

## Women's Access to Communal Land: A Case Study of Siabuwa, Binga, Zimbabwe

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### Abstract

While it is appreciated that Zimbabwe has shown advancement in gender equality legal framework, it is worth to mention that it is still far from achieving the actual average equality standard in resources allocation. One of the area which is lagging behind is on the uneven distribution of communal land between men and women as it is skewed towards men. Most rural women are struggling to fully access and control communal land despite being their main source of livelihood. Implementation and monitoring of land policies is inadequate in rural areas leading to women's suffering. This research assessed the challenges faced by rural women in accessing communal land in Zimbabwe's Binga area. In doing so, a qualitative ethnographic case study of Siabuwa, in Binga, Zimbabwe was chosen methodology. In-depth interview with key informants was the main method employed in soliciting data from participants. Other methods such as Focused Group Discussion and participatory observation were also used to obtain data. The research findings revealed that most rural women still suffer discrimination as women to fully access and control communal land. Traditional leadership institution is dominant in the land allocation in Binga. The study aims to act as an eye opener to interested stakeholders and in particular government on the difficulties faced by rural women in accessing communal land and how this negatively affects development. The study is also meant to signify the need for a rethinking other strategies to enable access to land for the disadvantaged rural women.

**Keywords:** Discrimination, women, communal land, access, control

### 1. Introduction

Land is one of the properties for livelihood for the mankind and other living organisms. Margaret Michell in Kanokanga (2016) considered land as the only thing which people should value most when she said the following: "Land is the only thing in the world that amounts to anything, for it's the only thing in this world that lasts. It's the only thing worth working for, worth fighting for, worth dying for, because it's the only thing that lasts." Margaret Mitchell in Kanokanga (2018) More so, land continues to receive more attention to become a topical issue in any jurisdiction (Kanokanga, 2018) especially its allocation and management. Article 15(a) of Maputo Protocol says "State parties are required to take appropriate measures to provide women with access to ... land, and ..."

At local level, section 289 of the 2013 Constitution of Zimbabwe Amendment (No 20) Act on the principles guiding policy on agricultural land needs to be observed. Worth to mention is 289(c) which states that:

'The allocation and distribution of agricultural land must be fair and equitable, having regard to gender balance and diverse community interests' Equality and non-discrimination are two principles which have proved to be difficult to achieve especially in terms of gender. Commenting on gender relations in Zimbabwe, Gudhlanga (2010) <sup>[21]</sup> said it has always been biased against women. It is so despite the effort being put by the government in coming up with progressive laws which are aimed at protecting and promoting human rights as evidenced by its inclusion in the country's progressive 2013 Constitution. Gender relations have often

shown male dominance and female subordination (Gudhlanga 2010 <sup>[21]</sup>; Ostergraad 1992) <sup>[39]</sup>.

Land in Zimbabwe is one of the essential means of production which require fair distribution for the development of the country. Armed with international human rights instruments in which Zimbabwe is a signatory, gender equality and non-discrimination on the access and distribution of critical resources such as land should not be a problem. More so, the progressive legislation in access and distribution of resources since independence should take Zimbabwe to a better level of gender equality.

In fact, despite having officials from Gender Commission and Ministry of Women Affairs, Community, Small and Medium Enterprises Development and other state agencies up to village level in rural areas to drive the gender equality in the access and distribution of means of production, women continue to have challenges in accessing communal land.

While statistics indicate that about 86% of women in Zimbabwe depend on land for their livelihood, only 5% of the rural women have primary land rights while the majority access land through their husbands or any other male relative and sometimes with no access at all (ZimStat 2012) <sup>[66]</sup>.

This study will establish that inaccessibility of communal land by rural women in Binga has negatively affected their welfare and that of their families. It has generally derailed rural communities' development which could be on a positive growth if women could be afforded fair access to communal land as they are considered to have both necessary capability and agency to use it effectively (Birds and Espey 2010) <sup>[5]</sup>.

The existing gender relations have often legitimised the exclusion of women from participation in decision-making processes especially on the allocation and management of natural resources, land included. The noted result of these unequal relations is the failure of women to access basic resources like land which is the backbone of their livelihood. Of importance is the emphasis being put by most African governments on the formal laws to improve women's access to land. Deducing from most international and regional human rights instruments such as Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Protocol to the African Charter on Human and People's Rights on the Rights of women in Africa, every state party has the duty to protect, provide, respect and fulfil the right to land to all its citizens in an equal and non-discrimination manner.

It is a fact that women in communal land contribute so much to the well-being of their families through agricultural activities. However, their interests are not seriously considered by policy makers who seem to ignore their rights to land. Zimbabwe as shown by its ignorance to women's access to land seems to follow the gender-blind approach to land issues.

## 2. Explaining Gender Inequality of Land

Gender inequality on the access to productive assets has been a long talked issue world-wide. However, it seems not enough is being done to correct the situation which seem to be taken as normal. The question which this paper intends to address is why is women's access to land discourse not receiving the expected attention it deserves from the decision makers?

Although there are several studies done on land distribution in Zimbabwe, many such studies concentrated on racial imbalances created during the colonial era between whites and blacks. Little research has been conducted on the aspect of women's perspective in communal land resulting in government turning a blind eye when formulating and implementing programmes despite the importance of supporting communal land areas in eradicating poverty. In 1995, while giving a speech during the launch of Bulawayo's Kelvin North Training Centre, Bjorn Forde, the then Secretary General of Mellefolklight Samvirke (MS) emphasised the importance of having a rural focus as it is considered that the poverty in communal land areas deserves most attention to achieve sustainable development (Nielsen, 1995) <sup>[34]</sup>.

Lack of appropriate evidence for decision making has been cited as a key problem blocking progressive policy response to women's access to resources (Bird and Pratt 2004). Quoting Bird and Espey; "Inadequate research funding for gendered microlevel studies limits the generation of robust empirical evidence which might challenge the perceived unimportance of intrahousehold and gender concerns" (Bird and Espey 2010 <sup>[5]</sup>:365) Commenting on the status of black women, Stewart (2010) <sup>[51]</sup> emphasised the need for research in countries in the Eastern and Southern African region on women's access and control of resources including land (Stewart 2010 <sup>[51]</sup>:246).

This paper is therefore aimed at providing the needed empirical evidence on women's access to communal land to assist in both gender-setting and policy formulation.

Women's land issues related to Fast Track Land Reform and Resettlement Programmes (FTLRP) and urban land have been widely documented. However, less has been said on how communal land women access, control and use land as their rights to land. It is therefore the aim of this paper to document

the ways rural women access, control and use land and the impact of the land administration system on women.

Communal land tenure system is one of Zimbabwe's prevailing systems of tenure which is governed by the communal land Act and other Acts of parliament. Statistics indicate that 42% of the total land in Zimbabwe falls under the communal land system (ZimStat, 2012) <sup>[66]</sup>. Women in rural areas who in most cases access land through their fathers, husbands, sons, uncle, brothers or any other male figure as stipulated by the country's customary law are the major users of communal land as shown in figure 1 below.

**Table 1:** Land User Sector

	Women	Men
Communal area (size)	3 173 546	2 825 855

Source: ZimStat 2012 <sup>[66]</sup>

The communal land Act (CLA) in section 4 stipulates that all communal land is vested in the President of the country and all those who access it have usufruct rights. In fact, the statistics has shown that access to land had been proved to be a gendered process in Zimbabwe. The existence of dual legal system, where State policies and socio-cultural practices interplay is blamed for gendered contract system which in most cases has shown more favour to men than women.

Most studies carried out so far have pointed to the women's subordination position and under representation in land delivery institutions as accelerant to their lack of institutional support.

In Latin America, women were found to own smaller land than their men counterparts and mostly men make major decision of family's land produce (Reinhardt 1988; Deere and Leon 2003). More so, where women inherited land, it was a mere process leading to land handed to another male person who can be son, husband, brother or uncle. In fact, women are only used as access points and conduits (Stewart, 2011) <sup>[48]</sup>

Despite the presence of good range of progressive laws in the Statute books in Zimbabwe which aim at gender equality, still women seem to suffer discrimination in as far as access to, control over and use of land especially in communal land where some traditional customs and practices dominate.

More so, there is a lack of awareness of rights among women in the rural communal lands in Zimbabwe.

## 3. Women's Law Theory

Despite being a theory within the law discipline, women's law approach embraces other disciplines such as sociology, anthropology and many more (Dahl, 1986) <sup>[12]</sup>. Dahl (1986) <sup>[12]</sup> further described the methodology of women's law as a cross disciplinary and pluralistic. This writing used women's law approach as its key theoretical framework. Its relevance emanates from the nature of the study title "women's access to communal land" which is a women focused study.

This writing has taken into consideration that women are not homogenous. There are various factors which differentiate women living in any community. Some of the factors considered included the age, tribe of origin, marital status and many more. Non-homogeneity means that women were affected by women issues differently and in this case land issues which necessitated me to consider sameness and difference approach during my research. For example, old women who lived yester years had different stories from youth despite the fact that women are usually viewed as common group in a sisterhood notion (Ann Stewart, 2011) <sup>[48]</sup>. Sameness and difference can also be intersectional as

postulated in women's law. This study established the fact that rural women would be discriminated on land governance for the sake of them being women. However, a further discrimination would occur on women whose tribe origin is not Tonga for example.

Women's law approach links the women's lived realities and the laws which regulate the societal behaviour. Its aim is to interrogate and investigate the law system as it affects the lived realities of women (Bentzon *et al*, 1998) [4]. As pointed out by Stewart (1997) [50], women's law approach considers women and their lived reality as a starting point in law formulation and eventually law reform which gives a diversion from a tradition system of seeing law as the beginning of the process. It is its bottom-up character (reality - law) which attracted my attention to engage the theory in my study on women in communal land. This was also emphasised by Bruijn *et al* (1997) [13] when they realised that starting from real-life problem have an effect of bridging the gap between the academic field. The bottom-up approach has the effect of putting "taking the law to the people" concept away and emphasise that lived reality should shape the law.

Using women's law theory enabled me to analyse the women's lived reality on how they accessed, used, controlled and managed land in comparison to men in communal land as provided in the international and local formal laws (law Vs reality). Legal pluralism system dominated the researched community as such; the women's law approach became very relevant for the study especially on the fact that it considers the impact of legal pluralism on women's enjoyment of their freedoms and entitlements.

Apart from the formal systems in place, the communities usual rely on other informal norms and dispute resolution styles which women's law recognises (Bentzon *et al*, 1998) [4]. This approach enabled me to move away from the assumption that formal legal system is the only source for rights. The women's law approach also recognises the semi-autonomous structures which play a part in shaping the behaviour of members of the society. In some cases, these semi-autonomous structures might emerge stronger and become even more influential than the existing legal structures. Women's law theory was relevant as compared to the legal positivist theory which hinges on the system of law as the source of human rights and does away with the moral philosophic basis of human rights (Shestack, 1998).

This paper looked at the welfare of rural women's livelihood which depends on communal land, as such; I disregarded the positivism theory which regards law system as the only system to be obeyed despite the fact that it ignores the welfare of the individuals. For example, the law recognises head of the family who are mainly men to be beneficial from government programmes, thus this puts women at a disadvantage position. This is where moral philosophy should be applied.

In conclusion, as pointed by Tsanga and Stewart (2011) [48-49], the inadequacy and confining nature of law in conceptualising and resolving societal problems has made me to opt for women's law approach as the main theory of this study.

#### 4. African Feminism as Related to Access to Resources

In investigating women's access to communal land, African feminism was engaged, especially considering the importance of communal land in an African context. In fact, African feminism theories informed this study as it looked at the ways in which land is shared between men and women in Africa's rural areas.

The uniqueness of African feminism perspective from the traditional western feminism is in its non-acceptance of separatism from opposite sex. Some African feminists such as Ogunyeri (1996) [62] went to an extent of replacing the term feminism with African womanism to remove separatist motive of feminism. The concept of womanism emphasises on complementarity rather than competition among men and women. Steady (1981) [47] defined African feminism as emphasising female autonomy and co-operation, nature over culture. The concern of African feminism is the equality of all African people irrespective of gender.

African feminism questions on the features of traditional African cultures without denigrating them. African feminism became relevant in this study for its emphasis on African women whose problems are largely concerned with access to the basic amenities of life and land as one of those amenities. Ogundipe-Leslie's (1994) [37] STIWANISM theory (Social Transformation Including Women in Africa) is one of the important African feminism theories. It emphasises on social equality with men in Africa. Those who are for the theory observe the historical gender inequality but believe the change can be brought by convincing men to consider women in social spheres. Leslie's stiwanism model is relevant in redressing current economic inequality between men and women in African communities, especially rural areas where men still control resources.

Motherism theory by Acholonu (1995) [1] is another strain in African feminism. In her book, *Motherism: the Afrocentric Alternative to feminism*, Acholonu (1995) [1] described motherism as composed of motherhood, nature and nurture. The theory involves several things such as ordering, reordering, creating structures, building and rebuilding in cooperation with Mother Nature at all levels of human endeavour. In explaining "motherist", the theory does not separate men and women, the same way our African societies experience both female and male-headed families. A mother is characterised by partnership, co-operation, tolerance, love, understanding and patience.

Nego (no ego) feminism theory which falls in African feminism is based on negotiation. The theory itself is structured by cultural imperatives of the society. As Nnaemeka (2004) [35] has put it, this theory describes the lived realities of African cultures which have a culture of negotiation and compromise when it comes to realising agreements. Women in rural areas are generally patient and believe in negotiating for the access of resources including land with their men counterparts.

Other African feminism theories such as Cultural feminism theory which focuses on liberation of women through individual change also informed this research. This theory utilises essentialist understanding of male and female difference as the foundation of women's subordination in the society-the otherness of women. These were the main theories which educated this study.

#### 5. Communal Land Governance in Binga: Who Controls Land?

It will be short-sighted to analyse the land rights in rural areas without spelling out the players involved in the management of communal land in Zimbabwe. These institutions have influence in determining how the resource is shared between men and women. This discusses the different institutions involved in the governance of communal land in relation to women's land rights.

Cultural norms, beliefs and values and customary law are cited as reasons in Zimbabwe for women's lower social and economic status (Mavuru and Nyanhanda-Rutsauka, 2008) [29]. This is despite the sections 17(1)(c) of the Zimbabwe Constitution which states that; "The State and all institutions and agencies of government at every level must take practical measures to ensure that women have access to resources, including land, on the basis of equality to men".

The dominance practice of patrilocal marriage in Tonga people makes women subordinates to their husbands. This system which moves women to their husband's village makes them intruders to the husband's families as such they are treated as outsiders when it comes to the accessing of family resources including land. Indirect accessing of land by women through their husbands during marriage is not a problem in Tonga culture.

At global level, Zimbabwe as a party to CEDAW should seriously consider Article 5(a) which says; "States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."

During this marriage time, wives find themselves in a comfort zone in terms of accessing family resources though control of land by women remained questionable. However, problems arise after dissolution of marriage (divorce or death) where husband's family is required (according to Tonga culture) to take back the woman to her original village/family. This is in violation of CEDAW's article 16(c) which stresses same rights and responsibilities during marriage and at its dissolution.

Usually women's original family would not have considered married daughters when allocating resources as those men in control of family land consider it amounting to double dipping of women. This therefore entails that the end of marriage is basically the end of women's access to resources especially land which is vital for her livelihood. It is worth to note that CEDAW Article 13(a) is against the discrimination of women on family resources. It emphasises the equal right to family benefits for both men and women. In this context, the divorced daughter has the right to benefit from the family resource as her family share.

There was blame on the inconsistency of the system in Binga as far as allocation of communal land is concerned to women. The old system used to give responsibility to husband's family to allocate permanent land to wives. The use of this system was based on the fact that a girl child would have been married at an early age say 3 years or earlier and husband would be monitoring the growing of the girl. The system did not put the minimum marriage age. For this reason, a girl's father would not allocate land to her daughter who would join her husband's family. It would be the responsibility of the husband to budget resources including land for the coming wife.

The new system is where girls get married when they are mature, say at an age of 16 years and above. This system then put responsibility on the fathers to give land to a girl child because she is capable of owning land before married. However, the new system has proved that marriage is no longer permanent. Nowadays, when the marriage fail, a woman moves to another marriage and the process continue as long as the woman is still sexual active thereby earning the name "banakwenda". The mixture of the two systems leaves

women in suspense with nowhere to look for the allocation of land.

There is a general complaint that despite the fact that a boy child could move away from home, they are allocated land on permanent basis and that land remains theirs, in which the situation is different for girl child. Example is on a boy child who can go to city for employment for 20 or more years but his allocated land will be kept for him though it might be temporarily utilised by another family member but still remains his land. The question is, why can't this also happen with girl child when we now know that marriage is not a permanent institution same as employment of a male child which one day will come to an end. In fact, employment and marriage should be treated in a similar way. The argument is, if a married woman has no right to own land from her father, so should be an employed male child since they are both away from the family.

According to yester-years, women in Binga had right to get land from their husbands. This was due to the fact that in Tonga culture, if a woman gets married, the bond between the woman and husband's family is expected to be permanent (there was permanency in marriage). Under this version, divorce would be rare. In cases of death of a husband, the widowed would remarry within the same husband's family (wife inheritance), for example by the deceased husband's brothers as it was important to keep the same surname for all the woman's children. However, Maputo Protocol's Article 20(c) states that a widow shall have the right not only to remarry but that in event of remarrying; she should marry the person of her own choice.

For this reason, a woman would remain in her husband's family till her death and therefore, it was justified that she would only get the land from that family where she would spend the rest of her life (land moves with permanency of stay). This therefore translates to the fact that girls would not inherit their fathers' land since they would get married. The land which a woman gets on marriage remains hers and she would be in total control till death. This is the old version of customary system on how women accessed communal land in Binga.

However, the new system is now replacing the old version. This may be due to the respect of women's rights which are advocated by NGOs, government and civic organisations. It was after the realisation that wife inheritance was risk due to the diseases such as HIV and also in consideration of Article 20(c) of the Maputo Protocol which totally do not recognise wife inheritance but observe the choice of the widow to remarry a husband of her own choice. However, wife inheritance is still happening in some parts of Binga in contravening of the stated article. The new system meant that the inheritor takes over the property including land. Because the wife is not inherited, she would be required to go back to her father's home "empty handed" irrespective of emphasised rights during and on dissolution (article 16(c) of CEDAW), especially young women who still require remarriage. Because of this and to avoid conflicts, husbands no longer give permanent land to their wives since it is known that one day they will leave the husband's family.

This concept of remarrying of women after dissolution has earned them the name "banakwenda" meaning roving people. Husbands now give permanent land only to their old aged wives with no possibility of remarrying. This means an age has become a factor for a woman to get permanent land but the land would be in the overall authority of eldest son. The question remained unanswered is what treatment was given to

women without male children or no children at all. Traditionally, if a woman have no male child or no child at all and no possibility of remarrying, such woman is required to go back to her father's home who will have the responsibility to allocate land. Such kind of women are usually allocated barren, unproductive, infertile land since good lands would have given to sons or father's brothers. When comparing the two systems it sounds the old system was better since it catered for women in terms of communal land allocation.

Traditions of social norms therefore are major determinant of human relations at every level of society (Chant, 2010) <sup>[56]</sup>. It has been observed that Binga traditional norms are very pronounced up to clan level. A wife is taken as man's first acquired property which would then lead to him accessing family land as he is now considered a family man. This has been observed by Stewart (2010) <sup>[51]</sup> when she described women as being used as access points and conduits by men.

Binga traditional system is highly observed by Tongas to an extent that they rebel against anyone including government employees who go against their 'normal' way of doing things especially on land allocation. Recently the District Administrator (DA), now referred as District Development Coordinator (DDC) was evicted from his office after she tried to enforce the principle of gender equality and non-discrimination on family land allocation as required by section 17(1) (c) of the Constitution which states that 'the State and all government institutions at every level must take practical measure to ensure that women have access to resources, including land, on the basis of equality to with men. This did not go well with local traditional leaders who demanded her removal from office and in did she was removed.

This point is however, supported by Bird and Espey who emphasise on the importance of local knowledge in approaching and initiating changes for visible equality and economic development when they say; "Understanding the way in which household members interrelate the customary practices that govern their familial structures and traditional mores that affect their methods of managing assets and the complex of economic social and emotional calculations made by women and men when making decisions is vital for equitable social and economic development (Bird and Espey, 2010) <sup>[5]</sup>.

## 6. Women's Space in the Society: Women's Land Rights

It is common that in most cases, women are used as access points and conduits (Stewart, 2010) <sup>[51]</sup> to the resources they never fully benefit. The majority age of 16 as stated in the Constitution does not apply in the allocation of family resources in Tonga region. The main factor considered especially in accessing land is the marital status of the man. Marrying is the "passport" for a man to be considered to get an independent land. In fact, one of the things which earn a man respect in Tonga culture is the number of wives he has. It was observed that the more the wives one has the higher the respect awarded. On the same note, daughters were out of discovered to be out of men's "budget" on land because he consider them temporary at his home as they would get married somewhere to another family. This makes the issue of gender equality and empowerment of women to remain pertinent in development.

Traditional leadership believe a woman do not gets land from her father before and during marriage. A woman can only get land from father on return from husband either on divorce or death of the husband. It was also said that a married woman

needs to make good relations with her husband's entire family to get enough land for use during marriage. All these practices are meant to exclude women from family benefits which are a violation of CEDAW Article 13(a).

Emphasising the advantages of equitable allocation of resources between men and women, Marongwe (2002) <sup>[60]</sup> has the following to say; "A fair distribution of country's resources is a prerequisite for peaceful co-existence and stable development of Zimbabwe".

Women generally have limited access to land. The study among Mousgoum people in Kenya established unequal access of land between men and women as in the following quotation:

"Women are not given access to land in their own right, but as wines or in the case of divorces and widows, as daughters or sisters of males within their own families (Bruijun *et al* 1997:15) <sup>[13]</sup>.

Women can be equated to the property therefore he said property cannot own another property. The belief is that, women were not capable of owning land because they are considered to be first line property. This is the reason why a wife can be inherited like any other property. Binga culture puts category of property for inheritance as follows:

- i) First line property-wife
- ii) Second line property-immovable such as land and buildings
- iii) Third line property-movables

This is why people in Binga cannot talk of women owning land when they are also considered owned property.

## 7. Women's Poverty and Access to Land

Binga is one of the poorest districts in Zimbabwe given the persistence of chronic poverty in the area (Mudimba 2015) <sup>[32]</sup>. Some scholars have described the poverty in Binga as paradox (ibid) considering the vast resources available. Although the causes of the poverty in Binga cannot be pointed to a single factor, scholars like Colson (1999) <sup>[10]</sup> associated it to a change of social system of Tonga people after being displaced by the construction of Kariba dam. The situation is said to have taken Cernca (1997) <sup>[7]</sup> model of impoverishment, Risk and Reconstruction (IRR) which identifies risks associated with displacement and landlessness, food insecurity, loss of access to common property and social disarticulation being some of them. Whatever the direction it took, women are at the receiving end. In fact, the study by Colson (1999) <sup>[10]</sup> on the Zambian side of Tonga communities claimed that the domestic arrangement of equality between men and women changed after their displacement and this disadvantaged women who were left with no land of their own.

This new system has enforced that the only way for women to negotiate access to these economic resources like land would be through a male figure such as father, husband, sons or clansmen (Bird and Espey, 2010) <sup>[5]</sup>. This situation limits women's economic independence and choices. Access to economic resources leads to an improved well-being of a woman and her family as it has positive impact upon increased spending on food, children's welfare and education (ibid) especially in rural areas as noticed in Binga where women are the major users of land for agriculture. In fact, land can is can also be used by women as collateral to access other assets such as credits (Dolan, 2002) <sup>[58]</sup>.

Agarawal (1994) <sup>[2]</sup> emphasised on the availability of productive resources as a way of eradicating poverty when he

said; “Women’s and children’s risk of poverty and physical well-being could depend significantly on whether or not women have direct access to income and productive assets such as land and not just access mediated through husbands or other male family members”

### 8. Women’ Sources of Livelihood in Binga

“Land is vital source of rural women’s livelihoods which ensures the economic survival of their families and ultimately their control and ownership of land is crucial” (Nyagwande, 2016<sup>[36]</sup>:6)

In deed the above statement points that land is the main if not only source of women’s livelihood.

The customary tenure system of communal lands further put rural women at a disadvantage position as the system follows the customary laws in allocation of land. The nature of the system favours men as women only depend on negotiations through male relationship for access to land for their livelihood (Nyagwande, 2016)<sup>[36]</sup>. Gaidzanwa (1991)<sup>[18]</sup> further noted that the insecurity of the land rights in communal land tenure system reduces women’s commitment to agriculture. Like what was noted in Binga, the lack of permanency of women’s land rights also decrease their innovative to meaningful investment on land. This in turn contributes to the impoverishment of many rural women who consider themselves as nomadic especially after the end of the marriage institution.

In deed this indicates negligence on the part of the government especially in protecting the vulnerable rural women. As a party to CEDAW, Zimbabwe has a duty as outlined in Article 14(1) which says “States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas”.

Most women relied much on back yard gardens for their livelihood. The bigger plots were said to be under the control of their husbands who preferred cash crop (Cotton) which was not of much use to the women and children since their men monopolised the cash obtained.

### 9. Institutions and Actors in Land allocation: State Vs. Non State

Both government departments and local traditional leadership have been delegated powers to allocate and manage Communal land system on behalf of the State. One such institution is the Rural District Council which draws its power from section 8 of CLA.

The coming of CLA in 1983 meant the transfer of authority over the land from traditional leaders to RDCs. The Act gave RDCs power to allocate land to the rightful persons. The big question is on the procedure used by RDCs in allocating land. Did this bring in of RDCs institutions brought in new ways from Tribal Trust lands Act (TTLA) approach where traditional leaders were in charge. Lack of clarity still engulfed the new system and as a result, land continues to be allocated to household heads (mainly men) for usufruct by chiefs and village heads in Binga.

The main confusion on CLA is on the missing clarity on which institution between RDCs and traditional leadership yields more power on land. Section 8 of CLA states that;

“in allocating land, BRDC shall have regard to customary law relating to allocation, occupation and use in the area concerned and consult and cooperate with traditional leaders appointed to preside over the community concerned in terms of Traditional Leaders Act (TLA) and grant consent only to persons who according to the customary law of the community that has traditionally and continuously occupied and used land in the area concerned are regarded as forming part of such community or who according to such customary law may be permitted to occupy and use such land”

Close analysis of this section points to RDCs as having the authority but further question is asked on the situation where the two don’t reach consensus. In Binga specific, traditional leaders have emerged to be more powerful on agriculture and residential land in their areas. This is shown by the absence of appeal cases on land at Magistrates’ courts or to other authorities.

Traditional chiefs obtain their powers on land allocation from section 5(g) of TLA which states the duties of a chief as “ensuring that Communal Land is allocated in accordance with Part III of the Communal Land Act [Chapter 20:04] and ensure that the requirements of any enactment in force for the use and occupation of communal or resettlement land are observed”.

In all the land issues in Binga, women are invisible actors in decision making (Bruijn, 1997)<sup>[13]</sup>. This has influenced an increase in illegal land sales by men and those in authority who “deem” to have overall decision on it.

### 10. Influence of Legal Framework on Land

The highly claimed legislative achievement on women’s rights, in particular on addressing gender inequalities in African States does not tally with the reality for women in rural areas (Bird and Espey, 2010)<sup>[5]</sup>. Even in countries like Zimbabwe where laws and rules demand gender equality and protection of human rights, there is tendency to assume that equality *defacto* has been achieved and hence underestimating the existing discrimination and their negative effects. It is true however that Zimbabwe has been commended (including from CEDAW) for putting in place various national legislative instruments aimed at guaranteeing women’s legal and Constitutional rights. Furthermore, Zimbabwe’s effort in creating an enabling environment for the attainment of equity and equality between men and women is shown by ratifying various international conventions and declarations on gender and equality which include CEDAW (1979) +, the Beijing Platform for Action (1995) and SADC Gender and Development Declaration of 1997 which were of course infused into the country’s policies.

Drawing inferences from Zimbabwe Constitution (sec 56) on equality and non-discrimination, policies are also becoming more gender sensitive. In fact, policy formulation in Zimbabwe has proved to be not a big problem, instead, as put in Bruijn *et al* (1997)<sup>[13]</sup>, the main daunting problem in rural areas are implementation and stability of these policies. On this, BRDC was reluctant to maximise section 8 of the Communal Land Act (CLA) which give them authority over land under them. As seen in CEDAW report (2020)<sup>[53]</sup>, though Zimbabwe is commended for the existence of excellent text (laws and policies), however, experts have noted a huge gap which exists between the “text” and its application. On 13 February 2020 for example, Honourable Minister of Women Affairs, Sithembiso Nyoni presented Zimbabwe’s report to CEDAW in Geneva where she outlined position of Zimbabwe’s inheritance laws. She explained to the

Committee that when the husband dies, wife automatically inherits. This point was however, disputed by the committee who remained concerned about the continued eviction of the widows from their homes by the in-laws in Zimbabwe. This was also noted by Bird and Pratt (2004) <sup>[6]</sup> in Uganda on customary inheritance practices where they found out that though male heir to land was supposed to be responsible for supporting the deceased's family, widows and their children were finding themselves forced out from their homes and land (Bird and Pratt. 2004) <sup>[6]</sup>.

State use public policies in the promotion of effective development. The weakness of most Zimbabwean land policies is in the lack of gender sensitivity where society (women and men) is treated as undifferentiated. Another problem of these policies is on defining household as a nuclear family comprising of father, mother and children as if this is a standard set up of a family. Binga like any other rural set up area had proved that this definition of household as purported by land policies is lagging behind especially considering the increase in female-headed families which fall outside the scope of these public policies. This is where most land policies fail to meet the intention of the planners.

Binga has high male migration in search of employment in cities as the area has no industrial or manufacturing sectors. This leaves women as heads of the households and responsible for farm production. Any public policy therefore which assumes or defines household in a nuclear family lose relevance in most rural areas like Binga.

## 11. Identifying Rural Women's Problem in Legal Sphere: Availability Vs. Acceptance of law

One would wonder why Tonga people and women in particular are quiet even when it would be so clear that their basic rights have violated. It is a fact that Zimbabwe has good equality laws as per in its constitution and other legal instruments. Notably, women in Binga still find it difficult to get a completely protective system.

Legal system was one such mechanism which was hoped to save the situation. However, the gag still exists.

There are however different views on why women in Binga do not bring up their cases to courts including land issues. One school have blamed the "unavailability" of laws in remote area. Though the literature on laws might be there, it does not save a purpose unless the intended target is able to make use of it. In this case, it was found that material on laws was available in most places but it was in English which the majority of women could not understand even if it was read to them. Considering the high rate of illiteracy of among women is Binga as discussed above, even if the literature were in their vernacular language, still they would not be able to read and understand the contents.

Tsanga (2002) <sup>[65]</sup> in her book "taking law to the people" she also explained physical availability and the availability in terms of the actual knowledge which is seriously lacking in Tonga women. When I was trying to measure the know ledge on women's land rights, I discovered that most women were not able read and analyse the pamphlets which NGOs utilised to educate women on rights. Where no direct contacts were made, the system could not save the purpose due to the fact that the facilitators were either Shonas or Ndebele who are mostly employed by these NGOs and they could not fully explain the concepts in Tonga. It could make more impact if the educators were local people who can clearly explain the concepts. More so, people in Binga would not take the

programs serious as they would see as foreign laws which Shonas and Ndebeles are imposing on them.

On the other hand, some quarters argued that adequate legal system is there but the problem is on the acceptance of the laws of those who need protection and in this case are Binga women themselves. Binga district coordinator in the ministry of women affairs, gender and community development highly blamed women themselves in joining their men to reject the government programmes which are meant to empower them. It is therefore viewed that despite the availability of mechanisms to take the law to the people as put by Tsanga (2002) <sup>[65]</sup>, still people can reject those laws because they are embedded in culture or other belief. This explains the acceptance of laws as one of the factors to consider in evaluating the effects of the system. Non-acceptance like in Binga weakens the impact of the laws in place.

## Conclusion

It is concluded that the communal land tenure system is still embedded in the traditional customs which do not recognise women's land rights resulting in women failing to have freedom on the land. The system is skewed towards men. The customary tenure system only gives women secondary user right on land while men have primary user rights. This eventually results in women only access land through men and as such, their control over, use of and access to land is limited.

The evidence of non-coordinated effort of many land agencies worsen the women' situation in the land administration. In fact, some agencies are unaware of their roles on land administration even though legal instruments outline these duties. Several Acts which deal with land further confuse the system. The contradictions or clawback clauses on RDCA, TLA and CLA pose a threat to the division of duties on agencies. The overlapping and duplication of duties on the agencies leave land issues in the hands of traditional leadership institution which still follow the patrilineal system which highly discriminate women on accessing land.

Documentation of gender land conflicts (causes, nature and magnitudes) remains non-recorded for future reference especially at chiefs and village levels despite the fact that this is the most used means of solving land disputes in the district. It should be noted that land is the backbone for women and their families for livelihood. The un-access to land by rural women has pushed them to extreme poverty. Though the area receives, moderate-low rains the inadequacy of land worsen the women' situation. Binga women have however proved to be very effective on land as they used to live better life while the cultivated along Zambezi before the construction of Kariba dam. Their movement worsened an imbalanced situation on the land ownership of land between men and when, women being on the losing part. Non-availability of land for women has seriously pushed them below the Poverty Datum Line (PDL).

Policymakers who are politicians have a tendency of ignoring addressing cultural and traditional social practices even if they see their adverse impacts for the fear of compromising their popularity especially when going for election polls.

Gender land conflicts are mainly caused by structural-based scarcity of land resource. The main cause of this is the fact that the present policies, institutions and programmes have failed to distribute land in an equitable and socially acceptable manner among women and men.

## Recommendations

Gender issues have to be integrated into development policies, plans and strategies and advocacy on gender issues and women's empowerment to continue to work hard to inform policy makers on the importance of taking on board gender issues and concerns at all levels. On this issue, policy makers (Members of Parliament) need to be always engaged with their constituencies and interact with electorates so that the use people lived experiences to inform the law they disseminate which should improve the legal literacy of the community and build up the capacity of its structures (Tsanga, 2007:499) Most households in Binga and any other rural areas are female-headed and as such, more support should be given to female farmers in terms of services and policy to improve agricultural production in rural areas. It is important to consider the women's crucial role in agricultural planning and institutional policies in rural areas for it to continue to be the main food provider - rural women should be considered as farmers instead of merely housewives. Government's agricultural programmes need to focus more on women for their active participation in agricultural activities. The "Head of family" syndrome which the government is relying benefits men who are traditionally considered natural heads of families.

This research has revealed that rural women are increasingly burdened with supporting their families, as such; agricultural land policies should consider them beneficiaries of agricultural production with the aim of increasing the standard of living in rural areas.

Institutions such as RDCs, traditional leadership and any other need to be trained and equipped with appropriate knowledge and skills that would enable them to resolve gender and related conflicts in the areas of influence. Further to that, coordination system should be in place to synergise the efforts of stakeholders. Agencies should not compete but complete each other. In fact, it would be prudent to put in place effective monitoring mechanisms within institutions which are involved in communal land administration to ensure the government is objective of gender equality and non-discrimination is achieved as per Constitutional requirement.

The provision of basic education to rural women by government can go a long way in assisting them to interpret legal documents on ligation of land related issues. More so, the court system should come closer to people – there is need for the visibility of law.

In summing up the recommendations of this paper, the way to go is for land law reform looking at both customary laws and the current state laws. Dahl (1987) equated law to a fertile soil for the cultivation of rules which can provide a foundation for change. In quoting Dahl, Nyagwande (2016) <sup>[36]</sup> noted that in order to improve rural women's position, not only good law should be formulated but implementation and monitoring needs to be effective. This is line with article 1(a) of the Maputo Protocol which states that;

"States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination"

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