



**Midlands State University**

Established 2000

*Our Hands, Our Minds, Our Destiny*

## **FACULTY OF ARTS**

### **DEPARTMENT OF HISTORY AND INTERNATIONAL STUDIES**

**WIDOWS AND INHERITANCE VIOLATION: CASE STUDIES OF ZENGEZA 1 AND 5  
CHITUNGWIZA 1997-2018.**

By

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**APPROVAL FORM**

The undersigned certify that they have read and recommend to Midlands State University for acceptance, a research project entitled: *Widows and Inheritance Violation. Case studies of Zengeza 1 and 5 Chitungwiza 1997- 2018*, in partial fulfilment of the requirements of the Bachelor of Arts in History and International Studies Honours Degree.

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**DECLARATION**

I Memory Matamba declare that this Dissertation entitled *Widows and Inheritance Violation. Case studies of Zengeza 1 and 5 Chitungwiza 1997-2018.*, is based on my own research and reading and has not been submitted for any degree or examination in any other university. All the sources consulted and quoted have been acknowledged as complete references.

Signed: \_\_\_\_\_

## **DEDICATION**

I dedicate this dissertation to my late mother Evelyn Matamba, my beloved aunt Munorweyi Matamba, my beloved Tanatswanashe, my uncle and aunt who always supported and encouraged throughout my time at the university.

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## **LIST OF ACRONYMS**

AEA- Administration of Estates Amendment Act 1997

ACPHR- African Charter of Human Rights

CEDAW- Convention on the Elimination of all Discrimination Against Women

COHRE- the Center on Housing Rights and Evictions

HRW- Human Rights Watch

LRF- Legal Resources Foundation

MPOI- Mass Public Opinion Institute

NGO- Non Governmental Organization

PIR- Property Inheritance Rights

SADC- Southern African Development Committee

UCLU- Unregistered Customary Law Union

WLSA- Women and Law in Southern Africa

ZimStat- Zimbabwe National Statistics Agency



## **ABSTRACT**

*The dissertation is mainly focused on the widows continued experiences of property inheritance violations in Zimbabwe particularly Zengeza 1 and 5 in Chitungwiza. The cause and reasons why widows are still being disinherited their property rights after legal laws were implemented to protect them. Widows before the Administration of Estates Amendment Act of 1997 they faced violations towards their right to property inheritance. The first born usually the son or a male relative was the heir to the inheritance of the deceased and the heir was supposed to follow the needs of the widow but if was found out that this was not happening. Widows were being left without houses and their benefits were used to cater for the needs of the heir only. In 1997 the Administration of Estates Chapter 6 was amended to Administration of Estates Amendment Act which made the surviving spouse and children the beneficiaries of the inheritance. Zimbabwe had a dual legal system which has the general law and customary law that are used to govern and it was inherited from the colonial times. Reports by academic researchers and newspaper reports shows that widows are still being violated their rights. Interviews were used to gather information from the widows and other residents and the legal interns of Women and Law in Southern Africa. Secondary sources were also used such as journals, articles, newspapers and books. Violations that widows are facing are also as a result of the interpretation of the laws and they are being disinherited their rights. The violations are caused ignorance fear to ruin their relations with the in-laws, the interpretation of the laws and family traditions.*

## INTRODUCTION

The research will analyze the widows continued experiences in violation of their property inheritance rights. The analysis focused on the violations that widows are facing after the death of their husbands in relation to their right to property inheritance. The causes and reasons for continued violations of these property inheritance rights despite the legal laws that have been put in place to protect the widows. The study shows the violations that widows are facing towards their property inheritance rights after the death of their spouses in Zengeza 1 and 5 in Zimbabwe since 1997. The period from 1997 to date was chosen because in 1997 the Estate Administration Act Chapter 6:01 was amended to the Administration of Estate Amendment Act No.6 of 1997. The first born was the heir (usually the son) to the inheritance of the deceased and it changed to that the surviving spouse and children were now the heirs.

Chirawu argues that the Amendment Act is that the living spouse has to inherit the matrimonial home that the couples were living at the time of death of the deceased and the children will inherit the remaining part of the estate<sup>1</sup>. In 2013 the Constitution was also amended where men and women should have equal access to resources. Before the 1<sup>st</sup> November 1997, widows who are in unregistered customary law unions could not inherit from the estates of their husbands unless a will was provided.<sup>2</sup> The Administration of Estates Amendment Act Number (AEAA) 6/1997 introduced radical changes to the laws of inheritance especially to those under customary

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<sup>1</sup>S. Chirawu, D. Makaza Kanyimo, P. Nhema and P. Kurima, Strengthening the Legal Framework on Women, Property, and Inheritance Rights in the Context of HIV/AIDS in Zimbabwe: Harmonization of Marriage Laws and Equality In Marriage, Position Papers on Unregistered Customary Law Unions and Putative Marriage, Women and Law in Southern Africa Research and Trust Education, Harare, 2013, pg 10.

<sup>2</sup> S. Chirawu, Distribution of Property-Customary Law Union, Women and Law in Southern Africa Research and Education Trust, Harare, 2012, pg 2.

law to that the major beneficiaries would be the surviving spouse together with the children, be it those of out of wedlock.<sup>3</sup>

These changes were done so that widows' would not be violated their inheritance rights, but from the research reports and newspaper articles it has been seen that widows are still being violated. This research reflected why the widows' are still being violated their property inheritance rights, reasons for violations, how they are being violated and who are exactly the perpetrators of violations.

Violations of inheritance on widows' have been happening and have been a major concern in the recent years. It has been a global phenomenon in Africa as a continent and in Zimbabwe as a nation. They have been implementing legal laws that are to protect and help widows' who are being violated their property inheritance rights. Widows' are losing their inheritance to their in-laws and their children after the death of their husbands. Chakamba says to a widow losing a husband is also losing a home since many widows are losing mostly their matrimonial houses.<sup>4</sup>

Widows have been facing violations of their property inheritance long before the 1997 that is why the government have amended the statutory laws so that widows will not be violated their rights. It has been seen through the Human Rights Watch reports, the Women and Law in Southern Africa reports and other organizations that help widows that even now widows are still experiencing it and this research will focus on why this is still happening.

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<sup>3</sup> Ibid pg 4.

<sup>4</sup> R. Chakamba, "For Zimbabwean Widows, Losing A Husband Can Also Mean Losing A Home", Women and Girls Hub, April 19, 2017, <https://www.newsdeeply.com/womenandgirls/for-zimbabwean-widows-losing-a-husband-can-also-mean-losing-a-home/>, accessed 19/08/18.

The research focused on the Zengeza High Density Suburbs' widows. Zengeza 1 and 5 were chosen because the most cases which are attended at the WLSA help desk at the Magistrate court in Chitungwiza most of them are from Zengeza 1 and 5.

The age range for widows will be open to all ages. The widows were placed in two categories which are: those below 30 of age and those that are above 30. The researcher focused on widows' below 30 because those are the widows' that are mostly violated by their in-laws mostly since their children are still young that they cannot violate them. Those who are above 30 are both violated by their in-laws and their children since the children would have grown up and violate their mothers. Questionnaires were distributed randomly to the residents of Zengeza 1 and 5. Interviews will also be conducted with the widows in Zengeza 1 and 5, the residents of Zengeza, the Director of Women and Law in Southern Africa- Zimbabwe (WLSA) and also with Legal Resources Foundation (LRF). Observations were conducted at the Magistrate Court in Chitungwiza where estates of those with customary marriages both registered and unregistered are done and at the Master of High Court in Harare where edict meetings of those with civil marriages are held.

### **Statement of the problem**

The study analyzed the continued violations that widows are experiencing towards their right to inherit property after the death of their husbands although there are legal laws that were passed to protect them against those violations since 1997. It also showed how the widows are being violated their rights The study reflected the exploitations, abuse done to widows, reasons why and how widows are still being violated their rights in Zimbabwe after a number of laws have been passed and adopted in protecting the widows. The legal laws adopted were the Amendment Act Number 6 of 1997, Maintenance Act, Deceased Estate Succession Act, Wills and Inheritance

Act, Gender Policy of 2013 and the Amended 2013 Constitution of Zimbabwe. The research tried fill the gap of reasons why widows are still being violated their property inheritance rights despite the implemented laws.

### **Objectives**

1. To asses if the current inheritance laws have failed to protect the widows.
2. To evaluate how widows have been directly and indirectly disinherited their property inheritance rights.
3. To assess how far the inheritance laws have protected the widows from being violated.

### **Research Questions**

1. Have the inheritance laws failed to protect the widows on violation of their property inheritance rights?
2. How are widows being directly and indirectly discriminated and disinherited their inheritance rights?
3. How can the inheritance laws protect the widows from being violated their inheritance rights?

### **Background of the Study**

In Africa there have been many cases of violation of widows' property inheritance, property grabbing and research reports that widows are still being violated their property inheritance rights after the death of their husband. According to Kazembe and Mol in Africa widows remain a target of abuse after the husband dies<sup>5</sup>. Many countries in Africa have been implementing legal

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<sup>5</sup> J. Kazembe, and M. Mol, "The Changing Legal Status of Women in Zimbabwe Since Independence", *Canadian Women Studies*, Vol. 7 (1-2), 1986, pg 54-56.

laws that protect widows and even adopting the laws that protect the widows' from the hands of their violators. They have been adopting laws from Southern Africa and Development Committee (SADC), United Nations (UN), Convention on the Elimination of all Discrimination Against Women (CEDAW) and African Charter of Human Rights to mention a few. The Centre On Housing Rights and Evictions (COHRE) says:

*“For The African Charter makes clear that discrimination should be eliminated and integrates international legal standards, for example in Article 18 (3): The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. In addition, the Protocol specifically recognizes women’s right to inheritance and in Article 21 stipulates that: A widow/widower shall have the right to inherit each other’s property. In the event of death, the surviving spouse has the right, whatever the matrimonial regime, to continue living in the matrimonial house”.*<sup>6</sup>

Reports from the Non Governmental Organizations (NGO) in Zimbabwe such as the Women and Law in Southern Africa- Zimbabwe, Nhaka Afrikan Worldview Trust, Human Rights Watch and Legal Resources Foundation say that widows have been victims of property inheritance rights by their in-laws and even their own children. In Zimbabwe we have the dual legal system that governs inheritance issues which affects the working of the laws that protect widows depending on the type of marriage. This dual system of law was used in the colonial period disadvantaging the African women and after the independence it is still being used where there is the general law

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<sup>6</sup> B. Scholz, and M. Gomez, The Centre on Housing Rights and Evictions, Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women: A Survey of Law and Practice in Sub-Saharan in Africa, Primavera in Amsterdam, Geneva, Switzerland, 2004, pg 16.

and the customary law<sup>7</sup>. The general law governs those who have the civil marriage thus the Chapter 5:11 and the customary law helps those who have the Customary marriage Chapter 5:07 and the unregistered marriage Act. This dual system affects many widows because most people in Zimbabwe do not have registered marriages although even those with unregistered marriage can now be helped and benefit from the estate of the deceased if they provide proof that they were married to the deceased. The use of dual system confuses the management of the estate upon the death of males and it is the main reason of vagueness confusion and composes the existing unfair practices in property inheritance like property grabbing.<sup>8</sup>

Widows are also facing challenges with the interpretation of the laws especially the one which says the house in which the partners were living at the time of death. Many partners do not live together because of employment and according to the AEAA of 1997 it makes it difficult to define the matrimonial home. Another issue concerns couples who have more than one house, where the remaining spouse shares the estate equally with the children. In both cases women are violated their property inheritance rights since they will not get the matrimonial home but would share it equally with the children. Chirawu argues that:

*Practically the meaning of the words house in which the spouses lived in at the time of death: on this issue they do not have indicial pronouncement. Practically the words mean that the couple should literally be living in the house before the death of the deceased.*

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<sup>7</sup> S. Coldham, "Succession Law Reform in Zimbabwe", *Journal of African Law*, School of Oriental and African Studies, Vol. 42 (1), 1998, pg 129.

<sup>8</sup> M. Dube, The Ordeal of "Property Stripping" in A Peri-Urban Community: A case Study of a Selected Ward in Binga District, Zimbabwe, *Social Work, Stellenbosch*, Vol. 53 (3), 2017, pg 341-344.

*There are situations like the wife stays on and off the house and her husband dies whilst she is not around or probably living in Diaspora?*<sup>9</sup>

This phrase on this law does not protect widows who were not living with the deceased at the time of death despite what explanation one has. It becomes difficult for these kinds of widows to claim their property inheritance since the estate will be shared equally with the children. Most widows are violated their rights because they would have contributed to the purchase of the property but do not inherit them because they were not living with the deceased at the time of death. Reports in the local media and my experiences at the Master of High Court in Harare last year during my attachment period shows that women are still being violated their property inheritance rights.

Zimstat census in 2012 they recorded that Zimbabwe has got almost 587,000 widows, and most of the women are aged 60 and over.<sup>10</sup> Human rights Watch supports Zimstat view and also add that many of these older women are vulnerable to violations of their property and inheritance rights. Paradza assets that:

*In 1997, as the inheritance laws changed the surviving spouse became the one who had to inherit the matrimonial house. However, the capacity of widows' to benefit from these*

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<sup>9</sup> S. Chirawu, Distribution of Property- Customary Law Union, Women and Law in Southern Africa Research and Education Trust, Harare, 2012, pg 5.

<sup>10</sup> Women and Law in Southern Africa, Gender Equality, Human Rights, Monitoring and Evaluation Training, Delma Printers, Harare, 2017, pg 2.



*changes remain very limited because of their ignorance of the law, bureaucracy, financial and practical challenges that limits them from using the law.*<sup>11</sup>

In Zimbabwe relatives are still using family traditions and cultural traits to disinherit widows or abuse them and this was done long before the 1997 Amendment Act that went on to protect the widows. Customs are being used to exploit the widows Africa wide and even in Zimbabwe as a nation since we still live in a patriarchal society. In a patriarchal society women do not own any property. WLSA argues that widows are caught in between tradition and modernity and it makes them vulnerable.<sup>12</sup> Brown et al says many widows have been and are still being evicted from their matrimonial houses, abused and violated by their in-laws<sup>13</sup>. Widows who have got older greedy children are also being violated by them as their children stay in their houses and do not pay rent or take the benefits from that house and do not give them to their mothers.

Widows are also violated their rights when their children take the benefits from the bank that their mothers receive from the pensions or any other source of means. The First lady of Zimbabwe Amai Auxilia Mnangagwa also addressed the same issue of violation on inheritance property in Zimbabwe this year in July at the Magamba Hall in Warren Park after she had received many complains of widows being violated their right to property.

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<sup>11</sup> G. Paradza, "Intergenerational Struggles over Urban Housing: The Impact on the Livelihoods of the Elderly in Zimbabwe", *Gender and Development*, Taylor and Francis Ltd, Vol. 17 (3), 2009, pg 419- 421.

<sup>12</sup> Women and Law in Southern Africa-Zimbabwe, Property and Inheritance Rights Newsletter, Women and Law in Southern Africa Research and Education Trust, Vol. 1 (3), Harare, 2012, pg 16-18.

<sup>13</sup> B. Brown, D. Mavhinga, and D. Lohman, Violations of Property and Inheritance Rights of Widows in Zimbabwe, United States of America: Human Rights Watch, 2017, Accessed 11/08/ 2018, <http://hrw.org/you-will-get-nothing/violation-property-and-inheritance-rights-of-widows-in-Zimbabwe>.

The research focused on the reasons why widows are still being violated their property inheritance rights despite the laws that were implemented to protect them by the Zimbabwean government. Prior 1997 the inheritance of the deceased was inherited by the first born (usually the son) and he was supposed to take care of the family including the wife of the deceased but it was realized that the wives were being disinherited their property inheritance rights. They were being evicted from their houses, abused by their in-laws and those who are older were violated their rights by their own children. In 1997 the AEEA was passed and it only affected estates of people who would have died on or before after the 1<sup>st</sup> of November 1997. The 1997 AEEA makes the surviving spouse the major beneficiary of the house if s/he was living in the house at the time of death and this contradicts with rights of children who would still want to be protected.<sup>14</sup>

In Zengeza there have been newspapers articles of Daily news, Herald and Sunday Mail of widows who are being violated their inheritance rights by their in-laws and even children to those who are above 30 and living with their children. Reports say that widows are being evicted from their house even though legal laws were passed to protect them. WLSA even establish an office at the Chitungwiza Magistrate court with the aim of helping the widows that are facing violations in the areas of Zengeza.

### **Literature Review**

There have been many pieces of literature that have been postulated or written by many scholars concerning the widow's violations on their right to property inheritance. Research reporters, journalists, and scholars have written the issues of widows' being abused their rights since 1997,

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<sup>14</sup> S. Chirawu, Principles of the Law Succession in Zimbabwe: incorporating the Women's Rights Perspective, Women and Law in Southern Africa Research and Education Trust, Sable Press, Harare, 2015, pg 7.

even prior before the 1997 Amendment Act. The Administration of Estates Amendment Act was passed as from the 1<sup>st</sup> of November 1997 and it only affected those who had died as from that date. Pfumoredza says violation of property inheritance rights have been there since the colonial times and the dual legal system that the colonialists used on the Africans and their wives disadvantaged them is also thriving in Zimbabwe.<sup>15</sup> Coldham says that the White Marriage Paper was a proposal of changing the laws that were oppressing the Africans and that the marriages laws be changed to benefit everyone.<sup>16</sup>

The laws were changed after independence but violations continued to take place and later the laws were again amended but violations are still thriving. Dube asserts that these laws which are discriminatory have been established in Zimbabwe and they continue to incline widows of their right to inheritance property.<sup>17</sup> Mambondiyani is of the view that through the constitution Zimbabwe in 2013 it adopted provisions which advocates for equal rights for women including inheritance and property rights, but it has been reported that in practice, the existing laws mostly apply to widows in officially registered marriages.<sup>18</sup>

The Human Rights Watch focuses more on older people but the research will focused on all ages. Human Rights Watch argues that of the 587,000 widows in Zimbabwe most of them are

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<sup>15</sup> J. Pfumoredza, "Protection of widows and surviving children under intestate succession laws in Zimbabwe: The case of estates of persons subject to customary law", *Journal of Social Development in Africa*, Vol. 25 (1), 2010, pg 3.

<sup>16</sup> S. Coldham, "Succession Law Reform in Zimbabwe", *Journal of African Law*, Scholl of Oriental and African Studies, Vol. 42 (1), 1998, pg 129-131.

<sup>17</sup> M. Dube, The Ordeal of "Property Stripping" in A Peri-Urban Community: A case Study of a Selected Ward in Binga District, Zimbabwe, *Social Work, Stellenbosch*, Vol. 53 (3), 2017, pg 343-344.

<sup>18</sup> A. Mambondiyani, "Zimbabwe's Widows left In the Cold as In-laws Seize Property", Thomson Reuters Association, December 12, 2017, <https://www.reuters.com/articles/us-zimbabwe-landrights-widows/zimbabwe-s-left-in-the-cold-as-in-laws-seize-property>, accessed 28/07/18.

elderly and cannot protect themselves from the violations.<sup>19</sup> These widows are facing challenges in accessing their property inheritance rights. There have been many laws that have been adopted like the Amendment Act of 1997, The 2013 Constitution, and Maintenance Act 5:09, Will Act Chapter 6:06 and the Gender Policy of 2013.

Chirawu wrote of the challenges that widows are facing after the death of their spouses and how they are being affected especially those who would have died of HIV and Aids and those in unregistered customary marriages.<sup>20</sup> In Africa they have adopted laws that help them to protect the widows such as CEDAW which has an article that is relating to women's property and inheritance rights, ACHPR on the Rights of Women in Africa and others. However despite having these laws widows are still being violated their property inheritance rights.

According to Mavhinga from the interviews they did across Africa in countries like Zimbabwe, Zambia, South Africa and Botswana there are many cases were of in-laws claiming the property and resources of the deceased to be theirs leaving them homeless and without money to take care of themselves.<sup>21</sup> Human Rights Watch argues in their report You Will Get Nothing that widows are left homeless, vulnerable and that their in-laws are disinherit them because of

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<sup>19</sup> B. Brown, D. Mavhinga, and D. Lohman, Violations of Property and Inheritance Rights of Widows in Zimbabwe, United States of America: Human Rights Watch, 2017, Accessed 11/08/ 2018, <http://hrw.org/you-will-get-nothing/violation-property-and-inheritance-rights-of-widows-in-Zimbabwe>.

<sup>20</sup> S. Chirawu, Distribution of Property-customary law unions, Women and Law in Southern Africa Research and Education Trust, Harare, 2012, pg 3-4.

<sup>21</sup> D. Mavhinga, "Widowed, Left With Nothin"g, Daily News, February 7, 2017, [www.dailynews.co.zw/articles/2017/02/05/widowed-left-with-nothing](http://www.dailynews.co.zw/articles/2017/02/05/widowed-left-with-nothing), accessed 22/07/18, 14:31.

greediness.<sup>22</sup> In the research the researcher also focused on the widows that are facing violations from their own children. How and why they are being violated their rights by their own children? In many cases widows lose everything they had worked for being violated their right to inherit the inheritance of the deceased. This means that widows' are having challenges with their in-laws in terms of getting the property after their husband has died and thus violation of property inheritance done to the widows. WLSA says that the laws interpretation disinherits widows and makes them vulnerable since many marriages are not registered.<sup>23</sup> Maphosa in his article supports WLSA saying widows are in the most vulnerable places comparing to orphans and widowers and they need more attention, at the same time culture is disinheriting the widows. At most times they depend on the help of others, staying with relatives, trying to find income when they are used to be independent. This makes it hard for the widows since they would have been used to do things own their own but now they have to survive on relative's mercy. According to WLSA some communities still believe that a wife should be chased away after the death of a husband and that only a man should be involved in administering an estate. This was evident during edict meetings where deceased relatives would battle with the surviving spouse over the selection.<sup>24</sup> Most widows do not know that they can be administrators to the estate of their husband and some of them give the in-laws to be the administrators in fear of destroying their

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<sup>22</sup> B. Brown, D. Mavhinga and D.Lohman, Violations of Property and Inheritance Rights of Widows in Zimbabwe, United States of America: Human Rights Watch, 2017, accessed 11/08/18, <http://www.hrw.org/you-will-get-nothing/violations-property-and-inheritance-rights-of-widows-in-zimbabwe>.

<sup>23</sup> Women and Law in Southern Africa-Zimbabwe, "Engaging Communities to Confront Property and Inheritance Challenges: The Experiences of the Women in Law in Southern Africa Research and Education Trust", *Property and Inheritance Rights Journal*, Vol. 1 (1), 2012, pg 12.

<sup>24</sup> Women and Law in Southern Africa, Where is Equality? Analysis of the Use of Monitoring Tools by The Gender Equality Consortium, Mutbells Printers (Pvt) Ltd, Harare, 2017, pg 187.

relationship with their relatives. However, the research looked on how the community and the culture of Zimbabweans making the widows disinherited their property rights in Zengeza 1 and 5. The research will differ from that of WLSA in the sense that the researcher will look more into how culture and the community are violating these inheritance rights and how widows are also contributing to it with or without knowing it.

Mavhinga says that from the widows he spoke to during the research for the HRW report ‘‘ You Will Get Nothing’’ on the rights of widows said that in-laws evicted them from their homes and forced them to leave their houses and land that they would have worked for.<sup>25</sup> Despite progressive legislation on that prohibits property grabbing, incidents of property grabbing are occurring to widows. The research will differ with that of WLSA and Human Rights Watch because it will focus more on widows in the urban areas respectively those in Chitungwiza Zengeza 1 and 5 and why the laws are not being that effective. An assessment if it is the laws that are failing to protect the widows or other reasons that are causing these violations was also looked at.

Mambondiyani is of the view that many widows in Zimbabwe encounter insurmountable obstacles whilst defending their property or taking legal steps to reclaim it according to a report by Human Rights Watch.<sup>26</sup> Widows still need more help to access their property rights as many of them are facing challenges. WLSA says that the different marital regimes has made those in unregistered customary marriages to be disinherited and losing their matrimonial houses<sup>27</sup>. However, this research looked at the obstacles that the widows are facing and the reasons why

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<sup>25</sup> D. Mavhinga, ‘‘Widowed, Left With Nothing’’, Daily News, February 7, 2017, [www.dailynews.co.zw/articles/2017/02/05/widowed-left-with-nothing](http://www.dailynews.co.zw/articles/2017/02/05/widowed-left-with-nothing), accessed 22/07/18, 14:30.

<sup>26</sup> A. Mambondiyani, ‘‘Zimbabwe’s Widows left In the Cold as In-laws Seize Property’’, Thomson Reuters Foundation, December 12, 2017, <https://www.reuters.com/articles/us-zimbabwe-landrights-widows/zimbabwe-s-left-in-the-cold-as-in-laws-seize-property>, accessed 28/07/18, 14:30.

<sup>27</sup> Ibid

they are facing those obstacles despite the laws that are there to protect them. It differs in the sense that the research will be mostly focusing on all ages and assessing the obstacles that widows face in trying to their property inheritance and others scholars focus on older widows.

Women and Law in Southern Africa is of the view that property grabbing is a reality for widows despite existence of protective laws and socio-cultural attitudes amongst people are also entrenched in duty bearers hence the struggle for access to justice.<sup>28</sup> Widows are facing property seizing after the death of their husbands in the hands of their relatives .Women and Law in Southern Africa- Zimbabwe says:

*From the founding principles in the Constitution of 2013 gender equality and the recognition of the rights of women a survey was done by the Mass public Opinion Institute (MPOI)and it showed that three-quarters of the Zimbabweans d not have much knowledge on the constitution. Most people ended their interaction with the constitution during the referendum.<sup>29</sup>*

However, the research looked at how this ignorance of the knowledge in the constitution causing violations done to the widows' in Zimbabwe respectively Zengeza 1 and 5. It also tackled the fact why the constitution is not that effective to the people who are being violated and those violating the law.

*Every society has got formal laws and informal rules of succession that govern that will get which share of the deceased person's property and responsibilities. In the laws are*

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<sup>28</sup> Women and Law in Southern Africa, Gender Equality, Human Rights Monitoring and Evaluation Training, Delma Printers, Harare, 2017, pg 2.

<sup>29</sup> Women and Law in Southern Africa, Where is Equality? Analysis of the Use of Monitoring Tools by The Gender Equality Consortium, Mutbell Printers (Pvt) Ltd, Harare, 2017, pg 19.

*used to govern the estate of the deceased in a way that everyone who should benefits In reality, if the laws of inheritance are not based upon human rights standards, they often has opposite effects, robbing widows and girls of their lands and homes, and forcing them to be homeless. The society and culture invariably shapes the inheritance and succession according to the way it operates. The family structures and the roles are a very large part in the society on how such laws and rules are applied and formulated. Inheritance is often seen as a private matter, which explains the hesitation governments in interfering in the matters.*<sup>30</sup>

The research also looked at how traditions and culture are undermining the rights of the widows in the Zimbabwe particularly Zengeza 1 and 5 societies and how older women are being the most victims of the violations of inheritance rights. According to Kanyimo:

*Traditionally widows have a socially weak and vulnerable position in the Zimbabwean society because of the discriminatory practices. the position paper produced by Women and Law in Southern Africa and the property and inheritance rights network of Zimbabwe on suggested amendments of inheritance laws found out that women who do not have marriage certificates face challenges in court. They are required by the court to come with affidavits or testimony from their late husband's relatives to confirm the*

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<sup>30</sup> Women and Law in Southern Africa, Where is Equality? Analysis of the Use of Monitoring Tools by The Gender Equality Consortium, Women and Law in Southern Africa Research and Education Trust, Mutbells Printers (Pvt) Ltd 2017, Harare, pg 1.



*marriage. It has been observed that these relatives mostly deny the existence of the union and state that the customary law wife was a mere girlfriend.*<sup>31</sup>

There are many cases of challenges faced by widow because they do not have registered marriages and the researcher looked on how those widows are affected by the current laws of inheritance if they have not registered their marriages addressed by Women and Law in Southern Africa.

### **Research Methodology**

The research was a qualitative one with a historical approach. The qualitative method is studying things in their natural settings. Two aspects are of importance in the qualitative research and they are interviews and observations. This method was more efficient because it made the researcher interact with people in the field in a less formal way and interviewee were be free to talk. Interviewees were more comfortable and the widows were not scared hence the researcher got more information on the research. The method was more flexible and the researcher even got information by observing the people in the field, the respondents even elaborate their problems more freely by telling their experiences and even the attitude was be different on the face to face interviews. Also, the researcher was able to probe more information. The approach also catered for those who are illiterate and literate to participate meaningfully to the discussions. This approach gave more room for clarification of questions. It is also essential on this study because the people which the researcher dealt with were displaced and they were more emotional since it involves matters of their beloved ones and because of the traumatic events they had gone through

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<sup>31</sup> B. Scholz, and M. Gomez, The Centre on Housing Rights and Evictions, Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women: A Survey of Law and Practice in Sub-Saharan in Africa, Primavera in Amsterdam, Geneva, Switzerland, 2004, pg 10.

after the death of their husbands. The study also focused on widows who are below 30 and those above 30. They were both the working class and those who are not going to work and this made the research effective because in Zengeza 1 and 5 there are mixed people and 9 people were interviewed in the research. Six will be the widows, the director of Women and Law in Southern Africa and two widowers.

Interviews were conducted on widows who have faced violations on their property inheritance rights in Zengeza 1 and 5 areas, residents of Zengeza 5, legal interns at WLSA and the Director of WLSA. This source tackled the experiences and hardships of widows after the death of their husband and gave enough detail on who exactly violated them. This method was efficient because the interviewer had one on one talk with the interviewees, asked questions and observed their reactions when interviewing them. It also catered for those who are illiterate and made the research to be easier. The researcher also observed the non-verbal communication done by the interviewees on whether he/she is saying the truth or biased information. The method helped the researcher to gather raw information that was important to write the dissertation although there were disadvantages that there could have been exaggeration, bias and the forgetting of actual dates and days when the events took place. One side of the story was told, some at first did not want to disclose information and others totally refused to be interviewed fearing their stories will be heard by the world although confidentiality had been assured to them. To curb these shortcomings the researcher used secondary sources like reports, archival sources and online sources.

Secondary sources were also consulted which included scholarly journals, newspaper articles, books and unpublished articles. This is information that had been written by other people or scholars and was included in the dissertation. The information in books, journals and these

published articles is not biased and can be acknowledged without any doubt. It was easy to access because it can be found on internet websites, e-books, national archives and libraries. The researcher gathered information from the WLSA and LRF help desks where widows are helped and information is kept in their records and even their published articles. Information from courts was also accessed where the issues are dealt with or resolved.

## **Dissertation Layout**

Chapter 1: History of inheritance laws in Zimbabwe

The first chapter focused on the background of the inheritance laws prior 1997 and after 1997. It will focus on the inheritance laws that are in Zimbabwe. The laws that were there before 1997 and are there to protect the widows' from being violated their inheritance rights. The changes that happened when these laws were being amended were also looked at and how it affected the widows' as well as how the people acted after the laws changed in Zimbabwe.

Chapter 2: The widows experiences regard to inheritance rights in Zimbabwe particularly Zengeza 1 and 5

This chapter looked at the experiences that widows are facing in Zimbabwe but particularly in Zengeza 1 and 5. It focused on what types of violations these widows are facing and who is violating them. There was focus it on the reasons of the violations to widows and why they are being violated in Zengeza 1 and 5.

Chapter 3: The causes of widow's violations and challenges they encounter

The chapter looks at the causes of the violations to widows. It also unveils the challenges that they are facing. How the widows are being disinherited their property and inheritance rights by

their violators. It also unveils how these widows' are being violated and the challenges that widows are facing in trying to get justice or acquire their rights technically.

#### Chapter 4: Impact of inheritance laws and their protection widows property rights.

This chapter focused at if the legal laws that are protecting the widows should have an amendment to them. It will focus on if the laws of inheritance are fully protecting the affected widows towards their right to property inheritance. The researcher looked at how some laws are disadvantaging the widows to their right to inheritance leading to violations that are taking place to them. There was focus on how the laws are disinheriting them why trying to get justice technically. It s also unveiled what the organizations that help widows' are doing in helping them to get their justice and curb these violations.

#### Time Frame

The research was conducted from the 16<sup>th</sup> of June 2018 to the 30<sup>th</sup> of November 2018. The research was of Zimbabwe but particularly of Zengeza 1 and 5. Violations done to widows and how they are being violated their property inheritance rights was also looked at.

Gathering information for the research cost was \$80 for questionnaires papers, transport and refreshments. Therefore the research took five months gathering data through conducting interviews on the widows, directors of companies that help widows, legal interns that help widows with their cases and the assistant masters of the Master of High Court. Reading of documents, journals, textbooks, newspapers articles and reports of organizations that deal with the issues of protecting widows was used on conducting this research.

## **CHAPTER 1: HISTORIOGRAPHY OF THE INHERITANCE LAWS IN ZIMBABWE**

### **1.0 Introduction**

The chapter will analyze the history of the inheritance laws in Zimbabwe. The nature of the inheritance laws during the colonial period when Africans were under the colonial rule and after the colonial period in relation to widows. How some of the laws that disadvantaged the Africans penetrated to the new independent Zimbabwe. It will look at the inheritance laws prior the Administration of Estates Amendment Act of 1997 which replaced the Administration of Estates Act Chapter 6:01. Inheritance laws after the amendment and the changes that took place to date will also be discussed in this chapter. It shall seek the changes that took place during those periods and how the inheritance laws help the widows in protecting them. The adoption of laws by Zimbabwe in trying to protect the widows will also be a matter and also how the neighboring countries of Zimbabwe have also adapted to the changes that gives power to the widows who are being violated their property inheritance rights. Researchers of Women and Law in Southern Africa (WLSA) and Human Rights Watch (HRW) have also looked at the violations done to widows towards their inheritance rights.

Internationally, regionally and nationally there has been recognition of the importance of promoting and securing women's PIR. Several international and regional instruments that have been put in place to promote women's access to, control over and ownership of resources; these include the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the International Covenant on Economic, Social, and Cultural Rights and on Civil and Political Rights (ICESCR/CPR), the Beijing Platform for Action (BPfA) and the SADC Protocol on Gender and Development (The SADC Gender Protocol). At national level, Zimbabwe has put in place laws that govern the distribution of deceased estates; whilst

promoting women's access to PIR. These include the Administration of Estates Act Chapter 6:01; Administration of Estates Amendment Act No. 6 of 1997, the Deceased Persons Family Maintenance Act Chapter 6:03; Deceased Estate Succession Act Chapter 6:02; Wills Act Chapter 6:06 and Wills Amendment Act 21 of 1998.

However despite all these efforts women still have limited access to, control over and ownership of resources. Worldwide, women own only an estimated 1-2 percent of all titled land and are frequently denied the right to inherit property. Studies conducted by WLSA Zimbabwe in 2010 and 2011 revealed that women have limited access to property of economic value. In this study property was defined to include house, car/vehicle, and livestock, stand (commercial and residential), and farm land and household goods. In the 2011 study of the female interviewees indicated that they owned some form of property. However most of the property owned by women was of no economic value as 49% owned household goods such as kitchen utensils / equipment. None indicated that they owned farming land, 4% owned livestock and 23% owned residential stands, and 47% of these stands were without title deeds.

### **1.1 Inheritance laws in Zimbabwe**

Scholars like Chirawu, Pfumoredza, Coldham and Armstrong are also writers to the inheritance laws of Zimbabwe before independence and after in relation to widows inheritance rights. The Administration of Estates Amendment Act was passed in 1997 and it had effect to those who had passed away as from the 1st of November 1997.<sup>32</sup> Meaning it started to be used on the estates of those who had died on the 1st of November and onwards, those who would have died before could not be governed by this new law. This gave a problem to the cases that got into

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<sup>32</sup> Women and Law in Southern Africa-Zimbabwe, Property and Inheritance Rights Newsletter, Women and Law in Southern Africa Research and Education Trust, Vol. 1 (3), Harare, 2012, pg 2.

court after the 1<sup>st</sup> of November where the deceased had died before the issue date of the amendment. The Maintenance Act was changed hence it also began to protect the rights of widows and children where wife or wives would and every child of the deceased whether born in wedlock or out of wedlock was supposed to inherit the estate of their father.<sup>33</sup>

The inheritance issues have been a global phenomenon that have been a major issue as widows are being seen as minors and cannot inherit property inheritance rights though there has been a change after laws have been changed. In Africa there have been research reports on disputes concerning the inheritance after the death of a husband between the wife or wives, children and relatives especially the in-laws.<sup>34</sup> The laws and culture have many practices that have perpetuated in denying women's and widows rights to inherit matrimonial property and customary laws gives more social power and status to men rather than women. Richardson argues widows as women in the societies are not entitled by their relatives to have the right to property or any other inheritance that should be given to them after the death of their husband.<sup>35</sup> In the customary law marriage they are governed by the customary law and those married under the civil marriage are governed by the general law. Richardson says that despite the widows marital statuses in the African societies there have been conflicts and fights of property and inheritance rights.<sup>36</sup> In Zimbabwe there has been widows empowerment through the participation

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<sup>33</sup>A.M. Richardson, "Women's Inheritance Rights In Africa: The Need To Integrate Cult Understanding and Legal Reform", Human Rights Brief, American University, Washington College of Law, Vol. 11 (2), 2004, pg 19-22.

<sup>34</sup>J. Kazembe, and M. Mol, "The Changing Legal Status of Women in Zimbabwe Since Independence", *Canadian Women Studies*, Vol. 7 (1 - 2), 1986, pg 53-55.

<sup>35</sup> A.M. Richardson, "Women's Inheritance Rights In Africa: The Need To Integrate Cult Understanding and Legal Reform", Human Rights Brief, American University, Washington College of Law, Vol. 11 (2), 2004, pg18.

<sup>36</sup>Ibid pg 19-22.

to a number of international and regional set of rules such as the African Union Optional Protocol to the Rights of Women in Africa, Southern Africa Development Committee (SADC) on Gender and Development and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). There have been policies like Legal Age Majority Act issued in 1982, Administration of Estates Amendment Act of 1997 and the 2013 Amended Constitution that were implemented to protect widows but there have been challenges on the implementation and interpretation. Stewart is of the view that in reality localizing the international and national laws on gender and development has not been succeeded in Zimbabwe.<sup>37</sup> Widows married under the customary law marriage, unregistered customary law union and those married under civil law marriage do not have the same privileges in reality for the two marriages are not the same due to the interpretation of the inheritance laws.

## **1.2 Inheritance laws before independence in relation to widows.**

In the colonial times the law of intestacy applied to the estate married under the Marriage Act and depended mostly on race of the person who has died or whether the deceased was African or not. During the colonial times the right to inheritance was governed through the race of a person<sup>38</sup>. The colonialist governed themselves through the general law and the Africans were governed by the customary law according to how they lived in their societies. Prior to 1 November 1997, the administration of estates to which customary law applied was governed by section 68 of the Administration of Estates Act [Chapter 6: 01] (hereafter, the Act) which stipulated that where the deceased died intestate and customary law applied to him, the estate

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<sup>37</sup> J.E. Stewart, "Inheritance in Zimbabwe: The Quiet Revolution", *Women and Law in Southern Africa*, Harare, 1995, pg 6-21.

<sup>38</sup>S. Coldham, "Succession Law Reform in Zimbabwe", *Journal of African Law*, School of Oriental and African Studies, Vol. 42 (1), 1998, pg 127-131.



shall devolve according to customary law. The nature and content of customary law in Zimbabwe is not cast in stone as customary law is dynamic and differs from tribe to tribe, from place to place and from time to time. Despite these dynamics of customary law, the courts usually referred to the textbooks to ascertain the nature and content of customary law in a given tribe. Some observers have pointed out that due to the patriarchal nature of the Zimbabwean society; the courts have had to construct their own version of customary law which sadly, has been particularly harsh to women and children. Richardson says colonial administrators found out that the ruling relations between them and Africans were different and to maintain control over the Africans they compromised on the principles that made them and the Africans to live together without fighting.<sup>39</sup> This led to the formation of the dual legal system which had the civil law and customary law. The customary law by this time did not allow the widow to inherit the inheritance of the deceased rather the first son or the eldest male person in the family was the one to be the heir of the inheritance and in Shona it was tsvimbo. In most cases the son would inherit and if the widow had no son, a male family member would inherit and it could be the brother in-law of the deceased. Widows had no right to the property they would have acquired together with the late husband. They would only inherit if a will was left. According to Coldham:

*In Succession Law Reform in Zimbabwe, Africans would distribute the estate of the deceased according to the customary which would not benefit the widow leaving her with nothing. When the deceased was not an African the general law would be applied and estate will be given to the*

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<sup>39</sup>A.M. Richardson, Denial of Inheritance Rights for Women Under Indigenous Law a Violation of International Human Rights Norms, *Human Rights Brief*, American University, American College of Law, Vol.11 (2), 2000, pg 20-21.

*remaining spouse and children. When it was African estate it was governed with customary law marriage with section 13 of the constitution.*<sup>40</sup>

Africans had to govern themselves through the customary law of which in the customary law widows are not entitled to anything and are regarded as part of the estate or as gadgets. Coldham emphasizes more on how the customary law disadvantaged women under customary law in general although they are said to be at par. Zimbabwe as a patriarchal society, men only had the power to own resources or property even when a widow's husband has died a male was the one to take over the properties together with the wife as she was also regarded as property that was owned through the payment of bride prize. Armstrong et al argues that the control of basic resources in most families is by men and they have leverage over women and there has been a blind eye on it by the laws of Zimbabwe.<sup>41</sup>

### **1.3 Inheritance laws after independence before the Administration of Estates Amendment Act of 1997**

The customary laws of succession which were used to govern the majority (Africans) during the colonial rule were abolished at the same time replaced when Zimbabwe got independence in 1980. The new laws were in favor of the remaining living spouse and the children of the deceased though there were two types of systems governing which are the general law and customary law. The new laws did not remove the concept of the males being the heir, it continued even after independence in the new laws on the customary law. The new government

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<sup>40</sup>S. Coldham, "Succession Law Reform in Zimbabwe", *Journal of African Law*, School of Oriental and African Studies, Vol. 42 (1), 1998, pg 129-134.

<sup>41</sup>A. Armstrong, C. Beyani, C. Himonga, J. Kabebere-Macharia, A. Molokomme, W. Ncube, T. Nhlapo, B. Rwezaura and J. Stewart "Uncovering reality: Excavating Women's Rights in African Family Law", *International Journal of Law, Policy and the Family*, Vol. 7 (3), 1993, pg 314-369.

after independence maintained the legal pluralism in their new Constitution with the section 89 of the Lancaster House Constitution<sup>42</sup>. Section 89 maintained both the customary law and general law working together and regarded to be at par. The Lancaster House Constitution issued that there should be equality between men and women; women were also to benefit from the inheritance either from their fathers or their spouses. The dual legal system that Zimbabwe adopted is where the tradition customary law runs together with formal and statutory laws of the state. This has been an effect to the issue of inheritance because these two laws as much as they are said to be at par they do not agree on some aspects which makes the widows be violated their PIR. The customary laws oblige with the issue of bride prize and that a widow should be under the traditional customs of the society whilst the general law makes the widows independent. It differed with courts that would have been gone and the person who will be presiding believes in what or wants to use which law and most widows were disadvantaged. The new government was not based on race unlike the previous government. Chirawu in her article she points out that in the new constitution property was held and disposed according to customary law and civil law<sup>43</sup>. The government went on with the first born being the heir to the inheritance again leaving the widow on an open space without anything. Kazembe and Mol says:

*Among the Shona and Ndebele tribes the only possessions that widows got at the distribution of inheritance are cows, goats and goods made from their skills like clay pots, baskets since they would have got them through marriages of their daughters.*

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<sup>42</sup> S. Chirawu, Distribution of Property- customary Law Unions, Women and Law in Southern Africa Research and Educational Trust, Harare, 2012, pg 4-5.

<sup>43</sup> Ibid pg 6.

*Widows who did not have daughters would not inherit anything as they would be regarded as people with nothing at all hence would not inherit anything.*<sup>44</sup>

Ncube argues that the result of the old customary law was a complete exclusion of women as wives, mothers, daughters and sisters from the inheritance process.<sup>45</sup> Kazembe and Mol are of the view that “widows were also disinherited their right property due to the fact that they did not have a female child who would have made them to have property when she got married. Widows were regarded to be owned by their husbands since bride prize had been paid for them”.<sup>46</sup> In this case widows were violated their rights since they could not acquire the property they had worked for together with their husbands.

Widows were being violated their property inheritance rights and being disinherited for not having a female child or not having any child. According to Chirawu customary law is a living phenomenon and it is imperative that any efforts to eradicate its harmful aspects go beyond the passage of general civil laws.<sup>47</sup> Kazembe and Mol write mostly on the challenges that widows were facing after the death of their husband after independence but do not actually get into detail on how this happened. They also say that women are still unaware of the legal provisions as most

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<sup>44</sup>J. Kazembe and M. Mol, “The Changing Legal Status of Women in Zimbabwe Since Independence”, *Canadian Women Studies*, 1986, Vol. 7 (1- 2), pg 54-58.

<sup>45</sup>W. Ncube, “Muddling in the Quicksands of Tradition and Custom and Skating Down the Slippery Slopes of Modernity: Reform of Marriage and Inheritance Laws in Zimbabwe”, *The Zimbabwe Law Review*, Vol. 13, 1996, pg 13-14.

<sup>46</sup>J. Kazembe, and M. Mol, “The Changing Legal Status of Women in Zimbabwe Since Independence”, *Canadian Studies*, Vol. 7 (1 - 2), 1986, pg 56.

<sup>47</sup>S. Chirawu, “Challenges to outlawing Harmful Cultural Practises for Zimbabwean Women”, 2014, <http://www.boell.de/sites/default/files/persepectives-dec-2013-web.pdf>, accessed 13/09/18.

deaths are occurring in the rural areas. Community courts were established so as to administer estates of the Africans who die without will (intestate)

. The courts were meant to stop property grabbing by relatives of the deceased and this has been witnessed long before the AAEA where widows were ripped all the property in the name of culture. The change of inheritance laws did not stop widows being violated because in the courts some still had the mind that widows should not acquire property.

Later it was recognized that after the son or brother in-law who had been given the power of heirship would forget the widow and children. The heirs that would have been given the right to inherit would register the immovable property in their names, chase away the widow and children and the movable property will be sold leaving the widows on difficult times. Makaza-Kanyimo says WLSA did researches in the period 1992-1994 and found out that widows and girls were being disinherited their property rights and this was a deformation to the customary law.<sup>48</sup>

The Legal Age of Majority Act was passed in 1982 where everyone in Zimbabwe who had turned 18 would be free to own property and it brought a relief to women including widows. This was done so that any women would no longer be a minor and did not need consent from anyone to own property. Equality was introduced and this meant that if a husband dies the widow would inherit the property. The laws were passed so as to protect women who were being undermined their rights including widows who were losing the inheritance rights because of greedy relatives.

After Legal Age of Majority was passed and raised hope for women including widows the Vareta vs Vareta SC 126-90 case eroded the fact that women could inherit without a male

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<sup>48</sup>D. Makaza- Kanyimo, Law relating to Succession and Inheritance in Zimbabwe, Women and Law in Southern Africa Research and Education Trust, Harare, 2015, pg 8-10.

consent. Makaza-Kanyimo notes that females were not allowed to inherit if a male person was not present and this took place in the case held at the Supreme Court of *Vareta vs Vareta*.<sup>49</sup> In the process of making the widows gain their inheritance rights Legal Age of Majority Act (LAMA) could not protect widows more since there were challenges. In reality this law did not protect the widows more since the widow had no right to own property from her late husband under customary law since the a male was the most preferred in inheriting the estate.

. The Supreme Court ruled in favour of the male applicant. Finally, the case of *Magaya v Magaya* 1999 (1) ZLR 100 (SC) is worth mentioning. The deceased died intestate and his estate consisted of a house and some cattle. The deceased had two wives, both marriages being according to African law and custom. The first wife was the mother of the Appellant, Venia Magaya, born in 1941. The second wife was the mother of the Respondent who was born in 1946. The Appellant who was the eldest child of the deceased was female. The Respondent was male but was younger than the Appellant. Although the Respondent was not the eldest son, he was contesting heirship because the eldest son had refused heirship.

Chirawu says females who would want to inherit their father's estate wanted consent from a male person and that widows who were being violated their rights in favor of the eldest male in the family.<sup>50</sup> LAMA could not fully protect the widows towards their inheritance rights and this made them to be vulnerable and be left as destitute with nowhere to live. Chirawu points out that the interpretation of LAMA towards the widow's PIR showed a pattern changes and at times it even depended on who was sitting in the court at that particular time.<sup>51</sup>

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<sup>49</sup> Ibid pg 1-3.

<sup>50</sup> S. Chirawu, "Treat Or Trick- The Impact of the Administration of Estates Amendment Act Number 6 of 1996 on Women's Property and Inheritance Rights in Zimbabwe", *UZ Student Journals*, Harare, 2014, pg7.

<sup>51</sup> Ibid pg7.

Makaza-Kanyimo argues that the inheritance laws were being violated to every woman be it a widow or a daughter to a father and also how these laws changed to favor the widows. She reveals that the most encouraging case for reform to the old law of inheritance was the Magaya vs Magaya case which was the clear cry for action to reform the law.<sup>52</sup> After this court appeal it was seen that LAMA could not affect the appointment of the male heirs but it rather upholds it. It was seen that widows in most cases would lose their matrimonial home when the son or the in-laws had sold the house and other properties that were supposed to benefit the widow hence a drive to change the laws to help the widows. The research done by WLSA during 1992-1994 made a realization that there must be changes towards the inheritance rights on widows. These researches contributed in the changes of inheritance laws leading to the Administration of Estates Amendment Act of 1997. Stewart argues that in theory the heir was supposed to administer his estate with the interests of the surviving spouse and children but it was seen that this was not the case.<sup>53</sup>

#### **1.4 The inheritance laws after the Amendment Act of 1997**

The laws changed drastically towards the inheritance law in 1996 when they amended the AEAA of 1997 to favor the widows and children after they had seen that widows were still being violated their PIR. There are three types of marriages that are the civil marriage which is Chapter 5.11, the registered customary marriage which is Chapter 5.07 and the Unregistered Customary Law Union. The civil marriages are the ones that are processed in the High Court whilst the registered customary marriages and unregistered are done at the Magistrate courts. The Amendment Act came after the proposals in the White Marriage Paper by the government in

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<sup>52</sup> Ibid pg 8.

<sup>53</sup> J.E. Stewart, "Inheritance in Zimbabwe: The Quiet Revolution", Women and Law in Southern Africa, Harare, 1995, pg 10.

trying to make the widows have the opportunity to inherit the estate of the deceased. According to Coldham the 1997 Amendment Act was drafted basing on the schemes set in by the White Marriage Paper which out spoke the disadvantages of the previous laws.<sup>54</sup>

The White Marriage Paper erased the disadvantages the women and widows were facing after the death of their husbands and it wanted to make sure the wife or wives benefit from the estate even those in customary law marriages. The customary law marriage did not suit the urban life hence it had to be changed so that widows would not be vulnerable. Widows were being violated their rights as the first born or a male member of the in-laws were supposed to take care of the family including the wife and children but they did not do that. Widows were not entitled to anything of which they would have worked with the husband to acquire everything they had and after being disinherited they would suffer of poverty.

Paradza says when the laws changed widows gained a new position in the courts towards the right to own property and the rights of widows were then raised their status by the government.<sup>55</sup>

The surviving spouse was entitled to the matrimonial home they were living in t the time of death and other financial benefits which the deceased had left. These changes removed the first born (usually son) to be the heir of the estate but the widow being the inheritor of the matrimonial home and the rest of the estate will be shared to the children and the wife or wives if he had a polygamous marriage. The heir was supposed to take over the responsibilities of the deceased but it was seen that widows were becoming vulnerable to their right to inheritance.

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<sup>54</sup> S. Coldham, "Succession Law Reform in Zimbabwe", *Journal of African Law*, School of Oriental and African Studies, Vol. 42 (1), 1998, pg 129.

<sup>55</sup>G. Paradza, "Intergenerational Struggles over urban Housing: the Impact on Livelihoods of the Elderly in Zimbabwe", *Gender and Development*, Taylor and Francis Ltd, Vol. 17 (3), 2009, pg 419.



Many changes occurred after the AAEA as the widows were allowed or given the chance to contest a will if it was not giving her the matrimonial home she has to get. There was end to discrimination to widows who were childless who were regarded useless by their relatives but now could inherit the inheritance property as the surviving spouse of the deceased. The surviving spouses were given the chance to be the executor of the estate giving her the opportunity not to be disinherited her inheritance rights. The act recognizes that if a man is married under an unregistered customary law union and without dissolving it he goes on to marry another wife in terms of general law, both shall be regarded as valid marriages for purposes of inheritance. The children of the deceased were regarded as equals even if he/she was of out of wedlock. The male heir began only to be entitled to the traditional artifacts that are tsvimbo/intonga in customary marriages and unregistered customary law unions. In the African culture the widow is required to give tsvimbo to one male member of the family and nowadays widows choose their own sons in fear of being disinherited. The amendment act introduced radical changes to the customary law of inheritance. Unlike the heir under the old law who was male and inherited immovable property in their personal capacity, the heir under the new law inherits the deceased persons' name and tsvimbo/intonga and any traditional articles which under customary law, pass on to his heir on the person's death. The act specifically recognizes an unregistered customary law union as a full marriage for purposes of inheritance. Under ordinary circumstances a man is not allowed to marry polygamously and monogamously

The AAEA recognized the unregistered customary marriages for purposes of inheritance though they have to provide evidence that they were married to the deceased, be it the affidavits from the family of the deceased or anything that proves them as the wife of the deceased. Ncube says the Administration of Estates Amendment Act extends further recognition to unregistered

customary marriages for purpose of inheritance and how the customary law did to widows in sharing of the estate.<sup>56</sup> Chirawu argues that some men are mixing marriages types, they get married to women under both customary and civil law marriage and this causes problems when they die<sup>57</sup>.

They marry women in the rural areas and it will be the unregistered customary law union and leave them going to marry in the urban areas with a civil marriage and when they die problem arise as both wives claim to be married to the deceased. Sometimes he first marry with civil marriage and goes on to pay bride prize for the second wife and when he dies both the widows will be claiming to be his wives.. The new section 68(3) of the Administration of Estates Act say a marriage contracted according to customary law shall be regarded as a valid marriage for the purpose of this part notwithstanding that it has not been solemnized in terms of the Customary Marriage Act Chapter 5:07. Therefore this means the customary law union shall be seen as the same as valid marriage. In the civil marriage one provides a marriage certificate to prove the marriage and in the unregistered customary marriage one has to have affidavits or any proof the states that she was married to the deceased and this a challenge to the widows because some relatives refuse their daughter in-law.

In the Amendment Act in Section 3A to the Deceased Estates Succession Act the surviving spouse inherits the house she was living in at the time of death. In the courts it has been interpreted in the sense that the house which the spouse was physically living for example the Ndoro vs Ndoro and Master of the High Court HH-198-12. Chirawu says that the inheritance

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<sup>56</sup> W. Ncube, Inheritance in Zimbabwe: Laws, Customs and Practises, Women and Law in Southern Africa Research and Education Trust, Harare, 2008, pg 3.

<sup>57</sup> S. Chirawu, S. Distribution of Property- customary Law Unions, Women and Law in Southern Africa Research and Educational Trust, Harare, 2012, pg 6.

laws amended were meant to protect the widows after the death of a husband on being violated by the relatives.<sup>58</sup> Under the African cultural practices many widows were deprived of houses and other properties by relatives hence by amending the law the government was protecting the widows. The new law presents significant challenges in relation to certain issues such as proving the existence of an unregistered customary law union and the requirement that a spouse must have been physically present at the house at the time of death.

There are cases of bigamy and the AEEA only recognize the second wife if the first wife was married under customary marriage whilst the second wife was married under civil law marriage. This will be treated as polygamous marriage although the second marriage will be assessed and would be brought down and is treated as customary marriage at times. When all the wives were married under customary marriage and all of them would be having the right to inherit the estate. If the first wife was married under civil law marriage and the second wife was married under the customary marriage then the marriage with the second wife is regarded as invalid and not recognized. In some cases widows are violated their rights when the husband married her on customary marriage and goes on to marry another wife and does not make her aware, the estate will shared with both wives and in most times the one living with the husband will get the matrimonial home and the households.

Widows when the husband dies he will be living with the other wife and the one not living with the husband at the time of death would not inherit the matrimonial house but the house she was living in. If the deceased has more than one wife one third of the estate is shared among the wives, of which the 1<sup>st</sup> wife gets two shares and the other wives get the remainder of the one

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<sup>58</sup> S. Chirawu, Principles of the Law of Succession in Zimbabwe: incorporating the Women's Rights Perspective, Women and Law in Southern Africa Research and Education Trust (WLSA), Sable Press, Harare, 2015, pg 93.

third and share it equally. The two thirds of the net estate are shared equally among the children of the deceased.<sup>59</sup> If the wives were living in different houses at the time of his death they each get the house they were living and its household goods in it. If they were living in the same house and it is impossible to get ownership, they will retain the right to use the house. Chirawu notes that proving an unregistered customary law union is a serious burden and impediment for widows in the existing legal system. There is no clear moment when a unregistered customary law union begin since it s a union hence it is hard to prove since it does not have a marriage certificate.<sup>60</sup>

Neighboring countries of Zimbabwe such as Botswana, South Africa, Zambia have taken some legal steps to improve women's and widows property rights and inheritance laws. In Botswana up until 2013, men and women had equal rights under civil law only in regard to decision making on family property management, including upon death of a spouse. Now women and widows have the right or have equal access to everything and have access to the property after the death of a spouse hence it is the upgrading of widows and women towards their rights. Many educational researchers mostly focus on women at random be it those who are married, not married or widowed. Also in South Africa the Recognition of Customary Marriages was done in 2000. Legal scholars in Zimbabwe points out that the South African Recognition of Customary

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<sup>59</sup> Ibid, pg 97.

<sup>60</sup>S. Chirawu, D. Makaza-Kanyimo P. Nhema and P. Kurima, Strengthening the Legal Framework on Women, Property, and Inheritance Rights in the Context of HIV/AIDS in Zimbabwe: Harmonization of Marriage Laws and Equality In Marriage, Position Papers on Unregistered Customary Law Unions and Putative Marriages, Women and Law in Southern Africa Research and Education Trust, Harare, 2013, pg 23-26.

Marriages Act has some positives for change, but the law short falls on providing on the situation where relatives are not cooperative after the husband has passed on.

After the AEAA of 1997 the inheritance laws were having different positions and it has helped many widows and changes were recognized in Zimbabwe. However, the position of the UCLU has been a controversy over the years even there are calls to amend the law so as to bring it equally to the registered marriages. In the Customary Marriages Act, Section 3 says marriage contracted through marrying a widow or widows of a relative is not valid be it customary or not unless solemnized according to this Act .The marriage for it to be regarded as valid it needs to be solemnized for example payment of bride prize or anything to prove they were married.

In 2008 April, Zimbabwe confirm the African Union Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa ( the Maputo Protocol), which has many provisions on property rights for women and widows. It is specifically for the protection of widows and women. This makes Zimbabwe to protect widows from discrimination in terms of property grabbing and other practice that violate their rights.

In 2013 the Constitution was amended saying that men and women should share the rights equally and by this they were strengthening the equal rights in Zimbabwe whilst upgrading women so that they would not be discriminated and widows were included. The Amendment together with the marriages laws they have been working hand in hand but there have been complications on implementation and interpretation. The Zimbabweans do no fully understand the concepts of the amendment act hence there are still violations towards the widows. The engagement of women and men in unfaithful relationships are making the laws to be problematic when being implemented.

## **1.5 Conclusion**

In conclusion, the inheritance laws in Zimbabwe in colonial period were suppressing and violated the inheritance of the widows. The inheritance after independence were changed but widows were still violated their rights through the dual legal system which is still a challenge today. Customary law governed the Africans then general law was for the whites. It was done so that the widows could be protected after they have found that widows were being violated their rights. The surviving spouse and children could now inherit the estate not that the first born was the inheritor. Widows were violated their rights by the heirs by fulfilling the widows needs. In 1987, a Succession Bill had been drafted but it was not pushed through due to divergent views and therefore research was necessary to establish current laws, practices and possible solutions. The aspects of the White Paper's recommendations relating to inheritance issues, which were the only ones that were not superfluous, have now been incorporated into the provisions of the Administration of Estates Amendment Act No.6 of 1997, which came into force on 1 November, 1997. The same realization on why the legislature brought changes to the law as recognized by Justice Chiweshe in the Chihowa case therefore drove WLSA Zimbabwe to conduct the research. I argue that widows were and are still being violated their rights from the colonial times to date.

## **CHAPTER 2: TYPES OF VIOLATIONS WIDOWS FACE**

### **2.0 Introduction**

In this chapter the types of violations that widows are facing towards their right to property inheritance will be assessed. How the widow's are being violated and by who? How the violations result in the lives of widows will also be looked at. In Southern Africa widows have been being violated their rights before colonial times and after. Changes have been done but these violations are still taking place. In Zimbabwe there have been many cases of widows being violated their property inheritance mostly by their in-laws. Zengeza 1 and 5 widows have been violated their property inheritance rights which are confirmed by the researchers reports of organizations dealing with widows and also from the interviews that were done with widows who were evicted and faced property grabbing.

Widows are facing a number of violations which are property grabbing, disinherited the property, abuse, torture, exploitation by culture, loss of land, evictions from their matrimonial homes by their relatives and children. Widows are also separated from their children after in-laws have taken the children from the widow. Culture is also playing a part contributing to these violations. Even before a case makes it to the local courts where it often encounters its own set of challenges, it is vital to understand the role that the family, particularly the marital family plays as a harbinger of challenges.

The insecurity that many women face when their husbands die – denied the right to inherit their marital home, forced to marry a brother or husband, or simply subjected to psychological pressure by in-laws claiming their property – often drives them from rural areas to urban centers. Without options, turned away from their marital and even natal home, they are compelled to

migrate to cities in an attempt to find an income, a home and a new life, often with children and other dependents.

## **2.1 Eviction from the house by relatives**

In Africa there have been research reports of widows being violated their property inheritance and conflicts have been rising between the in-laws and the widow by organizations which deals with the rights of women. Many African countries have adapted to laws that help widows not to be violated their property inheritance rights but widows are still facing those violations. The fact that women cannot inherit land and housing after the death of their spouse or relative reflects the more general violation of women's right to adequate housing. For millions of women in sub-Saharan Africa, the systematic denial of housing and property inheritance rights lies at the heart of their economic marginalization and housing poverty.

If women are unable to legally own, control and inherit property, they have little economic and personal autonomy because they fundamentally lack access to wealth. Women's economic contribution to their families, which is essential, remains unremunerated and invisible. Widows in Zimbabwe have reportedly said that they are still facing challenges after deaths of their husbands and also in Zengeza 1 and 5 are facing a plethora of violations in the hands of the violators at the same time having challenges in accessing their right to property inheritance. In Zengeza 1 and 5 widows are being evicted from their own houses by both their in-laws and their children. Most widows after the death of their husband they are forcefully evicted from the house especially the matrimonial house. The relatives immediately take the keys of the house or move in throwing the widow out of the house. Women and Law in Southern Africa says that eviction of widows is the most widow violation that they face after the death of their beloved ones by their in-laws in



Zimbabwe<sup>61</sup>. Zengeza 1 as an old suburb most of the widows are now old and due to that they are easily abused and in their times they did not have knowledge about their rights to property inheritance. They have little knowledge on how the law protects them after the death of their husbands. In-laws are still sticking to the tradition that a woman cannot inherit property and most widows are evicted from their houses as the relatives will be taking the homestead forcefully. Izumi says that widows leave their matrimonial house to go and live with their natal families after they have been abused and have lost the property to the hands of their relatives.<sup>62</sup> The widows also play a part in being abused as they also honor the family traditions and they also fear that the relatives will disown them leaving them alone. Widows are being disinherited their right to property inheritance after they have been chased away by their in-laws and most widows do not report such cases. When a woman becomes homeless, she loses much more than just a house although this alone is catastrophic enough, she is also deprived of her personal security and social status.

## **2.2 Eviction by children**

Widows are also being evicted from their own house by their own children who are greedy or who are under the influence of their father's relatives who are greedy. HRW says children totally chase away their mothers from the house leaving her homeless or making her return to her natal

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<sup>61</sup> Women and Law in Southern Africa-Zimbabwe, "Engaging Communities to Confront Property and Inheritance Challenges: The Experiences of the Women in Law in Southern Africa Research and Education Trust", *Property and Inheritance Rights Journal*, Vol.1, (1), 2012, pg14.

<sup>62</sup>K. Izumi, "The Land and Property Rights of Widows and Other Vulnerable Women in Zimbabwe", *Gender and Development*, Vol. 15, (1), 2006, pg 13-16.

family.<sup>63</sup> The widows also have children who have grown up who are living with them whilst not paying rent or bringing any contribution at the house to support the widow. By not paying rent or contributing to the welfare of the widow they are violating her rights because that house is supposed to protect her from poverty and it is the widow's inheritance benefit. After the death of their father they chase away their mothers from the house saying that their husband is dead and what is left is for the children hence she should move away. In Zengeza 5 we have a mixed community both the old school and the new generation. Those in the old areas are the ones who are facing eviction from their own houses mostly and end up going to live with their relatives or at the rural areas. In both suburbs widows are facing the violation of being evicted from their own house by both their in-laws and their own children. The widows are also evicted by parents of the deceased who will be claiming the house saying it belonged to their late son, brothers in-law will also be claiming that it belonged to their brother. Abuses during evictions kill widow's self-esteem which affects their ability to defend their rights according to Izumi.<sup>64</sup>

### **Physical abuse**

Widows who refused to be evicted from their houses or give property are physically and emotionally abused. They are dragged out of the house being thrown and beaten in the process. They are left with bruises on them and homeless. When they resist giving the relatives property or the benefits they have like money. Disputes over lack of rights to inheritance, land and property ownership frequently expose widows to physical harm and even death at the hands of

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<sup>63</sup> B. Brown, D. Mavhinga and D. Lohman, Violations of Property Inheritance Rights of Widows in Zimbabwe, United States of America: Human Rights Watch, 2017, accessed 12/08/18, <http://www.hrw.org/you-will-get-nothing/violations-property-and-inheritance-rights-of-widows-in-Zimbabwe>.

<sup>64</sup> K. Izumi, "Gender Based Violence and Property Grabbing in Africa: A Denial of Women's Liberty and Security", *Gender and Development*, 2007, Vol. 15, (1), pg 11-23.

male relatives. Often, relatives abuse widows with impunity, as their activities are seen as ‘family matters’, falling within the private sphere. For this reason, police and other authorities are often lax, or unwilling to intervene. Izumi is of the view that physical abuse usually takes place when the relatives are chasing away the widow especially when she is suspected of killing her husband.<sup>65</sup> The first lady Amai Auxilla Mnangagwa on 3 June 2018 at Magamba hall she said that there has been a number of complains at her office of widows being disinherited their property rights hence she arranged a workshop and called experts to explain the legislative provisions.<sup>66</sup>

### **2.3 Sexual abuse**

Widows are also being sexually abused. This happens to those who have unregistered customary law unions. Proving that kind of marriage the widows needs anything from the day of the marriage be it a bride price/ lobola list or videos and those who do not have they need affidavits written by their in-laws. Widows are usually asked for sexual favors for them to get the affidavits and if they do not they will be disinherited the inheritance. Some widows are forced to sleep with one of the relatives as a way of cleansing the widow and for them to be helped by the in-laws to process the estate of the deceased. Women themselves are blamed for the death of their husbands, either due to ‘witchcraft’ or to HIV/AIDS infection. In many parts of sub-Saharan Africa, widows must often endure abusive and degrading treatment meant to ‘cleansing’ them after the death of their spouse. As we will see throughout this report, these ‘cleansing’ rituals can range from forced sex with male in-laws, to semi-starvation, forced nudity, prolonged isolation, and other treatment humiliating to the widow, such as cutting off all her hair or making her eat

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<sup>65</sup>K. Izumi, “The Land and Property Rights of Widows and other Vulnerable Women in Zimbabwe”, *Gender and Development*, Vol. 15, (1), 2006, pg 11-19.

<sup>66</sup>First Lady tackles inheritance issues, ZBC Newsday online, July 3, 2018, [www.zbc.co.zw/first-lady-tackles-inheritance-issues/](http://www.zbc.co.zw/first-lady-tackles-inheritance-issues/), accessed 15/07/18, 11: 10.

off dirty plates They also fear that if they don't comply with their relatives their relations will be distorted. In Zimbabwe it has been observed that widows are always at that receiving end especially those in unregistered customary law unions. Others are forced to marry one of the relatives for them to benefit from the inheritance and that is called levirate marriages especially those who are young at age. In some cultures, upon the death of her husband, a woman herself may be inherited, as she is seen to 'belong' to her late husband's family. The wife is regarded as having been bought through the payment of bride price.

## **2.4 Property grabbing**

In most cases, widows' property is seized by both the relatives and their own children. Property like the matrimonial home, cars, farms, financial benefits and savings are taken by their in-laws. Property grabbing is the most reported violation done to the widows. Human Rights Watch says that property grabbing also harm those that are in the care of the widows and there will be no peace amongst them.<sup>67</sup> Mavhinga also articulated that property grabbing is a problem and that widows are being evicted from their houses, left to depend on relatives.<sup>68</sup> Research reporters of Human Rights Watch say that the distant relatives come after the death of the widow's husband claiming property of the deceased.

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<sup>67</sup> B. Brown, D. Mavhinga and D. Lohman, Violations of Property Inheritance Rights of Widows in Zimbabwe, United States of America: Human Rights Watch, 2017, accessed 11/08/18, <http://www.hrw.org/you-will-get-nothing/violations-property-and-inheritance-rights-of-widows-in-Zimbabwe>.

<sup>68</sup> D. Mavhinga, "Widowed, Left With nothing", Daily News, February 7, 2017, [www.dailynews.co.zw/articles/2017/02/05/widowed-left-with-nothing](http://www.dailynews.co.zw/articles/2017/02/05/widowed-left-with-nothing), accessed 22/07/18, 14:20.

Parents of the deceased also claim to be the owners of the inheritance<sup>69</sup>. Widows who were not working are even at more risk because the relatives will be saying she was not working hence all the property belongs to their dead relative and she should not own anything. Chirawu also write that property grabbing is affecting widows and impoverishing them to an extent that they become poor not even to have a place to stay or sent children to school.<sup>70</sup> Women in Southern Africa also support that property grabbing is making widows vulnerable to poverty. It has become new form of gender based violence.<sup>71</sup> The pension that is supposed to be benefited by the widow is taken by the in-laws who will be holding the death certificates and other credentials that enable them to get the pensions. Bank cards are also taken by relatives on cases where the widows are still young and on widows who are old their own children withdrawing money every month and not giving the widow to sustain her and the remaining family. The benefits that are supposed to benefit the widow will benefit others people families.

A 39 year old widow in Zengeza 1 said:

*Her husband died in 2004 and she asked for money for the funeral. She gave the brother in-laws the bank book for them to process the funeral expenses and all. The elder brother in-law and relatives processed the burial and every document of the deceased to be buried. They did not return the bank books nor give the widow money and they did confirm that the deceased had a wife. Three weeks later she asked for the bank book and*

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<sup>69</sup> B. Brown, D. Mavhinga and D. Lohman, Violations of Property Inheritance Rights of Widows in Zimbabwe, United States of America: Human Rights Watch, 2017, accessed 12/08/18, <http://www.hrw.org/you-will-get-nothing/violations-property-and-inheritance-rights-of-widows-in-Zimbabwe>.

<sup>70</sup> S. Chirawu, Distribution of Property-Customary Law Unions, 2012, Women and Law in Southern Africa Research and Education Trust, Harare, pg 5.

<sup>71</sup> Women and Law in Southern Africa-Zimbabwe, "Engaging Communities to Confront Property and Inheritance Challenges: The Experiences of the Women in Law in Southern Africa Research and Education Trust", *Property and Inheritance Rights Journal*, Vol. 1, (1), 2012, pg 13-14.

*death certificate and she was told she was no longer part of the family since her husband had died hence they could not give her the credentials. She said all the benefits taken by her in-laws and she was not given a cent from the money that was in the bank or that came from the company her husband was working.*<sup>72</sup>

This shows that widows after the death of her husband the in-laws do not care about her anymore or the children that she has. To them what only matters is the deceased who would have died and it shows that people any care for ones wealth not his family. The widow suffers both the loss of her husband and the money that was supposed to sustain her until she gets back to her feet. Izumi says that in Zimbabwe 80% of the cases of property grabbing brought at the Master of High Court and relatives that want to evict or who evicts widows are of the middle class<sup>73</sup>. They will be having their own wealth, properties and not poor but would want to disadvantage the widow of her right.<sup>74</sup> In Zengeza it has been seen that widows who will be evicted from their houses sent their children to their relatives and the widow seek a job in the city so as to take care of the children. A resident in Zengeza 5 says:

*Her sister's property was taken after her husband died by the relatives of the deceased. She was left with nothing even her clothes were taken after she was evicted from her matrimonial house. She came to live with him at his house and this traumatized her to an extent that she was taken for counseling. They did not report the case to the police and the relatives benefited disinherit the widow.*<sup>75</sup>

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<sup>72</sup> Interview with P. Kwashirai, Widow, Zengeza 5, August 13, 2018.

<sup>73</sup> K. Izumi, "Gender Based Violence and Property Grabbing in Africa: A Denial of Women's Liberty and Security", *Gender and Development*, Vol. 15, (1), 2007, pg 18-23.

<sup>74</sup> Ibid pg 22-23.

<sup>75</sup> Interview with E. Tichatonga, Zengeza 5 Resident, August 12, 2018.

Where there is a will, the relatives after the death of the deceased they go the lawyer of the deceased trying to buy the lawyer with huge amounts and some lawyers are bought so that they forge the will or do not read the will.

At times they go to the deeds office to change names of the estates though some do not succeed and they will be trying to disinherit the widow from inheriting the property left by her husband. Where the deceased had a car or had cars they would go to the Company Vehicle Registration (CRV) to claim the vehicle book so that they can change the name. At some cases on the period when the funeral of the deceased is being held some people take the car parts of the vehicle and by the time the funeral will end only the body will be left. Slowly relatives take property that is supposed to be of the widow without her consent and most widows realize it after the funeral because they will be in pain of their loved ones who would have died hence they will not be looking at the activities happening.

*In Zengeza 5 a widow said she lost her husband in a car accident in 2010. All the funeral procedures were done together with her and the relatives and they went to the graveyards in Mbudzi to bury her husband with all her relatives. When she came back the house was empty and all the property had been taken. She said whilst she was burying and paying her last respects to her husband, the relatives were taking the property in the house. The relatives took all the property including what was in the house she was living in. Fortunately she was able to recover some of the property after she had reported the case to the police and because some of the household receipts had her name. They only took what the deceased had before he was married.<sup>76</sup>*

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<sup>76</sup> Interview with F. Mhlanga, Widow, Zengeza 5, July 11, 2018.

HRW notes that widows face pressure from in-laws and then accept property seizing in the name of family traditions and culture.<sup>77</sup> The first Lady Amai Auxilla Mnangagwa in June she addressed a workshop saying that property grabbing is affecting both men and women and it is an offense of almost two years in jail or the person pay fine or both. Chakamba argues that when a widow's loses a husband they have lost everything because the in-laws grab property from her and they are being abused leaving them in pain.<sup>78</sup>

Widows are tricked by their own children who are selfish and greedy. The children collect monthly pensions and rent which should be received by the widow and squander it by drinking or use it for their own needs. Some are even beaten by them if they ask for the rentals and in the end they do not ask in fear of being beaten again. They even go to an extent of begging from the neighbors especially those who are old and can no longer work for themselves. An elderly widow in Zengeza 1 reported that:

*She has married to her husband for 20 years and her husband passed away in 1999 and her in-laws took all the property leaving her with nothing only children to take care of. She raised her children who are now grown ups and she remarried then continued to live in the house her husband left. She said in 2015 her eldest son came and claimed the house she was living in belonged to their father and she should move out for him to live. He moved in with his family in his mother's house not paying rent or money for food and*

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<sup>77</sup> B. Brown, D. Mavhinga and D. Lohman, Violations of Property Inheritance Rights of Widows in Zimbabwe, United States of America: Human Rights Watch, 2017, accessed 12/08/18, <http://www.hrw.org/you-will-get-nothing/violations-property-and-inheritance-rights-of-widows-in-Zimbabwe>.

<sup>78</sup>R. Chakamba, " For Zimbabweans Widows, Losing A Husband Can Also Mean Losing A Home, Women and Hub, April 19, 2017, <https://newsdeeply.com/womenandgirls/for-zimbzbwean-widows-losing-a-husband-can-also-mean-losing-a-home/>, accessed 19/08/18, pg3-6.



*also abused her so that she will move out. The widow went to the police and got peace order and the son was order to leave the house and not disturb his mother.*<sup>79</sup>

Widows do not know where to report the cases and at times they are afraid of reporting their own children to the police or at courts. They feel they will be exposing their problems to the world and would say they want to keep their dignity in the society. Widows are taken advantage by their own blood and violated their right to inherit the benefits of the deceased. In Zengeza 1 where most of the old widows live they reported that their own children take their benefits and even abuse them when they come home drunk. Some widows even complain to their relatives but nothing is done in protecting because the child will ask for forgiveness and swear he/she will never do it again but after some months it starts again.

Widows have reported that relatives take everything that the widow has, harass her, intimidate and insult her physically restraining her so that she can leave her house. They also say that were tortured constantly in order for the widow to surrender what the deceased left to the relatives.<sup>80</sup> Widows are violated their right to own property through psychical, emotional and mental abuse. Some seek for help from the police and are told to apply for peace order at the court. Widows say that the process of getting peace order is costly for they have to apply from the court and say that the time they will not be having money hence they leave it. Even after they have obtained the peace order some relatives including their children keep on abusing them. Also they fear that their in-laws or children will then be taken to jail and it will ruin their relations with them. HRW also wrote about how widows are abused and the vulnerabilities they face from their in-laws.

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<sup>79</sup> Interview with S. Matendevu, Widow, Zengeza 1, August 13, 2018.

<sup>80</sup> B. Brown, D. Mavhinga and D. Lohman, Violations of Property Inheritance Rights of Widows in Zimbabwe, United States of America: Human Rights Watch, 2017, accessed 12/08/18, <http://www.hrw.org/you-will-get-nothing/violations-property-and-inheritance-rights-of-widows-in-Zimbabwe>.

They also say that widows face property grabbing and it is experienced by both older and young women. At the workshop by the first lady at Magamba hall many widows poured their hearts saying that there are threats of them losing their property. Issues raised by widows and those who should benefit from the estates are a result of ignorance. She told widows to look for assistance from the experts than relying on hearsay.<sup>81</sup>

Africa as a patriarchal society widows are violated by culture and the customary law<sup>82</sup>. Widows who are ignorant about the widow's rights are deprived of their inheritance with relatives. Culturally after the deceased has died there are certain procedures that should be done like cleansing and sharing of the deceased property including the widow. The property of the deceased should be shared among the relative that is kugova nhaka in shona. They do not only disperse his clothes but also his property leaving the widow without anything and it is said the one who is going to be her new husband in the family will provide for her. Mr Muatasa at the workshop held by the first lady in Warren Park Magamba dispersing the clothes and property of the deceased without the consent of the Master is a crime<sup>83</sup>.

Widows are being forced to marry a family member so that they keep the wealth in the family. Relatives are not comfortable to let go the widow with property because they feel that the person who will marry will benefit from the wealth of the deceased who is their family member. Widows who deny to be remarried by a family member are evicted from their house and not

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<sup>81</sup> First Lady tackles inheritance issues, ZBC Newsday online, July 3, 2018, [www.zbc.co.zw/first-lady-tackles-inheritance-issues/](http://www.zbc.co.zw/first-lady-tackles-inheritance-issues/), accessed 15/07/18, 11:13.

<sup>82</sup> K. Izumi, "Gender Based Violence and Property Grabbing in Africa: A Denial of Women's Liberty and Security", *Gender and Development*, Vol. 15, (1), 2007, pg 21-23.

<sup>83</sup> First Lady tackles inheritance issues, ZBC Newsday online, July 3, 2018, [www.zbc.co.zw/first-lady-tackles-inheritance-issues/](http://www.zbc.co.zw/first-lady-tackles-inheritance-issues/), accessed 15/07/18, 11:10.

allowed to inherit anything from the deceased property and that is property grabbing. Most widows do not inherit the property that they worked together with the husband as she would be refused to be remarried in the family. A widow in Zengeza 5 said that:

*When her husband died in 2000, her in-laws gave her a condition that for her to keep the property she should be remarried to the younger brother of the deceased. They said the property should benefit the family of the deceased and for that to keep on happening the widow should marry her brother in-law. She refused to be married to her brother in-law and was chased away from her home and was ordered to leave her children. She went back to her parent's house and she later seek help from Legal Resources Foundation a non-governmental organization where she was helped to retain her property but not all of it and the money had already been used . She says that this was the most difficult times of her life after her husband died and it is still affecting her.*<sup>84</sup>

From that interview it is evident that in-laws deprive widows from inheriting property in the fear that the property will be given to one who will marry that widow in future. Women and Law in Southern Africa also write about the widows with HIV and the vulnerabilities that face in the face of their relatives. They are even forced to marry a male family member. They go on to that say that widows without marriage certificates who do not hold marriage certificates face challenges in court proving that they were married to the deceased. Proving that the widow was married to the deceased is a burden in the existing legal system because they will rely on the mercy of the relatives of the deceased<sup>85</sup>. Brother's in-law of the deceased will start making

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<sup>84</sup> Interview with R. Matabvu, Widow, Zengeza 5, July 15, 2018.

<sup>85</sup> S. Chirawu, "Treat Or Trick- The Impact of the Administration of Estates Amendment Act Number 6 of 1996 on Women's Property and Inheritance Rights in Zimbabwe", *UZ Student Journal*, Issue 3, Harare, 2014, pg 8-9.

moves on the widow so as to benefit from the widow by trying to make them their wives. In polygamous marriages widow also face problems for other wives would want to take everything from the other wife or wives.

Human Rights Watch wrote that other widows in a polygamous marriage also do property grabbing to the other wives of the deceased<sup>86</sup>. Culturally women who do not have children were not entitled to inherit anything as they will be said to have not acquired anything during the marriage. Even now there are some people who still believe in it and they will not want to give widows any inheritance after the death of their husband. Izumi wrote that defending widow's property has cost some women their lives, while others have lost shelter and have become destitute. Mavhinga goes on to say that women in unregistered customary unions are the most vulnerable ones in courts and they rely on the mercy of their greedy in-laws. He says that widows with civil marriages often get help but they still face challenges although they usually win their cases in court.<sup>87</sup>

The other major reason for change was that the WLSA research on inheritance and anecdotal evidence suggested that male heirs upon inheriting immovable property in their own right would swiftly proceed to sell the house. The only legal requirement was that they provide alternative accommodation. The issue was not about the quality of the accommodation but the very fact of providing such. This could mean that dependants and the surviving wife could be moved from an

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<sup>86</sup> B. Brown, D. Mavhinga, and D. Lohman, Violations of Property and Inheritance Rights of Widows in Zimbabwe, United States of America: Human Rights Watch, 2017, Accessed 11/08/ 2018, <http://hrw.org/you-will-get-nothing/violation-property-and-inheritance-rights-of-widows-in-Zimbabwe>.

<sup>87</sup> D. Mavhinga, "Widowed, Left with Nothing", Daily News, February 7, 2017, [www.dailynews.co.zw/articles/2017/02/05/widowed-left-with-nothing](http://www.dailynews.co.zw/articles/2017/02/05/widowed-left-with-nothing), accessed 22/07/18, 14:17.

urban area where the children could access schools, health institutions and other amenities much easier to an area that was not yet fully developed.

The research reports by WLSA and HRW says that some magistrates are biased to widows and interpretation of the laws differs. Chirawu has written that widows are violated their rights to inheritance even in the courts. Some magistrates are biased that the widows do not get their entitled inheritance and it happens mostly to those with unregistered customary marriages<sup>88</sup>. There is also a misinterpretation of the laws of inheritance mostly on customary marriages and the issue that the widow should get the house where she was living at the time of death. Some widows do not live with their husbands because of work and others do not have one house rather they have many. The widow is violated her right to the inheritance because apart from where she was living the other estate is shared equally with the children of which she would have contributed to the purchase of the houses but the receipts are not in her name. Widows are also violated their right to inheritance by the laws of Zimbabwe. The law says all the marriages types are equal but in reality the unregistered customary law unions disinherit most widows because they are hard to prove and most widows rely on the relatives of the deceased. There are some phrases in the laws that disinherit the widows for example the widow inherit the house she was living at the time of death of the deceased.

## **2.5 Conclusion**

The widows' in Zimbabwe particularly those in Zengeza 1 and 5 are facing violations from their in-laws and children towards their property inheritance rights. These violations have been there long before the independence and even after the Administration of Estates Amendment Act of

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<sup>88</sup>S. Chirawu, "Treat Or Trick- The Impact of the Administration of Estates Amendment Act Number 6 of 1996 on Women's Property and Inheritance Rights in Zimbabwe", *UZ Student Journal*, Issue 3, Harare, 2014, pg 10.

1997 which abolished the violations that were happening to widows. Widows are being evicted from their own houses, property is being grabbed by their relatives and they are being abused physically, emotionally and mentally. Property seizing is leaving widows in poverty and they would have to start from scratch. Some they will suffer mentally because after the shock of losing a husband they will also lose everything they would have worked together with their husbands. The relatives do these violations taking advantage of the trauma the widows will be having after the loss of their loved one.

Practically the widows will be not thinking well to an extent that they can agree to anything which leads them in losing their property inheritance. Sexually they are being forced to sleep with one family member for them to get affidavits which confirm that they were married to the deceased. In-laws are forcing widows to be remarried by a male family member so that the wealth in fear that the man that will marry the widow will benefit from it. Widows are being given conditions by their in-laws and children so the relations will be maintained. Those are the protectors of the law are also biased that widows are violated their rights at their own costs. They are also violated because they are ignorant and they do not have the financials to process the estate and those in unregistered marriages do not have proof of marriage.

Violence against women within the context of inheritance disputes reflects women's low status within societies, and in particular the low status of widows. The violence which women may experience upon the death of a spouse is critical to understanding the intense cultural reverberations of the inheritance question, and highlights the serious context in which women must make their decisions about whether or not to fight for their rights to be upheld. Either way, women pay a very high price.

## **CHAPTER 3: CAUSES OF THE VIOLATIONS DONE TO WIDOWS**

### **3.0 Introduction**

The chapter will assess the reasons why the widows are being violated towards their property inheritance rights despite the laws that were passed to protect widows. It is mainly focusing on the causes of the violations done to widows. The challenges that widow's are facing in trying to access their property inheritance be it technically. It shall also look at how widows are disinherited their rights by their in-laws and children. Widows in Zimbabwe have been and are still facing violations towards their right to property inheritance. Many widows are facing challenges because of technicalities or because they are ignorant of the laws. Widows are being violated their right to property because of ignorance and the fear to ruin their family relations. Greediness, ignorant of the law by relatives, culture and even the loopholes of the laws are causing these violations to prevail to the widows especially to those with unregistered customary law unions. Shortages of money to consult the court and for transport are also other factors. Some do not even finish the registration of the estate because they do not have the 4% of Masters Fees.

### **3.1 Reasons of the continuation of the violations**

The causes of the violations done to the widows are both self inflicted and not self inflicted. There are in-laws that are greedy and want to take all the inheritance to them forgetting that the deceased had a wife and family. Greediness is one of the causes of violations done to widows in Zimbabwe. Chirawu argues that relatives are greedy to the extent that they want to deprive widows from inheriting their inheritance. Most of the family members who do property grabbing

are wealthy and just want to deprive the widow from inheriting her inheritance<sup>89</sup>. These relatives just have a belief that a widow should suffer after the death of her husband and should rely on the mercy of others and that the estate left by the deceased should not be owned by her. They forget that there are children that needs to be taken care of and some of them usually claim guardianship to the children so that they can benefit from the estate of the deceased. In the African society a widow is expected to surrender all the estate to the relatives of the family and most of the times the relatives takes everything forgetting that the widow also contributed too be it financially or not. Children are also caught with greediness over their mother's benefits. They usually leave where they will be living and come to stay with their mother without giving her any cent of which they will be capable of taking care of themselves and some even evict their own mothers from the house.

Some even look for tenants who will live with their mother and they will be the one to collect the rent which should be helping their mother as a source of income. Most widows suffer due to greediness of their in-laws and their own children. According to Chakamba widows leaves their homes after being chased away and seek jobs as domestic workers so as to make a living. She says widows both in rural and urban areas face property grabbing and those who are poor suffer most.<sup>90</sup> It is has been observed that in Zengeza 5 widows are suffering or are being violated their rights because of relatives who are greedy and jealously to the widow.

Ignorance of the law is also another factor causing widows to be violated. Munyoro says ignorance is making widows be disinherited. The constitution and other laws are not in line with

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<sup>89</sup> S. Chirawu, Challenges faced by women in unregistered customary law unions, Women and Law in Southern Africa Research and Education Trust, Harare, 2014.

<sup>90</sup>R. Chakamba, "For Zimbabweans Widows, Losing A Husband Can Also Mean Losing a Home", Women and Hub, April 19, 2017, <https://newsdeeply.com/womenandgirls/for-zimbabwean-widows-losing-a-husband-can-also-mean-losing-a-home/>, accessed 19/08/18 .



the types of marriages that widows are violated their rights.<sup>91</sup> A lot of widows do not know their rights on inheritance property and this makes them vulnerable to their violators. In Zengeza 1 and 5 widows are ignorant of the law hence anyone does what they want with them. The widows do not even know their right to inheritance property hence they are at a disadvantage. Some of them know their rights but they fear to go to the police so as to maintain their relation with their abusers. It has been argued that people who are abuse have got a tendency to protect their abuser and this is what happens with the widows with their violators. In the Zengeza it has been discovered that a number of widows do not know procedures to take after property seizing or when they are being abused. They also do not know the effectiveness of registering an estate and other widows don't even know places to register an estate or the benefits. Once they do not register the estate their violator's takes advantage and disinherit them.

Widows said that they would have been threatened that if they go to court for the estate distribution they will be cut off as members of the family, disowned the tradition of the family and it is costly for the family. This usually affects those with unregistered customary law unions at most and they would have had difficulties on registering the estate since they do not have proof. This is one of the most reason why widows are being violated their inheritance rights. Those with marriage certificate are at a better level if they register the estate. Widows at the workshop held at Magamba hall in Warren Park by the first lady Amai Auxilla Mnangagwa said that they did not know that the estate should be registered after their husband has died and they did not know that the relatives has no right to take property from them.<sup>92</sup> Widows do not even know that they can get peace orders and they can go to court to contest or fight for their property

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<sup>91</sup> Interview with K. Munyoro, Legal Assistant at WLSA, Harare, July 28 2018.

<sup>92</sup> First Lady tackles inheritance issues, ZBC Newsday online, July 3, 2018, [www.zbc.co.zw/first-lady-tackles-inheritance-issues/](http://www.zbc.co.zw/first-lady-tackles-inheritance-issues/), accessed 15/07/18, 11:05.

inheritance. Widows have no idea that there are organizations that can stand up for them in court for free. Most widows do not fight for their inheritance because they will be saying they have no money for hiring a lawyer to stand up for them. Ignorance is one of the major reason why widows are being violated their inheritance rights in widows of Zegeza 1 and 5.

Fear of losing the relations with the violators is one of the reason why the widows are being violated their rights. Widows whose husbands die at a young age fear that if they fight the in-laws for the property they will lose their relations with them. Makaza Kanyimo says:

*Widows are being threatened by their in-laws and they are not reporting. She said their organization is urging widows to report such cases and they should obtain protection orders. She said there are cases when the widows are threatened with witchcraft and unfortunately the law does not believe in witchcraft hence widows are being violated and not protected.*<sup>93</sup>

Those who are old fear that if they make their relatives angry how their children will live whilst their relative will not be taking to them especially on the issues of getting married or going to marry one wife. Relatives makes it harder by blackmailing that whatever happens to the children is no longer their concern hence the widow fear to upset the relatives of their children. Another widow in Zengeza 5 said that:

*They had two houses one in Waterfalls and one in Zengeza 5 Chitungwiza which they had both contributed to on purchasing it. Her husband passed away in 2012 and the relatives threatened to take away everything she had and they only took the car and the house in Waterfalls. They kept on threatening and harassing her so that she can leave the house in Zengeza. She said she has been living in fear thinking the relatives would come and*

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<sup>93</sup> Interview with D. Makaza-Kanyimo, Director of WLSA, Harare, July 28 2018.

*throw her away. This matter was not reported to the police because she feared to ruin the relations with her in-laws.*<sup>94</sup>

The deceased in most cases do not leave a will and without a will conflicts happen as everyone would one to inherit from the estate of deceased. To those who will be having will relatives usually contents the will saying whether the signature does not belong to the deceased and the widow forged the will to favor herself. The deceased could be having many wives and in both customary and civil marriage. This brings problems on who should inherit what but at most case every wife gets the house she was living at the time of the death of the deceased unless they were living at the same house.

Widows who are first married with customary marriage and are living far away from their husband are mostly at a disadvantage because the one living with husband gets the home. If the second wife is married with a civil marriage then she gets most of the property that the deceased had though this kind of marriage is accepted. Under customary marriage one can have as many wives as he wants but under civil marriage it is one wife. At the courts the magistrates or those that should help the widows also misinterpret the law leaving widows at a difficult position which makes them to be violated.

### **3.2 Widows challenges and how they are disinherited**

Widows face a lot of challenges in trying to access their right to inheritance. Money is of the major obstacle of widows when it comes to processing the estate. Most widows would have used the money on the deceased when he was sick and at his funeral. If one did not have a funeral policy then it becomes hard for the widow then when it come to processing the estate it becomes

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<sup>94</sup> Interview with B. Mandiopera, Widow, Zengeza 1, 17 August 2018.

hard for. First they will not be having money to go to the Master of High Court or the nearest Magistrate court to register the estate. Others after registering the estate they do not have money to pay for the edict fee or money for transport to go for the edict meetings. Due to socialization, women lack confidence and assertiveness skills to demand and claim their rights. Women in Zimbabwe have Zimbabwe has experienced cases of women who approach not been spared; they are a vulnerable group because their them for legal aid but during the course of the legal rights are already limited by traditional practices proceedings they either withdraw cases or do not turn up for court hearings. A follow up of such clients indicated that the women opt for out of court settlement.

Relatives refuse to go with their own money and the widow has to pay for the relatives. At the same time relatives do not come to edict meetings so as to delay the distribution of the estate. Not having money for fees or registration of estates or for processing the documentation like edict fees. According to Chirawu money for transport and court fees are the most hinderers of widows that make them not pursue their property inheritance rights when they are violated.<sup>95</sup>

Women and law in Southern Africa says both widows from urban and rural areas face that and when they are violated their right they do not fight their violators because lack of finances.<sup>96</sup>

Those who are infected with HIV are the most violated because their violators regard them as dead and are accused of killing their husbands. Widows also find it difficult to go to courts after

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<sup>95</sup> S. Chirawu, D. Makaza-Kanyimo, P. Nhema and P. Kurima, Strengthening the Legal Framework on Women, Property, and Inheritance Rights in the Context of HIV/AIDS in Zimbabwe: Harmonization of Marriage Laws and Equality In Marriage, Position Papers on Unregistered Customary Law Unions and Putative Marriages, Women and Law in Southern Africa Research and Education Trust, Harare, 2011, pg 1-4.

<sup>96</sup> Women and law in Southern Africa-Zimbabwe, "Engaging Communities to Confront Property and Inheritance Challenges: The Experiences of Women in Law in Southern Africa Research and Education Trust", *Property and Inheritance Rights Journal*, Vol. 1 (1), 2012, pg 12.

their property has been grabbed because they will not be having transport fee and do not even have money hire a lawyer for those who do not know there are free lawyers who stand up for widows. Izumi notes that many widows will be exhausted by financial resource by the time their husbands die. They would have paid hospital and funeral bills and left with no money to challenge their relatives in court when their property has been grabbed. Relatives even drag the court cases by not attending hoping the widow will lose hope. Other widows lose hope and have no financials to continue coming to the court.<sup>97</sup>

The estate after it has been registered the estate must be valued and valuing an estate also needs money. It also has to be advertised in the newspaper to notify people and if anyone was owing or being owed money by the deceased would come forward. This challenge is common to most widows and a few would pass this stage for the estate to be shared.

At the time of the death most widows will be crying and the family members usually process the death of the deceased and most of the documents are held by those who will be processing. Widows are taken advantage at the time of death of their husbands. Widows face a challenge that they will not be given the death certificate by the family members and this makes it a challenge for her to register the estate of the deceased. Widows report that they are ordered to give the death certificates and other credentials of the deceased to be given to the elder brother of the deceased. This makes it hard for the widow to register the estate or even process the benefits of the deceased. Widows realized it later that the benefits that they should get are already taken by the in-laws. Without the death certificate, death notice and the national identification of the deceased one cannot register the estate and this is a challenge that widows are facing toward their right to

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<sup>97</sup> K. Izumi, "Gender Based Violence and Property Grabbing in Africa: A Denial of Women's Liberty and Security", *Gender and Development*, Vol.15 (1), 2007, pg 11-15.

inherit the inheritance of the deceased. So not having enough documents required to register an estate is of the widow's obstacle in accessing their inheritance.

In an African society women are caught between tradition and modernity, widows being the victims of customary practices which deprive them from inheriting the property they had with the deceased. Chirawu notes that the problem is not the law, because the law allows women with unregistered customary unions to be inheritors of the estate if they prove that bride price (lobola) was paid for them.<sup>98</sup> Chakamba supports Chirawu that the Zimbabwe law is meant to protect widow's rights but the majority are in unregistered customary marriages and courts requests confirmation of marriage from the in-laws of the widows.

Widows are having challenges with that because they would have lost the proof and they have to depend on the mercy of the in-laws. In a customary marriage widows have to prove that she was married to the deceased for her to inherit the estate. The relatives should confirm that the widow was married to deceased in form of an affidavits or agreeing during the courts sessions. This is also another obstacle that widows are facing because some relatives refuse that the widow was married to the deceased. The widow for her to be considered the wife she has to have physical proof like the bride price list, people who were present or the atmosphere on the day she was married since the word of mouth is not of relevance for her. Proving to be the wife of the deceased is a challenge that widows are facing because most widows no longer have that kind of proof. The widow has to benefit on the mercy of the relatives of the deceased.

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<sup>98</sup> S. Chirawu, D. Makaza-Kanyimo, P. Nhema and P. Kurima, Strengthening the Legal Framework on Women, Property, and Inheritance Rights in the Context of HIV/AIDS in Zimbabwe: Harmonization of Marriage Laws and Equality In Marriage, Position Papers on Unregistered Customary Law Unions and Putative Marriages, Women and Law in Southern Africa Research and Education Trust, Harare, 2013,pg 11-13.

Chirawu says that there are challenges in proving the existence of an unregistered customary union and that the phrase widows should be psychically present at the house at the time of death of the deceased.<sup>99</sup> There widows who still want to uphold the cultural practice that they should not inherit or challenge the verdicts of the elders but rather be given inheritance willingly by their in-laws. They fear that if they make their in-laws angry it will not be well with them and their children. Most of them buy family relations at the expense of losing the property inheritance and this is mostly found in the elderly widows.

The paying of the master's fee which is 4% of the estate is one of the challenges why widows are not registering estates. The deceased could be having the matrimonial home only and a few amounts in the bank which cannot pay the masters fee and in the end the widow sell the matrimonial home. Some end up selling the matrimonial home to pay the masters fee 4%. They are threatened by the family members that if they register the estate they will lose everything and it is better for the estate to be shared amongst them.

In Zengeza there are cases of relatives who deny their daughter in-law so as to benefit from the deceased wealth. They do not write the confirmation affidavits which agree that the widow was the wife of the deceased. Relatives also refuse to come to the courts session so that the widow will not benefit anything. Some widows who do not have marriage certificates suffer most for they need confirmation that they were married. This was evidenced by a 35 year old widow:

*The widow said that she was customarily married to her husband and the husband died in 2016. She registered the estate at the Magistrate court in Chitungwiza. At the edict meeting the deceased family members denied that the widow was married to the deceased*

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<sup>99</sup> S. Chirawu, "Treat or Trick- The Impact of the Administration of Estates Amendment Act Number 6 of 1996 on Women's Property and Inheritance Rights in Zimbabwe", *UZ Student Journals*, Harare, 2014, pg 10.

*and that she was not their daughter in-law. One sister of the deceased later confirmed that the widow was married to her brother and she was present when they went to pay bride prize at the widow's homestead. She narrated the people who went to pay bride prize, approximate of how much they paid and the setup of the widow's parent's home that is how the widow was saved and got the matrimonial home and the other estate.*<sup>100</sup>

Belinda had no proof to prove that she was married to her late husband and her father in-law and other relatives denied her as their daughter in-law. They wanted to inherit the estate of the deceased with the wife getting anything and this shows the greediness of the in-laws of Belinda. She was saved due to the mercy of her sister in-law. Chirawu notes that all marriages should be registered so as to avoid incidence where the widow depend on the relatives and that the widows when customarily married they should keep any form of evidence be it bride prize list, photos of the day, videos if possible or any other form of proof that can protect them.<sup>101</sup> Women in civil marriages do not encounter such kind of challenge because they have the marriage certificate to protect them.

### **3.3 How the widows are affected by the violations**

Widows are affected by these violations in different ways in their lives and negatively. After they have been robbed the property and the benefits that they should get they are left at a disadvantaged stage. Death of the widows husbands mostly have negative impacts to their lives added by the greedy relatives. They are left to depend on other people's mercy of which they would have been used to be independent. Widows are left in poverty and can no longer take care

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<sup>100</sup> Interview with B. Sithole, Widow, Zengeza 1, July 18, 2018.

<sup>101</sup> S. Chirawu, "Treat Or Trick- The Impact of the Administration of Estates Amendment Act Number 6 of 1996 on Women's Property and Inheritance Rights in Zimbabwe", *UZ Student Journals*, 2014, pg 3-6.



of themselves and those in their care. Others are not even allowed to take their own clothes as they will say to have been bought by the deceased and the widows should not benefit. Life because difficult for them and they would think after their loved one died everything died with him, be it happiness or peace.

Widows are left homeless and have to squatter to their relative's homes and look for jobs to sustain them and their family. Losing a home is like starting from scratch and others are not accepted by their relatives and do not have any rural home to go to and wonder in places where people squatter. Those who are accepted at their natal families are given conditions to leave the children behind and most widows cannot leave their children with the relatives after many scandals have happened. When they come back home they also suffer stigmatization by the community and would be accused of many things that they are not able to bear. Many widows are suffering trying to give a roof over their families. They would now be having costs of rent, food and even clothing for the family.

Depression catch most widows because losing everything that they worked together with their husband emotionally affects them and other even commit suicide or die of high blood pressure. They would have been traumatized by the death of their beloved one and then they realize that no one is supporting her rather depriving her and inducing more pain. Most widows do not expect such kind of treatment because most relatives will not be showing that kind side when the deceased was still alive. Those who have been said to be HIV positive are seen as dead already and the way they are treated depress them and at most they will be accused of killing their husbands. Widows are emotionally and mentally affected by the acts of the relatives and the kind of life they would have to start leaving. Some even remain in denial and end up being mentally ill due to too much stress and depression.

### **3.4 Conclusion**

In fear of cutting ties with their relatives widows are submitting to the abuses they are facing and they are always living in fear. From the interviews that were done it has been seen that widows are suffering more because of ignorance and in trying to maintain their relations. Culture is another reason why widows are being violated their rights. Those in unregistered customary marriage suffer most as they need to prove their marriage in court for them to inherit the property. They depend on the mercy of their in-laws and most in-laws are greedy of which they will be having their own wealth. Relatives who are not poor are the ones making the widows suffer. Widows in Zengeza 1 and 5 have been victims of property grabbing and eviction from their own house by their in-laws and children. Children are chasing away their mother from the house or coming to stay with them not paying any cent. Widows are crying, living in pain and fear of their property inheritance.

## **CHAPTER 4: IMPACT OF INHERITANCE LAWS IN PROTECTION OF WIDOWS INHERITANCE RIGHTS**

### **4.0 Introduction**

This chapter will look at the effectiveness of the inheritance on protecting the widows and the impact of inheritance laws after the 1997 Administration of Estates Amendment Act. It shall look at how the legal laws are disinheriting the widows on their right to inheritance. The availability of organizations that should help the widows and how they are dealing with issues of violation of widows inheritance. It shall unveil how the laws are preventing some of the widows from enjoying ownership of their property inheritance. Also on how far the community is aware of the widows' inheritance rights to property ownership. The law is there to protect the widows but it has been seen that widows are still being violated their property inheritance rights and this is caused by how the law is interpreted or the conditions which the law can be used and the extent the law can protect the widow.

After the 1997 Administration of Estates Amendment Act which upholds the rights of widows and children from being violated by their relatives or anyone have been argued to have some loopholes which makes them to be violated again like before the amendment though at different angles. In Zimbabwe the dual legal system makes the marriage laws to have loopholes on protecting the widows.<sup>102</sup> There are three types of marriages which are the civil marriage (chapter 5.11), the registered customary marriage (chapter 5.07) and the unregistered customary law union. All these marriages are to be considered equal when inheritance is being shared but there are conditions for them to be recognized. The civil marriage is at a greater advantage than

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<sup>102</sup> Women and Law in Southern Africa-Zimbabwe, Gender Equality, Human Rights Monitoring and Evaluation Training, Delma Printers, Harare, 2017, pg 2.

the others because it has proof and is governed according to the general law. In Zimbabwe for one to be considered correct he/she has to have proof hence the civil marriage and registered customary marriage have proof of marriage certificates but the unregistered does not have a marriage certificate which makes it difficult to be prove. It has been seen that 80% of Zimbabwean marriages are not registered. Women and Law in Southern Africa argues that the different marital regimes have led to many cases of disinheritance mostly to those in unregistered customary marriages who are at higher risk of losing the matrimonial homes.<sup>103</sup> Although Zimbabwe can be said to have favorable laws on paper that address PIR, the reality is that implementation of these laws is problematic.

#### **4.1 Effectiveness of laws protecting widows rights to inheritance property**

There are inheritance laws that were passed to protect the widows from violations but have been observed that the widows are still being violated due to some terms that are used on the laws. The term immediate resident at the time of death is one of the things that are making widows being violated their right to inheritance property.<sup>104</sup> It is disinheriting most widows who do not live with their husbands. In Zimbabwe most of them do not live with their husbands in the same house or area because of work or their family setup. Due to the Zimbabwean economy families are no longer staying together in search of a living. A wife could be working out of Zimbabwe and the husband could die with a sudden death and the wife is not around. Some widows usually come to the urban areas during the summer time and most times will be in the rural areas or out of Zimbabwe in Diasporas and the husband will be in town and the husband dies. These days'

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<sup>103</sup> Women and Law in Southern Africa-Zimbabwe, Where Is Equality? Analysis of the Use of Monitoring Tools By the Gender Equality Consortium, Mutbells Printers (Pvt) Ltd, Harare, 2017, pg 2 -5.

<sup>104</sup> S. Chirawu, Challenges faced by women in unregistered customary law unions, Women and Law in Southern Africa Research and Education Trust, Harare, 2012, pg 1-4.

people are dying of sudden deaths than the previous years. In the late 90's most people died after a long illness and the widow will not be living with her husband and the husband then comes to the rural areas where she will be and she would not inherit the house in town.

Some will be living with their small house in town whilst the wife is in rural areas and she will not get the house. Due to the meaning of the statement house living in at the time of death the widow will not inherit the matrimonial home rather it will be treated as the estate and shared among those who should benefit. From the interviews that were conducted it has been seen that widows who were disinherited from the inheriting the matrimonial house at most would be out of Zimbabwe doing border crossing so as to make a living. This interpretation of the law usually costs the widow because they do not consider other options or the reason why the widow was not living with the deceased. The law does not consider widows who are not living in the same area with the deceased or how the families were living. There are cases when the couple will be having many houses and the house they will be living at the time of death of the deceased is not their main house.

At that case the widow will not inherit the main house but the house they were living at the time of death and most cases widows feel violated their right on property inheritance since they would have worked hard on the house which will be shared among beneficiaries. In some case there are times when the husband has many wives and at the time of death another wife who would not have contributed to the establishment of the house but living in the house and then it goes to her. There are no considerations to who contributed to the building of the house or why was the wife not living with the husband at the time of death. The laws have changed but the widows or women are still marginalized due to their limitation to claim their rights because the government

lacks the mechanism to enforce the laws which are there to protect the widows.<sup>105</sup> The immediate resident concept again promotes schemes which are illegal by wives under polygamous marriage to win immovable properties by finding their way onto the property before the death of the deceased who would have been terminally ill.<sup>106</sup> Women and Law in Southern Africa also wrote that proving the existence of the unregistered customary law unions or when is the marriage a marriage is also a difficult because there is no hard evidence except that of relatives who should testify that they know the widow. She goes on to say that the meaning of house in which the spouses lived in at the time of death is also problematic and they are disinheriting many widows.

For a marriage to be recognized according to the Zimbabwean laws it has to be registered. If the marriage is not registered the widow usually is violated her rights to property. Most marriages in Zimbabwe are not registered because of ignorance and that they do not have money to register their marriages. Registering of marriages is not for free in Zimbabwe and this has made the laws not be very effective on their implementation since registered marriages are the ones which are considered as marriages. Widows say that they do not have the \$20, 00 to register the marriages. Widows in Zengeza 1 and 5 said that they did not know that marriages can be registered and those who knew said that they did not have money to register at the time they got married and then later became reluctant until their husbands died. I

It has been observed that transport fee and registration fee are challenges that makes widows not to register their marriages. 84% of marriages according to Zimstat are not registered and this has

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<sup>105</sup> S. Chirawu, D. Makaza-Kanyimo, P. Nhema and P. Kurima, Strengthening the Legal Framework to Enhance women's access to property an inheritance rights in the Context of HIV and Aids in Zimbabwe: Harmonization of marriage laws and equality in marriage, Position papers on unregistered customary law union and putative marriages, Women and Law in Southern Africa Research and Education Trust, Harare, 2011, pg 13- 14.

<sup>106</sup> G. Masimirembwa, "Zimbabwe's marriage laws need urgent harmonisation", The Herald, February 27, 2017, <https://www.herald.co.zw/zimbabwes-marriage-laws-need-urgent-harmonisation/>, pg 7, accessed 24/10/18, 09:14.

caused fights over estates when one dies. Many marriages are seen as unions not marriages because they are not registered in Zimbabwe. Marriages which are not registered do not qualify to be recognized as marriages.<sup>107</sup>

The inheritance laws say that all the marriages are equal but we can see that if a husband marry under customary marriage first then later marry another wife under civil marriage the second wife is to benefit more. The first wife cannot stop the second wife to get married to the husband and cannot sue the wife like what those in civil marriage do. A widow in civil marriage can inherit the matrimonial home which they were at the time of death because she has proof that she was married to the deceased of which one in unregistered marriage has to prove that she was married to the deceased with the help of the relatives of the deceased. There is a bit of favoritism with the civil marriage compared to other marriages in Zimbabwe.

Maphosa says at the International Widows Day in 2013 the United Nations secretary Ban Ki-Moon said women were facing vulnerabilities after the passing on of their husbands and they face cruel and inhuman treatments.<sup>108</sup> Many widows are being violated their part of inheritance, social safety and health care. Widows who are young are being victimized by political and traditional leaders in the society. Churches should note on protecting and promoting widows rights especially those facing socio-economic and cultural challenges. Women are facing a lot of challenges but widows are the most affected ones

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<sup>107</sup>84% of Zimbabwe marriages unregistered, Bulawayo24, February 27, 2013, <https://bulawayo24.com/index-id-news-sc-national-bulawayo-byo-25937.html>, pg 5, accessed 15/10/18, 11: 03.

<sup>108</sup> K. Maphosa, "Widows: the silent, excluded group", The Southern eye, October 11, 2013, <http://www.southerneye.co.zw/2013/10/14/widows-silent-excluded-group/>, accessed 10/11/18.

## 4.2 Customary law and unregistered marriages on widows

Customary registered marriage and unregistered marriages are dealt with according to our day to day time lives culturally. This make it difficult for the law to be fully enforced as some matters ore settled out of the court. Under customary law the family of the deceased determines how the estate can be distributed and they do not favor the widow but themselves. In a customary marriage a man can marry as many wives as he can and all the wives will be having marriage certificates but it does not out rule a man to enter into a civil marriage. Those in customary marriage are not safer than those in civil marriage. Most widows are losing the matrimonial home because another wife was married after her under civil marriage. Makaza-Kanyimo says:

*Widows should keep their list of lobola incase relative refuse to write affidavits which confirms she was the wife of the deceased. She said widows in courts after they have failed to provide list of bride prize they are asked the procedures that took place for her to be married like who was first told or who came to their home to pay the bride prize, the side she was sitting and what she was wearing. She adds that property grabbing is taking place in Zimbabwe to widows and widowers.<sup>109</sup>*

Civil marriage according to the inheritance laws over rule the customary marriages. The law when distributing it does not consider that the wife was married in customary marriage and was not living in the house and they give the matrimonial house to the second wife living in the house. Most widows of old age have lost their matrimonial houses because their husband married a second wife with civil marriage whom they will be living with.

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<sup>109</sup> Interview with D. Makaza-Kanyimo, Director of WLSA, Harare, 28 July 2018.



In Unregistered Customary Law Union there is lack of guidelines which makes the widows violated their right to property inheritance because culture is homogenous. In unregistered marriage the widow has to show proof that bride price was paid for the widow to inherit and it is dealt with customarily which means it includes the culture and practices of Zimbabweans.<sup>110</sup> The law says the unregistered customary unions are recognized but proof is needed to prove that one was married to the deceased. In this kind of marriage if the wife does not have proof the in-laws have to confirm that she was married to the deceased and those who have greedy in-laws are disinherited. It has been observed that most widows do not keep proof and some would have been married a long time ago. The wife in customary marriage cannot sue the one in civil marriage who came after her. Mrs Majonga said that unregistered customary unions have created a lot of problems among spouses with widows being the worst victims and have got problems because they are only recognized for maintenance purposes by the law.<sup>111</sup> Registrar-General Mr Tobaiwa Mudede said that there are loopholes on the marriage legislation and that attention should be put to protect families and cultural values.<sup>112</sup>

Relatives at most times convince the courts that the widow was not the wife of the deceased and after that the law cannot further protect the widow from being violated. The problem is that the existence of the union cannot be proven with any document and if the widow is not in good books with the in-laws she is likely to lose at most. Women and Law in Southern Africa says that in their reports some relatives ask for sexual favor for the widow to obtain the affidavits of conformation of the union. The inheritance laws cannot protect the widows without hard

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<sup>110</sup> Women and Law in Southern Africa-Zimbabwe, "Engaging Communities to Confront Property and Inheritance of the Women in Law in Southern Africa Research and Education Trust", *Property and Inheritance Rights Journal*, Vol. 1 (1), 2012, pg 10-13.

<sup>111</sup> 84% of Zimbabwe marriages unregistered, Bulawayo24, February 2, 2013, <https://bulawayo24.com/index-id-news-sc-national-bulawayo-byo-25937.html>, 2013, pg 4, accessed 15/10/18, 10:55.

<sup>112</sup> 84% of Zimbabwe marriages unregistered, Bulawayo24, February 7, 2013, <https://bulawayo24.com/index-id-news-sc-national-bulawayo-byo-25937.html>, 2013, pg 2, accessed 15/10/18, 10:54.

evidence and this makes it problematic and reformation on it.<sup>113</sup> Widows seek legal help but during the process they back out or do not show on the hearings. They opt for out of court settlement so as to keep relations with the relatives of the deceased. Widows in Zengeza 1 and 5 said that the court procedures make them not to go to courts because they heard they are very difficult.

In Unregistered Customary Law Union a widow can lose the property because according to the law she will not be married to the deceased but is said to be cohabiting with him until proven that they were married to the deceased. It is the dual legal system that allows these laws to have some loopholes which make the widows to be violated their property inheritance rights. The tsvakirai kuno is not considered as bride price and if that was only paid the widow was not married to the deceased although it differs with culture.<sup>114</sup> In this kind of marriage the widows lose inheritance property to the in-laws and the law is not protecting the widows fully from the violations of their rights. Relatives usually collect the death certificates and the benefits of the widow saying that the deceased was not married and the widow cannot take them because she will not be having proof that she is the wife of the deceased without the help of the in-laws.

The widow again cannot register the estate at the Magistrate court without the in-laws confirming that she was the wife to the deceased. This enables relatives to claim that the widow was not married to the deceased and they grab property hence property grabbing. The problem or loophole is that the widow usually is the one that should prove that she was married to the deceased but it does not happen with widowers. If the marriage is said to be considered by the

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<sup>113</sup> Women and Law in Southern Africa-Zimbabwe, Position Paper on Unregistered Customary Law Unions, Women and Law in Southern Africa Research and Education Trust, Harare, 2013, pg 24.

<sup>114</sup> S. Chirawu, Distribution of property- Customary Law Unions, Women and Law in Southern Africa Research and Education Trust, Harare, 2012, pg 5.

law why does it have to be proved hence this shows that the laws are not that effective on protecting the widows from violations. The unregistered customary law union is seen as a partnership not a marriage in the eyes of the law. Only the children can benefit to the inheritance if a will was not left by the deceased and the widow will be considered as a girlfriend no matter how many years they have stayed together.

When a widow was not married with Chapter 5.11 first it can be downgraded to Chapter 5.07 if the husband was co-habiting with the small house for many years and happens to pass away. At the distribution of estate both widows get the house they were living in and the rest is shared among the children and both wives. The law encourages one to register with the Chapter 5.11 first not to share property with any other wife or wives. The law says that all types of marriages are considered but from the outlook the civil marriage is the one that is more considered hence it out rules the other two types of marriages hence it is biased. Unregistered customary law union is referred as co-habitation from the general law point of view. It is all because the only proof is the word of mouth and in Zimbabwe physical evidence is wanted when proving a point. Zimbabwean law is based on evidence so without the marriage certificate the widow is vulnerable in the hands of the greedy relative and the law cannot fully protect the widow. The inheritance laws says that it caters for all the three types of marriages but is not clear enough to what extent and that is when widows become vulnerable and violated their property inheritance rights.

On the inheritance law it is difficult to prove when the unregistered customary law union is practically it or not. In Zimbabwe we have different customs and practices hence it is difficult to prove that when is the unregistered customary law union really the one or not. Chirawu on her article customary Law Unions she says when can one exactly say the widow was married to the

deceased? What type of bride price should be paid for the widow to be considered a wife? In the courts it is said that if the widow could prove that she was married by giving bride prize list or pictures or any other proof it means she was married to the deceased. There are others who regard paying what is called rusambo in shone culture being married and others require paying all the bride price as being married. It is difficult to prove that when a wife is should be considered married. Determining whether unregistered customary law marriage a marriage or not has been difficult for judiciary for long because the executive and legislature is failing to balance Zimbabwe marriage laws.<sup>115</sup>

Issue on the property in communal land is another area where widows are being violated their rights. It has been seen that the communal Lands Act is silent on the issue whether widows are entitled to inherit immovable property. The issue is that in our culture a daughter in-law is not part of family on owning property and is said to have no right to inherit her husband's rural home in fear that she will remarry and the property will go with her. Women and Law in Southern Africa also add that when a widow wants to acquire land at the Ministry of Lands if she was married customarily she needs sworn affidavits from the husbands relatives for her to own that land. Chirawu says those at Women and Land in Zimbabwe says widows at most are not acknowledged by the relatives and they lose the land and the policies limit them in helping the widows. They go on to say that women are evicted from their communal lands since they are not the permit holders.<sup>116</sup>

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<sup>115</sup> G. Masimirembwa, "Zimbabwe's marriage laws need urgent harmonisation", The Herald, February 27, 2017, <https://www.herald.co.zw/zimbabwes-marriage-laws-need-urgent-harmonisation/>, pg 6, accessed 24/10/18, 09:14.

<sup>116</sup> S. Chirawu, Challenges faced by women in unregistered Customary Law Unions, Women and Law in Southern Africa Research and Education Trust, Harare, 2012, pg 4.

From the interviews women in Zengeza 1 who owns farms or communal lands argued that they were chased out of the land and were told never to come back and from there they have lived in the city since they are evicted from their communal lands. Women and Law in Southern Africa supports that widows are being violated their rights with this property grabbing and the law cannot fully protect those widows in unregistered marriages for them to benefit from the estate and that community still believes women should be chased away after the death of their husbands.

The AEAA of 1997 does not fully protect the widows in the sense that they continue their application to intestate succession. It discriminates the widows in a second marriage if the 1<sup>st</sup> marriage is chapter 5.11. If the husband had chapter 5.11 and does not include the 2<sup>nd</sup> wife married under customary marriage the 2<sup>nd</sup> wife will not inherit anything and may be sued for marrying the husband. Only children can inherit the estate leaving the widow on the open space. Women and Law in southern Africa says that in their reports some officers at the Masters office are biased towards men against the surviving spouse to be the executors of the estate and this makes it easier for the widows to violate her inheritance rights.<sup>117</sup>

#### **4.3 Availability of legal institutions dealing with widows right to inheritance property**

In Zimbabwe there are a lot of organizations that help the widows but most of them are non-governmental organizations such as Women and Law in southern Africa, Legal Resources Foundation, Zimbabwe Women Lawyers Association to mention A few. In Zengeza 1 and 5 which are in Chitungwiza there is Women and Law in Southern Africa at the Magistrate court on

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<sup>117</sup> Women and Law in Southern Africa-Zimbabwe, Where is the Equality? Analysis of the Use of Monitoring Tools by the Gender Equality Consortium, Mutbells Printers (Pvt) Ltd, Harare, 2017, pg 18- 19.

Wednesdays and Thursdays to help the widows concern the deceased estate. According to the records of Women and Law in Southern Africa more than 80 cases in 2017 have been dealt with at the information desk 30 cases being of Chitungwiza.<sup>118</sup> There are no other organizations to help. Most of them have to go to town of which they are saying they cannot afford the transport fee and some do not even know that they can be helped for free. There is no enough education on the issues of inheritance laws at large then mostly on widows.

Widows are being assisted by the non-governmental organizations in most cases and this causes a slow progress in solving the violation of widows. NGO's should not be at the front in helping because they are donor funded and life cycle depends on the resource availability and this makes it difficult because it is not always they have the resources. The government should be at the forefront to help the widows with their cases and it should ensure that widows are not being violated and represent them fully in the courts advising them about the inheritance rights not relying on the non-governmental organizations.

The government is not providing translators on language in the courts and this has making the widows back out on court sessions as they will not understand a thing. Translators on language that the widows understand is another barrier that causing these violations to go on and on. Widows are failing to access justice because of language barriers as English is the language used in courts. They should have those who will translate to language that the people in the court under at most the widows. This is another problem that is making the widows be violated their right to property inheritance as they will opt to settle the matter out of court. Chirawu is of the view that the implementation of laws that protect widows is problematic in reality because of the

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<sup>118</sup> Ibid pg 24.

kind of system that Zimbabwe use which was inherited from the colonial times though changed to suit the Africans.<sup>119</sup>

#### **4.4 The government and the violations of widows**

In the 2013 Amended constitution there should be equality between men and women and there should be no discrimination among them in any way. The constitution then states that it protects women and there is no exact ruling on the issue of protecting the widows from the cultural practices which are harmful and abusive.<sup>120</sup> Widows depend on legal practitioners to correctly interpret the law. The constitution is a bit silent on widows and they may be constitutionally challenged. The widows are just put in one bracket but they have different cases which should be solved differently hence the constitution should cater a section only for widows so that they cannot be violated their rights and they are protected. The constitution is a bit vague on the widows sections though they are catered in the women bracket but it is not enough to avoid the violations. Chirawu et al says that there should be equality but in practice the laws that exists only apply to the widows in officially registered marriage that is civil marriage.<sup>121</sup>

The constitution chapter 15 upholds the roles of traditional leaders in the communities to promote the cultural values and preserve the culture. Upholding our culture it means being in line with our traditions in every ways of lives and some of the traditions and cultural practice violate the rights of widows. From this point of view widows are violated their rights as the traditional

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<sup>119</sup>S. Chirawu, D. Makaza-Knyimo, P. Nhema and P. Kurima, Strengthening the Legal Framework to enhance women's access to property an inheritance rights in the Context of HIV and Aids in Zimbabwe: Harmonization of marriage laws and equality in marriage, Position papers on unregistered customary law unions and putative marriages, Women and Law in Southern Africa Research and Education Trust, Harare, 2011, pg 18- 20.

<sup>120</sup> Women and Law in Southern Africa-Zimbabwe, "Engaging Communities to Confront Property and Inheritance Challenges: The Experiences of the Women in Law in Southern Africa Research and Education Trust", *Property and Inheritance Rights Journal*, Vol.1 (1), 2012, pg 10-13.

<sup>121</sup> S. Chirawu, Position Paper on recognition of unregistered customary law unions in Zimbabwe, Women and Law in Southern Africa Research and Education Trust, Harare, Zimbabwe, 2013, pg 7-8.

leaders will be upholding the cultural values. This affects the widows in customary marriages and those in unregistered customary law unions.

Traditional leaders are custodians to cultural values but the cultural values violate the widow's rights to property. For example the widows should marry the female member of the family, the property should be shared to the family, the widow only gets property in the kitchen or that was of hers. Culturally a widow cannot own property and with this widows are being violated their rights though there are laws to protect them.

The Gender Policy of Zimbabwe 2013 says that there should be equality between women and man to prevent discrimination. It again does not address widows directly but bracket them with rest of the women and not recognizing their insecure and unprotected position in the patriarchal societies. It does not address how to help the widows on their rights or when they are violated directly. Dube also support the view saying that there are loopholes in the laws of Zimbabwe for widows and there is need to change or alter them again. Chirawu goes on to say that protection of widows is there but there is lack of enforcement mostly on the laws.<sup>122</sup> She says the interpretation of the law by interpreters make the widows to be violated their property inheritance rights.

#### **4.5 Community and the awareness on widows rights to property**

The Zimbabwean community is not fully aware of their inheritance rights and at most the people particularly the widows in Zengeza 1 and 5. They are being violated their rights to inheritance property because of the lack of awareness. Widows are not aware that they have on their right to property inheritance. They also do not know how the laws work and how they protect them

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<sup>122</sup> S. Chirawu, Distribution of Property- Customary Law Unions, 2012, Women and Law in Southern Africa Research and Education Trust, Harare, pg 3-4.



against the violations. Women and Law in Southern Africa writes that 66% of people do not know their rights to property in inheritance issues of which 49% of them are women widows include there and 17% are men.<sup>123</sup> there is the myth that inheritance is a private matter and should therefore be dealt with privately. This assumes that the woman's best interests will be taken care of, which, as we have already surmised and will become abundantly clear in subsequent sections, is rarely the case. It is vital that governments and authorities be made to challenge such assumptions. Governments must actively intervene in inheritance rights situations, and must do so with a willingness to ensure that women realise their rights to own, access, and control housing and land, in their own name and in their own right.

Widows do not report the violations done to them because of lack of knowledge and 52% of them have been violated and did not report their cases since they do not even the procedures.<sup>124</sup> The community is not fully aware of their inheritance rights and this makes them to be disinherited. There are programmes for orphans the old age and women but there are no programmes specifically for widows and yet they are the most disadvantaged.

#### **4.6 Conclusion**

In conclusion, the laws that are there to protect to widows are effective to a certain extent but there are loopholes with them because of the use of the dual legal system. This makes the widows be violated their rights inheritance property. The Zimbabwean laws depend more on physical or tangible evidence hence those with marriage certificates and those given affidavits by the deceased relatives are at advantage. The laws are said to be at par but the customary and

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<sup>123</sup> Women and Law in Southern Africa-Zimbabwe, Gender Equality, Human Rights Monitoring and Evaluation Training, Delma Printers, Harare, 2017.

<sup>124</sup> Women and Law in Southern Africa- Zimbabwe, Position Paper on Unregistered Customary Law Unions, Women and Law in Southern Africa Research and Education Trust, Harare, 2013, pg 13-15.

unregistered customary law union are at disadvantage at some point. The meaning of the clause immediately at the time of death of the law disinherit many widows to the matrimonial home as most widows do not live with their spouse.

Some goes to work that is not in the same area with the husband and others are in rural areas. Registration of marriages is not free hence most marriages are not registered and it makes it easy for the widows to be violated their inheritance rights. On the marriages there is favoritism on the civil marriage. Those with unregistered customary law unions are at more risk of being violated their rights because they need the help of their in-laws to be proven the wife of the deceased. In the late 90's the organizations which helped widows were a few but as times goes on they were many until there was an economic crisis which has also made them to be a few again.

Most widows are being helped by the non-governmental organizations than the government itself. The government has not fully enforced that laws because of the dual system that they use and this makes the widows be violated their rights. The UCLU is difficult to determine whether when it can be called a marriage and the laws calls it rather a partnership or a union. Widows are not aware of their rights on property and inheritance and they are being violated because of that.

## CONCLUSION

In conclusion I argue that despite the laws implemented to protect widows they are still experiencing violations on the right to property inheritance. There are laws that were implemented to protect widows from being violated their rights but the violations are still perpetrating. The dual system is used to govern the Zimbabweans laws since colonial times and there is the general law and customary law. The first major challenge lies in legal pluralism. Zimbabwe does not have a unitary legal system. Instead, Zimbabwe's sources of law are statutes, customary law, precedents and Roman Dutch Law, often referred to as general law and the application of general or customary law depends on the particular circumstances of the case. The customary law system entails recognition of the established customs and practices of the community.

Customary law is unwritten and its interpretation depends on a particular tribe. These practices are recognized as laws binding on the community and as a source of part of the prevailing legal system. In Zimbabwe we have 3 types of marriages that is the civil marriage, customary law marriage and the unregistered customary law union and they are all recognized. Maphosa argues that the vulnerabilities experienced by widows are affecting them in many ways and they are losing the property that they should inherit due to cruel and greedy relative.<sup>125</sup> Before independence the Africans were disadvantaged and the customary law was used on them and widows were being disinherited the property inheritance rights.<sup>126</sup>

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<sup>125</sup> K. Maphosa, Widows: the silent, excluded group, The Southerneye, October 11, 2013, <http://www.southerneye.co.zw/2013/10/14/widows-silent-excluded-group>, accessed 10/09/18, 13:10.

<sup>126</sup> S. Coldham, "Succession Law Reform in Zimbabwe", *Journal of African Law*, School of Oriental and African Studies, Vol. 42 (1), 1998, pg 129.

At independence, the right to inherit from the estate of a deceased relative to a very large extent depended on the race of the deceased. The immovable property forming part of an estate of a person governed by customary law would be inherited by an heir in their individual capacity through the provision of Section 7 of the then African Wills Act. After independence the laws changed and the dual system was continued to be used.

The violations continued to take place and the AEA Chapter 6.07 was amended to AEAA 1997 and it gave the remaining spouse and children power so that they would not be disinherited.<sup>127</sup>

The research has reflected that widows face violations such as being evicted from their houses, property grabbing, physical abuse, sexual abuse and denied as the wives of the deceased after the death of the husband. Ignorance, greediness, fear to ruin their relations with the relatives, preserving family tradition and culture and the type of marriage one has are the main cause of the violations that are continuing to widows.

Widows do not have money to go to courts that is transport fee, the money to pay courts fees and lawyers to stand up for them in court. They are violated due to technicalities. The inheritance laws have got some loopholes that allow widows to be violated their inheritance rights because of the interpretation and implementation of the law which has been a challenge.

The research tried to show that inheritance laws have got positive impact because it has helped many widows although violations are still taking place. The interpretations of the inheritance laws disadvantage those in unregistered customary law unions. They have to prove that they were married to the deceased and if they don't have proof the relatives have to confirm that they were married to the deceased in form of affidavits. Before 2011 marriage laws were not

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<sup>127</sup> S. Chirawu, *Distribution of Property-customary Law Union, Women and Law in Southern Africa*, Harare, 2012.

harmonized and they were criticised since they were not giving the same legal rights and protection after one spouse had died.<sup>128</sup> Civil marriage and registered customary marriage were the only recognized ones and those in unregistered did not have the same rights as others.

However the marriage laws changed to that every marriage was recognized but there is still challenge on the UCLU because there have no tangible proof that there was a marriage rather they rely on their in-laws or list of bride prize but most of them would have lost those lists. It has been observed that those with unregistered marriage are the most one suffering violations of property inheritance. They have to rely on the mercy of their in-laws as proof that they were married to the deceased in courts. The laws are the effective but they have loopholes which are disinheriting the widows especially on the phrases used. Most marriages are not registered and that makes it difficult to govern the estate. Those with registered marriages are safe because they have marriage certificates as proof.

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<sup>128</sup> S. Ndlovu-Bhebhe, Harmonise Zimbabwe's marriage laws before changing marriage certificates, Open Society Foundations, 2012, <http://www.osia.org/buwa/-zimbabwe/harmonise-zimbabwe's-marriagelaws-html>, accessed 25/10/18.

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