

**A STUDY OF WIDOW INHERITANCE IN ZAMBIA AND ITS RELATIONSHIP TO
THE DECEASED BROTHER'S WIDOW'S MARRIAGE ACT**

BY

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**A DISSERTATION SUBMITTED TO THE UNIVERSITY OF ZAMBIA FOR
PARTIAL FULFILMENT OF THE REQUIREMENTS OF BACHELOR OF LAWS.**

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DEDICATION

This research is dedicated to my parents Michael Sankwe Kambole and Florence Mwendapole Kambole, my grandmother Martha Mwendapole and my two young brothers Abel and Sankwe Kambole.

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ABSTRACT

Widow inheritance is a custom commonly practiced in Africa. In this custom, a man inherits the property and wife of his deceased brother or relative. The custom is practiced in order to ensure that a widow and her children are taken care of after the death of her husband. In Zambia, the custom is supported and portions of it given statutory legal effect by The Deceased Brother's Widow's Marriage Act Chapter 57 of the Laws of Zambia, which legalises the marriage between a man and his deceased brother's widow. This research set out to compare the practice of widow inheritance among the Bemba, Nsenga and Lenje tribes of Zambia. This was done in order to establish why these three tribes practice the custom and whether the custom is relevant in Zambian modern society.

The objectives of the research were to establish how and why the Bemba, Nsenga and Lenje tribes practice widow inheritance and whether economic, social and cultural changes in society have affected the practice of this custom. This research was conducted by interviewing members of the communities in question and through desk research from relevant statutes, books and the internet.

It was established that under customary law, women were not allowed to own property or land without the consent of their husbands or their fathers if unmarried. Therefore, when a man died, his male relative inherited his property. Widow inheritance was therefore necessary because the widow could not inherit the property of her deceased husband. Therefore, widow inheritance ensured her continued care from her deceased's husbands relatives who inherited his property. Widow inheritance was also done in order to continue the deceased's lineage and in order to keep the widow in the family.

This research shows that widow inheritance is a custom. Like most customs, the way widow inheritance is practiced has changed over time in response to economic, social and cultural changes. It was established that the Bemba, Nsenga and Lenje no longer practice widow inheritance fully in the sense that only a remnant of the practice has survived as an option to be opted for instead of a mandatory practice. This has been due to the enactment of the intestate Succession Act Chapter 59 of the Laws of Zambia and Wills and Administration of Testate Estates Act Chapter 60 of the Laws of Zambia which provide for how much a widow inherits from her deceased husband's estate. In addition, the risk of the spread of HIV/AIDS and other diseases has contributed to the move away from practicing widow inheritance. Human rights fundamentalists also argue that customs like sexual cleansing and widow inheritance are inhuman, degrading, humiliating and against international human rights that everyone is entitled to. This research further shows that firstly, the way the custom is practiced is not contradictory to the inheritance acts, it flourishes in its own right. Secondly, the practice is not injurious therefore, the custom should be promoted and the act amended to suit the changes in society.

TABLE OF STATUTES

Deceased Brothers Widows Marriage Act, Chapter 57 of the Laws of Zambia

Intestate Succession Act, Chapter 59 of the Laws of Zambia

Local Court Act, Chapter 29 of the Laws of Zambia

Penal Code Act Chapter 87 of the Laws of Zambia

Wills and Administration of Testate Estate Act, Chapter 60 of the Laws of Zambia

The Constitution Chapter 1 of the Laws of Zambia

Matrimonial Causes Act No. 20 of 2007

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CHAPTER ONE: INTRODUCTION

1.1 INTRODUCTION

The aim of this research is to compare the custom of widow inheritance among the Bemba, the Nsenga and the Lenje tribes in Zambia and to establish whether the practice is in accordance with the objectives of the Deceased Brothers Widows Marriage Act Chapter 57 of the Laws of Zambia (hereinafter referred to as “the Act”). The research also discusses whether the legislative, economic, social and cultural changes that have taken place in Zambia have affected the practice of the custom. This will be achieved by critically discussing the objectives of the Act and analysing the practice of widow inheritance in Zambia.

1.2 BACKGROUND

In Zambia, the legal framework consists of statutory law that is practiced side by side with customary law¹. In traditional Zambian society, before colonial rule, people regulated their conduct according to rules that were passed down from their ancestors. These rules were not written down and became binding to people over the course of time. For a custom to be legally binding, it has to be reasonable, long established, uniformly observed and certain. It can be set aside if it is repugnant to natural justice.² The practice of customary law differs from one place to another. In Zambia, there are 73 ethnic groups, therefore, there are different customs, as well as similar customs practiced differently from one ethnic group to another. Customary law is also dynamic and changes over time in response to social, economic and cultural developments in society³.

Widow inheritance is a custom practiced in Southern Africa, it allows a man to inherit the property of his deceased brother and also marry his widow under customary law. It ensures

¹ Choolwe Beyani, Zambia-Justice and The Rule of Law, accessed 24Tth May 2015, <http://www.osisa.org>

² Margret M Munalula, Legal Process: Zambian Cases, Legislation and Commentries (Lusaka: UNZA Press, 2004), 45-46.

³ Margret M Munalula, Legal Process: Zambian Cases, Legislation and Commentries (Lusaka: UNZA Press, 2004),89.

that the widow and her children do not suffer and are taken care of after the death of her husband⁴. Under customary law, rights of property inheritance are given to the family of the deceased male and property is usually owned by men. Rights of women to own property is severely limited. Under customary law, conformed to by many African societies, when a man dies his property is either inherited by his adult sons or repossessed by his family. Therefore, widow inheritance ensures that a widow is cared for after her husband's death⁵.

In Zambia, the custom was enshrined into law by the Act which legalises marriage between a man and his brother's widow. It states that; "No marriage heretofore or hereafter contracted between a man and his deceased brother's widow within Zambia or without, shall be deemed to have been or shall be void or voidable, as a civil contract, by reason only of such affinity."⁶ The Act further provides that; "Notwithstanding anything contained in this Act or the Matrimonial Causes Act, 1857, of the United Kingdom, it shall not be lawful for a man to marry the divorced wife of his brother, or the wife of his brother who has divorced his brother during the lifetime of such brother."⁷

This section prohibits a man from marrying his brothers' divorced wife during the lifetime of the said brother. This shows that the objective of the Act was to specifically allow for the practice of the custom of widow inheritance so that the widow and her children are taken care of after the death of her husband.

Over the years, there have been social and economic changes, enactment of the Intestate Succession Act Chapter 59 of the Laws of Zambia (hereinafter referred to as the ISA) and the Wills and Administration of Testate Estates Act Chapter 60 of the Laws of Zambia (hereinafter referred to as the Wills Act). These statutes have modified the traditional ways of

⁴ Australian government refugee review tribunal: Country advice Zambia, accessed October 19th2014. www.refworld.org

⁵Tanzania: Why Wife Inheritance should be discouraged, accessed 3rd February 2015, <http://www.allafrica.com>

⁶ Section 3

⁷ Section 5

succession and expressly provide that children and widows can inherit from their deceased fathers/husband's estates.

There has also been a concern that the practice of widow inheritance can lead to an increase in the spread of HIV/AIDS and can also be emotionally and psychologically damaging to both the widows and the children involved⁸. It is reported that inherited widows lack economic and social power in their subsequent marriage as they lose their social standing and are at a risk of gender based violence. It is further reported that the process of being inherited is degrading and humiliating, which is an infringement on a person's fundamental right to dignity⁹. There is a growing concern that the practice of degrading rituals like sexual cleansing, widow inheritance and the practice of levirate and life threatening mourning and burial rites are examples of human rights violations that are justified by reliance on culture and tradition¹⁰.

The Zambia Law Development Commission has a mandate to conduct research on weak and ancient legislation and recommend on the removal or amendment of such legislation and develop new laws that respond to the country's needs. The Commission co-hosted a stakeholder's consultative workshop as a first step in repealing the act in which it was decided that a feasibility study was to be conducted across the country to gain support for the maintenance or repeal of the act¹¹.

⁸ Katie Nguyen, *Zambian chiefs back repeal of Degrading Widow Inheritance Law- study*, <http://allafrica.com/stories/201407231242.html>.

⁹ Michael Mulimansenga Chanda, *Using a feasibility study as an advocacy tool towards repealing an antiquated Law that perpetuates HIV: a case of the Deceased Brother's Widows Marriage Act in Zambia*, <http://pag.aids2014.org>

¹⁰ Timothy M. Banda, *Silent Tears: "The Continued Violation of Widows Inheritance Rights In Zambia." A Study of Widows Experiences in Kitwe District of The Copperbelt Province*, <http://www.Searcwl.ac.zw>.

¹¹ Alfred S. Magagula, *The Law and Legal Research in Zambia*, accessed 2nd June 2015, <http://www.nyulawglobal.org/globalex/Zambia.htm>

1.3 STATEMENT OF PROBLEM

Widow inheritance was important because women under customary law, women had no right to own and transfer property. Therefore, it ensured that widows and their children were taken care of after the death of their husbands. This research analyses and compares the practice of widow inheritance among three tribes namely: the Bemba, Nsenga and Lenje because customary law is practiced differently among different tribes in the country. This research therefore, examines why these tribes carry out widow inheritance, the way they do it and the evolution of the said custom to what it has become today. It also establishes what legislative economic, social and cultural changes have led to the evolution of the custom. This research establishes whether the way the custom of widow inheritance is practiced today is reasonable.

1.4 RESEARCH OBJECTIVES

The objectives of this research are to;

1. Undertake a comparative study of how and why widow inheritance is practised among the Bembas, theNsengas and the Lenjes.
2. Establish whether the way widow inheritance is practiced has been influenced over time by economic, social and cultural changes in Zambia.
3. Establish what economic, social and cultural changes may have an impact on the practice of widow inheritance.
4. Establish the relationship between the custom of widow inheritance and the Deceased Brother's Widow's Marriage Act.

1.5 RESEARCH QUESTIONS

This research paper answers the following questions;

1. How is widow inheritance practised among the Bembas,the Lenjes, and the Nsengas?
2. Why do the Bembas, Lenjes and Nsengas practice widow inheritance?

3. Has the practice of widow inheritance been modified by the social, economic and cultural changes that have taken place in Zambia?
4. What is the relationship between widow inheritance and the Deceased Brother's Widow's Marriage Act?

1.6 SIGNIFICANCE OF THE STUDY

Customary law practices differ from tribe to tribe and also changes in response to social needs. Widow inheritance is a custom practiced by many tribes in Zambia. It is therefore important to look at how and why different tribes undertake this practice. This research examines how and why widow inheritance is practiced among three different tribes in Zambia. Over the decades, a lot of legislative, economic and social changes has taken place in Zambia, for instance women are now able to legally inherit their deceased husband's property. This research is important as it establishes whether and if so how the practice of widow inheritance has changed over the years. It further establishes whether the practice has been affected by the economic, social and cultural changes that have taken place. In so doing it therefore establishes whether widow inheritance is reasonable and still necessary in Zambia today.

This research is beneficial to women in general and is specifically essential in the current fight for gender equality and promotion of women's rights. It is also beneficial to men who might be faced with the choice of inheriting a widow. This research is also important as it is a contribution to the legal frame work on the discussion of customary practices in Zambia. It is also a contribution to the feasibility study being conducted by the Zambia Law Development Commission to gauge support for either the maintenance or repeal of the Deceased Brother's Widow's Marriage Act.

1.7 LITERATURE REVIEW

A Number of scholars such as Thole, Michael Chanda, Banda and Nguyen have written about how unfavourable the practice of widow inheritance is in modern times. This research however, focuses on how and why the custom of widow inheritance is practiced among three different tribes in Zambia. Nguyen¹², argues that widow inheritance is a southern African tradition in which the surviving siblings of a deceased man have a right to marry his widow and lay claim to his estate. The custom in Zambia was enshrined in law with the Deceased brother's widow's marriage Act. The Act allows a widow to be inherited by her deceased's husband's family whether she consents to it or not.

Nguyen further argues that "it's a tradition that had very good intentions and it had very good results at the time. But in the era of HIV, there is quite a lot of threat, there is quite a lot of risk, there is a growing recognition that this tradition hurts women."¹³

This quote shows that, over the years, there has been recognition that the tradition of widow inheritance hurts women and has become unfavourable due to the increased spread of HIV/AIDS. Nguyen's article is important to this research as it defines widow inheritance and recognises the custom's existence in Zambia and that it has been enshrined into law by the Deceased Brother's widow's marriage Act. However, this research establishes whether the widows in all the tribes in Zambia do not have a choice to be inherited or not by their deceased husband's relatives. The custom has been modified to suit the economic, social and cultural changes that have taken place in present day Zambia.

According to Olwormondu:

In the Alur custom 'bride inheritance'-when the clan designates a male relative to replace your deceased husband- was common practice. This probably comes from the tradition of bride price. Since a husband must pay a price (often in form of cattle) to marry a woman, culturally women are considered as property by the clan, their

¹² Katie Nguyen, *Zambian chiefs back repeal of Degrading Widow Inheritance Law- study*, accessed <http://allafrica.com/stories/201407231242.html>

¹³ Katie Nguyen, *Zambian chiefs back repeal of Degrading Widow Inheritance Law- study*, <http://allafrica.com/stories/201407231242.html>.

families and husbands. This is why my late husband's family felt it was their right to grab my property and push me to remarry my brother in-law. Failure to agree to the remarriage arrangements means that you are rejecting the culture or in the eyes of the elders it can even confirm that you are an outcast or a witch.¹⁴

Olwormondu observes that widow inheritance in Uganda is carried out because a woman is considered as property of a clan. Refusal by a widow to be inherited led to suspicions of witchcraft and being treated as an outcast. This research on the contrary focuses on how and why widow inheritance is carried out in Zambia.

Thole highlights that section 4 of the Act protects people who got married to their deceased brother's widows before the commencement of the Act. It allows the existing rights and interests in terms of succession to continue applying even for marriages that were contracted before the enactment of the act. He further argues that the act was enacted in 1926 and was only amended once in 1964, it has never been amended since then to reflect changes that have occurred regarding marriage to a deceased brother's widow since then. The issues that the act was meant to address are now covered by the intestate succession act, therefore the act is no longer relevant to Zambia.¹⁵ Thole was only focusing on the succession rights of people who were married to the widow of their deceased brother. This research however establishes whether all aspects of the custom have been rendered irrelevant due to the enactment of the inheritance acts.

Another study was conducted by Chanda¹⁶ in 18 districts in Zambia, to collect views from different people on whether or not to repeal the act. The statistics collected are contained in the quotation below;

Twenty of the twenty one (95%) chiefs interviewed and 231 of the 249 (93%) other key informants supported repeal of the Act, viewing it as harmful to the HIV/AIDS response.

¹⁴Fighting to End Widow Inheritance, accessed 3rd April 2015, <http://www.actionaid.org/uganda/stories/fighting-end-widow-inheritance>

¹⁵ Lloyd Samson Thole, Testamentary and intestate succession in Zambia- A critical Review, Obligatory Essay, UNZA (2006)

¹⁶ Michael Mulimansenga Chanda, Using a feasibility study as an advocacy tool towards repealing an antiquated Law that perpetuates HIV: a case of the Deceased Brother's Widows Marriage Act in Zambia, <http://pag.aids2014.org>.

Additionally, 90% of the other participants- including more than 100 village headpersons, 20 judges and magistrates, 50 civil society and faith-based organisation leaders, 30 government officials and over 1000 members of society-supported the repeal of the Act.

According to the statistics, most Zambians want the Act repealed as it is harmful to the HIV/AIDS response. This research highlights the legislative, economic, social and cultural changes that have affected how the custom of widow inheritance is practiced.

Maurice¹⁷ observes that the term levirate comes from the Latin word *levir* which mean a husband's brother. This refers to unions in which a widow is married by her deceased husband's brother in order to raise the children for him. These marriages were common in communities where marriages were endogenous, that is within the boundaries of one's clan only. They also existed, although less common in communities in which marriage were exogamous, that is marriage between people from different clans. All African communities had a way of managing and taking care of their widows. Maurice further argues that Africans did not want outsiders to inherit the property of their deceased, therefore, when a man dies, a brother in law was selected to guard property of the deceased which included bearing children in order to continue the lineage of the deceased.

Maurice argues that levirate unions in Africa are institutions of care for the widow and not a new marriage, they are a continuation of the first marriage. This is evidenced by the fact that children born of such a union live on and inherit the land of the deceased. This is important to this research because it defines levirate marriages or widow inheritance and shows that it was a way of managing a widow after the death of her husband. However, my research differs from this one as it argues that the marriage or union formed between a man and his deceased brother's widow is a marriage is recognised by the act as a marriage in its own right and not a continuation of the first marriage.

¹⁷ Ogolla Maurice, "Levirite Unions in Both the Bible and African Cultures: Convergence and Divergence", International Journal of Humanities and Social Science, Vol. 4 No.10(1), accessed 30th May 2015, <http://www.ijhssnet.com>

In a study conducted in Kitwe, Banda¹⁸ argued that in Zambian traditional society, due to custom, reciprocal duties and obligations in an extended family protected the widow and her children. However, today custom is more likely to be used to oppress them. The experiences faced by women stem from discrimination in inheritance customs and patriarchal nature of society. It also stems from traditional practices and customary codes that dominate and take precedence over constitutional guarantees of equality, modern laws and international women's human rights standards.

Unlike Banda whose research focused on how many traditional practices exploit women and children, this research specifically looks at the practice of widow inheritance among three tribes in Zambia to establish whether they all exploit women as customary law is practiced differently from tribe to tribe. This research establishes whether the widows have no choice but to be inherited. It also establishes why the widows are being inherited and if it is necessary to inherit the widows.

In a study conducted in Kenya, Agot and Stoep¹⁹ highlight that in a United Nations programme of HIV/AIDS report, it was reported that the HIV/AIDS epidemic had its most profound effect in sub-Saharan Africa with 67.1 % of people living with HIV, the majority of which were women. Widow inheritance has been postulated as contributing to the risk of HIV infection and transmission. They argue that widow inheritance is a widespread practice in sub-Saharan Africa notably in Kenya, Uganda, Malawi, Zambia, Senegal, Nigeria and Congo. Cultural practices such as widow inheritance and sexual cleansing are among the reasons for the spread of HIV/AIDS in the Luo community in Kenya. This has led to several HIV prevention campaigns targeted at the elimination of widow inheritance in the Luo community in Kenya. However, many members of the Luo community have been reluctant to

¹⁸ Timothy M. Banda, Silent Tears: "The Continued Violation of Widows Inheritance Rights In Zambia." A Study of Widows Experiences in Kitwe District of The Copperbelt Province, <http://www.Searcwl.ac.zw>.

¹⁹ Kawango E Agot, et al, Widow Inheritance and HIV prevalence in Bondo District , Kenya: Baseline results from a Prospective Cohort study, accessed 25th May 2015, <http://www.nih.gov>

stop this practice arguing that widow inheritance performed by the brother in law of the deceased actually curbs the spread of HIV as it restricts the widow to one sexual partner. It is argued that non relative inheritors who practice inheritance for ritual purposes only are responsible for the spread of HIV/Aids.

Fasoranti and Aruna²⁰, argue that every culture determines the practices that relate to widowhood and mourning. Among the Igbo of Nigeria upon the death of a man, his property passes to his siblings and not his wife and children. One of the siblings then inherits the widow to take care of her. Among the Yoruba of Nigeria, property of the decease is shared among the children and widows only have access to it through their children. Widow inheritance among the igbos and Yorubas is not popular as it was before but it is still practiced in very remote areas. This literature is important to this research as it shows that widow inheritance is a custom commonly practiced in Sub-Saharan Africa. It was commonly practiced in Nigeria and is still practiced in Kenya. This research however, focuses on the changes in how the custom is being practiced in Zambia today and how this affects the Deceased Brother's Widow's Marriage Act.

1.8 RESEARCH METHODOLOGY

This research uses primary sources of information such as statutes, decided cases and secondary sources of data such as books, journals and internet articles. A structured interview will also be carried out with members of the Lenje community in Central province, the Bembas of Northern province and the Nsengas of Eastern Province.

1.9 OUTLINE OF CHAPTERS

Chapter two gives a background of customary law and the general practice of widow inheritance in Zambia and also discusses how and why the Bemba's of Northern Province

²⁰ O.O Fasoranti and J.O Aruna, "A Cross-Cultural Comparison of practices relating to widowhood and widow-inheritance Among the Igbo and Yoruba In Nigeria", *Journal of World Anthropology: Occasional paper*, Volume III, no. 1, accessed 15th May 2015, <http://wings.buffalo.edu>

practice the custom of widow inheritance. Chapter three inquires on how and why the Nsengas of Eastern Province practice widow inheritance. Chapter four is a discussion of the practice of widow inheritance among the Lenjes of Central province. It further discusses the differences and similarities of how widow inheritance is undertaken among the three tribes and whether all the three tribes have modified the way they practice the custom due to economic, social and cultural changes. Chapter five then concludes the research and suggests recommendations where appropriate.

1.10 CONCLUSION

This chapter has introduced the research area by giving the aim and background of the study, the statement of the problem, objectives and significance of the study as well as the research methodology. The next chapter discusses how widow inheritance is practiced among the Bemba and why they practice it.

CHAPTER 2: WIDOW INHERITANCE IN ZAMBIA

2.1 INTRODUCTION

This chapter discusses the practice of widow inheritance in Zambia, in particular how and why the Bemba practice widow inheritance. Firstly, it gives a background on customary law in Zambia and secondly, a discussion of the practice of widow inheritance in Zambia.

2.2 CUSTOMARY LAW IN ZAMBIA

Ndulo¹ argues that, African Customary law is the indigenous law of various ethnic groups in Africa which originates from the practices and customs of the people. The term “African customary law” does not necessarily mean that there is a uniform set of customs that prevail in any one country. The term is generally used to cover many different legal systems that are ethnic in origin and only operate within the area occupied by the ethnic group. Customary law is the oldest law known to man, it has a great impact on the personal lives of many Africans in matters such as marriage, inheritance and traditional authority².

Customary law requires widespread acceptance as customs give rise to expectations that guide people’s actions. Individuals recognise the benefits of behaving in accordance with other people’s expectations. Therefore, practices that everyone counts on being observed will then be regarded as binding and as customary law³. Before colonial rule in Zambia, people regulated their conduct according to rules that were passed down from their ancestors. These rules that were passed from generation to generation were not recorded but became binding over the course of time through their observance by the community they applied to. When the colonialists came to Zambia, they also brought with them their law, the common law⁴. This law clashed with the already established code of conduct which the natives were bound to.

¹ Muna Ndulo, African Customary Law, Customs and Women’s Rights, <http://scholarship.law.cornelledu/facpub>

² Muna Ndulo, African Customary Law, Customs and Women’s Rights, <http://scholarship.law.cornelledu/facpub>

³ Mark Sulkowski, Customary Law, accessed 10th February 2015, <http://jim.com/custom.htm>

⁴ Margret M Munalula, Legal Process: Zambian Cases, Legislation and Commentaries (Lusaka: UNZA Press, 2004), 45

British policy recognised the need for the natives to be controlled by customary law norms that they had been subject to before the coming of colonialists. Therefore, there was recognition of two separate legal systems, the common law that applied to everyone and the customary law that applied to the natives. Article 9 of the Barotseland North-western Rhodesia Order in Council of 1899 protected and respected any native laws or customs which regulated the civil relations of any native chiefs or tribes that were under the protection of the crown. This was subject to a condition that they were compatible with the exercise of the crown's jurisdiction and power⁵.

Customary law was applied to the extent that it was not against any written law or contrary to natural justice, equity and good conscience. Native courts applied customary law to transactions between natives. Even British Courts applied customary law in civil cases between natives brought before them so long as the custom was not repugnant to natural justice or morality. The British judges were assisted by native assessors in establishing the existence and validity of the custom in question⁶. Customary law is still recognised in Zambia today and is applied side by side with statutory law, The Local court Act Chapter 29 of the Laws of Zambia⁷ provides that;

Subject to the provisions of this Act, a local court shall administer;

- (a) the African customary law applicable to any matter before it in so far as such law is not repugnant to natural justice or morality or incompatible with the provisions of any written law.

This quotation means that customary law is that customary law can be applied in any matter subject to the repugnancy clause. This shows that customary law in Zambia is recognised and accepted as binding as long as it is not repugnant to natural justice and morality or

⁵ Margret M Munalula, *Legal Process: Zambian Cases, Legislation and Commentaries* (Lusaka: UNZA Press, 2004),64

⁶ Margret M Munalula, *Legal Process: Zambian Cases, Legislation and Commentaries* (Lusaka: UNZA Press, 2004),64

⁷ Section 12(1)

incompatible with any written law. In the case of *Kaniki V Jairus*⁸ the Lala custom called *akamutwe* was questioned. This is a practice that occurs when a spouse dies. The practice entails payment of compensation by the relatives of the surviving spouse to the relatives of the deceased spouse. In this case what was in contention was not the payment of the money but the amount to be paid. It was held that the custom was contrary to natural justice and morality. The judge went on to say in his ruling that this did not make the observance of the custom an offence but the custom is not enforceable in a court of law.

For a custom to be valid, it has to satisfy four criteria. Firstly, its usage has to be long established. The second criterion is that the custom has to be reasonable, a custom is considered to be reasonable if it is not injurious or oppressive. A custom that is so in favour of one party as to be fundamentally unjust to the other party is said to be unreasonable. Further, the custom has to be uniformly observed and certain.⁹

2.3 WIDOW INHERITANCE IN ZAMBIA

All ethnic groups practice some form of cleansing as a prerequisite for succession. This is done so that the family name, wealth, children and widows are maintained. It is believed that when a death occurs, the spirit of the dead spouse hovers over the surviving spouse unless they are cleansed through some ritual to rid them of the spirit of the deceased. One of the rituals used to rid the surviving spouse of the spirit of the deceased spouse is sexual cleansing. This is done through sexual intercourse between the surviving spouse and a sibling or cousin of the deceased spouse. The person who cleanses usually inherits the widow as well, it does not matter whether he is married or not as polygamous marriages are acceptable under customary law¹⁰.

⁸(1967) Z.R. 71 (H.C.)

⁹ Margret M Munalula, *Legal Process: Zambian Cases, Legislation and Commentaries* (Lusaka: UNZA Press, 2004), 45

¹⁰ Zambia Law Development Commission, *Restatement of Customary Law Working Paper*, December 2002, accessed 12th February 2015. <http://www.zambialii.org>

According to Amber Peterman widow inheritance is defined as;

The practice whereby a male relative of the dead husband takes the widow as a wife, traditionally in part to provide economic security for the woman. Variants of the practice exist by tribe, but it has historically included cleansing involving sex with a social outcast or a male relative to rid the woman of her dead husband's evil spirits and misfortune. Sex is often forced and protection is rarely used, as the cleansing is not thought to be valid unless semen enters the woman.¹¹

This quotation means that widow inheritance is a practice where the male relative of the deceased husband takes the widow as his wife in order to provide economic security for her. The practice is done in various ways but it involves sexual cleansing with a social outcast or a male relative in order to rid the widow of her dead husband's evil spirits. Under customary law, when a woman loses her husband, she has a right to be provided with a new husband by the extended family of the deceased or a duty to accept the new husband provided for her by the extended family of the deceased. After the death of a man, a person known by the family to be responsible was chosen to take over the widow as his new wife. This person had to be the brother or cousin to the deceased and had to be from his clan. The person who inherits the widow is required to have children with the widow so that there is continuity of the lineage of the deceased¹².

Widow inheritance can be done in different ways and can have different functions among different ethnic groups. Mainly, it serves both as social protection and control over the widow and the children left behind by the deceased. It is also done to keep the wealth of the deceased in the family, if the widow inherits the deceased's property and remarries, the wealth then goes to her new family¹³.

¹¹ Amber Peterman, Widowhood and asset inheritance in sub-Saharan Africa: empirical evidence from 15 countries, June 2011, accessed 23rd February 2015

¹² Tanzania; Why Wife inheritance should be Discouraged; Daily News 13th January 2014, accessed 24th February 2015, [http:// m.allafrica.com](http://m.allafrica.com)

¹³ Tanzania; Why Wife inheritance should be discouraged; Daily News 13th January 2014, accessed 24th February 2015, [http:// m.allafrica.com](http://m.allafrica.com)

Widows in sub-Saharan Africa usually face a lot of discrimination when it comes to inheritance of property after a spouse dies. In many parts of Africa the rights of women to inherit land and other property is very limited. Under customary law which is practiced widely throughout Africa, property of a man is usually inherited by his adult sons or by his family at his death if his children are still very young. It is argued that customs and traditional practices are used to justify the oppression of widows and may also override statutory and constitutional provisions that provide them with legal rights to inherit¹⁴. In Africa patriarchal ideologies are strong even in matrilineal societies, men are usually preferred as inheritors to women.

In Zambia there are two systems of land administration, statutory tenure and customary tenure. The Lands Act¹⁵ was passed in 1996, guarantees women the possibility of ownership of land. The Act states that customary land should be administered according to the customary law in that area. The act states that;

Notwithstanding subsection (3), the President shall not alienate any land situated in a district or an area where land is held under customary tenure-

(a) without taking into consideration the local customary law on land tenure which is not in conflict with this Act.¹⁶

The majority of land in Zambia is under customary tenure. Customary tenure is estimated to be 94 percent while state land is estimated to be 6 percent. Under customary law, men dominate the use and control of land, women just have user rights and access to land. Therefore, this provision which requires customary land to be administered according to the customary law that applies to that area, may be used to oppress women and prevent them from owning land¹⁷.

¹⁴Tanzania; Why Wife inheritance should be discouraged; Daily News 13th January 2014, accessed 24th February 2015, [http:// m.allafrica.com](http://m.allafrica.com)

¹⁵ Lands Act, Chapter 184 of the Laws of Zambia

¹⁶ Section 3 (4)

¹⁷ National Reports Zambia-Land , accessed 23rd May 2015, <http://www.un.org>

Widow inheritance is common amongst most ethnic groups in Zambia as it ensures the continuation of life for the widow and her children and gives the widow access to the property left by her husband. The widow however has an option to return to her relatives if she chooses to be released through other forms of non sexual cleansing¹⁸.

Sexual cleansing and levirate marriages or widow inheritance have been implicated in the spread of HIV/AIDS and sexually transmitted diseases as condoms are rarely used in the ritual. Due to this as well as religious reasons, sexual cleansing is no longer part of the cleansing ritual. However, some widows still prefer sexual cleansing as well as widow inheritance. This is because the widow may lack the resources to take care of herself and her children as the deceased's successor usually inherits the property of the deceased. Another reason why some widows preferred to be inherited was because of fear of not being accepted by their families if they leave their husbands village¹⁹.

2.4 WIDOW INHERITANCE AMONG THE BEMBA OF NORTHERN PROVINCE

The Bemba are found in the North-eastern part of Zambia, they are matrilineal which means inheritance is through the mother's side. They belong to the central Bantu ethnic group. Family includes members of the extended family that work together and shares food, clothes, money and other items. In addition they are also part of every important decision that is made in the family²⁰.

Leontina Chanda Kabwe²¹, a traditional marriage counsellor referred to as *Banachimbusa* explained how widow inheritance among the Bembas takes place. A *banachimbusa* is a

¹⁸ JRS Malungo, Resistances to Behavioural change to reduce HIV/AIDS Infection (1999), accessed 11th February 2015, <http://htc.anu.edu.au>

¹⁹ JRS Malungo, Resistances to Behavioural change to reduce HIV/AIDS Infection (1999), accessed 11th February 2015, <http://htc.anu.edu.au>

²⁰ Bemba, accessed 11th February 2015, <http://www.everyculture.com>

²¹ Leontina Kabwe, interviewed by Mwenya Kambole, 12th of February 2015

person who instructs young girls when they reach puberty and young women who are about to get married about how to be good wives and mothers.

According to Leontina Chanda, death of a spouse gives rise to funeral customs and eventually to remarriage. However, neither the widow nor widower takes part in these customs as they are usually considered to be the cause of death. Sometimes, the widow is dispossessed of all of her husband's property which is taken to the parents of the deceased. In order to drive away the spirit of death, two processes take place, *ukufwala imishingo* and *ukupyana*.

According to Martha Mwendapole²², *Ukufwala imishingo* is a custom where clothes belonging to the deceased are given to a nephew, grandnephew or even cousin of the deceased. This person replaces and performs the functions of the deceased and can help out in work such as farming. He also takes the name of the deceased and his position in the family, the children of the deceased can refer to this person as father. The person who is usually picked in this ceremony is usually a young boy considered to be pure, it can even be someone below the age of ten. This person sleeps in the funeral house after burial so that he can chase away the spirit of the deceased in the house. It is not usually the duty of this person to cleanse the widow.

The funeral practice that takes place is *ukupyana* which lasts for two days. The aim of this ceremony is to rid the widow of the taboo of death through sexual cleansing and prevent her from going mad after the burial. This is done through the widow having sexual relations with the cousin of the deceased. If the person appointed by the family to perform the ceremony is unmarried, he usually inherits the widow after the ceremony and takes her to be his wife. Where the person chosen to cleanse the widow is already married, the ceremony is more public but he can also inherit the widow and turn his marriage polygamous.

²² Martha Mwendapole, interviewed by Mwenya Kambole, 11th February 2015.

On the second day of the ceremony, the widow and the man stay in the house the whole day as is done during a marriage ceremony. They place the marriage pot on fire and wash themselves when the water is hot, this signifies the bond of marriage. He is considered to have married her through the ritual therefore, this is a new marriage.

According to Leontin Chanda Kabwe, widows in Bemba land are given the option of whether to be inherited or not by the deceased husband's relative after they are cleansed and those who refuse are set free and allowed to remarry elsewhere. However, in the past, the widows agreed to be inherited by the person who cleansed them and performed the *ukupyana ceremony*.

There are many reasons why widow inheritance is undertaken in Bemba land. Firstly, for continuity, that is to continue the lineage of the deceased, to take care of the children as well as to marry the widow thereby keeping her in the family. However, women may choose not to marry the men who cleanse them, some women even refuse to be sexually cleansed due to religious reasons and fear of the spread of diseases especially where the deceased was very sick.

According to Leontina Chanda Kabwe, in the past women did not own anything, they relied on their husbands for financial and economic support. However, in addition to laws that protect succession rights of women, many women today have jobs that make them economically stable and well able to take care of themselves and their children. Therefore, *ukupyana* has been phased out and replaced by a ceremony where the widow is poured mealie meal, blessed and given beads to wear on her hand before she is allowed to remarry. *Ukufwala imishingo* is still practiced today as it does not involve any sexual acts and is just symbolic of someone taking the place of the deceased.

The custom of *ukupyana* and *ukufwala imishingo* as practiced by the Bemba upon the death of a spouse is given legal force by virtue of the Subordinate Court Act, Chapter 45 of the Laws of Zambia.²³ The Subordinate Court Act recognises customary law practices provided that these practices are not repugnant to natural justice, equity or good conscience and are not incompatible with any written law. *Ukupyana* is no longer widely practiced by the Bemba who now only practice *ukufwala imishingo*. This custom is not in conflict with any written law and is therefore legally acceptable and recognised.

2.5 CONCLUSION

This Chapter has established that widow inheritance is a common practice among most ethnic groups in Zambia. The Bembas practice two customs in the event of the death of a spouse, the first custom is *ukufwala imishingo* where a nephew or cousin of the deceased takes the name and position of the deceased. The second custom is widow inheritance in a ceremony called *ukupyana* which also involves sexual cleansing of the widow by the cousin of the deceased, in most cases, the person who cleanses the widow also inherits her. This is done to continue lineage of the deceased, to take care of the children the deceased has left behind as well as keep the widow in the family. In Bemba tribe, widows are not forced into being inherited and are given the choice of whether to be inherited or not. In the past, they usually preferred to be inherited so that they and their children are taken care of. However, due to economic, social and cultural changes, religious beliefs and spread of diseases, practices like *ukupyana* have been phased out. The next chapter discusses how the Nsenga of eastern province practice widow inheritance and why it is done.

²³ Section 16

CHAPTER THREE: WIDOW INHERITANCE AMONG THE NSENGA OF EASTERN PROVINCE

3.1 INTRODUCTION

The previous chapter found that customary law and in particular widow inheritance is practiced by many tribes in Zambia. It was established that the Bemba's of Northern Province have a custom of widow inheritance that is practiced upon the demise of a man for the continued care of the widow and children. However, the way this custom is practiced has changed over time due to risk of spread of HIV/Aids. This chapter builds on this to discuss how and why widow inheritance is practiced by the Nsengas of Eastern province and the Lenje of central province. It firstly discusses widow inheritance among the Nsenga, followed by a discussion of how the Lenjes practice widow inheritance. It further compares the practice of widow inheritance among the Bembas, Nsengas and Lenjes.

3.2 PRACTICE OF WIDOW INHERITANCE BY THE NSENGA TRIBE

The Nsenga are a Bantu speaking people found in the Luangwa valley in south eastern Zambia. The Nsenga are found in Nyimba and petauke district of Eastern province¹. They have many similar customs as those practiced by the Bembas, the Ilas ,Chewas and Ngoni ethnic groupings. The Nsengas are a matrilineal people, in that their ancestral lineage is traced through the mother's side, wealth is also passed through the female line.² Nsengas like every other ethnic group have different customs for different situations in life such as marriage, initiation, birth of a new baby and funerals.

According to Besnart Mwanza³, during marriage in Nsenga custom, a woman leaves her village and goes to live with her husband at his village. When a man dies and they bury the

¹ Orville Boyd Jenkins, accessed 24th May 2015, <http://orvillejenkins.com/profiles/nsenga.html>

² Nsenga people, accessed 20th February 2015, Accessed 21st February 2015, [http:// www.britannica.com](http://www.britannica.com)

³ BenartMwanza, Interviewed by Mwenya Kambole, 20th February 2015

body, the relatives of the deceased and the widow then sit down to discuss the future of the widow and her children. The relatives do not only include close relatives of the deceased such as parents and siblings but also includes relatives from the extended family such as the grandparents, uncles, aunties and cousins.

According to Geoffrey Mwanza, after the burial of the deceased, the widow has to be cleansed so that she is released and can remarry. A long time ago the widow used to be freed from her deceased spouse through sexual cleaning. Before a widow is cleansed, she is not supposed to engage in any sexual relations, shave, change her mourning clothes, and socialise with members of the community as she is still considered to be in mourning.⁴

After burial, the elders would sit down to discuss who is to cleanse the widow and inherit her, this custom was referred to as *Chokolo*. The person chosen was the nephew of the deceased, this process was referred to as *mulisa angina chokolo cha malume*. This is translated to mean the nephew has taken the place of his uncle. The nephew then becomes the widow's husband and takes over the duties of her deceased husband. The nephew in addition to inheriting the deceased's widow also inherits the deceased's property, clothes and in some cases even his name. Usually, the successor chosen to inherit the widow already has a wife, therefore the widow would become a second or third wife. *Chokolo* was a continuation of the old marriage, no new marriage took place.

Another form of cleansing was a symbolic one known as *kusuzula*. This involved cutting the widow's hair, bathing of the widow and oiling her. This was followed by shoulder to shoulder tapping of the widow by the aunties and uncles of the deceased. This was said to remove the spirit of the deceased and release the widow so that she is free to remarry.⁵

⁴ Zambia Law Development Commission, Restatement of Customary Law Working Paper, December 2002, accessed 20th February 2015, <http://www.zambialii.org>

⁵ Zambia Law Development Commission, Restatement of Customary Law Working Paper, accessed 20th February 2015, December 2002, <http://www.zambialii.org>

According to Geoffrey Mwanza⁶ the widows had no choice as to whether or not to be inherited as women owned nothing of their own and the nephew of the deceased is the one who inherited the property of the deceased. Therefore, they needed someone to take care of them. They were also afraid of running mad and causing the death of their future husbands if they were not cleansed. Sometimes a young boy was chosen to succeed the deceased if he showed maturity. His duty was to take over the name of the deceased and provide the children left behind with someone they can look up to as a father.

According to Besnart Mwanza, over the years widows started having more of a choice and could accept to be inherited or not. If the widow refused to be inherited but was liked by the deceased's family because she was good, hardworking and had good relationship with the family, the relatives decided to allow her to continue to stay in the deceased husband's village so that they take care of her and she continues to help them with work in the field. She was allowed to remarry with permission of the deceased husband's family so that they ascertain whether the new husband is well able to take care of the children left behind by the deceased.

These days a widow is cleansed through a process where an elderly relative of the deceased cuts the pubic hair of the widow to symbolise cleansing and release her to get married to someone else. It is also done by simply sprinkling mealie meal on the widow and the person who would ordinarily inherit her. She and a relative of her deceased husband sit next to each other and they are sprinkled mealie meal on their shoulders, she is then said to be released to marry someone else. Alternatively the elder can put mealie meal and water in their mouth and then spit on the widow and the relative of the deceased.

Widow inheritance was carried out for different reasons. Firstly and most importantly it was done to take care of the children left behind by the deceased and also to retain the children in the family. It was also done to maintain the family unit so that the widow does not get

⁶ Geoffrey Mwanza, Interviewed by Mwenya Kambole, 22nd February 2015

remarried to another man from a different family. Another reason widow inheritance was carried out was to maintain the family name as the person who inherited the widow usually had the same surname as the deceased. Further, widow inheritance was practiced to maintain the presence of the deceased in the family.

Widow inheritance is no longer practiced among the Nsenga people because of economic, social and cultural changes that have taken place such as religious beliefs, fear of spread of diseases like HIV/AIDS and economic independence of women. More women are also educated and prefer not to be inherited. Even though widow inheritance is no longer practiced, a nephew of the deceased is still chosen to take over the name of the deceased so that he is not completely lost to the family. However, the relative of the deceased no longer has to marry the widow. His duty is to provide a father figure for the children and take the name of the deceased.

Customary law proceeds directly from the people and expresses their legal thought. For a custom to apply it has to be reasonable, not repugnant to natural justice and not incompatible with any legislation. Customary law is applied as a question of fact of the common adaptation of the custom in question ⁷. The custom of widow inheritance called *Chokolo* has been commonly practiced over a long period of time by the Nsenga and has been modified to suit current times. In addition it is not in contradiction to any written law but has been endorsed and given legal effect by the Deceased Brother's Widow's Marriage Act of 1926.

3.3 WIDOW INHERITANCE AMONG THE LENJE

The Lenje are found in Central province of Zambia. There are seven Lenje chiefdoms spread across Lusaka, Central and Copperbelt provinces. Lenjes are believed to be among the first

⁷ Mirriam, M Banda, The Effectiveness of the Zambian Intestate Succession Act No.5 of 1989 and the Laws of Inheritance in Zambia Under a Dual Legal System: A Critical Appraisal, Obligatory Essay, UNZA (2004)

groups of people to come into Zambia from Cameroon. The Lenje are of matrilineal descent.⁸ Matrilineal descent is a kinship system in which the ancestral lineage is traced through the mother's side⁹.

According to Winter Mataula¹⁰, the Lenjes have a custom called *kupyana* in which a male relative of the deceased takes over the widow as his wife after a woman loses a spouse. In the past, when a man died, there would be a long mourning period which would end when the moon became full again. During this period, elders from the deceased's family would sit down to discuss the future of the widow and who would inherit her. A person was chosen among the cousins of the deceased and not among the siblings of the deceased. The process of choosing was a careful and long one as the person who was chosen had to be a responsible person who could take over the family of the deceased. This person also had the duty of sexually cleansing the widow. If they failed to pick a successor, the cleansing ceremony would be postponed. The person tasked with the cleansing and taking on the widow as his wife was usually a married person which led to polygamous marriages. In some cases the successor was not told but the elders would make sure he was present during the cleansing ceremony.

After the mourning period, beer was brewed and animals were killed in preparation for a big celebration to mark the end of the mourning period. Relatives of both families were then invited to attend the ceremony which was usually held in the evening. The widow and the chosen cousin of the deceased would then be taken to a room where they would strip naked and perform the sexual cleansing ceremony. Elders were present to witness the cleansing and make sure it happened in the right way. The woman was then considered to be freed from the

⁸Lenje in Zambia, accessed 23rd February 2015, <http://joshuaproject.net>

⁹ Jacob Taylor, Matrilineal Descent patterns in Contemporary Cultures, accessed 25th may 2015, <http://explodie.org>

¹⁰ Winter Mataula, Interviewed by Mwenya Kambole, 21st February 2015

spirit of death and was free to remarry. The man then took over the widow as his wife, this was not a new marriage, it was merely a continuation of the first marriage.

According to Winter Mataula¹¹, the cousin of the deceased who inherited the widow, also inherited everything the deceased owned, his clothes, property and land. In some cases, he also inherited the name of the deceased and was referred to as the deceased. He then became the head of the family and could then distribute some of the property of the deceased to other relatives if he so pleased as he was now in charge of the property of the deceased.

Widow inheritance was done for several reasons and the widow had no say in whether she could be inherited or not. Widows who resisted were not cleansed and risked running mad, dying if they got involved with other men or causing the death of their future husbands. Widow inheritance was done firstly to financially and economically secure the widow and her children as women usually did not own property and the property of the deceased was inherited by the chosen successor.

In a study conducted in a Lenje community of Chenena village in Chibombo district of central province¹², it was stated that the Lenjes are matrilineal and inherit land through the matrikin. However, despite being matrilineal, women especially widows entitled to own and inherit land find their matrilineal rights being challenged. A 60 year old woman interviewed stated that after her husband died, her neighbours in the Chamuka Lenje area started making her life difficult by grabbing her fields and allowing their animals to graze in her fields thereby destroying her crops, this forced her to move to another place.

It was further reported that the majority of women interviewed did not have land or fields of their own but tilled land allocated to them by their husbands. Very few single women, even heads of households were allocated land directly by the head man, most of them had access to

¹¹ Winter Mataula, Interviewed by Mwenya Kambole, 21st February 2015

¹² Gear M. Kajoba, Women and Land in Zambia: A case study of Small-scale Farmers in Chenena village, chibombo District, Central Zambia, accessed 24th February 2015, <http://elibrary.ossrea.net>

land through their fathers or male relatives such as an uncle or brother. Another reason widow inheritance was done, was to maintain the presence of the deceased and keep him alive, it was believed that in this way no one died as he lived on through the person who takes his place. Widow inheritance was also done to build family ties and keep the family united as family bonds would be broken if the widow remarried in another family. It was also done to keep the widow in the family so that she does not marry elsewhere. Another reason it was practiced was to avoid children growing up without a father figure.¹³

However, over the years due to education of women and the community about the rights of women and religious beliefs, sexual cleansing and widow inheritance referred to as *kupyana* among the Lenje is no longer being carried out. Another reason the custom of *kupyana* is no longer practiced is because of the increased spread of HIV/AIDS in Zambia and the risk taking over someone's wife who may be HIV poses to the successor as well as his other wife/wives.

Widow cleansing is still being practiced however, there is no sex involved. The elders from the family of the deceased cleanse the widow by making her sit next to a cousin of the deceased and then sprinkling mealie on them, the front, the back and their sides. Sometimes the elders may put mealie meal and water in their mouths and spit on the widow and the cousin of the deceased to cleanse the widow. She is then free from the spirit of the deceased and is free to remarry. The custom of widow inheritance is a custom that is long established and widely accepted by the Lenje and hence is a customary law that is applicable. In 1926 it was given statutory legal force by the act.

¹³ Gear M. Kajoba, Women and Land in Zambia: A case study of Small-scale Farmers in Chenena village, chibombo District, Central Zambia, accessed 24th February 2015, <http://elibrary.ossrea.net>

3.4 COMPARISON OF WIDOW INHERITANCE AMONG THE BEMBA, NSENGA AND LENJE TRIBES OF ZAMBIA

This section discusses the similarities and differences in how the custom of widow inheritance is practiced among the Bemba, Nsenga and Lenje tribes of Zambia.

3.4.1 SIMILARITIES IN THE PRACTICE

The Bembas, Nsengas and Lenjes all practiced the custom of widow inheritance. In this custom, when a man died and left behind a wife, a relative of the deceased inherited the property of the deceased as well as his widow. In all these tribes, there was involvement of the extended family. Elders sat down to discuss and choose a successor of the deceased who was responsible enough to take care of the widow and children left behind. In some cases the successor also took the name of the deceased. Another common thing was that the practice involved sexual cleansing of the widow, usually by the successor of the deceased. This was done in order to chase away the spirit of the deceased and to prevent the woman from becoming mad when she remarries. In addition the person chosen to inherit the widow was usually already married with wife and kid, thereby turning the marriage polygamous.

Most widows accepted to be inherited mainly because they were not economically and financially secure on their own. In Zambia, patriarchal ideologies are strong even in matrilineal societies, men are usually preferred as inheritors as opposed to women. Women did not own property or land on their own and only had access to it through their husbands¹⁴. This is the case even among the Bembas, the Lenjes and the Nsengas who are all matrilineal but property is still passed to a male relative of the deceased. Therefore, it was necessary for women to be inherited.

¹⁴ Gear M. Kajoba, Women and Land in Zambia: A case study of Small-scale Farmers in Chenena village, chibombo District, Central Zambia, accessed 24th February 2015, <http://elibrary.ossrea.net>

The three tribes also share the same reasons for inheriting a widow, firstly it was so that the widow and her children were taken care of by the relatives of the deceased. It was also done for continuity, as the inheritance was not a new marriage but was a continuation of the first marriage so that the lineage of the deceased is maintained. Further, widow inheritance in the three tribes was carried out to enhance family unity so that the widow does not remarry in another family. This way the widow remained in the family of the deceased and family ties were not broken. It was also done to maintain the presence of the deceased, so that he was not completely lost from the family.

All three tribes no longer practice the custom of sexual cleansing and widow inheritance. This has been due to education of people, religious beliefs and increased spread of HIV/AIDS. However they are all still practicing a form of cleansing of the widow. This is done by sprinkling mealie meal on the widow and a relative of the deceased.

3.4.2 DIFFERENCES IN THE PRACTICE

Even though the Bembas, Nsengas and Lenjes all practiced the custom of widow inheritance, there were minor differences in how the practice was carried out. There were differences in which relative succeeded the deceased. The Bembas call the practice of widow inheritance *ukupyana* and the person to succeed the deceased is picked among his surviving cousins. This person inherits the property of the deceased and also marries the widow. Another custom called *ukufwala imishingo* is practiced among the Bembas where a nephew of the deceased is chosen to take his clothes and his name, this can even be a young boy. This person is said to replace the position of the deceased in the family but he was not supposed to marry the wife of the deceased.

The Nsengas on the other hand refer to widow inheritance as *chokolo* and the person picked as a successor is the nephew of the deceased. If a young person is picked he does not marry

the widow but merely takes over the name of the deceased. Unlike the Nsengas who choose a successor of the deceased among his nephews, the Lenjes choose a successor among the cousins of the deceased.

The custom of widow inheritance as practiced by the Bemba, Nsenga and Lenje was legally binding in that it was reasonable, was long established, uniformly observed and certain. The custom was reasonable in that it was beneficial to both the widow and the family of the deceased. The widow had both emotional support and financial support and security after the death of her husband, while the family of the deceased continued the lineage of the deceased and ensured that property and land remained in their family. The custom was long established among the three tribes who had all been practicing widow inheritance from before colonial rule, therefore the custom was generally known among the three tribes and certain. The custom was uniformly observed within the three tribes and was complied with by widows upon the death of their husbands. The way the custom is practiced by the three tribes has changed but it is still legally binding as it is reasonable in modern day Zambia, the changes in the practice are also uniformly practiced, long established and certain¹⁵.

3.5 CONCLUSION

This chapter has discussed how widow inheritance is practiced among the Nsenga people of Eastern province and the Lenje people of Central province. It has established that the Nsengas used to practice a custom called *chokolo* in which the widow was cleansed and inherited by a nephew of the deceased, who also inherited the property of the deceased. It has further established that the Lenjes practiced a custom called *kupyana* in which a cousin of the deceased inherited the property as well as the widow of the deceased. It has further established the differences and similarities in how the Bembas, Nsengas and Lenjes practiced

¹⁵ Margret Margret M Munalula, *Legal Process: Zambian Cases, Legislation and Commentaries* (Lusaka: UNZA Press, 2004), 46

widow inheritance. The Nsengas, Lenjes and Bembas no longer practice widow inheritance due to religious reasons and prevention of the spread of HIV/AIDS. The next chapter discuss the effects of widow inheritance in Zambia as well as the economic, social and cultural changes that have affected the practice of the custom of widow inheritance.

CHAPTER 4: ANALYSIS OF WIDOW INHERITANCE IN ZAMBIA AND ITS RELATIONSHIP TO THE ACT

4.1 INTRODUCTION

The previous chapter discussed how widow inheritance is carried out among the Nsenga and Lenje tribes and found that a nephew of the deceased inherits the widow among the Nsenga while a cousin of the deceased inherits the widow among the Lenje. Both tribes have modified the way the custom is practiced due to fear of the spread of HIV/ Aids. It also compared how widow inheritance is practiced among the Bembas, Nsengas and Lenje tribes of Zambia. This chapter aims to present and analyse the findings on the study of widow inheritance in Zambia and its relationship to the act. It firstly, discusses the effects of widow inheritance as well as the legislative, economic, social and cultural changes that have affected the practice of widow inheritance in Zambia. Secondly, it discusses and analyses the findings of the research in relation to the Act.

4.2 EFFECTS OF WIDOW INHERITANCE IN ZAMBIA

According to Mbozi¹, attempts to explain the high cases of HIV/AIDS in Zambia have pointed out that there is evidence that some negative cultural practices rooted deeply in the social lives of most ethnic groups have contributed to the spread of the disease. A country assessment of Zambia in 2000² found that some of the factors contributing to the spread of HIV/AIDS are customary practices that relate to marriage and death rites. Sexual cleansing and property and widow inheritance are some of these negative cultural practices. The relationship between sexual cleansing and widow inheritance is that the person who takes

¹ Parkie Mbozi, The Impact of Negative Cultural Practices on the Spread of HIV/AIDS in Zambia, accessed 4th March 2015, <http://www.unesco.org>.

² United Nations, "Common Country Assessment Zambia 2000", page 17

part in the sexual cleansing ritual more often than not takes the spouse of the deceased as his new wife³.

The custom of widow inheritance had good intentions and was useful in the past as it ensured continuity of the family and proper care of the widow and the minor children of the deceased. This is because the relatives of the deceased inherited the property of the deceased, hence, the custom ensured that a widow was taken care of after the death of her husband by his relatives⁴.

It is argued that in the era of HIV infection, the custom exposes widows, their inheritors as well as their inheritors' wives to the risk of HIV in a country where HIV is the biggest killer of people between the ages of 15 and 49⁵. When widow inheritance is practiced, there is a risk of HIV infection especially because the widow is usually given to a married man, turning the marriage polygamous. If the deceased died due to HIV, it is likely to be passed on from the widow to the successor of the deceased to his other wife or wives. It is further argued that the custom deprives women of their right to property and encourages gender inequality. It is also reported that some women find the practice degrading and humiliating⁶.

³Parkie Mbozi, The Impact of Negative Cultural Practices on the Spread of HIV/AIDS in Zambia, accessed 4th March 2015, <http://www.unesco.org>.

⁴ Timothy M. Banda, Silent Tears: "The Continued Violation of Widows Inheritance Rights In Zambia." A Study of Widows Experiences in Kitwe District of The Copperbelt Province, accessed 2nd December 2014, <http://www.Searcwl.ac.zw>.

⁵ Katie Nguyen, Zambian chiefs back repeal of Degrading Widow Inheritance Law- study, accessed 3rd January 2015, <http://allafrica.com/stories/201407231242.html>

⁶ Vi. Shortcomings and Risk Factors within the Legal Framework, accessed 4th March 2015, <http://www.m.hrw.org>

4.3 LEGISLATIVE, ECONOMIC, SOCIAL AND CULTURAL CHANGES THAT HAVE AFFECTED THE PRACTICE OF WIDOW INHERITANCE

This section discusses the legislative, economic, social and cultural changes that have affected the practice of the custom f widow inheritance in Zambia.

4.3.1 INTERNATIONAL HUMAN RIGHTS AND NATIONAL LEGISLATION

The legal systems of most African countries are a mix of different sources of law. These include legislation enacted by parliament, customary law, religious law and received law such as common law or civil law depending on the country's colonial history. Customary law greatly impacts the lives of the majority of African people in matters such as marriage, inheritance and traditional authority. Customary law is usually discriminatory in its application as women are not seen as equals to men in society⁷.

It is argued that some customary practices such as sexual cleansing and widow inheritance undermine women and are used to justify the treatment of women as second class citizens. Customary law emphasises rights in terms of duties of an individual to the community while human rights norms are based on the principle that protection of the family should not be a justification to restrict the individual rights of family members. Human rights are based on the premise that women's rights protected under international conventions are universal norms to be adhered to by all countries in the world. Women have fundamental human rights which they are entitled to exercise within the family and society⁸.

The Universal Declaration of Human rights, the International Covenant on the Elimination of all forms of Discrimination against Women (hereinafter referred to as CEDAW), International Covenant on Civil and Political rights, the International Covenant on Economic, Social and Cultural Rights are all international conventions that outlaw discrimination⁹.

⁷Discrimination in Property and Inheritance Rights and HIV/AIDS, accessed 3rd March 2015, <http://m.hrw.org>

⁸ Discrimination in Property and Inheritance Rights and HIV/AIDS, accessed 3rd March 2015, <http://m.hrw.org>

⁹ Discrimination in Property and Inheritance Rights and HIV/AIDS, accessed 3rd March 2015, <http://m.hrw.org>

Zambia is party to a lot of these UN human rights treaties and the African charter on Human and people's rights. These conventions impose obligations on states to make policies that eliminate all forms of discrimination against women. CEDAW, which Zambia ratified in 1985 imposes an obligation of state parties to take all appropriate measures in the abolition and modification of all existing laws, regulations, customs and practices that discriminate against women. By ratifying these treaties, Zambia has committed itself to protecting a broad range of civil, political, economic and social rights of women¹⁰.

The Protocol to the African Charter on Human and Peoples Rights and the Rights of women in Africa to which Zambia is a signatory, puts an obligation on the state to take appropriate legal measures that ensures that widows are not subjected to inhuman, degrading or humiliating treatment¹¹. It further states in Article 2(1) that the widow has a right to an equitable share in the inheritance of property of her late husband¹². It is argued that customs like sexual cleansing and widow inheritance are some of the inhuman, degrading and humiliating treatment that provisions of the Charter protect widows against¹³. The fact that customary law is still subject to scrutiny based on Human rights standards is very significant for the rights of women. This is because customary law has customs and traditions that discriminate against women.

Muna Ndulo argues that discrimination of women is as a result of the inequality, male domination, poverty, aggression, misogyny rooted in entrenched customs and myths. This problem can only be solved by eradicating customs that undermine the dignity of women.

The Beijing Declaration called on state parties to ensure that any harmful aspect of certain

¹⁰ Vi. Shortcomings and Risk Factors within the Legal Framework, accessed 4th March 2015, <http://www.m.hrw.org>

¹¹ Article 20(a)

¹²The Protocol to the African Charter on Human and Peoples Rights and the Rights of women in Africa, accessed 18th March 2015, accessed <http://www.achpr.org/instruments/woman-protocol/>

¹³Timothy Mambi Banda, Silent Tears: "The Continued Violation of Widows Inheritance Rights In Zambia." A Study of Widows Experiences in Kitwe District of The Copperbelt Province, accessed 2nd December 2015, accessed 2nd December 2014, <http://www.Searcwl.ac.zw>.

traditional, customary or modern practices that violates the rights of women is prohibited and eliminated.”¹⁴

The courts over the years have been trying to mitigate the operation of customary law norms that oppress women. “Judges are continually asserting supremacy of human rights norms and declaring discriminatory norms as unconstitutional or invalid and inapplicable in modern society.” Government’s ratification of CEDAW meant that the courts should take the provisions of the convention into consideration when faced with discriminatory cases.¹⁵

4.3.2 NATIONAL LEGISLATION

One of the reasons for the practice of widow inheritance in Zambia was because of the traditional way of succession. When a man died, a relative of the deceased inherited the property as well as the widow of the deceased. However, two laws of succession were enacted in 1989¹⁶. The Intestate Succession Act Chapter 59 of the Laws of Zambia provides for instances where the deceased dies without leaving a will. This law makes financial provisions for the widow and the orphans of the deceased¹⁷. It states that;

5 (1) Subject to sections eight, nine, ten and eleven the estate of an intestate shall be distributed as follows:

(a) twenty per cent of the estate shall devolve upon the surviving spouse; except that where more than one widow survives the intestate, twenty per cent of the estate shall be distributed among them proportional to the duration of their respective marriages to the deceased, and other factors such as the widow's contribution to the deceased's property may be taken into account when justice so requires;

(b) fifty per cent of the estate shall devolve upon the children in such proportions as are commensurate with a child's age or educational needs or both.¹⁸

¹⁴Muna Ndulo, African Customary Law, Customs and Women’s Rights, Indiana Journal of Global Legal Studies, Page 101, accessed <http://scholarship.law.cornelledu/facpub>

¹⁵Muna Ndulo, African Customary Law, Customs and Women’s Rights, Indiana Journal of Global Legal Studies, Page 101, accessed <http://scholarship.law.cornelledu/facpub>

¹⁶ Judith Mulenga et al, Human Rights Violations in Zambia; Part II: Women’s Rights, July 2007, accessed 3rd March 2015, <http://www.omct.org>

¹⁷ Judith Mulenga et al, Human Rights Violations in Zambia; Part II: Women’s Rights, July 2007, accessed 3rd March 2015, <http://www.omct.org>

¹⁸ Section 5

This is a uniform law of succession which gives women the legal right to inherit the property of their deceased husbands, thereby rendering the purpose of the custom of widow inheritance irrelevant.

It is argued that, customary law practices such as widow inheritance place women in inferior positions and discriminates them as women are the ones usually inherited and not men. The constitution of Zambia which is the supreme law of the land guarantees and protects a lot of fundamental rights including prohibition of discrimination on the basis of sex. The Constitution Act No 18 Of 1996, Chapter 1 of the Laws of Zambia¹⁹ states that;

It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely;..

This means that women have equal rights to men as discrimination on the basis of sex is prohibited. However, this provision may not be enough as The Constitution²⁰ exempts discrimination that arises from family, customary and personal law. This creates an environment that allows the practice of discriminatory customs such as widow inheritance as it is exempted from being treated as discriminatory by virtue of Article 23 of the constitution²¹.

One of the requirements for a custom to be valid is that it should be reasonable. This means that it should not be injurious in its nature, it should not be unjust or oppressive to one party. The custom of widow inheritance is said to be used to justify the exploitation of widows and sometimes violates fundamental human rights of widows. Therefore, the custom is unreasonable in society today.

¹⁹ Article 11

²⁰ Article 23

²¹ Alfred .S Magagula, The Law and Legal Research in Zambia, accessed 4th April 2015, <http://www.nyulawglobal.org/globalex/zambia.htm>

The penal code²² has also contributed to the change in the way the custom of widow inheritance is practiced by outlawing sexual cleansing. This is because the practice of widow inheritance was usually preceded by sexual cleansing of the widow by a relative of the deceased who was to inherit her. It states that;

(1) Any person who conducts or causes to be conducted a harmful cultural practice on a child commits a felony and is liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life.(2) In this section “harmful cultural practice” includes sexual cleansing, female genital mutilation or in initiation ceremony that results in injury, the transmission of an infectious or life threatening disease or loss of life to a child but does not include circumcision on a male child.”²³

4.3.3 PUBLIC SENSITIZATION ON THE DANGERS OF WIDOW INHERITANCE

The custom of sexual cleansing is one that was tolerated and endorsed by traditional leaders as rural life tradition. However, there has been a rising concern by political and tribal leaders that the practice of customs such as sexual cleansing and widow inheritance contributes to the spread of HIV in Zambia. These leaders have started speaking out publicly against the practice and condemning it as one of the ways HIV is spread. This has led to some changes in how the custom is practiced, the sexual cleansing ritual has been abolished in more and more tribes²⁴.

The government of Zambia through various governmental, quasi and non-governmental organisations has embarked on a public health campaign due to the threat of HIV/Aids.²⁵ The campaigns also discourage harmful practices such as sexual cleansing and widow inheritance from modern Zambian society. One such campaign was the Zambian Integrated Health programme which focused on chiefs because of their wide influence in rural areas. It

²² The Penal Code Act, Chapter 87 of the Laws of Zambia

²³ Section 157

²⁴ Vi. Shortcomings and Risk Factors within the Legal Framework, accessed 5th March 2015, <http://www.m.hrw.org>

²⁵ Augustus K. Kapungwe, Traditional Cultural Practices of imparting sex education and the fight against HIV/AIDS: The Case of Initiation Ceremonies for Girls in Zambia, African Sociological Review 2003, pge 36, accessed 4th March 2015, <http://sowiport.genesis.org>

undertook to influence behavioural change with respect to customs such as sexual cleansing²⁶.

This has led to the replacement of sexual cleansing and widow inheritance practices towards symbolic gestures. These include sprinkling of mealie meal on the widow and the wearing of beads on the right hand by the widow to symbolise cleansing. These practices preserve original value of the custom while eliminating the risk of the spread of diseases such as HIV²⁷. However, there are traces that show that such practices are still a part of Zambian society especially in rural areas, though they are no longer widely practiced²⁸.

4.4 PRESENTATION OF FINDING AND ANALYSIS OF DATA

The central aim of this research was to establish how and why widow inheritance is practiced among the Bemba, Nsenga and Lenje tribes as well as establish the relationship between the way the custom is practiced and the deceased brother's widow's marriage Act. It was found that the three tribes practiced widow inheritance in order for the widow to be taken care of after the death of her husband as women were seen as property of their families and could not own anything²⁹. The objective of the Act was to promote the practice of the custom of widow inheritance. This was done by giving legal effect to marriage between a man and his deceased brother's wife and protecting the legal interests of any such marriage that occurred before the enactment of the act³⁰. Therefore, the custom is in line with the objectives of the act.

In 1989, the two inheritance acts, the ISA and WILLS Act were enacted in order to promote the welfare of the family and ensure that a widow and her children inherited from her

²⁶ Emma day, Allan Maleche, Traditional Cultural Practices & HIV; Reconciling Culture and Human Rights, accessed 4th March 2015, <http://www.hivlawcommission.org>

²⁷ Emma day, Allan Maleche, Traditional Cultural Practices & HIV; Reconciling Culture and Human Rights, accessed 4th March 2015, <http://www.hivlawcommission.org>

²⁸ Parkie Mbozi, The Impact of Negative Cultural Practices on the Spread of HIV/AIDS in Zambia, accessed 4th March 2015, <http://www.unesco.org>

²⁹ Fighting to End Widow Inheritance, accessed 3rd April 2015, <http://www.actionaid.org/uganda/stories/fighting-end-widow-inheritance>

³⁰ Section 4

husband's estates. Widow's rights to succession were protected and it has been argued that this renders the Deceased Brother's Widows Marriage Act irrelevant.³¹ In as much as this overtakes the aspect of the act financially securing the widow, this does not render the act in its entirety irrelevant. This is because it was found that, the custom is practiced for many reasons such as the continuation of the lineage of the deceased as well as keeping the family together and united. In addition, the inheritance laws were enacted due to the increase in property grabbing, hence it was a way to ensure that only those who were entitled inherited from the estate of the deceased³². The custom of widow inheritance practiced is not in contradiction to the inheritance Acts, its idea is for the widow and the children to not feel the absence of the deceased. The inheritance acts and the Deceased Brother's Widow's Marriage Act are parallel as they flourish in their own right.

It has been argued by a plethora of scholars, in the literature and earlier in this chapter that some of the factors that contribute to the spread of HIV/AIDS are customary law practices such widow inheritance as they usually involve sexual cleansing. The man who takes over the widow as well as his other wives is also at risk of transmission of HIV/AIDS if the deceased was infected³³.

The research found that the harmful and injurious practices associated with widow inheritance such as sexual cleansing have completely been done away with. They have instead been replaced with symbolic sprinkling of mealie meal on the widow to symbolise cleansing. In addition, a relative of the deceased no longer takes the widow as his wife but just takes over the role of the deceased such as providing a father figure and counsel to the children of the deceased and taking over the family duties of the deceased.

³¹ Llyod Samson Thole, Testamentary and Intestate Succession in Zambia-A Critical Review, Obligatory Essay, UNZA (2006)

³² VI. Shortcomings and Risk Factors within the Legal Framework, accessed 22nd April 2015, <http://m.hrw.org/reports/2003/zambia/zambia1202-06.htm>

³³ Parkie Mbozi, The Impact of Negative Cultural Practices on the Spread of HIV/AIDS in Zambia, accessed 4th March 2015, <http://www.unesco.org>

The practice of the custom of widow inheritance is still being practiced by the Bemba, Nsenga and Lenje. It is not injurious as it has been modified to suit current times. It is an accepted custom and as such even if the act is not an active piece of law, it is good law as it promotes the welfare of the family.

4.5 CONCLUSION

This chapter has analysed the effects of widow inheritance as well as the economic, social and cultural changes that have led to the eradication of the practice of the custom of widow inheritance. Some of these legislative, economic, social and cultural changes are fear of the spread of HIV/AIDS, increased sensitisation of citizens of Zambia on the dangers of the custom, international Human rights standards as well as the succession rights of women. It has also analysed the findings of the research and found that the way widow inheritance is being practiced by the tribes is not injurious and should therefore be maintained. The next chapter concludes the research and gives recommendations where necessary.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1 INTRODUCTION

The previous chapter discussed the effects of the practice of widow inheritance in Zambia. It also established that enactment of the Intestate Succession Act, the fear of spread of HIV/AIDS, recognition of Human rights, public sensitisation on the dangers of customs such as widow inheritance are some of the factors that have led to the eradication of the custom. This chapter concludes the research and gives recommendations.

5.2 CONCLUSION

This research undertook a comparative study of the practice of the custom of widow inheritance in Zambia among the Bemba people of Northern Province, Nsenga of Eastern province and Lenje of Central Province and its relationship to the act. This was accomplished by firstly giving a background on customary law in Zambia, secondly, by establishing how and why widow inheritance is undertaken by these three tribes. Thirdly, by establishing whether the way the custom is practiced has changed over time due to economic, social and cultural changes and to establish what these changes are. Finally, the findings of the research were analysed in relation to the Deceased Brother's Widows Marriage Act.

It has been established that widow inheritance is a custom practiced in many parts of Africa in which a man inherits the property and widow of his deceased brother or relative. Under customary law, property is usually owned by men and in the event of death, succession rights are bestowed on the male relatives of the deceased. Therefore, widow inheritance was important because the relative who inherited the widow then becomes responsible for her and the children left behind by the deceased. It served both as a social protection and control over the widow and the children survived by the deceased. It ensured that the widow and her children were provided with shelter, clothing and food.

This research further established that in Zambia, statutory law and customary law are practiced side by side. Customary law is binding so long as it is not repugnant to natural justice and good conscience. Customary law is the indigenous law of various ethnic groups in Africa. It has its source in the practices and customs of the people. Customary law is the oldest law known to man, it has a great impact on the personal lives of many Africans in matters such as marriage, inheritance and traditional authority. For a custom to be legally binding, it has to satisfy four requirements. Firstly, its usage has to be long established. The second requirement is that the custom has to be reasonable. A custom is considered to be reasonable if it is not injurious or oppressive. A custom that is so in favour of one party as to be fundamentally unjust to the other party is said to be unreasonable. Further, the custom has to be uniformly observed and certain.

This research has established that the Bemba, Nsenga and Lenje tribes of Zambia all had the custom of widow inheritance. After a man died, a relative was chosen from among his surviving relatives to inherit his property and marry his wife, in some cases, the successor also took over the name of the deceased. It has further established that customary law differs from one ethnic group to another, as has been evidenced by the differences in how widow inheritance was practiced by the three tribes. Among the Bembas and Nsengas, a cousin of the deceased inherited the widow, while a nephew of the deceased inherited the widow among the Lenje people.

Despite these differences, all the three tribes practiced the custom of widow inheritance for the same reasons. Firstly, it was done to ensure proper care for the widow as widows have no rights to inherit land and property under customary law. Secondly, it was practiced to maintain the lineage of the deceased. It was further practiced to enhance and maintain family unity by preventing the widow from remarrying into another family. Another reason the

custom was practiced was in order to maintain the presence of the deceased so that he was not completely lost to the family.

Customary law changes over time in response to changes in society. This research has established the custom of widow inheritance is no longer practiced among the ethnic groups in Zambia. This is due to economic, social and cultural changes that have taken place in Zambia. Firstly, the enactment of statutes such as the Intestate Succession Act which makes provisions for the widow and the children to inherit from her deceased husband's estate has rendered the practice of widow inheritance unnecessary. A widow now has a legal right to inherit from her deceased husband's estate and does not need her deceased husband's relatives to financially provide for her.

It has further been established that the risk of the spread of HIV/AIDS has led to most tribes abolishing sexual cleansing and widow inheritance. If the deceased died from HIV and infected the widow, she is likely to infect her husband's successor and his other wives if she is inherited. Consequently, the Bembas, Nengas and Lenjes have now done away with widow inheritance completely and cleanse a widow by sprinkling mealie meal on her. There have also been national campaigns that have been undertaken in the country to discourage the practice of widow inheritance. Political and traditional leaders publicly point to widow inheritance as one of the reasons for the increase in the number of people infected with HIV.

This research has further established that many African Constitutions including Zambia's have provisions that guarantee fundamental human rights and prohibit discrimination based on sex. Customs such as widow inheritance undermine women and are used to justify the treatment of women as second class citizens. Zambia is a signatory to CEDAW which imposes an obligation on all state parties to take all measures to abolish all existing laws, customs and practices that discriminate against women.

This research further found that the custom of widow inheritance is still practiced and has been modified to suit present day Zambia. Practices such as sexual cleansing as well as the taking of property by the husband of the deceased family are no longer part of the practice. The way the custom is practiced is therefore not injurious as it promotes the welfare of the family and fills the gap left by the deceased. Therefore the custom should be embraced and maintained. In addition, it was found that the objectives of the Deceased Brother's Widow's Marriage Act are not in contradiction with the inheritance acts.

5.3 RECOMMENDATIONS

The practice of the custom of widow inheritance is not injurious and has since been modified to suit economic social and cultural changes in present day Zambia. Therefore, the traditional aspect of the custom should be maintained as it enhances unity which is at the centre of the family under customary law.

Widow inheritance was practiced in order to ensure the proper care of widows after the death of their husbands as they had no means to do so in the past because women were not allowed to own anything. However, due to the increase in the spread of HIV/AIDS and enactment of the inheritance acts, the way the custom is practiced has changed. Other researchers have recommended that the Act be repealed because the practice is harmful. However, it is recommended that Deceased Brothers Widows Marriage Act should be revised to take into cognisance the fact that the practice has been modified and is no longer being practiced with the same intensity it was practiced with before so that it becomes useful.

Despite the move away from the practice of widow inheritance by most ethnic groups in Zambia, it is still being practiced in some rural and remote areas. The reasons behind the practice itself are not harmful. Therefore, there is need for more sensitisation on the dangers the practice causes, such as the risk of the spread of HIV/AIDS and their fundamental human

rights. So that widows who still opt to be inherited can go for testing and make an informed decision.

In addition, despite the move away from practicing the custom of widow inheritance, some widows in rural areas who conform to customary law have no means to take care of themselves after the death of their spouse. There needs to be policies introduced in these areas to help widows sustain themselves and manage the property left behind by their deceased's husbands.

There is also a need to modify the law of how customary law land is alienated as it makes up the larger percentage of the land in Zambia. Currently customary land is appropriated according to the customary law of the area in question. This gives room for women and widows to be prevented from owning land as under customary law women are still regarded lower in status than men. Policies need to be implemented that facilitate the owning of land by widows in rural areas.

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