind in the homes, their disadvantage came from the fact that “farm occupation” was in general and for the ordinary person an integral part of the land allocation process and such occupation could not be remotely effected. One had to be present on the farm and physically “occupying” the farm in order to be considered for allocation. However, the “occupation” meant different things for different people, especially from a resource point of view. The ownership of a resource such as a motor vehicle played an important role in defining “occupation”. As will be underlined elsewhere in this chapter, one of my respondents, Mrs.

³¹⁶ Makonese M (2008). Zimbabwe’s Forest Laws, Policies and Practices and Implications for Access, Control and Ownership of Forest Resources by Rural Women. A Dissertation submitted in Partial Fulfilment of the Requirements of the Masters Degree in Women’s Law. Harare. SEARCWL.

AM³¹⁷ was able to juggle her role as a breastfeeding mother with the farm “occupation” by spending the day at the farm and travelling back to her urban home about 20 kilometres away to nurse her child in the evenings. This was possible for her because she had a motor vehicle and this made it easy for her to travel between her home and the farm. Other people, particularly men with full-time day jobs and cars were also able to pass through the farms on their way to and from work to “register” their “occupation” and continue with their work whilst still being considered to be “occupying” the farms and therefore eligible for allocation when the time came.³¹⁸ They would also bring some titbits for the full time occupiers in the evenings such as Chibuku³¹⁹ or a bag of mealie meal to assuage them for staying on the farm full time whilst they pursued other interests. Lack of similar resources by the generality of women due to their generally low economic status therefore meant that they could not derive any benefits from such strict interpretation of “occupation.” Yet the availability of such resources would have made it easier for women to deal with their multiple gender roles whilst still being able to claim a piece of land. Brown (1994:3) notes that female headed households when compared with male headed ones are inferior as the female head of household is forced to cope with subsistence responsibilities yet her access to resources is poor and limited. According to one of my respondents Mrs. MN³²⁰ from the Musvovi Communal Lands, if one was not considered to be in “occupation” of the farm, they were immediately excluded from allocation or could lose land that might have been allocated to them at an earlier stage. However because they had to juggle many responsibilities, lack of resources made it difficult for them to meet even the very basic requisite for occupation, leading to them being excluded from the land allocations.

³¹⁷ Interview with Mrs. M1 in Chiredzi Town on 06 February 2012

³¹⁸ This was revealed during an interview with Mrs. M1 above in Chiredzi Town on 06 February 2012

³¹⁹ Chibuku is a Zimbabwean traditional sorghum beer brewed by the country’s leading brewery, Delta Beverages.

³²⁰ Interview with Mrs. MN on 23 April 2011 in Musvovi Communal Lands. Another respondent Mrs. RM1 lost her piece of land that she had been allocated after she had visited her rural home. On returning to the farm, she found that another person (a man) had been allocated her piece of land.

7.4 The Value of Women's Unpaid Domestic Work

The value of women's unpaid work has been a subject of debate amongst feminist theorists with a realisation that failure to recognise and give value to women's unpaid work leads to women's oppression and subjugation. According to Merchant, Socialist feminists have argued that:

Male domination over women is a complex social pattern called capitalist patriarchy, in which men bear the responsibility for labour in the marketplace and women for labour in the home. (Merchant, 1990:103)

Such a state of affairs results in a capitalist economy that is largely controlled by men and a domestic sphere wherein women's labour in the home remains unpaid and subservient to men's labour in the marketplace. After realising that women's unpaid work in the home is critical for the economic development of any country, the CEDAW Committee in General Recommendation Number 17³²¹ urged world governments to measure and quantify the unremunerated domestic work of women and ensure that such work is recognised in the Gross National Product (GNP). Such recognition is critical in ensuring that women are not economically prejudiced as a result of the domestic and private nature of their work which however has an important role to play in ensuring that men are able to perform their duties in the public marketplace. The FTLRP in Zimbabwe brought into sharp focus the public and private dichotomy in gender relations in access to resources with women and men often playing different roles, which were given incongruent value in the land acquisition process. The value given to each role often determined the access patterns and levels as well as the nature of relationship that a person would have with the acquired land. In the traditional family set-up comprising of a husband, wife and minor children, the roles that a husband and wife played determined whether the acquired land was regarded as the man's land, the woman's land or both spouses' land. A key element of the FTLRP was that camping or "occupations" on the farms for prolonged periods of time during the farm invasions (*jambanja*) period determined

³²¹ CEDAW General Recommendation Number 17 on Measurement and Quantification of the Unremunerated Domestic Activities of Women and their Recognition in the Gross National Product (GNP)

the eventual beneficiaries and therefore failure to stay on the farms during this period often meant losing out when the eventual allocations took place. Hanlon, et al note that:

To a large extent, obtaining A1 was self-determined as those who *really* (emphasis added) wanted it persevered until they were allocated, either individually or as part of a family. (Hanlon, et al 2013: 158).

The reality however was not as simple as Hanlon, et al have put it. As this chapter will show, there were many women who “really” wanted and were “self-determined” to get the land and who could have persevered in order to get the land but for the gendered realities that they met, at family, farm and national level when they made effort to obtain land. The result as will be shown in this chapter was that more men than women managed to stay out in the open waiting for allocations whilst the women stayed at home because of the gender roles that they had to perform in the home amongst other reasons.

7.5 When Men Went Camping, Women Kept the Supply Chain Going

The move by farm invaders to leave their homes and camp on the farms can be analogous to the age old hunting expeditions because of the risk that was involved and the uncertainty of the outcome. This was especially the case on the A1 Resettlement Schemes where government intervention was very limited until many years later when government moved in to “rationalise and regularise”³²² the occupations. Such rationalisation and regularisation could lead to displacement or relocation to another farm for some of the settlers if Government concluded that the carrying capacity of the farm had been exceeded. After the mass land invasions led by the war veterans and sometimes state security agents started in the year 2000, it took government several years to try and regularise the farm occupations. In many instances the occupations have not been regularised to date. In my research area in the Nuanetsi Ranch, the land occupiers had not been given offer letters as late as March 2014 when I last visited the area

³²² As explained by the Masvingo Provincial Governor in September 2010. The terms were used in reference to a process whereby Government through the then Ministry of Lands and Rural Resettlement moved onto the farms to officially peg and allocate land to the people that had settled on the farms resulting in these settlers being issued with permits/certificates of occupation.

as part of fieldwork. This left many settlers, and in particular women vulnerable and exposed to possible future dispossession.

From a gender and women's rights perspective, the challenges that one faced in an effort to acquire land were myriad. Hanlon, et al show in relation to women's initial attempts and subsequent failure to acquire land, that as things got tougher and conditions more difficult after the initial invasions, many women gave up. They also stress that the pull-out for women was as a result of lack of infrastructure such as sanitation, schools and markets in the farms which impacted negatively on women because of their duties as child care givers and food providers when compared with men (Hanlon, et al, 2013:164.) The lack of infrastructure provision on the farms ahead of settlement by the new farmers was a serious policy and implementation failure by the Government of Zimbabwe with regards to the FTLRP as this had serious implications on the success of the programme. The success of the 1980s programme was in part due to the provision of the necessary infrastructure which made the new resettlement areas habitable, particularly for women and young children. Ikdahl et al for example note in relation to the 1980s resettlement that:

the resettlement schemes were in the initial stages, provided with technical assistances, credit opportunities, depots for seed and fertiliser, dip tanks for cattle, clean domestic water sources, schools and clinics. Funding for infrastructure was provided by both national and international resources. (Ikdahl et al (2005: 73-74)

Such an approach showed proper planning on the part of the Government and provided the new settlers with the confidence that viable opportunities were a possibility in the new resettlement areas. Kinsey notes that:

These early years were a Golden Age for the resettlement program. Beneficiaries received exceptional levels of supporting services, extension coverage and access to credit were both universal in the initial stages, and marketing facilities, schools, clean water supplies and other infrastructure were provided.... The perceived benefits weighed heavily on factors such as the chance to make a new start, the opportunity to take control of their own lives, and the freedom to make their own decisions. (Kinsey, 2004:1689)

Contrary to the 1980s land reform programme, there was an underlying realisation that the farm invasions under the FTLRP were largely an enterprise of risk as there was no guarantee that the initiative would last or that the invasions would lead to land allocation. Families had to plan and devise strategies that ensured that the children continued to attend school, could grow up in a suitable and stable environment and that the families would not lose the property that they already possessed in pursuit of an uncertain land allocation process. My research findings show that in communal areas like Musvovi in Masvingo and Gororo and Shindi in Chivi Districts, traditional leaders compounded the problems by threatening to take over and re-allocate rural land and homesteads that were left unattended as people went to the new farms. The strategy for families that had both a husband and wife was therefore for one partner, in most cases the husband to go and camp on the farm whilst the wife maintained the rural home and provided logistical support to the husband on the farm. Violence was also an inhibiting factor. Mrs. MN³²³ was one of the respondents who indicated that the violence that accompanied the “jambanja” period of the FTLRP inhibited the participation and effective integration of women in the process leading to a disproportionate number of male invaders camping on the farms compared to women. As will be shown later in this chapter, these factors excluded women from participating in some of the activities associated with the farm invasions and confining them to specific roles that were not viewed as critical thereby inhibiting their chances of acquiring land under the FTLRP.

7.6 Providing the “Daily Bread” and Other Needs on and off the Farms

Women played a significant role in ensuring that the men’s stay on the farms during the FTLRP was sustained for prolonged periods and bearable whilst their homes and children were taken care of as well. Mazhawidza and Manjengwa (2011:2), note that some settlers were visited regularly by their wives who brought food and did their laundry. In many cases, the roles that women played made the difference between the acquisition of land by men and being left out

³²³ Interview with Mrs. MN on 23 April 2011

of the land acquisition and allocation process. Mies (1986) in reference to hunter-gatherer communities of old noted that women's productivity is the pre-condition for all other human productivity. This was and still remains the case because as Mies explains:

female productivity consisted above all in the ability to provide the daily subsistence, the guarantee for survival...women necessarily had to secure the "daily bread" not only for themselves and their children, but also for the men if they had no luck on their hunting expeditions, because hunting is an "economy of risk. (Mies, 1986:58).

My field work findings illustrate that there were significant risks that were involved in camping on the farms in anticipation of allocation of land and the chances of being allocated land were as good or as bad as the chances of not being allocated. Homes that had both a husband and wife fared much better because the husband was able to pursue the uncertainty of land occupations, whilst the wife maintained the home base, carrying out the daily chores that were required in the home, securing it from possible acquisition by the village heads, thefts and vandalism and often making occasional visits to the farms to provide the men with supplies of food and fresh clothing. In some instances, the wives would visit to do the laundry for the men on site on the farms and only leave after ensuring that the husbands' welfare was taken care of. The women also ensured that the children continued with their education in the rural or urban homes where infrastructure was available for the raising of children compared to the new farms which had no schools, water, roads, shops or any other infrastructure that would make it possible to raise children optimally and allow them to acquire an education. The women therefore held the fort, ensuring the sustenance of the family and the men on the farm bases, a critical component in the farm acquisition equation. However when the allocations were eventually made, more consideration and preference was given to those that had physically occupied the farms and camped at the bases and limited consideration was given to any other help that was provided from outside the bases to ensure that the prolonged stay on the farms was possible. The men were the majority of the people who physically occupied the farms, and on that basis got most of the land under the FTLRP. Government policy on joint registration of

offer letters and certificates of occupation (permits) for married couples was either not known or not strictly followed³²⁴, especially at the beginning of the land formalisation process. As a result the women who sustained the farm occupations “from behind the scenes” were largely left without land of their own and had to access land through men, mostly as wives but also as sisters, daughters or aunts of the men, amongst other relationships.

Provision of food, singing and dancing at the “bases”³²⁵ has been part of the Zimbabwean landscape during periods of civil strife from the days of the liberation struggle through to the time of farm invasions and subsequent violence ridden elections in the years 2000, 2001, 2005 and 2008.³²⁶ During the liberation struggle song and dance were used as a morale booster and entertainment for the war weary liberation fighters as well as an instrument of communication with the masses to raise consciousness about the war of liberation and its purpose (Vambe, 2004:182). Post-independence, the invocation of the liberation struggle and its vestiges continued to play an important role in the political, social and economic terrain of the country. Hence the concept of bases and *pungwes* (night vigils) were always invoked and often abused as an instrument of coercion to remind people of the liberation struggle especially in situations of politically motivated civil strife such as election time and and also during the farm invasions. The political organization on the farms during the farm invasions was therefore modelled around the Zimbabwe War of Liberation and it was inevitable that the farm political structures and actors would be identical to those that were used during the war. War veterans as the

³²⁴ In an interview with the Provincial Administrator for Masvingo Province on 6 September 2010, he indicated that whilst government policy required that there should be joint registration of offer letters if a married person acquires a farm, in reality that policy was not followed, or strictly enforced.

³²⁵ In military terms, a base is “an area or place from which military operations proceed” (The Random House College Dictionary, 1988). During the Zimbabwean War of Liberation, bases were used as operating areas for the freedom fighters and as centres of meetings with villagers where they were required to bring food, sing and dance and receive liberation war indoctrination. Since war veterans who fought in the war of liberation led the farm invasions, they replicated some of the military structures, terms and set-ups of that war on the farms.

³²⁶ During the 2008 elections, bases were set up in communities where ZANU PF supporters gave ordinary citizens “orientation” or tortured those that were perceived to be opposition supporters. See Zimbabwe Human Rights NGO Forum 2009 report titled “Political Violence Report: December 2008)

liberation war fighters took the lead as ‘base’ commanders on the farms. This demonstrated that the liberation struggle and its vestiges were used as a springboard for the farm invasions and creating the structures and norms that justified the farm invasions. Similarly, as during the liberation struggle, women on the farms were the singers and the dancers and they provided the food for the men on the farm bases as they did for the liberation war fighters. In reference to the role of her mother during the liberation struggle Gumbonzvanda notes that: “like other villagers, she provided food and financial contribution for the survival of the comrades (war veterans) during the war.”³²⁷

She however laments the fact that heroines like her mother might never be honoured or recognised for the important role that they played in sustaining the war of liberation. In addition, song and dance are an integral part of Zimbabwe’s cultural heritage as Chitando notes that “With music accompanying individuals from the cradle to the grave, it occupies an important place in the cultural life of the people of Zimbabwe” (Chitando, 2002:82).

As such song and dance cannot be trivialised in the social life of a black Zimbabwean. The same author notes that the nationalist black leaders exploited the emotion that was created by music in the late 1950s and early 1960s to mobilise the people to fight against colonialism and song and dance were an integral part of the nationalist movement at rallies and at the bases. In all my research sites, song and dance were an important facet of the life at the bases as the war veterans and villagers displaced the white commercial farmers and camped on the farms in anticipation of land allocations. It also emerged that the women on the bases were the main providers of food, whether it was sold or provided by the (mostly male) invaders in raw form, for women to cook without any payment. But the provision of food and the singing and dancing were not perceived as an important contribution to the farm invasions by those that were

³²⁷ ” (<http://www.pambazuka.org/en/category/comment/55793>, unpaginated)

involved, both men and women. Song and dance were often characterised as trivial³²⁸ by both the women singers and dancers and the male farm invaders who regarded it as peripheral to the central business of land acquisition.

The Table below shows the different roles that were played by men and women in my research area during the land invasions and the period soon after. This is not to suggest that the men and women in my research area did not undertake any other tasks outside of those listed below nor that the tasks were exclusively undertaken by women or men as listed therein. The focus of this analysis is on tasks or roles that had a direct or indirect bearing on the acquisition of land under the programme and the categorization is based on those roles that were predominantly performed by the gender under which the role is listed.

Table 7.1- Dominant Roles for women and men during the FTLRP in Zimbabwe in the source homes and in both the A1 and A2 farms

<i>At Family Level in the source home and in A1 and A2 farms</i>		<i>At Farm Level (Both A1 and A2)</i>	
<i>Women</i>	<i>Men</i>	<i>Women</i>	<i>Men</i>
Looking after the children	Camping on the farms	Singing	Leading negotiations with or fighting the white farm owner
Looking after and maintaining the home		Cooking and providing food (normally without compensation for cooking)	Undertaking trips to the district or provincial centres for meetings with government officials
Cooking and providing food for the children at home and the men on the farms		Washing the men's clothes	Allocating land
Washing the men's clothes at home and taking fresh supplies of clothing to the farm or visiting the farm and washing the clothes on-site.			Distributing farming resources such as seed, fertiliser and farming implements.

Table 7:1 outlines the roles that were performed in pursuit of or “in support of” land acquisition and utilisation by women and men, both at the household and farm levels. Of note is that there

³²⁸ Interview with Mr FZ (in Masvingo Town) and Mrs. PC (PM) (at Lothian Farm) both of Lothian Farm on 9 September 2010 and 10 February 2012 respectively.

were interlinkages between the household level and what transpired at the farm level in terms of the social, economic and political architecture that determined access to land and attendant resources. Without the involvement of the household and in particular women members of those households, access to land was going to be difficult for both the men and women who eventually accessed the land.

The narratives below from some of the respondents help in reinforcing and illustrating that women and households played an important role in sustaining the farm occupations during the “*jambanja*” period of the FTLRP. I will organise the narratives into those by women who provided the support using their homes as a base, those who provided the support as part of the invaders and campers on the farms and those who straddled the farms and homes both in communal and urban areas.

7.7 Staying Behind and Using the Home as the Springboard for Supporting the Land Acquisition Process

A home has always played an important role in the lives of Zimbabweans. The communal home in particular is regarded not only as a place to stay and raise a family but also a place to be buried, to carry out traditional rituals and to maintain a bond with family and the ancestors. Therefore, even as Zimbabweans clamoured to get land under the FTLRP, sight was not lost of the need to keep and maintain the communal or urban home whilst people pursued resettlement land elsewhere. Yet the communal home was more difficult to maintain and keep compared to the urban home because the dwellers of the communal home had no title to those homes. Invariably considered as “state land”³²⁹, “vested in the President”³³⁰ or under the authority of traditional leaders or rural district councils³³¹, communal land can easily be taken away if there

³²⁹ The fact that communal land is vested in the President makes it state land

³³⁰ Section 3 of the Communal Land Act: Chapter 20:04 states “Communal Land shall be vested in the President, who shall permit it to be occupied and used in accordance with this Act.”

³³¹ In terms of Section 8 of the Communal Land Act: Chapter 20:04 the rural district councils in consultation with traditional leaders can give authority to any person to occupy communal land

is suspicion that it is abandoned or no longer being occupied. Yet if one were to abandon their land in an urban area, it would not equally lead to a takeover of such land by another person because such land is titled. Scoones et al show the importance that was placed on the communal home when they state that:

Indeed most new settlers in the new resettlements regard their communal homes as “home” (*kumusha*). The new resettlements are regarded instead as places of economic opportunity, much in the same way as the urban areas and off-farm employment once were. (Scoones, et al, 2010:186)

My field research confirmed this state of affairs and also the fact that like in the days of old when men moved to the urban areas or mines in search of jobs and other economic opportunities, under the FTLRP, the women also often stayed behind to look after the children and *musha* (home). This was a secure fall back in case the land acquisition endeavour failed whilst men went away in pursuit of the economic opportunity that was presented by the land reform programme as shown by the narratives below.

Mrs. RM2- Chidza Farm (A1 Farm) - Masvingo District

I chose Mrs. RM2’s narrative to illustrate how women’s productivity played an important role in enabling men to stay on the farms because many facets of her narrative illustrate this point. Her story was not necessarily different from that of other women who were interviewed and who stayed behind in their original homes whilst their husbands went to occupy the farms. However, for her, the main reason for staying behind was to look after the children because at the time of the farm invasions she had two young sons, both below the age of 5 who needed a safe and secure home to grow in. At the same time, she ensured that her husband who was camping on the farm was taken care of through supplying food and clean clothes amongst other things. Her staying behind also ensured that the husband had a secure home that he could occasionally visit during his sojourn on the farm. For these reasons Mrs. RM2 stayed behind in the family’s rural home in Marova, Gutu whilst her husband joined the farm invasions across

the district in Chidza Farm. Like many other farms, Chidza Farm did not have the requisite infrastructure to accommodate her and the children. Her story is below:

My husband came here from Marova in Gutu when the farm invasions started in 2000. The fields that we were using in Gutu were allocated to us by my father in law and were therefore not big enough for us. My husband was a war veteran and therefore when news of the farm invasions started to filter in, he was one of the first people to occupy this farm as it is adjacent to our communal area. (She pointed their communal area home to me which could be seen from where we were carrying out the interview). I stayed behind with the children (2 boys who were present during the interview) when my husband came here because they were too young. There was nowhere for them to sleep here as they were too young to sleep in the open. It was only after my husband had built a hut that we then joined him. During that period, my husband used to come back to the village often so that I could wash his clothes and replenish his food supplies. Sometimes I would also visit the farm and bring him food as well as wash his clothes right here. The conditions were not very good but we had to persevere because we wanted land to leave behind for our children when we die. There was no hope that the children could get any land in Marova because even us their parents did not have suitable land there. In 2009, the farms were properly pegged by government and people were given offer letters. The offer letter was in my husband's name and it still remains in his name even though he is dead. Access was equitable as long as one was on the farm at the relevant time. The only challenge was that not many women were here at first. When they later came making enquiries, they realised that all the land had been parcelled out. The plot sizes were the same for all the people on this farm who qualified for allocation, both men and women. They all got 15 hectares.³³²

Therefore without Mrs. RM2's role which focussed on ensuring that the children, the home and her husband were looked after, the husband's chances of enduring his stay on the farm would have been limited. However the role she played did not translate into allocation of land in her own right or even jointly with her husband as the land was eventually allocated to and registered in her husband's name. At the time of the interview, her husband had died. Her view was that it was only after the death of her husband that she gained total control of the land in question, and was able to make decisions on how to utilise the land including the types of crops to grow. There was no interference by the husband's family in the control and management of the farm after the husband's death. It must therefore be accepted as Goldstone J, noted in the constitutional case of the *President of the Republic of South Africa vs. Hugo*³³³ that:

that parenting may have emotional and personal rewards for women should not blind us to the tremendous burden it imposes at the same time. It is unlikely that we will achieve

³³² Interview with Mrs. RM 2 on 9 September 2010

³³³ CCT 11/96

a more egalitarian society until responsibilities for child rearing are more equally shared. (Paragraph 38).

Other authors have revealed that the emotional and moral benefits that women derive from the dependency of the foetus and the infant on them during pregnancy and child rearing is countered significantly by the fact that this dependency burdens women materially resulting in motherhood leaving women unequal (West, 2007:130). It therefore follows that whilst women generally enjoy motherhood and looking after their children, this role must be rewarded by policies that recognise that this responsibility leaves women economically disadvantaged and should therefore carry an economic reward. Where the parenting responsibilities are not equally shared, it is important that those who carry out this important task are recognised and their roles rewarded. In the case of Mrs. RM2, the above observations by Goldstone J and Becker can extend to all the roles that she and many other women performed during the FTLRP in support and in aid of the programme but were not recognised because they were viewed as not having a direct link or relationship with the land acquisition exercise. In line with the recognition of these challenges, the CEDAW Committee in General Recommendation Number 21 noted that women in all societies have traditionally performed their roles in the domestic or private realm and such roles have for a long time been regarded as inferior³³⁴. The Committee further noted that the assignment of inferior status to the roles performed by women had the effect of undermining principles of justice and equality. The Committee also noted that as such there is no justification for this inferiority labelling on the roles played by women given that such roles are invaluable for the survival of societies³³⁵

Mrs. M2- Hippo Valley West- Area 1 (A2 Farm)- Chiredzi District

I will use Mrs. M2's narrative to show that women stayed behind in the homes as men went to invade the farms in order to keep and maintain the old home. Even though she no longer had

³³⁴ CEDAW General Recommendation Number 21 on Equality in Marriage and Family Relations, Para 11

³³⁵ CEDAW General Recommendation Number 21 on Equality in Marriage and Family Relations, Para 12

any minor children at the time of the farm invasions, Mrs. M2 stayed behind in Mkwesine when her husband went to Hippo Valley to invade the farms because they were afraid that if they both went, then they would lose their original plot where they had been growing sugarcane since 1982. Her narrative is provided below:

My husband is the one who first came here and applied for and got the 30-hectare plot in 2002. For 3 months he was here alone and I followed him afterwards to check on him. Unfortunately he passed away in 2007 after we had settled here. When he came here, we were already in the sugarcane business in Mkwesine. We were amongst the first black people to grow sugarcane way back in 1982. When the FTLRP began we saw this as a chance for us to grow our business by acquiring a second and bigger plot. Our plot in Mkwesine was only 10 hectares. When my husband came here, I stayed behind because we wanted to keep the Mkwesine plot as well but it was taken away from us and given to another person. We even tried to have the plot registered in our son's name there but it was turned down. That is when I came to settle with my husband permanently on this plot.³³⁶

Unfortunately for Mrs. M2 and her husband, their original plot was allocated to someone else despite their efforts to save it. When the plot was re-allocated, Mrs. M2 followed her husband to the farm and by then the husband had already been allocated a plot which was registered in his name.

7.8 Camping, Cooking and Singing- the Women who Sustained the Invaders on the Farms

The women who stayed behind in the homes as men went to invade the farms played an important role in sustaining the men on the farms. However, another critical group of women was the one which participated in the farm invasions and were part of the campers on the farms. In addition to their role as campers, these women also provided the in-situ support that was needed on the farms, with the bulk of their work aimed at ensuring that the men on the farms were comfortable through providing food, washing and entertainment. Below I give narratives by two women who had different social and economic backgrounds but both of whom saw it as their responsibility to ensure that the men were taken care of during the period of farm invasions. Mrs. PC had very limited education and before participating in the farm invasions,

³³⁶ Interview with Mrs. M8 on 6 February 2012 in Musinyanyani area, Hippo Valley

survived on selling traditional beer at the local township.³³⁷ Mrs. C on the other hand was a qualified nurse and had at some point worked as a nurse in the United Kingdom. However their narratives show that they both believed that they had a duty to cook and sing for the men during the farm invasions. Unfortunately, they did not view these roles as critical to the land acquisition programme but viewed the roles as peripheral to the process. Their narratives are provided below:

Mrs. PC- Lothian Farm (A1 Farm) - Masvingo District

My husband died in 1994 in Chitekete, Mukaro, Gutu District. We had four children together. After my husband's death I went to stay at a nearby township where I was selling traditional beer and renting one room. My husband's brother who was a Major General in the army was helping out in looking after the children. So when the farm invasions started, he is the one who identified this particular farm and advised me to join the invaders. He came and introduced me to Comrade BJ who was the war veteran leader here... Women who managed to come to the farms early enough were treated the same way as men in allocation of the land. The women were not doing much on the farms except cooking for the comrades and singing at the bases but we were still allocated the same sizes of land.³³⁸

Mrs. C- Hippo Valley Estates- Musisinyani Area (A2 Farm) - Chiredzi District

I was working in the UK as a nurse and then I came back home. When the farm invasions started, I also joined in. I have used the money that I brought from the UK to fund my farming and to start other businesses including a restaurant/nightclub and a haulage transport business..... The women were very few at the time of taking the farms when we were camping in the bush. I was there all the time and I made sure that the men were supported. I and the other women who were there would cook *sadza* and make sure that the men were well fed as we camped on the farm. Those women who supported the men and participated in the struggle for land therefore got the land.³³⁹

As will be elaborated below, both women did not see their roles as part of the land acquisition process but merely as supporting the men who were the real protagonists in the land invasions and the land acquisition exercise. They believed that they were allocated land because they “supported” the men and not because they were part of the land invasions and land acquisition process thereby downplaying their role in the process.

³³⁷ A rural shopping centre in Zimbabwe

³³⁸ Interview with Mrs. PC on 9 September 2011

³³⁹ Interview with Mrs. C in Masvingo Town on 10 February 2012

7.9 Playing a Balancing Act: Acquiring a New Farm and Keeping the Old Home

The challenges of keeping an old home whilst pursuing resettlement on the new farms affected mostly the people that originated from the rural areas or old resettlement areas. Once they made manouvers to resettle on the new farms, the communities around and in particular the community leaders expected them to relinquish the old rural or resettlement home in favour of other people. A person was not expected to “double dip” and benefit twice by keeping the old home after being allocated a new farm. There was constant surveillance by the communities and the village heads to identify any homes that appeared “abandoned” as people rushed to invade the new farms. At the same time, once an individual had participated in the farm invasions and registered their interest, absence from the farm to go and check on the old home was regarded as an indication of loss of or lack of interest in the new farm, both before and after allocation. Single women found it difficult to manouver and often had to make a choice between the new farm and the old home. Married couples however were able to keep their presence in both places, often with the wife staying in the old home whilst the husband went to camp on the farms. In one polygynous marriage, the husband kept the rural home whilst his two wives went to invade the farms in different locations. They were both allocated pieces of land and the husband took turns to visit and stay with each wife whilst also maintaining a presence in the rural home. The straddling and balancing act that was at play in keeping old homes and claiming new farms during the FTLRP is shown by the narratives below:

Mrs. MN - Musvovi Communal Lands - Masvingo District

The new settlers were fighting over the land amongst themselves. At one point when I told the leaders that I wanted to come and check on my home here in the village they said I should not come back because it showed that I wasn't interested in the plot. But there was no one here to check on my home and I realised that I could not lose this home for a plot whose potential I was not sure of. Many of the widows in this village went to the farms and faced a similar problem and therefore decided to come back to protect what they already had.³⁴⁰

³⁴⁰ Interview with Mrs. MN in Musvovi Communal Lands on 23 April 2011

Mrs. AS- Musvovi Communal Lands- Masvingo District

I went to the farms but I could not stay there because by that time I was already a widow and no one could look after this home. As you can see this is a very big home and I can't afford to just let it crumple. I have a very beautiful home but it's the field for cultivation that I don't have. When I went there, I was told that once I went to the farms, I would not be allowed to leave or else I would not keep my plot because it was a sign that I was not committed. The war veterans were saying that if you left your allocated piece, then it would be given to someone else and here in the village, the village heads were threatening to allocate our fields and homes to other people. So I had to make a choice and I decided to come back to this village. For widows, it would have been better if homes had been built first on the farms then we wouldn't worry much about leaving the homes that we already had.³⁴¹

Mrs. RM1- Musvovi Communal Lands- Masvingo District

I actually went and got a field but when I came back to the village to check on my home, I found that my plot back at the farm had been allocated to another man. I tried to reason with him and asked him to leave my plot but he threatened me and I had no choice but to leave. I wanted to come and check on my home because the farm was just a bush. I could not risk my existing home under the circumstances. Yet there was no one to hold onto the plot whilst I came to check on the home. For married people, it was better because one partner would stay on the farm whilst the other one was looking after the rural home.³⁴²

Mrs. JC- Hippo Valley Estates- Farm 54 (A2 Farm) – Chiredzi District

My husband has got two wives. When the farm invasions started, I came to camp here in the sugar estates and my co-wife went to Fair Range and we were allocated land at the same time and the plots are registered in our names. Our husband remained at our rural home in Nyangombe but now he takes turns to visit and stay with us. We have kept our rural home and we are using some of the proceeds from farming to develop the rural home...For instance, I have since managed to finish building my house in the village. The house now has a cement floor and is plastered and painted. I have also bought some furniture to furnish the house.³⁴³

Below I provide an analysis of the deductions that I made from the above narratives:

- i. Married couples were able to share responsibilities, in particular with regards to residence during the farm invasions so as to keep the rural home whilst they acquired a

³⁴¹ Interview with Mrs. AS in Musvovi Communal Lands on 23 April 2011

³⁴² Interview with Mrs. RM in Musvovi Communal Lands on 23 April 2011

³⁴³ Interview with Mrs. JC at Farm 54, Hippo Valley on 6 February 2012

new farm. In many instances the husband went to the farm whilst the wife stayed in the rural home, resulting in land being registered in the husband's name.

- ii. Single women struggled to maintain a balance between keeping the rural home and acquiring a new farm and were therefore often forced to make a choice between the new farm and the rural home. As detailed above, many of the single women that I interacted with as respondents during fieldwork chose the rural home because of the security it offered compared to the uncertainties that lingered over the new farms. They therefore failed to access the new farms despite a clear need and effort to acquire the farms.
- iii. Polygynous men were able to exploit their relationships and manipulate their wives as instruments of land accumulation with wives being allocated plots separately. This however provided some room for independence for the wives, as they were able to have the land registered in their names, or to be in control of the land as the husband moved between the different locations where the wives were staying.

Men and women therefore played different roles during the FTLRP. However, these roles were given different weight, with men's roles being regarded as central to the land acquisition programme and women's roles as merely supportive and peripheral. The findings however show that without the roles played by women, the men would have struggled to acquire the land just like single women struggled to obtain land on their own. Below, I provide an analysis of why despite the critical role that they played, women in marriages often found themselves excluded when it came to access and registration of land.

7.10 Women's Work as "Natural"

The narratives above evince that looking after the home and children, washing, food provisioning, cooking, singing and dancing were viewed by the farm invaders as part of women's "nature" or a "natural" responsibility of the women within the family and on the farm bases. The activities were not necessarily considered as having any direct contribution towards

the farm invasions, occupations and the subsequent land acquisitions and accumulation process. This view was shared by both the men and the women who were the singers, the service providers to their husbands and farm invaders and the home keepers during the period of farm invasions. Mies argues that the concept of “nature”:

Has been used to explain social inequalities or exploitative relationships as inborn, and, hence, beyond the scope of social change. Women should be particularly suspicious when this term is used to explain their status in society. Their share in the production and reproduction of life is usually defined as a function of their biology or “nature.” Thus, women’s household and child-care work are seen as an extension of their physiology, of the fact that they give birth to children, of the fact that “nature” has provided them with a uterus. All the labour that goes into the production of life, including the labour of giving birth to a child, is not seen as a conscious interaction of a human being with nature, that is, a truly human activity, but rather as an activity of nature, which produces plants and animals unconsciously and has no control over this process. This definition of women’s interaction with nature – including her own nature – as an act of nature has had and still has far-reaching consequences. (Mies, 1986: 45)

It is a concept that has led to the non-recognition of women’s work and women’s labour in the home and outside leading to social, political and economic inequalities. During the farm invasions, this view was used to elevate the men who were at the forefront of intimidating the white commercial farmers or of “negotiating” with government bureaucracy for the invaders to be allocated land to positions of authority. As a result, they became the first ones to be allocated land or to get the prime land on any farm. The men who went to Masvingo for meetings with the Ministry of Lands and Rural Resettlement Officials, the PG, PA or the DA were regarded as playing a more important role than the women who made sure that these men had enough to eat before they embarked on their journeys and had entertainment during the evenings through music and dance. Mrs. PC whose narrative is given above, gave a view which embodied a manifestation of invisible power. She said “The women were not doing much on the farms *except* cooking for the comrades and singing at the bases but were still allocated the same sizes of land.”³⁴⁴

³⁴⁴ Interview with Mrs. PC on 9 September 2010

Her view therefore was that her cooking and singing were not important and as such she was grateful that she was still allocated the same size of land with everyone else including the men whom she viewed as having done more for the land invasions to be sustained. She therefore in her view played a supportive role and was in her opinion not an active participant in the process. Mrs. C also quoted above reinforced this view when she said that she “*supported the men*” by ensuring that they had enough *sadza*³⁴⁵ as they camped on the farms. The women themselves therefore viewed their role as supportive or complementary and not having a direct bearing on the process that was unfolding on the farms. The women viewed their role as a “behind the scenes” contribution and not part and parcel of the whole process. This had the effect of undermining the work that women carried out resulting in them feeling indebted to the men. As a result, they did not question the process when land was registered only in their husbands’ names and they accepted any pieces of land that were allocated to them without questioning male authority and the often biased allocation of land. At Lothian Farm, the war veteran leader of the invasions at the farm had the most prime piece of land, which had the farm dam, some farm buildings and irrigation infrastructure. During field work in February 2012, the crops on almost all other plots on the farm were showing advanced signs of moisture stress, but the male war veteran leader’s plot had a healthy, ripe maize crop that was being sold to traders. I observed people coming to buy the mealies for resale. At a time when everyone else on the farm and surrounding areas was in distress because of the possibility of an impending drought, the war veteran leader was making money because he had managed to acquire a prime and viable piece of land. He could irrigate his crop using infrastructure that he had acquired as part of his land allocation due to his role and influence in the farm invasions which was considered important and therefore deserving of the best plot on the farm. The fact that he was perceived as a *de facto* leader and therefore regarded as contributing more towards the farm invasions and allocation process meant that he automatically got the best plot and the best infrastructure on

³⁴⁵ Sadza is a thick porridge that is made from maize meal and is the staple food in Zimbabwe. The term is also often used to generically refer to meals or food in general

the farm without questioning. On being asked how the war veteran leader was allocated the prime plot, one of my female interviewees, Mrs. PC³⁴⁶ was quick to defend the war veteran and posited that were it not for him, they would not have managed to get the land as the white farmer was determined to fight them to the end.

The narratives by the women also demonstrated invisible power at play at the family and community level as the communities, men and women perpetuated their stereotyping of women, their work and their inferiority when compared to men. A major challenge that manifests itself in the form of invisible power is that the socialisation of women leads them to undervalue their own work as revealed by the various narratives above. Mrs. C's narrative shows that she was an educated person, a nurse who at one time had worked in the United Kingdom and had acquired valuable resources which she eventually invested in her farming and other businesses. She therefore would have been expected to appreciate the importance and value of her cooking during the farm invasions and equate the cooking to any other productive work that she had undertaken in her life. Her view, however, was that under the circumstances, cooking was to be expected of her as a woman and that the cooking was in support of the men who were doing the "real" work on the farms and whose work was instrumental in allowing everyone on the farm to eventually get some land. As Efroymsen notes "The low perceived value of women's work is shared by women themselves, who fail to give importance to their own daily work and thus to themselves." (Efroymsen, 2010:iii)

Fighting such perceptions and gender stereotypes is therefore important in ensuring that women are able to demand their rights and recognition for the work that they do and recognise the value of their productivity. As will be explained below, placing such value on women's work will

³⁴⁶ Interview with Mrs. PC on 9 September 2010 at Lothian Farm

help in eradicating discrimination against women and promoting women's emancipation by creating paradigms that include and value women and their contributions.

7.11 Creating Models for the Recognition of Women's Work

It is accepted that the non-recognition of household work or "care" work reinforces gender discrimination and gender based inequalities in society. The results are manifested in the subordination of women in the home and wider society, low economic status, limited access to economic and other valuable resources as well as the marginalisation of women in political and public life. Efroymsen states that:

The low perceived value of women and of the work they do are key factors resulting in women's low status; this causal relationship also helps to explain the lack of government action (around the world) to protect women's rights and to work towards improving their status. (Efroymsen, 2010:iii)

This negative perception of women's unpaid work is not confined to any particular geographical location in the world. Women from both developing and developed countries face similar challenges. Yet giving value to the work that women do for the betterment of their families and societies will help in the creation and implementation of policies that help in the upliftment of women at various levels. It helps in addressing not only immediate consequences of discrimination but long term emancipation obstacles for women the world over. For example whilst my research findings show that the immediate effects of the non-recognition of women's work and the contribution of that work to the land reform process was limited access to land or access to marginal land by women, the medium to long term implications have already begun to manifest. These include limited or marginal participation by the few women who accessed the land in farm based governance institutions, leading in turn to limited access to resources that are required for effective farming. Resources such as seed, fertilisers and tillage facilities for hire are often made available on the farms through sale, donations by government or donations by non-governmental organisations. Mrs. PC at Lothian Farm reported that the men in the governance structures on the farm were the first to receive information about any resources that were available and how they could be accessed, whilst women were the last to

know. In some instances, women only got to hear that resources such as seed and fertilizers had already been distributed without their knowledge. Such a state of affairs in turn leads to reduced farm productivity by women due to lack of resources and better returns for men thereby perpetuating perceptions that portray men as better than women. In the land reform scenario, the perception that is portrayed is that women are not good farmers when compared to men.

To address the challenges of undervaluation and devaluation of women's work, the international community has over the years put in place a number of initiatives ranging from policy to programmatic undertakings to ensure that women and their work are valued and respected. In many cases, the international initiatives have been domesticated at the national level through legislation, policies and practices with the aim of changing the paradigm at the local level. Whilst these efforts are commendable, tangible results are often limited due to inadequate implementation. Reasons for non-implementation are varied, ranging from lack of political will by the governments and other policy makers and implementers, cultural and religious impediments and the general public and cultural perceptions and gender stereotypes that place women and what women do on inferior social, economic and political rungs when compared to men. For example, the implementation of international human rights provisions at the national level and the recommendations of Treaty bodies such as the CEDAW Committee help in addressing these challenges. An example is the CEDAW General Recommendation Number 17 which calls on CEDAW State Parties to measure and quantify the unremunerated domestic activities of women and ensure that those activities are recognised in the GNP. Such an approach would ensure that the *de facto* economic role of women is recognised not only within the family but also at the national level. As explained in Chapter 3, international law is a useful framework in addressing the problem of women's discrimination and marginalisation in that it captures different forms of discrimination including direct, indirect and structural discrimination and provides recommendations on how such discrimination against women can

be eliminated. As shown in Chapter 4, Zimbabwe has domesticated some of these provisions although challenges still remain at the implementation stage.

7.12 Multiple Gender Roles as Impediments to Participation in the Farm Invasions

In the section above, I have argued that despite the work and roles that women played in ensuring that the farm invasions were sustained and the subsequent FTLRP implemented, this did not lead to their acquiring land when it was eventually allocated. Yet feminist critiques of development have explained the link between the marginalisation of women from productive resources such as land with the subordination of women making it difficult for women to move from reproductive roles to productive roles (Kameri-Mbote, 2008:395). One of the most important qualification for land allocation at the beginning of the FTLRP, especially for the A1 allocations was one's presence on the farm during the invasion period as was shown by the importance that was accorded to "farm occupation". Those that stayed on the farms during the invasions were allocated land on the farms that they were camped on, or if they could not get land on those farms, they were allocated land on other farms where land was available.³⁴⁷ From my research area, the roles that women played related to their relationships to other people both in the nuclear and extended family set-up, mostly as wives, mothers, daughters and grandmothers. In the sections above, I concentrated on the reproductive work of married women as mothers and wives and those of single or married women as providers of food on the farms during the invasions. The section below will provide a detailed analysis of the other gender roles that different women normally play and which they played during the period of farm invasions and how these impeded their access to land during the FTLRP.

³⁴⁷ In both Chidza Extension Farm and Chidza Farm, there were people who had been moved from other farms where they had camped during the land invasions and allocated land here. Some were moved from what was referred to as Mazari Farm whilst others were moved from what they called Khan Farm

7.13 Grandmothers Looking after Grandchildren³⁴⁸

The HIV and AIDS epidemic in Zimbabwe has left many orphaned children in the care of their grandmothers. In 2004, the United Nations Children's Fund (UNICEF) estimated that almost a million children in Zimbabwe had lost one or both parents to AIDS and that by 2010, one in every five children in Zimbabwe would be orphaned. The burden of caring for these children has often fallen on the grandmothers. In a study that was carried out in the Manicaland Province of Zimbabwe, it was noted that: "When a parent, especially a mother, dies of AIDS, orphaned children often go to live with a grandmother, a practice referred to as 'skip-generation parenting'" (Foster, et al, 1997:164).

Some of the respondents during my fieldwork were grandmothers who were looking after their orphaned grandchildren. In other cases, the grandmothers were looking after the grandchildren whilst their parents, either mothers or fathers or both had crossed the border into South Africa in search of "greener pastures". Like the married women who remained behind in the homes whilst their husbands went to invade the farms, the grandmothers also remained behind to look after homes and their grandchildren. However, unlike the married women, in the grandmothers' cases there was no one to claim a piece of land on behalf of the family as the majority of the grandmothers were also widowed. The reasons for staying behind were that they had to look after their grandchildren and ensure that they attended school. Taking the children with them to the farms was not a tenable option because of lack of infrastructure such as clinics, schools, water amongst others. Asked if at their age they were really interested in settling on the new farms, the grandmothers indicated that they would have considered moving to the new farms if the farms had adequate infrastructure to make life easy for themselves and enable them to effectively look after their grandchildren. Below is a picture of one of the "schools" in the Masimbiti area in Nuanetsi Ranch, illustrating the infrastructural challenges on the farms and

³⁴⁸ See http://www.unicef.org/aids/index_22197.html last accessed on 29 December 2012.

the concerns that grandmothers and mothers had about the education and general upbringing of the children in their care.



Picture 7.1: Masimbiti Primary School: The above photograph of Masimbiti Primary School was taken in September 2010. The rudimentary structures are “classrooms” and these are the conditions that children were to learn under. Considering that both rural and urban areas from where the new settlers were coming had proper and established schools, it was often a difficult decision for women to take the children to the new farms and expose them to these conditions of learning amongst other challenges.

7.14 A Daughter Looking After a Sick Mother

When I asked her why she had not joined the farm invasions when others did, one of my interviewees Mrs. MN had this to say:

If the farms are available, I am still interested in going. The reason why I didn't go when others did was that I was looking after my mother who was sick. I therefore could not leave her behind and go to the farms. She eventually died. I later followed but by that time the pieces that were available were very difficult to clear as they had big *mopane*³⁴⁹ trees and were also on hilly areas. I stayed for a while and realised that I could not clear the field or build a home and therefore I decided to come back. The issue of clearing land and building homes was one of the major challenges for many women and that is why they were reluctant to go or had to come back after joining the farm invasions initially. Right now the field that I am using is very small since I have to share it with my son who is now married.³⁵⁰

³⁴⁹ A tree species indigenous to the arid parts of Zimbabwe and other Southern African countries such as Botswana and South Africa. The trees normally grow very tall and have got huge trunks.

³⁵⁰ Interview with Mrs. MN on 23 April 2011 in Musvovi Communal Lands

Although Mrs. MN was the only woman that I interacted with who failed to join the farm invasions because she was looking after an ill parent, her narrative illustrates the fact that women are saddled with care duties which often hinder their efforts in seeking and acquiring critical resources and engaging in economic activities. Caring for sick parents and other relatives is often a responsibility that is placed on daughters and women in Zimbabwean society as in other societies (Johnson, 1997:62). This is often regardless of their age, location or marital status. Young children have often been pulled out of schools in Zimbabwe in order to look after sick parents and younger siblings thereby denying them education, an important asset in ensuring that they are released from the snares of poverty in their lives (Sithole, 2007). Married women are often required to leave their marital homes to look after sick relatives whilst in some cases they take in sick relatives into their homes so that they can look after them as shown by one of my respondents Mrs MN. In the case of Mrs. MN, she had to bring her mother into her home in order to look after her. As Sithole notes:

Women share a disproportionate share of the burden of care. Women's burden has been worsened by the gender roles that assign the responsibility for caring for the sick to women and girls. This has increased the disadvantages suffered by women and girls as they lose out on opportunities to improve their status...Thus a cycle of poverty is perpetuated. (Sithole, 2007:95)

The opportunities to improve one's status once lost are difficult to regain. In the case of the FTLRP and the farm invasions, the opportunity lost by women such as Mrs. MN who were caring for sick relatives was that of camping on the farms and a chance to be allocated a farm. This is a responsibility and burden that most men would not carry, thereby allowing them to participate in the processes that provided opportunities to access land through the farm invasions and the subsequent land allocations.

7.15 Creating a Formula for the Inclusion and Effective Participation of Women: A Brief Comparison of the FTLRP with the Immediate Post-Independence Land Reform Programme

This section seeks to analyse whether women's work and contribution towards the acquisition and subsequent utilization and management of land was recognised by law, policy and practice during the 1980s post-independence land reform programme and if so how this compares with the FTLRP from 2000 onwards. In 1980, the independence Government of Zimbabwe embarked on a land reform programme whose aims were to:³⁵¹

- i. Alleviate population pressure in the communal areas;
- ii. Extend the base for productive agriculture in the peasant farming sector;
- iii. Improve the standard of living of the largest and poorest sector of the population;
- iv. Provide opportunities for people who have no land and employment;
- v. Bring abandoned or under-utilised land to full production; and
- vi. Expand the infrastructure of economic production and to achieve national stability.

The programme at independence therefore had a welfarist and poverty reduction approach which targeted communal areas, peasant farmers, the poor and the landless to benefit from the process as indicated by the first four objectives of the programme listed above. It has also been observed that this was a rehabilitative programme that targeted returning refugees and families displaced by the war and that the beneficiaries were the poorest among the poor (Chatora, 2003:324). The challenge however remained for women in that despite their being in the majority of all the identified categories of beneficiaries, there was still no policy directly targeting women within those groups as beneficiaries. A shift in later years targeting people with Master Farmer Certificates and those with resources such as ploughs, cultivators and harrows to invest on the farms further marginalised women. This was because the majority of women fell outside those categories despite their land needs as they did not have the required

³⁵¹ Zimbabwe, Resettlement Policies and Procedures, Harare, Ministry of Lands, Resettlement and Rural Development 1980 cited in Paradza G (2010).

assets and also because prior to 1980, women were not awarded master farmer certificates. However access by women to the master farmer programme improved after independence and from 1982 to 1992, women constituted 33.2% of this training programme and by 1993 there was an increase in women's participation of 60 to 90%.³⁵² Requirements for master farmer certificates as a qualification to access land during the early years of independence therefore disadvantaged women because at that time very few of them had the certificates. Emphasis on ownership of farm implements as a prerequisite for access to land during the 1980s land reform programme also disadvantaged women, the majority of whom had no access to such resources. As a result, for women access to land just like in conferment of class was mediated through their sexual or other ties to a man, who then gave them access to material resources (Lerner, 1986: Unpaginated). As women could not acquire land in their own right, they had to rely on the men to access land with the result that they were the workers of the land but not owners of the land. This created a class of women in the resettlement areas who were sexually, socially and economically subordinate to the men who owned and controlled the means of production. Despite the fact that women in the majority of cases are the ones who till the land, they tend to be marginalised with regards to the distribution of benefits from the land and their future is uncertain in the event of the death of the spouse (Murisa, 2009:150). There is a view that the 1980s land reform programme was more beneficial to women because it was more organised and allowed women to integrate into the new resettlement areas as efforts were made to provide basic infrastructure such as schools that allowed the settlers to be easily emplaced as families. While women settled and were integrated on the farms with their families, the fact still remains that the post-independence land reform programme in Zimbabwe continued with colonial policies of sex discrimination...as women who comprised the migrant population on the resettlement farms were there as wives of migrant husbands and not in their own right (Chingarande, 2009).

³⁵² See FAO, Fact Sheet: Zimbabwe, Women, Agriculture and Rural Development: <http://www.fao.org/docrep/V9101e/v9101e04.htm>, Last Accessed on 1/02/2013

The view that women benefitted from the early independence land reform as part of families also glorifies the argument that women should be content with access to land as opposed to ownership or control of the resource. Glorification of access only for women leads to the subjugation of women in that they work on the farms to improve the economic and social standing of their husbands, fathers or other male figurehead without being recognised or benefitting from their own work. The same approach also perpetuates the view of the man as the head of the family and breadwinner when in many instances, women are taking on such roles and responsibilities. The 1980's land reform programme therefore did little to provide land to women in their own right.

The FTLRP on the other hand learnt nothing from this state of affairs and perpetuated the same gender biased land allocation systems when it was implemented. This was despite the court decisions that upheld the principle that women's unpaid domestic work should be considered as contribution towards the acquisition of matrimonial property as detailed in Chapter 4 of this research.

7.16 Conclusion

A variety of methods can be employed to address the challenge of non-recognition of women's work. These may include the provision of services and infrastructure that help in reducing the amount of time that women spend in carrying out chores such as fetching water and firewood. In addition, there is need for the strengthening or where non exist, the establishment of services for the caring of children, people with disabilities, the elderly and ill people. This leads to the reduction of the time poverty of women leading to the expansion of their economic opportunities because it will be easier for women to look for employment [and other economic opportunities] outside the household. In turn women would be able to access incomes, be economically independent and fortify their bargaining power and position within the household

and the community (UN Human Rights Council, Special Rapporteur on the Right to Food, 2012:18).

In the context of Zimbabwe's FTLRP, women played a critical role in maintaining homes both in urban and rural areas, looking after children and supplying the men with the everyday needs that sustained them on the farms as they camped in anticipation of land allocations. Other women participated in the actual invasions side by side with men and in the process made the stay on the farms bearable for themselves and the majority male invaders by supplying and preparing food, washing and providing the much needed entertainment through song and dance as they camped on the farms. This contribution by women however did not translate into access to land when the actual allocations were eventually carried out. The women who maintained the home base whilst men went for the invasions were largely forgotten as land was mostly allocated to those that were actually "occupying" the farms. In many instances, the women that camped on the farms with the men got land that was generally equal to men's in size but not prime or strategically positioned. The prime and strategically located plots were allocated to the male leaders whether war veteran or otherwise whose roles in the FTLRP were considered more important than cooking, singing and dancing at night vigils. The perception that was created by giving the occupants the same hectrage was that of fairness, equality and non-discrimination. The effect of unfairness, inequality and discrimination however persisted as a result of the poor quality plots that were allocated to women in situations where they got the land.

Many women therefore failed to get land despite the 2005 Constitutional Amendment Number 17 which for the first time constitutionally outlawed gender based discrimination in land allocation and provided that women should benefit from land redistribution on the basis of equality with men. This is an indication of the fact that adding on legal provisions without

changing mind sets, institutional approaches and make-ups and taking practical steps to address gender imbalances will not assist women in achieving equality with men. The opposite effect can in fact be achieved in that the inclusion of legal provisions safeguarding women's rights will render women's struggles invisible and non-political on the basis that their concerns have been addressed through legislative provisions even when the legislative provisions are ineffective or are not being implemented. The constitutional amendment³⁵³ failed to deliver land to women because their lived realities including the constraints placed on their ability to camp on the farms by their gender roles were not addressed and where women participated, the role that they played on the farms was considered as insignificant.

In addition, the non-inclusion of women's land rights provisions in the Land Acquisition Act: Chapter 20:10 of 1986 and 1992 and subsequent amendments in response to the constitutional amendment of 2005 was also a challenge because this was the main act to be used in the land reform process. In addition, no regulations were put in place to guarantee that the people responsible for land allocation were compelled to ensure that women benefited from the process on the basis of equality with men by anticipating the gendered challenges faced by women and addressing the challenges to ensure their access to land. Bureaucrats responsible for land allocation would have been better placed to comply with a law or regulation that they were using on a day to day basis as opposed to constitutional provisions. One of my key informant interviewees, a Provincial Lands Officer³⁵⁴ conceded that whilst as technocrats they were aware of the general guide to give 20% of all land that was available for allocation to women, in reality this was not viewed as important because it was not written anywhere but was only talked about at meetings or political rallies. It is a basic tenet that constitutional provisions are implemented through the promulgation of enabling legislation, by-laws, guidelines and programmes. The

³⁵³ Number 17 of 2005 which provided for Section 23 (3) (a) in the Constitution providing for women's right to resettlement land

³⁵⁴ Interview held on 10 February 2012 in Masvingo

lack of such instruments at the implementation level therefore posed challenges for effectiveness in addressing women's land rights under the FTLRP. Failure to follow up on the 2005 constitutional amendment with the promulgation of enabling legislation for women's access to land provides a basis for arguing that the constitutional provision was simply an "add on" to deal with the pressure that was emanating from women's rights organizations such as the WLLG, ZWLA, ZWRCN and the WCoZ for government to address land rights and access for women without necessarily seeking genuine access to land by women. There is therefore need to extract and find the correct paradigm for women's inclusion in law and policy development and implementation to avoid the occasional occurrences of "forgetting" about women and making efforts to amend and include them after decisions have been made.

The men that were responsible for allocating land on the farms such as war veteran leaders believed that women should be content with benefitting from the FTLRP through their husbands. Other men believed that women were too lazy to wait in queues for their turn to be allocated land or to follow up on their applications for land with the authorities. Similarly the application of rules other than national laws in determining access to land also disadvantaged women. The prevailing state of strong legal pluralism underlined by the concept and meaning of "occupation", male violence and atrocities all played a role in displacing formal laws and international laws that otherwise recognised the women's unpaid work as a contribution in the acquisition of matrimonial resources.

Chapter 8: Application of the Post Fast Track Legal Framework and Implications on Tenure Security, Access and Control for Different Women

8.1 Introduction

This chapter seeks to assess whether both State and non-state actors made real efforts to implement the laws that were promulgated to address women's rights to fast track land. Learning from the provisions of the laws that were put in place after the FTLRP to regularize and define tenurial issues and rights to and over fast track land, the chapter will assess the legal provisions as detailed in Chapter 4 and whether and how various actors implemented the laws. The chapter will mainly use field research findings and compare these findings with the provisions of the law on the issues under discussion. This will be analysed in the context of marriage, divorce and death, with a focus on women in different family and relational situations such as wives and daughters in the various stages of a family cycle. Divorce will be analysed on its effect on women as wives whilst death will be analysed in view of its effect on women as wives and daughters. Although other female relatives may also be impacted on in relation to access to land, the focus of this chapter will be on women who are closely related to a landholder or beneficiary of fast track land to an extent that they would be expected at law to benefit from the assets or estate of such a landholder during their lifetime and upon their death.

The chapter also seeks to analyse the situation of women under the FTLRP from a perspective that recognises that different women are impacted on differently by any situation. Asking the question "whose land is it anyway?" and trying to understand the meaning of benefitting from land under the FTLRP and implications on ownership, access and control of the land, this chapter is premised on the realisation that land is a contested resource whose change of ownership by any means often leads to various contestations. Von Benda Beckman et al, have noted that:

Property is the focus of struggles at all levels of social organization, within and between families, communities, classes and States. The distribution of property objects has been contested throughout history and as have been the legal property regimes themselves. (von Benda Beckman et al 2006:2)

This means that rights and entitlements over property are impermanent, fluid and can be impacted on by changes in life, social and community organisation, economic developments, marital standing and even legal imperatives. Changes occasioned by life events such as death and divorce can have considerable implications not only on human relationships but also on the relationships that human beings have with property. Such life changes can transform one's status and in the process their relationship with property that they previously had or had no connection with. The Food and Agricultural Organisation (FAO) emphasises that property should not be viewed as an object but the relationship between people and things and that property also refers to the relationship between different people in respect to things (FAO, 2010:12).

As such, in an effort to understand fast track land as property and using mainly field data and linking it with the law, customary and traditional practices as well as societal views and attitudes, this chapter will seek to answer the following questions:

- i. What tenure systems were put in place by the government following the implementation of the FTLRP?*
- ii. How did the tenure systems impact on the rights of different women to own, access and control land?*
- iii. How did the tenure systems relate to available state and customary laws as well as societal views on women's rights to land?*

These questions are asked with an underlying assumption that the available legal provisions conferring land rights on women are on their own not adequate in securing women's land rights in Zimbabwe generally and under the FTLRP in particular. Underlying realities in determining or hindering women's rights to land under the FTLRP included limited monitoring and

enforcement of legal provisions, customary considerations, societal views on women's rights to land and the lack of capacity by women to demand and enforce their rights to fast track land.

8.2 Post Fast Track Tenure Approaches

The chaotic manner in which the FTLRP was implemented meant that there was no defined tenure system in place at the inception of the programme. Chapter 4 of this research has shown that in many instances, Government moved in to put in place laws and systems to manage the land reform programme after the invasions and self-settlement by people. Researchers such as Matondi and Moyo have argued that a significant amount of land was acquired through proper applications for land to government followed by allocation and settlement and not necessarily through invasions. However, in my research area, invasions and occupations were the underlying *modus operandi* in acquiring land in all the three locations that were the focus of my research, albeit with variations. In the Hippo Valley Estates (A2 allocation) for example, even after invading the farms, the invaders were still required to make formal applications whilst they camped on the farms in order to be allocated their pieces of land and some of the assets on the farms (in particular houses). These included the main farmhouses and the staff (compound) houses, which were allocated to the resettled farmers individually once they were given their portion of land on the farm. In the other two locations (Lothian/Chidza and Nuanetsi) no application process was required and settlers were allocated land by virtue of invasions and self-settlements. In terms of law-making, the government promulgated the laws in retrospect as it struggled to manage the various facets of the land reform programme such as claims from the dispossessed farmers, ensuring security for the resettled farmers, with the aim of stabilising the process from a social, political and economic perspective. However, the fact that the law-making process was reactionary and often in response to specific nagging issues as opposed to a well thought out policy direction meant that many issues were left out of the equation.

Chapter 4 of this research has shown that fast track land cannot be part of the assets inventory upon divorce, as it is not regarded as part of matrimonial property but State land. The most comprehensive piece of legislation to address the issue of fast track land in relation to divorce³⁵⁵ shows that what can be shared upon divorce are the rights in the permit or developments and improvements that are made on the farm during the subsistence of a marriage. Such improvements have to be taken into account when assessing compensation in the event that one of the parties leaves the fast track land.³⁵⁶ As such, even though fast track land is considered as State land, certain rights other than ownership can still accrue to beneficiaries of such land. Where there is disagreement regarding such rights and the value or benefits deriving therefrom, a determination can be made by an arbitrator appointed in terms of S.I 53/2014, with an appeal lying to the responsible minister.³⁵⁷ This research however shows that there are challenges both in respect of practice and attitudes with regards to the rights of the parties to fast track land upon divorce. The major challenges regarding practice arise from the fact that fast track land remains mired in controversy with government failing for a long time to come up with a clear tenure system or policy with regards to ownership, access and utilization. For example the fact that one has an offer letter, a 25-year or a 99-year lease has not been a guarantee from evictions by government or other senior officials in government, the military, police and intelligence services amongst others.³⁵⁸ The continuous cycle of evictions and the involvement of the army in evicting people from fast track land did not show any signs of abating during my four years and seven months of research. For example, the Crisis Report³⁵⁹ of 26 June 2015 reported that

³⁵⁵ Agricultural Land Settlement (Permit Terms and Conditions) Statutory Instrument 53/2014

³⁵⁶ Section 14 (3) of S.I 53/2014

³⁵⁷ Section 14 (3) and (4) of S.I 53/2014

³⁵⁸ For example in May 2014, there were reports of successful wildlife ranchers Darryl Collet and Alistair Forsyth of Mjingwe Ranch in Mwenezi District who were facing eviction from senior police and army officers despite the ranchers having 25-year leases. The *Newsday* of 23 May 2014 in a story headlined "Security chiefs in \$500K bribery scam" reported on how the two wildlife farmers were being threatened with eviction by senior army and police officers unless they paid \$500,000 in what the security chiefs called a dividend for their share in the Ranch

³⁵⁹ The "Crisis Report" is a Publication of the Crisis in Zimbabwe Coalition, a broad based civil society coalition with more than 72 member civil society organisations comprising churches, women's groups, social movements, residents associations, labour unions, human rights lawyers, and health professionals (www.crisiszimbabwe.org)

soldiers from the 4.2 Infantry Battalion in Gutu District, Masvingo Province had destroyed the homes and crops of 22 villagers from Chomufuli Farm in Gutu District. The report indicated that the move by the “army was meant to intimidate the villagers into evacuating their pieces of land”, which was allocated to them under the FTLRP (The Crisis Report 26 June 2015:1). The villagers indicated that the soldiers wanted to take over the farm.³⁶⁰ The move by the villagers to take the matter to court and have the soldiers interdicted from harassing and evicting them drew increased ire from the soldiers who were not deterred by the court order.³⁶¹ The result is that the uncertainty and flux created by this state of affairs as well as the apparent disregard for the rule of law has mainly been used by the ZANU PF Government, supporters and political activists as a political and control tool against political opponents and the electorate. The lack of a clear cut and secure tenure system over the years has therefore impacted negatively on the fast track land beneficiaries because of the attendant insecurity and uncertainty. In the past, research has been carried out in the country, including the Mandivamba Rukuni Commission of Inquiry into Land Tenure Systems in Zimbabwe (1994) to determine suitable tenure systems in the country. The Commission recommended the maintenance of the country’s multi-tenure system with an emphasis on ensuring that “each tenure instrument be made more secure by explicitly identifying the land rights and ensuring greater continuity of those rights by the holder.” (Rukuni, 1994: 1)

These recommendations if followed would have meant that Government had the basis to make a determination on appropriate tenure systems as the country implemented the various land reform programmes, including the FTLRP. Efforts to address the tenure challenges in the country post fast track can be gleaned from the promulgation of legal instruments such as S.I 53/2014, which deals with A1 land. In addition the 99-year leases (for A2 commercial farms)

³⁶⁰ This was alleged by the villagers when they petitioned the District Lands Officer to have the soldiers stopped from harassing them (See *Newsday*, 17 June 2015 “Soldiers go on the Rampage”)

³⁶¹ Solomon Nyashanu and 27 others (Chomufuli farmers) vs. Minister of Defence N.O and Officer Commanding 4.2 Infantry Battalion, Case. No BP6/2015

and the 25-year leases (for the wildlife based land allocations) have been put in place to address tenure issues in the A2 allocations. However, the question that still remains is whether these provisions are adequate to protect women and other beneficiaries of fast track land. The sections below will address this question.

8.3 Women's Rights to Fast Track Land in Marriage

This section looks at the role of marriage in securing or denying land rights for women. It evaluates the different types of marriages that are recognised by law in Zimbabwe and how women in these different marriages fared in relation to access to fast track land during the subsistence of the marriage, upon divorce or upon death of the male land holder, be it a husband or a father.

8.3.1 Women in Monogamous Marriages and their Rights to Land During Marriage

Women in monogamous marriages acquired land in their own right but also through their husbands with the majority of such women falling in the latter category. The acquisition of land through the husband meant that women had access to and could utilise the land but without any discernible control over the same land. The offer letter/permit or lease agreement for the piece of land was often in the name of the husband alone with no strict requirements for land acquired by a married person to be registered in the name of both spouses. In Chidza Farm, the respondents who had acquired land through their husbands were working on the land but relying on their husbands to make decisions about the utilisation of the land on issues such as what to plant, when to plant, when to sell their produce and the quantities to be sold amongst other decisions. One of my respondents who was a widow at the time of my research Mrs. RM2 indicated in an interview³⁶² that she only had control over her piece of land after the death of her husband. This showed the gripping control that her husband had over the piece of land. When her husband was still alive, he would make all the decisions about the utilisation of the

³⁶² Interview held on 9 September 2010 at Lothian Farm

farm and the resultant produce. Although he “consulted” her, the final decision always lay with the husband. Both she and her husband were however working on the farm on a full time basis. Mbuya Va N,³⁶³ also indicated during an interview that her husband made most of the decisions regarding the utilisation of the land, the sale of produce including livestock and how the proceeds from their farm were to be utilised. She also indicated that although she was “consulted”, it was the husband’s view that carried the day. This was a shared view by other women interviewed at different locations of my study area.³⁶⁴

The issue of men controlling the land and related decision making processes affected even land that was acquired by married women in their own right. This was a clear case of invisible power where men assumed control over land acquired by their wives by virtue of being men and “heads of households”. In the same vein, women believed that even though they were the beneficiaries and recipients of land under the FTLRP, they could not make decisions pertaining to or control such land when they had husbands. This state of affairs was explained away and justified on the basis of tradition, custom or social perceptions, which did not allow women to be in control of property such as land if they were married. In other instances, the economic muscle of the husband, especially in situations where he was the one providing inputs for the farming activities, meant that women who were allocated land in their own right could not control such land as they depended on their husbands to provide them with seed, fertiliser and draught power to undertake the farming activities on the farm. In the true application of the old adage that “*he who pays the piper calls the tune*”³⁶⁵, the wives therefore deferred to their

³⁶³ Interview held on 9 September 2010 at Lothian Farm

³⁶⁴ For example interviews with Mrs. AM in Hippo Valley (Farm 54) on 6 February 2012, Mrs. M7 in Nuanetsi Ranch (Masimbiti) on 11 March 2014 and Mrs. AH in Hippo Valley (Mhlanganisi Farm) on 25 April 2011

³⁶⁵ The Cambridge Dictionary defines this to mean that “ the [person](#) who is [paying](#) someone to do something can [decide](#) how it should be done” (See <http://dictionary.cambridge.org/dictionary/british/he-who-pays-the-piper-calls-the-tune>)

husbands in terms of control over the land and related decision-making as the husbands were the economic powers behind the productivity on the farms.

Mrs. SG³⁶⁶ reported during an interview that she was the one allocated the piece of land. At the time of the land invasions, her husband was working in Masvingo Town and could therefore not leave his employment to go and camp on the farm. After the allocation of the farm, they made their farm the main family home and she relocated to the farm with their nine children whilst her husband continued to work in Masvingo. He however provided the inputs that were required at the farm and visited the farm every weekend. During the weekend visits, he would provide instructions on the activities to be undertaken at the farm during his absence including when to start planting and harvesting, the types of crops to be grown and the quantities of produce to be sold. The produce was sold under his name, mainly at the GMB in Masvingo, and the proceeds deposited into his bank account. Just like in the other instances listed above, he would “consult” her on how the proceeds would be utilised but the final decision lay with the husband. Her husband died in 2009, following which she assumed total control of the farm. When her husband was alive, she did not have the kind of decision-making over the farm that she assumed after his death.

There was however another dimension to the issue of control over the land and related activities on the farms by married women. This was where women were in charge simply because of physical incapacity or lack of interest in farming on the part of the husband. One of my respondents, Mrs. C was allocated a farm in the Hippo Valley Estates’ Musisinyani area. She was the one who camped on the farm during the farm invasions as her husband was sick and could therefore not join in the invasions. A nurse by profession, Mrs. C was also responsible for financing the farming activities on the farm and visited the farm often to check on

³⁶⁶ Interview held with Mrs. SG at Lothian Farm on 9 September 2010

developments and give instructions to her farm manager and the other workers. She was in control of her piece of land and everything that transpired on the farm because the husband's health condition made it difficult for him to be involved in the operations at the farm. Another respondent, Mrs. M1 was in control of her allocated piece of land at Farm 54 in Hippo Valley Estates because her husband had no interest in farming whatsoever. At the time of the interview,³⁶⁷ the husband had died but she indicated that she had always been the one responsible for the farm because her husband was not interested. As a result, she was the one to participate in the farm invasions and was subsequently allocated the piece of land. The conclusion that I drew therefore was that married women in monogamous relationships were constrained in controlling fast track land by the following issues:

1. The framework rules governing the relationship between a husband and wife and in which a wife occupies a subordinate position with the husband occupying a dominant and controlling position;
2. Societal attitudes (invisible power), which frowned upon women who controlled land and related processes when their husbands were alive and capable. The view was that as the "head of the family", the husband must control land and its produce; and
3. Lack of resources, which made women to depend on their husbands for inputs on the farms even in situations where the farm was acquired in the wife's name.

Married women in monogamous relationships could still control the land and make decisions on the utilisation of the land if the men were incapacitated (for example due to illness like in Mrs. C's case) or if the men were not interested in the farm and related activities (as in Mrs. M1's case). In either situation however, the control over the land was not entirely because of deliberate decision-making on the part of the women but was mainly determined by the husbands' situations. If Mrs. C's husband had not been ill and Mrs. M1's husband had no other

³⁶⁷ I held my first interview with Mrs. M1 on 6 February 2012 in Chiredzi Town

activities to occupy him, the control and power dynamics over the allocated pieces of land would have been different, with the men still playing a leading role in the processes.

8.3.2 Women in Polygynous Relationships and their Relationship to Fast Track Land During Marriage

Despite a striking decline in the incidences of polygynous unions in Africa in the last half a century (Fenske, 2012:1), the practice is still commonplace. In some instances, polygyny has taken a different meaning from how it was known and practiced a few decades ago where a polygynous man lived in the same compound with his two or more wives. In modern day polygyny, the wives can stay in different locations and even in different cities or countries as people adapt to contemporary realities. However despite efforts to “modernize” or adapt the practice of polygyny to modern day life, the CEDAW Committee views it as constraining women’s rights and their dignity, and as a harmful cultural practice. The CEDAW Committee in General Recommendation Number 21 has noted that:

Polygynous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited.³⁶⁸

The committee went on to raise concerns in the same General Recommendation that despite many constitutions recognising the rights of women to be treated on the basis of equality with men, the same constitutions also allowed polygyny on the basis of personal or customary law. From the perspective of the CEDAW Committee therefore polygyny has negative implications for women’s social, legal and economic wellbeing as the unequal power relations that exist in such marriages weigh against their rights to property amongst other rights. The Committee in its approach therefore regards the total abolition of polygyny as the best way to ensure that women are not discriminated against, treated unequally or otherwise violated because of the continued recognition of polygyny as a form of marriage. This approach is different from the

³⁶⁸ Para 14

approach taken by African States on the issue in that whilst they acknowledge that polygyny can have negative consequences on the rights of women, the issue of how to deal with it is more measured. The Maputo Protocol states that:

Monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected.³⁶⁹

This is an indication of the fact that despite the negative effects of polygyny on the enjoyment of rights by women, African States viewed and continue to view the abolition of polygyny as a difficult task, which can only be achieved over time, if at all. Nyamu-Musembi agrees with this approach and argues that:

The CEDAW Committee can draw inspiration from the Maputo Protocol's approach in order to engage African States in a less stylized and more productive dialogue on legal pluralism: one that reflects an in-depth understanding of each country's context and each country's milestones along the path toward transformed gender relations. (Nyamu-Musembi, 2013:213)

It is in the context of these two different approaches that I will analyse the polygynous families that participated in the FTLRP in my research area as detailed below. Six of my interviewees were in polygynous marriages before the start of the FTLRP. Their living in a polygynous marriage was the trigger for the participation by five of the women in the FTLRP. They indicated that they wanted to acquire property that they could have control over and be able to leave behind for their children upon their death. The women had fears that because of the polygynous nature of their marriages, the shrinking of the available farming land in the communal areas and the number of children that were hoping to benefit from the same piece of land as they grew up, their children would not be able to access the rural land for farming and building their homes. The children also had limited chances of benefitting meaningfully from any other available resources due to their numbers and the fact that the available resources were few. Although obtaining fast track land was not going to be the panacea to their problems, it

³⁶⁹ Article 6 (c)

provided more land for their children as opposed to relying purely on their rural land. Whilst having land that they could control was a factor for these women, it was also notable that one of their main focuses was not always their own wellbeing but that of their children, in particular sons, as this was a recurrent thread during interviews. The narratives below outline the role of polygyny in compelling both men and women to acquire land under the FTLRP.

Mrs. JC³⁷⁰

She was the first of two wives. She was already married at the time she acquired the farm but her husband remained behind in the Nyahombe communal lands in Chivi District. The husband sometimes visited her but would go back to the rural home in the village. Her co-wife also got land in the Fair Range Farm in Chiredzi District. The co-wife and the respondent got the farms at the same time after they both went to invade the farms during the farm invasions, whilst their husband stayed behind in the village. The respondent had been a cotton farmer for many years but believed that sugarcane farming was more profitable than cotton farming. She therefore focussed her sights on invading land in the sugarcane estates when the farm invasions started. Both she and the co-wife had kept their houses in the village. She viewed the sugarcane plot as a commercial venture and wanted to keep her rural home so that one day when she was old and unable to continue with the sugarcane farming, she would go back and settle in the village again and leave her children to utilise the new farm. She had since managed to use proceeds from her sugarcane farming to develop her homestead in the village including building a new brick under asbestos house and furnishing it. A follow up interview on 3 March 2014 revealed that she had since given the plot to her daughter to manage as she went to take over a 50-hectare farm that had been left behind by her deceased son.

Village Head M1³⁷¹

He acquired a plot in the Masimbiti area in Nuanetsi Ranch. At the time of the first interview, he was staying with his two wives on the newly acquired farm. By the time of the second interview in March 2014, he had acquired another plot in Chivhu, Mashonaland East Province, which was a distance of more than 200 kilometres from Masimbiti and had taken the younger wife to the new plot. Although he told me that he had moved to Chivhu because the plot in Masimbiti was too small to accommodate his 33 head of cattle, a neighbour told me that he had moved because there were constant disagreements between his two wives and he had relocated to Chivhu with the younger wife. I found him in Masimbiti because he had returned to his older wife after falling sick and was recuperating under her care.

Mrs. RZ³⁷²

She was the first of 3 wives. She moved to the Masimbiti area/ Ward 16 in the Nuanetsi Ranch in the year 2000 from the Nyamande area in Gutu. Her husband and children remained in the

³⁷⁰ Interviews held with Mrs. JC at Farm 54 in Hippo Valley held on 25 April 2011, 6 February 2012 and 3 April 2015

³⁷¹ Interviews held with Village Head H at Masimbiti in Nuanetsi Ranch on 7 September 2010 and 13 March 2014

³⁷² Interview held with Mrs. RZ at Masimbiti in Nuanetsi Ranch on 11 September 2010

village at the time of the farm invasions but followed her later. Whilst she was staying permanently with her children on her new plot, her husband who had two other wives in Gutu was resident in Gutu and occasionally visited her on the new farm. She decided to join the farm invasions and settle on the farm in Nuanetsi because as the oldest of the three wives, she felt that she had no place in her husband's home in the village as he was paying more attention to his younger wives. She was happy that she now had a piece of land that she had control over and could use as she wished without fighting over land allocations in the village with her co-wives. She was free to plant crops of her choice and on a bigger piece of land unlike the constricted land that she was using in the village.

Mrs. M10³⁷³

She was the second of five wives in an Apostolic Faith Church³⁷⁴ family and was the one who acquired the piece of land, which was registered in her name. After obtaining the land, her husband and the other 4 wives came to join her on the farm in line with the practices in their church, which required the husband to stay together with all his wives. Mrs. M10 and her husband divorced afterwards and the husband together with the other 4 wives moved away from the farm. She told me that she was able to keep the piece of land after the divorce because she had "*mapepa*"³⁷⁵

The narratives above show that both men and women in polygynous relationships sought land under the FTLRP for a variety of reasons. However all such reasons were closely tied to the nature of marriage that they were in. For Village Head M1, the reason was the need to acquire more farming land for his wives and separate them as they were feuding and failing to live together harmoniously. In the case of Mrs. JC, the husband took advantage of the fact that he had two wives and used this as an accumulation strategy as the wives were able to establish themselves on two separate farms whilst he maintained a hold on their communal home. In the end, the family managed to acquire more land. For some women in polygynous relationships, access to a piece of land under the FTLRP was a means of escaping from a marriage relationship where they felt excluded and in which their bargaining power over access to resources such as land for themselves and their children was diminished. As such, they considered access to fast

³⁷³ Interview held with Mrs. M6 at Lothian Farm on 2 April 2015

³⁷⁴ Apostolic faith churches in Zimbabwe come in different sub-denominations. They are part of the group of independent African churches and they mix African traditional practices and Christian beliefs in their worship. Polygyny is allowed in the church and is justified using both African traditions and culture and Old Testament Biblical stories in which some of the well-known people in the Bible were polygamists.

³⁷⁵ Mapepa is a Shona corruption of the English word "papers". It is often used in Zimbabwe to refer to any legal documents. In this case "mapepa" meant the offer letter, which was issued to the respondent, meaning that the land was legally recognised as hers.

track land as an opportunity to acquire land, a resource that they could have reasonable if not total control over. As shown by the narratives of Village Head M1 and Mrs. RZ, their polygynous marriages were clearly fraught with acrimony and any opportunity to escape was embraced by both men and women. The FTLRP therefore provided such an opportunity to start lives outside of acrimonious polygynous unions.

After the acquisition of the land, regardless of whether it was the men or the women who had acquired the land, the women if settled in different locations from their husbands, seemed to have more control over the piece of land they were occupying. This was because the roving husband could not keep track of all the developments on the farms due to their prolonged absence. In a number of cases, the kind of polygynous set-up on the farms also differed significantly from the traditional polygynous set-up where the man stayed together with all his wives within the same homestead and was therefore able to keep a tight leash on all the wives, monitor their movements and control their actions. The traditional polygynous set-up also gave the man an opportunity to control the wives' labour and have more land under his control as each woman was given her own piece of land within the vicinity to cultivate with her children (Sen and Beneria, 1981:280, Peters and Peters, 1998:187). Under the FTLRP, the factor of having more than one wife acted as an accumulation strategy for the men, who were able to acquire more land through their wives. However, the distances separating the different farm allocations for the wives and/or the rural home were often considerable making it difficult for the men to be present at the various places at all critical times. As such, whilst the men managed to get more land through the wives, the distances forced them to loosen their control over their wives, their labour and the attendant decision-making.

The friction that was existent in polygynous marriages meant that the wives, wherever possible took advantage of this state of affairs to further their interests and those of their children. In

addition, the fact that the women in these marriages played an active and often competitive role in the acquisition of the land meant that the acquired land was registered in their own names thereby securing their rights to an extent. The women were also often driven by the need to ensure that when they die, the land would be easily claimable by their own children and not by the stepchildren, the husband or his other wife or wives.

8.3.3 Implications of polygyny on women's land rights

Decision-making by women in marriages is often inhibited, as many decisions have to be deferred to the husband. This is particularly the case in African societies where the payment of the bride price has the implicit implications of transferring power and decision making from the woman to her husband and his family (Nii-Amoo Dodoo, 1998:233). In polygynous marriages, making decisions on critical issues is often one of the methods used by the men to ensure that they maintain control over the two or more wives as independent decision-making often leads to independence of the women as well. This is enabled by the fact that in many of the traditional family set-ups in the rural areas, all the means of production including land and livestock are in the hands of and are controlled by men. However, the fact that women in polygynous marriages who were able to settle in independent locations under the FTLRP were not always under the direct control of their husbands made it easier for them to exercise significant independence and autonomy in decision-making. These decisions ranged from deciding on the type of crops and hectrage to be planted and utilization of available resources including their time, which was a critical resource for productivity. Women could also make decisions on how to use the money realized after the sale of the farm produce. They would often seek ratification of the decisions by the husbands and normally consulted the husbands when making significant decisions such as building a house or purchasing farm equipment. Mrs. JC above showed significant autonomy and creativity in undertaking her farming activities on the sugarcane plot. In addition to improving her rural home, she was also able to use proceeds from her farming to acquire resources for the recapitalization of the farm and for her own use. For

example, although she could not drive, by the time of my last interview with her on the 3rd of April 2015, she had bought a van to use on her farm. Her nephew drove the van. She was also deploying the same van towards raising extra income as it was hired by parents on the farm to ferry children to and from school. She was charging ten United States Dollars per month per child and was contracted to provide this service to 41 children and therefore earned \$410/month from providing this service. She reported that she was totally in control of the proceeds from this venture as she was the one who had bought the van and had come up with the business idea. She also reported that she did not always disclose the total benefits that she accrued from using the van in business ventures to her husband and this provided her with extra income to deploy in her farming activities and other self-improvement initiatives. The fact that the husband was staying in another home, far away from where she was therefore helped her in making autonomous but critical decisions that were helping her in improving her farming and her standard of living.

As Grossbard has noted:

Much of the recent literature in household economics has been critical of unitary models in which households act as monolithic blocs possibly led by a male benevolent dictator. (Grossbard, 2011:42)

The criticism for this model is based on the realisation that often households are made up of individuals with their own personal preferences, constraints and choices. Such attributes therefore lead to decision-making that reflects these choices and preferences, often to the detriment of other members of the household. Women and children are therefore often the victims of such lineal decision-making processes. It is therefore a good development when they get an opportunity to make their own decisions and for their own benefit. Models or developments that encourage “jointness” in decision-making or give women some level of autonomy in decision-making are therefore preferable. The fact that women in polygynous relationships have managed to gain some leverage in decision-making under the FTLRP is

therefore important for their emancipation, development and the economic and social wellbeing of their families.

8.4 Women's Rights to Fast Track Land Upon Divorce

This research has shown that the bulk of the land that was available under the FTLRP was acquired by and registered in the names of men. The research has also shown that at the beginning of the FTLRP and for many years later, there was no clear policy in place to determine rights of spouses over fast track land due to the lack of a clear tenure system or a guiding legal framework. In Chapter 4, I emphasised the fact that it was difficult for the general laws applicable to matrimonial property and the rights of spouses upon divorce to be applied in respect of fast track land because such land was not considered as part of matrimonial property but state land.³⁷⁶ The result therefore was that upon divorce, the person in whose name the land was registered retained the land and the other spouse was required to leave without much debate. S.I 53/2014 came into effect during the fourth year of my research. The Instrument was meant to address tenure rights and the rights of different categories of people in relation to fast track land. The rights of spouses upon divorce were also addressed. In essence and as highlighted in Chapter 4, S.I 53/2014 maintained the status quo in that the rights of the spouse in whose name the land is registered have been maintained as superior. The only difference is that the exclusion of the non-registered spouse from fast track land has to be done following an elaborate procedure unlike in the past where the removal of such a spouse was automatic upon divorce. Upon meeting the requisite "buy-out" requirements and in some instances the arbitration and appeals procedures, the spouse in whose name the land is registered is entitled to retain the land as of right³⁷⁷. This provision might appear fair in that it is gender neutral and

³⁷⁶ Even whilst attempting to give rights to beneficiaries of fast track land, S.I 53/2014 emphasises that the land to which the permits relate remains state land as stipulated in Section 72 (4) of the Constitution of Zimbabwe, 2013

³⁷⁷ Section 14 (1) of S.I 53.2014 states that: "If the marriage, or in the case of a polygynous marriage, any of the marriages between a permit holder who is the sole signatory of a permit and his or her spouse is dissolved, the non-signatory divorced spouse shall retain his or her rights as a joint permit holder or joint head of household unless the signatory permit holder compensates the divorced spouse for his or her assessed share under the permit"

will apply to either a male or female spouse. The reality however as already shown by this research is that the bulk of fast track land was registered in the names of men upon acquisition in the early stages of the FTLRP. The provision therefore disproportionately affects women upon divorce in that they are the majority non-signatory permit holders under the programme and as such are prone to be evicted from fast track land upon divorce once the requisite compensation has been paid. Conversely, due to lack of resources by women and their low economic status, women in whose names fast track land is registered can in theory be forced to stay with their divorced spouses after failing to meet the compensation requirements to buy out their spouses upon divorce. This is because the same Section 14 (1) clearly states that upon divorce, the non-signatory permit holder is entitled to retain his or her rights as a joint permit holder until compensation is paid. As such, whilst the statutory instrument was a welcome development in that it clarified the basic tenurial issues and rights of spouses upon divorce, the *de facto* discrimination suffered by women in terms of access to and benefiting from fast track land upon divorce continued. As such by giving women rights, similar to those enjoyed by men without addressing the structural inequalities and disadvantages that women face as women, the statutory instrument failed to move women forward in terms of access to land in the country.

As Fredman has noted:

It is not sufficient simply to extend socio-economic rights to women. Instead, socio-economic rights need to be recast in light of the demands of substantive gender equality. Substantive gender equality goes beyond treating women in the same way as men and requires transformative measures. (Fredman, 2009:410-411)

In line with the above observation, an important point to make is that despite the reality that S.I 53/2014 was an opportunity by government to correct the gender skewed land access patterns under the FTLRP by compelling joint registration of fast track land by spouses, joint registration still remains optional. Yet joint registration and co-signing of the permit gives the spouses better protection upon divorce. The relevant registration form as provided for in S.I 53/2014 is shown below:

**Agricultural Land Settlement (Permit Terms and Conditions)
Regulations, 2014**

This Permit is issued subject to the terms and conditions set out in the
Agricultural Land Settlement (Permit Terms and Conditions) Regulations, 2014.

DETAILS OF PERMIT HOLDER

For the purposes of this section, a "Permit Holder" means a male or female head of household in whose name this Permit is issued. The Permit Holder in whose name this Permit is issued shall be primarily responsible for fulfilling the conditions of this Permit.

However, despite the fact that the Permit is issued to the person named in this section, the spouse of the Permit Holder or, in the case of a polygamous marriage, all the spouses of the Permit Holder (as specified under section 2.1), shall be regarded as Joint Heads of Household for the purposes of this Permit.

- 1.1 Surname:
- 1.2 First name:
- 1.3 Other names:
- 1.4 Title (Dr./Mr./Mrs./Miss/Ms.):
- 1.5 Place of birth:
- 1.6 Date of birth: Age:
- 1.7 National ID Number:
- 1.8 Marital Status (tick applicable):

Married	Single	Divorced	Widowed
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.....
- 1.9 Citizenship:

IN THE CASE OF JOINT SIGNATORIES:

- 1.1 Surname:
- 1.2 First name:
- 1.3 Other names:
- 1.4 Title (Dr./Mr./Mrs./Miss/Ms.):
- 1.5 Place of birth:
- 1.6 Date of birth: Age:
- 1.7 National ID Number:

Source: Statutory Instrument 53/2014

The fact that spouses are regarded as joint permit holders and joint heads of household (as opposed to joint signatory permit holders) does not give them equal rights to the land upon divorce but still gives the signatory permit holder superior rights.

8.5 Practice upon divorce

For the large part of my research period, S.I 53/2014 was not operational. As such upon divorce, the spouse in whose name the piece of land was registered would automatically retain the land and the other spouse would leave the piece of land. The courts were reluctant to deal with matters relating to fast track land arguing that it was State land and could therefore not be adjudicated upon by the courts. They therefore often referred litigants to either the District Administrator's Office or the Ministry of Lands and Rural Resettlement for a determination on spouses' rights over fast track land. In other instances, other actors and institutions both formal and informal also made determinations on the rights of spouses to fast track land upon divorce. These included the war veterans, committees of Seven, farm committees and traditional leaders amongst others.

A few important fast track land cases were however decided upon by the courts despite the reluctance stated above, but this was many years after the commencement of the programme. In the cases of *Chombo vs. Chombo* and *Chiwenga vs. Chiwenga* (discussed in Chapter 4), the courts upheld the view that the signatory spouse had superior rights over fast track land when compared to the non-signatory spouse. In both cases the wives were ordered to leave the farms as they were not signatory leaseholders. At a time when the courts were reluctant to deal with cases relating to fast track land, one of the reasons why the two cases were decided upon by the courts was simply because they were brought before the courts as part of wider divorce proceedings and attendant sharing of property. It was therefore imperative for the courts to adjudicate on the status of the spouses in relation to the fast track farms as well. Otherwise the general approach where the sole issue to be decided upon was the fast track land was to refer the matter elsewhere. The expectation with the promulgation of S.I 53/2014 is therefore that the courts will now be able to apply the S.I and determine spouses' rights upon divorce without hesitation. However, it is also hoped that the constitutionality of the S.I may be challenged

especially in as far as it automatically excludes one spouse (and in many instances the wife) from fast track land once the signatory spouse has managed to buy out the non-signatory spouse. It does not matter in terms of this provision what the relationship of the excluded spouse with the land is. Yet issues to be considered in the event of divorce should include whether the fast track land had become the matrimonial home, whether the non-signatory spouse is solely dependent on that piece of land for his/her livelihood or whether the signatory spouse has other sources of income amongst others. It is important that such issues be determined by the courts before a person is removed from fast track land simply on the basis that they are not signatory to the permit or lease agreement over the piece of land.

In practice, the non-signatory permit holder (normally the woman) simply moves out of the farm upon divorce. I came across only one case in which a man (and his other wives) was forced to leave the farm upon divorcing the signatory permit holding wife.³⁷⁸ The permit is what respondents referred to as “*mapepa*” and once one had “*mapepa*” the issue of who would retain the farm was almost a certain one. In one case, the wife was forced to leave the farm because she had committed adultery. The divorced woman’s mother told me the story and indicated that because her daughter had committed adultery, she (the daughter) had no leg to stand on in claiming any property, including the land. The husband had therefore shipped her off to her mother with only her clothes and kitchen utensils.³⁷⁹ In another case,³⁸⁰ the woman was chased away by her husband because he was in an extra-marital relationship. She was only able to come back because her children whom she had left behind on the farm were bothering the father, insisting that their mother should come back. Faced with this challenge the husband called her back to the farm but he then left the farm and went to stay with his mistress who was a teacher at a nearby school. However, according to the woman, she knew that she was staying

³⁷⁸ Mrs. M6, whose narrative is given above and who was interviewed on 2 April 2015 at Lothian Farm

³⁷⁹ Interview with Mrs. JC on 3 April 2015 at Farm 54, Hippo Valley Estates.

³⁸⁰ Mrs. C, interviewed on 2 April 2015 at Lothian Farm

on the farm at the pleasure of the husband and could therefore be chased away at any time. She said:

I had to leave when he told me to because the farm is his, not mine. Although I am staying here now with my children, I feel insecure because if he comes and says I should go, I will have to. It makes it difficult for me to exert my energies on working on this farm because maybe I am just working for another woman, who will one day come and take over both the farm and my husband.

Therefore, in addition to being prejudicial to women and their rights, the practice of ejecting a non-signatory spouse from the farm has the effect of undermining productivity on the farm. It means that if women, who in many instances are the main tillers and workers of the land are not motivated to work on and develop the piece of land for fear of eviction at some point, then the farm will not be successfully utilised. There have been concerns by government, including President Robert Mugabe that the land that was distributed under the FTLRP was lying idle and not being fully utilised.³⁸¹ Therefore as the government works to ensure that the farms that were distributed under the FTLRP are fully utilised, the practice of ejecting a non-signatory permit holder can be a stumbling block to that development. In the case of *Chombo vs. Chombo*, the court acknowledged that the wife was more involved in operations on the farm than the husband, but this did not earn her the ticket to keep the farm, simply because the lease to the farm was registered in the husband's name.

Men too object to the idea of their wives taking over the land in the event of divorce. Their reasons during fieldwork interviews centred on the opinion that land belongs to the man in a

³⁸¹ Addressing hundreds of Roman Catholics attending the Kutama Mission Centenary Celebrations in Zvimba on 22 March 2015, the President of Zimbabwe, Robert Mugabe said "Its turning out now that quite a good many of those who got farm on the A2 system aren't running them. The farms require huge capital and good management, they don't have it, but they are a status symbol to many" (The Chronicle 23 March 2015, "President Slams "Status Symbol" land holders"). Many other senior government and ZANU PF officials have also acknowledged that the land reform programme, in particular in relation to A2 farms has been a failure. For example, Irene Zindi a senior ZANU PF MP whilst contributing to a debate on the Presidential Speech in Parliament acknowledged the failures of the land reform programme. She said ""The idea behind the land reform programme was to economically empower Zimbabweans, ensure Zimbabweans earned a living from farming and see farming from a business point of view, but the situation obtaining does not really point to the three things" (Newsday 25 May 2015 "ZANU PF MP trashes land reform programme")

marriage and therefore in the event of divorce, a woman should leave the land and go back to her parents. Coupled with the now emerging approach that fast track land is not matrimonial land but State land, and that the person whose name appears on the offer letter, certificate of occupation, lease or permit is deemed to be the beneficiary under the FTLRP, many women are therefore left stranded after divorce despite their efforts in working on and improving the land. Co-signing was not pursued or prioritized by government at the time of giving land documentation and neither is it enforced as government gives new permits in terms of S.I 53/2014. Women are only acknowledged as joint permit holders and joint heads of households, but only during the subsistence of a marriage. In situations where beneficiaries have not been given any documentation for the land, as is the case in the Nuanetsi Ranch's Masimbiti area, authority on who the rightful beneficiary under the FTLRP is, rests with male dominated patriarchal structures and systems. These structures and systems evoke everything from culture to friendships, politics and even corruption to maintain male privilege and solidarity in the event of a dispute between a man and a woman over land. It therefore follows that in the event of divorce, women are forced to leave the fast track land and find alternative homes and means of survival. This approach to fast track land in marriages is similar to the prevailing situation before the promulgation of the 2013 Constitution in respect of communal land where women in law and in practice could not keep the communal land and home upon divorce. Even with the coming in of the 2013 Constitution, practice remains largely unchanged. FAO (1994) reports that despite the progress that Zimbabwe as a country has made in terms of women's rights, including being a State Party to CEDAW, challenges still remain in certain aspects of women's land and property rights amongst other rights. The organisation notes that:

However, women still do not have equal access to land in the communal areas. Married women have only secondary land use rights through their husbands, and divorced women are required to vacate the land and acquire new land in their natal homes.³⁸²

³⁸² <http://www.fao.org/docrep/v9101e/v9101e04.htm>

This position was entrenched by the courts in Zimbabwe through decided court cases. In the case of *Khoza vs. Khoza* (HC-B-106), the wife upon divorce was deprived of the two's communal land home despite the fact that she was solely responsible for the development and upkeep of the home whilst her husband was working in the city. In denying the wife access to the rural matrimonial home and giving her the city house despite the fact that farming was her only means of livelihood, the court argued that the patrilocal nature of rural Zimbabwean life made it difficult for the wife to stay amongst her husband's relatives after their divorce. Although this was not fast track but communal land, a customary law approach in relation to fast track land can yield the same result, especially where the provisions of the 2013 Constitution are not evoked or respected. As Gopal and Salim note:

“This case demonstrates the risks arising from the derivative nature of women's access to communal land. The woman could not retain her rural home and the right to reside there and cultivate the fields because her right was perceived as derivative and contingent upon her status as a wife, and therefore terminated upon divorce” (Gopal and Salim, 1998:95).

The derivative nature of the land access rights that women in Zimbabwe had and continue to have in relation to communal land therefore risks being imported into the resettlement areas if the policy framework that is being pushed by government is not challenged. In addition to the official policy position, it must also be realized that in the villagised A1 allocations, the majority of the beneficiaries are from the former communal areas in the country. Therefore whilst the beneficiaries might have moved from their original homes in the communal areas, they are likely to import their customs, cultures and practices into the new resettlement areas, especially those aspects that reinforce male privilege to the detriment of women. These are therefore likely to be enforced unless a position is taken to ensure that the issue of who keeps the land upon divorce is decided based on the circumstances of the divorcing spouses and the merits of each case.

All men that were asked about this issue during fieldwork in March 2014, including a village head in the research area, shared the position that women should not retain fast track land upon

divorce. Box 8.1 below shows the responses by two of the men and their reasons for having such views. I have chosen to highlight the views of the two men in Box 8.1 because they held different but highly influential positions in society as a headmaster at one of the schools in the research area and a village head on one of the farms. Their influence in the community was therefore likely to lead to their views being taken seriously both within their communities and during consultations with technocrats tasked with land allocation, conflict resolution and decision-making regarding fast track land. These two and other respondents were opinion leaders and influential people in the community. As a result, the patriarchal attitudes, customary and cultural beliefs and general attitudes that they held towards women and access to resources including fast track land upon divorce were likely to be propagated within the community and become widely acceptable. The school headmaster's attitude was of concern because he was an educated and enlightened individual and therefore expected to embrace the principle of the protection of human rights, including women's rights. As a teacher, he would also be expected to teach school children from an early age about women's rights amongst other rights as the approach to teach children about human rights at an elementary age is being embraced worldwide.

Box 8.1: Responses to the Question on whether women should be allowed to remain on fast track land upon divorce:

Mr CM Primary School Headmaster: He was unequivocal that women should not get land upon divorce because the land belongs to the man who is the head of the household and in most cases is the one who would have acquired the farm. He said that in Shona culture, when a woman is divorced, she goes back to her family and would leave the husband and his home. Although he indicated that he had a cordial and loving relationship with his wife, where she was responsible for farming on their plot and was in charge of selling the produce and even making decisions on how to use the proceeds from their farming initiative, he would not allow her to keep the farm in the event of a divorce. He contended that his wife was the “*sahomwe*” or the purse keeper and that she had used money from the previous farming season to buy a lounge suite and he had no problems with that as long as they were still married.

Village Head M2, Chidza Farm: Asked how he would decide on a matter involving a divorcing wife and husband both claiming fast track land in his village, Mr M indicated that he would give the land to the man because in most cases in his village, it was the men who came to invade the farms and they were therefore the ones who “looked” for the land. He also argued that as the head of the family, the man should be allowed to keep the land and the wife can look for land or a home elsewhere.

8.6 Views of a Leading Women's Rights Organisations on the Rights of Women to Fast Track Land Upon Divorce

As part of my research, I interviewed officers of one of the leading women's rights organisations in Zimbabwe, the Zimbabwe Women Lawyers' Association (ZWLA) on the issue of women's rights to fast track land upon divorce. In an interview on 6 November 2013, ZWLA officers raised concern with the fact that the courts were reluctant to deal with fast track land upon divorce, insisting instead that litigants must approach the Ministry of Lands and Rural Resettlement or the DAs for a determination on entitlement over the land. The courts were insisting that fast track land was State land over which courts had no jurisdiction.³⁸³ ZWLA officers were concerned that the courts were failing to create the much-needed jurisprudence on the issue of fast track land in the country. Yet, given its contested nature, decisions by the courts would be invaluable in setting out principles, rights and entitlements over the land and in the process clarifying various unclear and contested issues. This was premised on the realisation that the courts should be the last port of call in respect of any dispute and there should be no issue that the courts have no jurisdiction over. The ZWLA officials indicated that:

There is therefore a gap in that in any dispute that cannot be resolved, the courts should be the last port of call and it is unnerving when the courts give the impression that there are certain cases that they cannot deal with.”³⁸⁴

This concern is critical especially considering that in any situation, the judiciary should be the final arbiter whenever a dispute arises. The reluctance by the courts to deal with fast track land and making determinations thereof however could be explained by the fact that the jurisdiction of the courts on fast track land was ousted by constitutional amendment number 17 of 2005

³⁸³ This still remains a challenge because the New 2013 Constitution maintains that courts have no jurisdiction over certain aspects of the fast track land such as compensation for acquired land (as opposed to improvements) and courts are not allowed to entertain any such cases (Section 72 (3) (b) of the Constitution)

³⁸⁴ Interview with Abigail Matsvayi (ZWLA Programmes Coordinator) and Primrose Ratidzo Mungwari (ZWLA Legal Officer) on 6 November 2013

(and maintained in the 2013 Constitution) which barred courts from hearing cases related to fast track land. The ouster of the courts' jurisdiction in terms of these constitutional provisions was designed to ensure that the dispossessed white commercial farmers would not challenge the compulsory acquisition of their land and the attendant lack of compensation in the country's courts. However, the understanding and interpretation of this provision by the courts seemed to have extended to a general reluctance by the courts to make determinations on fast track land disputes, including in marriage settings. The approach by the courts according to ZWLA was similar to the one they use for immovable property in urban areas that was held in terms of an agreement of cession between an occupier and an urban local authority. The courts were referring married couples to the local authorities concerned to make determinations on occupation of the properties in the event of a divorce instead of making a ruling on the issue at the courts.

The reluctance by the courts to address disputes over fast track land in divorce cases has meant that decisions on who retains fast track land upon divorce is vested in the Ministry of Lands and Rural Resettlement, the DA's Office and in some cases local based institutions such as the Committee of Seven. According to the Ministry of Lands and Rural Resettlement's Provincial Lands Officer in Masvingo³⁸⁵, their policy was that the person whose name appeared on the offer letter or lease would retain the piece of land in the event of a divorce. Where possible, the Ministry of Lands and Rural Resettlement or the District Administrator would find alternative land for the other partner but because this was not always possible, the losing partner was often required to find an alternative place to stay or an alternative means of livelihood. The practice of finding alternative land for the other partner, especially the woman must also not be taken as a favourable outcome for the women, as the Ministry of Lands and Rural Resettlement suggests. This is because often the land that the woman is subsequently allocated upon divorce is

³⁸⁵ Interview held on 12 February 2012 in Masvingo Town

undeveloped and the woman will have to start the process of developing the land all over again. After spending many years developing the piece of land that she would have been removed from, it would be an unenviable task for the woman to start the process all over again.

The ZWLA officers highlighted that because men dominated the farm level institutions, the results were that women often lost the fast track land to men in situations where determinations were made at the farm level. They stated that:

There are clearly bilateral and multilateral social alliances of men to protect male privileges in the new resettlement areas. Men know each other socially and politically and they are well connected.³⁸⁶

According to ZWLA, the social capital and relationships that men enjoy on the farms are built on the fact that the men can freely interact in social and entertainment circles such as local townships and beer halls as well as in political meetings where women do not often find suitable space. As relationships are built, men therefore find it easier to support other men as opposed to women in the event of disputes over fast track land. The fact that these same men dominate the institutions that make determinations on access to fast track land in the event of divorce involving other men that they already have close relationships with is therefore detrimental to women. Considering that the farm communities are closely knit and intimate, these relationships can therefore not be taken for granted as they can be used to the detriment of those that are not part of the social, friendship and economic networks and in particular women. This is more so considering the way in which gender relations and property relations are structured in Zimbabwe generally and on the farms in particular where men are considered to be the owners of the land and also considered to have been the leaders in the farm invasions. This makes it easy to consider the removal of a woman from fast track land upon divorce or separation as inconsequential regardless of the impact on the woman. On the other hand, the

³⁸⁶ Interview with Abigail Matsvayi (ZWLA Programmes Coordinator) and Primrose Ratidzo Mungwari (ZWLA Legal Officer) on 6 November 2013

removal of a man is given more serious consideration before such an action is taken due to the androcentric approach to land and property ownership.

8.7 Women's Right to Fast Track Land Upon Death of a Spouse

There is a general even though sometimes reluctant acceptance by the population in Zimbabwe that upon death of a spouse, a surviving spouse must inherit the deceased's property, including land. Respondents interviewed on the issue including village heads,³⁸⁷ government officials,³⁸⁸ senior community opinion leaders,³⁸⁹ as well as the fast track land beneficiaries, both men and women accepted this principle as law and practice, especially if the women had children with the deceased husbands. The reason for supporting the woman to continue utilizing the land in such a situation was that she was using the land to raise the children and also that she was holding the land as a caretaker in order for the children to take over when they were older. Mr. CM, the headmaster referred to above, argued that whilst he was against the idea of his wife taking over the land in the event of a divorce, he had no problem with her keeping the land upon his death because she would use the land to raise their children. He was clearly against the idea of his siblings or other relatives taking the land from his wife after his death. Many of my respondents were widows who had remained on the farms following the death of their husbands. Despite the cultural constraints that they faced in relation to the land following the death of the husbands, they were still able to keep the land. One of my respondents' challenge was that she could not change the registration documents into her name without the blessings of the deceased husband's family. She had to travel to the rural home to request for permission to change the registration documents in person because she believed that this was an important issue that required her to show respect to her in-laws by discussing the issue in person. However because for a long time she had not managed to make the journey to the village, the farm remained

³⁸⁷ Village Head M2, interviewed at Chidza Farm on 10 March 2014,

³⁸⁸ Mr DM, Provincial Lands Officer interviewed in Masvingo on 10 February 2012

³⁸⁹ Mr CM, interviewed in Masimbiti, Nuanetsi Ranch on 14 March 2014

registered in her deceased husband's name even though no one had stopped her from changing the registration documents.

8.8 A Childless Widow's Nightmare

One of my respondents experienced challenges with her husband's relatives who wanted the land to be taken over by the husband's nephew. Their reason was that she never had any children with the deceased husband and as such she was not fit to take over the farm as it meant that the farm was now going to an "outsider". The issue of women's fertility and child bearing capacities being linked to women's rights including access to land has been a problem in Zimbabwean societies for a long time. In her research on childless women in Zimbabwe, Hellum concluded that:

In African countries, where fertility-centred value systems and customs have prevailed, procreative problems are giving rise to more serious existential, personal, social and legal problems than in the west. (Hellum, 1999:27).

This means that in Africa, many of women's rights, entitlements and recognition both within the family and the wider community are tied to child bearing. In traditional Zimbabwean society, often a woman is given her own piece of land and cooking hearth following the birth of a first child. This is because it is only after the birth of such child that her permanent stay within the husband's family is considered a possibility because she would have shown her capacity to grow the husband's family (Mutopo, 2014:137). But as Mushunje notes:

The fact that a woman was allocated a piece of land after she had given birth to her first child, implies that those who were unfortunate to be childless were never considered to be worthy of a piece of land and were thus never allocated. (Mushunje, 2001:8)

The traditional approach and practices that gave birth to denial of land rights to women on the basis that they had no children therefore keep creeping up in modern day Zimbabwe and women still experience discrimination on that basis. This is despite the growing view that a spouse should be allowed to inherit land and other property following the death of their spouse. Generally however, it remains clear that married women are better off as property holders upon death of a spouse as opposed to upon divorce or separation.

8.9 Women as Daughters

Traditionally, the economic and social value of children in Zimbabwe like in many African societies has always been determined in terms of their gender. Male children have always been considered as more valuable because they would stay within their natal homes, look after their parents in old age and bear children to keep the family name alive. On the other hand, the female children are expected to get married, with the parents collecting bride-wealth and then consigning the young women to their husband's families. The low value attributed to female children in Zimbabwean society during the colonial period was reflected in the parents' reluctance to spend resources on educating female children due to the perception that they would use their education to develop their husbands' families. The view as Schmidt notes was that:

A son could work, providing his parents with a range of material advantages, but a daughter could only marry. All her subsequent labour would be for her husband and his kin. In the case of girls, parents reasoned, there was no return in investment. (Schmidt, 1991:141).

This view of a female child as a transient member of her natal family still exists in Zimbabwean society today and has the effect of denying women access to resources as daughters. This is despite the fact that research has shown that female children are more inclined to look after their parents in their old age as compared to their male counterparts, both in terms of physical caring and provision of economic resources. A 2014 research by the American Sociological Association (ASA) concluded that: "Daughters provide as much elderly parent care as they can [whilst] sons do as little as possible." (ASA, 2014:1)

The notion that daughters are a wasted investment therefore does not seem to hold water. However, despite this reality, this research revealed some of the challenges that women face as daughters when it comes to access to land acquired under the FTLRP by both their mothers and fathers. With the phrase "*ivhu inhaka*" or land is the real inheritance being used by both male and female beneficiaries of the FTLRP, it was clear with a few exceptions that the beneficiaries

would prefer to hand down the land to their sons as opposed to their daughters. This approach was shared regardless of level of education, economic or social status. The position of married daughters was almost certain. They could not inherit or be given land under any circumstances because that would amount to giving family land to the son in law and his family. Village Head M2 in Chidza Farm, a father of 8 children comprising of five boys and three girls had this to say when asked about how his land would devolve to his children:

I would give a son a piece of land and not a girl because the son *ndiye mwene womusha* (he is the rightful owner of the home). I would only give land to a daughter if she was divorced or widowed and decides to come back to stay with me simply because I cannot chase her away. If my daughter decides to come back with her husband on this farm, I would not entertain them because I cannot look after a son in law. He has his own family and they will think that I am alienating their son from them. In our culture, a son in law cannot stay in the natal home of his wife.³⁹⁰

The previous white farm owner of Chidza Farm, where Village Head M2 was allocated a piece of land, Mr. Bollard was allowed by the Government to keep 500 hectares of the farm during the FTLRP. He was rearing Brahman cattle on the farm at the time of the farm invasions and the subsequent allocation of land on his farm but after negotiations with the Government was allowed to keep part of the farm. He had therefore lived side by side with the new settlers on the farm until the time of his death. His daughter had taken over the farm and was running it with her husband. I asked Village Head M2 why he found it difficult to leave his farm to his daughters when Mr. Bollard had left his farm to his daughter. His answer was simple. Mr. Bollard had no sons and therefore he had no choice but to leave the farm to a daughter. If he had sons, he too would have left the farm to the son or to his sons. His view therefore was that a preference to leave inheritance or give valuable property to sons ran across cultures and was not only a black Zimbabwean or African issue. To some extent, this view is correct because patriarchy knows no race or national boundaries. In describing sexism in South Africa, the former Constitutional Court Judge of that country, Justice Albie Sachs had this to say:

It is a sad fact that one of the few profoundly non-racial institutions in South Africa is patriarchy. Amongst the multiple chauvinisms, which abound in our country, the male version rears itself with special and equal vigour in all communities. Indeed, it is so firmly

³⁹⁰ Interview with Village Head M 2 in Chidza Farm on 10 March 2014

rooted that it is frequently given a cultural halo and identified with the customs and personality of different communities. Thus, to challenge patriarchy, to dispute the idea that men should be the dominant figures in the family and society, is seen not to be fighting against male privilege but as attempting to destroy African tradition or subvert Afrikaner ideals or undermine civilized and decent British values. (Sachs A, 1990:1)

The unfortunate reality is that the perpetuation of patriarchy and the acceptance of the superiority of men over women is not an issue that is only pushed by men, but women too have internalized and accepted this viewpoint. As a result, female respondents during my field research were also of the general view that female children should not inherit fast track land but that it should be given to male children. It was only after being quizzed about the effect of this approach to access to land by women, given their own role as women in the land acquisition process that they would concede, though reluctantly that female children should be allowed to access land on the basis of equality with their brothers.

8.10 Are Male Children Necessarily in Need of Land?

Whilst parents generally showed a preference for male children when it comes to donation or bequeathal of fast track land, this research showed that male children were not necessarily the best placed to take over farming operations from their parents. The major factor in this regard was that farming came across as an occupation of passion and one that requires a lot of work and resources in order for one to succeed. As a result, without the passion, resources and expertise required to succeed in farming, children of the first generation farm invaders or land beneficiaries were not necessarily interested in taking up farming as an occupation, livelihood option or business enterprise. Many of the children in the research area were living independent lives in cities or even outside the country, particularly in South Africa. Two families that I interviewed had children in Australia and the United Kingdom respectively. Such children could therefore not ordinarily be expected to come back to Zimbabwe and take over the farms as they had carved out different livelihood and career directions for themselves. Parents in such situations would therefore be better off leaving the land to children that had an interest in the

land and in farming whether male or female as opposed to an inflexible insistence on inheritance of the land by male children.

Mrs. GM's case was a stark illustration of the fact that children's interest in fast track land will not necessarily be created by the availability of land from parents. She was one of my respondents who died during the course of the research. When I first visited her, Mrs. GM was staying at the farm with her workers following the death of her husband and co-wife. She never had children with her husband but had a son from a previous relationship. There were contestations between her and her husband's family with regards to the piece of land after her husband's death but with the help of her brother who was a Member of Parliament for the area, she managed to keep the farm. During interviews, she had indicated her wish for her son to take over the farm, even though he was not staying with her. At the time of my last visit on 10 March 2014, I discovered that Mrs. GM had died and her farm was overgrown and the homestead was abandoned. I visited her relatives in the communal area where she had come from to make enquiries about inheritance of the rights over the farm following her death. The relatives indicated that Mrs. GM's Member of Parliament brother who was now a Minister often came to check on the farm but because he had his own large-scale fruit farm (mainly growing oranges and mangoes), he could not take over the sister's farm as well. Mrs. GM's son had refused to take over the farm despite its availability because of the acrimony that had earlier erupted over the farm but also because he was based in South Africa where he was staying with his wife and children. He therefore saw no reason to abandon his job and life in South Africa in order to come and take over his mother's farm, even though his mother was buried on that farm. Picture 8.1 shows the state of Mrs. GM's farm homestead following her death.



Picture 8.1: Left; Mrs. GM's abandoned farm homestead and Right; the abandoned and overgrown home with Mrs. GM's grave in the background on the slope of the anthill.

It is therefore my contention that bequeathal or donation of land by parents to children should be based on the children's interest, capacity to utilise the land (economic, technical and physical) and availability to tend the land as opposed to the gender of the children. Denying female children an opportunity when they are interested and capable of carrying out the farming activities whilst foisting the land on incapable and dispassionate sons will only result in the underutilisation, non-utilisation or total abandonment of the land following the parents' death or incapacity. Therefore if families that acquired land under the FTLRP are serious about intra-family transfer of wealth to the next generation through the utilisation of the land after their death, there is need for a paradigm shift. Such a paradigm shift must recognise the capabilities and capacity of female children, their rights to be treated on the basis of equality with their brothers and the inherent risk of losing the land to other families or the government in the event that the preferred male child is unwilling or unable to take over the farm.

8.11 Changing Attitudes? Women Benefit But Only to an Extent

As highlighted in Chapter 5 and earlier in this chapter, most men are of the view that women should only take up male roles, privileges and benefits if men are absent or incapacitated in one way or another. As highlighted earlier in this chapter men would be reluctant or are outright opposed to women taking over the land in the event of divorce but have no qualms with the

same women taking over the land in the event of their (men's) death. The basis of this argument is that if the husband is still alive, he should be the one to benefit from the land but once he is dead, there is nothing more than he can do about the land anyway and as such, the woman can just as well take over. It however must be realised that even the acceptance that women can take over land after the death of a husband is a recent phenomenon in Zimbabwe showing a positive change of attitudes towards women's inheritance rights. The fact that the majority of single women who owned or controlled pieces of land in the research area were widows is testimony to the general approach of allowing widows to retain and utilise land after the death of a husband. But what is this change of attitude attributed to? And can the same approach be used in ensuring an acceptance of women's rights to land and other resources in marriage and in divorce?

The interviewees attributed the change in attitudes to the high level of education amongst Zimbabweans and the awareness, information and education on inheritance issues that has been provided by the Government, civil society, church leaders and other community leaders such as traditional leaders. Mr. CM gave an account of how his father, who was a retired agricultural extension officer had taught them as children that each person should work for themselves and that once married, each individual's resources would be his or hers and his or her family's. This was a principle that he together with his brothers and sisters lived by, and therefore he did not expect any of his brothers to come after the piece of land that he had been allocated under the FTLRP in the event of his wife surviving him. Village Head M2 spoke of how as village heads and other traditional leaders, they were often invited for meetings by Non-Governmental Organisations (NGOs) where the issue of inheritance and the rights of women to inheritance were discussed. He would in turn bring that information to the farm village and share it with his subjects generally and during village meetings. As such he was of the view that his subjects were well informed about access to fast track land and other resources by a surviving spouse

and his or her children. This was however useful in an ideal and non-conflict situation. In conflict situations, this research has shown that the issue of land can end up in one of many fora for determination, and in such situations the rights of the parties at divorce or death become less pronounced, leading to loss of land and other entitlements. Another respondent, Mrs. TM³⁹¹ spoke of how the radio had been a source of information for her with regards to inheritance issues. She indicated that women's rights organisations often held radio programmes in which they explained and emphasised the rights of women to inherit their husbands' property upon a husband's death. Dissemination of information through various channels and platforms was therefore an important tool in educating the population and raising awareness about inheritance rights. Of particular importance with regards to Mrs. TM was her change of attitude regarding inheritance by female children when I visited her for the third time on 12 March 2014. On two previous occasions, she was of the view that land should be bequeathed or donated to sons upon one's death or incapacity to utilise the land. She attributed her change in attitude to "education" through the radio programmes on inheritance that she regularly listened to.

8.12 Farm Based Social Relations as Support Mechanisms for Women

In traditional village set-ups in the rural areas that the resettled farmers had come from, the community was often made up of people related through the males in the community with the village head as the unifying traditional leader. These family units and networks often played an important role in dispute resolution, as social safety nets and as economic fall back positions in situations of lack within one's family. The fast track villages and neighbourhoods are however not linked by any ancestral relationships because in many cases, the settlers originated from different places and are therefore not connected in any way. It was easy for men to create friendships and other forms of relationships in public places such as drinking places, local shopping centres and at political gatherings. Women's participation in such spaces was limited as was highlighted during the interviews with ZWLA and in Chapter 5. Women however had

³⁹¹ Interview with Mrs. TM on 12 March 2014

their own ways of creating relationships within the private realms in which they operated, that is, within the home and their neighbourhood. Other than neighbourly relationships, women used the totem³⁹² (*mutupo*) system to find new “relatives” on the new settlements. They would often refer to these “relatives” in the event of disputes, even though the results were not always favourable as the relationships were not strong or developed enough to elicit respect and positive responses from their husbands or blood relatives. The blood relatives were often given more sway and were called to the farms from the communal areas and from the urban areas to resolve disputes. Mrs. DM had stayed on her new plot at Lothian Farm for more than 10 years at the beginning of my research. She had established *mutupo* relationships on the farm, in particular with her neighbours and the war veteran leader whom she called *babamunini* (brother in law). However, she still called on her husband’s relatives in the Gutu Communal Lands when she wanted to make major decisions. Such decisions included when she held the *kurova guva*³⁹³ ceremony following the death of her husband on the farm. The ceremony was held at their new plot but relatives from Gutu led the process despite the establishment of new relationships on the farm. During the entire research period, she had indicated a desire to register the land in her name following the death of her husband but had not done so because she had not received the necessary clearance from her late husband’s relatives. Although they were not interfering with her farming activities and there was no indication that they would take over the farm, she still found it necessary to have their explicit approval before she could change the registration details for the farm.

³⁹² Totems in Zimbabwe are used to give social identity to a clan or lineage. Animals or body parts are used as the totem or “mutupo” and are regarded as the identity tag. As such people who belong to the same totem are considered as related even if there is no blood relationship between them. Marriage between people of the same totem is generally prohibited and a man is usually forbidden from marrying a woman who shares the same totem with his mother as that is regarded as getting married to one’s own mother. A totem is therefore an identifying tag and therefore if one meets a person who shares the same totem with them, they regard each other as brother and/or sister, if the person shares the same totem with one’s grandmother, a grandmother/grandchild relationship is created and so on.

³⁹³ In Zimbabwean Shona culture, this is a ceremony that takes place a year after a persons’ death. The ceremony is regarded as a ritual to bring back the spirit of the dead person back into his/her home. A cow/bull is normally slaughtered for a female/male deceased respectively and traditional beer and food is served. It is a sacred ceremony in which the deceased’s blood relatives are at the forefront and it is believed that before the ceremony is held, the deceased person is incapable of protecting her/his surviving family.

The farm based “relatives” that women relied on for support in the event of disputes were therefore not as strong as the relationships based on political, economic or social interactions in the public domain that men were able to create as the former were easily challenged by real blood relationships. The distance from the husband’s relatives that was created through fast track settlement however had some advantages for women as well. For example the visible control, which is often associated with the husband’s relatives over women, was limited on a day-to-day basis, allowing women to exercise control over their land. Such control however still became overbearing whenever it was exercised, even on the new farms and especially in relation to the observance of traditional ceremonies.

8.13 Conclusion

The improvement of women’s rights to access land generally and under the FTLRP specifically has the impact of improving their wellbeing, that of their families and tangentially that of women throughout the world. The position of women in Zimbabwe’s agricultural sector as workers of the land would invariably improve productivity if women were to have control over that land and be in a position to make decisions about the utilisation of the land. Given that currently the bulk of the land under the FTLRP is in the hands of men, women can still benefit from that land through bequeathal from fathers, husbands and other male relatives or as part of a settlement upon divorce or separation. This research however shows that in Zimbabwe, there is still reluctance by both mothers and fathers to give property to female children or other female relatives, whether as inheritance or donations. The insistence on male children as heirs and donees of fast track land does not however translate into uptake or utilisation of the land by the male children.

Another observation was that married women are better off at death of a husband than at divorce or separation with regards to access to fast track land. This is because there is a general

acceptance within society that wives and children must inherit their husbands' or fathers' property upon death but the same view is not shared upon divorce or separation. The existence of a litany of laws on women's inheritance rights and the popularization of the laws by both the Government and NGOs has gone a long way in creating this attitude, so has the generally high levels of education in the country, with inheritance law and rights being taught even at primary school level.³⁹⁴ The same robust approach has not been adopted with regards to women's property rights upon divorce. The result is that programmes such as the FTLRP have attempted to come up with clearer and favourable policies or practices with regards to women's inheritance to fast track land, but with no similar clarity or favourable provisions with regards to women's rights to the same land upon divorce or separation. As a result, decisions in this area have been made on an *ad hoc* basis with negative implications for women's land rights.

The resistance that is inherent at national, legal, institutional and societal level for a wholesale acceptance of the need to treat women on the basis of equality with men is therefore displayed in the selective approach by various actors and structures with regards to which rights to grant to women and which ones to withhold. In particular, where women's rights step on the toes of male privilege like during divorce or separation, they are frowned upon, but if there are no manly rights to be tampered with, for example when the husband is dead, then the women can just as well enjoy the manly privileges and benefits, including accessing the man's economic resources. Statutory Instrument 53/2014 though regarded as an effort towards securing the tenure rights of fast track land beneficiaries, irrespective of gender also betrays the same mindset in relation to women in divorce and death. It allows the signatory permit holder who is normally the man to buy out the wife and evict her from the farm upon divorce but clearly provides for the surviving spouse to inherit the rights over the land in the event of death. Effectively therefore the outcome is that at both law and practice, women are better able to

³⁹⁴ Interview with Mr CM, a Headmaster in Nuanetsi Ranch on March 2014

access land held by their husbands upon the husbands' death when compared to a situation of divorce or separation.

Girl children, though catered for under principles of non-discrimination in the Constitution of Zimbabwe of 2013 and in the provisions of S.I 53/2014 are in reality still disadvantaged. The general perception is that daughters, especially married ones cannot inherit agricultural land. The approach with regards to other forms of property, including immovable property in urban areas is more flexible. The cultural value that is placed on agricultural land "*ivhu*" means that both mothers and fathers generally prefer that such land be given to male children as they are seen as being in a position to keep the land within the family.

Chapter 9: Discussion and Conclusion

9.1 Introduction

In this Chapter, I will synthesise the findings thematically with a focus on the pertinent issues that impacted on women and access to land under the FTLRP in Zimbabwe, whether in a negative or positive way. The study has focussed on assessing how Zimbabwean women fared in accessing land under the country's FTLRP, the challenges they faced and the factors that worked in favour of those that managed to access the land and use it productively. It contributes towards the massive but still growing literature on land reform in Zimbabwe but with a focus on the legal dimension, the women's law aspects and the women's human rights characteristics of the FTLRP. Although the research focussed on three farm sites in Masvingo Province and some of their main catchment areas, the challenges that the women had to grapple with in their endeavours to access land may equally apply to many of the women in the country with regards to their relationship with fast track land. Some fought the odds and managed to access land under the programme but still faced challenges after they settled on the farms. A few in my research area were making a name for themselves on the farms as they managed to break the barriers, propelled by their "power within" in the form of high levels of education and access to resources to make it in the difficult farming terrain. Others were forced by their roles as mothers and wives to remain in their homes whilst the men went out to invade the farms and lay a claim on the land, which they controlled as husbands, fathers and heads of households. The wives and mothers who remained behind were happy when they joined their husbands on the farms and were given access to land which they could use, even though with limited rights. They were all too aware of the tied and therefore tenuous nature of their access in that they could enjoy access to the land only for as long as their marriage relationships subsisted. Many tried to access land, met challenges and gave up, whilst the overwhelming majority just never made any attempt as they were kept away by the clearly formidable obstacles that one had to contend with in an attempt to access the land, often with very limited if any State assistance or

involvement. This was a major challenge especially at the beginning of the farm invasions. The result was that Zimbabwean women lost out in the country's FTLRP when compared with their male counterparts. However questions still need to be asked and answers need to be provided on how the country and the Government will address these disparities and make sure that women have access to land, which forms the backbone of their livelihoods as they are dependant on agriculture for their survival and that of their families.

With the above findings in mind, I will therefore use this chapter to analyse the key conclusions of this research. Conclusions will be made based on the national and international legal, policy and institutional frameworks governing the rights of women under the FTLRP in Zimbabwe. Conclusions will also be made based on the lived realities of women as informed by the findings of my field research. I will also provide concluding observations and recommendations for legal, policy and institutional changes as well as locate Zimbabwe's position in the international discourse with regards to women's rights to land.

9.2 The International Human Rights Framework and Women's Rights

As shown in Chapter 3 of this research, international law plays an important role in articulating, monitoring and enforcing women's rights. Article 1 of the Universal Declaration of Human Rights (UDHR) states that "all human beings are born free and equal in dignity and rights." In line with this realisation, subsequent human rights instruments developed both at the international, the African continental and SADC regional level have addressed the rights of women specifically, and in particular their right to be treated on the basis of equality with men. Following the development of instruments such as the United Nations Covenant on Economic, Social and Cultural Rights and the United Nations Covenant on Civil and Political Rights, specific instruments were developed to address the rights of women at the global and regional levels. These instruments include the Convention on the Elimination of all forms of

Discrimination Against Women, the Protocol to the African Charter on the Rights of Women in Africa and the Southern African Development Community (SADC) Protocol on Gender and Development. These instruments address a variety of issues that were covered by this research including recognition of women's work, equality in marriage, women's land rights and women in leadership at various levels. Whilst Government has made considerable efforts in including the provisions of these instruments in legislation and in the Constitution, implementation still remains a major challenge. Government should therefore ensure that these positive legal and constitutional provisions are fully implemented if the women of Zimbabwe are to benefit from them.

9.3 Land Rights

Rural landlessness is one of the major indicators or predictors of poverty. This is in line with the observations by FAO which noted the link between landlessness and poverty and hunger, especially in rural communities.³⁹⁵ Access to land therefore is critical in ensuring that rural poverty is addressed and that poverty amongst women who form the majority of rural dwellers in Africa and in Zimbabwe is dealt with and addressed. In addition, access to land for women improves the social and economic welfare of their families and opens opportunities and positive impacts for access to other fundamental socio-economic rights including the right to food, water and shelter amongst others. The enjoyment of these socio-economic rights in turn leads to the enjoyment of other civil and political rights such as rights to participate in the governance of one's country and local government areas. Access to land therefore plays an important role in ensuring access to other rights for women and highlights the interrelatedness and the indivisibility of human rights.

CEDAW in Article 14 and with specific reference to rural women and land emphasises the rights of these women to "equal treatment in land and agrarian reform as well as in land

³⁹⁵ <http://www.fao.org/climatechange/65622/en/>.

resettlement schemes”. Article 19 of the Protocol to the African Charter on the Rights of Women in Africa speaks of the promotion of women’s land rights by stating that State Parties must “promote women’s access to and control over productive resources such as land” whilst Article 18 (a) of the SADC Protocol on Gender and Development urges State Parties to “end all discrimination against women and girls with regards to...property such as land and tenure thereof”. CEDAW also provides for the need to ensure that spouses in a marriage relationship have the same rights in respect of the ownership, management, acquisition, administration, enjoyment and disposition of property (CEDAW, Article 16 (h)).

The rights of women to be treated on the basis of equality with men with regards to access to, ownership of and control over land and other productive resources is therefore well enunciated in international law. In all land reform programmes, the Government must therefore ensure that women are treated on the basis of equality with men in relation to access, control and ownership of the available land. In doing so, it must be borne in mind that women have been marginalized in land reorganization initiatives in the country from the colonial to the post independence period and therefore special measures specifically targeting women in the process must be employed. The rhetoric about women’s rights to land alone is not enough, but efforts must be seen on the ground which show the political will to ensure that women enjoy those rights. Such efforts must invariably include implementation of the legal provisions that guarantee women’s rights to land and the development of programmes that target women as land beneficiaries.

9.4 The 2013 Constitution – Assessing the Potential

The 2013 Constitution of Zimbabwe is a good starting point in addressing some of the above-mentioned challenges given its progressive provisions on gender equality, the role and institution of traditional leaders and access to land and land management in the new resettlement areas. Whilst these issues are addressed in different sections of the Constitution, put together they provide a strong framework for the protection of women’s land rights. As a

starting point, the Constitution's gender sensitive language in addressing traditional leaders makes it unequivocal for the first time in the history of the country that leadership in this institution is not confined to men. By extension it is therefore a critical starting point in sensitizing traditional leaders about gender equality and the rights of women. Instead of the traditional and longstanding reference to a "headman" in all legislation and policies, the 2013 Constitution refers to such as a "headperson"³⁹⁶ thereby clearly opening the space for women to participate in this institution by eliminating the long-standing notion that such roles are reserved for men. This approach in the Constitution was influenced by the loosening grip on the institution of traditional leaders by men as seen by the appointment of women to such positions, slow as it may have been.³⁹⁷ Coupled with one of the principles guiding government policy on agricultural land in the Constitution, which states that "the allocation and distribution of agricultural land must be fair and equitable, having regard to gender..."³⁹⁸ and considering that the Constitution is the supreme law of the country, traditional leaders therefore no longer have any legal or other basis to discriminate against women in leadership and in access to land. As such, whilst historically, traditional leaders in Zimbabwe could have gotten away with discriminating against women and using customary law to justify this discrimination, the trajectory that was brought about by the 2013 constitutional dispensation makes it difficult for traditional leaders to rationalize any such approach, assuming the provisions of the Constitution are followed.

Article 17 of the Constitution requires the State to ensure gender balance in Zimbabwean Society by ensuring full participation by women in all spheres of Zimbabwean Society. In addition, under Chapter 2, which deals with national objectives, the Constitution states that:

³⁹⁶ Section 280 (2).

³⁹⁷ In a widely publicized event, in 1997 Chief Singobile Mabena of the Nswazi people in Matebeleland was appointed as one of the few female chiefs in Zimbabwe

³⁹⁸ Section 289 (c)

The State and all institutions and agencies of government at every level must take practical measures to ensure that women have access to resources including land on the basis of equality with men.³⁹⁹

The Constitution's general non-discrimination clause also provides for equality before the law, and equal treatment for men and women in their political, economic, cultural and social spheres.⁴⁰⁰ Fundamentally, in terms of the Constitution every person has the right not to be treated in an unfairly discriminatory manner on various grounds, including on the grounds of custom, culture, sex, gender, marriage or marital status,⁴⁰¹ grounds that are often used to discriminate against women. The focus of the legal framework therefore is not on conferring a right to land on women but on ensuring that:

- i. All discrimination against women with regards to access to land is eliminated
- ii. Women are treated on the basis of equality with men; and that
- iii. Women's prospects of accessing land are promoted.

Though not conferring a right to land on women *per se*, the provisions are critical in ensuring that women are recognised and considered equally and without discrimination on the basis of gender or sex when programmes that provide land to citizens are initiated and implemented. There is therefore an immediate obligation on the part of the State to embrace these principles and guidelines and ensure their implementation in order to ensure both immediate and progressive realisation of women's land rights in the country. Any further delays in addressing these challenges will result in the entrenchment of the inequalities and this will only make it more difficult to disentangle as time passes and current land occupiers establish their positions. In the long run efforts must be on realising equality between men and women in accessing land in the country. The worrying aspect of land reform in Zimbabwe with regards to denying women equal access and opportunities is that it is a recurring problem, which Government does not seem to be particularly willing or able to effectively address. Essof, in reference to earlier

³⁹⁹ Section 17 (1) (c)

⁴⁰⁰ Section 56 (1) and (2)

⁴⁰¹ Section 56 (3)

land reform programmes in Zimbabwe notes that “By 1990, it was clear that gender concerns were incidental in the mindset of the Zimbabwean Government” (Essof, 2012:43). As the country embarked on a new phase of land reform at the dawn of the new millennium in 2000, there was little to show that this attitude had changed. To address this challenge, Government must therefore unequivocally show its willingness to embrace women in its land reform agendas. The 2013 Constitution provides a strong basis for this approach. It therefore must be used as a framework for revisiting the FTLRP and assessing the challenges that women have faced with a view to addressing those challenges from a constitutional and human rights perspective.

9.5 Power and Decision-Making

Power and decision-making are two elements that have a bearing on determining relations between men and women. Under the FTLRP, power and decision making manifested themselves at different levels of the social, political and economic strata from the family right up to the national level and institutions in between. The influence that the various actors had, and their ability to influence the actions and decisions of others, and even sometimes the failure to make decisions or take actions was of particular disadvantage to women. As the research has highlighted, the powerlessness and subordinate position of women meant that they could not effectively participate in the FTLRP and they were not fully involved in decision-making at the family, local community, provincial or national level in policy making and implementation. The result was a programme that marginalised women due to lack of input from the women on the preferred models and modes of the FTLRP and how women could be included. Negative power and its coercive and restraining nature was more prevalent during the FTLRP in that those who wielded power used it to maintain their control over the marginalised by directing them on what to and what not to do whilst ensuring that there was no visible antagonism, opposition or threat to their power.

The seriously polarised, violent, and incongruous manner in which the programme was implemented meant that power was used as a tool of coercion and alignment of the population to the programme even if in reality one was opposed to the programme or certain aspects of it. Negative power was therefore used to command compliance and suppress independent decision-making especially against women who lacked power at the family level. At the community or national level, women were impacted on negatively by power because of their absence in positions of power and decision making. The absence of positive power and the inability of the majority of women to demand an inclusive programme also impacted negatively on levels of access to land by women.

How then can power and decision-making be used positively in land reform, access to land and access to resources programmes to ensure equal access to land by women? The State and its institutions must ensure that women are in positions of power and participate in decision making in public bodies as these are the institutions that are responsible for policy formulation and implementation. Their participation in these institutions means that there will be greater probability of specific issues that affect women being taken up in the public domain as matters for policy formulation and implementation. Article 7 of CEDAW enjoins State Parties “to take all appropriate measures to eliminate discrimination against women in the political and public life of their country” and, particularly to ensure that on the basis of equality with men, women are able “to participate in the formulation of government policy and the implementation thereof.” In the same vein women must be able to hold public office and execute all public duties at all levels of government. Similar provisions are contained in the Maputo Protocol⁴⁰² and the SADC Protocol on Gender and Development.⁴⁰³ Article 17 of the 2013 Zimbabwean Constitution supports this position.

⁴⁰² Article 9 (2)

⁴⁰³ Article 12 (1) and (2)

In relation to women's power and decision-making at the family level, it must also be realised that the international and national legal and human rights frameworks recognise the need for equality in marriage and family life. The family is viewed in international law as a fundamental building block or unit and an institution for the development of society, hence its recognition in founding human rights instruments such as the Universal Declaration of Human Rights (UDHR). The Declaration states in part that:

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.⁴⁰⁴

The recognition of the family as an important institution must therefore go hand in hand with the rights that accrue to the parties to such a marriage during the subsistence of the marriage and at its dissolution. State Parties and society at large are urged by the UDHR to protect the family. This is necessary to ensure that the family unit thrives and that its success helps in building cohesion in society and the nation at large. In line with this understanding, the Constitution of Zimbabwe enjoins the State to ensure the protection of the family⁴⁰⁵ and to ensure that there is equality of rights and obligations of spouses during the subsistence of a marriage as well as at its dissolution.⁴⁰⁶ The reality however shows that the responsibilities and obligations to protect the family unit have been unduly placed on women as opposed to the State, men and society, with the result that women are forced to endure violence, unfair treatment and discrimination within the family unit with the sole goal of protecting the integrity of the family unit.

This research has shown that various aspects including lack of resources and traditional and cultural practices amongst others, forced women to accept a subordinate role in decision-making and access to land in marriage relationships. At face value, women appeared contented

⁴⁰⁴ Article 16 (1)

⁴⁰⁵ Article 25

⁴⁰⁶ Section 26 (c)

with mere access to the land and being able to grow crops and feed their families. In reality however, women also wanted land that they could control and make decisions about in relation to use of both the land and the produce as evinced in Chapters 5-8 of this research. However, because of the powerful positions of men as the economic providers and the customary imperatives that elevated men as the leaders of the family, women could not contest decisions such as registration of the offer letters, leases and certificates of occupation in the names of their husbands. Government must therefore ensure and compel joint registration of offer letters, leases, permits and certificates of occupation under the FTLRP as a way of empowering women in marriages and securing their access and control over fast track land. Such joint registration must give equal rights and obligations between the spouses in relation to the land, instead of giving weighty consideration to the rights of one of the spouses.

9.6 Women's Unpaid Work, Multiple Roles and their Gendered Nature

The myriad roles that women had to content with as mothers, wives, grandmothers, daughters and homekeepers and the multiple nature of those roles impacted on the ability of women to access land under the FTLRP. The multiple gender roles impacted on women's ability to participate in the land invasions yet the invasions were a major factor in determining access to land. The gender roles also confined women to the home in a situation where access to land was determined by one's participation in the public domain through the farm invasions. Even for the land that was directly distributed by government to people that made applications, one had to leave the confines of the home in order to get the relevant information, the application forms and submit the applications at the DA or PA's office. Gender roles and their multiplicity therefore were a hindrance on access to land by women and will continue to impact on women's ability to access land and other resources if no deliberate efforts are taken to accommodate and plan around these roles. Women cannot stop performing these roles due to practical, customary, traditional and other societal reasons that will compel them to continue undertaking productive and reproductive roles in the home, caring for sick members of the family and looking after

homes and family assets whilst men go out to seek economic activities for which they get remunerated. It must also be realised that the gender roles that women perform and were performing in the home at the time of the FTLRP are essential and critical to the economic development of their families, communities and the nation at large. As this research has shown in Chapter 7, it is the work of women in the private home domain that facilitates men's participation in the public domain. It was the work of women as mothers, care givers and home keepers that enabled men to go out, invade the farms and camp on the farms. The non-attachment of value to such tasks however leads to the marginalisation of women. The international human rights framework's emphasis on equal pay for equal work⁴⁰⁷ has protected only a fraction of women that are able to participate in the public work place but has not extended the same protection to the women who work in the home and in other private settings. Work in the home is still not considered of equal value to the work of men and women in the public work place. This is shown by the fact that there are limited national frameworks to incorporate the private work of women in the home into the national gross domestic product. For example whilst the SADC Protocol on Gender and Development recognises the importance of agricultural and domestic work and the need for people engaged in such work to receive minimum remuneration,⁴⁰⁸ such recognition is only given when women are part of waged labour and not when they work as wives, daughters or other female family members in the home or in family businesses.

Therefore Government must have, and in future should adopt a human rights based approach and a women's law approach in developing and implementing land reform programmes in order to identify and anticipate the challenges that women face in efforts to acquire land. Identifying and anticipating such challenges would in turn lead to the State taking measures to

⁴⁰⁷ For example Article 19 (5) of the SADC Protocol on Gender and Development, Article 11 (d) of CEDAW and Article 13 (b) of the African Women's Protocol

⁴⁰⁸ Article 19 (2) (d)

ensure that women are not unfairly disadvantaged by their inability to leave the confines of their homes. In this regard, it is recommended that Government land reform programmes must be designed along the lines of “taking the programme to the women” in order to ensure that the services are brought closer to the women or the services are provided in such a way that women can easily access them. Not all districts in my research area had suitable land available for resettlement. Chivi District for example had no farms that could be used for resettlement with the result that most of the beneficiaries of the FTLRP from that district got land from other districts in Masvingo Province or in different provinces altogether, at a lot of cost in terms of time and finances. Government should have, and in future should provide services “*in situ*” to allow women in such districts to participate in the process without leaving their homes or at least without the need to travel too far to access the services. As such, government departments that were involved in the land allocation and distribution process such as the DA’s Office and the Ministry of Lands and Rural Resettlement could have moved to the communities to provide the required services. Such services included the provision of information, the distribution of application forms, collection of completed forms and delivery of outcomes through the establishment of satellite or mobile offices, instead of requiring women to travel in search of services. The Government has provided mobile and satellite services in other areas, for example in the areas of voter registration, national registration, child immunisation and family planning. The recommendation to provide such a service in land reform and redistribution programmes or any other critical area is therefore implementable.

The research districts including Masvingo, Mwenezi and Chiredzi had resettlement land that was adjacent to communal areas. Such land could have been allocated to women in these communal areas in a way that allowed them to carry out their work in their rural homes during the transition from the old homes to the new farms. This should also be the approach in future land reform programmes.

9.7 Impact of Legal Pluralism and Convoluted Governance Structures

This study has shown that the FTLRP was implemented under an intricate legal, structural and practice system that sucked women into a vortex when it came to identifying the appropriate and most beneficial individuals, systems and institutions to work with in order to acquire or access land. The existence of legal pluralism under the FTLRP raised many questions including those relating to the definition of law and the role that the State played in the process. It also raised questions about the role, influence and relevance of many institutions including the traditional leadership institution, the community from which the women and other settlers came from to settle on the farms and the new community that developed around them on the farms. The role of war veterans, Committees of Seven and farmers' associations also came into play. Overall, the research underlined that women had both negative and positive experiences with legal pluralism at various stages of the FTLRP. At the time of acquisition, the multiple nature of the institutions and individuals to be dealt with meant that some of the women could forum shop and identify the best institutions that could help them access land whilst avoiding those that worked against their chances of accessing land. As a result, some women aligned themselves with the war veterans and their processes as they viewed these as the best placed institutions to enhance their chances of acquiring land. Others aligned themselves with traditional leaders and their processes. Others aligned themselves more with the State centred laws, systems and processes such as those led by the DAs and the Ministry of Lands and Rural Resettlement officials whilst others chose their political party affiliations as the best option to use in acquiring land. A strategic and well-considered choice of institutions to engage with often led to women managing to acquire land. However, in other instances, the multiplicity of legal, social and political orders and systems as well as actors involved in the process meant that women were not certain about the authenticity of the actors and their systems, and ultimately their ability to provide them with secure land without fear of being evicted at some point. This study showed that fifteen (15) years after the beneficiary respondents were allocated

land, the issue of security of one's allocation remained a concern as shown by the continued hesitancy by some of the settlers to invest on their new allocations depending on the institution and actors that played a sole or bigger role in their land acquisition. In the final analysis, it can therefore be said that legal pluralism, especially in its strong form where other entities outside of those that were formally recognised by the State were involved in the FTLRP, had both negative and positive implications for women. The positivity arose from the fact that the few women who had an opportunity to engage with the FTLRP could negotiate their way to accessing land using the option that was most favourable to them. The negativity arose from the uncertainty that was created by the lack of a clearly defined legal role in the FTLRP for some of the entities that were involved in the process. This meant that women were not guaranteed of keeping their land in the event that a different legal order and new actors emerged as the legitimate ones, and not those that they aligned themselves with, negotiated with or associated with in acquiring the land. Unlike a state of weak legal pluralism where the two or more legal systems are all recognised by the State and all ranked in terms of superiority and therefore easy for citizens to identify the systems to engage with at the different stages, the existence of strong legal pluralism provides no such certainty. In this regard, weak legal pluralism on one hand is State law pluralism and it can be seen to "exist when the sovereign commands different bodies of law for different groups in the population by incorporating their normative orderings into the central administration of the law or the courts" (Sezgin, 2004:102)

In a strong pluralist system, the dichotomy between what is formal and informal and between what is legitimate and illegitimate, legal and illegal and recognised and unrecognised becomes blurred and highly contested. The contestation over the role of traditional leaders and their relevance *vis-a-vis* war veterans in the new resettlement areas was an illustration of strong legal pluralism at play. The results were struggles for power and recognition as the different institutions fought for recognition by the State and the settlers and control of processes,

resources and the settlers. There was an attempt to dilute the power of both through the creation of farm based institutions such as the Committee of Seven and Farmers' Associations on the A1 allocations and the small scale A2 sugarcane plantations respectively. The farm level institutions unlike the war veterans and the traditional leaders were more democratic in nature in that leaders were elected by the farmers and were expected to represent the interests of farmers with government and other entities such as produce buyers and input suppliers. The farm level institutions managed to some extent to dilute the powers of the war veterans even though in many instances the war veterans bounced back as leaders of these institutions. The traditional leaders were largely left out of these institutions and sought to maintain their grip on power by creating parallel farm level structures in the form of villages. These villages were led by village heads who were appointed by the chiefs and reported to and took instructions directly from the chiefs. Add to these institutions, the State led entities and actors such as the DAs, the PAs and the Ministry of Lands and Rural Resettlement together with ZANU PF party structures and the result was a melting pot of systems, actors and structures that women had to grapple with. In the process women lost financial resources and productivity as both were required in engaging with the myriad power structures.

The multiplicity of governance institutions and legal pluralism at the very low level could be viewed positively from a decentralisation perspective in that often decisions are taken at a very low level and in a manner that allows for citizen participation in the process. Such efforts were made by the Government of Zimbabwe from 1984 with the creation of institutions such as the Village Development Committees (VIDCOs) and the Ward Development Committees (WADCOs).⁴⁰⁹ These were formally recognised institutions and therefore had a clear mandate from which to operate as well as a hierarchical relationship and cooperating structure that was provided for in law. Despite efforts at creating villages in the new resettlement areas, formally

⁴⁰⁹ This was through the Prime Minister's Directive of 1984 which sought to define structures and relationships of rural administration at the various levels from the Provincial right through to the village

recognised local level institutions such as VIDCOs and WADCOs are not yet in place. However, even without legal instruments to back them, some of the institutions that have emerged on the farms such as Committees of Seven and Farmers' Association have acquired some legitimacy and acceptance by the settlers because of the relatively democratic and transparent manner in which they are instituted. The same acceptance and recognition does not extend to some of the institutions and actors such as war veterans and traditional leaders whose legitimacy is often questioned by the settlers. Yet even without such acceptance, these institutions continue to make decisions that have implications on women on the farms in terms of access to land, security of tenure and their general way of life. It therefore becomes important and necessary for government, 17 years after the start of the land reform programme to put in place clearly defined institutions with clearly defined mandates on the farms to ensure certainty, security and continuity for women and all other beneficiaries of the FTLRP.

9.8 Towards an Inclusive Access to Land Approach

Through this study, it has been established that access to fast track land was premised on criteria and practices that excluded certain segments of the citizens. Access was determined by gender and race amongst other considerations resulting in many women being elbowed out on the basis of their sex and/or gender. In addition, access was also determined by one's political affiliation and hierarchy as well as social, economic and familial ties with individuals with influence in the land reform process. Such considerations had the effect of disadvantaging women as they were not found in big numbers in any of these segments. Despite the political pronouncements by government and other leaders which suggested that all people were free to access land, the reality showed that many women were left out because of the above considerations. The women in the Chivi communal lands which was one of the main catchment areas for the farms in Masimbiti in Mwenzezi and the sugarcane fields of Chiredzi District showed that they were still keen on accessing land. This was because the initial programme had excluded them due to lack of resources to embark on the programme, lack of knowledge and information on how to

participate in the programme and a sense that they could not get the land unless they knew someone high up in the political or government circles. For the women who acquired land in the low value A1 allocations, many of them also wanted to get land in the lucrative sugarcane plots in Hippo Valley and Triangle Estates in Chiredzi District but failed to do so because of the more stringent requirements for such allocations which had the effect of excluding them. Lack of access to information, lack of resources, limited levels of education and lack of understanding on how to complete the application forms for A2 allocations all had the effect of excluding women.

In order to address these challenges therefore, it is important that the State develops laws, policies and practices that identify causes of exclusion for women in access to land and provide solutions on removing grounds of such exclusion. In addition to the recommendations given in the above sections, such policies, laws and practice guidelines for implementation must include the following:

- Active identification of potential and deserving beneficiaries for example women, the landless, communal area inhabitants and provide criteria for access;
- Provision of resources for resettlement such as schools, hospitals, water and sanitation as well as finances for agricultural production and criteria for accessing such resources as a prerequisite for resettling people;
- Clear outline of application procedures and how the Government can provide assistance in the application process for citizens in need of such assistance in an easy to understand format; and
- A transparent selection process that focuses on set criteria with limited discretion being given to those with the responsibility for selection of beneficiaries and allocation of land.

Whilst putting in place criteria for identifying beneficiaries and allocating benefits including land, farming inputs and finances may be considered as a perpetuation of the exclusionary practices, this is necessary in the context of identifying the normally marginalised members of society. In a free for all environment, these are likely to be elbowed out of resource allocation and access processes. This includes women, as this thesis has illustrated that without adequate protection and consideration from the State, women were left out of the FTLRP. This approach will therefore ensure that available land and other resources are not snapped up by the privileged and those with social, financial and political capital. This approach is also necessitated by the realisation that without pro poor and pro women interventions, these social groups are unable to influence social policy and resource allocations due to their general marginalisation.

Although political rhetoric has for many years insisted that the land reform programme has been concluded, indications as I concluded this research suggested that the programme was yet to be concluded. A lot still needs to be done to address some of the anomalies that were occasioned by the unplanned, chaotic and non-inclusive manner in which the programme was implemented. In June 2014, government indicated that a land audit would be carried out, starting in 2015⁴¹⁰ with the assistance of development partners such as the European Union (EU), the World Bank (WB) and the United Nations Development Programme (UNDP). Other than identifying beneficiaries and land uptake, levels of utilisation and cases of multiple land ownership, the audit would also focus on:

land valuation/compensation, land tenure/surveys, dispute resolution systems, land use planning, land administration and capacity building. (The Independent, 13 June 2014).

This is a critical process which Government should embark on, as it will result in unlocking and availing land that can be made available to social groups that were left out by the FTLRP,

⁴¹⁰ The Independent, 13 June 2014 "ZANU PF gives in on land audit"

in particular women. The allocation of such land should therefore focus on ensuring that access is equitable and addresses the land needs of a broad spectrum of citizens that were left out by the FTLRP. The processes above were also skipped during the FTLRP, leading to the chaos that characterized the process. If these issues are considered, it means that a more rational, fair and transparent land reform process that is more inclusive and therefore favourable to women can in fact be implemented.

9.9 Conclusion

Perhaps one of the key lessons for policy makers emanating from the FTLRP in Zimbabwe is that there is no substitute for planning, and a Government that is in control when implementing programmes of the magnitude of the FTLRP. There were arguments that the way in which the programme was implemented was the only possible way given the resistance by the white commercial farmers to provide suitable land or to provide any land for resettlement during the first two decades after independence. Other commentators have argued that Zimbabwean women were better off identifying with men as blacks in taking away land from the white people than to concentrate on their needs as women.⁴¹¹ It would then be easier to get the land from black men once that land was in their hands as black people. As such the common “enemy” then was the white commercial farmer and the primary battle was to take the land from the white farmer, after which a secondary battle by women to take land from the men would then ensue.

But has the secondary battle by black women to take over land from black men started and are there any chances that such a battle will be fought and won? And at what level will that battle be fought? Will it be between the women of Zimbabwe and the State, the women of Zimbabwe against men generally or the women of Zimbabwe against the men in their families? The proposed land audit could provide such an opportunity for women. However, the reality is that

⁴¹¹ View expressed by one of the lecturers during the DPhil seminar at SEARCWL on 22 October 2010

government has never stated as a matter of policy that women will be prioritised in the allocation of land identified for resettlement through the land audit when it is eventually undertaken. If anything, there seems to be a move towards entrenching the rights of men in the current government policy-making and implementation direction. Statutory Instrument 53/2014 entrenches existing acquisitions and addresses the rights of women to land as wives and not as individuals who need land in their own right. Once the wife tag is removed as the divorce case of *Chombo vs. Chombo* showed, women and the land are sure to be separated. The struggle therefore continues for Zimbabwean women to be treated on the basis of equality with men and to access land in their own right.

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