

**AN ETHICAL ASSESSMENT OF THE IMPACT OF INEQUITABLE LAND
OWNERSHIP PATTERNS ON WOMEN'S ECONOMIC AND SOCIAL RIGHTS:
A CASE STUDY OF MUMBWA DISTRICT**

By

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Requirements of the Degree of Master of Arts in Applied Ethics**

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DECLARATION

I, **SHADRICK CHEMBE**, declare that this dissertation hereby submitted is my own work and it has not previously been submitted for any degree, diploma or any other qualification at the University of Zambia or any other University.

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ABSTRACT

The study ethically assessed the impact of inequitable land ownership patterns on women's economic and social rights in Mumbwa district. Despite more women than men being dependent on agriculture for their livelihoods, the majority of women in Zambia do not own land due to inequitable land ownership patterns. The problem is that while it is generally known that inequitable land ownership limits women's access to livelihoods, it is not clear how much this affects their access to economic and social rights. Thus, the specific objectives of the study were: to investigate the current state of land ownership between men and women in Zambia; to establish factors that contribute to the existing land ownership patterns; and to ethically assess the impact of existing land ownership patterns on women's economic and social rights in Mumbwa district.

A case study research design was employed using a qualitative methodology with an ethical component. With a sample size of 78, primary data was collected through in-depth interviews with 37 community members, 4 head persons, 1 government representative and 1 representative from a local Non-Governmental Organisation (NGO) called Women for Change. Four focus group discussions with 35 community members in addition to observations were also used to collect primary data. Secondary data was collected by reviewing books, journals, articles and internet-based materials. Community members and traditional leaders were selected using simple random sampling while representatives from government and NGO were purposively selected based on possession of knowledge about land ownership in the area. Content analysis was used to analyse data followed by an ethical evaluation of the study findings.

The study found that there is inequality in land ownership between men and women. Land is mostly owned by the men who also exercise greater control over its use. The existing unequal land ownership patterns were attributed to five main factors which are power imbalances, culture, land allocation practices, suppression of women and allocation of labour. Unequal land ownership impacts negatively on women and on their ability to earn enough to meet their family basic needs. Consequently, it negatively affects their ability to have adequate food and facilitate their children's access to education.

An ethical evaluation of the findings was guided by rights theory and the ethics of care. As regards rights theory, there was discrimination of women on the basis of gender and marital status. It was observed that such a violation on women's rights should not be tolerated as Zambia is a State Party to many international commitments that affirm equal rights to land. Using ethics of care, it was observed that land ownership for women is critical to promoting their well-being as care-givers. Compromising women's land rights not only affects them but also affects children and the aged who are mostly under their care.

Among others, recommendations were made that government should conduct ethical awareness raising on equal land ownership rights, should introduce legislation to promote joint land ownership and should effectively enforce statutory law to guarantee equal enjoyment of land ownership rights between men and women under customary land.

DEDICATION

This dissertation is dedicated to my wife and my children who tirelessly supported me during the course of this study.

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LIST OF ACRONYMS

ACORD	Association for Cooperative Operations Research and Development
BPFA	Beijing Platform for Action
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CSO	Central Statistical Office
FAO	Food and Agriculture Organisation
FGDs	Focus Group Discussions
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
SADC	Southern African Development Community
SIDA	Swedish International Development Cooperation Agency
UDHR	Universal Declaration of Human Rights
UN	United Nations

CHAPTER ONE: INTRODUCTION

1.1 Overview

This Chapter presents the statement of the problem, aim and objectives of the study and research questions. It also briefly presents the ethical theoretical framework, methodology and methods of the study which are covered in more detail in Chapters Three and Four, respectively. It then presents the significance, delimitation and limitations of the study, as well as operational definitions.

1.2 Background

Women in Zambia experience numerous forms of discrimination with regard to ownership rights. Most of them do not own any property until they marry (OECD, 2010, 277). In a legal marriage, women are entitled to enter into contracts and have access to property such as land, either individually or jointly with their husbands. However, those who enter into customary marriages are not authorised to acquire possessions (OECD, 2010). Hence, the vast majority of land in Zambia is owned by men even when women constitute a larger proportion of the country's population (51%) as compared to men (49%) (Central Statistical Office, 2012) and there are more women (78%) than men (69%) engaged in agriculture (Sitko *et al.* 2011). For instance, only 7% of women own land alone as compared with 20% of men and yet the agricultural sector, which is primarily dependent on land, remains the primary employer in Zambia (Central Statistical Office *et al.*, 2014). Moreover, women perform 65-70 percent of all agricultural tasks in Zambia, and produce 80 percent of the nation's food stock (FAO, 2013:8)

The discrimination of women in land ownership is attributed to many factors such as the dual land tenure system where customary land is administered under customary law while state land is administered under the Lands Act of 1995. Women have not benefited as much

as men from the statutory tenure system because it is complicated and costly and hence prevents the former, the majority of whom are poor, with low literacy levels and inadequate access to information, from enjoying their rights to land (Mgugu, 2013). On the other hand, women who rely on customary land have to bear with patriarchal traditional land administration systems that favour men over women and hence result in men dominating the access to, control over and ownership of land (Kachika, 2009). The other factor that has contributed to discrimination of women is lack of uniform marriage laws. While the Matrimonial Causes Act of 1973 entitles spouses married under the Act to an equal share of property upon divorce, women who are not married under the Act cannot enjoy the same rights as observed earlier.

Land has many beneficial effects including protection against financial ruin for individuals and households (Central Statistical Office *et al.*, 2014). Ssenyonjo, in Chigara (2012: 3), points out that “inequitable land ownership patterns and landlessness give rise to a host of interrelated human rights violations including hunger and inadequate food, inadequate housing, poor health, and extreme poverty.” This implies that women who do not own land are more likely to experience hunger, inadequate food, inadequate housing, poor health, and extreme poverty. Such a situation is likely to compromise women’s dignity and well-being. Since land remains the primary employer with close to half of women being engaged in agricultural occupations, lack of it seriously limits women’s access to livelihoods.

Inequitable land ownership patterns in Zambia are a form of discrimination and are contrary to the fundamental belief that all human beings are born free and equal in dignity and rights (United Nations, 2008). According to the fourth principle of the 1948 Universal Declaration of Human Rights (UDHR), all human beings are equal as human beings. By virtue of the inherent dignity of each human person, all human beings are entitled to their rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion,

political or other opinion, national or social origin, disability, property, birth or other status (United Nations Country Team, Zambia, 2014). In order to ensure the realisation of human rights and fundamental freedoms, the fifth principle of the UDHR underscores the need for both sexes to meaningfully participate in, contribute to and enjoy civil, economic, social, cultural and political development.

Moreover, Article 17 of the UDHR declares that everyone has the right to own property alone as well as in association with others and that no one shall be arbitrarily deprived of his or her property (Ssenyonjo, 2012). Article 18(3) of the African Charter on Human and Peoples Rights of 1981 also recognises non-discrimination as a fundamental principle essential to the exercise and enjoyment of all human rights and therefore places an obligation on the State to ensure the elimination of every discrimination against women (Ssenyonjo, 2012). The principle of non-discrimination is violated if: “a) equal cases are treated in a different manner; b) a difference in treatment does not have an objective and reasonable justification; and c) if there is no proportionality between the aim sought and the means employed” (Ssenyonjo, 2012: 8). These three benchmarks are cumulative requirements and hence any treatment that is not in compliance with any of the them is discriminatory.

Generally, equal rights to productive resources such as land have been affirmed in many international commitments to which Zambia is a State Party. For example, Article 16 (1) (h) of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) gives the same rights to both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property. The 1995 Beijing Declaration and Platform for Action (BPFA) F1 - 165 affirms equal rights to own property and urges States Parties to undertake legislation and administrative reforms to give women equal rights with men to economic resources, including, among others, access to ownership and control over land. Article 19 c) of the African Protocol on the right to sustainable

development encourages the promotion of access to and control over productive resources such as land by both women and men. Provision H (iii) of the SADC Declaration on Gender and Development signed in 2008 also affirms the promotion of full access to, and control over productive resources such as land and a good quality of life in order to reduce the level of poverty among women and men.

The Zambian government, in particular, has introduced a number of measures to protect women and men from discrimination and deprivation of property. For example, the *Intestate Succession Act* of 1989 imposes criminal penalties on those who wrongfully deprive rightful heirs of their property. The *Wills and Administration of Testate Estates Act* of 1989 prohibits intermeddling with the property of rightful heirs. According to this Act, any person who wrongfully deprives a rightful heir of her or his property is liable to criminal sanction. Moreover, the Anti-Gender Based Violence Act of 2011 categorises property grabbing as a crime. The Act established the victim support unit to protect women and men from property-grabbing after the death of a spouse (United Nations, 2013).

Recent constitutional review efforts resulted in the Constitution of Zambia (Amendment) Act, 2016 which, among others, provides for the establishment of the Gender Equality and Equity Commission whose mandate is to promote the attainment and mainstreaming of gender equality. There has also been an attempt to enhance the Bill of Rights in the Constitution of Zambia 1996 by including economic and social rights among others. However, the referendum process failed as it did not reach the prescribed threshold of voters for any changes to be effected (Syampeyo, 2016). Had it succeeded, it would have worked to the advantage of women. Despite the failure of the referendum, there have been calls by the women's movement, particularly the Non-governmental Organisations Coordinating Council, and the Grand Coalition on a People Driven Constitution to revisit the process of holding another referendum.

Despite efforts to create an enabling environment for both women and men to own land, women continue to face discrimination. Therefore, appreciation of how this impacts on their economic and social rights is critical to raising an ethical awareness on the need to address this problem in Zambia. For this reason, this study ethically assessed the impact of inequitable land ownership on women's economic and social rights.

1.3 Statement of the Problem

The majority of women in Zambia do not own land due to inequitable land ownership patterns which are mostly in favour of men. However, more women than men are dependent on agriculture for their livelihoods. In addition, they continue to be caretakers of dependants, the young, the old, and others unable to care of themselves; women are embedded in human relationships of care. While it is generally known that inequitable land ownership limits women's access to livelihoods, it is not clear how this affects their access to economic and social rights. Therefore, this study assessed the impact of inequitable land ownership patterns on women's access to economic and social rights specifically in Mumbwa district.

1.4 Aim

The aim of the study was to conduct an ethical assessment of the impact of inequitable land ownership patterns on women's economic and social rights in Mumbwa district.

1.5 Objectives

- (a) To investigate the current state of land ownership between men and women in Mumbwa district.
- (b) To establish factors that contribute to the existing land ownership patterns between men and women in Mumbwa district.
- (c) To ethically assess the impact of existing land ownership patterns on women's economic and social rights in Mumbwa district.

1.6 Research questions

- (a) What is the current state of land ownership between men and women in Mumbwa district?
- (b) What factors contribute to the existing land ownership patterns between men and women in Mumbwa district?
- (c) What is the impact of existing land ownership patterns on women's economic and social rights in Mumbwa district?

1.7 Ethical theoretical framework

Considering the topic and objectives of the study, rights theory and ethics of care provided the ethical framework that guided data collection and informed ethical analysis.

1.8 Methodology and Methods

The research design was a case study. The methodology used was qualitative with an ethical component in order to gain an in-depth understanding of the issue. Three methods of data collection were used, that is, observations, in-depth interviews and focus group discussions (FGDs). Collection of secondary data was done by reviewing books, journals, articles and internet-based materials. Content analysis was used to analyse data followed by an ethical evaluation of the study findings.

1.9 Significance of the study

A large proportion of women depend on land for livelihood. Therefore, equitable land ownership is an ethical issue which has a bearing not only on women's dignity and well-being but also on their dependents. While a number of studies have been done on how inequitable land ownership in Zambia affects women's livelihoods, no study of this nature has been conducted in Mumbwa district. Therefore, this study was conducted to bring out new knowledge on the subject and to contribute towards raising ethical awareness among

policy makers, traditional leaders and Zambian citizens in general on the need to address the problem.

1.10 Delimitation

The study was restricted to Mumba and Shakumbila chiefdoms in Mumbwa district of Central Province. Moreover, the study only focused on ownership of land which was considered to be the most important productive resource in rural areas.

1.11 Limitations

The first limitation was that some interviews were conducted in a hurry because some interview participants were busy with farming activities. Another limitation was that only one female headperson was interviewed as compared with three male headpersons. This is because most of the traditional leaders in the area were male. This may have interfered with getting a balanced view on the subject.

1.12 Operational definitions

Ethical assessment:	The application of ethical theories and principles to analysing and resolving specific ethical problems.
Inequitable land ownership:	Patterns of land ownership that favour one gender more than the other.
Land ownership:	Ability to make the decisions regarding the use and potential sale of the property.
Economic rights:	The right to earn enough to meet family basic needs and the right to raise and sell one's products at a return which will give him or her and his or her family a decent living.
Social rights:	Rights to adequate food, water and sanitation, adequate housing, education, health, social security.

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

A number of studies have been conducted and papers written on the land ownership patterns between men and women as well as factors leading to such ownership patterns. This Chapter presents a critical review of literature on the subject at a global level, on the African continent, at the national and at local levels.

2.2 Global Perspective to Land Ownership Patterns

In principle, men and women have equal land ownership rights. According to the General Comment No.16 of the UN Committee on Economic, Social and Cultural Rights, “women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so” (Gomez and Tran, 2012: 4). The Committee goes on to underscore the need for national strategies to ensure food and nutrition security for all by preventing discrimination in access to food or resources for food. This should include guarantees of full and equal access to economic resources. The committee also emphasizes on the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology (Gomez and Tran, 2012). The committee simply echoes a position that is espoused in the UDHR as well as in several human rights instruments and protocols. In practice, however, literature shows that there are inequalities between the two with women usually being disadvantaged in most countries.

According to FAO (2017), women constitute on average 43 percent of the agricultural labour force in developing countries. However, their ownership of agricultural land remains significantly lower than that of men. Agricultural census data show less than 20% of landholders being women with some parts of Africa recording as low as less than 10% of women landholders. (FAO, 2010). Women’s lack of secure rights over land translates into

lower productivity, perpetuating food insecurity, malnutrition and poverty. This observation is also brought out by the Global Land Rights Index (2017) which shows that the land laws of many countries still do not recognize women's inheritance or joint ownership despite decades of constitutional and legal framework modernization support. This denies women of their rightful inheritance.

Similar observations were made by the United Nations Women (2013) that many women across the world lack secure land rights and are denied equal rights to inheritance. This is despite the fact that they till the land and produce the food (United Nations Women, 2013). The inequality in land rights puts women at a risk of losing their source of food, shelter and income.

Gomez and Tran (2012) observed that while women's land and property rights are vital to development, they are often not shared equally between men and women, and are routinely violated, denied, and given insufficient protection and enforcement in many parts of the world. Not only do women have lower access to land than men but they are often also restricted to secondary land rights which means that they hold these rights through male family members. Hence, women risk losing entitlements in case of divorce, widowhood or their husband's migration. The obstacles which prevent women from effectively enjoying land rights equally with men range from inadequate legal standards and implementation of laws, to discriminatory social norms, attitudes, and programs at the national, regional and local levels. These factors, taken together, result in wide discrepancies in practice between development outcomes for men and women.

According to Gomez and Tran (2012), there is an evident link between women's land and property rights and sustainable human development. The authors quote the Swedish International Development Cooperation Agency (SIDA) as having noted that "women's

access to land and property is central to women's economic empowerment, as land can serve as a base for food production and income generation" (Gomez and Tran, 2012: 2). So, land ownership has an effect on food availability and nutrition. For example, countries where women lack rights or opportunities to own land are said to have on average 60% more malnourished children than countries where women have some or equal access to land (Gomez and Tran, 2012). In other words, there is a direct link between land ownership and the enjoyment of economic and social rights such as the right to adequate food, adequate housing, education and health.

Recently, a study by Fisher and Naidoo was conducted in 2016 with the aim of producing the first high resolution map of gender inequality. The study analysed over 689,000 households in 47 countries representing approximately half of the world's least developed countries (Fisher and Naidoo, 2016). To measure inequality, land ownership and household wealth were used to compare welfare between male-headed and female-headed households. The study found that male-headed households had, on average, 13% more asset wealth and 303% more land for agriculture than do female-headed households. At the national scale, it was discovered that male-headed households had significantly more asset wealth than female-headed households in 17 of 47 countries. Only in Senegal did female-headed households have significantly more asset wealth than male-headed households. With regard to land ownership, "male-headed households had significantly more land in 13 countries ... while Senegal again was the only country where female-headed households owned significantly more land than those headed by males" (Fisher and Naidoo, 2016: 3). The gender inequality patterns were partly attributed to lack of the rights, knowledge or capital by women in many areas in developing countries to secure their land and asset inheritance after being widowed. Fisher and Naidoo (2016) observed that gender inequality in those countries was entrenched in the cultural, political and market systems that operated at

household, community and national levels. Nevertheless, the study did not make any attempt to pin down specific causal explanations for the gender inequality patterns. As such, Fisher and Naidoo (2016) recommended a detailed follow-up research to understand the gender inequality dynamics at the subnational or even village level.

A paper by Rao (2011) shows that across Asia, land ownership rights are not enjoyed equally between men and women. Access to landed property is shaped by the persistence of social norms and values, marital and inheritance patterns and religious practices which mostly favour men and discriminate against women. Available evidence points to the fact that women are less likely to own and operate land in South Asia. In cases when they do, the size and value of their holdings are lower than those of men. This situation is partly attributed to the patriarchal nature of Asian families in which the man is recognised as the head of household. For this reason, land and other asset entitlements are generally issued to the head of the household. Women, considered socially as dependent wives and mothers, are expected to obey and remain at the service of men and the family of the man. It is through performance of their roles as wives and mothers that their rights are protected. However, they lose such rights when they are divorced or separated from their husbands. This makes them vulnerable to discrimination.

2.3 Land Ownership Patterns on the African Continent

Land ownership patterns in Africa are discussed in a paper that was presented at the African Economic Conference in 2015 with the aim of providing insights on women's tenure security and its implications for gender equality in the context of political economy of land in Africa. In that paper, Kouamé and Fofana (2015: 5) stated:

Although generally full members of the community have direct and secure rights to community land; in the patriarchal structures which dominate social and production relations in Africa, allocation of land is generally given to men, particularly after reaching a certain age or after marriage. Women are denied the rights to have access

and control over land, particularly when they get married into the community. The only use-right to land they may have is generally related to the land allocated to them by their husband.

The authors imply that generally, there is no equality in land ownership in Africa as land is mostly allocated to men. Women, irrespective of their age, are denied land ownership rights based on the expectation that they will access it through their husbands. Those that are not married access some pieces of land through their mothers who in turn are dependent on their husbands. If the marriage relationship ends either through divorce or death of a spouse, women's land rights are severely affected since the person through whom they exercised their rights is no longer there. The inequitable land ownership patterns is partly a reflection of women's prevalent citizenship status where they may be considered as inferior to men (Kouamé and Fofana, 2015). Factors highlighted in the paper as contributing to gender inequality in land ownership include (1) social stereotypes related to assigning of productive roles to men and domestic roles to women; (2) customary laws and norms which confer rights to land to the head of the household who are mostly men; (3) legal pluralism in which different and concurrent legal systems (religious, customary and statutory) use different rules to decide on land cases thereby undermining the rule of law; (4) institutional factors such as lack of knowledge on legal rights and difficulty in accessing courts due to lack of resources; and, (5) economic factors which make it difficult for women to accumulate capital needed to buy land or make investments and improvements on their land.

The issue of patriarchy raised by Kouamé and Fofana (2015) undergirds much of the inequality issue not only in Africa but in all early social structures. According to Becker (1999: 24), "patriarchy is a male-centred, male-identified and male-dominated social structure." She argues that patriarchal culture values control and domination and that this is done to ensure one's own safety from others. She points out that although patriarchy is thought of in terms of women and men, it is more about what goes on among men.

Patriarchy, however, is the source of the continuing inequality between women and men. This realization leads into the definition of patriarchy as “a system of male authority which oppresses women through its social, political and economic institutions (Makama, 2013: 117). Patriarchy is said to justify the marginalization of women in many areas including family, domestic matters and inheritance.

A paper presented at the Annual World Bank Conference on Land and Poverty in 2013 shows that Africa has more customary land than statutory land and is always at men’s disposal while women access it through male members of the family. Odeny (2013: 7) writes, “the bulk of the land in Africa, about 75%, is under customary tenure, administered by unwritten law based on tradition and cultural norms prevailing in an area for a particular tribe of people”. He observes that despite African tribes having both patrilineal and matrilineal systems, male members of the family are allocated land whenever they need it while female members are allocated only through male members. Moreover, the allocation to females is temporary because they are expected to live and access land at their spouses’ home once they get married. Odeny posits that women, in essence, are treated as people in transit from their natal homes to join their spouses. He identifies many factors that impact on women’s access to and ownership of land under customary law as follows: (1) constitutional bias where some constitutions are either neutral or discriminatory in customary and personal law matters such as inheritance; (2) stereotypes arising from the patriarchal nature of African societies in which male domination on matters of land makes it difficult for women to access and own land in their own right; (3) lack of awareness on legal provisions in those African countries that have constitutions which ascribe to equality between male and female; and, (4) the gap between high-level commitments and implementation practice.

Another paper by Doss *et al.* (2013) was written with the aim of exploring the levels and relative inequalities in land ownership between men and women in African countries. The paper shows that (1) in the majority of cases, women are disadvantaged compared with men with regard to reported land ownership; (2) there is a wide range in the magnitude of the gender gap, depending on country, region, type of land, definition of landholding, and inclusion of joint ownership, even within the same country; and (3) Rwanda displays the highest levels of women's land ownership statistics overall—both reported ownership and documented ownership—when both sole and joint ownership are considered. This is followed by Uganda and Ethiopia which also display comparatively high levels of women's land ownership. However, less gender-equitable levels of land ownership and management are found in South Africa and Niger.

Despite the reference to Rwanda as displaying the highest levels of women's land ownership statistics, a brief by Lankhorst (2012) shows that, like in many African countries, land in Rwanda is not equitably distributed between men and women. He observes that the Rwandese government adopted legislation that reduced the scope for application of customary law in the area of land tenure and a new law on matrimonial regimes and inheritance, both of which incorporated progressive ideals of gender equality. However, this has not led to significant changes on the ground and customary law continues to have a strong influence on the way in which claims to land are dealt with (Lankhorst, 2012). In rural Rwanda, land ownership which is traditionally regulated by customary law, puts sons at an advantage by allowing them to typically inherit part of their father's land when they marry and share any remaining land when their father dies. Women, on the other hand, access land through their husbands and hence lack the rights to sell, gift, rent or build on it. While they may receive land from their parents as a gift when they marry, their claims are limited mostly to rights of use. The right to control continues to be exercised by their

brothers. Women's access to land is made possible through their husbands but they cannot inherit it. So, continued enjoyment of the right to use land by a widow will depend on whether or not she is in good terms with her in-laws. When a woman divorces or is abandoned, she will be forced to return to her biological family where her right to land is not guaranteed (Lankhorst, 2012).

A study conducted in Rwanda by Vanhees in 2014 raised similar issues to those discussed by Lankhorst (2012). The study investigated property rights for women in Rwanda with particular focus on access to land for women living in de facto unions. The study found that in general, female land tenure was characterized by indirect land rights that were often merely usufruct rights. Women relied on their association with male members to gain access to land. "As a consequence, female land rights are weak and unpredictable" (Vanhees, 2014: 92). The major factor contributing to the status of land ownership between men and women in Rwanda was said to be custom especially with regard to how land had been passed on from generation to generation. According to the study, male members of the family who reached the age of majority, also considered as the age of marriage, would receive a piece of land to build a house for their future family. The piece of land referred to as *umunani* would be given to grandsons if there were no sons in the family. As a result of this custom, married women were systematically discriminated by their ancestors when it came to appointing the power to control land. The resultant was that sons were given land to establish their households while married daughters were supposed to live on their husband's land. In the event of the dissolution of a marriage, caused by death of one of the spouses or divorce, widows would be considered as outsiders and hence expected to return to their consanguineal or blood family where they would only exercise the right to use land and enjoy its fruits (usufruct right) as land is usually passed on to males. The factors that contribute to inequitable land ownership are summed up by Polavarapu (2011) as, (1)

resistance to allow daughters to inherit land from their parents; (2) adherence to assumptions of female inferiority; and, (3) the persistence of informal marriages, in which wives remain unprotected by the existing laws.

Contrary to the position by Lankhorst (2012) and Vanhees (2014), a case study by the United Nations in 2013 shows that Rwanda is one of the African countries where lessons can be drawn in terms of land ownership. The study shows that both men and women are registered in the same way and enjoy equal rights. In the case of couples, both men and women are required to be present during the registration of owners to ensure they are both registered as joint property owners. Moreover, children are registered as individuals with a beneficial interest in their parents' land. This helps to effectively clarify inheritance issues by preventing family members of the deceased, on the death of the landowner(s), from wrongly asserting rights over land to the detriment of the genuine heirs. As a result of Rwanda's land tenure reform programme which started in 2004, statistics on land ownership in 2012 showed that 11 percent of privately-owned land was owned by women, 5 percent by men, 83 percent jointly by married couples and 1 percent by others. These statistics present a very uncommon picture in as far as general land ownership patterns in Africa are concerned. The study, however, did not include customary land ownership patterns which may be the reason for the difference between this study and the one by Lankhorst. Moreover, the United Nations case study did not show how the presented land ownership statistics in Rwanda have impacted on women's enjoyment of economic and social rights.

In Uganda, various studies and papers on land ownership patterns show that there are gender disparities in favour of men. While the Ugandan government has enacted formal laws that forbid discrimination against women, significant disparities between the rights of men and women arise from violation of customary law as "more than 80% of land is held under undocumented customary tenure systems" (Veit, 2011: 3). Women are reported to grow

70% to 80% of the food crops but only own less than 8% of the land. Burke and Kobusingye (2014) also made similar observations regarding the generally equitable laws which, however, are not equitably implemented. Poor understanding of land law and management systems is one of the factors contributing to unequitable land ownership (Burke and Kobusingye, 2014). Other factors include a pluralistic legal system, high costs of pursuing claims in the formal legal system, institutional discrimination, inefficiency in the court system, traditional norms and practices as well as patriarchal social systems which generally consider man as the head of the family (Hannay, 2014).

Ethiopia is another African nation that is reported to have made strides in promoting gender equality in land ownership between men and women. It is reported to have “comparatively gender-equitable levels of land ownership statistics” (Doss *et al.* 2013: 14) and this is attributed to recent government land policies and programs that provide for joint registration. However, men solely own a greater share of documented land than that owned solely by women in terms of area measures. For example, the share of total household land that is documented solely in men’s names is 19% as compared to 6% documented solely in women’s names (Doss *et al.* 2013).

A study was conducted by Tura (2014) in Southern Ethiopia with the aim of assessing the extent of the implementation of rural land use and administration law with respect to women’s equal access to and control over rural land with focus on smallholder farmers’ landholding system in the Southern Nations, Nationalities and Peoples Region in Woliata zone. The objectives of the study were to (1) examine the Ethiopian rural land use and administration laws in terms of women’s right to rural land and (2) assess the extent of enforcement of laws regarding women’s access to and control over rural land in two rural districts of Wolaita zone, Southern Ethiopia. The study found that Ethiopian women had equal rights with men to own, administer and control property under the existing laws.

Women particularly had a right to access rural land free of charge and control it equally with men. Moreover, they had an equal right to property inheritance. However, the law was not effectively implemented in the Wolaita community, one of the administrative zones in the southern Ethiopia. The main challenge to women's right to and control over land was the pessimistic attitude of the community towards women. Other challenges were lack of legal awareness on the breadth of their right to land, lengthy trial procedure in land matters brought before the courts and lack of an effective legal aid system for women (Tura, 2014).

2.4 Land Ownership Patterns in Zambia

A study by Muchula (2009) based on a case study design, was conducted in Shifwankula village in Mungule chiefdom in Chibombo District of Central Province. The objectives of the study were to: (1) assess the current land tenure situation with respect to women's access to customary land, the procedures followed in accessing customary land; (2) examine the obstacles if any that women faced in accessing land as well as (3) examine the level of women's awareness about their rights to land and property under customary law, so as to determine whether indeed customary law disadvantaged women in as far as access to land and property was concerned. The study found that women, like men, generally had access to land and property. The access to land was not through male relatives but directly through the headman. The study further found that women in Shifwankula village were aware of provisions in the Lands Act regarding their entitlements to convert customary tenure into leasehold tenure and some had taken advantage of such provisions to acquire land. Therefore, the study concluded that women in Shifwankula village did not face any obstacles in accessing land provided they showed loyalty to the village headman and were in the village register. However, the same study found that married women were disadvantaged with regard to access to land as they could not ask for land to be allocated to them directly from the headman but only through their husbands. It is observed that the

study did not clearly distinguish between access and ownership even though ownership was implied in the discussion that women were aware of legal provisions on conversion from customary tenure to leasehold tenure and that some were, in fact, benefiting from those provisions. Moreover, there were no findings on obstacles that women faced with respect to access to land since it concluded that there were no obstacles at all. The other observation is that the study did not cover the impact of existing land ownership patterns on women's access to economic and social rights because this area was not part of its mandate. Further, the study was conducted from a legal point of view and so did not look at the ethical implications of the findings.

Notwithstanding findings of the study by Muchula (2009), literature on gender equality and land ownership in Zambia generally shows imbalances between men and women. For example, Veit (2012: 1) states: "most women in Zambia do not enjoy the same land rights as men". Most statutory land is held by men in addition to the customary land which is also male dominated. While the Zambia Lands Act provides support for women who hold statutory land, it does not apply to customary land. Moreover, most land is held under customary tenure systems which do not provide women with significant land rights. The land ownership patterns are attributed to the following factors: (1) discriminatory customary rules and practices which place men at an advantage over women; (2) biased interpretation of laws in favour of men by some local court justices who are mostly male; (3) biased land institutions and (4) tedious land transaction procedures and complex application forms.

Moreover, a report by ACORD *et al.* (2012) shows that men and women in Zambia do not enjoy equal rights to land as there are several structural issues that perpetuate discrimination against and the erosion of women's land rights. The issues include: (1) the misconception that women are inferior class and less capable of developing land once allocated; (2) male dominated institutions allocating land; (3) lack of information on land acquisition procedure

or inappropriate dissemination channels; (4) lengthy and tedious procedures, and corruption; and (5) perception of women as being in transit and the notion that husbands will provide for their wives.

A baseline study was conducted by NiZA and ActionAid International (Kachika, 2009). The purpose of the study was to determine, establish, and benchmark the current situation in Zambia and four other Southern African countries (Malawi, Mozambique, South Africa and Zimbabwe) regarding women's land rights. The study observed that there was a dual land system in Zambia where customary land was administered under customary law while government administered the leasehold tenure in State land. The study found that comparatively, women had not quite benefitted from statutory tenure, as it was the men who mostly held title deeds. Moreover, the majority of women who still relied on customary land had to bear with patriarchal traditional land administration systems that resulted in males dominating the access, control and ownership of land. The study also identified some challenges preventing women from enjoying their rights. Some of the challenges were (1) lack of financial resources by many women to apply for customary land conversion; (2) practices by some local courts that continued to uphold customs that discriminated against women in matters of inheritance, divorce, marriage or compensation of property; and (3) society's consideration of women as subordinate to, or the property of men and their families.

2.5 Land Ownership Patterns in Mumbwa District

Mumbwa district is located in the Central Province of Zambia. It shares district borders with Shibuyunji and Kabwe (Central Province), Kaoma (Western Province), Namwala (Southern Province) and Kasempa (North-Western Province). Mumbwa has a total population of 226,741 out of which 50.6% (113,702) is female while 49.4% (112,469) is male (Central Statistical Office, 2012).

Generally, there is scanty literature on land ownership patterns in Mumbwa district. Studies that have been conducted have only focused on related issues. For example, Mumbuna and Machina (2015) conducted a study on the socio economic status of farm workers on Amatheon Agri farm. Despite one of the objectives being to investigate the level of access, ownership and control of land taking into consideration gender, the study only went as far as showing that “most (66%) of the respondents said they had access to agricultural land while 34% stated that they did not” (Mumbuna and Machina, 2015: 20). It did not show the proportion of men and women that owned land in order for one to determine whether or not there was gender equality in land ownership.

Another study was conducted by Women for Change (2014) to collect baseline information regarding women’s access and control over productive resources in Mumbwa district. The study was primarily focused on people living on customary land. According to study findings, 97.5% reported that they owned land. Although the study did not show the proportion of men and women reporting land ownership in order to clearly show land ownership patterns, it pointed out that there were power imbalances between men and women regarding buying, using, lending and selling of land. For example, the proportions of respondents reporting that a woman could buy, use, lend or sell land were 23.3%, 77.2%, 20.1% and 9.5% respectively showing high levels of access but low levels of control over land. According to this study, unequal power relations, tradition and lack of ownership are the three major challenges that prevent women from enjoying their right to productive resources such as land. The study observed that women’s limited control over land and other productive resources severely limited their efforts to attain economic, social and political empowerment. The study, however, did not show how the imbalances in power over land affected women’s enjoyment of social and economic rights.

Further, a gender needs assessment was conducted by Women for Change (2015) in Shimbizhi, Chisalu, Nakasaka and Nangoma wards in Mumbwa district. The study was conducted under a project focussed on promoting women's empowerment as a pathway to improved household nutrition. The gender analysis examined the different roles played by men and women, their decision-making power, differing needs, constraints and opportunities, and the impact of these differences on food security and nutrition. With regard to land, the study found that men had high levels of both access to and control over land while women had medium levels of access and low levels of control. The phenomenon was attributed to culture which put men especially husbands in positions of control over their wives. The study also found that crops grown by men were allocated more land than those grown by women. Small portions of land resulted in reduced crop diversity. Consequently, women struggled to meet family food and income needs from the little food crops that they harvested. Despite not focusing on land ownership patterns, the study pointed to the connection between access and control over land and women's economic and social rights.

2.6 Summary

Most of the studies that have been carried out on inequitable land ownership patterns have been at global, regional and national levels. This has left gaps in understanding these patterns at lower levels (district, chiefdom or village) for targeted and meaningful decision making. Where studies have been conducted at lower levels, they have not focussed on how inequitable land ownership patterns have impacted on women's economic and social rights. Nevertheless, there are common issues that can be drawn from studies that have been conducted in different African countries including Zambia.

Most of the studies show that different African countries have made efforts to introduce legislations aimed at promoting gender equality in land ownership. Despite the various legislations, there is inequality in land ownership patterns and mostly in favour of men

except for exceptions in Rwanda and Ethiopia. Inequitable land ownership patterns are attributed to many problems which may be categorised as follows: (1) Inadequate pluralistic policy and legal framework as well as institutions for promoting and protecting women's right to land ownership; (2) poor understanding of land law and management systems; (3) patriarchal rules and practices which place men at an advantage over women; (4) lack of financial resources by women which hinders them from acquiring and developing land; (5) social stereotypes related to assigning of productive roles to men and domestic roles to women; (6) persistence of informal marriages in which wives remain unprotected by the existing laws; (7) the gap between high-level commitments and implementation practice; (8) biased land institutions and interpretation of laws in favour of men by some local court justices who are mostly male; (9) lack of an effective legal aid system for women; (10) lengthy trial procedure in land matters brought before the courts; (11) tedious land transaction procedures and complex application forms; (12) discriminatory social norms, attitudes, and programs at the national, regional and local levels; (13) stereotypes arising from the patriarchal nature of African societies in which male domination on matters of land makes it difficult for women to access and own land in their own right; (14) perception of women as being in transit and the notion that husbands will provide for their wives; (15) society's consideration of women as subordinate to, or the property of men and their families; (16) resistance to allow daughters to inherit land from their parents; and (17) the misconception that women are inferior class and less capable of developing land once allocated.

While the problem of inequitable land ownership patterns has been identified and discussed in various studies, there has been little effort to show how this problem impacts on women's economic and social rights. Much less has been the effort to ethically assess this problem. Therefore, this study went further than just investigating the current state of land ownership

between men and women by ethically assessing the impact of existing land ownership patterns on women's economic and social rights in order to contribute to literature on land ownership patterns.

CHAPTER THREE: THEORETICAL FRAMEWORK

3.1 Introduction

This chapter presents the theoretical framework of the study comprising two ethical theories, that is, rights theory and the ethics of care. These are the theories that guided data collection and ethical analysis.

3.2 Rights Theory

A right may be defined as “a justified claim on others” (Velasquez *et al.*, 2014) or simply as a “justified or justifiable claim” (Feinberg, 1982: 197). The definitions of a right suggest that there is correspondence between rights and duties in such a way that the rights of one person imply the duties of another person (Fieser, 1995). Human rights are basic moral guarantees that all people regardless of sex, nationality and culture have simply because they are people (Becker and Becker, 2001). They explain that “calling these guarantees ‘rights’ suggests that they attach to particular individuals who can invoke them, that they are of high priority, and that compliance with them is mandatory rather than discretionary.”

Fieser (1995) notes that there are four features that are associated with rights. Firstly, rights are natural which means that they are neither invented nor created by governments. Secondly, they are universal as they do not change from country to country. People have rights simply because they are people. Thirdly, they are equal in that rights are the same for all people, regardless of gender, race, or handicap. Fourthly, they are inalienable which means that one cannot hand over one’s rights to another person. Moreover, human rights are independent meaning that they exist as standards of justification and criticism regardless of whether they are legislated by a particular country. Rights are morally justified by moral standards that may not necessarily be codified in law. However, the justification of a claim is usually dependent on some standard acknowledged and accepted not just by the claimant

but also by society in general. The standard can be as concrete as a Constitution or a local law that specifies legal rights of individuals in a particular country or locality (Velasquez *et al.*, 2014).

A clear distinction has to be made between natural rights and human rights from the onset. Shaw (2011) brings out the distinction by explaining that natural rights such as life, liberty and property are God-given inalienable rights which human beings have as a result of their nature as rational beings. These rights do not come from government but government only secures them so as to allow one to exercise them. For this reason, natural rights do not change over time. They remain the same for all people at all times and in all places. On the other hand, human rights are rights that human beings give to themselves as human beings. In other words, human rights such as housing and leisure are bestowed by the state and therefore place an obligation on the state to provide them. Since human rights are bestowed by government which itself keeps changing, human rights also constantly change.

The argument for the existence of human rights is based on moral universalism. This is a fundamental philosophical claim of the existence of a moral order which is rationally identifiable and whose legitimacy precedes contingent social and historical conditions. This order applies to all human beings everywhere and at all times (Fieser, 1995). On the basis of this claim, it is argued that moral beliefs and concepts are capable of being objectively validated as fundamentally and universally true. The origins of moral universalism are typically associated with Aristotle and the Stoics. Aristotle argued in support of the existence of a natural moral order. He used the concept 'natural' to refer to that which has the same validity everywhere and does not depend upon acceptance. The argument for the existence of the natural order provided the basis for all truly rational systems of justice where justice is explained in terms of what is lawful and fair. Aristotle was aware that civil law

could itself be unjust in the sense of being unfair to some. Therefore, he made an appeal to the natural order as providing a set of comprehensive and universal criteria for evaluating the legitimacy of actual legal systems. He argued that the means for determining the form and content of natural justice was the exercise of reason free from the distorting effects of mere prejudice or desire (Fagan, 1995).

The basic idea of natural law was similarly expressed by the Roman Stoics. Stoics brought in the idea of God to justify the origin of natural law. They argued that morality originated in the rational will of God and the existence of a cosmic city from which one could discern a natural, moral law whose authority transcended all local legal codes (Fagan, 1995). They argued that this ethically universal code imposed upon all human beings a duty to obey the will of God.

Later, the idea of natural law was rooted in divine authority by Christian philosophers such as St. Thomas Aquinas. Aquinas argued that humanity's existence and nature could be fully understood only when seen in relation to God (Stumpf, 1993). He agreed with the Stoics and St. Augustine that natural law must be described in metaphysical and theological terms. He stretched the idea of natural law as the participation of the eternal in the rational creature and the rational creature's participation in the eternal law. Aquinas said that basic precepts of the natural law comprised "the preservation of life, propagation and education of offspring, and pursuit of truth and a peaceful society. The natural law consists of broad general principles that reflect God's intentions for man in creation." (Stumpf, 1993: 191).

Notwithstanding the importance of the foregoing argument on natural law as providing a basis for human rights, the origin of rights theory is attributed to the 17th century British philosopher John Locke who argued for the individuals' possession of natural rights, independently of the political recognition granted them by the state. These natural rights,

flowing from natural law, are possessed independently of, and prior to, the formation of any political community. He specifically argued that the laws of nature, also referred to as natural law, mandate that we should not harm anyone's life, health, liberty or possessions (Fieser, 1995). Hence, rights theory is seen to originate from the doctrine of natural rights whose justification is based on natural law. Natural law is conceived as “an ideal or standard fixed by nature, binding on all persons, and taking precedence over the particular laws and standards created by human social conventions” (Beauchamp, 1982: 206). This means that natural law is higher than human social conventions and should be the standard against which such conventions can be evaluated. Therefore, the theory of natural law provides a standard against which the laws and policies of states should be measured (Beauchamp, 1982). It is this standard that provides the foundation of rights and moral obligations.

Following the philosophical arguments which provided a conceptual prerequisite for the defence of human rights, a full Declaration of the doctrine of human rights occurred during the 20th century when the UDHR was adopted by the UN General Assembly in 1948. The Declaration comprises first and second-generation rights. The first-generation rights, as embodied in the International Covenant on Civil and Political Rights (ICCPR), comprise civil and political rights over and against the encroachment of the state on individuals. These rights, also called negative or liberty rights, are defined as rights “to be free to hold a belief, to pursue a course of action, or to enjoy a state of affairs without interference” (Beauchamp, 1982: 199). They include the rights to privacy, life and property. The right to land falls under this category. Civil and political rights as negative rights of non-interference are more about allowing each the freedom to choose for oneself. On the other hand, the second-generation rights, embodied in the International Covenant on Economic, Social and Cultural Rights (ICESCR), comprise economic, social and cultural rights. These are called positive or claim rights in the sense that they claim for each person the positive assistance of others in

fulfilling basic constituents of human well-being like water, food, shelter, health and education (Velasquez *et al.* 2014). In other words, second generation rights are called positive rights because they are rights to obtain a good, opportunity or service (Beauchamp, 1982).

Despite the division, however, both first and second-generation rights are fundamental rights that cannot be separated in their meaningful application. This is because both categories of rights are directed towards the securing of a minimum level of well-being for human beings. For example, Velasquez *et al.* (2014) point out that a fundamental right to freedom is worthless if people cannot exercise that freedom. In this sense, a right to freedom implies that every human being also has a fundamental right to what is necessary to secure a minimum level of well-being. Therefore, positive rights such as the right to water, food, health and education are rights that provide something that people need to secure their well-being.

Despite the inclusion of economic and social rights in the UDHR, these rights have been met with objections. One of the objections is that these rights require “people to engage in some action, such as providing assistance or paying taxes that they might otherwise not take” (Becker and Becker, 2013: 797). This introduces the problem of affordability in ensuring the enjoyment of such rights. However, this objection has been challenged in different ways. One of the ways is that even negative rights which sometimes have been considered as involving only omissions on the part of others and hence not requiring active intervention actually do, at least, imply a need for active intervention. For example, the right to property such as land, which falls under civil and political rights, requires that a particular government not only refrains from interfering with one’s enjoyment of their right to a particular piece of land but also provides protection and remedies against such interference

by others (Beauchamp, 1982). While this asserts that the right to property has both negative and positive elements, nevertheless, as a human right, it does not rest on the basis of costs or affordability. In the same vein, economic and social rights are not justified on the basis of affordability because doing so would also have serious implications on civil and political rights which also involve the question of costs. It should be mentioned, though, that recognizing the economic and other restraints faced by many nations, the fulfilment of economic and social rights may have to be realized overtime. Hence, these rights are also referred to as progressive rights. However, each State Party to the ICESCR undertakes to take steps, both legislative and administrative and to the maximum of its available resources, to achieve progressively the full realization of these rights by all appropriate means (United Nations Human Rights Office of the High Commission, 1996-2018).

Another counterargument to those attempting to dismiss economic and social rights on the basis of costs is that one of the bases of human rights is the fact that human beings have certain interests with normative necessity. “Such necessity could be obtained if the interests consisted ... in the goods that are necessary for human action or for having general chances of success in achieving one’s purposes by action” (Becker and Becker, 2001, 1511). The general substantive theory posits that “all actual or prospective agents have equal moral rights to freedom and well-being, and their having these rights is grounded in their enduring needs for the necessary conditions of their action and generally successful action”. The two main necessary conditions are freedom and well-being. Freedom consists in a person controlling his or her own behaviour by his or her own unforced choice while having knowledge of relevant circumstances. Well-being consists in having the general abilities and conditions which a person needs to achieve his or her purposes. The necessary conditions pertain not only to bare action but also to generally successful action. Since ‘generally successful action’ will vary from person to person, the necessity in question can

accommodate the varying degrees of practical abilities and conditions needed for action. “Thus, well-being falls into a hierarchy of goods ranging from life and physical integrity to education and opportunities for acquiring wealth and income” (Becker and Becker, 2001, 1510). An inference can be made from the preceding argument that human beings have a right to social and economic rights as these are necessary conditions for freedom and well-being.

Rights theory undoubtedly provides a useful framework for examining the impact of inequitable land ownership patterns on women’s economic and social rights. Even so, it is not adequate as it does not sufficiently take care of the unique experiences that women in general undergo and particularly in the study site. Instead, it treats men and women as identical individuals operating under similar circumstances and yet the reality on the ground is different as will be shown by the ethics of care.

3.3 Ethics of Care

Care ethics, a distinct moral theory attributed to Carol Gilligan and Nel Noddings in the mid-1980s, is a feminist philosophical perspective that takes a relational and context-bound approach toward morality and decision making (Burton and Dunn, 2016). Both Gilligan and Noddings “charged traditional moral approaches with male bias, and asserted the voice of care as a legitimate alternative to the justice perspective of liberal human rights theory” (Fieser, 1995). Care ethics places moral significance on the fundamental elements of relationships and dependencies in human life. It considers human beings to be inherently relational and responsive beings and that the human condition is one of connectedness or interdependence. This means that human beings are involved in caring relationships which comprise at least two people, that is, the one-caring and the cared-for. So, care is central to the ethics of care. It involves maintaining the world and meeting the needs of both ourselves and others. It builds on the motivation to care for the dependent and vulnerable people and

it is inspired by both memories of being cared for and the idealizations of self (Fieser, 1995). Care is both an inevitable and a good part of life. It is the manifestation of love which, according to care ethicists, is the most basic moral value (Herring, 2013).

Care ethics is considered a type of virtue ethics. However, it is distinct from traditional ethical theories such as utilitarianism and deontology. Whereas utilitarianism and deontology are based on an understanding of society as a collective of autonomous, rational individuals with an emphasis on rules, duties, justice, rights, impartiality, universality, utility and preference satisfaction, care ethics is based on the understanding of the individual as an interdependent, relational being (New World Encyclopaedia, 2017). Further, ethics of care emphasizes the importance of human relationships and emotion-based virtues such as benevolence, mercy, care, friendship, reconciliation, and sensitivity.

Ethics of care seeks to maintain relationships by contextualizing and promoting the well-being of care-givers and care-receivers in a network of social relations. In such relations, the one-caring is said to act in response to a perceived need on the part of the cared-for. The motivation behind the act of caring is an apprehension of the reality of the cared-for which makes the one-caring feel and sense what the cared-for is experiencing and subsequently initiate a commitment to help (Burton and Dunn, 2016). So, the commitment to help the one in need does not arise from the fact of one having a right to be cared-for. Instead, it arises from what one could term empathy which in turn ignites a sense of responsibility to help and this culminates into a commitment. This process occurs because care ethicists take a position that “we all have needs and that caring for others in meeting these needs is a universal experience (Herring, 2013: 49).

Despite the position that human beings have needs and that caring for others in meeting these needs is a universal experience, care giving is said to be heavier on women. Becker

(2002) stated that “traditionally, women have been – and women continue to be – caretakers of dependents, the young, the old, and others unable to care for themselves” (as quoted in Herring 2013: 69). The care giving work has been done for either low or no pay and hence there has been little value placed on it. This has consequently put those with significant caretaking responsibilities at a disadvantage in many areas of human endeavour. For this reason, Herring argues that unless we place greater value on caretaking and provide support for caretakers of dependents, women will continue to be unequal.

The ethics of care brings out issues that may be applied to research of this nature. It provides a useful framework for analysis in the sense that land, being a primary resource, is a very important means by which women can exercise greater care for others. The theory’s emphasis on the need to promote the well-being of care-givers and care-receivers in a network of social relations is useful in addressing certain context-specific issues in land ownership between men and women that may not be addressed by universalistic and individualistic theories such as rights theory. Ethics of care recognises that men and women have different needs depending on their roles with respect to care-giving and these needs should be taken into consideration when looking at issues of land access and ownership. Moreover, when we promote the well-being of women as care-givers, many other people who dependent on them such as the young and the old benefit since the positive developments in the care-giver’s life spill over to those for whom they care. Therefore, ethics of care can be applied to address specific issues which rights theory may not adequately address.

3.4 Summary

Rights theory brings out very important aspects that are relevant to this study. Firstly, it shows that the right to land is a fundamental right falling under the category of civil and political rights and therefore should be respected at all costs. Secondly, contrary to

indications in the literature review of inequitable land ownership between men and women on the basis of marital status, gender and culture, rights theory emphasises that both men and women have an equal right to land as rights are the same for all people. Thirdly, the human right of a person to own some land is inalienable meaning that one is not justified in handing it over to another person. For example, a married woman cannot justifiably hand over her right to land to her husband or vice versa.

However, due to its universalistic approach, rights theory overlooks important aspects such as the care-giving role that is predominantly played by women and hence the need for another theory, the ethics of care, to complement the former. For example, if two people of the opposite sex applied for the same piece of land, rights theory would consider both as having an equal right to that particular piece of land and would therefore seek an objective criterion for deciding to whom the land should be allocated. However, the ethics of care would consider the network of social relations in which each of the two applicants are intertwined so that a decision to allocate a piece of land considers not only the benefits to the two rights holders but also the welfare of families or relationships in which they are involved.

The two ethical theories guided the collection of relevant data and informed ethical analysis in a complementary manner. Rights theory was used to show how the right to land by both men and women is necessary to provide necessary conditions for freedom and well-being. The theory was also used to analyse what obligations government and traditional leaders, as the duty bearers, have towards ensuring that both men and women, as rights holders, enjoy social and economic rights. Ethics of care was used to examine how land ownership enhances women's ability to play their distinctive role as care-givers.

CHAPTER FOUR: METHODOLOGY

4.1 Introduction

This chapter discusses the location of the study, the design, methodology and methods that were used to collect and analyse data. It also provides information on the study population, sample size, sampling techniques, data collection methods and delimitations of the study.

4.2 Study Location

Mumbwa district, as shown in Figures 4.1 and 4.2, is located in the Central Province of Zambia. It shares district borders with Shibuyunji and Kabwe (Central Province), Kaoma (Western Province), Namwala (Southern Province) and Kasempa (North-Western Province).

4.3 Research Design, Methodology and Methods

The study was based on a case study design using a qualitative methodology with an ethical component in order to gain an in-depth understanding of the issue.

4.3.1 Population

The study population comprised community members, traditional leaders and representatives from government and Women for Change.

4.3.2 Sample Size

The sample size of the study was 78 comprising 72 community members (42 women and 30 men), four traditional leaders, one government representative (at district level) and one representative from Women for Change.

4.3.3 Sampling Techniques

The study used simple random sampling, purposive sampling and convenience sampling. Simple random sampling was used to pick in-depth interview participants. This sampling

technique was employed because it was the most appropriate technique in an unplanned settlement with no records of the total population. Purposive sampling was used to select traditional leaders as well as representatives from government and NGO based on their possession of knowledge about land ownership in the study area. Convenience sampling was used in selecting FGD participants based on their availability and willingness to participate in the study.

4.3.4 Data Collection Methods

Data collection methods involved both primary and secondary sources. Primary data was collected through in-depth interviews, FGDs and observations. A total of 43 in-depth interviews were conducted comprising 18 community members (10 females and 8 males) and two male traditional leaders from Mumba chiefdom, 19 community members (10 females and 9 males) and two headpersons (1 female and 1 male) from Shakumbila chiefdom, one government representative and one representative from a local Non-Governmental Organisation (NGO) called Women for Change. In addition, 35 community members (22 females and 13 males) were engaged in four focus group discussions. Two FGDs were conducted in Mumba Chiefdom each consisting of 8 participants and two in Shakumbila chiefdom consisting of 7 and 12 participants respectively. Secondary data was collected by reviewing books, journals, articles and internet-based materials.

4.3.5 Data Analysis

Content analysis was used to analyse data. Data was coded based on objectives and then grouped into themes. The themes were then analysed to establish the interconnectedness of data in answering the research objectives. Thereafter, an ethical evaluation of the study findings was conducted.

4.4 Ethical Considerations

To ensure strict observance of research ethics and thereby reduce risks among study participants, the researcher made participants aware of:

- (a) Their right to voluntarily participate and withdraw at any time. This included their right to skip any question that they might find offensive. No participant was coerced to participate in the study.
- (b) The purpose of the study in order for them to understand the nature of the study and its likely impact on them.
- (c) The procedure of the study so that they could know what to reasonably anticipate in the study.
- (d) Their rights to have their privacy and confidentiality respected.
- (e) The benefits of the study that would accrue to individuals and the community.
- (f) The fact that the researcher, with participants' permission, would collect personally identifying information such as names and phone numbers for the purposes of scheduling interviews and FGDs. However, participants were assured that such information would not be included in the research report.
- (g) The need for their oral consent as an indication of their agreement to participate in the study.

4.5 Delimitations of the Study

The study was restricted to two chiefdoms of Mumba and Shakumbila in Mumbwa district of Central Province. Moreover, the study only focused on ownership of land which was considered to be the most important productive resource in rural areas.



Figure 4.1: Map of Zambia
Source: Focus Africa (2018)

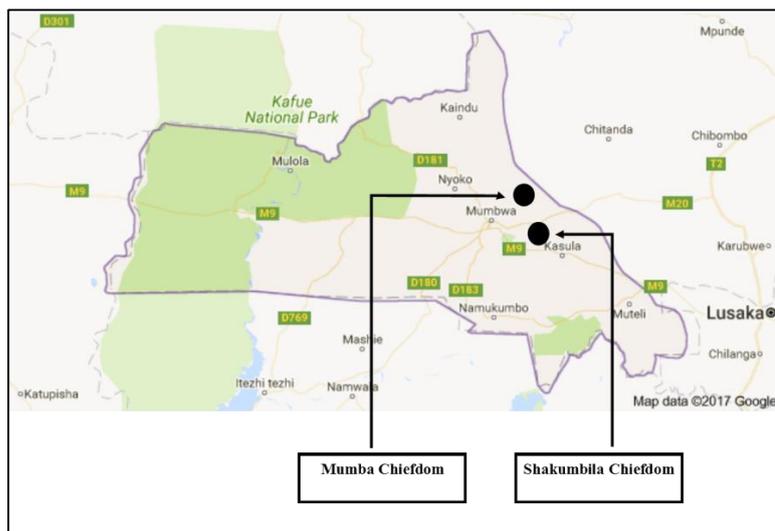


Figure 4.2: Study Location
Source: Map data (2017)

CHAPTER FIVE: FINDINGS AND DISCUSSION

5.1 Introduction

This section presents and discusses findings in line with the study objectives. The section begins by exploring the current state of land ownership between men and women in Mumbwa district. This is followed by the factors that contribute to the existing land ownership patterns before concluding with the impact of existing land ownership patterns on women's economic and social rights.

The study investigated land ownership by probing into aspects of access to land and control over its use and products. It looked at whether men and women were, in practice, equally allowed to own land. It also looked at who made decisions regarding the use and potential sale of the land including decisions about what to plant, what inputs to use, when and how much to harvest, and how to dispose of the crops.

5.2 Women and Land

5.2.1 Access to Land and Land Ownership

All the 37 community members (20 females and 17 males) who were engaged in in-depth interviews reported that farming was their main livelihood activity. These were asked whether they had access to any piece of land and their responses are shown in Figure 5.1.

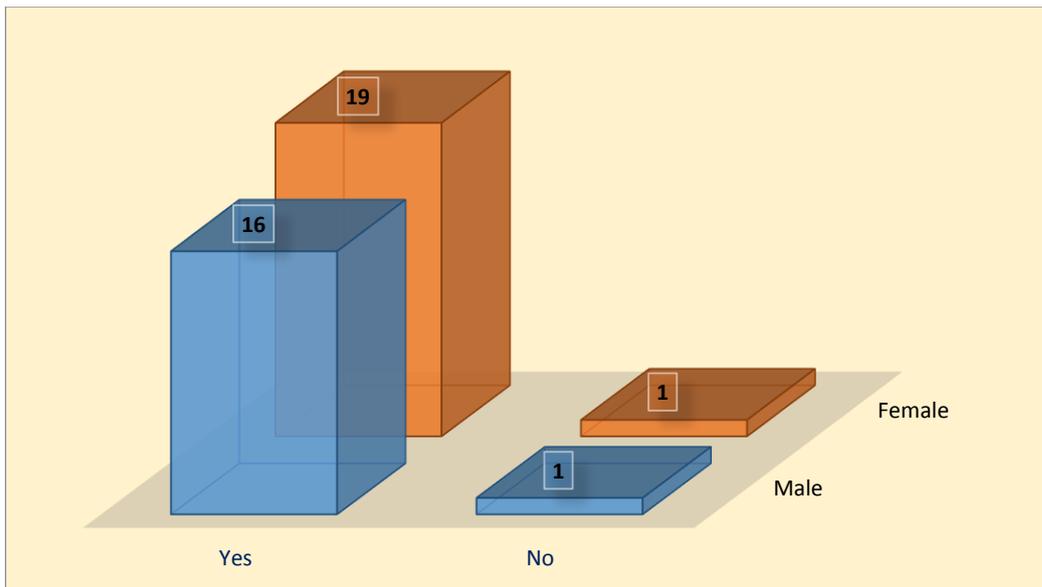


Figure 5.1: Access to Land by Sex

Source: Field data

35 (19 women and 16 men) reported that they had access to land while two (one female and one male) denied having access. The woman who said she did not have access explained that the land she used belonged to her husband which suggested that she actually did have access to the land through her husband. The man who said that he did not have access to land reported that most of his land had been grabbed from him by the same headman who had given it to him in 2013 leaving only his yard and a very small piece surrounding his house. He reported that the land had since been reallocated to someone else from Lusaka who had given the headman an undisclosed amount of money. When asked how he survived, he explained that he rented part of his neighbour's field at a cost of K200 annually. As such, it was established that he, in fact, had access to land. Hence, all the 37 in-depth interview participants had access to land.

The interview participants were then asked whether they owned the pieces of land to which they had access. The results are presented by respondents' sex and marital status in Figure 5.2.

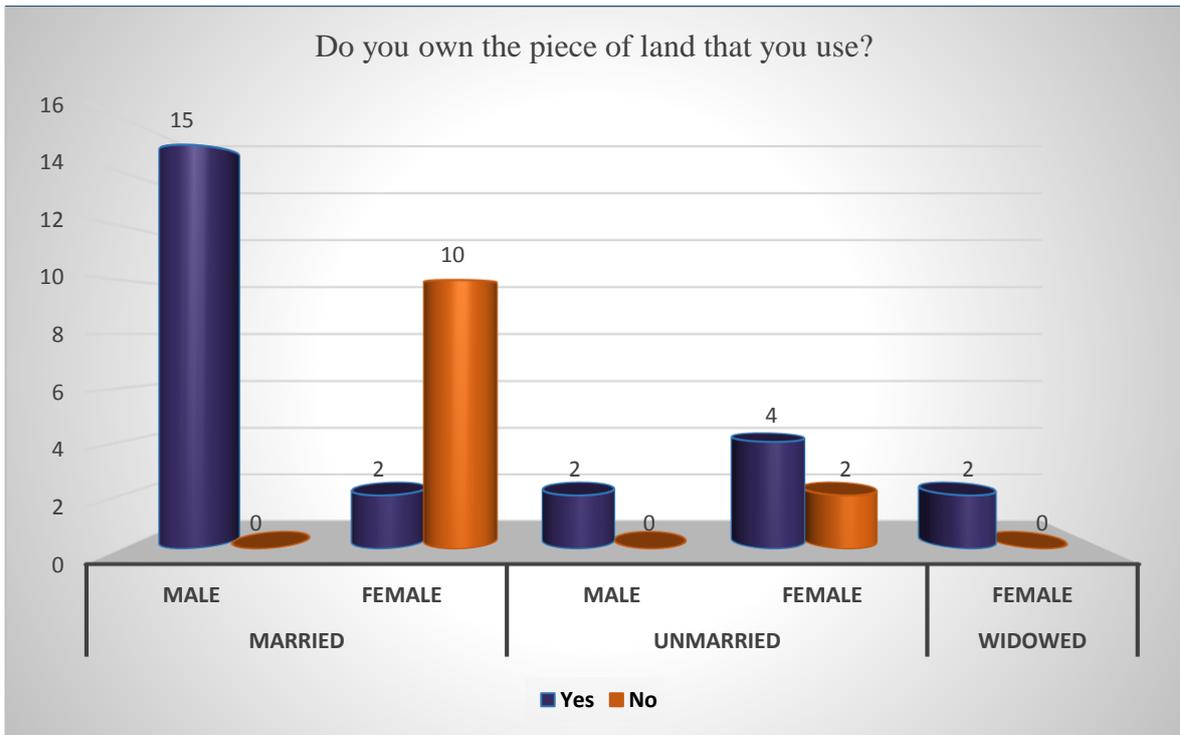


Figure 5.2: Land ownership by sex and marital status

Source: Field data

Of the 37 respondents, 25 (15 married males, 2 married females, 2 unmarried males, 4 unmarried females and 2 widows) reported that they owned the respective pieces of land while the 12 reported that they did not. In terms of sex, 17 out of the 25 that reported that they owned land were male while eight were female but all the 12 that reported that they did not own any piece of land were female. In other words, all the males that were interviewed reported that they owned land as opposed to only eight out of the 20 women.

The in-depth interview participants were also asked whether men and women were equally allowed to own land. Their responses are shown in Figure 5.3.

Out of the 37 in-depth interviews, whereas 15 (6 females and 9 males) indicated that men and women are equally allowed to own land, 22 (14 females and 8 males) indicated that men and women are not equally allowed to own land (see Figure 5.1). Thus the majority indicated that there was no equality in land ownership between men and women.

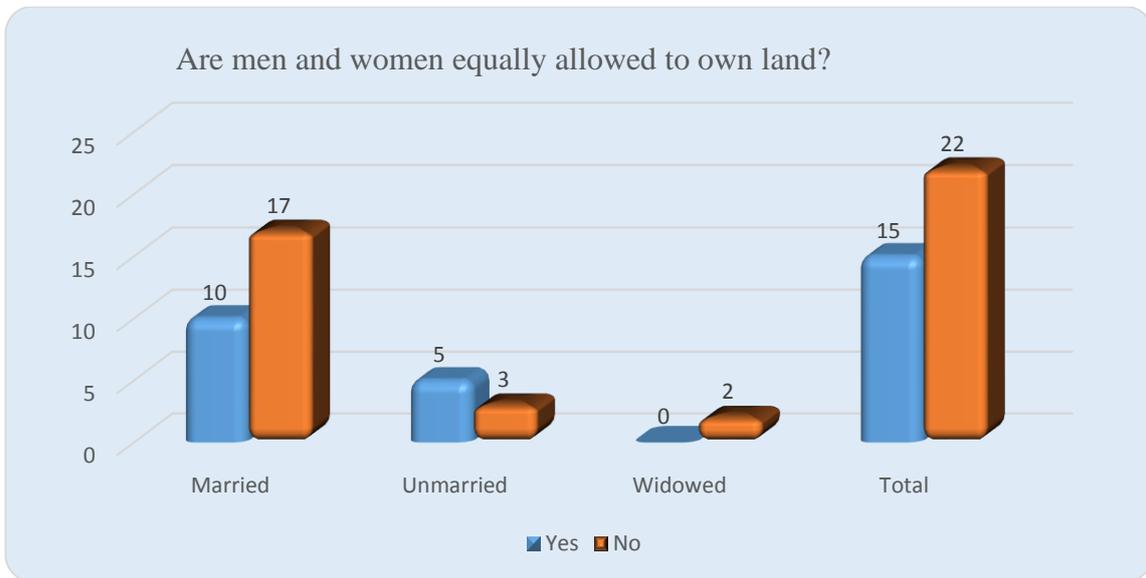


Figure 5.3: Inequality in land ownership by marital status

Source: Field data

During interviews, women (14 out of 20) showed a stronger tendency to respond in the negative than men (8 out of 17). The researcher observed during the in-depth interviews that women who responded in the negative to the question above did so immediately the question was asked and with passion as opposed to men who mostly smiled and took time to think about the question before providing a response.

In-depth interviews suggested that ownership of land by men was not affected by their marital status. They could own land whether or not they were married. Nevertheless, the situation was different for women as there were significant variances among women of different marital status. The eight women that reported land ownership consisted of 2 out of 12 married women, 4 out of 6 unmarried women and the two widowed women. So, the results do not only show that there is unequal land ownership between men and women but also that the gender bias in land ownership affects married women more than those that are unmarried and widowed.

The in-depth interviews indicated that unmarried women had an opportunity to own land. However, upon getting into marriage, they left behind whatever pieces of land would have been given to them and joined their husbands. Leaving their own villages to join their husbands resulted in some of them being referred to as ‘foreigners’ in their husbands’ village. This was reported to weaken women’s position in matters of land ownership. One of the interviewees echoed many others by saying:

Land ownership in this village favours men. Men easily get land because when a woman gets married, she abandons the plot and she has land acquired before marriage and goes to join her husband. This is why they [headpersons] give men. Married women are not given land but only use it through their husbands. So if you just pick a fight with your husband, he takes his land back saying you did not come with land from your family. Here, men own about 80% of the land.¹

The respondents were also asked about who they thought owned more land between men and women. As shown in Figure 5.4 below, 34 in-depth interviews reported that men owned more land while 3 (2 married men and 1 unmarried woman) reported that both men and women owned land equally.

¹ Personal communication, 5th July, 2017

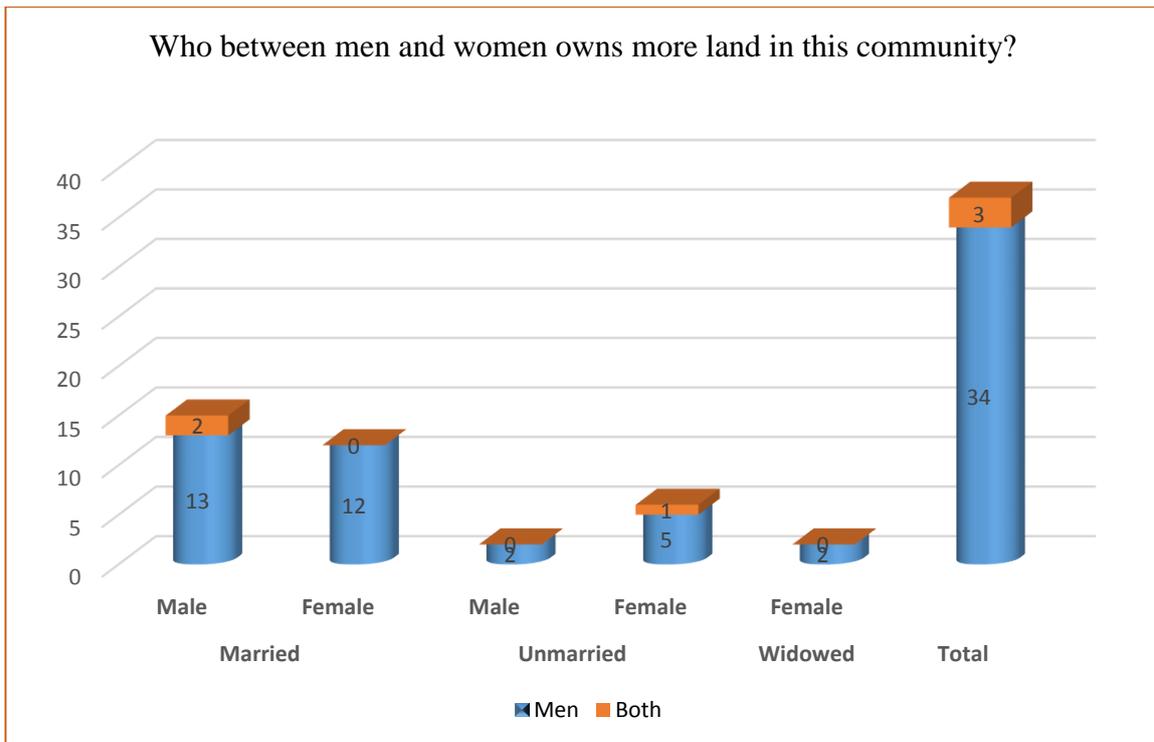


Figure 5.4: Proportionality in land ownership by sex and marital status
Source: Field data

The study further inquired into how much customary land in Mumbwa district was owned by men as compared to that owned by women. During initial in-depth interviews, it was discovered that there were no statistics as to how much land was owned by men and women as the land in question, being customary land, was not surveyed for appropriate land measurement units such as hectares to be established. The researcher was informed by the headpersons that were interviewed that they only used imposing marks such as removing a strip of bark around a relatively big tree to act as a beacon to show boundaries of one's piece of land. However, the researcher asked participants to give estimations of how much land in their village was owned by men and women.

The most common response from 11 in-depth interviews was that men own about 70% while women own about 30% of land. The second most common response from 9 in-depth interviews was 80% for men against 20% for women followed by 60% for men against 40%

for women from another 8 in-depth interviews. Hence, a significant majority of in-depth interviewees were of the opinion that at least 60% of land is owned by men. While these are only estimations and the sample is too small to provide meaningful figures, the findings suggest that men own more land than women.

The FGDs conducted in Mumba and Nangoma also revealed that there was inequality in land ownership between men and women. All the 12 FGD participants in Mumba reported that they had access to land as all their activities were depended on land. However, when asked whether they owned the land to which they had access, different responses were given as follows: The five married women said that they did not own the land but that it belonged to their husbands. The three married men said that they owned the land as it was given to them by the headman. Both unmarried women said that they did not own the land but that it belonged to their parents. The only widow in the focus group said she owned the land which was left by her late father and the only unmarried man said that he owned the land given to him by his parents. So, out of eight women, only one (a widow) owned the piece of land to which she had access whereas all the four men owned the land to which they had access. Moreover, when the participants were asked whether men and women were equally allowed to own land, they responded in the negative and explained that men were the ones who usually owned land. Similar views were expressed by FGD participants in Nangoma. All the 10 participants in one of the FGDs reported that they had access to land. Whereas the six married women said that the land they accessed belonged to their husbands, the four married men reported that they own the pieces of land to which they had access.

Despite the majority of in-depth interviews and FGDs indicating unequal land ownership between men and women, three out of the four headpersons that were interviewed said that both men and women were equally allowed to own land. For example, a female headperson in Nangoma reported that both men and women were equally allowed to own land. She said:

“it is now 50/50 when it comes to land ownership in my village.”² She, however, explained that the scenario was different in the past until a Non-Governmental Organisation (NGO) known as Women for Change (WfC) started implementing gender and human rights programmes in the area. She reported that WfC’s several trainings and sensitisations on gender and human rights had increased appreciation by both traditional leaders and community members of equal land rights for men and women.

A male headperson in the same area also reported that both men and women were equally allowed to own land. However, when the researcher requested for village land ownership records to confirm what had been shared, the headperson responded as follows:

But in the [village] register, it is only men and unmarried women in whose names land is registered. Married women have it [land] through their husbands. If a married woman comes [to ask for land], we call her husband to find out whether he has allowed her to come and ask for land. If the husband refuses, she cannot be given.³

What the headperson said was also voiced in most in-depth interviews and all the four FGDs. For example, when the researcher asked about the procedure for obtaining traditional land, one of the female FGD participants in Nangoma gave the following explanation while the rest of the participants nodded in agreement:

You start by approaching the headman to ask for a piece of land. The headman then will ask you why you want land and if you are a woman, he or she will ask about your marital status. If you are married, the headman will ask you to come with your husband to find out whether he is in support of you being given a piece of land. If your husband agrees to go with you to the headman and tells the headman that it is fine for his wife to be given land, the headman will look for an unoccupied piece of land and give you. But if your husband refuses to go with you to the headman or goes with you but does not agree that you should be given land, the headman cannot give you.⁴

² Personal communication, 13th June, 2017

³ Personal communication, 17th June, 2017

⁴ Personal communication, 17th June, 2017

However, when participants were asked whether a married man could be allocated land without his wife's permission, they all responded in the affirmative and broke into laughter. Immediately after everyone had stopped laughing, a male participant said that married women needed their husbands' permission to be given land. He said:

If a man does not allow his wife to obtain land but the headman goes ahead to give her, he will be accused by the husband of having a suspicious relationship with the woman in question. Moreover, the headman will be accused of intentionally causing that marriage to disintegrate. For this reason, headmen are afraid of allocating land to a married woman without her husband's permission.⁵

The FGD participants confirmed that this was the correct position regarding land allocation. They said that married women were required to seek their husbands' permission to own land. Any married woman who did not do so would be regarded as disrespecting her husband. In fact, she would be seen as indirectly communicating that she no longer considered the man she lived with as her husband. The FGD participants did not explicitly say what consequences there would be for such a woman although their comments were pointing to suggestions that if a woman pursued land ownership without her husband's permission, she could be divorced on grounds of disrespect and lack of recognition of her husband's headship.

5.2.2 Control over Land

Control over land has been treated as a separate section because a study looking at land rights for men and women should not only look at access and ownership but also control. One may argue that control, in fact, is a component of ownership and hence a discussion on land ownership necessarily incorporates aspects of control. Such an argument would be valid to some extent as the definition of ownership includes power to make decisions over what is owned. However, there is a difference between ownership and control as one may

⁵ Personal communication, 17th June, 2017

own something without necessarily having control over it. This study measured control by asking respondents to indicate who had control over the piece of land that they either accessed or owned. The results are presented in Figure 5.5.

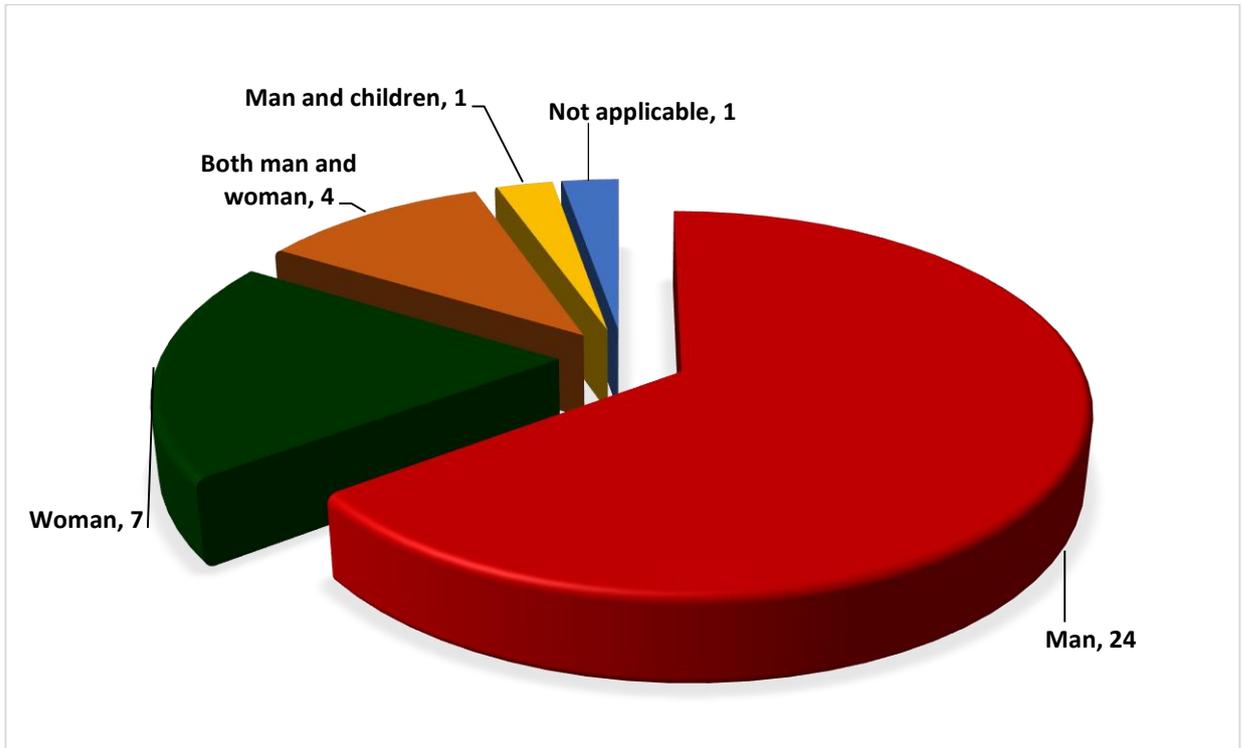


Figure 5.5: Control over Land

Source: Field data

Out of 37 in-depth interviews, 24 (13 females and 11 males) reported that a man controlled the respective pieces of land that they used, 7 females reported that the pieces of land they used were controlled by women, 4 males reported that both man and woman exercised control, 1 male reported that the piece of land he used was controlled by man and children while another 1 male did not state his position. The seven females that reported women's control over land consisted of two married women, three unmarried women and two widows while the four males that reported shared control between men and women were all married men. Hence, the findings showed that land was mostly under man's control and that women mostly exercised control if they were unmarried or widowed. It was revealed that for most

of the married women, their husbands were the ones that controlled land because they were household heads. One of the respondents explained this aspect as follows:

I not own any land because all the land I use belongs to my husband. He has allowed me to use it. Since he is the owner, he is the one with control over the [piece of] land on which we live and carry out farming activities. However, I have control over the produce from my own field. For example, last year, I spent the money realised from my produce on children's school fees. My husband did not pay for any of our four children (two in secondary school and two in primary school) because he had not yet sold his produce at the time school fees were due.⁶

Even in cases where a wife used her own resources to buy land, the husband took over its control. Some women complained that they were suppressed when it came to control over land. For example, one woman in Nangoma reported that she had bought a small piece of land that she used to grow crops such as soya beans and maize. She explained that the particular piece of land was her own while her husband also had his own. She also said she had control over crops that she produced. But things changed at marketing time as the husband took over. The husband was the one that sold the crops and made a budget of how the money should be used. She gave an example of her own experience where the husband did not only exercise control over the money she worked for but also decided when to allow her to use her own piece of land and when not to. She said:

They [husbands] say it is my place. The headman knows me not you [wife]. For example, I have stayed for two years – last year and this year – without growing any crops because my husband told me not to. He just said: this year you should not use that piece of land you used last year because I want to use it. Although he did this, it is my piece of land which I bought from a fellow village member in 2012 in exchange for four goats.⁷

Asked whether such experiences were common, she said yes. She said that men did that because they knew that a woman could not do anything; she could not fight back. What should be clarified, however, is that lack of control over land affects married women more

⁶ Personal communication, 8th July, 2017

⁷ Personal communication, 16th June, 2017

than widows. For example, the two widows that were interviewed reported that they had control over their respective pieces of land. One of the widows had gotten her land from a headperson after the death of her husband while the other one had simply continued living on the piece of land on which she and her husband lived before his death.

In-depth interviews with headpersons also indicated that men were the ones that controlled land as far as couples were concerned. They explained that men had control over land because they were the ones to whom land was allocated.

The researcher analysed the village register of a village headed by a female and found that in some cases, only a husband's name was written in the register. In other cases, the names of husband, wife and children were all written in the register although the husband's name was always on top in the first roll of the third column followed by his spouse's name below. The names of children were written in the third-last column of the register on condition that their names be transferred to the third column below their parents' names upon turning 14 years of age. The researcher observed that while there were names of widows in the register, there was no name of an unmarried woman. Upon enquiry of why there was no name of an unmarried woman, the village secretary's response was that there was no unmarried woman in the village. While it was difficult to verify whether indeed there was no unmarried woman in the entire village, the chances of such an occurrence are highly unlikely. Moreover, in-depth interviews had revealed that it was difficult to be given land if you were an unmarried woman. A female respondent said:

Those women who are not yet married have difficulties [acquiring land] because they [headpersons] will start asking that why do you want to have land on your own. So those just depend on their parents' land. For example, I know a woman, Ms. B. who found it difficult to obtain land. After dropping out of school, she approached

*headman S. for a piece of land for her to set up her own farm but the headman refused.*⁸

FGDs also showed that men had greater control of land because they were the ones to whom it was allocated. During an FGD in Nangoma, a male participant said that men had control over land because they were created to be in-charge of everything. Justifying his argument by referring to the Bible, he argued that women were helpers or assistants and hence should submit to men. Some female participants did not agree with the argument as they were of the opinion that women should equally own land and exercise control over it. No consensus was reached on the issue but all the participants reported that the current state of things was that land was mostly controlled by men.

5.3 Discussion

It is important to note the distinction among access, ownership and control which this study makes in order to focus on where the real problem is with regard to land rights. Some previous studies have made statements that seem to lump access, ownership and control together as if they mean the same thing. For example, Kouamé and Fofana (2015: 5) stated: “women are denied the rights to have access and control over land, particularly when they get married into the community. The only use right to land they may have is generally related to the land allocated to them by their husband.” A statement like this may make it difficult to understand whether women are denied both access and control or simply one of them and hence the need for future studies to avoid make such compound statements.

Gomez and Tran (2012) referred to SIDA as having said that women’s access to land and property is central to their economic empowerment, as land can serve as a base for food production and income generation. This study found that land, in deed, is the resource upon

⁸ Personal communication, 18th June, 2017

which everyone depends not just for survival but for its social consequences. In the rural area where this study was conducted, all other activities such as business are secondary to farming which is the main source of livelihood.

The findings of this study suggest that women have access to land regardless of sex or marital status. Women of different marital status access land in various ways. In addition to having access through their mothers and husbands as observed by Kouamé and Fofana (2015), women also have access directly through traditional leaders although this is rare for married women. In this regard, the study only agrees with Muchula (2009) to an extent that he observed that women, like men, generally had access to land and property. However, it does not agree with his observation that access to land was directly through the headman as this is only one of the many ways through which women may have access to land.

Despite women in Mumbwa having access to land, both in-depth interviews and FGDs suggest inequitable land ownership patterns in favour of men. Thus, this study agrees with literature (Rao, 2011; Gomez and Tran, 2012; Kouamé and Fofana, 2015; Fisher and Naidoo, 2016) which shows that land ownership rights are not enjoyed equally between men and women. Nevertheless, unlike studies that talk about women as if they are in a homogenous group, this study notes that inequality in land ownership does not affect all women in the same way. Married women are the ones that seem to be affected more than those who are not married. Although past research has not emphasized this point, factors that this study found as contributing to inequitable land ownership patterns point to marriage as having a significant influence on whether or not women enjoy their land ownership rights. For example, one of the factors reported to have contributed to inequitable land ownership patterns was power imbalance between men and women. It was reported that men have more land than women because man is considered as head of a household. The headship was referred to within the context of marriage. Even when culture was cited

as another factor, it was reported that women were culturally not allowed to have land in their own names but only through their husbands. This clearly points to the issue of land ownership being closely linked to marriage.

This raises the question of why the right to land ownership should be problematic mostly for married women. ACORD *et al* (2012) observed that one of the structural issues that perpetuate discrimination against women's land rights is the notion that husbands will provide for their wives. This study also pointed to a belief that land is allocated to men in order for them to fulfil their role of looking after their families. The study further found that headpersons could not give land to a married woman but to her husband as he represented the whole family. This argument, however, is faulty in many ways as it seems to suggest that a married man will always act in the best interest of his family (wife and children). Firstly, it is not correct to think that a married man will necessarily provide for his wife to the same extent that she would provide for herself if she had adequate means. This study found that some husbands were not adequately providing for their wives despite having been given land on the basis of their responsibility to provide. Secondly, even if married women were guaranteed adequate care by their husbands to an extent that all their needs were provided for, lack of land ownership rights exposes such women to the risk of losing entitlements in case of divorce, widowhood or their husbands' migration as argued by Gomez and Tran (2012). Thirdly, the right to land, like all other human rights, is inalienable and hence cannot be handed over on the basis on one's marital status. While human rights are inalienable, the study gives an indication that women hand over their rights to their husbands to an extent that they seek permission to enjoy a right for which ideally they do not need anybody's permission.

Control is another aspect that is important to discuss as it affects women's enjoyment of their right to land. A brief on Rwanda by Lankhorst (2012) shows that while women may

be given land by their parents as a gift when they marry, their claims are limited mostly to rights of use. The right to control continues to be exercised by their brothers. A study by Women for Change (2014) in Mumbwa also found that women had high levels of access but low levels of control over land. The findings of this study are consistent with past studies in that it points to women having less control over land than men. The report of how a woman's piece of land in Nangoma was controlled by her husband to an extent that he even prevented her from growing anything on it is a clear example of how a woman can own land and yet exercise no control over it. This suggests that the understanding of women's land ownership should not simply focus whether a particular piece of land has been allocated to a particular woman without delving into whether or not the woman is actually in control over that piece of land.

The study identified five factors that contribute to the inequitable land ownership patterns between men and women in Mumbwa district. The factors were power imbalance, culture, land allocation practices, suppression and allocation of labour.

5.3.1 Power Imbalance

WfC (2014) found that one of the factors that contributed to unequal land ownership between men and women was unequal power relations. This study also found that power imbalance between men and women was one of the major factors that accounted for men owning more land than women and exercising greater control over it. 13 out of 37 interviews reported that men owned more land than women because the man was the head of a household. Being head, he was the one with power and hence exercised control over land. For example, two in-depth interviews from Mumba and Shakumbila chiefdoms respectively explained why there was unequal land ownership between men and women as follows:

*Man is the head of the house. If I look at the Bible, man was made first hence he looks after everything.*⁹

*It is men who have more control because of religion which teaches that man is the head. This started a long time ago. Even if they [women] buy big things like an ox cart, automatically they hand over control [to men]. Women are so much under men. They have no freedom. Even if it is hers, she lacks freedom to control it.*¹⁰

Many other respondents gave similar justifications by linking man's headship to religion. They said man was in charge of everything where the concept 'everything' was used to include all living and non-living things except man. Thus, women were put in the same category as property and placed under man's control.

5.3.2 Culture

According to a study by WfC (2015), culture was one of the factors that put men, especially husbands, in positions of control over their wives with regard to land and other productive resources. This study confirmed that culture is indeed one of the factors that contribute to unequal land ownership in favour of men. A good number of in-depth interviews (12 out of 37) reported that men enjoyed more ownership rights because their culture did not allow women to have land in their own names but only through their husbands. The unmarried women were not given land because it was believed that they would get married and access it through their husbands. When the issue of culture was probed, it was discovered that marriage had a significant role to play. Two particular aspects were raised with regard to marriage and land allocation. The first aspect was that men were the ones that proposed marriage and paid dowry. Consequently, they felt that they had 'special rights' over women and hence expected to be the ones to have a final say over what happened in their homes. Secondly, upon marriage, a woman shifted to her husband's village. That made the woman an 'outsider' which consequently compromised her claim rights to land. The two aspects

⁹ Personal communication, 17th June, 2017

¹⁰ Personal communication, 18th June, 2017

were often referred to during both in-depth interviews and FGDs. For example, male participants in one of the FGDs strongly opposed the idea of women owning land by referring to culture and marriage. They said:

Culture says a woman cannot have land in her own name but [through] her husband. So everything should be in the husband's hands. Husbands say that she can become big-headed and disrespectful [if she has her own land].¹¹

Women cannot have land unless they start marrying us and we start shifting to their villages.¹²

An interview with a WfC staff member also revealed that men were the ones with control over land in Mumbwa district because of traditional beliefs and marriage. He explained that the area was under a patriarchal system where it was believed that men should exercise control over resources for the good of women. He said the other reason for men's control over land was that they paid dowry which made women lose claim to everything. He explained as follows:

Men have control over land. The explanation given for this is the traditional belief based on a patriarchal system which states that it is a man who should own and control the resources for the well-being of a woman. The justification for this is that a man bought her by paying colossal sums of money in form of Lobola and brought her to join the man in his family land. Therefore, she has no claim of ownership to any property let alone land which is the main source of livelihood. In addition, she will not have the right to make decisions in the home.

Men and women had culturally been conditioned to think that land was just for men. As observed by Odeny (2013), women are treated as people in transit from natal home to join their spouses. This makes it difficult for them to enjoy equal land rights with men.

5.3.3 Land Allocation Practices

Kouamé and Fofana (2015) observed that allocation of land in the patriarchal structures which dominate social and production relations in Africa is generally given to men,

¹¹ Personal communication, 14th June, 2017

¹² Personal communication, 13th June, 2017

particularly after reaching a certain age or after marriage. However, the authors did not list allocation of land as one of the factors contributing to gender inequality in land ownership. This study found that land allocation practices, in fact, do contribute to men owning and controlling more land than women. In-depth interviews with community members and headpersons revealed that land was allocated to men while women were expected to access it through their husbands or parents. It was reported that headpersons did not have power to give land to married women without their husband's consent. For example, a headperson said:

Man has more control [than a woman]. He is the one who is registered [in the village register]. A headperson has no power to give land to a woman who is married. It will look like you want to separate them.¹³

In village records, it is mostly men and unmarried women that are registered which shows some level of discrimination against married women. Literature review shows that where land ownership among couples is concerned, it is possible to register both the husband and wife. For example, a case study by the United Nations in 2013 in Rwanda revealed that both men and women were required to be present during the registration of owners of land to ensure they were both registered as joint property owners.

The fact that men are the ones that are registered creates the impression that land belongs to men. Some headpersons justified the practice by saying that they could not give land to a married woman because when land was given, it was given to the whole family which comprised husband, wife and children. However, when that line of reasoning was probed in one of the FGDs, all the female participants exclaimed in opposition and said that in reality it was not like that. They said that when a woman lost her husband, headpersons were not even present to defend her against land grabbing.

¹³ Personal communication, 16th June, 2017

*The headperson can say like that but when you lose your husband, he is not even there. It is just your deceased husband's relatives who are there and they use their power without anyone opposing them. You just watch because you have no power and no one will come to your aid.*¹⁴

When the interviewer asked the men who had nodded to explain the meaning of their gesture, one of them said that what the women had said was true. They agreed that while it was assumed that land was given to a man only as a representative of his family, women mostly lost land in the event of divorce or death.

5.3.4 Suppression

Although the researcher did not come across any literature referring to suppression as one of the factors that contribute to inequitable land ownership patterns between men and women, this study found that it was one of the prominent factors thus contributing something new to the body of literature on the subject. Six out of 37 in-depth interviews with community members reported that some men especially husbands simply did not want a woman to have her own land because they had fears that she might surpass them and refuse to submit to their authority. Suppression of women was also attributed to the treatment of women as foreigners in their husbands' villages. For example, one of the community members said:

*Women get suppressed a lot. When they want to talk, they are told that you are a foreigner in this village. Women are used like slaves to work from morning to evening without rest. They are told that you came here to work. Usually, women have land through their husbands. Some husbands, when they see that the wife has done well in farming, they take back [repossess] the land. They feel jealousy to see the wife doing well. They think that she will start boasting [if her progress is not interrupted].*¹⁵

During the study, the researcher was told that a good number of women had had their pieces of land repossessed by their husbands upon being seen to be doing well in farming.

¹⁴ Personal communication, 17th June, 2017

¹⁵ Personal communication, 13th June, 2017

Unmarried women were also suppressed in the sense that they were expected to just wait for marriage on the assumption that they would have access to land once they got married. It was reported that it was difficult to give unmarried women land because it was believed that once they got married, they abandoned everything including land to join their husbands. This point was clearly articulated by one of the female community members during in-depth interviews. She said:

Those women who are not yet married have difficulties [acquiring land] because they [headpersons] will start asking that why do you want to have land on your own? So those just depend on their parents' land. For example, there is a woman in my village [name withheld] who, after dropping out of school, approached the headman for a piece of land for her to set up her own farm but the headman refused. There is need to teach headpersons [about women's rights to land] because they are the ones who refuse.¹⁶

Indications of women's suppression were also evident during FGDs. Female FGD participants especially pointed out that they had been suppressed. They, however, mentioned that WfC (a local NGO) had sensitised them on their land rights and their eyes had been opened to no longer accept suppression.

We women were in the dark [while demonstrating the point with a gesture of moving her right palm from forehead to chin]. We didn't know that we should also own land on our own. So the men took advantage and suppressed us and we really used to suffer. But now Women for Change [an NGO working in the area] has taught us our rights as women. They have opened our eyes to realise that we are also human beings and should have our own land so that we produce, buy what we want and have our dignity¹⁷.

Moreover, some male participants during one of the FGDs strongly objected the idea of a married woman having land saying that she could lose respect for her husband. They reported that even when both spouses were alive, there were occurrences where a man apportioned a piece of land to his wife. But a year later, upon seeing that she was doing very well, he would change his mind and stop her from using the same piece of land on pretext

¹⁶ Personal communication, 16th June, 2017

¹⁷ Personal communication, 14th June, 2017

that he wants to use the same piece of land. The real reason behind such acts, however, is just to block her from growing her own crops. Probed for the reasons behind such behaviour by some men, it was explained that some men felt that a woman would become boastful if she had enough money. She may no longer recognise her husband's authority. Therefore, she was made to depend on him so that she respects him. The reasons may be summarised in the two quotations below:

The problem with women is that you give her a piece of land and she produces. But the moment she has her things, she changes. She becomes stubborn and boastful over just a small portion. What about when they have a big portion of their own?¹⁸

The problem is that if a man and woman each have a piece of land and produce food, you start by eating you food [man's] and finish all of it. Then you start eating her food. After a while, she will start saying I am the one who feeds you.¹⁹

5.3.5 Allocation of Labour

The other factor which contributes to the existing land ownership patterns between men and women in Mumbwa is allocation of labour. The researcher found out that men were mostly in charge of activities that had productive value such as rain-fed agriculture, gardening and charcoal burning. Even though women were made to provide labour for these activities to be carried out, it was men that made decisions and controlled the marketing of what was produced and by consequence the money realized from such activities. As such, it was commonly accepted that the money belonged to men. As a result, men were advantaged in two ways. Firstly, it was believed that men were the ones that looked for money and hence land should be allocated to them to help them fulfil their role of looking after their families. Secondly, men were able to use the money to influence the allocation of land in their favour because even traditional land was allocated at a cost as opposed to the past when traditional land was freely given to would be developers. For example, an interview with a government

¹⁸ Personal communication, 14th June, 2017

¹⁹ Personal communication, 14th June, 2017

official revealed that land had become a very big issue in Mumbwa and the rest of Zambia.

He said that the worst culprits were chiefs and headpersons. He said:

I do not know what is happening these days. You find that chiefs are selling huge chunks of land to investors. They do this even by displacing their own people. Some chiefs have even gone to an extent of selling even their own palace just to get money.²⁰

This means that one needs to have money to acquire land. The study showed that women were mostly involved in activities that did not result in monetary benefits such as preparing food, ensuring cleanliness for all family members, taking care of the sick and so forth. While these activities were important, the fact that there was no money realised from them had resulted into a belief that it was not women's responsibility to look for money. As a result, there was no need to give them land because they had no business with it as their male figures (husbands, fathers, brothers and uncles) were the ones that looked after them. So the way labour was traditionally allocated reinforced both the belief and the practice that land should mostly be allocated to men while women should just access it through their husbands or male guardians.

5.4 Impact of Existing Land Ownership Patterns on Women's Economic and Social Rights

As defined in Chapter One, an economic right is the right to earn enough to meet family basic needs and the right to raise and sell one's products at a return which will give him/her and his/her family a decent living. Social rights are rights to adequate food, water and sanitation, adequate housing, education, health and social security.

²⁰ Personal communication, 13th June, 2017

5.4.1 Impact on Economic Rights

The study found that unequal land ownership had many negative effects on women's economic rights. All the respondents reported that farming was their main livelihood activity. As such, they depended on land to raise resources in order for them to meet family basic needs. The study found that women's limited ownership of land severely limited their efforts to earn enough to meet their family basic needs. Eight in-depth interviews pointed to the fact that women's limited land ownership resulted in their inability to raise enough resources and increased their overdependence.

When you have no land, you ask for money [from your husband] but he refuses. So in the end, you start stealing from him to buy clothes so that you also look like the friends you admire.²¹

Without land, you have no power to farm. So when you have no land you have nothing.²²

Lack of land leads to overdependence. For example, you find that a woman receives her relatives who are in need of something such as chitenge [wrapper] but she cannot give them because she has no money. She has to beg all the time.²³

Interviews with headpersons also revealed that lack of land ownership impacted on women's economic rights. Two headpersons reported that women that did not have land faced difficulties in raising adequate resources. As a result, they became overdependent on men and when they did not get enough resources, they ended up engaging in risky behaviours such as alcohol abuse and prostitution.

Lack of land ownership by women has negative effects on them [women] such as overdependence on men. If she is unlucky and gets married to a man who is senseless, they [women] suffer a lot: poor diet, poor dressing. They just start admiring their friends. In the end they get into prostitution.²⁴

²¹ Personal communication, 13th June, 2017

²² Personal communication, 13th June, 2017

²³ Personal communication, 13th June, 2017

²⁴ Personal communication, 15th June, 2017

A WfC representative also indicated that land in rural communities was directly related to people's ability to survive. He said that a person who did not have land was a poor person because such a person could not make a meaningful living. He said:

Land is the major source of livelihoods among the rural communities and without it they would hardly survive. Land gives hope and confidence to both men and women. Land is a critical asset for rural communities and disputes to do with land can even lead to physical confrontations and endless hatred and divisions among the affected. It is said that a person who has no land is a poor person because he/she will not be able to make a meaningful living (in Tonga/Ila a person of such kind is described as 'Ulipengede' or 'Muhubahuba' ... Land is a source of pride too without which men and women and their children will live in abject poverty.²⁵

As observed by Kouamé and Fofana (2015), economic factors make it difficult for women to accumulate capital needed to buy land or make investments. So, women's lack of adequate resources due to unequal land ownership creates a cycle of poverty which further reduces their likelihood of owning land as they do not have adequate resources.

5.4.2 Impact on Social Rights

Most of the in-depth interviews (25 out of 37) reported that lack of land ownership by women resulted into hunger and limited access to education by children. They reported that women who did not own land were not able to grow adequate food that could last them all year round.

We [women] suffer a lot due to not having land. It is just a name that men look after us. In reality, we are the ones who look after them. If we [women] do not put our minds providing for the family, even the farm that belongs to a man will not survive and there will be hunger in our homes.²⁶

They further reported that women were more inclined to spending money on basic necessities such as food and children's education whereas men were more inclined to spending money on pleasure and prestige.

²⁵ Personal communication, 21st July 2017

²⁶ Personal communication, 13th June, 2017

We [women] are the ones who look after the family – take care of family needs. A woman and man with the same amount of money will use it differently. A woman's money will be used at home to pay for school fees but few men do that. Most of them take it to beer or buying big things such as cows. They want many cows and their children just start herding cattle instead of being in school. So when you do not have land as a woman, you become a nomad and experience hunger and children will not go to school.²⁷

It was reported that even though it was assumed that land given to men was used to raise income for family use, it was mostly not the case in reality. As highlighted above, men were reported to have been spending money on alcohol and cattle at the expense of basic necessities.

5.5 Summary

The study found that there is inequality in land ownership between men and women. While both men and women have access to land, it is mostly owned and controlled by men. Women mostly exercise control only if they are unmarried or widowed. The existing unequal land ownership patterns were attributed to five main factors which are power imbalances, culture, land allocation practices mostly in favour of men, suppression of women and allocation of labour which reinforces men's claim of land. The inequitable land ownership patterns impact negatively on women's ability to earn enough to meet their family basic needs. Consequently, it negatively affects especially their ability to have adequate food and to facilitate their children's access to education.

This study makes a distinct contribution to the literature on the subject by adding suppression to the list of factors that contribute to inequitable land ownership patterns between men and women. Further, in addition to the data of this study corroborating what has already been found, the analytical breakdown and a detailed discussion of the five factors as contributing to inequitable land ownership patterns is a contribution to the

²⁷ Personal communication, 13th June, 2017

literature. This study provides a point of reference for ethical research that may focus on human rights and landownership especially at local levels as similar research in the past has focussed on global and national levels.

CHAPTER SIX: ETHICAL EVALUATION

6.1 Introduction

The issue of land ownership between women and men is an ethical issue that warrants an ethical evaluation. Land ownership is a human rights issue which is affirmed in many international covenants. Within the human rights framework, government is the major duty bearer while citizens are rights holders. Furthermore, land ownership is not just a rights issue but also something that affects men and women differently in their distinctive roles with regard to care giving. Hence, this chapter uses rights theory and the ethics of care to evaluate the study findings.

6.2 Rights Theory

Human rights are basic moral guarantees that all people regardless of gender, nationality and culture have simply because they are people (Becker and Becker, 2001). One of the features associated with rights is that they are equal which means that they are the same for all people, regardless of gender, race, or handicap. In this case both men and women have equal rights to land. By virtue of their inherent dignity, they are entitled to their rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status (United Nations Country Team, Zambia, 2014).

However, findings of this study show that in Mumbwa district, women do not enjoy the same land ownership rights as men. Not only is there unequal land ownership between men and women but there is also gender bias in land ownership that affects married women more than those who are unmarried and widowed. This means that women are being discriminated against on the basis of gender and marital status. This is obviously a violation of women's rights to land which should not be tolerated considering that Zambia is a State Party to many international commitments that affirm equal rights to land for both men and women.

Aware that human rights are basic moral guarantees that all people have simply because they are people (Becker and Becker, 2001), one cannot give sufficient justification for treating women differently in land ownership simply because of their marital status. Moreover, the African Charter recognises non-discrimination as a fundamental principle essential to the exercise and enjoyment of all human rights including the right to land (Ssenyonjo, 2012). One of the ways in which the principle of non-discrimination is violated is when equal cases are treated in a different manner. The findings of this study clearly show that men and women in Mumbwa district are treated differently with regard to land ownership. This shows that there is bias in land allocation between men and women.

Although the Zambian government has introduced a number of measures to protect women and men from discrimination and deprivation of property, nevertheless, most of the laws that have been put in place seem to be reactive rather than proactive. For example, the *Intestate Succession Act* of 1989, the *Wills and Administration of Testate Estates Act* of 1989 and the *Anti-Gender Based Violence Act* of 2011 all seem to focus more on resolving disputes that arise from events such as the death of a spouse or divorce. The legal framework for ensuring enjoyment of land rights before such disputes arise is either weak or non-existent.

This study found that the existing unequal land ownership patterns were attributed to five main factors such as power imbalances, culture, land allocation practices mostly in favour of men, suppression of women and allocation of labour. However, the researcher did not come across any law that concretely addresses such factors beyond mere pronouncements that both men and women should enjoy equal rights to land. This implies that the laws that have been put in place require women to wait until divorce or the death of their spouses before they can claim their rights to land. This further implies that married women who

neither experience divorce nor death of their spouse are perpetually subjected to discrimination in as far as land rights are concerned.

This study revealed that many female participants were aware of their equal rights to land. For example, in one of the FGDs, some argued that women should equally own land and exercise control over it. They reported that WfC, a local NGO, had sensitised them on their land rights and that their eyes had been opened to no longer accept suppression. Moreover, three out of the four headpersons that were interviewed said that both men and women were equally allowed to own land, a position they said had resulted from several trainings and sensitisations on gender and human rights by WfC. However, despite this, their practices were exactly the opposite and one of the justifications for this was that headpersons could not allocate land to married women without their husband's permission for fear of being accused of intentionally causing marriages to disintegrate. Apparently, there is no piece of legislation that guarantees protection to headpersons with such fears. So, traditional leaders who are duty bearers responsible for ensuring that both men and women, the rights holders, enjoy social and economic rights are in fact not playing that role. Considering that headpersons are the closest duty bearers that should represent government in promoting and upholding human rights, their failure to do so should be an issue of concern by government.

The allocation of land to men actually reinforces the discrimination of women's rights to land as shown by both in-depth interviews and FGDs that men have greater control over land because they are the ones to whom it is allocated. Lessons can be drawn from a case study by the United Nations in 2013 on Rwanda which revealed that both men and women are required to be present during the registration of owners of land to ensure they are both registered as joint property owners. Such a law could effectively deal with the gap that is created due to current practices in which land is solely allocated to men thereby creating an impression that it belongs to them when it should in fact belong to the whole family.

Despite some level of awareness on equal rights to land by both men and women in Mumbwa district, this study found that some respondents justified the practice that married women should not ask for land to be allocated to them directly but only through their husbands. The basis for such justification was based on men being household heads as well as on culture and religion. The use of culture to defend men's domination of women is a clear example of an attempt to maintain the patriarchal social structure which favours men's interests over those of women. However, a thought or practice cannot be said to be right solely on the basis of culture. Aspects of culture can only be said to be right in as far as they promote respect for life and for the conditions that make life meaningful. Conversely, aspects of culture that work against the promotion of human dignity, which is what human rights attempt to do, are definitely wrong and hence should not be perpetuated.

Further, the reference to the Bible as justifying men's domination over women is an indication of how people can engage in literalistic interpretation of certain religious or biblical passages to support the patriarchal structure. It is observed that saying that man was made first hence he looks after everything may be true depending on one's interpretation. However, the interpretation of everything to include women is not correct. In the case of the use of the Bible to justify power imbalances in 5.3.1 by saying that man was made first and hence looks after everything, one is inclined to believe that the scripture being referred to is Genesis 1: 26 which reads as follows in the New Jerusalem Bible: "God said, 'let us make man in our own image, in the likeness of ourselves, and let them be masters of the fish of the sea, the birds of heaven, the cattle, all the wild animals and all the creatures that creep along the ground.'" This scripture does not in any way suggest that men should dominate women. Neither does it include women in 'everything'.

Moreover, the belief that married women only ask for land through their husbands is contrary to rights theory. The theory posits that human rights are inalienable which means

that one cannot hand over one's rights to another person on the basis of culture, religion or any other reason. In this regard, not even married women themselves can justifiably hand over their right to land to their husbands. So, acceptance of discrimination of women does not make the practice right but indicates a gap in human rights awareness. In fact, rights theory makes it clear that compliance with human rights is mandatory rather than discretionary.

The right to land falls under first generation rights. These rights are defined as rights to be free to hold a belief, to pursue a course of action, or to enjoy a state of affairs without interference (Beauchamp, 1982). Yet, this study found that even in cases where a married woman used her own resources to buy land, the husband took over its control. For example, one married woman reported that she had bought a small piece of land on which she used to grow crops such as soya beans and maize. However, her husband exercised control over the money she made from working on that piece of land. Worse still, her husband later on stopped her from using her own piece of land using his power as household head. This is a clear example of how women are not only discriminated against in terms of lacking ownership but are also not free to control even the pieces of land that they acquire. Civil and political rights require that a particular government not only refrains from interfering with one's enjoyment of their right to a particular piece of land but also provides protection and remedies against such interference by others (Beauchamp, 1982). The study found, however, that no form of protection or remedies for women facing interference in the enjoyment of their right to land was provided in practice. In conclusion, rights theory was used to analyse data which showed that there are inequalities in land ownership patterns between men and women in Mumbwa. The theory was used to demonstrate that the treatment of women with respect to land ownership amounts to discrimination as it limits their land ownership rights and control on the basis of their gender and marital status which

is contrary to the belief that rights are the same for all people. The theory was also used to discredit arguments that appeal to culture and religion to defend patriarchal social structure.

6.3 Ethics of Care

Care ethics places moral significance on the fundamental elements of relationships and dependencies in human life. It considers human beings to be inherently relational and responsive beings and that the human condition is one of connectedness or interdependence. Maintaining the world and meeting the needs of both ourselves and others is central to the ethics of care. For this reason, ethics of care seeks to maintain relationships by contextualizing and promoting the well-being of care-givers and care-receivers in a network of social relations. In the context of Mumbwa district, land ownership for women is critical to promoting their well-being as care-givers and that of family members for whom they care. This is because farming is the main livelihood activity in the area. As such, women depend on land to raise resources in order for them to meet family basic needs.

Women play a greater role in providing care. This study found that women are more inclined to spending their money on basic necessities such as food and children's education. However, despite the acknowledgement of women's caring role in the family, the study found that women's ownership of land is limited and this severely limits their efforts to earn enough to meet their family basic needs. Women's limited land ownership results in their inability to raise enough resources to meet their basic needs as well as the needs of those under their care. It was found that women who do not own land are not able to grow adequate food that can last them all year round. From the perspective of care ethics, the focus on women's land rights does not only affect them but also affects their children and the aged who mostly are under their care. Therefore, rather than looking at men as heads of households and allocating land to them on this basis, an appreciation of care ethics would morally compel one to look at the impact that lack of women's land ownership has on the

family as a whole. In other words, promoting land ownership for women is not just a human right as observed by rights theorists, but has beneficial effects on children, the aged and other members of society that depend on women's care to lead a meaningful life.

Ethics of care takes the position that human beings have needs and that caring for others in meeting these needs is a universal experience. In this experience, it has been noted that care giving is heavier on women. Becker (2002) has stated that "traditionally, women have been - and women continue to be - caretakers of dependents, the young, the old, and others unable to care for themselves" (as quoted in Herring, 2013: 69). Care giving work, however, has been done for either low or no pay and hence has had little value placed on it. This has consequently put those with significant caretaking responsibilities at a disadvantage in many areas of human endeavour. Consistent with this observation by care ethicists, this study found that women are mostly involved in activities that do not result in monetary benefits, activities such as preparing food, ensuring cleanliness for all family members, taking care of the sick and so forth, all of which fall under the category of care. While these activities are important, the fact that there is no money realised from them has resulted into a belief that it is not women's responsibility to look for money. As a result, there is no need to give them land for generating income. This is one of the ways in which women's position as caregivers puts them at a disadvantage when it comes to enjoyment of their right to land as a productive resource. Herring (2013) argues that unless we place greater value on caretaking and provide support for caretakers of dependents, women will continue to be unequal.

Moreover, ethics of care recognises that men and women have different needs depending on whether they are care-givers or care-receivers and that these needs should be taken into consideration as we seek to promote their well-being. For example, it was reported during in-depth interviews that men and women spend money differently. A woman mostly spends

her money on satisfying family needs such as food and children's education. On the other hand, a man mostly spends his money on leisure and purchase of property such as cows.

One may argue, as some of the respondents did, that when land is given to men, it benefits women as well as other members of the family. However, the study found that even though it is assumed that land given to men is used to raise income for family use, it is mostly not the case in reality. Men were reported to be more inclined to spending money on alcohol and cattle at the expense of basic necessities. So limited land ownership for women seriously compromises their ability to meet their needs and the needs of those who depend on their care.

Therefore, land allocation should take such factors into consideration so that we do not end up underestimating care which is an important part of human existence. Not paying adequate attention to the different needs between men and women can compromise the well-being of women and the people for whom they care. This phenomenon was well articulated by some respondents who reported that lack of land ownership by women has negative effects on them as it leads them into over dependence and pushes them to engage in risky behaviours such as alcohol abuse and transactional sex. Promoting the well-being of women as care-givers through land ownership can benefit many other people who are dependent on them such as the young and the old. This is because positive developments in the care-giver's life spill over to those for whom they care. Thus, ethics of care was used to analyse data which showed that women in Mumbwa carry a heavier responsibility of care work and yet are limited with respect to land ownership. The situation limits women's ability to meet basic needs and effectively play their role of care giving. This reinforces the need for government and traditional leaders to promote women's land ownership rights and control over land as this does not only benefit women but also their dependents.

6.4 Summary

The ethical evaluation of findings shows that there is discrimination of women on the basis of sex and marital status despite the fact that men and women should enjoy equal rights to land. This situation should not be tolerated as Zambia is a State Party to many international commitments that affirm equal rights to land. However, laws to concretely address factors that contribute to women's discrimination in land ownership are weak and not adequately implemented. The laws need to be grounded in rights ethics. Using ethics of care, land ownership for women is critical to promoting their well-being as care-givers. Safeguarding land rights for women does not only affect them but also affects children and the aged who are mostly under their care. Hence rights ethics and care ethics complement one another in promoting the well-being not only of women themselves but also of the ones who depend on them.

CHAPTER SEVEN: CONCLUSIONS AND RECOMMENDATIONS

7.1 Summary

Land ownership is critical to the development of any nation. People in rural areas are primarily dependent on land for agriculture which is their main livelihood activity. Moreover, land ownership is a human right which should be enjoyed equally by both men and women. However, land ownership rights are not enjoyed equally due to the persistence of social norms and values, marital and inheritance patterns and religious practices which mostly favour men and discriminate against women. This poses a threat to women's enjoyment of economic and social rights.

7.2 Conclusion of Data Findings

Findings show that there is inequality in land ownership between men and women in Mumbwa district. Both men and women have access to land but ownership is mostly enjoyed by men. As land owners, men are the ones that exercise control and define how land should be used. The unequal land ownership is due to five main factors which are power imbalances, culture, land allocation practices, suppression of women and allocation of labour. The unequal land ownership impacts negatively on women's ability to earn enough to meet their family basic needs. Consequently, it negatively affects their ability to have adequate food and facilitate their children's access to education.

7.3 Conclusion of Ethical Evaluation

An ethical evaluation of the findings show that women in Mumbwa district face discrimination in land ownership on the basis of gender and marital status. Such discrimination is contrary to both Zambian laws and international commitments that affirm equal rights to land ownership. Zambian laws concretely addressing factors that contribute to women's discrimination in land ownership are weak and do not adequately support the

rights of women to land in practice. The ethics of care shows that land ownership for women is critical to promoting their well-being as care-givers because they play a greater role than men in providing care. Compromising women's land rights not only affects them but also affects their children and the aged who are mostly under their care. Rights theory and care ethics complement and support one another in focusing on the critical importance of ownership and control of land by women.

7.4 Recommendations

Based on findings of the study and the ethical evaluation of the findings, it is recommended that:

- Government should fully implement laws that promote Gender Equality and Equity in order to attain gender equality in land ownership;
- Traditional leaders in Mumbwa district should promote joint land ownership for couples by recording both husbands and wives in village land records;
- Civil Society Organisations should intensify their sensitisation and capacity building programmes on equal land rights;
- Further studies should be conducted on the application of laws on equal land ownership rights among married people.

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APPENDICES

Appendix A: Interview Schedule for Community Members

1. What do you do to earn a living?
2. Do you have access to any piece of land?
3. If yes to question 2, do you actually own the piece of land that you use?
4. Who has control over the piece of land that you use?
5. What is the procedure for acquiring land in this community?
6. Do men and women know about the correct procedure for acquiring land?
7. What are the requirements for owning land in this community?
8. In this community, are men and women equally allowed to own land?
9. Who between men and women owns more land in this community?
10. Why are things the way they are with regard to land ownership in this community?
11. How does land ownership benefit men and women?
12. How does lack of land ownership affect men and women?

Appendix B: Interview Schedule for Traditional Leaders

1. What do people in this chiefdom do to earn a living?
2. Do men and women have access to land?
3. If yes to question 2, do they actually own the pieces of land that they use?
4. Between men and women, who has control over land?
5. What is the procedure for acquiring land?
6. Do men and women know about the correct procedure for acquiring land?
7. What are the requirements for owning land?
8. Are men and women equally allowed to own land?
9. Who between men and women owns more land in this chiefdom?
10. Why are things the way they are with regard to land ownership in this chiefdom?
11. How does land ownership benefit men and women?
12. How does lack of land ownership affect men and women?

Appendix C: Interview Schedule for NGO Representatives

1. What do people in this chiefdom do to earn a living?
2. Do men and women have access to land?
3. If yes to question 2, do they actually own the pieces of land that they use?
4. Between men and women, who has control over land?
5. What is the procedure for acquiring land?
6. Do men and women know about the correct procedure for acquiring land?
7. What are the requirements for owning land?
8. Are men and women equally allowed to own land?
9. Who between men and women owns more land in this chiefdom?
10. Why are things the way they are with regard to land ownership in this chiefdom?
11. How does land ownership benefit men and women?
12. How does lack of land ownership affect men and women?

Appendix D: Interview Schedule for Government Representatives

1. Do men and women have equal access to land?
2. If yes to question 2, do they actually own the pieces of land that they use?
3. Between men and women, who has control over land?
4. What is the procedure for acquiring land?
5. Do men and women know about the correct procedure for acquiring land?
6. Are men and women equally allowed to own land?
7. Who between men and women owns more land Mumbwa district?
8. Why are things the way they are with regard to land ownership?
9. How does land ownership benefit men and women?
10. How does lack of land ownership affect men and women?

Appendix E: FGD Guide for Community Members

1. What do you do to earn a living?
2. Do you have access to any piece of land?
3. If yes to question 2, do you actually own the piece of land that you use?
4. Who has control over the piece of land that you use?
5. What is the procedure for acquiring land in this community?
6. Do men and women know about the correct procedure for acquiring land?
7. What are the requirements for owning land in this community?
8. In this community, are men and women equally allowed to own land?
9. Who between men and women owns more land in this community?
10. Why are things the way they are with regard to land ownership in this community?
11. How does land ownership benefit men and women?
12. How does lack of land ownership affect men and women?