

**SILENT TEARS: “THE CONTINUED VIOLATION OF WIDOWS’
INHERITANCE RIGHTS IN ZAMBIA.” A STUDY OF WIDOWS
EXPERIENCES IN KITWE DISTRICT OF THE COPPERBELT
PROVINCE**

Abstract

This dissertation explores how, upon their husband’s death, poor illiterate widows often suffer, at the hands of unscrupulous family members, severe economic, physical, social and cultural hardships in breach of their right to inherit from his estate. Several enlightening methodologies (especially the Grounded Theory and Women’s Law Approaches) are combined and implemented with appropriate data collection methods to collect and reveal a wide range of evidence about their tragic plight. They live in a society driven to abide not so much by the law, but by evolving patriarchal customs whose discriminatory effects against women are protected by contradictory provisions contained in Zambia’s Constitution. Although further legal reform (in line with regional and international Human Right instruments) is recommended to overcome certain legal inconsistencies, emphasis is also placed upon improving women’s access to their existing rights through concerted educational campaigns at every level of society.

BY

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**A Dissertation submitted in partial fulfilment of a Masters Degree in
Women’s Law, Southern and Eastern African Centre for Women’s
Law, Faculty of Law,
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DECLARATION

I, TIMOTHY MAMBI BEMBA BANDA, do hereby declare that this is an original work presented towards the award of the Masters Degree in Women’s Law Degree at the Southern and Eastern Africa Regional Centre for Women’s Law, University of Zimbabwe, not previously presented for any degree or other award in any academic institution.

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

This work is approved for submission towards the fulfilment of the Degree of Masters in Women’s Law by the supervisor

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

Dr Amy S. Tsanga, Deputy Director, Southern and Eastern African Regional Centre for Women’s Law, University of Zimbabwe

DEDICATION

This work is dedicated to my late parents Eliya and Rachel Banda. I regret you did not live to see this work but am sure you would have been proud of me, mum especially, I remember how you used to teach me how to persevere and pray . I will always remember your wise words:

“A wiseman will serve among kings.”

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Administration of Wills and Testate Estates Act 1989

Constitution of the Republic of Zambia 1996

Deceased Brother's Widow Act

Intestate Succession Act 1989

Land Act of 1995

Marriage Act of 1989

Witchcraft Act

LIST OF REGIONAL AND INTERNATIONAL HUMAN RIGHTS INSTRUMENTS CITED

African Charter on Human and People's Rights

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

Fourth World Conference on Women Platform for Action (Bejing Platform)

International Covenant on Civil and Political Rights (ICCPR)

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

Optional Protocol to the Convention on the Elimination of All forms of Discrimination against Women

Protocol to the African Charter on Human and People's Rights on the Rights of Women

SADC Declaration on Gender and Development

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LIST OF CASES CITED

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LIST OF ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
AU	African Union
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
COHRE	Centre on Housing Rights and Evictions
FAO	Food and Agriculture Organization
HIV	Human Immunodeficiency Virus
LRF	Legal Resources Foundation
NGO	Non Governmental Organization
SADC	Southern African Development Council
SC	State Counsel
STI	Sexually Transmitted Infections
TB	Tuberculosis
UCZ	United Church of Zambia
UN	United Nations
UNAIDS	United Nations Aids
WLSA	Women and Law in Southern Africa
YWCA	Young Women Christian Association

CHAPTER 1: INTRODUCTION

1.0 BACKGROUND TO RESEARCH

Reports in the local media, both print and electronic, reports and statements at seminars and workshops I have attended, as well as the work I was involved in the legal field clearly shows that women are deprived of their rights to inherit upon the death of their spouses. Many of these women suffer abuse and exploitation at the hands of family members of their husband often in the context of property disputes.

Property grabbing and maladministration of the deceased's estates by people appointed as administrators as well as the practice of degrading rituals such as cleansing by sex, widow inheritance, the practice of levirate¹ and accusations of witchcraft and life-threatening mourning and burial rites are examples of human rights violations that are justified by "reliance on culture" and "tradition". Few cases proceed successfully through the justice system, perpetrators go unpunished, while others remain undeterred and undetected.

In the past, reciprocal duties and obligations in an extended family protected the widow and her children because of custom. Today, custom is more likely to be used to oppress and exploit them. These experiences widows face stem from discrimination in inheritance custom, the patriarchal nature of society, and the domination of oppressive traditional practices and customary codes, which take precedence over constitutional guarantees of equality, modern laws and international women's human rights standards.

The government of Zambia has legislated for equality in inheritance rights in compliance with its obligations under such human rights treaties such as the Convention on the Elimination of All Forms against Women. However, it is clear at the local level discriminatory customary rules on inheritance still apply, whatever

¹ A custom under which a man is obliged to marry his brother's widow in order to continue the dead man's line.

constitutional guarantees or modern laws exist. Legislative reform has largely failed to take precedence over local customary interpretations of customary law.

There is growing evidence of the increasing vulnerability of widows both socio-economically and psychologically with the advent of the HIV/AIDS scourge. In Zambia, like in many developing countries, widows comprise a significant proportion of all women. Across all of Zambia's 72 ethnic tribes and cultures, widows are subjected to patriarchal, customary and religious laws and confront discrimination in inheritance rights. Many of these widows suffer abuse and exploitation at the hands of family members, often in the context of property disputes. The HIV/AIDS pandemic has had a multiplier effect.

In much of the Zambian society, widowhood represents a "social death" for women. In the majority of instances the death of her husband spells not merely a wife's loss of the family's sole breadwinner, it robs her of her social status and casts her and poor children out into the fringes of society where she suffers untold discrimination, stigma and harm. Widows are generally downtrodden, poor and unprotected as their lives are determined by patriarchal interpretations of local tradition, custom, and religion.

Few women seek legal redress and have access to the justice system, and therefore perpetrators go unpunished, while others remain undeterred and undetected. Because of the violation of their inheritance rights, widows continue to suffer abuse and the practice of degrading, life-threatening mourning and burial rites which constitute gross human rights violations cruelly and ruthlessly inflicted upon them in the name of culture and tradition. Widows are often evicted from their homes, stigmatized because of their HIV/AIDS status and physically abused.

This wretched scenario seems to persist despite the fact that the country has passed new legislative reforms in inheritance rights. Therefore, this research tries to assess why there are in fact on-going human rights violations of widow's inheritance rights and it was carried out in the Kitwe District of the Copperbelt Province of Zambia. Furthermore, the research reviews the existing inheritance laws, the existing situation of widows in Zambia and internationally in an effort to identify where the law is weak and needs more reform.

Zambia is a landlocked country in Southern -Central Africa and borders eight countries namely Malawi, Zimbabwe, Botswana, Namibia, Tanzania, Mozambique, Angola and the Democratic Republic of Congo. It is one of the urbanized countries in Africa. Administratively Zambia has nine provinces Lusaka, Copperbelt, Northern, Eastern, Western, and Central, North-Western, Southern and Luapula and fifty-eight districts and has seventy-three tribes.

The Copperbelt Province is one of the most industrialized and populated provinces in Zambia because of the copper mining activities and the fact that copper accounts for about ninety percent of the country's export earnings. Kitwe is the largest mining town and Luanshya another mining town lies thirty-two kilometers away from Kitwe

The Copperbelt thus is characterized by intermarriages and the privatization process undertaken by the new government after the advent of multi party politics in 1991 has had a tremendous effect on the lives of people. This is due to the fact that the process saw the closure and subsequent retrenchment of people from the mines as ownership passed from the state to the private sector in the names of investors.

Like most African countries Zambia has a dual legal system of customary laws and statutory laws running alongside each other. These laws often conflict and customary law sometimes renders statutory law provisions useless. Although this state of affairs permeates every aspect of Zambian life, its effect is especially felt in the area of personal law –marriage, devolution of property, inheritance and divorce. The status quo has been maintained by the Bill of Rights in the Republican Constitution.²

The Constitution has “.....*contradictory provisions whereby article 11 guarantees the equality status of women and article 23(4) permits discriminatory laws to exist in the area of personal law ...and customary law in any matter*”.³

² Women's Property Rihts in Zambia By Joyce Shezongo –Macmillan, A Paper presented to the Strategic Litigation Workshop held from 14th to 18th August 2005 in Johannesburg, South Africa.

³ Center on Housing Rights and Evictions Bringing Equality Home : Promoting and Protecting the Inheritance Rights of Women Geneva ,2004, 42

1.1 BRIEF BACKGROUND TO THE DEVELOPMENT LAWS OF INHERITANCE IN ZAMBIA

Both customary and statutory law governs inheritance in Zambia. The pre-colonial law in Zambia was essentially customary in character, having its source in the practices and customs of the people. At independence, two English statutes and customary law applied to inheritance in Zambia. The two English statutes were the Wills Acts, 1837 and the Inheritance (Family Provisions) Act, 1938. The two statutes applied to the country by virtue of two Zambian statutes, namely, the English Law (Extent of Application) Act and the British Acts Extension Act.

The English Law (Extension of Application) Act declares the extent to which the law of England applies in Zambia, while the British Acts Extension Act provides for the extension or application of certain British Acts in Zambia. It also provides for amendments to certain British Acts in their application to Zambia.

In an attempt to address the problems and shortcomings of both the Wills Act of 1837 and Inheritance (Family Provisions) Act, 1938 and indeed in order to come up with a uniform law of succession, the Intestate Estates Act No.5 and the Wills and Administration of Testate Estates Act No.6 were enacted in 1989.⁴ The Intestate Act was introduced to curb the rising cases of ‘property grabbing’ in cases where a deceased spouse left no written will.

This Act has a standard scheme for distribution of the property in an intestate estate, both in civil and customary marriages. The Act was reformed to provide for women in polygamous marriages. On the other hand, the Wills and Administration of Testate Estate Act was enacted to prohibit the ‘intermeddling’ of property with those entitled

⁴ Research carried out by the Law Development Commission to get people’s views on the subject and gauge their responses showed that there was a lot of opposition to the proposed law and parliament faced a lot of difficulty in passing the law because many members of parliament feared that if the proposed law was passed, women would start killing their husbands in order to inherit their share of the estate.

to the property (that is, those determined by the court or by the will to be beneficiaries).

1.2 INTERNATIONAL AND REGIONAL HUMAN AND RIGHTS EXPECTATIONS ON INHERITANCE LAWS

Human Rights are defined through a range of international instruments. Conventions, covenants, and treaties are legally binding for those countries signing and ratifying them and compel those countries to ensure their national laws are compatible with obligations articulated in the international documents. Declarations and the agendas and platforms for action that may accompany them are not legally binding but may gain the force of binding law if the contents are widely accepted by the international community, as exemplified by the Universal Declaration of Human Rights adopted in 1948. Resolutions (excluding those of the UN Security Council) are not legally binding but are adopted by UN bodies to explicate issues implicit in the other international instruments and carry considerable weight with respect to the international obligations those instruments establish (Benschop, 2002).

Zambia is a State Party to the following human rights treaties: The International Covenant on Economic, Social and Political and Cultural Rights, the International Covenant on Civil and Political Rights and its Optional Protocol, the Convention on the Elimination of All Forms of Racial Discrimination Against Women, the Convention on the Rights of the Child and the Protocol to the African Charter on Human and People's Rights of Women in Africa. The High Court took judicial notice of this in the case of Sarah Longwe v Intercontinental Hotels.

“Before I end, I have this to say something about the effect of International Treaties and Conventions which the Republic of Zambia enters into and ratifies. The African Charter on Human Rights and People's Rights and the Convention on the Elimination of all Forms of Discrimination Against Women etc (ante) are two examples. It is my considered view that ratification of such a document by a nation state without reservations is a clear testimony of the willingness by the state to be bound by the provisions of such a document.”⁵

⁵C.M Musumali, J in *Sarah Longwe v Intercontinental Hotels* 1992/HP/765

1.3 PROVISIONS IN INTERNATIONAL HUMAN RIGHTS RELEVANT TO INHERITANCE RIGHTS OF WOMEN

At the time Zambia had passed its inheritance laws or succession laws it had ratified CEDAW, ICESCR and ICCPR. CEDAW obliges States Parties to embody the principle of equality of women and men in their national constitutions and “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” (Article 2), and obliges States Parties to grant women legal capacity in civil matters equal to that of men including equal rights to conclude contracts and to administer property and equal treatment in all stages of procedure in courts and tribunals (Article 15). The International Covenant on Civil and Political Rights (ICCPR) guarantees equality of persons before the courts (Article 14), prohibits arbitrary or unlawful interference with one’s privacy, family, or home (Article 17), and confirms equal protection of the law for all without discrimination (Article 21).

The International Covenant on Economic, Social and Cultural Rights (ICESCR) further underscores the principle of non-discrimination with regard to sex and recognizes the equal right of women and men to the enjoyment of all economic, social, and cultural rights including the right to adequate housing (Articles 3 and 11). Women’s rights and their basis in principles of gender equality and non-discrimination are the focus of these human rights instruments.

Table 1: International Treaties, Conventions or Declarations that Zambia is Party to Relevant to Women’s Inheritance Rights

Treaty, Convention, Declaration	Action	Year
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Acceded	1984
International Covenant on Civil and Political Rights (ICCPR)	Acceded	1984
International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)	Acceded	1972
Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)	Ratified	1985
Protocol to the African Charter on Human and People’s Rights on the Rights of Women	Ratified	

Source: Formulated by author (Information gathered from UNHABITAT, 2007)

1.4 COMPLIANCE WITH INTERNATIONAL NORMS AND LEGAL FRAMEWORKS

Zambia has not complied fully with International norms and has not fully fulfilled its obligations to advance the rights of women’s inheritance rights. Article 11 of the current National Constitution on fundamental rights and freedoms, protects various civil and political rights for all Zambians, regardless of, inter alia, sex. The Constitution also prohibits the taking of property without compensation. The Constitution attempts to guarantee non-discrimination in law and application⁶ and Article 23 (3) defines discrimination as:

⁶ Article 23(1)

....affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed.

On the other hand with consequences for women Article 23 (4) of the Constitution specifically excludes from the application of the non- discrimination clause all law:

(c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law and (d) for the application in the case of members of a particular race or tribe, customary law with respect to any matter to the exclusion of any law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons.

The CEDAW committee which monitors State Parties compliance with CEDAW has expressed concern at the:

....contradictory provisions contained in the Constitution whereby article 11 guarantees the equal status of women and article 23(4) permits discriminatory laws to exist in the area of personal law, namely adoption , marriage , devolution of property on death, or other matters of personal law and customary law with respect to any matter.⁷

It is clear that the Constitution falls short of providing the full protection that is necessary to ensure women’s equal rights. Furthermore, personal law matters, including inheritance, are governed by customary law, which often enshrines patriarchy and discrimination against women.

Keller (2000) observed that the Zambian Constitution of 1996 forbids laws that discriminate on the basis of sex. This provision seems to suggest that both men and women would be treated equally in all matters including accessing, owning and controlling of land. However, Keller points out further that, at the same time, “the Constitution explicitly excludes from this provision personal law – such as that concerning inheritance of property – and the application of customary law” (Keller, 2000:109).

The Intestate Succession Act does not apply to land held under customary law and family property.⁸ This disadvantages women and people take advantage of this

⁷ CEDAW, concluding observations ,2000

⁸ Movable and immovable property that belongs collectively to the family

provision. 80 % of land in Zambia is held under customary tenure and the majority of Zambians live on this land. This situation means women living on this land with their husband have to leave it on the death of their husbands. Women cannot inherit the matrimonial home under the Act but can only inherit a usufruct right for the duration of their unmarried life.⁹ The same applies to the Administration of Wills and Testate Estates Act as it does not apply to customary land.

Under Zambian Law there are two types of marriages women can enter into, statutory and customary marriages. Statutory marriages are those entered into under the Marriage Act and the High Court has jurisdiction over matrimonial causes arising out of such marriages (including succession). However, just as many women are married under customary law, this implies that the lack the protection of the highest court in the land unless on appeal from the lower courts which may take a lot of time and requires many legal procedures and requirements.

Under the Lands Act of 1995 land is categorized into two kinds, state and customary land. Six percent of Zambian land is State land and is administered according to English law. The rest of the land which is 94 percent is customary land and is administered according to customs and traditions which are usually not legally documented as they vary from place to place. The bottom line is that customs and traditions are usually patriarchal in nature and discriminate against women. The chances of a widow inheriting land under this set up are indeed very remote.

Section 22 of the Lands Act sets out the jurisdiction of the Lands Tribunal to inquire into and make awards and decisions in any land dispute relating to land under the Act, make awards and decisions in relation to any dispute and compensation to be paid, generally to inquire and adjudicate upon any matter upon affecting the land rights and obligations under this Act of any person or the government and to perform such acts and carry out such duties as may be prescribed under this Act or any other written law.

⁹ If a widow remarries under the Act, she has to leave the matrimonial home

However the tribunal refused to handle the case of a widow who had refused to be inherited by her late husband's brother and the family of the deceased turned her backyard into a grave yard.¹⁰ The Tribunal ruled that it had no jurisdiction to deal with disputes arising on land held under customary land. Using the above section the Tribunal could have found a way of helping the widow.

Under the Witchcraft Act the main offence is to accuse someone of practising witchcraft. The punishments are also clearly spelt out. Widows are often accused of having killed their husbands by bewitching them and threatening them that if they go to court they will be bewitched. They however cannot use this Act as they will be charged for accusing people of practicing witchcraft. There is also no clear provision they can use if they are threatened with witchcraft.

The Deceased Brother's Widows Act, Cap 57 of the Laws of Zambia Section 3 permits one to marry his late brother's wife. In the era of HIV/AIDS this is very dangerous and leads not only to the spread of the disease but also allows property to pass to the brother. Widows are forced to marry the brother of the late brother and where she refuses for example she will lose all the property.

All the above laws are clear testimony that Zambia has not complied with International Human Rights Instruments despite ratifying them. Local Courts for example still sanction sexual cleansing and the legal fees charged at almost all levels of the judicial courts means widows fail to access justice. The Constitution itself which is the supreme law of the land has a claw-back provision in relation to personal laws. The existence of the Deceased Brother's Widow Act shows that certain discriminatory laws are still in existence despite International human rights instruments calling for their abolition or modification.

The significance of women's property and inheritance rights as recognized in a variety of international legal instruments entails that States parties are required to enact laws that: protect inheritance rights of women from for example property

¹⁰ Op. Cit *Chilala v Milimo*

grabbing; abolish those which permit widow inheritance and practices such as sexual cleansing. This means that women should be allowed to administer property left by their late spouses, unlike the case now where women are usually not appointed as administrators of property left by their late spouses.

Few widows enjoy property left by their late husbands as there is too much interference from families of the deceased. The reporting guidelines to CEDAW require states to address the rights and obligations of widows and daughters, including the ability to inherit land, whether or not these rights and obligations are the same for husbands and brothers, whether there are any mourning rituals and the issue of the levirate.

In 1990 CEDAW adopted a recommendation on the avoidance of discrimination against women in responding to AIDS that State Parties include in their reports under Article 12 of the Convention information on the effects of AIDS and on the situation of women and the action taken to cater to the needs of those women who are infected and to prevent specific discrimination against women in response to AIDS. The Optional protocol to CEDAW enables groups of women to submit complaints to the CEDAW committee.

In 1996 UNAIDS, in collaboration with the office of the United Nations High Commissioner for Human Rights, adopted HIV/AIDS and Human Rights – International Guidelines. Guideline 7 calls for the implementation and support legal support services to educate people affected by HIV/AIDS about their rights to develop expertise on HIV-related legal issues and use means other than courts such as human rights commissions to protect people affected by HIV/AIDS.¹¹

However, many countries including Zambia have no legislation when it comes to HIV/AIDS. As HIV/AIDS has led to an increase in the numbers of widows, the U.N has seen a need to compel countries to promote the human rights of women living

¹¹ The Permanent Human Rights Commission in Zambia is a constitutional body and has such mandate.

with HIV/AIDS. This is all the more important against the background that HIV/AIDS is being used as a tool to deny women their inheritance rights.

1.5 INHERITANCE LAWS

Zambia has a plural legal system, general or statutory law, which is based on English Common Law, which is applied side by side with customary law and the customary practices of the people. The recourse available to women who have experienced discrimination in inheritance matters is through the courts, which administer statutory law: The Supreme Court, the High Court and Industrial Relations Court. Customary law administers traditional law which in practice is often discriminatory against women.¹²

The Zambian Constitution recognizes a dual legal system whereby local courts administer customary or traditional law. These courts uphold customs, usually on matters of inheritance, marriage or compensation for property, that discriminate against women by considering them to be subordinate to or the property of men or their families. Customary laws and practices, which derive their force from traditional cultures moulded over centuries and manifesting behaviour that looks down on the woman are still by large discriminatory against women. Certain discriminatory laws still exist in the books. A good example is the Deceased Brother's Widow's Act which allows widow inheritance and the national constitution which allows discrimination in matters of personal law.

In Zambia, the Intestate Succession Act and Administration of Wills and Testate Estates Act govern inheritance and succession. It must be noted that the Intestate Act is a compromise of the customary law and the position of English statutes (WLSA Zimbabwe,2005). The Acts were passed to control and curb incidents of property grabbing and to protect the rights of widows.

¹² Republic of Zambia, CEDAW Report submitted in pursuance of Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, August 1999, p6

1.6 THE INTESTATE SUCCESSION ACT

The Act spells out how the estate of an individual who dies without a will is to be shared. Relying on percentages, the Act allocates the surviving spouse 20% of the deceased's estate whilst children get 50%. The deceased's parents are entitled to 10 %, as are the dependants, if there any. Equally significant is the appointment of administrator, whose role it is to ensure that the estate is indeed shared according to the judgement. It has prescribed a widow's inheritance right which includes twenty percent of the estate of the deceased spouse.

If there is more than one widow, the twenty percent is shared among them, in proportion to the duration of their respective marriages to deceased. When dividing the property among multiple widows, a number of other factors may be taken into account, including each widow's contribution to the estate. Depriving beneficiaries of the deceased's property is an offence under the Act. The Act also gives the widow the following rights which she is entitled to enjoy. These are:

- a. To approve the choice of administrator or to apply to administer the estate thereof;
- b. To a life tenancy in the matrimonial house;
- c. To inherit together the household and personal property;
- d. To bring an action of maladministration of the estate.

1.7 THE WILLS AND ADMINISTRATION OF TESTATE ESTATES ACT

This Act contains three main objectives, namely, to simplify the making of wills, to provide for adequate financial and other provisions for dependants in a will and to provide for the administration of estates of persons who died testate. The Act prohibits the taking away or interfering with property with those entitled to the property if the court has determined the beneficiaries as per the will. An unauthorized

person who deprives a person entitled to the property or any part of it has committed an offence and liable to a fine or imprisonment.¹³

Like the Intestate Act it also does not apply to land held under customary laws and institutionalized property acquired and held as part of chieftainship property. However, it has a provision where widows, widowers and daughters can apply for a share of the deceased's estate if they have been left out of the will.

1.8 REGIONAL LAWS, RIGHTS AND POLICIES

Zambia is a signatory to the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa which calls on State Parties¹⁴ to take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provision:

- a. That widows are not subjected to inhuman, humiliating or degrading treatment;
- b. A widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and welfare of the children;
- c. A widow shall the right to remarry, and in that event, to marry the person of her choice.¹⁵

Article 21 states that a widow shall have the right to an equitable share in the inheritance of the property of her husband and shall have the right to continue to live in the matrimonial house. In the case of remarriage, she shall retain this right if the house belongs to her or she has inherited it. Therefore, the charter gives widows the

¹³ Section 65(1) and (2)

¹⁴ By January 2005, 33 countries had signed and five (Comoros, Libya, Lesotho, Namibia, and Rwanda) had ratified the Protocol on the Rights of Women.

¹⁵ Article 20, also Article 18(3) calls for elimination of discrimination against women and the protection of women's rights.

protection of not being subjected to inhuman, humiliating or degrading treatment like sexual cleansing and widow inheritance and some other widowhood rituals like sleeping with the body of the deceased spouse for some days.

The above article also gives widows the right to occupy their matrimonial house even if they remarry, take care of their own children and to remarry a person of their own. The reality is that widows are forced to marry relatives of the deceased, and if they refuse they lose the right of inheritance. In Zambia, the Intestate Succession Act gives a widow only a usufruct right to live in the matrimonial house for so long as she remains unmarried and if she remarries she has to leave the house.

The African Commission has also asked states parties to report on women's access to property, including by way of inheritance.¹⁶ Furthermore the AU Declaration on Gender Equality 2004 provides that states have a duty to: "Actively promote the implementation of legislation to guarantee women's land, property and inheritance rights including their right housing".¹⁷

1.9 POLICIES

The National HIV/AIDS /STI/TB Policy of 2005 reaffirms the importance of respecting human rights and the dignity of persons affected and infected with HIV/AIDS and the avoidance of discrimination and stigmatisation of PLWHAs. Its broad objective is contained in paragraph 5.8 and reads as follows; "To ensure that rights of HIV-infected and affected people are protected and stigma and discrimination are eliminated."¹⁸

Zambia has ratified international human rights conventions and has tried to put most of their provisions into practice by formulating and adopting a National Gender

¹⁷ AU Declaration on Gender Equality in Africa 2004 article 7

¹⁸ National HIV/AIDS/STI/TB Policy p.24

Policy, which has a holistic approach in ensuring that both women and men participate fully, and equitably benefit from the development processes.

1.10 STATEMENT OF THE PROBLEM

Widows in Zambia, especially those with HIV/AIDS, in common with many women, have their human rights violated on a daily basis. Widows are subjected to patriarchal customary and religious laws and confront discrimination in inheritance laws despite the enactment of new inheritance legislation in 1989.¹⁹

They are discriminated and stigmatized in society and are often unaware of their rights and encounter many barriers to accessing the justice system such as illiteracy, cost, threats of violence from family members and ignorance and sometimes bias from the judiciary and lawyers. Stigma and discrimination are interrelated, reinforcing and legitimizing each other; stigma lies at the root of discriminatory actions.

Numerous barriers impede women's ability to claim their rights to property ownership and inheritance. Legislation that is nonexistence, inadequate, or inherently discriminatory, as well as inadequate interpretation and enforcement of appropriate legislation, continue to undercut women's ability to own and control property. Women often lack adequate knowledge about court practices and other legal mechanisms when in need of legal assistance.

1.11 SIGNIFICANCE OF THE RESEARCH

Studies have shown that there is a continued human rights violation of widow's inheritance rights in Zambia despite reforms in inheritance legislation. (WLSA Zambia, 1994:86) The HIV/AIDS scourge that has infected most of the world has worsened the plight of widows as the disease is now been use to disinherit widows

¹⁹ Both the Interstate Estate Act No.5 and the Administration of Testate Estates Act No.6 were enacted in 1989 but do not address the issue of HIV/AIDS Widows inheritance rights.

because of their status. Widows of all ages, are often evicted from their homes, stigmatized and physically abused.

Widows in Zambia, especially those with HIV/AIDS, share two common experiences, a loss of social status and economic circumstances. Therefore, the research is useful because it will apart from exploring the reasons behind the continued violations of widow's inheritance rights, it will also be useful for: -

1. Legislators and law makers as it will guide them in enacting new legislation especially in the protection of widow's inheritance and human rights and those living with HIV/AIDS. Since the government is committed to international gender related instruments, this study is a contribution to existing knowledge that could assist government in domesticating international agreements such as the Convention on the Elimination of all forms of Discrimination against Women (CEDAW).
2. Policy makers in particular in the Gender in Development Division (GIDD) to formulate policies that will seek to protect and safeguard the human and inheritance rights of widows especially those with HIV/AIDS.
3. Non-Governmental Organizations (NGOs), Civil Society Organizations (CSOs), Women's Groups and Human Rights Organizations to advocate for constitutional and legal reforms as well as domestication of all international treaties and instruments (to which the government is already signatory) into national laws and use legal and human rights mechanisms to promote human rights as well as challenge and seek redress for discrimination against widows living with HIV/AIDS.
4. Administrators in institutional settings- in particular, in work-places, health – care services, courts, and social welfare settings will be encouraged to respect and recognize the human rights of widows especially those with HIV/AIDS.
5. In addition, the study could be used by other scholars to enrich the literature on gender and inheritance related issues for public policy review and implementation.

Furthermore, despite being a party to international instruments relating to women's rights such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the 1997 SADC Declaration on Gender, Zambia is still far from meeting its obligation to promote these land rights. As such, there is a need for adequate information to help Government implement its commitment to these human rights instruments.

1.12 OBJECTIVES OF THE RESEARCH

The overall objective of the study was to review and analyze why there are continued human rights violations of widow's inheritance rights on the Copperbelt and in particular Kitwe.

1.12.1 Specific Objectives

1. To analyze how the current inheritance laws have failed to protect the inheritance rights of widows especially HIV/AIDS widows.
2. To assess why legislative reforms in inheritance laws have failed to take precedence over local customary laws of inheritance.
3. To find out the legal impediments widows face in accessing the justice system to claim their inheritance rights.
4. Investigate how HIV/AIDS is directly or indirectly used to disinherit widows.
5. To evaluate why most perpetrators of discrimination, abuse and exploitation against widows go unpunished, undetected and undeterred by current inheritance laws.
6. To suggest how international human rights instruments can be applied locally to protect the inheritance rights of widows especially those living with AIDS.

1.12.2 Assumptions of the Research

The research topic was derived or arrived at after the drawing up of the following assumptions below, which helped in guiding the research in terms of data collection and which people and institutions to engage. These are: -

1. The current inheritance laws have failed to protect the inheritance rights of widows especially those living with HIV/AIDS.
2. The legislative reforms in inheritance laws have in practice failed to take precedence over local customary laws.
3. Widows face more legal impediments in accessing the justice system to claim their inheritance rights.
4. HIV/AIDS is directly or indirectly being used to stigmatise, discriminate against and dis-inherit widows.
5. Most perpetrators who abuse and discriminate against widows, especially those with HIV/AIDS go unpunished, undetected and undeterred by the law.

1.12.3 Research Questions

The research was guided by the following preliminary questions: -

1. Are the current inheritance laws weak in their protection of widows' inheritance rights?
2. How and why have customary laws taken precedence over legislation reforms in inheritance laws?
3. Is there need for more legal reforms in inheritance laws to protect widows?
4. What type of impediments do widows face in accessing the justice system to claim their inheritance rights?

5. How have HIV/AIDS widows been directly or indirectly been discriminated, stigmatized and dis-inherited because of their status?

6. Why have violators of widows' rights inheritance rights especially those with HIV/AIDS gone unpunished, undetected and undeterred by the current inheritance laws?

CHAPTER 2: LITERATURE REVIEW

2.0 INTRODUCTION

This Chapter looks on the literature review done prior to the research. I took the methodological approach taken by WLSA was the most appropriate. (WLSA Swaziland, 2001). I did an extensive review of the topic under investigation at local, regional, and international levels. Throughout the research, I made reference to information gathered through extensive reading of literature. I conducted a review of laws as well as previous research on the topic. I also reviewed contemporary literature on customary, religious and traditional laws of inheritance to illicit information and to get a guide and direction on topic to find out how much research has been done and what literature is available on the same topic.

2.1 WLSA, COHRE, NDULO, HIMOONGA

There are a number of researches which have been done on the subject of inheritance and succession in Zambia since the enactment of the Intestate Succession and the Wills and Administration of Testate Succession in Zambia. But I found the most relevant to this research are the ones done by the Women and Law in Southern Africa namely, *Widowhood, Inheritance laws, Customs and Practices in Southern Africa* (1995) and *Inheritance in Zambia, Law and Practice* (1994), as well the one done by The Centre on Housing Rights and Evictions (COHRE) entitled 'Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women: A Survey of Law and Practice in Sub-Saharan African'.

The COHRE survey found out that the 1996 Zambian Constitution falls short of providing the full protection that is necessary to ensure women's equal rights and needed to be amended to enshrine women's equality and human rights. Furthermore,

the survey revealed that both the Intestate Succession and the Will and Administration Testate Estates had some shortcomings.²⁰

The WLSA branch of Zambia observed that regarding the Intestate Succession Act:

“On paper, the new law of inheritance has been a wonderful breakthrough for women’s rights. In practice, though, the five years since the enactment of the Act have witnessed a different picture. The earlier resentment at the passing of the law, which usurps customary rights, had blossomed into blatant disregard of statutory law and a perpetuation of the distorted and evil practice of property grabbing. This is particularly so in situations where people are aware of the provisions of the statute and do not fear the sanctions provided for. The law is weakened first and foremost by the lack of conviction among the women themselves that they have a legal right to their deceased husband’s property, and secondly by their fear of reprisals should they invoke the law...Even laws and the law enforcement agencies like the police and the Local Courts have failed to give the new law the respect it deserves and encourage it’s use.”²¹

Both studies singled out customary law, ignorance of the law, property grabbing, and witchcraft as well widowhood rituals such as sexual cleansing as some of the common factors that affect the inheritance rights of women. For example it was found that the major problems widows encountered relating to property has to do with society’s perception of a woman and her general status in society. It is assumed that women have no property rights at all. However, a WLSA study established that region-wide, women do have property rights. (WLSA Zimbabwe, 1993:68)

The research conducted by WLSA Zambia revealed that widows and widowers observed some form of mourning rituals but there were differences according to location. Regarding administrators it found out that there are more men than women being appointed as administrators. It was also found out that generally people do not leave wills and that they were not aware of the provisions of the statutory law. On the issue of inheriting from a deceased husband’s estate, one common finding was that his surviving wife had to be good to her husband’s relatives before she could inherit.

²⁰ The Centre on Housing Rights and Evictions(2003), Bringing Equality Home: Promoting the Inheritance Rights of Women : A Survey of Law and Practice in South Africa

²¹ Joyce Shezongo –Macmillan, Unveiling the Obstacles: Legal Obstacles to Inheritance –the WLSA findings ,Paper presented COHRE workshop ‘Inheritance Rights and Human Rights’, 21-23 Jan,2004 Johannesburg, South Africa

(Ndulo, 1985: 90-102) points out that Zambian courts have not tried to mitigate the operation of the customary law but have instead frequently denied women their right to inherit their husband's estate on the grounds of customary law and the courts continue to be conservative and to promote traditional rules which deny women to inherit. He shows that the premises on which the rules were founded no longer exist as the joint family is in the state of decline.²²

(Himonga, 1985) examined the position of women and children in modern urban society and attempted to show that much of the law, which governs family property in Zambia, denies women and children property rights in the family under customary law whether through divorce and death and causes injustices and hardships and changes their social and economic conditions.

2.3 PRACTICES OF THE COURTS

In most African Countries courts usually interpret customary law in a way which is discriminatory against women. However, judgments have varied, as in some cases judges have ruled in favour of women and the courts have taken note of the state's obligations under international human rights instruments that guarantee the inheritance rights of women.

As part of colonial legacy, whereby patriarchal customs were institutionalized within legal systems, legal rights to ownership of property of value like land, houses etc is not guaranteed to women in a number of countries, especially widows whose legal status is determined in most cases by customary law. But there also case reports which show that women and particularly daughters, were prepared to challenge "the male-inherits" presumption. This includes the Nigerian case of *Nzekwu v Nzekwu*, where the judge held that male heir presumption, which allowed the son to alienate

²² For example the Will and Administration of Testate Act No.6 of 1989 does not apply to Land held under customary tenure and Chieftainship property and the Intestate Succession Act does not apply to Customary land, Chieftainship property and Family Property.

property during the lifetime of the widow, was “barbarous and repugnant to natural justice, equity and good conscience”²³

In the Zambian case of *M v.M*,²⁴ the widow of the deceased petitioned the High Court for an order, inter alia that she was entitled to 20 per cent of the deceased’s estate according to the provisions of the Intestate Succession Act. She alleged that the respondent, the deceased’s cousin, who had been appointed by the local court as administrator of the estate according in accordance with Tonga/Ila²⁵ customary law, did not recognize her as the widow of the deceased, and that he intended to administer the estate without due regard to her interests in it. The petition was dismissed by the High Court and on appeal to the Supreme Court by the widow, the court ruled in her favour.

In the South African case of *Bhe*, an African woman challenged the patriarchal construction of customary law, which favoured the rights of men over women. The High Court held in favour of her, noting that the Constitution guaranteed equal rights to women and was premised upon the principle of non-discrimination including sex.²⁶ In the Tanzanian case of *Ephraim v Pastory*²⁷, the claim was by the nephew of a woman that her aunt, did not under patrilineal customary law of the Haya Group, have the right to sell the clan land that she had inherited. But the Court of Appeal used the equality clause in the Constitution to rule in her favour that customary law had to accord with human rights norms of equality and non-discrimination, thus women had to be given the same rights as men.

Some countries have even ignored the fact that they have ratified international human rights conventions. Ignoring Zimbabwe’s ratification of the African Charter on

²³ *Nzekwu v Nzekwu* [1989] 2 NWLR 373

²⁴ SCZ /8/46/1990

²⁵ The Tonga/Ila are from the Southern Province of Zambia

²⁶ *Bhe and Others v The Magistrate, Khanyelista and Others* CCT 49/03-2005(1) SA 580(CC)

²⁷ Op Cit

Human and People's Rights, the Supreme Court of Zimbabwe in *Magaya v Magaya*²⁸, while spelling out the importance of gender equality, adopted a retrogressive stand and confirmed male privilege of customary law. In Zambia, the local courts handle most cases of inheritance under customary law²⁹.

2.4 CONTEMPORARY LITERATURE ON INHERITANCE LAWS

There is a lot of literature on how a lot of factors contribute to an environment in which women's property and inheritance rights are rendered insecure (Benschop 2002; Drime 2002a; FAO 2003a; Human Rights Watch 2003a and 2003b; Mbaya 2002; Muchunguzi 2002; Ngwira et al . 2002; Steinzor 2003; UNECA 200; Walker).

In general such factors can be divided into three categories including gender-biased legislation being at odds with international human rights standards, flawed litigation and enforcement mechanisms, including women's inadequate access to justice systems, lack of awareness about women's rights compounded by discriminatory social attitudes and practices enshrined in customary law and tradition.³⁰

The government of the republic of Zambia has recognised that gender plays a significant role in national development. However, more often than not, there exist gender disparities and imbalances in our society owing to a number of reasons which are legislative, administrative and customary in nature. The domestication of the various instruments to which Zambia is a party especially the Convention on the Elimination of Discrimination against Women (CEDAW) is seen as critical for the socio-economic empowerment of women.

²⁸ 1999 (1) ZLR 100

²⁹ This is done under the Local Courts Act

³⁰ Richard S.Strickland "*To Have and To Hold*", *Women's Property and Inheritance Rights in the Context of HIV/AIDS in Sub-Saharan Africa*, Working Paper, (June 2004)International Center for Research on Women. p 28

In this regard, the Government has committed itself to the domestication of several treaties and covenants and observes the international obligations under all Human Rights Treaties to which it is party. Most notably, the President of the Republic of Zambia Dr. Levy Patrick Mwanawasa, SC announced at the opening of the 10th National Assembly in 2006 that Government would undertake the domestication of important treaties, which benefit the population. Furthermore, the domestication of international treaties is a priority in the Fifth National Development Plan (FNDP).³¹

There are daily news reports both in the print and electronic media in Zambia of widow abuse. An example can be cited of one case reported in one of the local papers of a widow Christina Kubikisha of Solwezi town, who was fined Zambian Kwacha One Million and Fifty Thousand Kwacha (K1, 050,000) or United States Dollars Two Hundred and Seventy Six (USD 276), by Senior Chief Kasempa's traditional court for allegedly bewitching her husband, Fanwell Mutelembi who died in September. She said her in-laws forced her to spend a night with the coffined body of her husband in their house, alleging that she was a witch and was behind her husband's death.

*“The relatives of my late husband refused to take the body to the cemetery, demanding that I confess to have bewitched him, and I do not have anything on me, even my mother who was staying with us, her house was also burnt to ashes including 10 bags of maize and two bags of sorghum”.*³²

Kubikisha said her in-laws also told her that she would not get money from the benefits of her late husband, who was a chef at Kasempa Boys High School. Against this background, the First Lady Maureen Mwanawasa has called on government and the Church to intensify the campaign against property grabbing so that widows and orphans are protected from destitution.³³

³¹ The Post of Zambia, Tuesday October 30, 2007 p14

³² Ibid September, 2007

³³ Ibid Monday October 29, 2007 p2

2.5 TRADITIONAL, RELIGIOUS AND CUSTOMARY LAWS

Common to African societies, including Zambia, are interpretations of religious laws, customs and traditions at the local level that take precedence over any modern state or international law. Widows, especially illiterate ones, living in rural areas, are mostly ignorant of the legal rights they have. Patriarchal kinship systems (where the bride goes to the husband's location), and matrilineal inheritance (where succession devolves through the male line), shows the concept that women are "chattels" who cannot inherit and may even be regarded as part of the husband's estate to be inherited themselves (widow inheritance). Where matrilineal kinship systems pertain, inheritance still devolves through the widow's brother and his sons.³⁴

(Chanock, 1985) describes how in Zambia traditional male leaders led to the imposition of customary damages for adultery because they thought the women were misbehaving and the colonial authorities agreed. Thus it can be concluded that customary law was constructed to benefit men and their political agenda at that time and this applies to elements of customary law today. This situation is justified by male family members of the deceased man who justify property grabbing on the basis of the customary rule that a man's property belongs to his family (WLSA Zimbabwe, 1993).

The status of a widow under customary law is far more problematic, there is throughout the region evidence that the impact of customary or, more properly, the customs and practices of the indigenous people impose constraints and restrictions on a widow. Most Anglophone African states recognize customary law as being part of the formal legal system and some systems see customary law and culture as being subject to non-discriminatory provisions. (Banda, 2005:33-34)

Laws related to marital property and inheritance rights remain discriminatory in most Sub-Saharan African and various other countries. In countries like Lesotho and Swaziland, married women are seen as legal minors, who cannot enter into contracts

³⁴ Kuyela Teddy, "*Alleviating the pangs of widowhood*", Times of Zambia, 15th February 2007, on <http://www.times.co.zm/news/viewnews.cgi>

without the consent of their husband. While laws increasingly recognize equal inheritance rights of daughters, this is often not the case regarding widows. In the few countries where the laws recognize women's equal marital property and inheritance rights (for example in Latin America), cultural attitudes in many areas in Latin America expect a daughter to relinquish her right to inherit land to her brother.

In many sub-Saharan African countries, the idea of women inheriting land is seen as a threat to the continuity of clan land in the hands of the male family. Even in various matrilineal societies, such as in Malawi, Zambia, Mozambique and Tanzania, land market pressure and individual registration processes are threatening the continuity of inheritance systems that so far have been more protective of women. Religious laws usually entitle women to inherit, but the share of inheritance is invariably smaller, and there is an emphasis on access rather than ownership rights.

2.6 LEGAL PLURALISM

Historically, all countries in Southern Africa have retained dual legal tenure; state and customary law systems. The former system originally applied mainly to white settler populations while the latter, indigenous customary law, regulated the affairs of the indigenous black populations with each ethnic group having its own system of rules and regulations with regard to inheritance and property rights.

“In most countries legal systems and cultural norms reinforce gender inequality by giving men control over productive resources such as land, through marriage lawsand inheritance customs that make males the principal beneficiaries of family property”. (Thou 2001:2)

Furthermore, legal pluralism further hampers efforts to eliminate gender bias in law, as two or more existing systems of law (e.g statutory and customary) may lead to divergent legal conclusions in a case that is usually resolved by one system taking precedence over another. Problems arise in cases where, for example, constitutional law (which most guarantees some degree of gender equality) is determined to prevail in all matters except those pertaining to family matters, including the distribution of property on death. Instead, such matters are usually governed by customary law, even if it conflicts with the state's obligations established under international human rights

treaties: “Needless to say, gender-neutral laws applied in a social and cultural context where women are relegated to the private realm, accorded second class status, and even treated under laws as minors, can result in judicial decisions that do not benefit women” (COHRE 2000:9)

Two cases in Zambia are relevant to the above statement. In the case of *Chilala v Milimo*³⁵ the deceased and his wife dwelt on land held under Tonga customary tenure which had been given by the chief. After the death of the man the widow refused to be inherited by his brother in law who then started burying deceased family members in her backyard. The Lands tribunal held that it had no jurisdiction to deal with ‘disputes arising under customary tenure’. On the other hand, in the case of *John Phiri v Rozariya Phiri*³⁶ which came before the Lusaka Local Court, a widow was being ordered by the uncle of the deceased to vacate the house after being purified, the reason being that she had no children with the deceased and no *lobola* had being paid. The court ruled that the widow should vacate the house since she had already been cleansed and, since the uncle was the administrator, he was entitled to administer the estate. While under Customary Nsenga customary law she was not entitled to the house, under general law she was. On appeal to a higher court she was awarded the house.

There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband or father’s property than would be widowers and sons³⁷. In some instances, women are granted limited and controlled rights and receive income only from the deceased’s property.

Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and

³⁵ LAT 099/1999

³⁶ Case No.672 of 1989

³⁷ Under the Intestate Succession Act No.5 of 1989, while a widow has a right to inherit absolutely, this right ceases once she remarries; the same does not apply to widowers.

should be abolished³⁸. Therefore, reports of States parties should include comment on the legal or customary provisions relating to inheritance laws as they affect the status of women as provided in the Convention.

However, it is clear at the local level discriminatory customary rules on inheritance still apply whatever constitutional guarantees or modern laws exist. In rare cases where courageous women have defied threats of violence and taken their cases to court, some independent, progressive and creative judges have decreed that international law as laid down under the Convention on the Elimination of All Forms of Discrimination against Women takes precedence over custom and religion.

In many non-codified legal systems, the law of inheritance, tenure, and transfer of land, which is customary in origin, is amenable to development through the courts. For example, in 1990, the High Court of the Republic of Tanzania, in the leading case of *Ephraim v Pastory*, took account of international human rights treaties, including article 5 of CEDAW, and held that the customary prohibition on women selling clan land was discriminatory.³⁹

In many Africans customary practices, the right of inheritance land and property is in most cases denied to women.⁴⁰ The state of affairs could be captured in Nigeria's initial report to the committee on the Elimination of Discrimination against Women (CEDAW), the relevant part reads:

“The authority in the home is the monopoly of the man...Any attack on discrimination against women must honestly attack cultural and inhibitive factors inherent in the primary unit...In tradition society, a woman is treated as a chattel, to be bought and sold, discarded at will, inherited and disposed of with other property upon the death of her husband and without consent ...True there are no provisions discriminatory of women in our statute books, but it is equally true that there are no enforceable laws that offer her succor when she is

³⁸ General recommendations by the Committee on the Elimination of Discrimination Against Women, General Recommendation No.21 (13th session, 1994) 34,36 available on the United Nations Website

³⁹ *Ephraim v Pastory and Kaizingele* (1990) (PC), Civil Appeal No.70 of 19989 (Unreported).

⁴⁰ Both the Will and Administration of Testate Estates Act No.6 and Intestate Succession Act No.5 of 1989 of Zambia do not apply to land held under customary law, chieftom property and Family property or property held collectively by members of a particular family for the benefit of such members in case of the former.

discriminated against by customs, administrative directives and discriminative religious practices...There are still no enforceable laws that protect against traditions, attitudes, customs, religion and illiteracy.”⁴¹

But in other cases, notably Zimbabwe’s Supreme Court’s ruling in 1999, less independent and more traditional judges have ruled to the contrary and thus revoked women’s enjoyment of these rights.⁴² In Zambia, the major issue for widows is dispossession by the husband’s relatives and violence against widows leading to their insecurity, ill health and death abounds in all the inheritance research reports undertaken by Women and Law in Southern Africa.(WLSA Maputo,1994).

Some progress has been made in promoting the human rights of women in Africa. States, including Zambia, have taken steps to remove laws that discriminate against women have formulated gender-sensitive constitutions that create an enabling environment for women to claim their human rights. Many countries have made legal provisions for equal rights of spouses in marriage, equal rights for women and men in inheritance rights and equality before the law.⁴³ However, there is still widespread non-acceptance of the equality of persons. There is gender discrimination in many areas, such as in religious and cultural practices.

Discriminatory legislation and harmful traditional and customary practices still persist. There are huge disparities between the enactment and enforcement of gender sensitive legislation, thus perpetuating inequality between women and men. In many countries, women’s access to the justice system is limited by legal illiteracy, lack of resources, cultural and traditional restrictions.

⁴¹ Both the Will and Administration of Testate Estates Act No.6 and Intestate Succession Act No.5 of 1989 of Zambia do not apply to land held under customary law, chieftom property and Family property or property held collectively by members of a particular family for the benefit of such members in case of the former.

⁴² *Magaya v Magaya* in Law Reports of the Commonwealth, 1999,vol 3,p.35.Also discussed in: International Women’s Rights Action Watch (IWRAP), The Women’s Watch, September, 1999.

⁴³ Economic Commission for Africa, *Promoting Gender Equality and Women’s Empowerment in Africa: Questioning the Achievements and Confronting the Challenges Ten Years After Beijing*, February 2005,Addis Ababa, Ethiopia.

2.7 WIDOWHOOD, INHERITANCE AND HIV/AIDS

The AIDS epidemic is contributing to a rising number of female –headed households, and there are many examples of widows who have lost their property in disputes with members of their deceased spouse’s extended family (Human Rights Watch 2003a and 2003b;Ngwira et al .2002;Steinzor 2003; AIMS 2003; Mphale et al .2002).

Widows are often blamed for killing their husbands by infecting them with HIV and in-laws have used HIV/AIDS as an excuse for dispossessing them. Widows are frequently accused of witchcraft. The stigmatization associated with AIDS has contributed to widows’ insecurity of land rights (Mphale and Rwambali, 2003; Mbhele and Nzama, 2002).Many of these widows are infected with HIV/AIDS or living with AIDS, and dispossession, harassment and eviction often takes place when their economic and health conditions are rapidly deteriorating (FAO, 2006).

Consequently, such widows and their children are left without shelter, any means of livelihood or support networks in the community. After being dispossessed of their land, a FAO study showed that many female-headed households did not seek any legal action due to ignorance about their inheritance rights and also fear of unfounded accusations of witchcraft:

*“When my husband passed away, his relatives took away everything. I tried to seek assistance through the headman and he tried to talk to his relatives but nothing changed. I was advised to see the Legal Resources Foundation but the threat of witchcraft came in and because I was afraid I withdrew the case. I am now struggling to make ends meet through gardening and beer brewing but before my husband died we had fishing equipment which enabled us to survive’.*⁴⁴

The linkages between widowhood, inheritance law and HIV/AIDS are vividly illustrated in the Southern African region.(WLSA Maputo,1995). Inheritance laws have been subject of reform in many countries in Africa. Ghana, Malawi, Nigeria, Zambia and Zimbabwe are among those countries that have legislated for equality in inheritance rights in compliance with their obligations under the Beijing Platform for

⁴⁴ Source : in-depth interviews with a widow in Mungwi District,Zambia,cited in FAO (2006)

Action and human rights treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

For instance, in one rural highland community with a high prevalence of HIV/AIDS and inward migration during the construction of the Lesotho Highlands Water project (LHWP), there occurred the following case:

A man died and shortly thereafter the woman fell sick. It became known in the village that she was HIV-positive and her in-laws accused her of having infected and killed their son. They claimed that she had an affair with a construction worker. The woman was then expelled and sent back to her parents' village with her children, thus serving her a double blow of losing her beloved husband and breadwinner as well as his land, the principal means of livelihood for the widow and her children (Mphale et al .2003;30)

Women's low social status in terms of inheritance and possible "property grabbing" while not regarded as the most prominent of their difficulties in relation to the effects of HIV/AIDS, is also the subject of comment, discussion, and recommendations for change. For instance, Ackroyd argues:

Women are still legal minors in many countries or have only recently been granted full adult status and the personal, social, political and economic concomitants this may be critical in understanding the impact of HIV/AIDS. Their position under customary law, is often unfavorable, and even where they are married in accordance with statute law they may still have their personal property removed by a deceased husband's heirs...(1997:24)

Widows are often victimized by others such as in-laws and their relatives through manipulative decisions that deny them inheritance rights and this added to the stigma and discrimination associated with HIV/AIDS leaves them depressed.

CHAPTER 3: METHODOLOGICAL FRAMEWORK

3.0 INTRODUCTION

This chapter details the manner in which the study was carried out, that is, the theoretical perspectives informing it, the methods of data collection and the process of data analysis. The research employed certain aspects derived from several methodological approaches pertinent to the subject on inheritance. This was in order to give the research a wider analytical perspective, as rightly contended by WLSA⁴⁵, that, as part of its research–action, it is commendable to develop new research methodologies that are suitable for Southern Africa. Thus, multiple methodologies were fused together to enable appropriate and effective analysis.

3.1 METHODOLOGIES USED

The methodological approaches used in the research are:

1. The Grounded Theory Approach;
2. The Women’s Law Approach;
3. Legal Pluralism;
4. Women in Development;
5. Radical Feminism;
6. The Human Rights based Approach

3.1.1 Grounded Theory

The above approach was the starting point for my research. I went into the field with my assumptions and with an open mind. I tried as much as possible to follow the six skills or tools a researcher may employ in the research process and which act as guides in the grounded theory approach (Glass and Strauss 1967). These are:

⁴⁵ Op.Cit

1. Starting with an open mind;
2. Next question technique;
3. Concept building;
4. Constant Comparative Method;
5. Theoretical Selection or Sampling;
6. Limitations on Theory Building;

When I went into the field, I let the women tell me their stories and, based on their answers, I was able to formulate many more questions. For example, asking questions around the assumption that widows face impediments in accessing the justice system, I was able to find out some of the barriers which impeded them. Then from there I was able to build questions asking about: the nature of the barriers, the reason for the barriers, who was behind the barriers and how to overcome the barriers.

By using the grounded theory I was able to assess if certain data was relevant or not and if a matter was worth pursuing or not. On the issue of property grabbing for example, from the answers I got I was able to get reasons why people grab property, what type of property is grabbed, who grabs and whether property grabbing was on the decline or not.

I went further using my assumptions to discover new areas through the answers I received. In this way, by asking more and more questions I uncovered how false accusations of witchcraft and sexual cleansing were used as intimidatory tactics to prevent widows from seeking legal assistance. In other words, this approach revealed emerging issues. It was necessary to let the women speak their stories because it helped me to test whether my assumptions were holding or being challenged. It also forced me to engage fully with all the data I collected.

3.1.2 The Women's Law Approach

This is derived from the Scandinavian women's law methodology. It gives the researcher the opportunity to deal with ethical, empirical and legal issues concerning

the topic under investigation from a woman's perspective. It was suitable for this research as it raised political questions and required that I analysed current laws and policies. This is a woman centered legal discipline which takes women's actual lived experiences and life situations based in sexuality, birth, care and domestic work as a starting point for analysis of the position of women in law and society.

The existence of biological, social and cultural differences between women and men are not regarded as the main problem in women's lives, but rather law and society's systematic under-valuation of female activities, values and characteristics are seen as the main source women's subordination (Dahl 1987:13). Thus, if the subordination of women is to be addressed, a social and legal order, which recognizes that there are biological and cultural differences between women and men, needs to be created.

Because of the subordinate position of women in society, the women's law approach starts with the assumption that the law is a structured set of rules that is largely modelled on the interests and experiences of men. (Bentzon, A. et al: 1998:92). The women's law methodology also allows activism during the research directed towards lifting the legal status of women hence its importance to the research.

During the research a lot of women expressed ignorance about the existence of any laws that protect their inheritance rights. Even in situations where they are aware of the laws, they face a lot of impediments. For example, the issue of payment of court fees are far beyond the reach of many women especially widows.

I took this approach also to look at the court practices and widowhood rituals like sexual cleansing. For example I interviewed an elderly woman in order to know where the custom of sexual cleansing came from. I also used this approach to attend funerals and observe what happens from the time a spouse dies up to the day the time the property is shared to see how customs are followed and observed. The approach helped me to look at the continued existence of laws which legitimize the subordination of women, the socio-economic status of women and the structure and administration of our inheritance laws.

This approach was also useful in that in the course of the research I was able to respond to some of the questions women asked me regarding the law and while doing

research I was able to help them. For example, one widow in Kitwe wanted to travel all the way to Lusaka to file petition against the administrator of her late husband's estate, when, instead, she had the right to file it locally.

3.1.3 Legal Pluralism

The basis of this methodology is that state law does not govern on its own. This perspective does not view state law as being central but rather as a tool of analysis as legal pluralism recognises that there are other forces that regulate state law. Legal centralism and legal pluralism are analytical frameworks that provide different understandings of the position of women in the context of multicultural societies and plural systems of law. (Bentzon, A.W., et al (1998). In this regard, the research tries to highlight other forces with which state law functions and to understand the role such forces play in regulating inheritance.

For many women the fact that they are trapped within the colonial state's interpretation of the construction of families, its assumptions about the status of women in customary law has been a barrier to advancement even when the broader areas of the law have been reformed for the benefit of women (WLSA Botswana, Armstrong et al 1997 (a)). Studies have concluded that knowledge of the law is no guarantee that they will resort to its use.

The use of legal pluralism exposes various forces that regulate social and family relations and promotes creative interplay between the various regulatory forces referred to as semi-autonomous social fields.⁴⁶ This assists to fully assess the capacity (or lack of it) of the justice delivery system to deal with inheritance. There are some overlooked benefits of legal pluralism that could be used to help women maximize their property and inheritance claims.

⁴⁶ Sally Moore's concept of the semi autonomous social fields is a research tool that assists in describing and analysing the rule –generating and rule-upholding processes which affect the position of women and gender relations in a situation where a plurality of normative structures informs interaction especially as it affects the position of women.

Instead of looking for clearly defined rules within a single, coherent legal system, it is useful to recognize the ambiguity of rules, and the multiplicity of legal systems. The ambiguity and pluralism gives scope for human agency, through forum shopping and adapting rules in the concretization of rights (Meinzen – Dick and Pradhan 2002:27).

Griffiths (1996: 3), points out that law is and should be the law of the state, uniform and applied to all people exclusive of all other law, and administered by a single set of institutions. As someone with a legal background, I took this approach because legal centralism, which remains the dominant tradition among academic lawyers, starts from the stand point that state law or state-recognised and enforced law is the most important normative order and that all other norm-creating and enforcing social fields, institutions and mechanisms are either illegal, insignificant or irrelevant. But this is not the reality in the field.

I used this approach to see if statutory and customary law recognized by the law is the only way of resolving inheritance disputes. I discovered that there are other means used to resolve such disputes. Instead of being sexually cleansed, widows were being told to pay money instead. Furthermore, I discovered that some families never used any law to share the property of a deceased but did so by reaching a mutual understanding between both the husband and the wife's families using elders as their intermediaries. In such cases, property was shared equally and no disputes arose.

I went further to use this approach in exposing various forces regulating social and family relations, like how the relationship between the widow and her late husband's family determines whether she will inherit any property or not and who in the family has a final say, the deceased's father, mother, uncles or brothers etc or who decides how and who should sexually cleanse the widow. By using this approach I was able for example discover that the relationship with one's in-laws is a determining factor in inheritance.

The use of this approach also helped me discover some positive aspects of customary law like some families admitting that it was their responsibility to take care of the deceased relative's children because they were their own blood. I wanted to identify and ascertain the extent to which both formal and non-formal law affects the way in which estates devolve on the deaths of their owners.

3.1.4 Women in Development

This perspective criticizes the discriminatory effect of both colonial rule and post-colonial law and development policies which were dominant in the 1950's and 1960's. Sex discrimination is a core concept and covers economic and legal influence and intervention which treats women differently from men.

Proponents of this theory call for amendments to legislation and the restructuring of the judicial system to ensure that there is legal equality between men and women. This can only be achieved if all legal discrimination between men and women is eliminated. The Women and Law in Southern Africa Research Project used this analytical approach in the book *The Legal Situation of Women in Southern Africa* (Stewart and Armstrong 1990).

It can help to analyse the extent to which women are discriminated against in terms of employment regulations, legal provisions or whatever is under investigation, in this case, inheritance in Zambia.

I used this approach to find out how some laws from the colonial era have been used to discriminate against women. One example is how, by using the same methodology, I was able to detect the piece of legislation called the "Deceased Brother's Widow Act Cap 57 of the Laws of Zambia"⁴⁷ and how ineffectual and outdated the Witchcraft Act is, for it is of no help in protecting widows from accusations of witchcraft.

The recruitment of local court justices and court rules and procedure have remained unchanged since they were inherited from the colonial period. Using the same methodology, I investigated how many women are employed in the judicial system and what positions they currently hold.

⁴⁷ Section 3 allows someone to inherit their late brother's wife.

3.1.5 Radical feminism

Radical feminism challenges the core structures of society and law by focusing on its patriarchal ordering and its representation of patriarchal culture and more. Radical feminists emphasise that patriarchy, reproduction and sexuality are at the core of women's exploitation and oppression. The discrimination women face on a daily basis is simply ignored, unrecognized or trivialised by the legal system.

They argue that it is the patriarchal system that oppresses women, a system characterized by power, dominance hierarchy and competition. It is not only the patriarchy's legal system and political structures, which are a problem, but also its social and cultural institutions (especially the family and church).⁴⁸

The main reason I used this approach was to find out why women were not being allowed to administer their late spouse's property. I considered issues for example of lobola and used it to find out whether men felt that because they had paid lobola, they thus had every right to appoint themselves administrators and use this as a pretext to take away the children from the mother.

Through this approach I was able observe at the funerals I attended that the widow in most cases would not be consulted in matters of property sharing and administering. Usually it was the male relatives from both families who were involved; and if the widow attended she would not say anything because of the ingrained patriarchal tradition of never challenging one's in-laws.

I also used this approach to analyse if there were some inequalities in inheritance laws. The role that the church plays in inheritance matters is one of the reasons I used this approach, as the church has sometimes supported patriarchal cultures and this was manifested during the research: as one of the reasons some women did not seek legal redress was because it was allegedly against their religion.

⁴⁸ Some churches in Zambia practice what is called "*Shipikisha*" meaning persevering despite all the difficulties a woman may face, the equivalent of "*Gomera Uripo*" in Zimbabwe.

3.2 SAMPLING

In sampling I considered the need to take into account variations and similarities that exist within the society. Variations include the geographical differences as well as the socio-economic discrepancies, whether in Kitwe urban or Kitwe peri urban. My research methodologies also influenced my sampling. Because I also wanted to find out the experiences of both women and men with regards to inheritance I had to locate widowers as well.

3.2.1 Sample Size

The sample size of the research is presented by the tables below which illustrate the number of respondents including all key informants.

Table 2: Table of Respondents

Method	Number of Interviewees	Female	Male
Key Informants	18	8	10
In-Depth Interviews	13	8	5
Individual Interviews	11	7	4
5 Group Discussions	41	25	16
Total	83	48	35

The total of number of respondents interviewed was 83 respondents, of which 48 were females and 35 male. There were 18 interviews with key informants (8 of them female and 10 male), 13 in-depth interviews with 8 female respondents and 5 male; 11 individual interviews of which 7 were female and 4 male and 5 group discussions involving 41 respondents of which 25 were female and 16 female.

Table 3: Table of Key Informants

Organization/Institution	Male	Female	Position	Total
Legal Resources Foundation	2	1	1 Lawyer/2 Paralegals	3
Legal Aid Clinic for Women	1		Lawyer	1
Buchi Catholic Paralegal Centre		1	Paralegal	1
Local Courts	1	2	2 Court Clerks / 1 Local Courts Officer	3
Subordinate Courts	1		Senior Clerk of Court	1
High Court	1		Assistant Registrar	1
Seventh Day Adventist Church	1		Senior Pastor	1
Police Victim Support Unit	1	1	1 Inspector/ 1 Sergeant	2
Young Women Christian Association		1	Regional Coordinator	1
Department of Social Welfare	1		District Social Welfare Officer	1
Department of Labour	1		Assistant Labour Officer	1
Zambia Land Alliance		1	District Coordinator	1
United Church of Zambia Women's Group		1	Coordinator	1
Total Number of Key Informants	10	8		18

Table 4: Cases/Complaints Handled by Organizations/Institutions from February-November 2007

Organization/Institution	Cases/Complaints	Percentage Out Cases /Complaints Handled
Legal Resources Foundation	139	
Buchi Paralegal Centre	42	
Legal Aid Clinic for Women		40 %
Police Victim Support Unit		10%
Local Courts		30%
Subordinate Courts		30%
High Court		5%
Young Women Christian Centre		45%

3.3 CHOICE OF RESEARCH SITES

In choosing the research site I considered the fact that the community in which one lives tends to influence people's perception of certain experiences as well as their preference to certain things, for example, which court to go to or which police station to report to. Therefore, the research sites I visited represent the socio-economic and geographical diversity of not Kitwe District but the Copperbelt Province as well.

3.3.1 Peri Urban Areas

Kawama, Twatasha, Zambia, Race Course and Zamtan Compounds belong to the peri-urban area. A majority of the people in these areas are unemployed and many belong to the low income group. Those who work are mostly unskilled workers and casual labourers. A lot of women are marketeers. I wanted to find out if their staying far from the centre of town had any effect on their ability to access the judicial structures, such as the courts.

3.3.2 Urban Areas

Most of the institutions and organizations relevant to the study are situated in the urban area of Kitwe and these include: the High Court and Subordinate Courts, as well as the Police Victim Support Unit as well as the various NGOs. Hence, places like Parklands, Riverside, Nkana East and West, Kwacha, Ndeke, Ndeke Village and Chimwemwe are located in the urban area and most of the people come from either the middle or upper classes.

3.3.3 Mine Townships

The mine townships have the largest population in the district and the highest number of inter-marriages, not only among Zambians but also between Zambians and Non-Zambians. During the copper boom in the 1970's a lot of the workforce was brought in from neighbouring countries notably Malawi and Tanzania to supplement the local labour force. All 73 ethnic groups in Zambia are well represented here. Wusakile, Chamboli and Mindolo mine townships are the most populated.

3.4 RESEARCH METHODS

I employed several research methods which I identified as suitable for the collection of data relating to inheritance. To this extent I divided my research methods into two, secondary and primary methods. My assumptions and research questions influenced my methods. For example, when interrogating the assumption that widows face impediments in accessing the justice system to claim their inheritance rights, the method I used was in-depth interviews with both the widows themselves and people who are involved in the administration of justice.

3.4.1 Secondary Methods

This included library research, laws and previous research already done regarding the topic of inheritance, examination of records and review of newspaper reports.

3.4.2 *Library Research, Laws and Previous Research*

I did research in the library to get materials and literature on the topic of inheritance. I took a keen interest on previous research already done on the topic. For example WLSA has already done a lot of research on the topic of inheritance in the region. I reviewed laws dealing with the issue of inheritance.

3.4.3 *Examination of Records*

At all institutions and organizations I visited I attempted to find out if I could examine their records to see how they dealt with inheritance cases and complaints both under statutory and customary law. This was also to determine the prevalence and types of inheritance problems that existed, as well as to get statistical information about them.

3.4.4 *Review of Newspaper Reports*

In order to access which type of inheritance problems and cases are considered newsworthy and frequently reported, I had to review newspaper articles as part of my secondary source of data.

3.5 *PRIMARY METHODS*

The primary methods used included in-depth interviews, group discussions, individual interviews and observations.

3.5.1 *In-Depth Interviews*

I obtained a significant amount of data using this method. Most of the informants I interviewed using this method were mainly widows who had suffered violations of their inheritance rights. The interviews involved asking the interviewee to relate their experiences on the subject of inheritance on the death of their spouse and their relationship with their late spouse's family before and after the death. The

disadvantage was that although interviewees were given the freedom to talk about their personal experiences, they sometimes found it hard to do so with a stranger.

3.5.2 Group Discussions

The group discussions consisted of groups of twelve to thirteen people. Five group discussions were conducted in different locations, two in the peri-urban and three in urban areas. The group discussions consisted of people of both sexes in order to solicit the views and attitudes of both women and men on inheritance.

Some participants gave examples of their personal experiences and others gave examples of close relatives. The disadvantage with this method was that some participants were more talkative than others and some were not comfortable sharing their experiences with others. It was easy to identify the participants as some of them were my former students when I was a human rights educator. Since some HIV/AIDS widows and widowers had formed community groups, it was relatively easy to find and establish contact with them.

3.5.3 Observations

I used this method to observe court proceedings and funerals. I managed to observe two appointments of administrators and three inheritance cases in the Local Courts. I wanted to see the court proceedings, the behavior of the parties in court and the widow herself. I was not able to observe any cases at the Subordinate Courts and the High Court because there were no scheduled cases.

I also managed to observe two funerals and one involved a neighbour and friend. I wanted to observe how the whole funeral process would unfold from start to finish. I observed the behaviour of all relevant parties, i.e., both families, the in-laws, members of the extended families on both sides and the male and female mourners. I was interested in observing how the widow was treated and how the property would be shared. Although this is not usually a public process, I was given the opportunity to do so at the late stages of the process.

3.6 DATA ANALYSIS

I analysed the data everyday after a field trip. I was interested in emerging themes and any lapses. I wanted to know for example what type of property is often grabbed, the different experiences of widows and widowers, the themes emerging from both urban and peri-urban areas, as well as the socio-economic status of the women. I also analysed whether matters were reported to the police or other organizations. The type of marriage of the widow or widower was analysed. The most important process to witness is how themes emerged from the research as it progressed and developed.

3.7 LIMITATIONS OF THE RESEARCH

The major limitation was my inability to interview some important key informants. For example, I was unable to interview any Local Court Justice, Magistrate or High Court Judge. Also I was unable to get statistics from some organizations and I was instead given only percentages. The late release of the research money by the bank caused a delay to the start of the research, so I was unable to visit some targeted sites. The heavy rains experienced in the country meant that on some days I could not go out to meet interviewees.

CHAPTER 4: RESEARCH FINDINGS AND EMERGING THEMES

4.0 INTRODUCTION

This chapter analyses the main findings of the research. The main objective of the study was to review and analyze why there are continued human rights violations of widow's inheritance rights on the Copperbelt and in particular Kitwe. The chapter will also present trends which emerged from the data in all the research sites. Derived from the main assumptions the following questions were asked:

1. Are the current inheritance laws weak in their protection of widows' inheritance rights?
2. How and why have customary laws taken precedence over legislation reforms in inheritance laws?
3. Is there need for more legal reforms in inheritance laws to protect widows?
4. What type of impediments do widows face in accessing the justice system to claim their inheritance rights?
5. How has HIV/AIDS been used directly or indirectly to discriminate, stigmatize and dis-inherit widows?
6. Why have violators of widows' inheritance rights especially those with HIV/AIDS gone unpunished, undetected and undeterred by the current inheritance laws?

Therefore, this chapter will look at the adequacy of inheritance laws in protecting widows, legislative reforms and customary law, impediments facing widows in claiming their inheritance rights, HIV/AIDS and inheritance and the non-punishment of perpetrators.

4.1 ADEQUACY OF INHERITANCE LAWS IN PROTECTING WIDOWS

The current inheritance laws have failed to protect the inheritance rights of widows. Most respondents were of the view that in their current form the laws were very weak. Both the Intestate Succession Act and Wills and Administration of Testate Estate Act have weaknesses as far as the protections of widow's rights are concerned.

As one key informant a lawyer with the Legal Resources Foundation regarding shortcomings of the Act had this to say:

“..the Intestate Succession Act has a lot of weaknesses that is why as early as 2003 LRF had made submissions to the Law Development Commission about it's shortcomings, but it appears they have not been acted upon among them the issue of percentages, women in polygamous marriages and the lack of deterrent punishments”

People feel that the current inheritance laws are a copy of the English laws and do not address the cultural and customary background of most Zambians and the weight that customary law carries within the Zambian Judicial system. The other finding is that most people are not aware of the contents of inheritance laws, let alone the laws themselves.

4.1.1 Shortcomings of the Intestate Succession Act

The first shortcoming highlighted was that of the percentages formula which is laid down in the Act to determine the value of the inheritance of each beneficiary. The Act provides no guidelines as to the ratios or proportions in which the personal chattels are to be shared among the beneficiaries. As one key informant a coordinator with the Young Women Christian Association (YWCA) observed:

“I believe the Act is not clear in terms of property. It is difficult to share property in percentages. If the deceased left two houses and three families and children elsewhere, how do you share the property in percentages. That to me is a weakness which must be corrected.”

Most widows interviewed felt the 20 percent given to them was not adequate. They felt that after working hard with their husbands they deserved a larger percentage. On the other hand many families especially parents complain that the share given to the

widow is too large. The parents of a deceased person feel that the 10 percent given to them is too little. They felt that after educating their son, they deserved to be rewarded and that a wife contributes nothing to the value of her husband during the subsistence of the marriage.

As one respondent in Chimwemwe Township whose son died noted that after educating her son all she got was clothes and a bicycle:

“How can I be given only clothes when I educated my son and took care of him, what is this ten percent? I should have been given 40 percent. What type of law is it which forgets parents? Again, the widow will get the other 50 percent for the children and have 70 percent”.

The second shortcoming noted was the issue of age of children as beneficiaries. The Act gives no age limit in relation to children who are beneficiaries. Some children are still considered beneficiaries of the deceased even if they have already married and started their own families. They arrive and claim their benefit from a poor widow.

The third shortcoming was the provision for women of polygamous marriages. People felt that this provision is not adequate. This was confirmed by one of the key informants from the Local Court who said that sharing a home after the death of the husband of a polygamous marriage is very difficult. Often the house has to be sold so that the proceeds can be split between the numerous wives and children, a task which often leaves them all worse off than before the death.

The fourth shortcoming was that the Act does not apply to property held jointly by the family and land held under customary law. This prejudices women who had worked hard with their husbands to acquire property, as the family of their late husband will not distinguish between family property and personal property belonging to the wife or the husband.

The fifth shortcoming highlighted was one concerning the issue of the punishment of perpetrators. People feel the punishments provided in the Act do not deter people. Most of the people interviewed felt that this is the main reason why people continue to violate widow's rights and lastly the Act has no procedural rules for the court to follow in applying it.

4.1.2 Shortcomings of the Wills and Administration of Testate Estate Act

Firstly, like the Intestate Succession Act, it does not apply to land held under customary law. One of the key informants a lawyer said that the Act is too technical for most people and especially women to suite the Zambian way of life.

“It places too much emphasis on the courts to resolve issues to see it that the will is adhered to while most Zambians organize or resolve most of their life situations within the family”.

Secondly, the Act was criticised for not giving a time frame within which the executor should apply for probate. This allows some executors to take more than a year before applying for probate during which time they plunder the deceased’s estates. Thirdly, the requirements needed for one to make a valid will makes it difficult for many Zambians to do so, thus defeating the purpose of simplifying the law governing the making of wills. Fourthly, it was said that the six months limitation period within which an application to contest a will can be made does not take into account the fact that it takes a very long time to obtain probate and that a will can only be contested after probate has been granted.

4.2 THE POWER OF CUSTOM AND TRADITION

According to the findings on the ground, most people treat customary law with great respect. To them traditions and customs are from their ancestors. Most women are convinced that they are adhering to their ancestral spirits, even if the tradition being followed is discriminatory. Some widows have gone to the Local Court to be sexually cleansed for example. Four widows said that after their deceased husband’s relatives delayed in their customary duty of sexually cleansing them, they took the matter to the Local Courts. As one of them said:

“They court ordered them to sexually cleanse me as per tradition because they were delaying as I wanted to be free from my husband’s ghost and wanted to remarry.”

People feel that they have to identify themselves with their customs and traditions and hence the belief that some traditions and customs must be adhered to. Those who do not follow them are considered to have no culture.

4.2.1 Local Courts

The Local Courts hear cases related to the rights of marriages contracted under customary law in respect of property, inheritance, marriage and divorce. Although statutory law is supposed to take precedence, some people interviewed expressed dissatisfaction with the way the Local Courts apply the law. Some judgments often discriminate against women especially in inheritance cases.

They said that some courts ignore the percentages prescribed in the Act. As one widow of Ndeke Township said regarding the appointment of administrators:

“When my husband died, his family went to the Local Court and they appointed his nephew who is a priest as administrator without even consulting me and I don’t know how the court allowed it.”

The courts are also neglected and under-funded and they also have been accused of being corrupt. This was confirmed by one of the key informants, a Local Courts Officer. She said that in her own experience of working with the Judiciary she has noted that corruption is a major problem. She said that due to inter-marriages, people have brought in different customs in marriages and these bring problems when one of the spouses dies, and people are likely to follow customary law.

In Zambia, any marriage where lobola has not been paid is not recognized and thus women interviewed said that if a man has not paid lobola it makes them feel cheap and valueless. So, a deceased husband’s non-payment of lobola during his lifetime has been used as a pretext for grabbing property, even his children from his widow after he dies. At one of the group discussions one widow had this to say:

“In my own tradition they say that a wife is property meaning you cannot own property because you are part of property, so property cannot own property.”

Therefore the practice of payment of lobola is still widespread. Although it is harmful to women, they have accepted its practice.

4.3 IMPEDIMENTS FACING WIDOWS IN CLAIMING RIGHTS

The research revealed that women face different barriers in accessing the justice system. These barriers experienced by women differ, but what the research brought out is that these barriers can be divided into socio-economic, customary and traditional barriers and those related to statutory law.

4.3.1 Socio-Economic Barriers

There is much ignorance of the law among both men and women. The illiteracy levels are high among women. In areas where NGOs are active especially in the urban area some women are at least aware of their inheritance rights but this is not the case in the peri-urban areas. Some women said that they have heard of the percentages but they were not aware on how they work and what they were entitled to. During a group discussion in Kwacha East one of the participants said that:

“These laws are for the educated people, how you can go against our traditions, education has led many people to forget their traditions, that is why there is a lot of deaths nowadays.”

Lack of resources is another barrier noted during the interview. Most widows revealed that even if they had wanted to claim their rights, they did not have the resources to do so. Places like Kawama and Zamtan are far from town and there is no local court. Even the NGOs for example charge a fee for preparing a court summons and most women revealed that they could not afford the court fees. A widow from the mine township narrated her sad ordeal as follows:

“My husband was a miner and when he died, his relatives grabbed on the household property and left me with nothing, not even his sisters I used to keep supported me. My brother who works in Botswana gave me some capital to start a business. I import clothes from places as far as Dubai and I can manage to send all my four children to school.”

Because of ignorance of the law, women do not know where to report or when to report their claims. In cases where they have reported cases to the police, the attitude of police officers was not gender sensitive. A widow of Chimwemwe Township recounted one event when she went to report a case of property grabbing:

“The police officer was a man and he questioned me on why I was trying to embarrass my in-laws by reporting to the police instead of sitting down with them. I thought it not worth to go there again.”

4.3.2 Customary and Traditional Impediments

Witchcraft emerged as a major impediment as far claiming their rights is concerned. It seems that witchcraft is used by some families to stop women from seeking legal redress or reporting their complaints to the police. A majority of widows interviewed admitted that at some point they were threatened with witchcraft. Traditionally witchcraft is taken extremely seriously by Zambian society.

Some widows said that they were told that if they went to report anywhere they would not see the sun the following day. All the key informants interviewed admitted the fact that women usually fail to report cases of property grabbing due for example to the threat of being accused of witchcraft by some members of the deceased’s family. Some families go to the extent of telling the widow that she will lose all her children if she decided to report anywhere. During one of the group discussions in Kwacha East Township a participant narrated how she kept silent despite being given just a mattress and a deeper freezer.

“My husband comes from the Bena N’gona (Crocodile) Clan and I was afraid they would eat all my children. They are linked to the people of Congo (Democratic Republic of Congo). Challenging them would have meant either me or my children losing their lives.”

Respect for one’s in-laws was one of the impediments which came out during the interviews. Some widows testified to the fact that they found it so difficult to take their in-laws to court as they would be regarded as coming from a family which was not cultured, and because they had children with the deceased meant that there was still a subsisting relationship. But religion also plays a part in that some women feel that due to religion they would not take action against the family of the deceased. A widow living with HIV in Ndeke Township said that she would not act against her late husband’s family because she was now born again.

“I am born again now and I know that God will punish them. The Bible says vengeance belongs to the Lord. Exodus 22:22-24 says “You shall not afflict any widow or orphan, if you afflict him at all, and if does cry out to me, I will surely

hear his cry and my anger will be kindled, and I will kill you with the sword and your wives shall become widows and your children fatherless.”

One of the key informants a Senior Pastor with the Seventh Day Adventist Church said that try as one may to educate widows about their rights, the need to report abuses to the police or to complain to the courts and not to believe in witchcraft, it does not help.

Cleansing is now being used to blackmail and threaten widows. Some families delay cleansing a widow just to stop her from reporting the matter to the police or enforcing her claim through the courts. A key informant who is a paralegal with the Buchi Catholic Paralegal Centre said that such cases are prevalent considering the low esteem in which unclesed widows are held. This was clearly explained by another key informant a leader with the United Church of Zambia in Ndeke Township.

“Cleansing is used as a weapon by relatives of the deceased. People keep widows for months even years without cleansing them, this is deliberate to keep them from going to court, because if she goes to court she will not be cleansed and the ghost of the late husband will be following her as is the belief in most Zambians cultures. Cleansing is just a belief, when you believe in God nothing can happen to you.”

It emerged during the interviews and group discussions that both men and women undergo the ritual of cleansing. Men cannot be cleansed if they have not paid full lobola and if there is money owing on it they cannot be cleansed. The cleansing of men usually involves the shaving of the head and then smearing some mealie meal in the head. If you are not cleansed you are considered to carry the spirit of the deceased spouse and you cannot remarry. There is a strong stigma associated with not being cleansed.

Due to the prevailing economic situation, cleansing has now being commercialized. Widows are told to pay money instead of being cleansed. The widows seem to have no choice because if they are not cleansed they will remain tied to the family of the deceased. A widow who is HIV positive narrated how her in-laws knew her status but went on to insist that she be sexually cleansed just to make money out of her because they knew that she would refuse because of her status and the reason they insisted is because they knew that the option of paying money would eventually come up.

“They knew my status but they just wanted to make money out of me, there are other ways a person can be cleansed but they ignored it, they made me pay K300, 000⁴⁹ and because I did not have the money they went back to their village without cleansing me. I am not a free person because I have not being cleansed. I have been looking for the money so that I can travel to my late husband’s village to be cleansed.”⁵⁰

4.3.3 Legal Impediments

The lack of capacity or knowledge among implementers of the law is a problem. The Local Courts Officer admitted that some officials lack training in principles of customary law, although the Senior Clerk of Court at the Subordinates Court said some officers are now been sent for gender training.

Women were of the view that the court procedures were too tedious and difficult for them to comprehend them. That is the reason why most of the women do not even appeal to the higher courts because even the language used is an impediment. Cases also take too long to conclude. One of the widows who has a dispute with her brother in-law complained about the same thing:

“My husband died in 2005 and the case took long to finish, I won the case but my brother in-law appealed and the case has up to now ended. There are always adjournments each time we go to court.”

The lawyer at the Legal Resources Foundation who was one of the key informants gave an example of the contesting of a will. There is a limitation of six months to contest a will in the High Court but there is no time frame for the executor to apply for probate. The fact that the courts charge for filing a summons at court is an impediment. The security cost for an appeal from the Subordinate Courts to the High Court is in the range of not less than k2,000,000 (500 Dollars) and that is a legal requirement.

⁴⁹ Approximately 80 US dollars at the current exchange rate.

⁵⁰ Besides cleansing by sex, there are other methods of cleansing like smearing mealie meal or tying of a string of white beads on the wrist of the victim.

4.3.4 Property Grabbing

There were many reasons given for property grabbing, including poverty, which is prevalent in Zambia. Some families wait for death to occur to sort out their differences with the widow. There are people who believe that the only way they can keep remembering the deceased relative is by taking some of the items he left behind. This could be a bed, a television set or a car. One key informant observed that:

“Our extended family has so many people in the family who are attached to this one man, and if each one of them wants to take something in remembrance of the deceased there could be nothing left for the widow and orphans.”

It emerged that most widows do not resist property grabbing for a variety of reasons ranging from ignorance of the law, through to a feeling that they do not deserve the property, to a belief that if they fight their relatives, they will bewitched.

4.3.5 Administratorship

An emerging trend in the respect of administrators was that more men are still being appointed than women and most administrators did not know their duties well. People appointed as administrators regard themselves as beneficiaries. Although the courts usually outline the duties of an administrator to people who are appointed as administrators, people ignore them the moment they are appointed. The women interviewed said that the Local Courts usually appointed male relatives of the deceased as administrators and the justices are mostly male and so they have some bias towards the deceased husband's relatives.

4.3.6 Wills

It was found that people do not leave wills. Members of the family seem to be very suspicious of wills. A few men had left wills, but in all research sites not one woman had written a will. People generally had no knowledge about how to prepare a valid will. This was the same in both the peri urban and urban areas.

As far the knowledge of writing a will is concerned, both men and women felt that wills are things of white people. One widower observed during a group discussion that:

“Writing a will is like imposing a death sentence on oneself, besides if either your wife or relatives discover that you have left them out, they will kill you. It is like committing suicide, besides these things belong to white people who have large families.”

Such remarks reveal the great ignorance of laws among not only men but women as well as they tend to view wills as being for the educated alone.

4.4 HIV/AIDS AND INHERITANCE

Most of the group discussions were held with HIV/AIDS widows and widowers. What emerged is that HIV/AIDS is now being used to dis-inherit widows in two ways: either the widow is accused of having infected her husband and so is not entitled to inherit; or they will use her status to discriminate and stigmatize her. One of the widows who is a member of the Network of People Living with HIV/AIDS (NZP+) Kitwe Branch said these during an interview:

“I revealed my HIV status in church because I thought the church would help me, but instead it increased the stigma and discrimination against me. My late husband’s family had accused me of being a prostitute who had brought AIDS into the house and because of that I would leave with nothing because I could not kill their relative and benefit. But I had complained to them on several times about his promiscuous behavior.”

Most people interviewed said that the HIV status of a widow affects her inheritance rights. The woman will be questioned about where the husband got the disease and that maybe she had an extra-marital affair or is a prostitute and so she brought the disease into the house and for that reason she will not get any property. In the event of the woman not being accused in this way, she is treated nicely but indirectly plans will be made to dis-inherit her. This was the experience of one widow in Zamtan compound:

“They told me that they will sell the property plus the benefits of my late husband and use the same to buy medicine for me. I have never seen them again and they took the children as well. I go to the Catholic Church Pastoral Care

Centre to get soya beans and cooking oil, some people at the funeral were even whispering that “kanayanka” meaning that am withering and why should property be given to someone who was about to go to the graveyard”.

Some families even take away the children claiming that the mother will infect them. According to the widows some churches have not helped as the stigma is also very high in some churches. Even family members do not help if the HIV status is known. According to one of the key informants, a paralegal with the Legal Resources Foundation who attended the funeral of a late relative where she witnessed disinheritance of a widow:

“I attended one funeral of one of our relatives who lived in the United States, the husband had left the wife out of the list of beneficiaries and when the lawyer read the will and it was discovered that the wife was not one of the beneficiaries, people clapped and hugged each other shouting “you cannot eat twice”, meaning you killed our relative our son with HIV/AIDS and again enjoy his riches.”

It was also revealed during the research that the HIV/AIDS scourge had increased the number of widows in the community as men are dying in large numbers on a daily basis.

4.5 COURT CASES AND POLICE STATISTICS

As far as court cases are concerned, I was unable to view any court case apart from just observing a few cases, and usually they ended in adjournments as most cases involving succession and inheritance take long to conclude especially at the Local Court. At the subordinates courts I was informed that a lot of the pending cases involved maladministration of deceased estates. In both the Local Courts and Subordinates Courts, inheritance related cases accounted for 30 percent of all cases handled from February 2007 to November while the High Court had 30 percent.

The police through the Victim Support Unit said that cases of property grabbing were declining. The cases which they are receiving nowadays are to do with witchcraft and maladministration of deceased estates. Of all cases reported from February to November 2007, inheritance cases accounted for 10 percent.

4.5.1 Other Organizations

The LRF handled 139 inheritance reports from February to November 2007. A large percentage of these reports were to do with maladministration of the deceased's estates. The Buchi Catholic Paralegal Centre had 42 reports. YWCA said that of all the cases they handled 40 percent were inheritance related and again the majority had to do with the maladministration of the deceased estates.

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

5.0 INTRODUCTION

This chapter summarises the findings of the research. The chapter goes on to offer some recommendations. The recommendations are based on the findings of the research.

5.1 CONCLUSION

Based on the findings I can conclude that the Copperbelt and Kitwe in particular is experiencing severe poverty, patriarchal customs, entrenched traditions and misplaced beliefs that are hindering the enjoyment of women's inheritance rights.

The Constitution has serious flaws in the legal protection of women and promotes patriarchy and discrimination. The Constitution specifically excludes from the application of the non-discrimination clause personal law matters, including widows rights of inheritance, which are governed by customary law which often enshrines patriarchal customs and practices which discriminate severely against women. This is the case despite the country being a signatory to many international human rights treaties among them CEDAW.

The Intestate Succession Act has failed to protect women's inheritance rights 19 years after its enactment. It devolves estates according to fixed percentages. The Act with its percentage calculations is not only difficult to comprehend but can also be difficult to implement. Parents entitled to 10% of the deceased's estate are not happy about their small share when they put a lot of time and effort into bringing up their child, while widows feel that the 20% allocated to them is too little considering the time and hard work they expended while living with the deceased.

The Act's exclusion of customary land has proved a hindrance to women's inheritance rights as women cannot inherit land. The provision for women in polygamous marriages is properly defined. The 20% normally allocated to a widow is

shared amongst the surviving spouses. Attitudes and beliefs have proved difficult to change, making law reform difficult.

Because customs and traditions are held to be sacred in Zambian culture the negative aspects of some cultural beliefs are not brought to light and their legality or morality are never questioned. Widow rituals are still practiced, especially cleansing, and widows and widowers still believe in chasing away the ghost of a deceased spouse. Cleansing has now been commercialized due to the economic situation and widows are being told to pay instead of being cleansed sexually, though sexual cleansing is on the decline. Although statutory law is supposed to take precedence over customary law, in practice judgments rarely reflect this and often discriminate against women in inheritance cases.

Widows face a lot of impediments in claiming their rights and these maybe socio economic, customary and traditional or related to statutory law itself. Cleansing is used as a weapon to impede them as they are warned that should they report anywhere, they will not be cleansed or are delayed in being cleansed. Unfounded allegations of witchcraft against them are also used to scare widows.

Widows also lack adequate knowledge about the courts and other legal mechanisms which are available to defend their rights as well as the means to employ such mechanisms when needed or where they are available. I also found out that some court officials especially from the Local Courts did not themselves know some provisions of the law.

Interviews conducted with HIV/AIDS widows highlighted a new emerging trend of using HIV/AIDS to disinherit, stigmatize and discriminate against them. It was also revealed that there is no specific law protecting widows living with HIV/AIDS. The existence of laws like the Deceased Brother's Widow Act promote negative customary practices and lead to the spread of HIV/AIDS as widows are forced to marry the brother of their late brother and in case they refuse, they lose all the deceased's property.

There is a serious lack of enforcement of the law. The Victim Support Unit (VSU) which was formed to protect women from property grabbing is under funded, under

staffed and most widows do not even know that it exists. Cases of maladministration by administrators are on the rise. The research also discovered that most people appointed as administrators do not know their roles and those who do know them, flout them.

Organizations and institutions dealing with inheritance matters all agreed that court cases complaining against property grabbing are on the decline and attributed this either to a lack of knowledge among people that it is an offence or loss of trust in the justice system. Although the law gives widows the right to approve or refuse an administrator or to be made a joint administrator of her husband's deceased estate, widows interviewed expressed ignorance of these rights.

The punishments of offenders provided in the inheritance laws are very weak. The mediatory role played by both the police and the courts means that most perpetrators go unpunished. On the other hand interviews and discussions with women showed that for cultural and religious reasons, women themselves have forgiven perpetrators.

5.2 RECOMMENDATIONS

To ensure that women continue enjoying their inheritance rights in accordance with international human instruments, the following recommendations are recommended. The recommendations are drawn from the data collected and suggestions put forward by people interviewed.

5.2.1 Strategies to Help Women Overcome Impediments to Accessing Justice

There is a need to devise strategies which will help women overcome the numerous impediments or barriers they face in accessing the justice system as these have turned out to be the major obstacles to their enforcing their rights.

5.2.2 Education and Economic Empowerment

There is a need for legal education and literacy campaigns to help women claim their rights. These campaigns must not only target women themselves but also all members of society in general as well. This will help in promoting the eradication of elements in traditional, customary and religious beliefs, practices and stereotypes which legitimize the discrimination of women when it comes to inheritance. Non-Governmental Organisations (NGOs) helping in the promotion and protection of women inheritance rights must be supported.

Women need to be economically empowered to be independent and responsible for their lives. All socialization agents including families, churches and traditional structures should be involved in re-orienting members of their communities to help reduce the violation of widow's inheritance rights. The media can play a vital role in information dissemination. There is also a need to introduce and support gender sensitisation and public programmes aimed at educating people on the rights of women.

It is recommended that the public and women in particular should be conscientised of laws that seek to protect them under both customary and statutory law. Women should also be encouraged to question existing laws which are inappropriate for them and recommend suitable ones. For example, campaigns promoting the writing of wills can be particularly effective when targeting men as well as women, dispelling popular misconceptions about wills and emphasizing the value of a will for the future well being of the family. Community based education activities can also address the gap that may exist between statutory law and customary practice.

5.2.3 Legislation and Law Reform

There is an urgent need to develop and implement laws that protect the inheritance rights of women, and to review and repeal all discriminatory laws that currently exist, whether statutory or customary and punishments for offenders need to be stiffened. Any new laws and policies that protect the inheritance rights of women should be actively disseminated and explained to the public. The introduction as a matter of

priority of legal and administrative mechanisms for women may be necessary to ensure the protection of women's inheritance rights.

There is a need also to address the contents of the law as this was also a major complaint of people targeted by the research. The national Constitution needs to be reviewed especially Article 23 (d) which permits discrimination. The Deceased Brother's Widow Act must be abolished in this area of HIV/AIDS. The Witchcraft Act may be strengthened to protect widows. Both the Intestate Succession Act and the Wills and Administration of Testate Estates Act must be taken back to the legislators so that it can be amended to address the views and concerns of people.

5.2.4 Legal Services, Judicial Capacity and Training

There is a need not only to provide women with legal aid but their voices should play a loud role in the reforming of legal structures in order to simplify rules and procedures so that their rights may be protected with a minimum of fuss. It is important to ensure that women have easy access to an effective and prompt means of legal redress when they come under the attacks of their relatives. The judicial sector should be given the capacity to effectively interpret and apply national laws with reference to international human rights treaties, thereby helping to domesticate relevant international laws that would protect and promote women's inheritance rights. As Human Rights Watch has suggested:

“Governments should provide training for judges, magistrates, police, and relevant local and national officials on laws relating to women's property rights and their responsibility to enforce those laws and should include women's property rights in the required curriculum of police training academies and law schools.” (Human Rights Watch 2003b)

This will mean introducing and promoting gender sensitisation and training of all service providers engaged in the administration of justice, such as judicial officers, police, paralegals and lawyers. Current programs providing paralegal and legal aid services to women should be made effective.

5.2.5 International Human Rights Instruments

International human rights can be used can be applied to various plights of widows. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) identifies a group of human rights that, if fully realized, should protect widows. Guarantees in other conventions, such as the 1966 International Covenant on Economic and Social Rights, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1993 Declaration on the Elimination of Violence against Women and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against women should be used to as legal tools to ensure that human rights are respected and upheld.

“We must be courageous in speaking out on issues that concern us. We must not bend under the weight of spurious arguments invoking culture or a tradition value....No value worth the name supports the oppression of women.”⁵¹

⁵¹ Nasif Sadik, former Executive Director, United Nations Fund for Population Activities, September 1995

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Property grabbing: Still real

...the local court, her husband's relatives continued to harass her.

She adds that the matter was taken to the magistrates court for further determination because the other party was not happy with the decision.

Chatupa complains that she had no source of income and that she suffered while the matter was kept in court. "I have suffered and even to reach this far has taken the grace of God. The children used to go to good schools but now they are all at SOS Children's Village," complains Chatupa.

According to the court document, the deceased left behind two widows and four children. His estate comprised three houses in Lusaka, one of them in South Africa, translating into four houses, five cars, three bank accounts, a farm, company equipment and other items.

Efforts to get a comment from one of the late Shadov Chatupa's relatives Chikande Mhango so as to get the other side of the story proved futile by press time as she was said to be on leave.

Efforts to locate her also failed.

Commenting on the issue, Chatupa's nephew Stanley Chota had this to say.

"Due to the rivalry between the two parties, different memorial services were held, the children were not even invited," Chota says. "Efforts by my aunt to exclude in civil branch proved futile."

The story of property grabbing or house-snatching is very common for many women in Zambia.

Although women constitute 51 per cent of the Zambian population, very few of them contribute effectively to development. This is because many of them are poor.

Property grabbing is one of the major causes of poverty in Zambia and only when the vice is stemmed can the country traverse the path of development.

Even the Bible condemns this vice.

According to the Intestate Succession Act 1989, if a person dies intestate, that is dies without leaving a will, his estate shall be disposed under the Act.

The estate of the person who has died intestate is distributed as follows: twenty per cent goes to the surviving spouse.

Where more than one widow survives the intestate, like in the case of Ruth Chatupa, the estate is distributed among them proportional to the duration of their respective marriages to the deceased and other factors such as the widows' contribution to the deceased's property may be taken into account when justice so requires.

Five per cent of the estate devolves upon the children in such proportions as are commensurate with a child's age or educational needs or both.

Twenty per cent of the estate goes to the parents of the deceased and ten per cent goes to the dependants in

equal shares.

In situations where the child of the deceased is too young, the father, mother or guardian shall hold his share of the estate in trust until he ceases to be a minor.

Where an intestate leaves no spouse, the portion of the estate which the spouse would have inherited shall be distributed to the children with respect to a child's age or educational needs.

No spouse or children, the aggregate portion of the estate, which the spouse and children would have inherited, shall be distributed equally to the parents of the deceased.

Cases where the intestate is not survived by a spouse, children, parents or dependants the estate shall be distributed to near relatives in equal shares and where there is no spouse, children, parents, dependants or near relatives, the estate shall be *bona vacantia* and shall devolve upon the state.

Section seven of the Intestate Succession Act part III states that where a person dies leaving a spouse, children, dependants and no parents the portion of the estate which the parents would have inherited shall be shared equally between the surviving spouse and children.

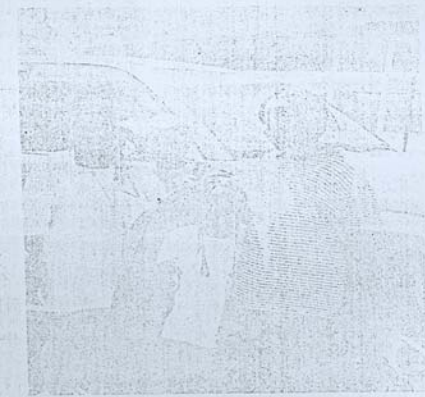
Notwithstanding section five where the intestate in the case of a monogamous marriage is survived by a spouse or child both of them shall be entitled equally and absolutely to the personal assets of the intestate.

Where the estate includes a house the surviving spouse or child shall be entitled to that house on condition that they hold the house as tenants in common.

The surviving spouse shall have a life interest in that house



Chatupa, the first widow



Chatupa's children



Chatupa with her late husband

which shall determine upon his/her remarriage.

If the estate includes more than one house like in the case at hand, the surviving spouse or child or both shall determine which of the houses shall devolve upon them and the remainder shall form part of the estate.

The Act provides that where there is more than one widow or child each widow or her child shall be entitled absolutely to the homestead property of the intestate and in equal shares.

Any person who unlawfully deprives any person of the use of any part of the property of the deceased to which that person is entitled under the said Act shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand kwacha or imprisonment not exceeding two years or both.

The court may on the victims of this heinous crime to report the perpetrators of this vice to the authorities.

Property grabbing is a perversion that society needs to be cured of if development is to become a reality.

...up all the four children and I am not even invited to them because Chatupa says. But what is the point of her with conviction, many property grabbing and my relatives."

Chatupa says: "I had to go to South Africa to get them from between the lines."

It was at this point that she decided to seek the help of the local court to get justice using the name of Chatupa.

"My husband had my mother-in-law's car. I got a car was given to me. I was given the car to take the children to school in South Africa. I lost the car when the car robbers got it in the night."

Chatupa says: "I was given the car to take the children to school in South Africa. I lost the car when the car robbers got it in the night."

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Help Me Get Compensation

Dear Advisor,

I am a 24-year-old widow seeking for your advice and assistance at large. I am pleading with you to assist me claim for my compensation from my late husband's employer, which I honestly know that without your support, I will not have it.

My husband was working as a taxi driver and worked for the same employer for two months before his death.

He started working on August 5, 2004 and was operating using a corolla vehicle and on October 6 2004 my husband came home with news that his boss was going to give him a new Toyota Camry which he was going to be using starting October 7.

Unfortunately on the same day, my husband went missing and we looked for him for a month without finding him.

However, each time we wanted to go and check at the UTH mortuary, my husband's boss would tell us that there was no need because he had checked in almost all mortuaries in Lusaka and there was no body of my husband.

After a month, we forced ourselves to go to the mortuary and we found my husband's body lying in the UTH mortuary with three gunshot wounds on the forehead, right arm and the chest.

It was concluded by his boss that unknown people killed him because the car, phone and money he had were stolen.

After the burial of my husband, I never saw his boss until in November 2004 when I met the wife to my husband's boss and told me that they would buy me two dryers, a blower and give me K500, 000 to start business. She told me that she really sympathised with me especially that my husband left me pregnant.

When I made a follow up with her after a long time without fulfilling the promise, she just managed to buy me one dryer but didn't give me money to start the business. From that time, I have not received anything apart from a promise that I would be given K500, 000 in instalments of K100, 000 and that would mark the end of the story with them.

Advisor, is it fair for my late husband's employer to only compensate me with a dryer and a promise of K500, 000. Please assist me.

Yours faithfully,
Lillian Chulu.

Chief Justice Mwenza calls for removal of biased court staff

By Henry Chikwira

CHIEF JUSTICE Mwenza of Mazabuka has called for the immediate removal of all the court staff at Mwenda local court and accused them of allegedly being biased.

Chief Justice Mwenza complained yesterday that the unprofessional manner in which the officials were handling adultery and land disputes cases had created division and hatred among her subjects.

She said that her subjects had lost confidence in the judiciary because of the high levels of corruption.

She regretted that people caught red handed committing adultery were acquitted in unclear circumstances.

"Most people are now seeking the services of the chief justice' court at the palace for fear of losing cases," she said.

Chief Justice Mwenza observed that most people in her area had resorted to killing each other over land issues because most bonafide land owners lose cases in the court because of being poor.

She said that there is need for the Chief Justice to seriously probe the matter and restore the dented image of the local court by sending new officers.

A month ago, chief Mwanachingwala of Mazabuka also called for the removal of a senior local officer at Musanga local court due to alleged corrupt practices.

Chief Mwanachingwala, who had stormed the local court officers, ordered the officers to leave the chiefdom from his work.

Intensify campaign against property grabbing - Maureen

By Nomusa Nichele

FIRST lady Maureen Mwanawasa has called on government and the Church to intensify the campaign against property grabbing so that widows and orphans are protected from destitution.

During a fundraising luncheon organised by the Zambia Widows Association in Lusaka yesterday, Maureen said it was saddening that many widows and orphaned children continued to suffer as a result of property grabbing by relatives.

Maureen said it was unfortunate that some women suffered property grabbing because they had

refused to bow down to retrogressive traditions of sexual cleansing.

"My advice to women on this matter is that stand for what is right, don't allow yourself to be dehumanised and safeguard the property your husband leaves behind. Your life and the future of your children is what must take centre stage. Always remember that we are living in difficult times in which we are confronted with the challenges of HIV/AIDS," she said.

Maureen also urged citizens to secure the future of their families by writing a wills.

"This appears to be a scary document. But we must do it for the sake of the family especially for children," she suggested.

She said it was important for people to leave something in their wills for their parents as this could help reduce property grabbing.

Maureen also said she lost her father when she was 10 years old, and was looked after and educated by her mother.

And Maureen said it was important to secure the future of the girl child through education, so that she could be prepared to deal with life's experiences such as widowhood.

"Education also helps to open up many doors of opportunities to advance your welfare," she said.

She also appealed to widows who would take part in the National Constitutional Conference (NCC), to ensure that laws that discriminate against women were looked at.

And Zambia Widows Association president Florence Mwaema thanked the government for allocating the association a piece of land where it would construct a multipurpose skills training centre. Florence said the association needed to raise K500 million to build the centre.

Traditional court fines woman over husband's death

By Mufumbi Mubumba in
Solwezi

SENIOR chief Kasempa's traditional court has fined a widow K1,050,000 for allegedly bewitching her husband, Faywell Mutsimbi, who died last month.

Narrating to Justice for

Widows and Orphans Project (JWOP) in Solwezi how her husband's relatives tortured her, Christina Kabikisha said that she was starved for more than 10 days.

Kubikisha said her in-laws forced her to spend a night alone with the puffed body of her husband in their house, alleging that she was a witch and was behind her husband's death.

"The relatives of my late husband refused to take the body to the cemetery, demanding that I confess to have bewitched him," Kubikisha said.

Kubikisha said her in-laws also told her that she would not get any money from the benefits of her late husband, who was a chief at Kasempa Boys High School.

She said her late husband, Mutsimbi, died at Makiriga Mission Hospital after suffering from severe diarrhoea.

K250,000 to senior chief Kasempa for the alleged offence I did not commit. I am living in fear because they have told me that I have to pay the whole amount before they release me," she said.

Kubikisha, who wept as she narrated her ordeal, said literally everything she had had been grabbed from her while her house and clothes were burnt.

"I do not have anything on me, even my mother who was staying with us, her house was also burnt to ashes including 10 bags of maize and two bags of sorghum," she said.

Kubikisha complained that police in Kasempa failed to help her despite her mother having been reported there.

She is currently in Solwezi, trying to raise the money she was ordered to pay.

and Justice for Widows and Orphans Project chairperson Stanley M'hango

areas was very rampant due to lack of sensitisation.

M'hango urged the government to come to the aid of the woman.

"It is really sad that at the time and age like this a woman should undergo such inhuman treatment. Even the traditional leader who should have come to the help of the lady went further, to inflict pain on her by charging her money," M'hango said.

M'hango said the action taken by senior chief Kasempa to charge the widow would encourage lawlessness in his area because his subjects would be mistreating every elderly person, believing that they were wizards.

"We don't take pride in exposing these issues but this is what is happening in rural areas because most of the human rights violations

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Deputy High Court Registrar warns property grabbers

DEPUTY High Court Registrar, Jonas Chinyama, has cautioned people to desist from selling property of their deceased relatives.

Mr Chinyama said it was saddening to find people who were supposed to look after orphans being the ones persuading other relatives to sell the deceased's property without thinking about the surviving spouse and children.

He was speaking at the burial of the late magistrate Albert Mambwe Kabamba in Chingola on Wednesday.

Mr Chinyama said it was the responsibility of relatives to look after the surviving family.

He said relatives should not get property in the name of children whom they abandoned when the property and money of the deceased was disposed of, leaving children as street kids.

Mr Chinyama described Mr Kabamba as a dedicated and hard working magistrate who rose through the ranks when he graduated from the National Institute of Public Administration (NIPA) in 1989.

He also said Mr Kabamba was a hard worker who showed a great depth of knowledge and skill in the adjudication of cases.

Mr Kabamba started work as Magistrate Class 3 at Nchelenge Subordinate Court.

He was promoted to magistrate Class 2 in 1993 and in 1995 he rose to the rank of magistrate Class 1, a position he held until his death.

Mr Kabamba is survived by a wife and five children. — ZANIS.

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