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Ndlovu, Thatshisiwe

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Silent Victims or Agents of Change?

An Exploration of The Lived Experiences of African Widows Confronted with the Practice of Customary Law of Succession and Inheritance in South Africa.



By

Thatshisiwe Ndlovu

Student number 748771

A research report submitted to the Faculty of Humanities in partial fulfilment of the requirements of the Masters of Arts degree in Development Studies.

Supervised by Dr Prishani Naidoo

University of the Witwatersrand

Johannesburg

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Abstract

This study seeks to explore the lived experiences of black South African widows living in a poor socio-economic locality using a qualitative research design, which allows for deeper engagement of widows' experiences of their own world. Having benefited immensely from reviewing literature on numerous legislative measures that have been enacted to protect the rights of women in South Africa, this study takes an entry point of analysing experiences of widowhood from the widow's perspective. Underpinned by the central question of examining how and in what ways customary practices of inheritance have affected the lived experiences of widows, the study challenges the view that African widows are silent and helpless victims of patriarchal beliefs and practices. It presents findings drawn from life history narratives of ten black women living in low-socio economic areas of Midrand and Tembisa located in the present day Gauteng province of South Africa, which indicated that widows in this locality were victims of structural, political and socio-economic factors. It also observed that widows were also victims of invisible and often unrecognised power of patriarchal attitudes that have lingered on. The study then deployed a feminist narrative approach to analyse the findings, which shows that some of the black women's experiences are informed by their socio-cultural realities and their lives are shaped by the unique intersection between race, gender and social class. Drawing from the main findings, I argue that culture, patriarchy, tradition, gender, and class are not distinct realms of experience, existing in isolation; rather they come into existence in and through relations with each other. Furthermore, the study argues that the connection between widowhood and law is marked by contradictions and uncertainties, which are deeply embedded in unequal power relations, socio-cultural and legislative measures of the broader post-apartheid South African context. By extension, this has seen such dynamics as class, level of education and types of marriages strongly playing themselves out in the lived experiences of widowhood. The study uses this as a launch pad to argue that in various ways, African widows exercise their agency, their silence being one of their chosen forms of resistance to challenge and question patriarchal domination. This study then suggests that widows and the experience of widowhood ought not to be seen from a homogenizing approach, as it tends to mask the limitations of legislative measures as an effective mechanism in countering the negative effects of customary and traditional practices.

ABSTRACT ..... **I**

DECLARATION ..... **III**

ACKNOWLEDGEMENTS ..... **V**

DEDICATION ..... **VI**

REGISTER OF LEGISLATION ..... **VII**

COURT CASES CITED ..... **VIII**

CHAPTER ONE **1**

INTRODUCTION TO THE RESEARCH 1
PROBLEM STATEMENT 4
BACKGROUND AND RATIONALE 6
RESEARCH OBJECTIVES 11
RESEARCH QUESTIONS 12
SCOPE OF THE STUDY 12
CONCEPTUAL FRAMEWORK 12
Culture *13*
Tradition and Custom *14*
Custom and Customary law *14*
STRUCTURE OF THE PAPER 15

CHAPTER TWO **18**

LITERATURE REVIEW AND THEORETICAL FRAMEWORK 18
Feminist legal theory *18*
Evolution of Patriarchy: The South African Context *24*
Customary Law of Succession and Inheritance *27*
Recent Developments in Customary Law of Succession and Inheritance *28*
Gender and Culture *29*
Religion and Culture *33*
Widowhood Rites and Practices *34*
Women, Property Rights and Land Rights *36*
Conclusion *37*

CHAPTER THREE **37**

RESEARCH METHODOLOGY 39
INTRODUCTION 39
Overall Research Approach *39*
Geographic Scope *41*
Accessing and Selection of Participants *42*
Methods of Gathering Data *42*
Data Analysis *44*
The Process of Analysis *44*
Reflecting on a Difficult Field *45*
Ethical Considerations *50*

CHAPTER FOUR 52

EXPERIENCES OF WIDOWHOOD AND WOMEN'S SUBORDINATION: GRAPPLING WITH CULTURE, CUSTOM, TRADITION AND PATRIARCHY 52

INTRODUCTION 52

Challenging Patriarchal Customs 54

The Law - So Near and Yet So Far! 81

Whose Property is it Anyway? Conflict between Custom and Law in Property Appropriation 90

Religion and Culture: The Odd Alliance 96

CONCLUSION 101

CHAPTER FIVE 103

CONCLUSION 103

REFERENCES 108

LIST OF INTERVIEWS 125

APPENDICES 126

APPENDIX A 126

Participant information sheet 126

APPENDIX A 128

Participant's consent form 128

APPENDIX B 129

Participant consent form: Recording of the interview 129

APPENDIX C 130

PARTICIPANT INFORMATION SHEET: 130

Declaration

I hereby declare that this is my own unaided work. It is submitted for the degree of Masters of Arts, Development Studies, University of the Witwatersrand in Johannesburg, South Africa. It has not been submitted before for any degree or examination in any other University.

Signed……. Date……. 2015

Thatshisiwe Ndlovu

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DEDICATION

I dedicate this study to the following: my husband Mqabuko Moore Mlalazi, my son Siyabonga Dumolwenkosi Mlalazi, my brother Michael Moyo, my mothers, Thandekile Moyo, Sibusiso Moyo, Lorine Moyo – Ncube, Sikhululekile Moyo and most importantly to my grandmother Lifflina Moyo (MaBhebhe) whose experiences inspired this study. I thank them for their support and believing in my potential.

Register of legislation

Constitution of the Republic of South Africa, 1996

Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) 4 of 2000

Recognition of Customary Marriages Act (RCMA) 120 of 1998

Communal Land Rights Bill

Communal Land Rights Act 11 of 2004

Traditional Leadership and Governance Framework Amendment Act

Intestate Succession Act 81 of 1987

KwaZulu-Natal Codes of Zulu Law Proclamation R 151 of 1987

Mthembu v Letsela and Another (71/98) [2000] ZASCA 181; [2000] 3 All SA 219 (A) (30 May 2000)

Court cases cited

Bhe and Others v Magistrate, Khayelitsha, and Others (Commission for Gender Equality as

Amicus Curiae; Shibi v Sithole and Others; South African Human Rights Commission and

Another v President of the Republic of South Africa and Another 2005 (1) SA 580 (CC)

Shibi v Sithole and Others (CCT 50/03, CCT 69/03, CCT 49/03) [2004] ZACC 18; 2005 (1) SA 580 (CC); 2005 (1) BCLR 1 (CC) (15 October 2000

CHAPTER ONE

Introduction to the research

Across African (many) societies, gender inequality (arguably) remains the norm; women have continued to encounter discriminatory practices because of religious and cultural practices. In most parts of Africa, women are still treated as second-class citizens and sometimes as minors, who according to Tamale (2004) and Ssenyenjo (2007) can only be seen but not heard. Several mechanisms have been used to keep women in subordinate positions; identified to be the most pervasive across the world are the specific gender roles for women, particularly, that they must be submissive to their husbands, must never have any authority over a man and must, therefore, keep silent (Isherwood & McEwan 1993:103). Of particular concern in this study are the cultural practices of widow disinheritance as one of the mechanisms employed to perpetuate the subordination of women in South Africa, bearing in mind that South Africa has a long and tragic history of colonial conquest, racial domination, social injustice, and gender discrimination. Under apartheid, many black women married under customary law were subjected to all kinds of human rights violations and degrading rituals and practices. Women in South Africa continue to face discrimination as far as succession and inheritance (terms which are often used interchangeably) are concerned because of the discriminatory African customary laws that regulate the lives of many African women.

It cannot be disputed that democracy ushered in a commitment to gender equality through the constitution. Since then, this has heralded a contested but popularly held view that post-1994 South Africa has made significant strides towards the advancement of women's rights. Hassim (2009) observes that the attainment of "new democracy that embraced the best of liberal democratic values" saw gender equality entrenched in the constitution as a priority "among other democratic values (Hassim 2009: 57). However, gender equality has been only but a fantasy for many African women (as it shall be elaborated later on in this study), one of the greatest obstructions to its achievement has been the adherence within African societies to customary laws that are largely embedded within the patriarchal ideology (Albertyn 2005, 2009, Ramphele 1996, Hassim 2009). Therefore, the most celebrated constitutional dispensation has been, as Bentley and Brookes (2005:4) rightly put it, a "great leap sideways". It was "a great leap

sideways", because "[b]beneath the heroic façade of the Constitution, it seemed a vicious cocktail of violence, sexism and hatred brewed" (Hassim 2009:57). It is not questionable and it has been acknowledged that almost 21 years into democracy black women still constitute one of the most vulnerable and marginalised groups in South Africa.

It is against this backdrop that this study draws attention to the plight of widows as a specific category of women after noting that they have drawn a relatively limited amount of scholarly studies on gender inequality in South Africa. The study recognises that widowhood practices are embedded in and a result of socially constructed gender hierarchies, which lead to unequal power relations between men and women. In South Africa, class further complicates the predicament of widowhood and racial inequalities produced and entrenched by colonialism and apartheid. The structural inequalities inherited from South Africa's apartheid past still affect the majority of South Africa's black population. The stubborn persistence of patriarchy, colonialism's emasculation of African men, its detrimental effects on the positions of African women in societies, the enforcement of discriminatory customary laws (Hassim 2009, Walker 1990, Albertyn 2003, Gqola 2007) and ineffective and biased state laws all constitute some of the factors that have seen widows' life experiences in this study reflecting perpetual subordination.

Hence, my study took an approach that consciously allowed widows to speak as it attempts to be different from a number of existing studies, which overlook analysing the experience of widowhood from widow's own perspectives. This approach arose out of an observation that women continue to suffer the flame of patriarchal traditions that undermine their fundamental rights despite a plethora of legislative measures that have been enacted to protect women's rights. This research aims to highlight the effects of what has been ordained as culturally acceptable in black South African communities on black widows. The foundation underlying this situation is the stubborn persistence of patriarchal tradition, which strives to keep women in positions of inequality and subordination. Widows are deprived of their rights to inherit from their late husband's estates; many of the women suffer at the hands of unscrupulous in-laws often in the context of property disputes. Widows have to endure the practices of degrading rituals

such as the practice of levirate[1] marriage, accusations of witchcraft, dehumanizing mourning and burial rites. All these are justified by reliance on "culture" and "tradition".

As shall be seen in this study, widows' lived experiences are characterised by social complications that include dispossession of property and money, abuse, psychological trauma, poverty, breakdown in family relations and overcrowded and dilapidated homes. Even so, their stories are not only stories of gloom, these are stories of women rising above these adversities, fighting for their rights and challenging aspects of the patriarchal order. The stories of these women also tell of the costs of the audacity to challenge the patriarchal system. These among others consist of the denial of their traditional cleansing rites, name-calling, and physical assault, accusations of witchcraft, murder, prostitution and threats of evictions from their marital homes. At the heart of this study are stories of resilience, resilience of people who have experienced the worst, including loss of a partner, loneliness and stigmatisation, but kept hoping for a better tomorrow.

Furthermore, amidst these quandaries, legislative measures have not gone far enough in alleviating violation of women's rights and achieving gender equality as well as progressive empowerment of women. This is (partly) because this legislation interfaces with culture, custom and tradition in complex ways, especially among black women of poor, socio-economic backgrounds and this has been an under charted avenue in exploring the persistence of women in positions of inequality, discrimination and subordination in post-apartheid South Africa. From this background, this study embarks on using the life histories of ten black South African widows[2]' living in a poor socio-economic reality, as narrated by them to the researcher, to explore experiences of widowhood and property inheritance. The study takes the experiences of widowhood from the widows own perspective to understand how post-apartheid South Africa's transformation process in terms of gender equality is experienced by ordinary black women, how these individuals live through conditions of suffering and despair.

[1] A custom under which a man is obliged to marry his brother's widow in order to continue the deceased's family line.
[2] This study focused on the experience of African women to the exclusion of Indian and coloured women.

Problem statement

Notwithstanding the fact that there has been massive support internationally and nationally for combating all forms of discrimination and harmful cultural practices against women, widowhood practices such as widow disinheritance persist. Hellum, Stewart, Ali & Tsanga (2007:407) argue that the quest for women to have equal inheritance rights in the African context has been highly contested. Widows are vulnerable because of the "weakened customary practice and social safety nets" that were initially used to provide for the widows (Izumi 2007:11). Moreover, cultural values tend to undermine women's rights, across the diverse traditions, widows are subject to patriarchal customary laws, religious laws and face the problem of violation of inheritance rights (Merry 2003: 946, Izumi 2007). In South Africa, customary laws are arguably a colonial creation (Guy 1983, Bozzoli 1983, Mamdani 1996). Customary law can be defined as law according to which many black South Africans regulate marriage, divorce, inheritance and land tenure among other things. These are regulated according to the "cultures" and "traditions" of the African people. In his work on democracy and the colonial heritage in Africa in *Citizen and Subject* Mahmood Mamdani (1996: 115) describes customary law as "a patchwork of customs and practices". Mamdani uses the idea of a patchwork because of the contentious issue of who defines what is customary. Mamdani argues that there were at least three contenders who assumed authority to define what constitutes the customary, first, it was the African man because of his position as an African. Second, it was the administrator because he claimed to be familiar with the local custom and the dominant attitudes and beliefs. Thirdly, the European has spent time with the illiterate locals and has gained their trust (Mamdani 1996:115). These contestations show that "culture" is a product of reshaped and redesigned customs and practices to suit the context in which it was to be applied. The wide array of contenders with claims to define 'customary' and the confusion over the content of custom clearly demonstrates that the customary is a contested concept. Whitehead and Tsikata (2003: 491) conclude that there are "simply too many examples of women losing out when modern men talk of custom".

Culture, as the underlying component of customary law, implies issues of human behaviour, beliefs and practices, customs, habits myths often passed from one generation to the next (Sewell 1999: 39). Therefore, culture consists of interrelated traditions, which are transmitted over

generations. Cultures are dynamic and change with interactions with other cultures, colonialism and other forces (ibid); some of the changes in the South African context and other post-colonial states have had detrimental effects on women (Walker 1990, Mamdani 1996). As shall be discussed later on, South African society has always been deeply patriarchal and divided along racial lines. The patriarchal nature of the society meant that beliefs, customs and practices passed over generations carried with them the sexist ideologies inherent in patriarchy, which meant that male domination over women was the order of the society.

Studies have shown that the underlying motivations for disinheritance are linked to cultural beliefs and customary laws that state that a widow cannot inherit from her late husband's estate (Izumi 2007, Kerr 1990, Bekker and De Kock 1992). Bekker and De Kock (1992) clarify that women are excluded from important positions including succession and inheritance purely based on their gender. Kerr (1990:99) argues that the root behind women and girls' exclusion from inheritance in customary law is based on the customary principle of male primogeniture. The other motivation for disinheritance and other widowhood practices and rites that deter the widow from claiming inheritance are linked to cultural belief and local cosmology that the widow is the prime suspect in her spouse's death. In light of this, the widow would therefore prove her innocence to the family by not claiming her late husband's land properties and other assets and observe rituals.

The prevalence of customary law in inheritance matters, despite the existence of the Law of Succession Act[3] is harmful to widows and it results in untold adverse social consequences. Although customary law varies across different cultures, tribes[4] and nationalities, in most communities customary law dictates that women cannot own or inherit property. Customary law's inability to address the problem of disinheritance has drastically reduced women's social and economic positions in communities. The problems resulting from disinheritance include the widows' incapacity to care for themselves and their orphaned children, impoverishment and stress (Izumi 2006, Izumi 2007).

[3] 81 of 1987.

[4] South Africa's population is diverse and consists of a number of tribal groupings including for example, the Zulus, Xhosa's, the Ndebele, the Tswana, Pedi, Swati, Shangaan and the Venda.

The enormous inhumane and discriminatory treatments that widows encounter are in contradiction with women's rights as recognised in international human rights conventions (Young 2006, Manyedi, Koen and Greeff 2003, Rosenblatt and Nkosi 2007). As will be shown in this study, often poor, stigmatised, marginalised and unaware of their rights, widows often encounter numerous problems in accessing the justice system for example, illiteracy, costs, and threats from family members, ignorance cultural socialisation of passivity and sometimes-biased judicial system. These problems, coupled with the paternal system of inheritance dominant in Africa directly have negative psychological, financial, sexual and social impacts on widows. In addition, this study ascertained that educational attainment, financial independence, and religious beliefs of the widows determine whether the widow accepts or resists disinheritance and other practices associated with it. Still, a number of widows tolerate these practices and seem complacent because of the social construction of gender discrimination that is reinforced through socialisation processes.

Background and Rationale

My study is driven by a personal experience - in 1994 when I was still in primary school, my grandfather died leading to a set of experiences that I came to know and feel as a grave injustice to women who are customarily married. My grandmother was dispossessed of all property they had accumulated, forty years after marriage. The claim made was that she could not inherit from my grandfather's estate because according to our "culture" a woman cannot inherit property. Even at that young age, I felt that "culture and tradition" were just tools used to perpetuate hatred and sexism against women. The idea of culture that was used to disinherit my grandmother was culture as an imposed and bounded set of beliefs and definitely not agreed to by everyone (Sewell 1999). Now I view it as a "culture" that was coined by the patriarchal society to suit the needs of the patriarchs. Due to ignorance about the law and her rights and my grandmother's loyalty to what she knew as "culture", she never sought legal help and the perpetrators went unpunished and undetected. It was at that moment that my interest in the injustices of customary law began and the implications it has on women's lives.

In light of the above, the focus of this study is on the experiences of black widowhood. De Leon, Kasl and Jacobs (1994:615) define widowhood as a state resulting from the loss of a spouse.

Generally, the term widow refers to a woman who has lost her husband by death, and has not married again. This study adopts this definition and this focus because the traumatic experience of widowhood tends to impact more strongly on women. This owes to cultural beliefs and traditions within different communities, altering their social status and increasing their vulnerability to discrimination, abuse, harassment, gender based violence as well as altering their ability to assert their rights (Commission on Gender Equality (CGE) 2007: 4 – 5, Ramphele 1996: 99, Manyedi, et al 2003:69). While there is a plethora of studies investigating women's experiences, it is suggested that studies on widowhood are generally scarce (Potash 1986, Ramphele 1996, CGE 2007, Somhlaba and Wait 2009, Kotze and Els and Rajuili-Masilo 2012). Potash (1986: v) proclaims that although widows constitute 25% of the adult female population in many African societies, they have been a topic of trifling interest to researchers. The available literature on widows focuses on cultural norms of widow remarriages and little is known about the widows themselves (Potash 1986: v). In South Africa, what is known about widows is that with the high levels of violence and HIV related deaths in the country their numbers seem to be on the rise (Ramphele 1996). In this research, I was curious to hear the voices of this marginalised group of women on the intersection of customary law, culture, tradition and patriarchy in their lives. Therefore, the study is important as it contributes to a greater understanding of the subjective experiences of widows and in particular, it sheds light into the condition of black widows living in contemporary South African Townships.

In order to understand the experiences of widows in South Africa, understanding the history of African women in South Africa is necessary. According to Walker (1990: 34), "…the history of African women in Southern Africa is the history of their oppression". Moon (2006) describes South Africa's history as marred with colonial conquest, human rights violations, violence and trauma with structural violence being the cornerstone in stabilising and maintaining the apartheid era. One of the most important fatalities of the colonial and apartheid era was "the reinvention of patriarchy" and African women were adversely disadvantaged (Walker 1990: 10, Guy 1982, Bozzoli 1983, 1990, McClintok 1990). McClintok dissects Henry Rider Haggard's book titled *King Solomon's Mines*, arguing that the book is an insight into the role that was played by the colonialist's discourses in influencing the changes in gender relations in South Africa. Her argument in this article and in her book titled *Imperial Leather* is that before the colonial invasion, black women were perpetually oppressed, then when the coloniser restructured the gender relations, their situation worsened compared to that of their male counterparts (Mc

Clintok 1995). Guy (1982) and Bozzoli (1983) argue that the introduction of the capitalist system economically empowered men and excluded women. As a result, women had to depend on men economically thereby perpetuating male dominance. Walker (1990) and Wolpe (1972) add that the emergence of a racist state had dire consequences on the social, economic and political positions of African women (Walker 1990: 1). According to Walker (1990), the colonialist's ideology of gender was such that women's place in society was in the domestic sphere or as Walby (1990) refers to it, the private sphere. The public sphere where there was money and power was a sphere reserved for men. The colonial ideology of gender stressed that women were "reproducers" and not "producers" (Walker 1990:10). Cock (1990) uses the incorporation of Xhosa women into domestic labour as a demonstration of how female domesticity was invented and enforced. Cock elaborates that "black female domesticity" was a value imported from western gender ideologies and enforced through missionary institutions (Cock 1990:3). Cock argues that the lack of understanding of the African culture led to the demeaning of the culture and to a total reinvention of culture through the missionary institutions. She writes:

> Towards African culture, and the position of women in African society in particular, missionaries adopted on the whole a hostile and culturally aggressive response. Women were perceived to occupy a position of subordination that bordered on slavery (Cock 1990:85).

As years progressed, the pressures of triple oppression (race, class and gender) became too heavy to bear for women. Scholars agree that that there is great confusion on how to explain the history of women's oppression in South Africa because of the absence of black women's voices in historical records (Zungu, et al 2014: 9). According to Walker (1990: 3), the invisibility of women from historical literature provides us with perhaps the most significant insights into the insignificant social positions of women in the past. Zungu et al argue that historians have focused on men as the torchbearers of the liberation struggle and this has silenced and neglected the role that women played in the fight for racial and economic liberation.

The shift of power from the white minority government to a democratic government in April 1994 ushered in a democracy that vowed to embrace liberal democratic values (Hassim 2009: 57). A significant feature of this democracy was the position of women in the new democracy. It vowed to reconstruct an egalitarian society with equality of the sexes. Gender equality therefore

was endorsed as the cornerstone of the new democracy in the South African constitution in 1996. It was a way of redressing the injustices of the past so that women were accorded full citizenship (Albertyn 2003:596). The importance of gender equality at that time emerged in the words of the first president of democratic South Africa when he said that South Africa will not be completely free until "women have been emancipated from all forms of oppression" (Albertyn 2003:596).

In contemporary South Africa, it is common rhetoric within political circles that South Africa is a non – racial and non – sexist country. However, many would agree that South Africa is still a highly patriarchal society (Albertyn 2003, Hassim 2009). Women have not been "emancipated from all forms of oppression". With high levels of gender-based violence, rape and their relation to the prevalence of HIV and AIDS among women, we cannot claim that women have been emancipated from all forms of discrimination (Albertyn 2003:596). It is difficult to obtain statistics on the violations of inheritance rights but evidence in this report though not generalizable give a glimpse into the pervasiveness of the problem. According to Walker (2013: 78), the problem is that the ANC led government's "turn to tradition" has threatened the achievement of gender equality, thereby invalidating the achievements of women's movement in 1993 that through its resilience influenced that gender equality be prioritised in the new constitution. Walker (2013:80) explains the "turn to tradition" as a:

> "… particular construction of 'African culture' ... which reduces it to a narrative of idealised, timeless tradition, and further reduces that to a set of values and practices falling under the custodianship of traditional leaders who are, properly and by the very nature of things, men."

Oomen (2005) and Ntsebeza (2005) who write that in the late 1990s the construction of tradition as the core of indigenous African culture took centre stage in political debates support this view. Walker (2013:86) argues that its articulation by the then President Thabo Mbeki romanticised Africa's past before the "ravages of colonialism". Romanticising culture means idealising even the harmful tendencies in it, and because, in South Africa it was done at the top, Walker states that its effects infiltrated into the societies and have affected the social standing of women (Walker 2013). Albertyn extends this discussion and argues that not enough attention has been paid to the role that the family, culture, and patriarchal norms and values play in the subordination of women (Albertyn 2003:596). Kariuki (2004) writes that the patriarchal nature of the South African society is evident even in the drafting of policies, drawing our attention to

the Communal Land Rights Bill 2003 (CLBR)[5], Kariuki discusses that the bill reinforced gender inequalities in land ownership, which was later enacted as Communal Land Rights Act[6]. It was biased towards men and only gave women user rights to land through their relations with men, which saw it, being declared unconstitutional in 2010 (Legal Resources Centre 2010). In light of this Kariuki declares that gender equality remains a fantasy for many women in South Africa who had hoped that the right to equality and protection from discrimination enshrined in section 9 of the South Africa constitution (Kariuki 2004:58).

In light of the above, the study is concerned with the continued practice of the violation of women's inheritance rights in the midst of gender policies that seem to encourage a different perspective. Firstly, from a cultural perspective, it is important to explore the reasons behind the continuing practice in the midst of a changing society and multicultural exposure. Secondly, from a gender equality perspective, it seems important to explore whether the practice of disinheritance may play a role in the social and economic subordination of women as this may imply an esteemed focus on culture over gender issues within African culture. The underlying cause of gender imbalance and domination, despite the calls to move to gender equality across the globe, remains poorly unexplained and understood because the voices of those affected have been absent. There is still need for research that explains the causality of deeply entrenched biased assumptions about men and women that still lead to the subordination of women in the contemporary liberal world. Particularly, the question as to why women still hold subordinate positions given the fact that, historically, both men and women equally experienced deprivation and subordination in South Africa deserves further inquiry. These studies are even more relevant with regard to widows as they are often deprived of their dignity, confidence and basic rights, as well as of a voice in literature about the experience of women's oppression generally. The fact that the data used in the study is based on information from widows of different age groups, economic status and levels of education, who have been victims of disinheritance and discriminatory widowhood practices, means it will uncover new dynamics to help understand the causality of complex gender imbalances.

[5] The point is extended in *Chapter Two* when I discuss women and property rights.
[6] 11 of 2004.

While this research focuses on the experiences of a certain category of women – widows, the questions asked, analyses and conclusion reached provide a complex web of issues to be considered in the debates around culture, tradition, patriarchy and their interrelated impact on women and their access to the law. This study demonstrates that culture is not bounded nor is it coherent but it is shaped in everyday practices that revolve around what people make to be custom and tradition. The patriarchal nature of the society makes those practices to be heavily skewed against women. The study then uses this as a stepping-stone to reveal how laws enacted to protect women in this regard have not been effective (see *Chapter 4*).

Research Objectives

The primary objective of this research was to:

Grasp a more comprehensive understanding of women's experiences of widowhood and inheritance, specifically from the perspective of a group of widows, identified in a poor socio economic urban area.

The specific objectives were:

1. To explore the subjective experiences of black South African widows about inheritance and customary law by creating an opportunity for the women to reflect on their experiences and in doing so to provide a space for their voices to be heard.
2. To construct new knowledge regarding widowhood that might enable transformation of oppressive practices.
3. To determine how far cultural practices discriminate against women with regard to inheritance.
4. To ascertain if legislative polices of South Africa are effectively protecting women's rights against discrimination with regard to inheritance.

Research Questions

The study was informed and guided by the following main research question:

Have customary laws of succession and inheritance in post-apartheid South Africa infringed on inheritance rights of black South African women? If so, why have efforts to discontinue their authority failed?

Around the main question, the following sub questions arose:

1. What are the subjective experiences of African widows of inheritance and customary law?
2. To what extent has "custom", "culture" and "tradition" frustrated efforts to guarantee inheritance rights to women?
3. Do women in South Africa understand their rights, the law, and the protections it affords them?
4. Are legislative policies of South Africa effectively protecting women's rights against discrimination concerning inheritance and succession?

Scope of the study

I am selective in terms of the extent to which I discuss culture and the nature of customary law in post-apartheid South Africa. I confine my analysis to culture as it applies to beliefs and practices of certain black South African communities and customary law as it applies to marriage law, family law and inheritance among black South African women. It is important to mention that in the course and scope of this study, the customary law of intestate succession will be explored in general terms and without any particular reference to any singular tribe or tribes as that would fall outside the capacity of the study and would be too extensive for the purposes of this study.

The main emphasis of this study is not to prove that culture is inherently harmful to women or to explore why. Rather, the intention is to argue that the tensions between some cultural beliefs and practices and women's rights to inheritance, which are reinforced by customary rules, have discriminatory tendencies and consequently result in untold social and economic consequences for women, particularly a certain category of women – widows.

Conceptual framework

Central to my investigation and to this study, are the notions of culture, tradition, custom and customary law, which I utilise to reflect on the arguments about the nature of women's subjugation in a contemporary South African context. In this section, I explain and clarify these concepts as used in the study.

Culture

Culture has been conceptualised in different ways. As a point of departure, 'Culture' is one of the most complicated words in English language (Sewell 1999: 39). It is a highly contested concept. Sewell defines culture in distinctly two ways; firstly, culture is defined as a theory about the way in which a group of people behave and secondly, culture as a "concrete and bounded world of beliefs and practices" (Sewell: 1999: 39). Culture in the first sense is elaborated to include firstly, "culture as learned behaviour", this consists of a body of beliefs, practices, customs, habits, myths passed from one generation to the next. Secondly, culture is defined as "an institutional sphere devoted to the making of meaning". The examples of these institutions are fashion, art and music to mention but a few. In the second sense, the definition is further elaborated as a "system of symbols and meanings" where anthropologists could abstract meanings from behaviour of a people under scrutiny (Sewell: 1999: 39 - 46). The conceptualisation of culture as a system of meanings was heavily criticised for depicting culture as static, shared and coherent. This informed the conceptualisation of the second meaning of culture as defined by Sewell, that of culture as a practice. This conceptualisation is cognisant of the fact that in the practice of culture there are different forces at play that include power relations, contradictions and change (Sewell: 1999: 44). In simple terms, the argument is that culture is dynamic, it changes over time and not all members of the society may accept its principles and practices. Cultures are contested and cultural systems overlap; exogenous forces that range from technology, religions, colonialism and economic interdependencies may influence cultures. My study utilises both meaning of culture, as a system of symbols and meanings and as a practice. I derive meanings from the practices of the particular group of people under scrutiny. The lived experiences of women in this study offer an insight into the cultural beliefs and practices of a community and as a researcher and analyst, the meanings that

emerge from those actions help the researcher to understand and explain the phenomena under study.

Tradition and Custom

The concepts of 'culture'' and 'tradition' have been used as synonyms in contemporary South Africa (Walker 2013: 77). In its "common sense" meaning, tradition refers to "an inherited body of customs and beliefs" (Handler and Linnekin 1984:273). If left at this stage it might as well be used interchangeably with culture. However, according to Graburn (2001: 6) tradition refers to the process of handing down of customs, thought processes and beliefs from one generation to the next. Reverting to the origin of the concept of tradition in Europe, tradition as defined by Levi Strauss referred to those cultural features that were rendered important and therefore continued to be handed down, carried on, thought about, preserved and passed on from generation to generation (Levi Strauss 1966:233 – 234). Horner (1990: 14 – 17) elaborated on Levi Strauss' conception of tradition by portraying tradition as reservoir of some aspects of the past way of life. This clearly demonstrates that it is a matter of choice on which traditions to keep and which ones to discard. The question that arises is whether tradition is still existent or forces of history have drained it away? Writing about women and tradition in South Africa, Walker (1994) points out that what we refer to as custom and tradition today has been "in fact the product of a complex, dynamic and frequently ambiguous history of contestation, co – option, and reconstruction" (Walker 1994: 349). Drawing on these conceptualisations and material from the field, the study is premised on understanding how tradition has affected the status of women in South Africa, particularly those traditions highly skewed in favour of the patriarch.

Custom and Customary law

Custom and culture are the foundations of customary law. According to Gluckman (1963:198), the term "custom" refers to the traditions, practices, moral or ethical codes and the rules for living that are specific to a particular society. Customs are not codified and they vary with regions or tribes. Customs regulate social relations as well as resolve disputes based on known and accepted norms and practices. The function associated with resolving disputes gives rise to the term customary law. Therefore the terms custom and customary law, although distinct, are

interrelated. For this study and in the South African context, customary law needs more clarification. Generally, in South Africa, customary law may be defined as: "the customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those peoples"[7]. In South Africa, scholars (Guy 1982, 1990, Mamdani 1996, Burman 1990, Cock 1990) have given extensive discussions on the influence of colonial values on customary law. These scholars argue that customary law, as we know it in South Africa is almost in its entirety a colonial creation (Mamdani 1996, Guy 1982, Bozzoli 1983). Mamdani (1996) argues that the customary law that emerged during colonialism was as a means to control the natives and their labour, it was a violent project that resulted in what he calls the "containerisation" where Africans were divided into tribes (Mamdani 1996:91). According to Mamdani, custom became a consequence of the struggle between various forces, and the created customary power was enforced using brutal force on those who failed to oblige. Guy (1982:175) confirms Mamdani's interpretations by stating that the Shepstone system, which was a policy of segregation created an administration system that divided Africans among chiefs and bestowed a lot of power over the chiefs to enforce custom so that the colonial state would get a portion of agricultural produce from the Africans. Jeff Guy says that for the colonial state to control the Africans together with their agricultural produce, reorganising the ways of lives of African was the best alternative. The first move was to regulate customary law, "principles of the homestead (women as agricultural producers), the custom of lobola and laws of succession and inheritance. These had to be controlled by the male head of house under the authority of the local chief (Guy 1982:174 – 175). This view of customary law, which is influenced by the accounts of the interaction between "patches" of African custom and colonial rule in South Africa, is adopted in this study.

Structure of the paper

This research report consists of five chapters.

Chapter 1 introduces the study, provides the background, the aim and research problem, questions, conceptual framework and maps out the study. *Chapter 2* provides a detailed review

[7] Section 1 of the Recognition of Customary Marriages Act 120 of 1998.

of literature on widowhood and customary law and theories used in the study. *Chapter 3* discusses the research approach used to collect and analyse data. It also details the actual research experiences and the study's limitations. *Chapter 4 discusses* data presentation and analysis. It is mainly concerned with presenting the voices and life of widows. The main purpose of this chapter is to offer a nuanced understanding of the complexities that structure and affect widows' lives in post-apartheid South Africa. *Chapter 5* is the concluding chapter. It proposes final analysis, overall discussion and conclusion.

Chapter Two

Literature Review and Theoretical Framework

This chapter reviews relevant literature that relates to and supports this study. The literature review pays particular attention to the cultural, historical, social, economic and political background that has shaped and informed customary law and its principles as far as it affects women, keeping in focus the main questions of this study. The literature review traces customary law from the colonial to the post-colonial period and the developments therein. The main intention is to construct an account that will help us in this chapter and subsequent chapters to understand how customary law of succession and inheritance has contributed to the discriminatory treatment of women in inheritance and other customary practices. The representation of widows in mainstream discourse is also analysed and I will endeavour to demonstrate how mainstream discourse can and have ignored the widows experiences and voices on issues that affect them. The purpose of the chapter is not to give a holistic analysis and full historical analysis on customary law and widowhood. In general, by historicising part of the discussion, I open up the report to a discussion, and an analysis and understanding of the ways in which subjugation of women, silencing of women's voices are historically entrenched processes, and to uproot them in the contemporary South Africa has not been an easy undertaking.

Furthermore, more importantly I seek to reflect on theories that make arguments about the nature of women's subjugation in a contemporary South African context. Two theoretical frameworks are used namely the feminist legal theory, legal pluralism and patriarchy. My study is primarily anchored in analysing the effects of customary law of succession and inheritance on widows. In that respect, I will use theoretical frameworks that have been used in academic circles to analyse the subordination as well how law (both customary and common) has or has not further perpetuated their subjugation in African societies.

Feminist legal theory

Feminist legal theory is a theory premised on a belief that the law has been fundamental to the systematic subordination of women. The feminist legal theory seeks to explain the role played by the law in women's systematised inequality and takes into cognisance the diversities in women's experiences. Feminist legal theory is two – fold, Katherine Barlett defines feminist legal theory

as "a family of different perspectives or frameworks used to analyse the actual, and the desirable, relationship between law and gender" (Barlett 1999:3). The second side of the theory is as Christine Littleton puts it "to explain, critique, and change law on behalf of, and from the perspective of, women" (Littleton 1989:725). This definition implies that the feminist legal theory focal point is on the actual experiences of woman, the goal is that as we foreground on the experiences of women, transformation of the law in favour of women will be a possibility. The central concern in this theory is how legal rules and practices affect women, the exposure and critique of patriarchal nature of the law that it expresses male perspectives and the transformation of the concept of justice. It also prioritises the experiences of unprivileged women as it argues that in this way, social reality is constructed.

This study broadly situates the issues within a feminist legal framework. I approach the theory in the manner that the Women and Law in Southern Africa (WLSA) used it to dissect how customary law in in Southern Africa denies women of independence and security in marriage and the right to inheritance. It considers the qualitative explanatory strength of the feminist legal approach and it seeks to explain ways in which the law plays a role in women's subordinate status**.** This operates within a feminist paradigm in conceptualising the socio-economic positions of women in South Africa. The approach provides an insight into the marginalization of women and explains the way in which law has played a role in the subjugation of women.

Legal pluralism

The research study adopts the use of the legal pluralism theory to understand what statutory laws operate to protect women's right to property inheritance. The theory is used to establish how these statutory laws operate parallel to customary law and in effect. This theory also explains the extent to which the existing legal dualism has affected women's right and access to land and other properties as well as inheritance thereof. Like many countries that lived through the colonial experience, South Africa inherited a "Potjiekos"[8] of European laws existing concurrently with indigenous systems of customary and religious law (Rautenbach 2008: 13).

[8] Rautenbach uses this metaphor of a stew of meat and vegetables to refer to South Africa's mixed legal system. In South Africa the dual legal system is one in which two different systems of the law are recognised by the state. During the colonial period, common law applied to white people and customary law applied to black people.

This phenomenon known as "legal pluralism" has given rise a number of critical intellects, questioning the plausibility of the harmonization of these multiple sets of norms, both formal and informal interacting with each other equitably (Woodman 1996, Sibanda 2010, Mamdani 1996). Legal pluralism is defined by jurists as a situation where "the sovereign commands different bodies of law for different groups of the population varying by ethnicity, religion, nationality, or geography, and when the parallel legal regimes are all dependent on the state legal system" (Merry 1988:869,871). Legal pluralism has also been defined in anthropological terms in Gordon Woodman's chapter in the book titled *Pluralism and Development: Studies in Access to Property in Africa.* Woodman criticizes the current understandings of legal pluralism for being too Eurocentric. He then defines legal pluralism as "the class of situations which a population observes more than one law" (Mostert and Bennett 2012: 36). Woodman terms this broader conception "deep legal pluralism" because it extends the concept of "law" to include non-state modes of social ordering. For this research, definitions by Merry (1988) and Woodman (2012) are appealing as they make it easier to understand that the use of the term denotes that some sort of contact exists between the different types of laws. In South Africa, Mamdani (1996) offers perhaps the most insightful account on the development of legal pluralism a system of law forcibly created to meet the requirements colonial regimes, largely based on separate administrations for black and white inhabitants. Mamdani leads the crop of academics in South Africa who criticize legal pluralism's characteristics as "unnecessarily complex, as denying the principle of equality before the law, [and] as underpinning grossly unjust modes of production or racial discrimination" (Woodman 1996:159). South Africa's pluralistic legal system, which I focus on in this study, is a prime example of an attempt to ensure multicultural accommodation and it is argued that in the process of accommodating different cultures, equality before the law is jeopardized (Sibanda 2010, Mamdani 1996).

Legal pluralism's shortcomings are that after creating a picture of the parallel justice systems and their operations and identifying the contradictions and contestations around them and their uneasy relationship, it is unable to take us further. It does not provide the alternative ways in which the two systems can work together.

Patriarchy

In examining the subordination of women in South Africa, this research study builds on the premise put forward by Walby's (1990) theorisation of patriarchy as "a system of social structures and practices in which men dominate, oppress, and exploit women" "(Walby 1990: 20). Women's movements have found the concept of patriarchy a useful tool and employed it to analyse the principles underlying the oppression of women (Walby 1990, Coetzee 2001). Theoretically, the concept of patriarchy has been used to investigate the real basis of the subordination of women and to analyse the various forms it assumes. Thus, the concept and theory of patriarchy is very vital for feminist analysis, it has been used to capture the depth and pervasiveness of women's oppression by penetrating beneath the particular experiences and manifestations of women's oppression (Walby 1990). Different thinkers in various ways define the concept of patriarchy. A feminist psychologist, Mitchell, uses the word to refer to "kinship systems in which men exchange women" (Mitchell 1971:24). Hooks, a radical feminist (2000: ix) elaborates on this definition by stating that patriarchy is a social disease and an "institutionalized sexism". The term patriarchy, as defined by Morrell (2005) and Hartmann (1980), is a form of male domination based on the powerful role of the father or patriarch as head of the household. Simply, Alcoff expounds that patriarchy implies a social system in which a father or male head of the household makes all major decisions concerning the family, he controls all economic and property resources, he is superior and dominates over the weak members of the family especially women and children (Alcoff 1990). When I bring together all these theoretical perspectives, patriarchy, in general terms, means any social system whereby unequal power relations between men and women systematically disadvantages and oppresses women in society and particularly so within the family, but also through other institutions and processes.

Even though Walby defines patriarchy as a system in which men dominate over women, Edley and Wethrell (1996) bring a different perspective. They argue that although men are in privileged positions and share in masculine privileges and institutionalized subordination of women, the process by which male dominance is maintained is multidimensional, indirect and subtle. According to Rogers (1998: 2), the benefits of patriarchy to individual men vary according to "class, age, race, able - bodiedness and sexual orientation". Furthermore, education,

employment, social and political disposition are also of paramount importance as far as benefiting from patriarchy is concerned. In a similar vein, Foucault (1977, 1982) argues that although discourses on patriarchy construct men as more powerful than women, power is not solely embedded in patriarchy. Instead, Foucault recognises that regardless of gender, political, social and economic status both men and women possess the ability to enforce as well as resist domination, exploitation, and subjection. Such actions are evidenced in the various experiences of women in their everyday lives. Not only men possess the power to subordinate women, women are also seen exercising such authority over other women. This suggests that not all men are successful patriarchs and not all women are perpetual subordinates. This is not to undermine the pervasive force of patriarchy; patriarchy largely draws on various strategies ranging from psychological terrorism to violence, and expresses in a multitude of ways – discrimination, disregard, exploitation, insult, control and oppression within the family and in society (Morrell 2005). The hegemonic positions ascribed to men by different cultures, traditions and religions (that God ordained men as heads of the families) give men authority over women (Coetzee 2001:4).

Power and the exercise of power, is vital in the definition of patriarchy (Kalabamu 2006: 238). Millet (1977:35) states that the strength in patriarchal ideology lies in the fact that "men are usually able to secure apparent consent of every woman they oppress" and this is done through institutions that include the academy, the church and family, each of which have systematic policies and actions that justify and reinforce women' subordination to men (ibid). Therefore, men derive power from culturally constructed rules on marriage, inheritance social status, (Kandiyoti 1998:145). To preserve the male dominance, patriarchy created 'masculine' and 'feminine' characteristics, private-public territories by gendered socialization processes.

Femininity according to radical feminist Simone de Beauvoir in *The Second Sex* means:

> Woman? Very simple, say those who like simple answers: she is a womb, an ovary; she is 'female' sounds like an insult; but he, not ashamed of his animality, is proud to hear: 'he's a male!' The term female is pejorative not because it roots woman in nature but it confines her in her sex… (De Beauvoir 2010: 23).

The feminine traits that culture designs for women across societies include being gentle, passive, having empathy, a low sex drive, being physically weak, dependent , emotional, sensitive, quiet, graceful, innocent, flirtatious, nurturing, sexually submissive and accepting. This is in line with Foucault's (1991) views on self-surveillance; he argues that some women are eager to subscribe to the positions of "good women". Good women are those who happily take on roles in the domestic sphere among other duties. Furthering this assertion, Gasteiz remarks that women have not shown much resistance to the inferior gender roles prescribed to them, particularly the ones who remain in the domestic sphere where they "are expected to be sentimental, passive, dependent and fearful" (Gasteiz 2010:23). It is important to note that any deviation from these prescribed behaviours is culturally unacceptable (Foucault 1991) and may result in dire consequences. The domination and subordination of women is further enforced by the roles prescribed for wives in marriage. The common belief that a married woman's duty is to her husband and his extended family subjects women to "perpetual dependency", parasitism, and "complete uselessness" (Goldman (1969c cited in Marso 2003:4). de Beauvoir (2010) states that once a woman gets married she is

> …integrated [into the family] as a slave or vassal dominated by fathers and brothers …In primitive times, the clan, the paternal gens, treats her more like a thing: she is part of payments … de Beauvoir (2010:452).

According to Walby (1990: 20 – 21) in a patriarchal system women are controlled in every sphere of their lives, their labour, reproduction, sexuality and property are all controlled by the patriarchal authority. Patriarchy as a concept has been criticised for not being able to deal with historical and cross cultural variation in the forms of women's subordination. Critics have argued that it is insensitive to the diverse array of the experiences of women across different cultures, classes and ethnicities (Barret 1980; Alcoff 1990). Black feminism, third world feminism and post-colonial critics have argued that mainstream feminism's patriarchal accounts fail to comprehend the realities of black women. One of the strongest ideological tenets around which black feminists have organised for example is the notion that race, class, gender and sexuality are co – dependent variables that cannot be readily separated (Collins 1989). These variables can be used in examining the complex realities of black women's lives (Lorde 1970). Whilst these criticisms of mainstream western feminism raise questions about how and why the western

feminists chose which variables to adopt in explaining women's subordination, they do not suggest an alternative account of inequality in which the private and public oppression is explained (Seidman 1994). In as much as Walby (1990: 2) argues that these criticisms are misplaced and are only relevant to a few early accounts. On the contrary, to point out that western liberal feminism should be expanded to cater for the experiences of black and third world women is right and should be taken seriously, but it must be acknowledged that liberal feminists played a vital role in important education and legal reforms. In the area of social policy and the law, legislators have started to focus on protecting individual rights of vulnerable members of families, women, children and the elderly included.

With the various well-founded criticisms the concept and theory of patriarchy in mind, it has proven to be an essential tool in dissecting women's subordination in different societies (Walby 1990:2). Patriarchy is a useful tool in explicating the different manifestations of women's subordination across class and ethnic groups (ibid). This section, has pointed out that patriarchy is both a system and an ideology that shapes and determines gender relations in a society. It has also noted that patriarchy is a complex system, whereby women and men are constantly negotiating their power base, rights and privileges.

Evolution of Patriarchy: The South African Context

The previous section has looked at theorising patriarchy in a wider context. This section briefly looks at how different constructions of patriarchy emerged in South Africa. The years spanned here will be the pre – independence to the post-independence period. The question I attempt to answer in this section is whether the collusion of western values with pre – colonial patriarchy improved or worsened the status of women. In dealing with this question, this section analyses mostly Southern African critiques.

In an important article, entitled *Gender Oppression in Southern Africa's Pre-capitalist Societies, by* Jeff Guy (1990) describes the oppression of women in traditional societies as centred on women's reproductive and productive capacity because the total functioning of these societies was centred on the accumulation of people rather than commodities. Therefore, women's reproductive capacities were of paramount importance. The control over reproduction was

validated in marriage with the exchange of cattle as bride wealth, it legitimised male control over women and their children (born and unborn). The exchange of women was done in the form of cattle. However, Guy emphasises that the situation is very different in contemporary South Africa. He argues that women exercised considerable control over the agricultural process and produce and that women had a respectable social status and a to a certain extent independence (Guy 1990). At this point, it cannot be claimed that they were not subordinated. Walker (1990: 10) states that the ideology of male dominance existed even before colonisation such that when the coloniser's ideology of male dominance infiltrated these societies it was easy to hold water and further subjugate women.

There are various ways in which women subjugation was executed; firstly, it was through the ideology of female domesticity (Cock 1990). Both Walby (1990) and Cock (1990) argue that it is problematic to relegate women into the private / domestic sphere because women are excluded from money and power. As discussed earlier, Cock (1990) uses the incorporation of Xhosa women into domestic labour as a demonstration of how female domesticity was imposed on the Africans. In this article, Cock elaborates that "black female domesticity" was a value imported from western gender ideologies and enforced through missionary institutions (Cock 1990:3). Cock argues that the lack of understanding of the African culture led to the demeaning of the culture and to a total reinvention of culture through the missionary institutions.

According to McClintok (1990), many colonial officials were raised in highly patriarchal societies and they imposed it on the colonies. The colonial ideology of gender stressed that women were "reproducers" and not "producers" (Walker 1990:10). According to Wolpe (1972), in 1910, as capitalist forms of production began to be encouraged by the segregationist state, black men relocated to work in the mines while women remained behind in 'the reserves' and continued with agricultural production for subsistence and nurtured children. The missing part in his account is how capitalism contributed immensely to the changes in the domestic sphere. Bozzoli (1983) draws on the linkages between capitalism and patriarchy. Bozzoli reveals the introduction of capitalism was followed by women's struggles against subordination by men. Bozzoli states that a male head of the family controlled the African family household with the exception of the abandoned women, divorced and unmarried. The important aspect to be noted here is that women were excluded from the property ownership (Bozzoli 1983). According to

Bozzoli, the situation was a bit different with the urban dwellers because women were absorbed into the public sphere and began undertaking capitalist wage labour jobs, which had always been male related jobs. Bozzoli (1983) however is quick to mention that patriarchy was not doused per se, but at least women were able to own property and assumed some leadership positions in their households, however men were still recognised heads of families.

At a later stage, Ramphele (2000: 114) observes that apartheid weakened the role of black men as household heads and protectors. Ramphele confirms that the absence of men from their families due to labour migrancy, the economically incapacitating environment due to low wages, lack of education, the barring of women and children from the cities all contributed to the failure of men to assume their culturally ordained roles to protect their families. On the same thread, Hassim (2009) states, "migrancy and unemployment have resulted in men's loss of power" coupled with forced removal that resulted in the destruction of communities (Hassim 2009: 63). These emasculating forces have resulted in horrible consequences for women. According to Walker (2013) the very high levels of gender-based violence in South Africa can be attributed to as a consequence of a "backlash on the part of many men angered by what they see as usurpation of their formerly unquestioned domestic authority" (Walker 2013:85). Gqola (2007) vehemently declares that even though there are loud talks on women's empowerment in South Africa, "South African women are not empowered: the rape, and other gender based violence statistics, the rampant sexual harassment at work and public spaces, the siege on black lesbians and raging homophobia…" are all signs of the persistence of "violent masculinities" (Gqola 2007:115).

Related to the above, is the gap in literature on how patriarchy manifests itself in culture and its influence on how the law operates that this study fills. Most surveyed literature tends to portray widows in terms of their victimhood to male dominance and biased cultural beliefs (Albertyn 2003) Ramphele 2000, 2002, Gqola 2007, Hassim 2009). This study shows that women have the ability to exercise different kinds of power in response to oppression. This study also fills a gap in literature available on the ideology of patriarchy. Although most gender and power research takes into consideration the ideology of patriarchy, it has not focused on how widows disturb the forceful nature of male dominance and how widows take advantage of the changing nature of ideology on women's rights. Based on the findings from the fieldwork, combined with literature,

I realised that contestation of the ideology of patriarchy sometimes occurs in the context of widowhood. Little documentation however exists on how such contestations manifest.

Customary Law of Succession and Inheritance

Customary law generally deals with family law, law of property, traditional leadership and intestate succession laws, which predominantly operate in the private sphere (Rautenbach 2008:5). The widespread inheritance patterns among the different ethnic groups in South Africa are based on male inheritance and exclude women from inheritance (Kerr 1990). The above-mentioned inheritance patterns allocate a huge amount of power to the agnatic core of the family and it is part of a patriarchal system shaped by patriliniality. The law of succession is one area of customary law that received a considerable amount of academic attention (Mqeke 2003, Bennet 2004, Himonga and Bosch 2000, Himonga 2005) and judicial attention[9]. The principles of customary law of succession and inheritance became a contentious issue since the introduction of a new human rights dispensation in South Africa (Schoeman – Malan 2007). The law of succession comprises rules and norms that determine what happens to a person's estate after his / her death and it has been criticised for its alignment to patriarchal ideology (Rautenbach 2008, Mqeke 2003, and Richardson 2004). The main issue under scrutiny was the constitutional validity of the principle of male primogeniture, which is a principle in customary law that provides only for male inheritance. Mqeke (2003) challenged the rule of primogeniture by arguing that the rule excludes women and extramarital male children and it discriminates unfairly on the grounds of age, birth and most importantly gender. Richardson (2004) supports the above contention by Mqeke by arguing that even though the legislator identified that the patriarchal nature of the customary law of succession discriminates against women and girls, it is apparent that schemes of inheritance and property allocation at death are deeply embedded in the notions of culture and tradition. The literature identifies three main aspects of customary law of succession and inheritance; firstly, the main characteristic is the exclusion of women and girls from inheriting from the deceased estate. Secondly, the basis for the exclusion of women, girls, and children born out of wedlock is the cultural norm of the continuation of the family lineage of the husband (Oliver and Jourbert 1995:147). Thirdly, it is the concept of the family as a collective, with collective rights and responsibilities (Bekker 1989). Bekker is of the view that

[9] Bhe v Magistrate, Khayelitsha; T Mthembu V Letsela 2000 3 SA 867 (SCA).

the customary rules of inheritance and succession were designed to continue the family lineage (Bekker 1989:273). These principles have continued to be applied in black communities and they have regulated the law of succession and inheritance. This has severely limited women's rights to inherit property from their husbands' estates. According to customs and traditions among most black families, a man is the head of the family and a woman is subordinate to men. The ideology of patriarchy passed down from generations has affirmed that paternal authority is not questioned, the man exercises it as the head of the family and the woman as subservient to him (Edley & Wetherell, 1995). According to Bennet and Peart (1991:31) in the Natal, code of Zulu law women are described as perpetual minors, their husbands are their guardians. According to Currie (1994:327), in fact women may not own anything other than a few personal belongings. Bennet (1995: 327) extends this point by mentioning that customary law wives do not have the right to control their earnings.

Recent Developments in Customary Law of Succession and Inheritance

The post 1994 era saw a series of reformations of customary law in the areas of marriage and succession because of their discriminatory tendencies against women. This saw the enactment of the Customary Marriages Act 120 of 1998 (hereinafter referred to as the RCMA) in November 2000 it was to be in line with the Intestate Succession Act 81 of 1987. The intestate succession Act 81 of 1987 stipulates that if more than one spouse and children survive the late, then the property will be appropriated equally among the surviving spouses and children.The Act granted South Africans in customary marriages or traditional marriages the same protections as those enjoyed by their counterparts in civil marriages. The Act stipulated that all marriages entered under customary law were automatically in community of property[10]. It also declared that women were equal partners in a marriage, considering that previous they were considered subordinate partners. There have been arguments that that the Intestate Succession Act draws on a very small sample of beneficiaries, a notion that does not correspond well with the indigenous communities' idea of extended families (Rautenbach 2008). Even though this assertion is not supported by empirical evidence, it is a convincing insight, as shall be seen in *Chapter 4*.

[10] Community of property means that that all the couple's assets and liabilities (even those acquired before the marriage) are combined into a single estate, in which each spouse has an equal share.

The Bhe and others v The Magistrate, Khayelitsha and Shibi v Sithole and others (Shibi) are perhaps the most famous cases as far as inheritance and succession under customary law is involved as it necessitated the reform of the customary law of succession and inheritance. The application in the Bhe case was made on behalf of the two minor daughters of Ms Nontupheko Bhe and her deceased partner. In the Bhe case, the applicants submitted that the principle of male primogeniture discriminated against the two children because of their gender. Male primogeniture ensured that the girls could not inherit from their late father's estate. In the Shibi case for similar reasons, Ms Shibi was prevented from inheriting the estate of her deceased brother. The flaws of male primogeniture that emerged from these two cases saw the constitutional court declaring the customary law principle of primogeniture unconstitutional. It was held that the right to equality translates to the right to dignity. Therefore, some subsections of section 23 of the Black Administration Act[11] were declared unconstitutional because they contravene section 10[12] and 28[13] of the constitution. The rule of primogeniture stems from the unwritten customary law that is based on patriarchy as noted by Kerr AJ (1990). Succession according to this system is patrilineal, and female exclusion is an integral part. Page 49 of the judgment reveals that Langa DCJ said that excluding women from inheritance means that the country has not moved beyond patriarchy, a system that relegated women to subservience. In his judgment, Langa DCJ indicated that the application of section 1 of the Intestate Succession Act of 1987 that considers only the surviving spouse, as the heir to the estate does not take into consideration other spouses married under customary marriage. Therefore, he indicated that there is need to provide for situations in customary law where there is more than one surviving spouse.

Gender and Culture

There is a connection between gender and culture in that most cultures are patriarchal and "have one of their principal aims the control of women by men" (Okin 1993:13). In such societies, gender inequality cannot be a possibility because:

[11] This Act set up a separate legal system for the administration of "black" law and custom. It details the steps that must be taken in the administration of those estates.
[12] Section 10 states "Everyone has inherent dignity and the right to have their dignity respected and protected."
[13] Section 28 concerns Children's rights and it forms the basis for the rights of children in all matters affecting children.

> [where] there are fairly clear disparities in power between the sexes, [then] the more powerful, male members are those who are generally in a position to determine and articulate the group's beliefs, practices and interests. Under such conditions, group rights are potentially, and in many cases actually antifeminist. They substantially limit the capacities of women and girls of that culture to live with human dignity equal to that of men and boys and to live freely chosen the lives as they can (Okin 1993:13).

Furthermore, Okin (1999) argues that religious and cultural communities are predominantly preoccupied with aspects of private law including marriage, control of property and resources such as land, divorce and rules of inheritance, women. In such societies, women are mainly involved in the domestic / private sphere. This means that they are the ones to be mostly affected by persistence of cultural claims, as stated earlier. McFadden (1997) points out those traditional African cultures are infested with norms and practices that hegemonise patriarchal interests and the oppression of women. According to Shope (2006: 64-65) there is an "intimate connection between power relations and custom", this hampers women's attempts to claim their rights as they find themselves colluding with culture (Geisler 2000).

Bentley and Brookes in their 2005 journal article titled *The Great Leap Sideways: Gender, Culture and Rights After 10 years of Democracy in South Africa* and Cherryl Walker's (2013) article titled *Uneasy Relations: Women, Gender Equality and Tradition,* among others, set the tone for this report. These intellectuals neatly identify the intersection of gender and culture and rights and law as problems rooted in poor understandings of culture as well as in identity and marginalisation. Walker (2013) for example, highlights that culture does not refer to a certain racial category (black people) as it has been depicted in contemporary political discourses. Bentely and Brookes (2005) state that "it is often the ascription of a cultural identity to the already marginalised groups – such as rural women – that leaves them vulnerable to the abuse of their rights" (Bentely and Brookes 2005:4). Shope (2006) argues that black rural women are strategically positioned at the borders of traditional and modern societies, this positions them at the centre of the ongoing debates and struggles over the definition and practice of tradition (Shope 2006:65).

Walker (2013: 86), and Classens and Mnisi (2009:495) warn against the romanticisation of culture prevailing in the discourses around culture within the ANC. The debates against cultural

relativism argue male definitions of culture are accepted as those of the communities (Walker 1994, Classens and Mnisi 2009). According to Walker (1994:349), proponents of culture in South Africa are ready to accept these definitions uncritically and rural women find it very difficult to challenge these hegemonic views because of their subordinate positions within their families and the society as a whole. The fact that culture is complex and dynamic and often changes is not taken into cognisance within the current political debates (Walker 1994, 2013). Moreover, Kuumba (2006) states, "nationalist discourse and praxis in many African descendent communities positions women as the custodians of and conduits for its customary practices, often serving their worst enemies" (Kuumba 2006: 113). According to a number of feminists (Walker 1994, 2013, Gqola 2007, Hassim 2005a, 2005b, Meinjtes 2003), the power to resist patriarchy and change culture lies with the women's movement, that it should keep insisting that custom could be refashioned to fit the contemporary aspirations of gender equality.

Not all feminists have confidence in the power of women's movements. There is a growing body of literature that advocates for research that will uncover women's diverse voices (Albertyn 2003, Claasens and Mnisi 2009). Particularly, Albertyn (2003) calls for women's voices to be heard within both communities and public conversations. Albertyn is of the view that probably listening to the "insider voices" would be a step in the right direction as far as gender equality is concerned (Albertyn 2003:610). On the same note, Claasens and Mnisi (2009) argue that women in rural areas must be given the opportunity to define custom because they have been silenced by hegemonic voices that define custom and land rights; this leads to a situation whereby women are left out in land ownership rights. Elsewhere, Patricia Hill Collins has written extensively on black African and Afro – American women's capabilities to challenge social injustice (Collins 1990, 2000). In her, book *Black Feminist Thought: Knowledge, consciousness, and the Politics of Empowerment,* Collins (1990) encourages black women academics to engage in an intellectual activism against that suppression. Collins argues that black women are the experts in their experiences; therefore, their voices should be an integral part in the construction of black epistemology. To emphasise this point she writes "… black women intellectuals are engaged in the struggle to reconceptualise all dimensions of the dialectic of oppression and activism as it applies to African – American women" (Collins1990: 13).

The custom of lobola is one aspect of culture that is widely discussed in the literature on culture and gender. The lobola practice is as varied as there are African cultural groups that practice it and its procedure and meaning changes through time (Ansell, 2001). In the official African languages of South Africa, it may also be referred to as *bogadi, bohali, xuma, lumalo, thaka, ikhazi, magadi or emabheka* (CGE, 2005). Lobola is a cultural practice that offers insight into the gender and power relations in African marriages (Shope 2006).This traditional custom has endured for centuries and is an important part of African Marriages (Goldschmidt, 1974, Guy 1982). According to Goody 1973, lobola gives a certain authority to the groom over the bride and within the marriage. Western observers have interpreted the practice of lobola (bride wealth) in Southern Africa in many ways. The differing interpretations of lobola reflect that there have been wider differences in how the cultural systems in Southern Africa have been understood (Ansell 2001), notwithstanding the different ways in which they are practiced.

The earlier writings on lobola that depicted lobola as an economic transaction for example (Raglan 1930) have been heavily criticised for misunderstanding and misrepresenting the purpose and meaning of lobola (Mizinga 2000). Mamdani (1996: 91 - 2) points out that the early Cape colonists argued that the practice of lobola was a means of selling women to the highest bidder and it was a way of enslaving women. Mostly African writers have not dismissed that it can have adverse effects for women but have argued that lobola there are deeper cultural meanings than the surface appearance of an economic transaction. Shope (2006) argues that among the Zulu for example, lobola has lobola has different and sometimes contradictory meanings for the black women and those meanings are both positive and negative (Shope 2006). Some of the findings included that lobola is a unifying custom, establishing relations between two families. In addition, it has been argued that lobola brings about a transfer of rights from the woman's family to the man's family (Ansell, 2001, Guy 1982). According to Mizinga, (2000) nonpayment of lobola renders the marriage invalid and since the lobola was normally premised on the woman's reproductive capacity, the groom has no claim over the children that he bears with the bride, and if he has daughters he cannot share in their lobola when they get married (Mizinga, 2000). Lastly, lobola has been an important aspect of claiming a cultural identity, it is one of the practices that represent being African (Ansell, 2001). According to Ansell (2001), many African people continue practicing lobola because they argue that it strengthens their African identity. Murray observes that in Lesotho, adherence to lobola "takes the form of a nostalgic

reconstruction of the past" (Murray 1976:323). According to Shope (2006: 65), the persistence of lobola indicates its "widespread support as well as its ability to adapt to socio –political context". However, most of the people who practice it are ignoring the relation between patriarchy, gender equality and the meaning attached to the economic transaction in lobola (Ansell 2001).

Religion and Culture

A large and growing body of literature has investigated the interaction between culture and religion. Previous anthropological studies have found that culture and religion interact in various complex ways (Aguilar 2000, Bowie 2000, Morris 1987). Religion can be conceptualised as a particular form of culture because of the collective set of attitudes, values, beliefs and practices shared by a group of people (Cohen 2009) or it can be conceptualised as a way to categorise cultural practices for example Christianity and Judaism or Catholicism and Protestantism (Cohen & Rozin 2001). Religion uniquely focuses on relationships with that considered divine and faith (Cohen, 2009). African religion has been a universal religion for Africans before the arrival of western religion, it was mostly characterised by the beliefs in ancestral spirits (Masango 2006; Mbiti, 1975; Tlhagale, 2000). Considering that religion is a specific set of beliefs and practices, its differences with culture lie in the divine and faith arena. Aguilar (2000) declares that religions like Christianity or Islam are a culture to many people.

According to Aguilar, religious beliefs and practices transpire within a particular national culture, the same religious teachings can manifest in different ways depending on the cultural context (Aguilar 2000). In South Africa, for example, the interaction of culture and religion is evident in specific complicated ceremonies connected with burial procedures, funeral rites, mourning rituals and inheritance procedures (Rosenblatt and Nkosi 2007, Manyedi et al 2003), it even plays a vital role in the copying strategies of widowed individuals (Somhlaba and Wait 2009). The central role of the church is seen during the preparation for the funeral. The members of the church visit the bereaved family to offer their condolences, singing, praying, and reading bible scriptures (Selepe & Edwards, 2008). In urban and rural areas, some families continue to practice traditional mourning rituals that are appropriate in African religion. Other families fuse them with Christianity (Denis, 2004). Furthermore, Aguilar highlights that in many African cultures women are the "headmistress of tradition" because they are the primary transmitters of cultural beliefs and values to their children (Aguilar 2000:240). Aguilar's conception ignores

issues of power and social relations when dealing with women's positions as custodians of culture. I remain conscious that as much as the literature on religion and culture is very useful to my study, the literature cannot exhaust possible avenues for consideration of religion and culture. Little is known about how African culture and religion complement each other as far as women's oppression is concerned. As much as Cohen (2009) maintains that religion is concerned with the divine and faith, more needs to be explored on the role of religion in the subordination of women.

Widowhood Rites and Practices

Limann (2003:21) notes that there is a surge in the studies of widowhood rites across the continent. Davhana – Maselesele (2005: 6) notes that widowhood rites are also rife in most rural areas of South Africa, backing this assertion is the research report produced by the Commission on Gender Equality (CGE) in 2007 which informs us that in most parts of South Africa widows (and not widowers) are victims of these rites. In South Africa, several studies investigating spousal bereavement has been carried out (notably Manyedi 2001, Manyedi et al 2003, Rosenblatt & Nkosi 2007, Somhlaba & Wait 2008, 2009).

A survey of widowhood rites literature indicates that it follows three paths. Firstly, there are those scholars who are occupied with cataloguing widowhood practices (Sossou, 2002, Manyedi, et al 2003, Chima 2006, Oduyoye 1997). For these scholars widowhood is an extremely intense period in a woman's life. Manyedi, et al (2003) indicates that widows are often subjected to hideous practices that widowers are not subjected to. According to Chima (2006) and Davhana – Maselesele (2005) these rituals have been variously described as harmful and dehumanising cultural practices because they are closely associated with human rights violations. The second category of scholars is those who are preoccupied with the search for factors that give rise to harmful cultural practices. In a recent study of the CGE on Widowhood Rites and Rights, the pervasiveness of widowhood rites within the South African culture was explained. The findings reveal that the patriarchal nature of the South African society and the cultures are applied in such a way that perpetuate and sustain widowhood practices. McFadden, (2001:68) added that widowhood rites and practices can be used to construct women as witches, husband killers and evil dangerous women. Within this category of scholars, some are aware of the impact of culture and social structure on widowhood rites but they are also aware that vengeance and a strong

desire to get even are at the very root of the practice. Rosenblatt and Nkosi (2007:80) and Effah et al (1995) assert widowhood is a time for settling scores, given that widows are mostly suspected of killing their husbands. In the context of HIV, witchcraft accusations have soared (Ashforth, 2001, 2005; Posel, Kahn, & Walker, 2007; Wreford, 2008 Niehaus 2005:91). In most cases, the accused are the "subordinated, impoverished, and vulnerable persons" (Kotze et al 2012: 747).

The third category of scholars argue that widowhood rites are not designed to be harmful to women or to dehumanise them according to this line of thought rites are generally intended for the overall good of the widow. George (2013) uses a sample of the Ikwerre speaking people situated in Northern Nigeria. This writer argues that the widowhood rites that include drinking water that has been used to wash the corpse and the mid – night fetching of water are aimed at preparing the widow for the difficult task of self-reliance. This line of thought does not have many followers because of the human rights violations associated with widowhood rites. Numerous studies (Rosenblatt and Nkosi 2007 Maluleke 2012, Chima 2006) have catalogued the perceived woes of widows and the possible factors that give rise to widowhood rites and the subjugation of women. Studies reveal that the rites are tied to traditional beliefs about death, inheritance, feminine roles, family structure, and family relationship (Maluleke 2012). The traditional beliefs about death feature prominently in the literature in that it comes out that the grief of most widows is not a result of the loss of a spouse; rather it is caused by social exclusion because most of them are accused of witchcraft and killing their husbands (Rosenblatt and Nkosi (2007). These two researchers conducted a survey in 2006 in the Kwazulu Natal province in South Africa and reported that most widows in the Zulu tribe are labelled as witches and as a result, they live as out casts, Davhana – Maselesele (2005) did a similar study among the Vhavenda tribe in Limpopo and the results are the same. The study reveals that the injustices experienced by widows ultimately affect their mental health. These studies lightly touch on the possible connections between widowhood rites and poverty, in that the widows are in most cases denied shelter and food security. Rosenblatt and Nkosi's (2007) study revealed that the process of *"ukuzila" (*a widowhood rite practiced in the black African communities which is observed over a year) leads to social exclusion as the widow is considered dirty during the mourning process and is not allowed to participate in empowerment projects, which ultimately leads to poverty.

Women, Property Rights and Land Rights

The position of women as far as property rights are concerned has been a topic of interest for many writers and theorists. Gendering the land question', to borrow Agarwal's 2003 term, remains a contentious issue among scholarly writers and human rights activists. Enforcement of women's property rights have been considered vital for the socio – economic development of women (Agarwal 2003, Jackson 2003, Classens and Mnisi 2009). In particular, women's land ownership has been a topic of interest in South Africa. Cultural constraints have been identified as some of the obstacles that complicate women's property rights (Agarwal 2003, Jackson 2003 and Claassens and Mnisi 2009). In particular, it has been noted that allocation of land under customary law discriminates against women (Kariuki 2004:16) because it according to customary law, land is allocated to men and women can only access land through their relationships with men (Kariuki 2004, PLAAS/NLC 2003). According to Agarwal cited in Jackson (2003:453), the gender gap in the access of land has been identified as one of the causes of poverty amongst women, particularly rural women and reducing the gap can actually increase opportunities for women. Agarwal as cited in Jackson (2003:453) declares

> *The gender gap in the ownership and control of property is the single most critical contributor to the gender gap in economic wellbeing, social status, and empowerment (Agarwal 1994:1455).*

Legislative measures have been enacted to address the problems like Communal Land Rights Act of 2004 (CLRA) however, land tenure under customary law is a complex concept because it deals with power relations in a society and they have to be acknowledged when enacting bills (Classens and Mnisi 2009). Lastarria-Cornhiel states that land tenure can be defined as societal relations (family structure and its marriage and inheritance systems); these societal relations revolve around how land is used and who uses land (Lastarria-Cornhiel 1997:1317). Overlooking these structures led to the demise of CLRA. According to Thandabantu Nhlapho in an affidavit cited in Classens and Mnisi (2009: 507) CLRA ignores "… the family as an institution and the family based nature of land rights in African systems of customary law. Nhlapho proclaimed that CLRA fails to move away from the colonial and apartheid laws that undermined women's customary entitlements to land, he argues that to a certain extent, CLRA entrenches the perception that land rights belong to the male head of the household. Upon the death of a spouse

or divorce women lose everything because the marital house is often attached to the land." (Kariuki 2004: 57).

On the other hand, there has been an intense debate on whether granting women land rights will transform their lives. Jackson (2003) argues that granting women property rights is not the solution to women's subordinate socio – economic status. Jackson calls for a closer analysis of gender and land questions, Jackson invites us to look beyond land rights for women. The main argument put forward is that land rights do not necessarily have the potential to transform gender relations, places women in a stronger socio – economic position and makes a notable different in women's bargaining power within the home and the community as Agarwal contends. Jackson argues that Agarwal overemphasises the importance of women's land rights and argues that the focus on land as the "magic bullet" that will transform the socio – economic positions of women is mistaken because according to Jackson (2003:462) land relations are social relations and a stronger focus should be placed on social relations and social change. According to Jackson, an analysis of how land is situated within livelihoods, the diversity of subject positions of women in relation to land and gendered property relations within the context of marriage and kinship should be prioritised. Agarwal's advocacy for a specific land rights policy obscures the need to consider land rights as constraint that is intertwined with other social constraints faced by women (Jackson 2003). Giving a blanket policy advice that is not conceptualised in specific places is problematic. On the same note, in an analysis of land reform in the South African context, Cherryl Walker argues that in the South African context, the department of land affairs has ignored the influence of land reform on gender relations. Similar to Jackson, Walker questions the importance of land rights compared to other resources such as education, health care, jobs and reforms of discriminatory laws and customs (Walker 2003: 128). The main argument is that the issue of land rights must be contextualised rather than adopting international orthodox policy recommendations.

Conclusion

So far, the literature review has shown that the South African government has made significant strides towards affirming women's rights by dealing with customary law principles that are discriminatory to women. However, the persistent adherence to unfair cultural practices has obstructed the efforts. Furthermore, religion has also not done much to counter the situation;

actually, it has reinforced the cultural principles that subordinate women. The literature has also highlighted that women's property ownership are weak and they are further jeopardised by patriarchal tendencies in the legislature. The literature has also shown that studies on widowhood, though enlightening have ignored and silenced the voices of those directly affected by the cultural beliefs and practices under discussion.

Chapter Three

Research Methodology

Introduction

In this chapter, a description of how the research was conducted is discussed in detail. The chapter also illustrates the data collection and analysis methods employed in the study. The researcher also examines the potential limitations of the research and reflects on the processes therein throughout the study.

Overall Research Approach

One of the major objectives of the study was to listen to the often marginalised and deprived black South African widows and provide an insider's view on widowhood and inheritance having noted that widows are rarely heard and socially excluded. As mentioned in the previous chapters, this study employed a largely qualitative method that relied mostly on the life history narrative approach, which allowed for close attention to issues of interest in the study. Watson & Watson define a life history method as "[a]ny retrospective account by the individual of his [or her] life in the whole or part, in written or oral form, that has been elicited or prompted by another person (Watson & Watson– Franke 1985:2). The breadth of coverage of life history approach was particularly relevant for my study because it allowed for the collection of rich data, shaped by the respondents' own interpretations of their experiences and the social circumstances that inform their stories (Atkinson 1998, Gluck & Patai 1991). According to Miller (2000) life history narratives are distinguishable from other qualitative approaches because they "allow one to grasp a sense of totality of a life" as well as enabling us to look at the subject as an individual with a past characterised by failures and successes and with a future with dreams, aspirations and fears (Miller 2000:8 – 9). Furthermore, it enables us "to view the intersection of men with the history of their society, thereby enabling us to understand better the choices, contingencies and options open to the individual" (Plummer 1983:69). The holistic aspects of life histories emphasise the uniqueness of individual experiences located within a wider and more complex

network of societal relationships. These among other qualities separate life history narratives from other qualitative approaches (Miller 2000:10).

My conceptualisation of life history is feminist; I join with marginalised women to contribute to a body of knowledge anchored in their subjective experiences. Therefore, I employed the qualitative research method of collecting life histories combined with a feminist approach to the analysis of these narratives to allow for close attention to issues of interest to the study. The strength of the narrative approach lies in understanding the respondent's unique perspective. (Miller 2000: 12). According to Miller (2000:12), the narrative approach allows the interviewer and the interviewee to work together to construct and compose the participants' stories. According to Roets and Goedgeluck (1999) feminist life history methods have a political ambition to "… negotiate openness, expose hegemonic power arrangements and inherent silences, highlight secrets of oppression and resistance, and revalue knowledge that risks being disqualified in current social sciences" (Roets and Goedgeluck 1999: 85). This methodology is grounded in the black feminist epistemology, which specifies that black women's lives are shaped by the socio – cultural histories and their experiences shaped by the unique intersection of race, gender, and social class (Collins 2000). The advantage of combining life history methods and feminist narrative analysis is that it provides a vehicle to reflect the women's standpoints; the study privileges the narrators and the focus is on understanding life events and experiences through the lens of the narrator. The focus of the research was to gain a deeper understanding of these women's stories; to capture a living picture of "invisible, silent women", how the subject viewed his own life, for example what it is like to be a widow, how society looked upon the subject, and what this meant as a consequence for that particular person.

A life history research approach shares common features with other qualitative approaches that distinguish it from the quantitative approach. A qualitative approach allows a researcher to gain an in-depth understanding into a particular group of individuals, in this case, black widows, and to understand their unique, lived experience. I employed the qualitative research method of collecting life histories combined with a feminist approach to the analysis of these narratives because qualitative research is more appropriate for describing and understanding details of phenomena under investigation. It also privileges the lived experience of the subject and allows the researcher to capture the interior and exterior experiences, stories and voices, perceptions and interpretations of those perceptions (Babbie & Mouton 2001).

Babbie and Mouton (2001:270) further explain that qualitative research prioritises the insider perspective of a phenomenon under investigation. My aim was not to reveal the statistics of disinherited women in South Africa and deduce how pervasive the practice is from the statistics. My aim was to develop "a detailed understanding of individual views, attitude, and behaviour" (Moore 2000:121). If my intention was to get statistics on widowhood and inheritance, I would have employed a quantitative study because at the heart of quantitative methodology lies statistical analysis, and quantitative research is pluralistic and deductive (Bailey, K, D 1988). According to Corbin and Strauss & (1990) Qualitative research endeavours to reveal the nature of a person's experiences. Furthermore, this method can give the complex details that are difficult to put across in a quantitative approach. Corbin and Strauss (1990) state that qualitative research "can refer to research about persons' lives, stories, behaviour, and interactional relationships" (Corbin and Strauss 1990:17).

This research aimed to access rich data on widows by reporting on and analysing the "spontaneous and meaningful ways that views were actually expressed" (Corbin and Strauss, 1990: 21). It is necessary to investigate situations where little is known about what is there and what is going on, as is the case with widowhood. Therefore, because the research was focused on interpreting, analysing and comprehending rather than explaining and predicting (Denzin and Lincoln (1994) the lived experiences of the widows**.** The study was located within a qualitative paradigm, which focuses on the way people interpret and make sense of their experiences in relation to the world they live in (Henriques, Hollway, Urwin, Venn & Walkerdine 1984).

Geographic Scope

I conducted fieldwork over a period of two months from the 28th of July to 24th of September 2014 in different township communities in Ebony Park and its surroundings and Tembisa areas. Tembisa Township was established in 1957 as part of the apartheid government's policy to set aside different pieces of land for black and white people. It resettled black people from white only designated areas like Edenvale, Midrand and Germiston to Tembisa, which became an "independent homeland" (Marks 2001:20). Tembisa is the largest township in Gauteng following Soweto. It is 42.80 km^2 and has a population of 463,109, with 98.9% of the people being black (Statistics South Africa, 2011). In the same vein, Ebony Park is a low-income township created as part of the post-apartheid metropolitan municipality of Johannesburg in 2000. These two areas

have been characterised by a concentration of poverty as reflected in high levels of unemployment, low annual household incomes, and the increase in informal settlements (Seekings 1990: 160).

Accessing and Selection of Participants

The sampling procedure used to access participants for the study involved both convenience and non-probability sampling approaches (snowball). Convenience sampling involved recruiting widows who volunteered to take part in the study and the snowball technique was used to recruit potential respondents, members of the community-identified respondents, and potential respondents recruited future subjects from among their associates. The non-probability sampling of this nature is acceptable because it "allows for the sampling of natural interactional units". (Coleman 1958 cited in Biernacki and Waldorf 1981:141). In this study, I selected 10 widows, these women had to be black South African women who lost their husbands through death and had not remarried. The choice was based on the fact that black women's experiences of African culture, custom and tradition is unique to them. The point was to interview women with similar circumstances and experiences. In light of the above, the participants consisted of 10 women who identified themselves as members of the following ethnicities, 4 were Zulu women, 1 Xhosa, 2 Pedi, 2 Swati and 1 Shangaan. They were important differences among the participants, even though it was not planned the differences in age and level of education came as a bonus for my study because it added an advantage to the diversity and complexity of their experiences in relation to culture and the law.

Methods of Gathering Data

The study engaged a combination of qualitative methods involving different approaches to understand the social relations to which widows are exposed in their daily and personal lives. These included, participant observation, in-depth interviews (through which life history narratives were obtained), supplemented by further reading of related documents on the law, newspaper articles and policy documents.

To gather the narratives and data, the study utilised narrative-based in-depth semi-structured interviews held with each of the ten participants. A semi structured qualitative research depends

on “a certain set of questions” to “guide conversation” (Kvale 1983:174). Moreover, I used the in-depth interviews to deepen my understanding on of the participants’ individual experiences. The questions were set around my particular topic and not specifically around a person (Kvale, 1983). In line with the above, a semi structured narrative interview format was used for interviewing participants, and a semi-structured interview schedule was used to facilitate conversation on the topic under investigation. The aim was to elicit a less imposed and therefore more valid account of their widowhood experiences from their own perspective (Seidman 2006). I further engaged in participant observation. According to Rubin and Rubin (2005:2), when conducting participant observation, “researchers watch their setting from the side lines or join the activities of those they are studying and take notes on what they see”. In this study, some of the data was collected through taking notes and documenting observed behaviour or significant responses that were considered important for enriching the findings of the study. For example, notes were taken on significant emotional responses that were observed, on my perceptions about each participant, as well as on contextual information pertaining to personal demographics of each participant. However, while observations were gathered, the primary means of gathering data for the study was through interviews, field notes were used to compliment and contextualise data gathered through interviews. Findings in this study relied more on data that was gathered through interviews than what was gathered through participant observation.

My interviews with the widows differed with the individuals - some were introverts, and some were extroverts and did not have a problem with narrating everything about their lives. Generally, I started by posing broad questions requesting respondents to describe their lives and themselves, and then followed up with questions that directed the telling of their histories towards inheritance issues after the death of their spouses. With introverted individuals, there were a lot of follow up questions that had been formulated beforehand and I adjusted these to suit the particular situation and the individual I was talking to. The interviews were conducted in a setting that encouraged and stimulated them to narrate and reconstruct their experiences freely and subjectively. The narrative interviews traced their lives from childhood, their family relations, and relations with their in-laws, significant life events like weddings, lobola payment, birth of their children to the death of their spouses and the happenings after that.

In addition, I also collected official documents such as government policies, newspaper articles and other material. The bulk of the information gathered from these materials provided

background information on the law, culture, tradition, customs as on popular discourses on widows and the condition of widowhood.

Nine of those are recorded and transcribed, one interview is unrecorded owing to the reluctance and unwillingness of the widow to be voice recorded, however, notes were taken and a few quotations from her are available. The interviews ranged from 1hr to 3 and a half hours and most of them were conducted in Zulu and a few in a mixture of Zulu and English. As an Ndebele speaker, I can converse very well in Zulu, which was an added advantage to me. Moreover, mixing Zulu and English was an advantage because some of the participants felt that some English words and sentences better capture what they are conveying. The informal conversations I had with other women in the course of my fieldwork were captured in the form of field notes.

Data Analysis

Narrative Analysis

"The purpose analysis of the narrated life story is the reconstruction of the present meanings of experiences… within the context of interaction with a listener" (Rosenthal and Bar-On 1993:61 – 63). Analysis was conducted of the transcribed interviews and my field notes. In using narrative analysis, the researcher was able to identify, analyse and report the stories that were constructed around widowhood during the interview process. Narrative analysis is defined by Cortazzi 1993:2 as an act of "opening a window on the mind or, if we are analysing narratives of a specific group of tellers, as opening a window on their culture". The object of investigation in narrative analysis is the story itself (Riessman 2002:218). From this perspective, the widows' narratives of their experiences were the primary data, allowing me to present the widows' subjective evaluation of their experiences, thereby providing in-depth information on their social experiences. This was advantageous, as other methods cannot provide the micro detailed experiences of individuals living within macro historical, cultural and political framework.

The Process of Analysis

The transcribed narratives and the analysis allowed for the construction of summaries of narratives to offer the personal stories that make the bulk of the next chapter. The personal narratives allowed a spectrum of experiences to emerge; they were an account of both victories and failures. As a result, the results were not victory narratives that merely articulated triumphs

over adversities, or merely stories of woe and failure. Instead a complicated set of stories emerged that were unexpected, changing the nature of the research. Instead of cataloguing the adversities brought by customary law as far as inheritance is concerned, the study diverted to focus as well on the different positions of agency that the women take to challenge the patriarchal system as well as its customary laws and what makes the other women to remain silent and not fight the system. These techniques added to the strength of my research because they have the ability to transform gaps and misunderstandings in the mainstream research created by the absence of the standpoints of marginalised people, such as African widowed women. This shows the importance of studying the lives of women from the inside; it adds value and depth to our findings.

I selected this approach because mine was a specific attempt to gather social and cultural collective experiences that frequently emerged through the narratives of all women, in an attempt to grasp a fuller understanding of the collective aspects of their lives (Guba & Lincoln, 1994). Thematic analysis allowed for a conceptual understanding of the issues that affected these women as a group, it gave insight into common features and variations, experiences and challenges in all the women's lives, the data provided examples of respondents' standpoints and political dimensions of their life stories. Analysing data in this way allowed for a deep understanding of the content of the data.

Reflecting on a Difficult Field

There were difficulties in carrying out this research study. Being a woman, I was aware that the research space was complex because of gender dynamics. I was confronted with a taste of the very problems that I was researching; male dominance was one of the obstacles in this study. Patriarchy characterised the field in which I had to go into in order to conduct my research. Initially I had proposed that I would conduct in-depth interviews with officials at the (CGE) and the South African Human Rights Commission (SAHRC) to get their views on customary law and on the effectiveness of the legislation enacted to protect the rights of women; however, that turned out to be an impossible mission. The people who occupied positions of influence in these organisations were male. I had to seek permission from them to speak to people within these organisations. Since South Africa is still enveloped by a patriarchal mind-set, the male official at

CGE made advances of a sexually inappropriate nature, which I refused, and I suspect that this could be the reason for his lack of assistance. Mindful of my gender, I maintained sensitivity throughout the period of interaction, especially with men who would sometimes be inquisitive about why I want to interview their mothers, grandmothers and partners. The richest source of data I had envisaged for this study would come from the widows themselves because depictions of widows in literature and mainstream research lack grounding in their lived experiences. As a result, there is generally an absence of the perspectives of this marginalised group. However, gaining entry into the field and gaining their trust proved to be harder than I had envisaged.

Issues of culture and tradition created practical problems in carrying out this study. The norm that widows cannot be seen befriending people aggravated my access problems because some people would tell me that they are still mourning and therefore cannot talk to me and I had to respect that. My fear was often that I would be accused of not respecting other people's traditions. After a few encounters with such barriers, I would be more sensitive when approaching a potential respondent and explain how the study does not aim to disrespect anyone but to gain knowledge out of their experiences.

Furthermore, it was difficult to access the young widows because most of the young widowed women I approached seemed uncomfortable with the idea that they are referred to as widows or perceived as widows (much the same as Manyedi et al (2003) observe when they argue that the stigma associated with widowhood subjects widows to feelings of isolation). The common belief that widows are infested with bad luck and inflict possible harm to other people give rise to experiences of imprisonment (Manyedi et al 2003: 78) which explains why widows would shy away from being labelled as widows, partly because they view it as a hindrance from moving on with their lives. For example, I got the following angry response from a young woman who I had approached to be part of this study after being told that she had lost her husband a few years ago:

> "I do not fit into that criteria (being titled a widow), try someone else! [Field notes, 13 August 2014].

While her response disappointed me because I had used what I considered to be a more acceptable phrase than widows, like "women who lost their husbands", exchanges such as these opened me up to the severity of widowhood related stigma, the feelings of the people in positions of widowhood and the efforts they went to shy away from it.

In addition to this, due to the sensitivity of the study, having someone from the Township act, as my interlocutor was a problem; one potential respondent (young widowed woman) accused one of the local women assisting me of wanting to use me to pry into her private life. I sensed that the younger widows resented the older widows in these communities because the older women thought that having a boyfriend signals loose morals and disrespect for the dead and were acting as matriarchs to the young widows. Levinson (2008) whose study examined young women's psychological and social adjustment to widowhood on widowed young women in the United States of America notes that those women between the ages of 35 and 54 experience adjustment to widowhood differently from older widows. For younger widows, widowhood is "a process of adjustment and transition to life, not merely a state of mourning" (Levinson 2008: 281). Young women normally want to re-enter the world unlike the older widows who do not see themselves as creating new lives but rather, in most cases, accommodate the loss of their spouses and make themselves comfortable for the rest of their lives (Levinson ibid: 288). This explains the clash between these two groups, which made it difficult for me to access the younger widows through the older widows. This perception clearly came out in my interview with Thokozile:

> People respect me. People look at how you conduct yourself after the death of your husband. If you do not respect yourself then the community will not respect you…In the community widows come to me for advice. Most of them finish their husband's money on boyfriends. I always tell them to give their time and love to the children than to give it to men. If you give your love to boyfriends then your children will suffer. You will leave your home and stay with boyfriends and your children will suffer. I love myself and the man who loved me I know him. I will not go around looking for love. [Interview Thokozile 5 September 2014].

This will be discussed further and expanded on in *Chapter 4*.

Some of the challenges I encountered were related to the general distrust with which researchers are treated. There were strongly held views that researchers make a lot of money from conducting research among poor black people. One day I approached one woman, after explaining to her my research project and giving her the information sheet she retorted:

> " You people (researchers) come here and ask us questions and promise to help us but you never come back to help us or to share with us the money that you get.[Field notes, 04 September, 2014].

After fruitless efforts to try to convince her that the research has no monetary benefits attached to it and that it is research specifically done as part of my Masters studies, she remained convinced that I wanted to benefit financially from it. I then thanked her for her time and left.

I was sometimes mistaken for a government agent or a fraudster. Some of the people I talked to expressed fears that I was sent by the government to repossess their houses from them. I recall an incident whereby in-laws had evicted one of my potential respondents from her home a few days before our scheduled appointment. Rumour quickly spread that the in-laws were working with 'people from the government' whom I assumed were lawyers. Furthermore, my position as a foreigner intensified the whole situation.

One of my respondents and gatekeepers suspected that I was a foreign fraudster with the sole purpose of stealing old women's pension money. A few weeks after interviewing her, she asked me to "remove our names from your book because we don't trust you". I explained to her that her participation was voluntary and her story will not be used in the study. After this encounter, my entry to other widows in the community became a daunting task because word had spread that there is a young woman posing as a researcher who wanted to get widows' personal details and use them for defrauding the widows. It became a problem because they knew where I stayed and I had fears that they would attack me. People's sense of fear and reluctance to talk to a Zimbabwean stranger was understandable. Undoubtedly, Xenophobia is a serious problem in South Africa, especially among the black population and I was no exception. In the Townships, foreigners are treated as a homogenous category of "amakwerekwere[14]". Due to the xenophobic discourse that prevails in the Townships, foreigners, whether documented or undocumented are treated with hostility. Though unsettling, this fieldwork hurdle did not affect my study because some apart from the few that were xenophobic, some widows were interested in the project and would volunteer to be interviewed and some were referred to me by friends their whom I had interviewed and had no problems with my nationality.

In addition, personal, intimate deterrents created barriers against talking to the respondents. Some respondents expressed fear that their voices would be posted on social media, potentially creating serious problems with their in-laws. One respondent vehemently refused to be recorded

[14] This is a colloquialism for (predominantly) black foreigners, especially illegal immigrants.

and did not trust my "big cell phone" because her children have shown her "how big cell phones work". I then explained to her that her participation is voluntary and she can choose not to be recorded. Instead, I then asked to take notes, to which she agreed.

My age sometimes would act as a deterring factor as the older women felt I was too young to understand widowhood, therefore opening up to me at the beginning of the interview was restricted. However, I noted that as soon as they started talking about their experiences that barrier seemed to fade away because some women felt that talking about their experiences was therapeutic. Quite touching for me was Elizabeth's assertion:

> It is comforting to know that there are people out there who care. As I talk to you, I feel you are counselling me. [Interview Elizabeth, 15 August 2014).

In this very limited space of the interview, it was clear that these women felt support and trust in me and for some of them it was the first time telling their stories in this manner and my own approach of listening without judgement encouraged the women to open up and freely narrate their stories.

Some women even asked me if I was married. The fact that I was married would set them at ease especially when talking about in-laws. I was regularly met with statements such as "you know how in-laws behave" and because they felt I am familiar with their experiences, they were able to open up and narrate their stories. In some cases, I would share my story as well, in the belief that I would gain their trust. It worked, even though I was not seen as fully an insider in the experiences because it was my grandmother and not I who had lost a husband and had those experiences. Amidst those hindrances, I managed to gain trust of the ten women who are the heart of this study.

The challenges that I faced during fieldwork, though frustrating at times, alerted me to the pervasiveness of patriarchy. The fact that women sometimes are the custodians of patriarchy and enforce customs that are discriminatory to other women was the reality that confronted me during the course of my fieldwork. I was also alerted to the concealed hardships (like the fears, shame and embarrassment) that were part of the widows' everyday lives, which they had to endure. The challenges also spoke of the habitually isolated widows' desire to live their lives away from the glare of researchers that made their lives visible, especially taking into

consideration the stigma associated with widowhood. These reflections inspired me to take the approach that I take in this study, which is to explore the lived experiences of widows focusing on the invisible tyranny of patriarchy as far as inheritance, and other experiences are concerned.

Ethical Considerations

Life history interviewing "is invasive, old hurts and traumas may be reopened" (Miller 2000:104). Therefore, this study undertook to observe major ethical protocols. The protection of participants' welfare was of paramount importance in this study. Given the socio – economic marginalisation of the participants and the traumatic experiences of losing a loved one and the experiences after that, retelling their stories included recalling of traumatic experiences during the course of the interviews. I ensured confidentiality and anonymity, and voluntariness of respondents (Babbie & Mouton 2001: 523). Confidentiality was explained in the letter of consent. To guard against identifying revealing information about the participants, pseudonyms are used throughout the research report. During the course of my field work I met with grieving widows, poor widows who have been stripped of their property and homes, people who are emotionally distressed, people who are angry at their in-laws for the grief they went through as a result of greed from their in-laws. I had to be sensitive when dealing with such people and measures were taken to ensure that no harm was inflicted on the subject. The women in this study all gave voluntary consent before engaging in this research. While widows independently chose to participate in the research process, measures were taken not to expose them to further abuse by their in-laws and communities, for those who were afraid to be seen talking to a stranger, alternative meeting points were arranged and all interviews were conducted in a location that allowed for privacy during the interview. Furthermore, participants were provided with the researcher and the researcher's supervisor's contact details in case they required feedback on the study.

I cannot divorce this study entirely from the difficulties and hardships I witnessed, which speak to the broader and pervasive realities of patriarchy, culture and customs. I was throughout my fieldwork exposed to these realities and indirectly experienced the realities that I was researching. The nature of this study was personal and reflexive. Therefore, I had to take cognizance of the ways in which my biases and subjectivity influence the research process (Liamputtong 2007). I had to divorce myself from the experiences of my particular respondents

and create distance as far as emotional attachment is concerned. I was aware that being a woman who has experienced the problems of customary law, patriarchy and culture on and off the field would weigh heavily on my study. In addition, differences in culture may have had an impact on the types of answers, which were given. I was also aware of the my personal opinions and understanding of matters being explored in the study, therefore, I aimed at all times not to allow these opinions to revealed to the participants because this may have indirectly impacted on the answers or information that would be provided.

When the participants raised various attributes about me in the interviews, I tried to reflect on what this may mean for the participant when conducting the analysis and attempted to consider this in an undefended and unbiased manner. For example, when some of the widows spoke about how I was too young to understand their experiences, I reflected on how difficult it must have been for these women to share their stories with me considering that I was younger than them and they could not connect the way they would normally do with a person their own age. Another example was that some of the widows felt that it was better speaking to someone who really understood what they were experiencing because I was married. I reflected to myself that in reality I could not truly understand their experience but may have presented sufficient empathy in order for the widows to feel understood. Often most participants reflected on that they felt better talking to someone who understood their experiences. I was mindful of that, I am not a widow and I do not share cultural histories with them, as a result, I cannot fully understand their experiences. However, I tried to be as sympathetic as possible. There were instances where I would be asked for advice because of my position as a student at Wits University. In such cases, I would explain that I was there to listen to their stories and they knew better than I did as far as their experiences were concerned. I could refer them to the relevant authorities for other problems related to their experiences.

CHAPTER FOUR

Experiences of Widowhood and Women's Subordination: Grappling with Culture, Custom, Tradition and Patriarchy

Introduction

In this research project, I was interested in introducing the participants to the reader in a way that made their voices audible and allowed their perspectives to be heard. Since the project aimed at giving the previously silenced and invisible widows a voice, their stories and voices had to be presented in a manner that they are seen and heard. The study reflects dynamic voices from women from different tribal groups. There were two strands constantly woven through these women's self-narratives: the culturally designed experiences of widowhood, and the challenges they encountered in accessing justice. The women who participated in this study highlighted the constant challenges of being a widow in South Africa, dehumanizing widowhood practices perpetrated by patriarchal society and their efforts to counter the authority of the patriarchal system. Their narratives echoed among other things that contrary to popular belief, they are not passive victims of widowhood practices and patriarchal authority; they take different positions by questioning, resisting, and challenging patriarchal authority. The study particularly focuses on unravelling what makes some women resist and talk and what silences other women. The main purpose of this chapter is to offer a nuanced understanding of the complexities of widowhood as perceived by the widows themselves. What are the predicaments they face as result of the phenomenon of widowhood? Drawing on the embodied accounts of different individuals, I examine how widowhood practices contribute to the infringement of their inheritance rights as well as their self-representations. What are the meanings they attach to widowhood? The chapter will enable us to grasp how widows understand, talk about and experience widowhood. In addition, we examine the precise social, political and economic processes that shape and constitute widowhood. How do the different individuals live through the stressful experience of widowhood? I therefore question how the changing socio – economic and political environment enables or hinders the widows from voicing their concerns and claiming their inheritance rights.

The chapter, drawing mainly from their life history narratives, presents accounts of the 10 widows that took part in this study, looks closely at the experiences of these women from

childhood to widowhood and significant events in their lives, specifically the deaths of their spouses and the happenings after that. This chapter will also focus on the cultural and legal adversities these individuals encounter in trying to claim their inheritance rights. While these attentions are seemingly disparate, they ought to be seen as complimentary as they are intricately intertwined. Taken together, these segments analyse the interlocking political, economic and social processes that affect women – widows in South Africa. By examining the widows' accounts, I cast attention on the agency of the widows in this study and what is at stake for them.

While the preceding chapters focused on an expansive body of literature that talks about widowhood and practices associated with widowhood, the socio – political factors that shape widowhood and give rise to the subjugation of women generally, the legal positions of women in South Africa. Here and throughout the study, I argue that the voices of the women experiencing the condition of being widowed has been largely absent from the discourse, hence it is the purpose of this study to give widows a voice. The widows' agency to be heard was best encapsulated, for me, in the response of one of the women I interviewed:

Thatshisiwe: Thatshisiwe: "ngokubona kwakho MamBhele, izimphahla kwakumele zabelwane kanjani?"
[In your view, Nomathemba, how do you think property should have been appropriated?]

Nomathemba[15]: Uyabona ke mtanami, ndiyavuya kuba undibuza lombuzo.
[You see my child; I love the fact that you are asking me that question.]

Her tone and her response indicated excitement that at least someone wants to know what she thinks. In everything that was going on: the scramble for the house and other properties there were assumptions and rules on how the property should be appropriated, her in-laws had their own plans, the co-wife had other plans, the law stipulates other things but no one has ever asked her how she feels things should be done. Her response spoke of and emphasised the passion to be heard.

In this chapter, I argue that despite the continued tyranny of patriarchy, the widows in this study have used the resources at their disposal to resist and challenge patriarchy, shaking its power

[15] Nomathemba's story will be expanded on later in the chapter.

over these women. I further argue that contrary to the mainstream discourses around women's rights in South Africa that assert that women's rights are adequately protected, there are obstacles that hinder the full realisation of women's inheritance rights. These include the stubborn persistence of patriarchy, lack of proper implementation of the laws, ignorance of the laws and that the laws are not accepted and understood by many poor people. Later on in this chapter, I argue that inheritance matters among black Africans in this study are determined culturally even though there are laws concerning asset appropriation. Women are discriminated against and the belief that property belongs to the male head of the household has seen women lose their property that they worked hard for after the death of a spouse. In short, who acquired the property is not a matter to be considered customarily. Lastly, I argue that Christianity complements culture and patriarchy; instead of offering refuge to the widows, it silences and oppresses them.

Challenging Patriarchal Customs

An expansive body of literature depicts African widows as passive victims of these customary practices, the general idea from the literature is that these women accept most of these cultural practices and are therefore according to Sossou (2002), "silent victims". However, the present study's findings contradict such perceptions; some women in this study vehemently refuse to be victims and as a result are seen as being at loggerheads with the patriarchal customary system. These include Mpho, Iris and Thokozile whose experiences I recount below as an insight into the different mechanisms some women employ to resist, redefine and change the oppressive cultural systems as well as the profound hardships that they encounter as individuals.

One of the women in this study who resisted the patriarchal custom that a widow cannot inherit her late husband's property and that her brother in-law is the sole executor of the property, is Mpho. The 35-year-old woman of Swati origin was born and bred in Barberton in Mpumalanga. She describes her early life as marred by poverty and despair. She could not get proper education due to financial constraints. She fell pregnant at the age of 16 and could not go back to school after she had her daughter. She later had two more children after she moved to Johannesburg to join her husband. Hers is a case of cohabitation at first before he paid lobola for her. Her husband had "a lot of mistresses and children born outside marriage". Even though they were traditionally

married through the payment of lobola, they later went to the Department of Home Affairs without the knowledge of the extended family to register the marriage. Mpho stays in a fully furnished three bedroomed house with her three children today.

During the course of their marriage, Mpho did not work, partly because of her limited education, and due to the fact that her husband was making enough money to support her and her children. However, this does not mean that she did not contribute to the acquisition of their wealth. She was a housewife, working in the home, taking care of, providing undivided attention to their children, and supporting her husband. Mpho regrets not working during the time her husband was alive:

> I have never worked. I was a housewife. I regret it now. I wish I had my own money. Now life is hard, I do not want to lie. How am I going to pay school fees? [Interview Mpho, 17 September 2014].

Mpho's husband died in July 2014, and at the time of the interview two months had lapsed since the death of her husband. It was clear that the memory is still fresh, she sombrely narrates the days after his passing:

> It was difficult, shame. There was a lot tension between my family and his family. His family was saying I should hand over the house and the cars. Actually, they were saying I should sell the house and the cars so that we share everything. According to them, no one was supposed to win. When I was seated on that mattress[16], they accused me of killing my husband, they said I know exactly what killed him and I killed him because I wanted to benefit from his death and take all his wealth, therefore everything was supposed to be sold so that I do not benefit from killing him. They then said I was not married, I told them that we were married; I have the marriage certificate so they cannot sell or distribute those things without my consent. That angered my in-laws, his brother lost it, and he slapped me very hard across the face. It was difficult for me. My brothers and uncles were angry and they started fighting with his family. There was a lot of chaos. They told me that I could not say I am married, there was no ceremony to accept me into the family therefore, they do not recognize the marriage, and I am just like all those other women he had children. What surprised me is that lobola was paid but we did not have a white wedding. My husband and I went to home affairs and registered the marriage. So

[16] The mourning custom of "a sitting" is observed in many black South African communities. During the time preceding the funeral, the beds are removed from the deceased's room and the bereaved women sit on the floor or on a mat or mattress covering herself with a cloth or a blanket and sometimes facing the wall. This custom is discussed later on in this chapter.

> they said that it was my affair, the family was not involved. His father had many wives and children, so he had many brothers. His eldest brother is cruel. They said that since he had children out of wedlock those children and their mothers deserved to get something hence I had to sell those things. Worse, after the funeral they told me to go back to my maternal home because I am not their *makoti* (colloquial for daughter in-law). [Interview Mpho, 17 September 2014].

Part of the furniture that was a site of battle included two "fully furnished" houses, one in Tembisa where she was staying at the time of the interview and a bigger house in their rural home in Mpumalanga and two cars. Mpho described her husband as a "hard worker". Mpho suspects that even though she did not physically see the will, her late husband wrote a will and his brothers hid it. Mpho's point of distress is the fact that her brother in-law instructed her to hand over the houses and the two cars that her husband had left behind. Mpho intensely refused to hand over the assets citing that she has a marriage certificate and she knows that the law[17] protects her. For Mpho, the custom that the women do not inherit and have no rights over their husband's property was unfair and had to be resisted. She maintained that the "marriage certificate" protected her inheritance rights.

> I told them that we were married; I have the marriage certificate so they cannot sell those things without my consent. [Interview Mpho, 17 September 2014].

Such utterances were variably common to the conversations I had with widows who were married in civil marriages, which indexed to me the level of trust these women placed in common law. Mpho's belief that this certificate was the answer to her problems of inheritance equipped her with authority, which she used to challenge her in-laws, retain her property, and resist eviction from her marital home. Even though her in-laws were adamant that they had the power to override the marriage because ceremonies were not done, and the physical force they exercised she did not seem perturbed by that:

> I cannot share with them or his girlfriends. If I were to share, I would rather share with his children. The problem is that those children are still too young and their parents are bloodsuckers who just want money. They were not supposed to force me; if they did not hit me maybe, I would have considered giving them something. [Interview Mpho, 17 September 2014].

Mpho was willing to go to extremes to protect her inheritance rights:

[17] Reference to law in the widows' narratives denotes common law.

> …I refused to sell the things but his brothers have teamed up with his other girlfriends and they want me to sell and share with every one of them. I will not sell anything they would rather kill me. [Interview Mpho 17 September 2014].

Apart from the marriage certificate, Mpho had a supportive family evidenced by the fight between her in-laws and her brothers and uncles. She pointed out that her mother and friends were her sources of strength because:

> My mother assists me and comforts me… She suggested that I should look for a job and start afresh. My friends also comfort me and at times encouraged me to challenge the issue. Then I always explain to them how complicated the issue is. [Interview Mpho, 17 September 2014]

It is clear from Mpho's account that the quality of one's family relations is an important factor in one's ability to defend their rights. Despite the challenges that Mpho was going through, she relied on the support from her uncles, mother and friends in order to resist the pressures of her husband's relatives. In addition, her unwavering belief that the marriage certificate would redeem her enabled her to refuse to hand over the rights to administer her late husband's estate to her brother in law, refuting eviction orders, and disregarding calls to sell the assets. Mpho's account resonates with some of the women in this study and in particular, Iris's account that I detail below.

Iris is also a widow who inherited the matrimonial home, property, and assets even though her husband died intestate. Iris aged 42 years was born of a Malawian father and a South African Swati mother; she was born and bred in Tembisa Township, a large Township situated on the East Rand, in Gauteng province. Even though she was almost the same age as Mpho when her husband died, she had different experiences and maneuvered the challenges using different resources. She lives with her two children in a two bedroomed house, paved and equipped with a double garage in Ebony Park in Midrand district, not far from Tembisa. She drives a BMW model car. Iris married her Xhosa husband in a civil marriage like Mpho, which is administered under common law.

Iris attained her education at various schools around Gauteng. After matriculating, she proceeded to university to study Bachelor of Business Administration. She is a holder of an Honours degree in Business Administration. Her husband did not have a well-paying permanent job; he used to move from one job to another, sometimes as a menial worker. On the other hand, Iris works with

a real estate investor and developer company. During their marriage, they purchased the house at Ebony Park in Midrand and furnished the house. They even extended the house and installed a double garage.

Iris's husband died in 2006, when she was 34 years of age. Unlike Mpho, Iris was slightly detached from the trauma of the loss of her husband. Iris told her story with much less emotion, probably owing to the fact that it has been long since he died, she started by explaining that when her husband died she had been expecting it and had accepted that he was going to die, a sentiment that is not normally accepted within black communities:

> My husband died in 2006. He was sick. It was not easy, more especially to the children. It was not easy you know, when a partner dies, it wasn't easy. There was a time when I would go and see him after leaving the hospital, I would come and say if he wakes up alive tomorrow, I would say God is great and I was expecting that anything can happen but because God is great at that time he didn't die, God kept him alive for a short while. Nevertheless, I could see that what is remaining is that he is dying. As a result, it was not that difficult for me when he died because I could tell that he was dying. It is not as if it was a surprise, you see if a strong person dies I mean yah yah it is different from seeing him suffer, you see and you try this and that you see. Then you come to a point of accepting, it becomes easier. It is painful at that time because as people we do not get used to death. It is not easy but I quickly accepted because I could see that he is suffering. [Interview Iris, 16 September 2014].

Iris had sour relations with her in-laws, I tried probing who exactly was problematic and she indicated that all of them were cruel to her. Her refusal to mention them might indicate that she did not want to remember them and the trauma they subjected her to and this can be viewed as another way of refusing patriarchal authority. At the time of the interview, she had cut all ties with them:

> You know I experienced problems from my husband's side of the family. You know when a man dies, a woman is to be blamed, and yes, a woman is to be blamed. After that, they won't like you like for real. I was blamed for the passing away of their child you see. I don't know how I can put it across, you know when you are a woman and married and your husband dies, the woman is to be blamed, they say you are the one who killed him forgetting that maybe they saw him when he was sick you see?. Despite the fact that they know what killed him but a woman is to be blamed, despite the fact that they are very much aware, but a woman is always to be blamed. Therefore, that is how things are. Some of us are used to them. I did not feel sorry because I knew that I was innocent yes, it was painful to be accused, but I did not want to entertain it because I knew that I am

> innocent. I knew that time exactly what killed my husband because he was sick, you understand. Therefore, I did not want to entertain it. They did not even help me financially. I buried my husband myself. They came and conducted themselves as visitors would. I did not mind them; I told myself that I am *gonna* (slang for going to) bury my husband decently…I never was close to them before his death so after it got worse…. To begin with, they never contributed anything and they did not want to touch anything. Now they regret why they did that to me, they realise that I am a good person, now it is too late. [Interview Iris, 16 September 2014].

What is strikingly different about Iris from the other widows in this story who were accused of killing their husbands was that she "did not want to entertain it" and "did not feel sorry". She simply ignored this norm. Iris was willing to take on established authorities and challenge the dominance of men and their female allies both in the family and in society.

Iris like other widows in this story was part of a family that was governed to a certain extent by customary law. She was expected to adhere to some traditional customs as a woman and as a widow. Iris similar to Mpho found some customs offending and grossly unfair, and unlike Mpho who only resisted tradition, Iris challenged and ignored tradition. Iris had worked hard to acquire the property that she had, furthermore, her husband "did not even have a good job", and this meant that she contributed more than her husband did in the acquisition of property:

> They should know that I work and this is my money. Their son had no car even a driver's license he could not even drive. [Interview Iris, 16 September 2014].

As per customary law, Iris was not supposed to inherit from her husband; this meant that Iris and her children would be left destitute. Observing this belief, Iris's in-laws suggested that they want to share the assets amongst themselves. This effort was stillborn as Iris heatedly rejected this custom:

> You know I was very stubborn on the days after his passing. I saw that if I were not stubborn they would crawl all over me. People told me to keep quiet; I would speak my heart out when I was sitting on that mattress. To begin with, they never contributed anything and they did not want to touch anything. [Interview Iris 16 September 2014].

In the above quotation, Iris demonstrates her defying customs. To begin with, in a patriarchal setting, daughters, daughters' in-law and wives are expected to respect their elders and in-laws, stubbornness is a trait that is not expected from women. Iris proudly said that she "was stubborn"; she employs this characteristic to resist her in-laws authority over her. Furthermore, a

widow must not speak out during the funeral; widows must be silent as a sign of mourning. Iris does not observe this custom, she simply ignores it, and instead, she "speaks her heart out".

Furthermore, the custom of "a sitting" commands that the widow should sit on a mat or mattress, facing the wall and covering herself with a blanket. She cannot leave except to go to the bathroom and should not even stand (Rosenblatt and Nkosi, 2007:78). Iris disobeys this custom by talking and arguing during the sitting, clearly it was forbidden as some people kept telling her to keep quiet. Previous studies suggest that some widows in urban South Africa do not agree with this custom and question why it is done in the first place. A widow in a study of mourning practices conducted by Kotze et al in 2012 captures this brilliantly:

> They say put down your mattress—you are expected to face the wall - . . . what is the meaning of this? . . . Why am I supposed to do this? How am I going to see people coming to comfort me whilst I am facing the wall? I always ask questions about things that don't make sense . . . but I need to understand why. They said that this is the way it has been done before . . . because our houses were so small . . . there was a small space for people to comfort you, they won't fit in the bedroom . . . but I said why should it be done in the bedroom anyway? Why can't we sit in the lounge where there is a space? . . . you share with these people. They said it was because of the space. What I have realised is that some of the people are getting out of that. There is a woman in our street in Orlando . . . her two children passed away and she never sat on the mattress. She was in her lounge and then people who were coming to her, they were coming to comfort her in her own lounge, and they kept on saying: ''She will see, after two months one of her family members will die.'' No one died after that. (Kotze et al 2012: 754).

This excerpt cogently reflects the widow's own resistance as well as another woman's actions of resistance and of changing the practice despite the threats of imminent death if one defies customs. In this study, however, the widows are forced to change the customs because of the counter – resistance they experience from their in-laws.

Shope (2006:70) rightly stated, "When women challenge male interpretations of tradition, they encounter male resistance". This rings true for the experiences of women who resisted patriarchal customs that were detrimental to them. It was not only myths that awaited the women who dared to challenge customs but direct consequences from the in-laws, particularly male in-laws. The most extreme was that of Mpho who was slapped in the face for not taking heed of her brother in-law's demands. The other problems included refusal to help with funeral expenses and the most disturbing for the widows was that their in-laws boycotted the cleansing ceremony as

well as well as traditional rituals normally done during and after the funeral. Thokozile cleansed herself:

> I did everything for myself, including cleansing myself. They were supposed to do the proper rituals for me but they were not interested because they said I took the money so I should do everything by myself using the money that was left for me. [Interview Thokozile, 5 September 2014].

On the other hand, for Iris, cleansing and other rituals were done the Swati way by Iris's mother and other members of her natal family. Such rituals and family decisions are apparently based on custom, but this research has revealed just how fluid custom can be, while some widows have upheld the traditional ways of conducting these practices, others have bent the processes to do what best suits them. On the same note, the acts of changing customs could be viewed as taking advantage of the flexibility of customary law; which "offers the possibilities for negotiation and contestation" (Parpart 1995:18). Parpart further points out that the flexibility of customary law can work for and against widows. In these two instances, these women opt for following what they thought was the acceptable version of tradition.

The actions of these two widows can also be viewed as their attempts at redefining culture and changing customs. The fact that Iris and Thokozile diverted from the traditional ways of doing things meant that they reinterpreted the purpose and meaning of the ceremonies and therefore challenged the culture. Despite resisting other widowhood practices and changing some, Iris went through the mourning process for a year, which she describes as a very excruciating period in a widow's life:

> During this period, there are limitations, like you wear the mourning attire. You must always be home at 6 pm sharp. You are not allowed to visit people, change the mourning attire, talking at the top of your voice is prohibited. I'm told sometimes you are treated as if you have bad luck by barbaric people, as for me I was lucky because my workmates are not that bad. One other thing I experienced was how silly men are. I used to cry you know, men were proposing me from all angles. I used to cry and tell my mum and my mum would tell me that you are *hot* (she meant sexually attractive) during the mourning period. Even my doctor was proposing me; I ended up not going to the doctor. I used to tell men that I'm in mourning and I cannot fall in love. Yooo it was painful to me, it was like an insult. I used to ask myself if they could not see the mourning attire. I would not date anyone during that year, I had to be cleansed first you see and then after that I would look for a friend. People no longer have a conscience. [Interview Iris 5 September 2014].

The mourning period disempowered her as a woman; she thought she was not supposed to be sexually attractive or even attracted to anyone. Iris's words are a reflection on how patriarchal society controls widow's sexuality and the fact that she "used to cry" when she was proposed to may indicate her discomfort over the belief that she was sexually impure and she did not even understand how that is the case. What seemed to be unfair was that she knew that there were limitations on dating and engaging in sexual relations, which is not normally the case with widowers. Even though the study did not consider the voices of men, previous studies (Manyedi et al 2003, CGE 2007), indicate that widows are often subjected to hideous practices and restrictions that widowers are not subjected to. The reason being that there are very strict roles prescribed for women in African societies compared to those of men and the socio – cultural controls apply to widows and not widowers (CGE 2007:4).

Iris's mother played a vital role in encouraging Iris to go through some of the rituals that Iris thought were too gruesome for her. Iris's mother encouraged her to persevere and go through the mourning period despite the fact that Iris expressed that she was not comfortable. Other widows in this study variably replayed such accounts, where other women, especially older women would be the custodians of culture as they retreated to encouraging the younger women to respect their culture and preserve tradition. These findings are in line with those of Aguilar's study of the Boorana people of Northern Kenya where he established that women are the "headmistresses of tradition" (Aguilar 2000: 237) in that they are very active in encouraging their children to know their traditions and defend them. In line with the overarching argument in this study Aguilar also maintains that in as much as women can be custodians of culture, they are also "agents of social transformation" (Aguilar 2000: 240).

Compared to Mpho who mainly relied on her family for support and encouragement, Iris employed a number of mechanisms to take on established authorities and challenge the dominance of men and their female allies both in the family and in society. Iris's level of education equipped her with the knowledge that she can resort to using common law if push comes to shove:

> No, we did not share any property. Isn't I am the one remaining behind and I had the *marriage paper* (Marriage certificate)? I mean the marriage certificate conquers all. So, they did not have power because I had the marriage paper. [Interview Iris 5 September 2014].

Unlike Mpho who had no money of her own to appoint lawyers and had no knowledge on how the law operates, except that she had a marriage certificate, Iris displayed an attitude of a woman who knew her rights. When I asked her how she thought her property should have been appropriated, she responded:

> It is mine; there are no two questions about it. [Interview Iris 5 September 2014].

Furthermore, Iris is one of the few women in the study who seemed to have benefitted from economic development in South Africa, she was well educated and had the economic resources to challenge the patriarchal system, she had money to appoint lawyers and fight for her inheritance rights even though her case did not come to that. There is a growing body of research, which elucidates that women exercise greater decision-making power within their families when they have a certain level of education, reasonably stable and well-paid work, and access to resources, such as land and credit[18]. Iris was reasonably well educated and had a well-paying job. This increased her bargaining power in her relationship with her husband before he died. She said that she bought property and the cars that they had were her "hard earned money" as her husband did not have a proper job. Iris's narration indicates that during her marriage, she had control over her life, unlike the other women who were dependents in the relationships and had their positions in the marital homes shaken after the death of their husbands.

Iris was able to beat the customary inheritance system and its patriarchal laws because as a woman with economic and personal resources, she used her own income and her level of education to influence the inheritance process. Her education and position within the waged economy provided important resources in her struggle to maintain control over her assets and to challenge patriarchal authority.

Drawing from Iris's story, one would be tempted to assume that access to lawyers, higher economic status, and other support mechanisms available to her are the only resources a woman can employ to challenge male authority. However, it became evident that these do not tell the whole story. The changing discursive environment in which these "urban" women lived played

[18] See the works of Kabeer, (2008) and Jejeebhoy (1995).

a vital role in their ability to challenge male dominance. Thokozile's story demonstrates this very well.

Thokozile is a widow who challenged the patriarchal practices and beliefs that were meant to hinder her from inheriting her two matrimonial homes. Thokozile lives in a three bedroomed house fully furnished with expensive leather sofas and other luxury goods. She lives with her three children. Part of the property she inherited includes another 10-roomed house in her hometown in Nelspruit and a vehicle that her son uses to generate income for the family.

Thokozile aged 49, of Swati origin and a staunch Christian, was born into a poor family in Kanyamazana Nelspruit. She believes that poverty is a part of life; it is not something out of the ordinary for many black people in South Africa. Thokozile dropped out of high school due to pregnancy and she could not go back to school due to lack of school fees. As a result, she could not acquire any formal employment. She stayed with her mother-in-law for ten years while her husband was working in Johannesburg. Ten years into their marriage, they managed to acquire their own piece of land where they erected a 10-roomed house. Due to health problems of their daughter, she and her children were forced to migrate to Johannesburg and join her husband, and this forced them to buy the Johannesburg home. While her husband was alive, she did not work. She was in a civil marriage. She had good relations with her in-laws when her husband was alive. In 2008, her husband died after a long battle with heart disease. Her husband left behind a will, and the will stipulated that she and her children are the heirs to their father's estate. In addition, he had verbalised some of its contents to his relatives before he died. He had clarified that if his wife did not want to share property with them then she must not be forced to do it, he was aware that such things happen after someone died. He took advantage of his prolonged illness to clarify how things should go and to protect his immediate family from the claws of his extended family. Thokozile's problems with her in-laws, particularly her mother in-law and brother in-law started soon after the death of her husband, as she recounted:

> After his death, life became difficult; his brother and mother were very rough to me. Before my husband died we never fought, his brother used to help me take my husband to hospital and traditional healers. You see! I never fought with them... I never had problems with them before he died…When he died ahhhh trouble started; they harassed me and demanded money. They told me that their brother worked for many years and they want me to release the money. I asked them which money they want and what for,

> and then all hell broke loose. They told me that they want to make sure that he gets a decent funeral, they want to arrange for the funeral, and the only thing they want from me is money… All these things happened before the burial, that what they do, they harass you before the burial. He was buried on Saturday after that things became worse, even though my husband told them never to harass me or take property from me… You know when your husband is alive; his family does not show its true colours. However, when he dies, that is when they will show you their true colours. In my opinion, I think it is just pure jealousy. In-laws have that problem that you will remain with a lot of property, you see, they have that thing that this person will inherit our brother or son's hard earned wealth and everything, you see that. It is just pure jealousy, they just want property, and they do not even know or have the means to get the property. People are cruel. Some even tell you that if you still want to stay in the matrimonial home, then you have to marry into the family again. [Interview Thokozile 5 September 2014]

The above quotation displays a gross disregard for the will. In all the contestations over property, the will was never mentioned or even taken as a legally binding document. Property had to be appropriated customarily. To Thokozile's distress, her in-laws did not prioritise the welfare of the children, their main concern was to get as much as they could from the deceased's estate. Thokozile indicated that she is struggling to pay school fees and her second born son has resorted to becoming the primary breadwinner, he has converted the family car to a truck for hire to generate income and help his mother financially. In addition to her woes, her husband's unscrupulous employer did not pay her all the money that her husband was contributing towards the Unemployment Insurance Fund (UIF).

After numerous attempts and threats to get money from Thokozile, she finally backed down, it is interesting to note that her backing down diverted from the expected. Thokozile like Iris and Mpho was a strong willed woman,

> I am also a very strong woman. I do not depend on people. I handle my own problems. [Interview Thokozile 5 September 2014].

Thokozile called in both families (hers and her husband's) and wanted to give the money to both her family and her husband's family so they could help each other with the funeral preparations. She encountered resistance from her husband's family; hence, she ended up surrendering the money for all funeral expenses; money that she had saved and was "kept under the mattress[19]".

[19] Instead of depositing her money in the bank, she would stash her cash under the bed for safe keeping.

This form of resistance miscarried because customarily, the wife's family cannot have control in such a situation. In this regard, we cannot safely assume that Thokozile's efforts of resisting patriarchal dominance were in vain because frustrating them and exercising some authority is in itself a form of resistance. The character of the individuals involved influences resistance in inheritance cases and other traditional rites. Strong willed women have been much more able to bend the otherwise rigid customs.

Thokozile's efforts to gain control of her late husband's property did not end there, after the funeral; they demanded that she hands over the movable property, the car and both houses. When asked how she responded to those commands she said:

> I told them that I am a woman who knows her rights; therefore, I will not allow them to treat me like that. [Interview Thokozile 5 September 2014].

Later on during the interview, she emphasised and was proud of her achievement:

> They could not overpower me because I KNOW MY STORY (with emphasis). [Interview Thokozile 5 September 2014].
>
> … but I would have contacted the police if they had taken anything. If the police were not helping, I would have hired a lawyer. [Interview Thokozile 5 September 2014].

This infuriated her in-laws and fights ensued between her and the in-laws. She was labelled a 'stubborn woman':

> After they failed to get the property, they accused me of stubbornness. I am a very open-minded person, I talk when I feel that something is wrong. [Interview Thokozile 5 September 2014].

In a desperate move, her brother in-law went to her late husband's workplace and demanded that his pension should be given to him as the head of the family on behalf of the entire family. Thokozile's resistance awarded her with exclusion from her husband's family, because she was "a bad example" for other daughters-in-law. Thokozile's willingness to challenge patriarchal authority may be attributed to the general shift in attitudes around inheritance matters and the knowledge that the law has changed in support of the widow and her children:

> … I thank President Mandela for changing the law. He took care of women by changing the law. If the law did not change, then they would have taken everything. Women were

> taken as household property. Women in customary marriages were suffering but Mandela changed all that. [Interview Thokozile 5 September 2014].

Thokozile further reiterated that people respect her for her bold resistance against her in-laws and that she was strong enough to fight for her rights and her children's rights:

> People respect me… In this, community widows come to me for advice. [Interview Thokozile 5 September 2014].

A study conducted by Women and Law in Southern Africa (WLSA) reported that in Zimbabwe, where similar laws were enacted, there has been widespread support in the community and country as a whole for giving marital property to the widow and her children rather than to the relatives of the deceased husband. Furthermore, it reported that middle class women have benefitted from the general shift in attitudes which was reflected in the prevailing belief that "the widow should inherit" and " the government says leave the widow alone" (WLSA 1993:142). The discourse around inheritance and women's rights has worked in the favour of women who wished to assert their rights and challenge assertions that only men could inherit, manage and control property (Parpart 1995: 16).

Women's rights discourses are without doubt affecting conceptions around women's rights and inheritance issues (WLSA 1993:142). Even though it is difficult to measure the influence of these changing attitudes and discourses it is important to note that Thokozile sought legitimacy for her demands by referring to the new "modern" ideas about inheritance. However, the aim here is not to argue that the language and attitudes supporting male superiority and women's subordination has disappeared in post- apartheid South Africa. There is a clear indication that the language continues to dominate much of South African discourse and practice and as a result have undermined progressive legislation. However, I argue that some women have managed to take advantage of the limited ideological openings and use them to affirm their rights.

Several techniques were used to force Thokozile to back down from resisting culture - like Iris, the cleansing ceremony was not done for her, and she was threatened with eviction, harassed, and labelled a selfish and stubborn woman. Additionally, after the funeral, her sister in-law took her daughter and as stated by Thokozile turned her daughter against her, by telling Thokozile's daughter that Thokozile is "a selfish woman and a murderer" who does not want to share the wealth that her brother left and a woman who killed her husband. For a while, Thokozile's daughter shunned her.

Eight years down the line, the struggle continues for her, Thokozile still receives threats from her brother in-law that one day she will have to hand over his late brother's property and move out of the matrimonial house. The threats had not quietened down even after Thokozile had tried to make peace with her mother-in-law by giving her R3000 from her late husband's pension pay out. The fact that she used her earnings from her small business of buying goods and reselling them for profit to extend the house and refurnish it has not stopped threats of impending eviction from her marital home.

Most widows in this study received threats of eviction from their houses. Kariuki (2004:57) clearly explains what might be the reason behind this practice. He states that on the death of a spouse (especially those who die intestate), the land and the house passes to male relatives while widows and daughters are left out. As explained in the literature review, the problem as explained by Walker (2002, 2005), Kariuki (2004) and Villarreal (2006) is that women are discriminated against as far as land rights are concerned. Walker (2002) and Kariuki (2004) argue that women's' rights to land are secondarily derived from their membership in the household and secured through marriage. The cases of eviction threats and dispossession of the widows in this study are directly associated with the institution of marriage. Once the marriage is dissolved by the death of a spouse, then male members have an upper hand when it comes to rights to inherit the land (Villarreal 2006). Furthermore, the occurrences of severe cases of dispossessions and eviction threats in this study confirm that indeed women's land rights (and thereby the house) even in urban areas can be severed when the husband dies as alluded to by Kariuki (2004:57). The subordinate position of women's access to land, as Kariuki asserts, is exacerbated by the fact that men make the decisions on how the land is used during the course of the marriage.

It goes without saying that Thokozile was in a serious predicament; however, she takes advantage of the discourse on women's rights and widowhood rights to fight the patriarchal system. We have seen that women use several mechanisms to resist patriarchal authority, including supportive family members, availability of economic resources, knowledge of the law, changing attitudes and discourses about women's rights, particularly widows' rights, level of education and forceful personalities. The study reveals that even though most women could not raise their concerns over marginalization from inheriting property and they were required to go through the discriminatory mourning rituals, signs of resistance were visible through their

actions and listening to their silent voices. This kind of resistance reminds one of the struggles that Foucault (1982:71) branded as "struggles against subjugation". Kanyoro (2001:51) contends that women with fewer resources display less visible forms of resistance and may require a listener to hear what he calls their "choked silence" as expressions of resistance because silence in itself is "a powerful form of protest" Ramphele (2002:31). Motseme in her article titled "The Mute Always Speak: On Women's Silences at the Truth and Reconciliation Commission argues that women's silence does not necessarily mean that they are not communicating. Examining women's testimonies during the hearings of South Africa's Truth and Reconciliation Commission, Ntabiseng Motseme advices us to interpret the gestures, tears, the silence and the dreams of the muted women as language by outlining the "why and how" (Motseme 2004: 909). If we look beyond the visible silence, investigate why the silence and how it is displayed we will then unravel the resistance communicated through silence. Therefore, adopting this standpoint, the spirit of resistance echoed within the narratives and some of them verbalized their resistance.

Although I have heard stories of women who accepted uprooting from their marital homes and accepted the disinherited condition as given and natural, a part of their culture, most widows who participated in this study remained in their marital homes despite being told to vacate those homes. They did not all verbalise their resistance like the three widows in this chapter, but the act of remaining in the home can in itself be a form of 'silent' resistance. Some women's resistance was displayed in not very overt ways, for example, Elizabeth indicated that she is no longer willing to share the insurance policy money with her stepchildren when it is released by the bank, something that she had thought of earlier before they harassed her. Undoubtedly, a recurring expression in many of the narratives given by the widows was that "God will punish them". Behind such sentiments is an aspiration for revenge, voices which say "even though I did not challenge you, a higher force with greater powers will do it for me". According to Sewell (1999: 54), resistance is not an unusual occurrence among the subordinated groups; Sewell argues that subordinate groups are likely to resist oppressive beliefs. Sewell further goes on to say that "cultural consensus" is an impossible mission and when it occurs, it is likely to hide "suppressed conflicts and disagreements". These three narratives reveal what Silberschmidt (2004) echoes that although patriarchal ideology is embodied and expressed in the lives of both men and women, this does not mean that all men are successful patriarchs and all women are submissive victims.

In summary, the three women's stories highlighted above demonstrate that some widows are challenging patriarchal authority that discriminates against them and frustrating the custodians of patriarchal customs and beliefs. The above discussion shows that widows have the power to resist what was otherwise considered rigid and unchallenged customs. Such challenges do not always, however, make use of the law. Rather, the laws and institutions designed to improve women's status have had to compete with deeply entrenched patriarchal beliefs. Furthermore, legislators have seemingly ignored the cultural realities and have passed laws that are largely unpopular and consequently ineffective. In short, the statutory changes have had no practical effect on the great majority of the population who are still governed in personal and family matters by customary law.

'Because it's Our Culture!' A denial of Widows' Inheritance rights, Voice and Liberty

The quest for identity and belonging were threads that prominently featured in the widow's narratives. Interestingly, each time the word culture was used; it was inclined towards forging an identity and belonging to a particular group; an aspect of life that inducts one into a group. One main characteristic of culture that emerged is that it is a system of rules designed to encourage disciple and observing the discipline determined one's belonging to the particular group. In this light, some of the widows understood culture as a fixed set of customs that were passed through generations and for that reason, they had to be adhered to. One common feature that emerged in the widowhood narratives was that they felt it was cultural to be silent; therefore, silence was a consequence of the discipline expected from women. In this study, it emerges that culture as fixed set of rules and practices has been used as a tool to violate women's rights, assert male supremacy as well as a silencing mechanism. While some women in this study have been able to resist some aspects of culture and its customs and practices, some have not been as fortunate. The discussion that follows demonstrates the ways in which some widows have been silenced, deprived of their inheritance, some dehumanised because of this particular conception of culture.

Although the majority of women across the different backgrounds interviewed in this study had very strong views on how cultural beliefs and customs have had detrimental results on their lives as women and worse as widows, one widow did not seem much perturbed by them, rather she accepted disinheritance as a given, natural part of her Zulu culture. Phumzile displayed sensitivity about the societal norms that she subscribes to as a Zulu woman and could not fight

them. She held the belief that culture cannot be opposed; this is evidenced by her passive acceptance of the prescriptions that she was not able to retain her property. Phumzile's case reminds us to ask ourselves how much choice these women really have considering that South Africa is a highly patriarchal society; women have been indoctrinated into silence by a sexist society (Motseme 2004, Ramphele 1995, 2000, Wing 1996). Wing (1996) argues that the violence of colonialism, neo-colonialism and apartheid created a scenario whereby custom, culture and religion became "psychological refugees" for the African men and women who had endured physical and psychological trauma during these violent episodes in South African history (Wing 1996: 951). According to Wing (1996) the oppressed groups may cherish traditions "in order to maintain a sense of manhood for the embattled men" and women partake in this without realising the burden of patriarchy they are absorbing themselves into (Wing 1996:951). Even though I could not prove conclusively that, the respect for traditions was to boost the ego of male members that cannot be ruled out. However, I established that these women suffer in silence and as Motseme (2004) interprets it, women's silence is often interpreted as non – communication (Motseme 2004). With that said, let us get to know the women in this study who suffered the burden of culture in post-colonial, post-apartheid South Africa silently.

Phumzile, a widow of Zulu descent, was unable to inherit their rural home; the property in the house, her late husband's car and her car was taken from her. Phumzile was 39 years of age. She lived in a three bedroomed house in Ebony Park in Midrand; the house is part of the property that she and her husband shared. At the time of the interview, she indicated that she was going through a lot of stress because she had been receiving threats from her brother in-law of eviction from this home. She lived with her three children, one boy, and two girls.

Phumzile was born in Ladysmith Kwazulu Natal. She is the last born in a family of 10 children. Growing up with authoritarian parents, she was taught to respect elders and particularly girls were obliged to display good behaviour in the community. She describes her upbringing as that of "community based parentage". In such communities, children belong to the community and not individual families. Phumzile dropped out of school in Grade 10 because the education system could not allow her to proceed to the next grade because she failed Grade 10. She fell pregnant soon after that. She married the father of her child; the type of marriage was both traditional and civil. Her husband moved to Johannesburg in search of employment and took his

wife and child with him. They later had two more children. Her husband was working as a paramedic and he used to ask his bosses to give her a job as well, as a result, she used to work as a casual worker at the same company. Therefore, we cannot say she was solely dependent on her husband for a living, we can assume that she contributed significantly in the acquisition of wealth. Together, they built a house in KwaZulu Natal and later bought a home in Ebony Park in Midrand. They furnished both homes and extended the house in Ebony Park, equipped it with a double garage and backyard shelters to generate income from it.

In 2011, her husband Mbuso abruptly fell ill and within three weeks, he died. She recalled the day she received the news:

> Ha-aaaa-aaaaa-aa! It was difficult…It was the first of August 2011. I thought it was a dream and I am going to wake up and realise that it was just a bad dream. I did not believe it; I was traumatized. I thought they had dialled a wrong number and that they will call back and tell me they had made a mistake. I thought it was a bad dream and I thought I would see him walk through the door. I could not eat or sleep. It was terrible believe me. [Interview Phumzile, 1 August 2014].

Phumzile's husband died intestate. Like most widows in this study, she was accused of killing him. Due to her young age, accusations were that she wanted to inherit the property, "spend money, and enjoy with her boyfriends". She found these accusations ridiculous:

> I mean how could I kill him? He was like a friend to me, the father of our children and the sole breadwinner in this house. [Interview Phumzile, 1 August 2014].

Soon after they received news of death, as per Zulu tradition, she "was instructed to sit in the bedroom and cover myself with a blanket as per our tradition". In the days preceding the funeral, she was verbally abused by her in-laws and isolated from decision-making meetings and everything that was going on. Her in-laws without her consent made all the decisions concerning the burial and the appropriation of property.

Property was shared before her husband was buried[20]. Phumzile learnt from her neighbours that her brother in-law was already using her husband's car on the very day that he arrived from Kwazulu Natal. Two days before his burial, Phumzile's in-laws asked for her late husband's

[20] In the Zulu culture, property of the deceased is appropriated after all burial proceedings by the male members of the family.

bank cards so that they could withdraw money from his accounts. Her husband was buried on a Saturday, she describes the days soon after his death as the most appalling and loneliest of days:

> You know I felt small, it was a painful period and you see people looking at you in a different way because of the dress code. The most painful part for me were the days after his passing before the ritual was done, I was not allowed to bath myself up to until they cleanse me. You know during the mourning process there are restrictions like you are not allowed to go to someone else's house because you will pass bad luck. They can only visit you. It was lonely considering my family was back home and I was here alone. [Interview Phumzile, 1 August 2014].

After the cleansing ceremony, she was allowed to exit the bedroom, she learnt that all the things people were telling her while she was in the bedroom were true, she learnt that her Kwazulu Natal home was taken, her car and her husband's car were taken including the money in the accounts, which they claimed covered all the funeral expenses. The shock was that her late husband's company had given the brother in-law money to cover the funeral expenses and provided the cars to ferry people to the gravesite and provided the casket for the late. This means that the brother in-law kept the money for his personal use. According to Phumzile, in Zulu custom when the head of the family dies his brother (or his sons if his sons are grown up or his father in cases where he has no male siblings) takes over his estate and its management thereof. Therefore, customarily, her hands were tied. She had to accept the decisions reached by her brother in-law concerning her husband's estate even though she felt that the property was not supposed to be shared and she knew that she was supposed to be the beneficiary of her husband's estate because:

> I do not think we were supposed to share the property because I have three children and those things were going to help me raise these children. …But it is our culture, you understand. That is how it is. Yah. [Interview Phumzile, 1 August 2014].

The majority of women I spoke to variably echo these sentiments and the common usage of the terms 'it is part of our culture', 'we want to preserve it' indexed to me the level of commitment to embracing and claiming belonging to a certain identity[21]. Phumzile could not raise her concerns or challenge her brother in-law; she preferred to stay further away from what was going

[21] It is important to note at this point that culture, according to other women in the study, referred to language and the tribal group that one comes from.

on even though she knew her rights. Her silenced voice meant that her property inheritance rights were violated.

Another widow who reflected a similar experience to that of Phumzile was MaHlongwane[22], also a woman of Zulu origin. Even though she was older than Phumzile and much more educated, she could not resist the authority of her brother in-law or take legal action against her in-laws from taking her property because she felt that challenging her Zulu culture, particularly the authority of her brother in-law, would destroy relations between her and her in-laws. When I asked if she had reported the matter to the police or took legal action against her in-laws, she responded:

> I never took things that far, I have a child with them you see. I told myself that I have to work hard for my children and if God permits, I will acquire more things in life. I told myself that they are adults and they know what they are doing and it is up to God to punish them. [Interview MaHlongwane, 18 August 2014].

Reference to god as a punisher of evildoers can be taken as a coping mechanism for MaHlongwane. The fact that she believes that god will punish her in-laws sets her at ease. The women in this case try very hard to maintain good relations with their in-laws, risking losing control of their properties. It is important to note that in both cases, at the time of the interview, both widows expressed that they had sour relations with their in-laws despite the fact that these widows tried not to destroy the relations. The problem seems to be widowhood itself. A glimpse into the ways these widows are treated by the community presents a clear picture of why relations between their in-laws and other people deteriorate In Phumzile's own words:

> To be honest, I feel that things have changed for me. People treat me differently. It is as if we are considered bad omens. We (widows) are excluded from events like children's birthday parties, and it has been difficult for me to enrol into a new *stokvel* (saving scheme club) because people give you funny reasons why you cannot join. [Interview Phumzile, 1 August 2014].

Alienation and economic hardships seem to be an integral part of the widowhood experience. Phumzile, because she was dependent on her husband, exclaims that life is tough and she feels her husband's death left a wide gap because she now has three children to feed, clothe, and pay school fees on her own. The situation has been exacerbated by the fact that her husband's former

[22] Mahlongwane's story is detailed under "Whose property is it anyway?"

employer sacked her from her job as a general worker soon after her husband died and no reason was given for that.

On the other hand, MaHlongwane has a steady job and her problems are less economic and more social:

> To be honest, I think people are laughing at me. However, I have a reached a stage where I do not care anymore. [Interview, MaHlongwane, 18 August 2014].

The accounts give a glimpse into widowhood as a lonely phase in a woman's life, the economic hardships exacerbate the woman's misery, and customary beliefs on widowhood alienate women from the community, making it difficult for them to exercise agency. Phumzile and MaHlongwane's life stories demonstrate that even though there are legal provisions in South Africa that seek to protect women from disinheritance, their implementation is hindered by patriarchal cultural beliefs and customs. Phumzile expresses that according to Zulu custom, her brother in-law is the sole executor of her husband's estate, and even though she believes that that is prejudicial, she cannot go against her culture and resist. The only option she had was to accept because it is her 'culture'. Subsequently, these widows were victims of property grabbing by in-laws.

These two women's docility can be explained by noting what Wing (1996: 952) calls "the spirit of injury". Critical race feminists use this term to describe what happens to women's psyche when multiple forms of oppression overwhelm. Wing (1996: 952 - 953) states that "spirit injury leads to the slow death of the psyche, of the soul and of the identity of the individual". To substantiate this point, she reports that oppressed women end up believing in their inferiority because of the inferior positions bestowed on them by their culture and other outside forces that include race and low economic positions. This leads to silence and loss of self-confidence. Furthermore, the consequences of speaking weigh heavily on such women and as a result, they resign to accepting the systematic forms of oppression (Wing 1996: 952 – 955). In addition, in such societies, non-assertive behaviour is often seen as an asset for women.

Phumzile and MaHlongwane were more concerned with what culture expects from them and hence could only adhere to customs. For Phumzile, her childhood among the Zulus and in the Zulu culture seemed very important to her, as at the beginning of the interview she made it a point that she explains her early childhood days in depth:

> I am from Ladysmith, Kwazulu Natal. In my family, we were 10 children - five girls and 5 boys. From a tender age, we were taught to respect elderly people. A girl would not be seen standing with boys; it was unlike nowadays that children do as they please. Children belonged to everyone in those days, as a girl child you would not disrespect because your parents are not around because everyone was your parent. [Interview Phumzile, 1 August 2014]

Phumzile's discomfort with the idea of challenging culture, in this case the principle of male primogeniture as oppressive was the idea that it is a practice of belonging to 'African culture', a culture she prefers to see as untainted by westernization. Phumzile, though not overtly, seems to defend her culture even though she may be aware that her property was taken in the name of culture, she accepts it as it is. As Ansell (2001:711) describes it, Phumzile is appealing to a particular (and narrow) understanding of culture, like most of the women interviewed in this study, as a set of traditions practiced in the past and somehow learns to accept them as they are because she had been encouraged to take pride in her culture. She does not understand it as everyday practices in which she participates or as something, she learnt from the discourse in the community she grew up in that is in rural Kwazulu Natal. Ansell (2001:711) argues that the South African schools' curriculum depiction of culture "derives largely from colonial portrayals of African culture as "predefined and static", designed to support patriarchal authority, through which stability of the colonized could be assured".

What shaped the widows' consciousness is the belief that it is "uncultured" for women to demand their rights from their extended families or question the decisions taken by her in-laws. Phumzile like other women in the study was afraid of breaking family ties, which were still broken despite their efforts to preserve them.

The evidence that I have presented here suggests an uneasy relation between gender rights and gender power. While gender rights may be compelling and enabling for women, it seems that they are often the powerless gender and hence have to succumb to the pressures of the dominant gender. These two women's stories confirm and the extent to which culture silences women from claiming their rights. Unlike the other women, namely, Iris, Thokozile and Mpho, who managed to identify and use different techniques at their disposals to fight the patriarchal systems and regain control of their marital homes and other properties, these two Zulu women, seemed to view culture as natural and given, something that could not be thrown away when

situations arise. In as much as it is appealing at this point to generalise that the Zulu women seemed to be more culturally inclined, the study employed the stories of a limited number of women to allow for hasty generalisations. However, these women differ from the other women in this study who employed different mechanisms to fight against oppressive patriarchal tendencies. Phumzile and MaHlongwane lacked risk taking and assertive behaviours and these were limiting factors in these women's success in claiming their rights and gaining control over their lives and property. Women are often non-assertive because they believe assertive behaviour is viewed as aggressive and masculine (Gumperz 1982).

This study established that inflexible adherence to unfair cultural customs does not only lead to passive acceptance of discriminatory practices, it subjects women to dehumanising and outdated cultural practices. What differed was the scale and extent of these practices. The widows spoke of different ways in which they experienced 'cultural practices'; however, the most striking for me was the custom generally known of *ukungena*[23] which literary means "to enter"and amongst the Sotho, it is known as go tsena mo tlung (which literally means "to enter the house") or go tsena (which means "to enter") (Schapera 1970:233). The *ukungena* custom is defined in section 1(1) of the KwaZulu-Natal Codes of Zulu Law[24] as follows:

> a union with a widow undertaken on behalf of her deceased husband by his full or half brother or other paternal male relative for the purpose (i) in the event of her having no male issue by the deceased husband of raising an heir to inherit the property or property rights attaching to the house of such widow …

From the above, we can infer that according to customary law, marriage does not end with the death of a spouse. In fact, the widow widow is considered to still be married and still expected to honour and respect her deceased husband and her in-laws (Ramphele 1996: 101).

Mrs Zungu, was a Pedi woman, her husband, Mr Zungu was of Zulu descent. Mrs Zungu was born in 1952 in Dindela Township, now known as Edenvale. Later her family were moved to Tembisa Township. Mrs Zungu grew up with her mother after her father abandoned them. Her

[23] The Zulu term *ukungena* was that which the participants used most commonly and hence is the term I use in this report.
[24] Proclamation R, 151 of 1987.

mother remarried Mr Mosehla, who was later arrested for something she could not disclose. Mrs Zungu grew up under harsh political and economic conditions. As a result, she was unable to get proper education. Her highest level of education is standard three. Mrs Zungu dropped out of school because she was pregnant. She became pregnant at the age of fifteen and she gave birth to her son in 1970. Barely two years after giving birth to her baby boy in 1972, Mrs Zungu started working "here and there including in the manufacturing industry" because her stepfather was in jail and her mother "did not have a proper job". The father of her son never married her. Mrs Zungu had no recollection of when exactly she got married to Mr Zungu because of the time that has lapsed. At the time of the interview, she was staying with her 44-year-old son because she did not have children with her late husband. Mrs Zungu's late husband was working as a general worker at a school. Mrs Zungu used to work as a casual worker at the same school where her husband was working. Her husband died in 2004 and she describes it as a very difficult time for her because:

> My in-laws treated me very badly. You see my child, in-laws treat you like dirt, and I do not have a relationship with them. It was bad; there were talks that the Johannesburg woman killed our relative. These people are from Newcastle, they are Zulus you see. They accused me of killing him because I wanted his house. Later on his brother *wasethi ufuna ukungingena* [wanted to inherit me], but he died before anything happened. When he told me that he wanted to take over from his brother, I thought *uyahlola ngoba wayenonkosikazi [*it was a bad omen because he had a wife]. He said that it would not be a problem I will just be helping his wife cook porridge for him. He was very serious about it because he even told me that it is part of his culture. I told you they come from Kwazulu Natal. The good thing was that he was far from me so his plan did not work well. [Interview with Mrs Zungu, I August 2014].

Mrs Zungu refused the marriage proposal. She was accused of disrespecting the Zulu culture because her brother in-law told her that in the Zulu culture Mrs Zungu has to be inherited by him because *lobola* was paid for her. It is striking to realise that the purpose of *lobola* was interpreted by her brother in-law and his family as a means of buying a wife, who should remain property of the family. Upon the death of her husband, she cannot leave her marital home, rather is passed on to the surviving male relative. As mentioned in the literature review, the practice of lobola has different meanings, functions and interpretations. For Mrs Zungu, lobola was used by the patriarchal powers to control her and her property. For her, it was the basis of patriarchal authority: a mechanism that was used to disinherit her. It seems lobola has different meanings for different groups of people although in some instances it has multiple meanings for one group.

This finding is in agreement with Shope's (2006) findings, which showed that lobola has different and sometimes contradictory meanings for black women. There is an intimate connection between power relations and the lobola custom and this obscures women's efforts to claim their rights (Geisler, 2000). Widows' voices have given insight into the complex relationship between gender and cultural tradition.

In Mrs Zungu's narrative, the *ukungena* custom can be viewed as a cultural practice that has been manipulated from its original purpose of ensuring the welfare of the widows and their children to a practice that supports and perpetuates the subordination of women. The subordination ranges from violating women's inheritance rights to perpetrating health problems. The psychological effects of such widowhood practices often go unnoticed. Very little is said in the literature about the psychological effects of widowhood practices. A study conducted by Davhana – Maselesele on the experiences of Vhavenda tribe in Limpopo province, reports that the Vhavenda widows' experiences of widowhood rites have adverse psychological effects (Davhana – Maselesele 1995). Psychologists, Somhlaba and Wait (2009) investigated the psychological wellbeing of widows after the loss of their spouses. The research reported that at least 87.88% of their participants experienced mild depression and 69.19% experienced anxiety symptoms (Somhlaba and Wait 2009: 2002). The findings in this study were consistent with previous findings that have reported on mild depression among widows. Some widows indicated that they sought psychological help, for depression related illnesses. Mrs Zungu explicitly says

> I was admitted at hospital for depression. I felt better when I came back from hospital. It was bad. [Interview with Mrs Zungu, I August 2014].

Thokozile discussed earlier also went for counselling because of the trauma and Elizabeth to be discussed later on was contemplating going for counselling at the time of the interview. Mrs Zungu took the mental health issue seriously and had this to say:

> You write this in your paper. I really think that people should seek counselling when faced with terrible situations. Otherwise you die! [Interview with Mrs Zungu, I August 2014].

At the end of the interview, I asked her how she now feels after her ordeal. This was her response:

> I feel bad, but I do not care, when I feel depressed, I drink a lot of alcohol. Alcohol makes me forget.

Mrs Zungu's narrative resonates with that of Matshabalala's narrative that will be detailed later on in this chapter. For now, it is suffice to say Matshabalala's narrative, provides a different but related scenario to the

Matshabalala was cohabiting with her late spouse for 14 years, he never paid lobola, and this means they were not customarily married. Nevertheless, after his death:

> They (in-laws) told me that *Mkhulu* was the last-born child and he was due to inherit the family homestead if he had returned home. They also said that if I want to inherit that homestead I should come and stay there in the rural areas. At first, I thought that they wanted someone to keep their family home for them. Then I realised that the brother to *uMkhulu* wanted me to be his wife, I thought haaaaa! This crazy man. The thing is I grew up here in Johannesburg so I am not a traditional person. That is the reason why I refused. Ahhhh! I asked myself, why they are doing this; he had not paid lobola so culturally I was not his wife. The other thing is that my children and grandchildren have nowhere to go. Therefore, I could not leave my children [Interview Matshabalala, 28 July 2014]

In both these narratives, like the other cases in this study, misapplication of culture and tradition is at play. According to Villarreal (2006:7) and Jackson (2003:466), the institution of levirate marriage ensures a widow has contiued rights to use family land and properties as marriage linkages are sustained. In as much as levirate marriage was meant to protect the widow from destitution and to take care of the orphans (Nyanzi, Emodu-Walakira & Serwaniko (2009), there is no doubt that it has unpleasant implications. While some studies reveal that some widows benefited from levirate marriage Nyanzi, et al (2009), widows in this study indicated that they viewed widowhood as a practice employed to perpetuate greed and abuse. Even though it might be argued that some of these practices were originally designed with good motives, the narratives collected here suggest that contemporary patriarchs are manipulating the tradition for their own benefit. The uneasy relations between African traditions and women's rights are evidenced in these stories.

Here, the custom of wife inheritance depicts that women are commoditised and considered as property themselves that should be inherited together with the other property left by the male relative. One of the findings of this study is that the custom of lobola plays a vital role in widowhood practices that include commoditising the woman, disinheriting the widow, and

justification of levirate marriage. It seems that once lobola is paid for a woman she then automatically becomes property of her husband's family, upon his death she cannot leave her marital home but rather is passed on to the surviving male relative, this is true for Mrs Zungu. Simply, this highlights women are treated as "chattels" that cannot inherit and may even be part of the husband's estate to be inherited themselves. However, interestingly, in Matshabalala's story, because lobola was not paid for her, her brother in-law tried to be cunning and downplay the role of lobola so that he could inherit the widow for his selfish reasons. Non – payment of lobola would traditionally mean that she does not belong to the family and therefore cannot remarry into the family. While some families (in other studies for example WLSA 1993) have upheld the traditional focus of customary inheritance law, with its commitment to the wellbeing and security of the widow and her children, this study found that others have bent the law to serve their own material interests. The widows' stories indicate grave efforts by the patriarchal order to use whatever means available to them to keep women in subordinate positions in the society.

The Law - So Near and Yet So Far!

A recurrent complaint in many of the narratives given by the widows was that legal representation was too expensive for the women in this study. A *Sowetan* newspaper article titled "Lawyers Too Expensive" in October 2013 revealed that the Deputy Justice minister Jon Jeffery, admitted that litigation was too expensive for the poor and middle class. In his own words he said

> … it would cost a domestic worker two days' salary to see a lawyer for 15 minutes. It is clear that access to a lawyer is for affluent South Africans only. But even for middle class people the cost of legal representation is simply unaffordable [Sowetan Live, 21 October 2013].

The newspaper report concerned tariff increases on litigation in late 2013. This was a year before I commenced fieldwork. One widow's sentiments capture this well:

> Lawyers do not deal with poor people. [Interview with Mrs Ngema, 24 September 2014].

Mrs Ngema's response spoke of her sense of resignation, even hopelessness about her situation and that of other people in a similar predicament. Litigation unaffordability is not the only problem that the widows confronted concerning the law. The statutory system is largely ignored and disfavoured by the local people in favour of customary because as it shall be argued,

statutory law of inheritance ignores the reality of the cultural situation, particularly the notion of the extended family. The greater problem is the lack of public education about the law, the general lack of knowledge on how the law operates was amongst the greatest obstacles to accessing the law and affirming women's rights. In addition, I argue that the binary system of law in South Africa exacerbated the problem because the widows displayed ignorance on which law between customary and common law they could use because they both seemed to function concurrently. However, as a point of departure, I present and discuss the story of a woman whom I call Nomathemba[25] who encountered problems to access legal representation because of her low economic status; in other words, the story highlights that the arm of the law is not always within the reach of poor women.

Nomathemba, a woman of Xhosa origin was born in 1962 in Transkei in the Eastern Cape Province. Her highest education level was standard 10. She has two children (not with her late husband), both boys, one is in his late 20s, and the other is in his early 30s. She met her late husband in 2002 and they started living together in early January, 2004; they were together for 12 years. She was her husband's third wife (his first wife died and his second wife left him). Her husband used to work as a driver for a hardware store. She was customarily married, her husband paid lobola in 2009, seven years after she met him and they had already been living together. Nomathemba was married customarily while on the other hand it seems her husband had married his ex-wife in civil union and they never divorced. Nomathemba's late husband had a 20-year-old daughter by his second wife at the time of his death.

Nomathemba lives in a three bed-roomed house with three backyard rooms; she stays with her eldest son while the youngest son stays with her parents in the Transkei. Nomathemba worked as a street vendor, she did earn enough to survive on a daily basis, and sometimes she gets surplus that she used to buy a number of household utensils and helped her husband to extend the house and build backyard rooms. Nomathemba says she had to start afresh buying furniture for the house because her husband's ex-wife took everything when she left. In 2005, her husband told her that they should start budgeting for a car and the car was eventually bought.

While married to Nomathemba, her husband continued having intimate relations with his second wife and at times, she was allowed to visit the house. She suspected that these were some of the

[25] Nomathemba literary means "mother of hope", I gave this widow this name because she displayed optimism in a situation where many women in her situation would have given up.

reasons why he was dragging his feet to pay lobola for her, her insecurities prompted her to persuade him to pay lobola for her. This again forced her to investigate if he was legally married to his ex - wife and she discovered that they were not legally married. These issues made her feel insecure and subsequently she pressured him to pay lobola for her because in her words:

> Other women have lost many things. Some women do not force their partners to pay lobola for them. I did myself a favour by forcing him. [Interview Nomathemba, 20 August 2014].

He was charged nine cows and Nomathemba forced him to pay eight.[26] For her, this day is engraved in her as she says, "*I will never forget that day. It was on a Saturday. I wrote it in my heart".* Nomathemba thought that by having lobola paid for her, her future was secure, both in the family (as a new daughter in-law) and as far as inheritance and other social issues are concerned. She was not aware that her economic position would derail her seemingly bright future.

Additionally, she forced him to pay lobola because "I wanted to know where I stand". Nomathemba did not have much bargaining power in her relationship compared with other women like Iris and Thokozile. Nomathemba was not educated and was from a Xhosa rural background, where women are socialised into the ideology that they are subordinate to men and church reiterates that women are the neck and men are the heads of the family and they accept the common discourse that men are naturally promiscuous:

> I cannot say my marriage was perfect. You know, my child, men are a problem… (Pause) sometimes I wish I were the one who died first because this man left behind many problems. I talked to him many times telling him to change things but he refused. The problem is that men are stubborn; as I speak, I am sure I am not the only woman going through this ordeal…. (Silence). His estranged wife used to come here…We used to fight over the fact that she used to come here. I think at one point they were getting too close. [Interview Nomathemba, 20 August 2014].

Nomathemba's husband died in May 2014 after a short illness, a month to be precise. She did not get support from his ex-wife, his family, and daughter after she informed them that he was ill. He was hospitalised for two weeks, operated on and doctors discovered that one of his ulcers had

[26] In the Xhosa tradition, a man cannot pay all the number of cattle or money that he is charged. Paying everything is considered a sign of disrespect, to show respect you have to appear that you are struggling to pay lobola, by either paying a certain amount of money or number of beasts or leaving some for payment in the future.

burst inside his body. It is not clear if he wrote a will or not and she wants lawyers to contact her late husband's boss to prove her suspicions:

> I discovered that there was a will when I went to his workplace. No one told me what is written on the will. I just heard the estranged wife's eldest daughter saying to the white man "can't we change the will?" [Interview Nomathemba, 20 August 2014].

After his death, the travails that she thought she was safeguarding herself against by forcing him to pay lobola hit her hard. Like all the other widows in this study, she was accused of killing her husband, only this time it was not her in-laws but her husband's ex-wife and daughter. There was tension between these two individuals and Nomathemba's in-laws, who were accusing the other woman of being a 'gold digger'. Her husband's ex-wife confiscated the car keys and asked Nomathemba to vacate the house because she believed that she and her daughter were the rightful heirs to the property because she was legally married to the late (she presented a marriage certificate) and the house was registered in her daughter's name. The surfacing of a marriage certificate unsettled Nomathemba because according to her account she had investigated if her husband was married or not and she had established that he was not legally married to any woman.

Nomathemba was desperate to prove if the marriage certificate was valid:

> I took *that thing* (marriage certificate) to the lawyers; unfortunately, they told me I have to register with them and I can only qualify for legal representation in October. I will take this thing to them during the first week of October. [Interview Nomathemba, 20 August 2014].

She even wanted me to see it and inform her if it was valid, (to which I politely refused). At the time of the interview, she had a protection order against the two for harassment and she had received threats of eviction from her matrimonial home, which she was willing to fight tooth and nail if only she had money to pay lawyers.

Nomathemba was also desperate to know her position as far as 'user rights' to the house were concerned. I say 'user rights' because by her account, her in-laws were on her side because they think she is the better woman who will be able to share the late husband's property with them since her co – wife is a 'gold digger' and they need the house when they come to the city.

Nomathemba has no choice but to comply. Losing the house means, firstly, that she will have to go back to her natal home, which she says she cannot do at her age, secondly, lobola was paid for her, which marked her exit from her natal home, and lastly, her house connects her to her husband spiritually, moving out means she will lose that connection:

> They will take the house after I am dead. To make matters worse, I have to have a cleansing ceremony, where will I do it if they take the house? What if he appears in my dreams and asks me to do something for him, where will I do it? That is why I am saying they will take the house after I am dead. I will also explain this to my lawyers and even at court. If they want to sell the house, they will have to kill me first, where will I go? I cannot go back to my mother's home. Lobola was paid for me. [Interview Nomathemba, 20 August 2014].

Additionally, and she seemed resigned to the fact that the house belonged to her stepdaughter and the appearance of the marriage certificate was unsettling for her because she thought that without a marriage certificate, she had no case.

> I do not want to lie *mtanami* (my child) when I saw that marriage certificate I was shocked. I am a bit scared though. [Interview Nomathemba, 20 August 2014].

Nomathemba's predicament is aggravated by the fact that the co – wife has daughters who are economically well off. The eldest daughter is a social worker and the other is a medical doctor. Nomathemba knew that they would take her to court and probably win if she does nothing. Hence, she approached the legal Wise insurance scheme and Scorpion where she could pay in instalments. Nevertheless, that did not mean that as soon as she did this her problems were over. At the time of the interview, she was not yet covered for legal representation, as she had to wait for the three-month waiting period required by insurance companies before her cover could take effect. Nomathemba expressed her frustration over the waiting period:

> Instead of mourning for my husband, I have concentrated on looking for legal representation and now they tell me that I have to wait. [Interview Nomathemba, 20 August 2014].

Nomathemba seemed to have accepted that because she is dealing with people of a higher socio – economic class; customary law cannot redeem her from her situation. Even though it appears that her in-laws are on her side, it seemed they backed off from stopping Nomathemba's co – wife from claiming what she believed was hers. Observing the actions of women in the story

who had resources to fight against discriminatory customary practices it is likely that Nomathemba's co – wife would fight the system if provoked.

Nomathemba found herself at the crossroads between the malice of culture that allowed her husband to have two wives and the economic hardships that rendered her incapable of accessing justice. Being a woman in a polygamous marriage (even though unknown to her) subjected her to privations after the death of her husband. She seemed to perceive polygamy as discriminatory evidenced by her investigating if her husband had another wife. Moreover, her husband's polygamous inclination meant that Nomathemba was not an equal partner in the marriage, that is why she was left as far as the truth was concerned or even in the ownership rights of the house. Nomathemba suffered greatly from the lack of knowledge on what her rights are and above all from the lack of economic resources to fight for her rights. Nomathemba and her co-wife were from different classes in society, Nomathemba's co-wife was advantageously positioned in the whole scenario because she had the resources to defend her rights and like Iris earlier, she was in a better position to deal with the issue compared to Nomathemba. The relationships between different classes of black women are rarely explored in the literature. The focus is usually exploitative relations between women of different races. Black feminists that include Collins (1990) encourage us to look closely at the relations between white women and black women as well as black women as an oppressed group, this undoubtedly provides us with rich analysis on the triple oppression of black women but it leaves a gap on the possibility of black women oppressing other black women. The situation in this study is complicated, as I cannot conclusively argue that that Nomathemba's co – wife was oppressing Nomathemba because as the first wife, she may have felt she was denied of her rights. However, we are reminded not to be oblivious of that fact when dealing with the oppression of black women.

Nomathemba's journey to freedom is a difficult one; there are multiple obstacles on the road, economic obstacles, cultural obstacles and knowledge obstacles. Mrs Ngema's story on the other hand, demonstrates that statutory changes have had no effect on the poor, marginalised and illiterate people, partly because of the high cost of legal aid and because of the lack of public education on the laws. As discussed in the literature review chapter, South Africa's legislative changes post-1994 paint a positive picture for women's legal positions, however, the study finds that the battle is far from over because the statutory changes have had to contend with long held

traditional practices. It has been discussed elsewhere that the traditional practices cannot be eliminated by just passing a law (Grigsby's 2004). Male primogeniture is one such practice.

Mrs Ngema's[27] late husband had two wives; Mrs Ngema was married customarily, while her co – wife was married in common law. In addition, Mrs Ngema has had girls and one boy (who disappeared) while her co – wife had five boys. Mrs Ngema is a 52-year-old widow of Swati origin who lives in a crowded (high-density) suburb of Tembisa in her late sister's two bedroomed house. She was married "a long time ago" when she was very young, she says, by customary law. The marriage was monogamous during the first years but later on, as it shall be explained, her husband married another woman. She did not acquire any formal education because her father did not believe in educating a girl child. In her culture, she says, "girls should marry, bring cattle home in the form of lobola, and bear children" and those things do not require formal education. Her life has been characterised by lack and anguish and she and her children have always longed for a "good life". Mrs Ngema spent most of her married years staying with her in-laws while her husband was working in Johannesburg. He also did not have much formal education – he worked as a construction worker for many years before opening his small car wash business. Mrs Ngema's father in-law was an abusive man, who used to beat up her children, especially her son for not doing his duties well and she could not object to that because she says her culture does not allow her to speak against her in-laws. What is most upsetting to her is that the abuse forced her son to run away and no one knows where he went.

As a way of escaping abuse and poverty, she took her children and left for Johannesburg to look for her husband, who was no longer providing for them or even coming home. While in the city, she stayed with her sister and connected with her sister in-law who connected her with her husband who had married another woman in a civil marriage and had five boys with her. After connecting with her husband, they talked and she forgave him for deserting her and her children. By her account, Mrs Ngema continued with the marriage because firstly, customarily, she was married to her husband and if she opted out then her family would have to "pay back lobola" she said. Secondly, she said that polygamy is part of her culture; therefore, her husband had a 'cultural right' to marry another woman. Thirdly, she desperately needed someone to support her and her two remaining children as they were young and she had no money to support them.

[27] Mrs Ngema refused to be recorded; most of the information from her was from the notes taken during the interview and a few quotations that I managed to capture.

Mrs Ngema and her husband could not stay together because he was staying with the other wife; therefore, she had to look for a place to stay because she could not stay with her sister forever. She found a small piece of land where she could erect a shack. She stayed in that shack with her two girls for a very long time before her sister died and her husband used to visit them on a regular basis. After the death of her husband, she later moved to her sister's house, at the time of the interview her sister had died and Mrs Ngema was staying with her children and her sister's children.

Mrs Ngema's husband died of tuberculosis in 2011, leaving behind no will and two confused families. Mrs Ngema did not receive anything from her husband's estate. Mrs Ngema's co-wife took over everything and she receives a monthly stipend from their late husband's life insurance policy to the detriment of Mrs Ngema and her in-laws. Adding to the confusion is the two legal systems operating at different levels and the lack of knowledge on the part of the families involved on how the systems work. In Mrs Ngema's words, she could not approach lawyers because she had no marriage certificate and believed she could not win in court and she believed that the police would not listen to her.

In addition, she believed that her chances of inheritance were further jeopardised by the fact that she had no male children who would inherit even if she claimed customarily. Customarily, the fact that her only boy disappeared was "a knife in the heart" because, even if he had to claim for property and money using the customary route, she would hit a wall because customarily girls do not inherit from their father, instead, they are expected to marry and bring lobola home. On the other hand, her limited knowledge of the law like most women in this study worked against her. She had no idea that the constitutional court ruled in the Bhe case[28] that the principle of male primogeniture was unconstitutional because of its gender bias. Furthermore, she believed that because she had no marriage certificate, common law was not going to be of use to her. She did not know that the RCMA stipulates that she has equal powers with her counterpart married in civil law. Furthermore, her strong rural background and the abuse she endured while staying in the rural areas with her in-laws contributed to the passivity that she had, because patriarchal customary laws still heavily govern the people rural areas. Culture also played a vital role in Mrs

[28] As already explained in the literature review chapter , male primogeniture was abolished in the Bhe v Magistrate, Khayelitsha; Shibi v Sithole , South African Human rights Commission V President of the Republic of South Africa 2005 1 SA 580 (CC) (hereafter the Bhe case).

Ngema's ignorance in that she was never equipped educationally because of the belief at that time that educating a girl is unnecessary. Ramphele argues that this belief has contributed immensely to the oppression of women in African societies (Ramphele 1995).

Differing from Nomathemba, who was from the same background and of almost the same age and level of education, Mrs Ngema did not bother to ask around for options. Instead, she took as the truth, what other women in the community had told her, especially because she had no marriage certificate (making her think that her hands were tied. Apart from structural hindrances, Mrs Ngema's self-concept and personality, the existence of sex role stereotypes exerted influence on how she viewed herself in her situation. For example, her lack of confidence in her own capabilities inhibited her from things that were going to empower her. Her belief that as a woman, she could only wait for her husband for material and emotional support, and as a woman with girl children, she had lesser rights compared to the woman with boy children worked against her. Mrs Ngema was too hesitant to take action, she apologised for who she was as an old woman, could not even approach local services for example "because nurses treat you like dirt" and she thinks that she is disrespected because " they know that you do not have a man who will protect you". The tendencies to disparage her capabilities were all contributory factors to her losing out. However, we cannot blame her for that. Her abusive background and the reiteration that girls are useless contributed to her very low levels of self-esteem.

Both Nomathemba and Mrs Ngema are products of a complex patriarchal system that deprives them of their freedom. The double tragedy of being at the intersections between customary law and the problems in accessing an arguably more democratic common law is a blow to their inheritance rights. Furthermore, the dual system does not even present an option but an obstacle because of the confusion evident between which route to take and the options available to them. The commonly expressed belief that if a woman is customarily married she is of a lower status compared to one in a civil marriage, is a clear indication that there is great confusion on how common law operates, particularly with regard to what happens to the property when a polygamous man dies intestate.

Looking at these two women's stories, one of the ways to resolve the problems that these women encountered is through resolving legal pluralism's conflicts and confusions. This is true to a certain degree; however, the problem is deeper than that. Thokozile's story demonstrates that

even if there is a legal document, the opportunity to use the law to improve women's status is not possible because most decisions regarding their lives are made at household level where customary law dominates. Thokozile's late husband had written a will, but because the law behind will writing is not accepted, known, understood, and enforced in communities, her in-laws disregarded it. These findings are consistent with those of Grigsby's (2004) observation that even in cases where women do have legislative or judicial support; patriarchal culture and social structure tend to pose difficult challenges and barriers to redeeming rights to property and land. Villarreal (2006: 8) supports this view and notes that even in countries where statutory laws have been changed to ensure equality between men and women, traditional institutions continue to be the principle means of determining access to and ownership of land. Empirical evidence also shows that customary systems take prevalence over statutory systems. It has been noted that the intestate succession act draws on a very small sample of beneficiaries; a notion, which does not correspond with the indigenous communities' idea of extended families (Rautenbach 2008). In this study, it became evident that there was friction between the widows and their extended families. In all the cases, the in-laws believed that they deserved a share in the deceased's estate. Another possible explanation for the failure of statutory interventions is best encapsulated by Rasavi (2003: 25) who expounds that reasons for failure of statutory interventions range from budgetary constraints to administrative and institutional weaknesses within governments and weak accountability within parliament and/or civil society.

Whose Property is it Anyway? Conflict between Custom and Law in Property Appropriation

Although many widows in this study could not prove that the properties, including their matrimonial homes, were solely products of their hard-earned money, some widows in this study specified that they had acquired the property using their own money and that their husbands had not contributed much to the acquisition of those assets. The discussion that follows demonstrates the ways some widows are deprived of their assets even when it is common knowledge that their husbands did not make much contribution towards the acquisition of those assets.

MaHlongwane, a widow aged 43, was born into a poor family in Pongola in the province of KwaZulu Natal. She is of mixed parentage, her father is a Swati from Swaziland and her mother is Zulu from Pongola, Kwazulu Natal. She grew up in Kwazulu Natal. She attended primary and secondary schools in Kwazulu Natal. After completing her Matric, she enrolled at a teacher's training college in Kwazulu Natal and trained as a primary school teacher. She graduated in 1992

and starting teaching the same year. She had her first daughter in 1997 and she did not marry the father. She taught in the Kwazulu Natal province for some time before migrating to Gauteng province for better opportunities. In 2000, she enrolled with a correspondence university and studied towards a Bachelor of Arts degree in English and Communication Studies, which she completed in 2003. The same year, she welcomed her second daughter from the man who later paid lobola for her. She specifies that her sisters and mother did not want her to marry the man because he was abusive and uneducated. She did not take heed of their advice as she says she was under pressure because she felt she was getting old without a husband. In 2009, he paid lobola for her in the form of six cows, a quantity considered normal for a woman with a child from a previous relationship (for it is thought that she does not warrant many cattle). The fact that her husband had two other children from two other previous relationships did not play any part in these determinations.

My conversation with MaHlongwane was in her two bedroomed house, which she shared with her two children. She bought the house before she met her husband and had already furnished it. When she met her late husband, he was staying with his sister. He was finding it difficult to acquire any formal employment because he was not educated. He ran different kinds of businesses that gave him very little remuneration, which according to MaHlongwane he spent on beer. At the time of the interview, the house was being extended as she is adding two more rooms; but she said construction had stopped because of financial constraints.

In January 2011, her husband died after being seriously ill for about a month. He died of an HIV-related illness. MaHlongwane had no idea that her husband was HIV positive and that he had been taking antiretroviral tablets. She expressed shock at learning that her husband was HIV positive:

> To my surprise, when they asked him if he knew his status he said he knew it since 2006 and he had been taking ARVs. I was shocked you know, very shocked and he was critically ill so I told myself that he will get better and I will have to deal with him then. He never got better he died a week later. [Interview MaHlongwane, 18 August 2014].

MaHlongwane learnt of her own status after the funeral, by her account, she was stressed and fell very ill, even though she suspected that her husband had infected her, she had not yet had time to prove it. She tested at the hospital and found that she was also HIV positive and fearing

stigmatisation, she did not divulge her HIV status anyone at that point. However, she says she was saddened to learn that she was accused of killing her husband:

> His sister came to me and asked what exactly killed him, I couldn't tell her it was AIDS because I was embarrassed so I said it was pneumonia, then she said if he never met you he would be alive today. I was too sad to start quarrelling with her but it did not stop there, the rest of the family members could not come close to me and they were passing funny comments to me. [Interview MaHlongwane, 18 August 2014]

The above excerpt shows that MaHlongwane was also accused of infecting her husband with HIV because she says the accusations made her suspect that that some of her in-laws, particularly those closest to her husband, knew about his illness.

Her story is a story of abuse in the days preceding the funeral. Most extreme for her was her being denied use of one of the houses in his rural home to the extent that she slept by the fireplace. She was also refused transport back to the city. What surprised her was that her mother in-law, who had been close to her, turned on her. After the burial, when she went to apply for a burial certificate she discovered that her brother in-law had gone before her. Depriving her of the certificate meant that she could not get grants that are given to widows and their children. Fortunately, for her, she managed to convince the officers that it should be given to her. She later managed to use it to apply for a bursary for her youngest daughter who is still at primary school. MaHlongwane and Iris's experiences of HIV related stigma highlights the subtle, yet pervasive and powerful social inequalities that enable and perpetuate stigma and discrimination. These findings support previous research on HIV related stigma by Mills (2004) who found that " structural inequality, like gender inequality, is highlighted by the stigmatization and blame of women for contracting and transmitting HIV to men" (Mills 2004: 22). Mills (2004) further argues that HIV related stigma can be used to highlight particular relations of power and the gendered nature of the stigma functions to reproduce unequal power relations between the "self and the 'other'" (Mills 2004: 23). With reference to widowhood and inheritance rights, the gendered nature of the HIV related stigma poses difficulties for HIV positive women as it is used to violate their inheritance rights, as is the case with MaHlongwane. In addition, her HIV status was used to bully her into submission. Other studies on HIV/AIDS and property inheritance (Izumi 2007, Strickland 2004 and Mate 2005) report that many women become victims of HIV and property grabbing because they have weak property rights, which jeopardise their ability to question, resist or change cultural practices, and increase their chances of preventing infections.

Strickland (2004) commenting about the effects of HIV/ AIDS on gender equality, argues that when women have weak property rights, they are incapable of securing resources that would allow them to improve their chances of preventing infection.

This study does not disprove such suppositions; it argues that such expositions are unsatisfactory because they assume that all women with secure property rights have lesser chances of contracting HIV infection and have stronger property rights. The narrative by MaHlongwane mystifies this assumption because she was gainfully employed, had access to credit and social support, and well educated but she had no bargaining power in her intimate relationship, evidenced by the fact that she was constantly a victim of domestic violence and emotional abuse. Furthermore, her subordinate position in relations with her in-laws exposed her to the violation of her inheritance rights. Even though the property literally belonged to her, her chances of claiming full ownership rights were shattered because she was still governed by customary law.

A few days after the burial, her in-laws summoned her and her family to her home, which they call their late brother's home, to share the property. The appropriation of property was presided over by her late husband's oldest brother who is a pastor and "they took whatever they thought belonged to him" [Interview MaHlongwane, 18 August 2014]. It is important to note that MaHlongwane's in-laws assumed that all the property belonged to her late husband. They took household furniture, including their wardrobe, his tools, and personal clothes. Most of all, they demanded his death certificate under the pretext that they want to apply for grants for his two other children. To her surprise, they told her that they are giving her the house. She says that the wardrobe and other property they took belonged to her, as her husband had never bought anything in the house. To her surprise, her brother in-law had already taken her late husband's building equipment without even discussing that with other members of the family and that equipment was not included as part of the property to be shared. It is vital at this point to mention Iris, even though her story has been dealt with in depth elsewhere in this report. Iris also had acquired more than her husband had because he was not as gainfully employed as she was. Despite this and the fact that his family knew that he did not have a steady and well-paying job, it did not stop them from threatening to take the property she shared with her late husband. Only in her case, her in-laws demands were futile. Others, like Elizabeth, also had their property that they had worked for taken by in-laws and, in Elizabeth's case, her late husband's children. Elizabeth, 65 of Shangaan origin, is a much older woman compared with MaHlongwane.

Elizabeth was customarily married to her late husband since 1986. She had three children with the late husband, two girls and one boy. When I met Elizabeth, her husband had only been deceased for a month. She was very emotional, citing insomnia and immeasurable pain after the loss of her husband:

> It is very painful my child. I cannot even sleep. I think about him a lot. It is as if I will see him walk in you know, it is painful… (Starts crying). I do not know how to explain it. MY HEART BLEEDS my child. You know when there are people around talking to me, I feel better but as soon as they leave AWUUU SHAME! I start talking to myself; (she sobs again) it is painful. He was in and out of hospital because of high blood pressure. [Interview with Elizabeth, 15 August 2014].

Elizabeth worked as a domestic worker for a long time, she says, before getting a job at the municipality as a cleaner. Elizabeth is retired and her source of income is a government grant for the Elderly and her pension from the municipality. She stays in a two bedroomed house in the Ebony Park Township of Midrand. The house has three backyard rooms to assist her with generating income for her survival. In the house, there is not much furniture except a two-plate stove in the kitchen and dilapidated kitchen cupboards and in the sitting room; there is an old model television set and old sofas.

After the death of her husband, her husband's children from a previous relationship and some members of his family helped themselves to whatever they chose:

> People just took whatever they wanted to take. They even took his bankcards. They took his credit card and his ABSA card. I do not know why they took them because they do not even have the pin codes. They did not even tell me that they are taking them. They want money; I will not even ask them, they will do whatever they want with the cards. I lost out my child; they took my clothes as well. They took my skirts, t-shirts, blouses, bras, pots, and plates whatever they wanted they took it my child. Now they are saying they want this house. [Interview with Elizabeth, 15 August 2014].

Later on, stepchildren dragged Elizabeth (a frail old woman, from what I observed, who frequently during the interview emphasised that "I am old") to the bank to withdraw money from her late husband's accounts and demanded that his pension fund be given to them, as they were the rightful beneficiaries of the money. The other demand was that Elizabeth should vacate her marital home because her stepchildren claim that the house does not belong to her, it belonged to her late husband and therefore his children are the beneficiaries. She found this demand outrageous because:

> I am the one who was paying the bond for this house. My husband was buying food and paying for water and electricity. [Interview with Elizabeth, 15 August 2014].

At the time when the interview was conducted, Elizabeth was considering approaching professional therapists in order to deal with the psychological and emotional trauma. The difference between Elizabeth and MaHlongwane's situation was that Elizabeth and her husband had acquired the house together; therefore, the customary practice of lack of recognition for the woman's contribution in the acquisition of property took precedence. On the other hand, there was no doubt that the house belonged to MaHlongwane as she acquired it before they met. That is the reason why her in-laws could not take it from her or even begin to threaten her. Most widows in this study who co – owned houses with their husbands were threatened with evictions.

In these narratives, it emerges that property ownership in customarily governed societies is highly gendered and culturally determined obstructing the realisation of women's rights and subsequently achieving gender equality. For the likes of MaHlongwane, Iris and Elizabeth, being a woman in a patriarchal community means that you can never own property or inherit it. Their stories demonstrate that patriarchal customs and beliefs discriminate against women and are blind to details. This poses questions as to whether this is a deliberate action perpetrated by greed. Dube (2008), Izumi (2007) and Sossou (2002) all agree that property grabbing is a symptom of deepening levels of greed.

> In-laws have that problem that you will remain with a lot of property, you see, they have that thing that this person will inherit our brother or son's hard earned wealth and everything, you see that. It is just pure jealousy, they just want property, and they do not even know or have the means to get the property. [Interview with Thokozile, 5 September 2014].

> They must have left those things with me because we have a daughter together. After all, he had acquired very little they were supposed to understand that. They did not even stop for a minute and think about his child... People are very greedy you know. [Interview with MaHlongwane, 18 August 2014].

It is interesting to note that even the relatives who were of a higher economic income bracket compared to the widow, for example, MaHlongwane's brother in-law who was a church pastor and much wealthier than MaHlongwane, would participate in the senseless dispossession of the widow. MaHlongwane's brother in-law was driven by greed to the extent that he defied custom by hiding some of the properties from the rest of the family and only presenting a few to be

appropriated. In his analysis of disinheritance in Zambia, Mwale (2006) confirms that greed is a great factor in property grabbing practices. Mwale argues that it does not matter if people have their own material possessions they just feel they could accumulate more from their deceased relatives. MaHlongwane's case is a clear example of the manipulation of patriarchal tools such as culture, traditions, and norms of a certain group for the benefit of the dominant group (Dube 2008: 34).

However, greed alone cannot explain the extensive disregard for inheritance laws; the experience of Elizabeth, for example, indicates that poverty is a factor to be considered. Elizabeth was living in a house that was dilapidated and in terrible shape, some of the items taken from her included undergarments and personal clothing. The present findings seem to be consistent with other research (Izumi 2007) which showed that property grabbing is a symptom of deepening poverty and consequently breaking down of social norms and family ties in Africa. Izumi (2007: 13) reports that many women who are victims of property grabbing are "themselves sick and impoverished and their land and possessions may amount to little more than a tiny shack or cooking pot". Izumi (2007) emphasises that, poverty contributes to only a small percentage of property grabbing cases. The real problem seems to be greed because most cases of families trying to evict women recorded in Zimbabwe are perpetrated by middleclass, wealthy family members who have their own property (Izumi 2007: 14).

Religion and Culture: The Odd Alliance

The relationship between Christianity and culture that emerged in the stories was unexpected and "odd" is the best way to describe it. As discussed in *Chapter 2* that the interactions between these two "cultures" is complex. I say "cultures" because they both consist of prescribed customs and practices and beliefs that may not be agreed by all members of the society and they change when situations arise. Some of the questions I asked myself after conducting the interviews were does Christianity condone or oppose patriarchy? Does it act as a silencing mechanism? Do women seek solace from Christianity or derive consolation from it? While Christianity is commonly viewed as a place where the oppressed can seek sanctuary, the widows stories demonstrate a rather disturbing picture. The following story offers some insight into the ways Christianity and

culture interact in a way that further subjugates women. Their inability to talk or to resist patriarchy reveals a good deal about the role of the church in the widows' lives. In addition, I will discuss how traditional customary practices and the practices and beliefs in the church conspire to discriminate against and isolate widows.

Matshabalala, a 71-year-old woman, was born in Alexandra Township. Her parents originated from Kwazulu Natal in an area known as Mahlabathini. She grew up amidst poverty and despair, sexual abuse, verbal and emotional abuse, which she says, forced her into prostitution and an early marriage because her conditions forced her to look for an alternative place to stay. Matshabalala was expelled from school when she was in standard five. She had her first child when she was a teenager and she has no recollection of her exact age at the time, but she emphasised that she was very young. Matshabalala said due to her behaviour she could not stay long in a marriage as in her Zulu culture, women are expected to be obedient to their husbands and women like her who loved beer were considered prostitutes and no one could marry her. As a result:

> All my children have different surnames; one of them is from Zimbabwe. She does not want me to tell people that (she laughs). I do not know the youngest girl's father; it was a one-night stand (giggles).

Later on in her life, she found a job as a domestic worker where she worked for "many years" which I thought explained her fluency in English. After years of being a single parent, Matshabalala met her husband of 16 years at a drinking place[29] normally called taverns.

> I then met *umkhulu* [she refers to the husband as "umkhulu" which is a sign of respect for the elderly man in the Zulu culture] he is the man that I can say he was my husband. I was with him for 16 years. He was almost like my stepfather, he was an alcoholic, but at least he loved my children, although he used to get angry with them sometimes for no apparent reason. Mind you, these were not his children; I have no children with him. [Interview Matshabalala, 28 July 2014].

There was no formal marriage between them. Matshabalala's late husband worked as a gardener and he died in 2012 from an asthma attack.

At the time of the interview, Matshabalala indicated that she is a "born again" Christian and she enjoyed her new life as a Christian. However, after the death of her husband, she felt that her

[29] At the time of the interview, she had stopped drinking and was a practicing reborn Christian.

Christianity was shaken because of some of the rituals and practices she was expected to observe. Firstly, she lamented that she was refused the liberty to bury her husband, because she was considered a city woman[30] because her husband had not frequented going home and he never financially supported people back home:

> *Mkhulu* was one of those people who had deserted their home and family. He was of those people we call "*khumbulekhaya"*[31]. I only met a few of his relatives when he was sick [Interview Matshabalala, 28 July 2014]

She says after his death

> There was drama…They were fighting for the corpse. Therefore, I asked them what they want and they said they want to take his corpse home to be buried there, so I gave them the corpse. I cannot say I had a relationship with my in-laws during the course of my marriage. [Interview Matshabalala, 28 July 2014].

She says as a Christian woman, she let that go. However, problems for her were only starting, apart from the squabbles for property, the most /degrading and humiliating for her was that she was asked to participate in some traditional cleansing rituals:

> They wanted me to partake in their rituals, I told them that I cannot do that because I am a born again Christian. They only gave me some muthi (*herbs*) to cleanse my blood and they bathed me just once using their things. I had to do this because you know there is bad luck that follows you when you do not do that. [Interview Matshabalala, 28 July 2014].

From the above, we can conclude that even if she was a Christian the cultural belief that a widow is infested with bad luck did not escape from her psyche. What follows was unexpected:

When I returned the pastor prayed for me so that bad spirits would leave me. After praying for me the pastor said I am clean, there is no darkness or bad spirits following me and to me is a relief. [Interview Matshabalala, 28 July 2014].

[30] City woman" is a phrase adopted from the widows' narratives to describe a greedy woman of loose morals who resides in the city with a man and who does not care about her husband's extended family. This term has a historical relationship with the system of migrant labour in South Africa that reproduced gender inequality and patriarchy. Migrant workers in the cities separated from their wives would engage in sexual relations with women in the city commonly referred to as "city women".

[31] In this community, people used the word "Khumbulekhaya" [literary means remember home] to refer to people who desert their homes. This was derived from an SABC 1 programme *Khumbulekhaya* that helps families locate their family members who deserted them.

The above excerpt demonstrates that even in Christian religion just like in African cultures, widows are unclean women who need to be cleansed. I concluded that this is a belief derived from African culture and incorporated into Christianity and it was retained and practiced side by side with Christianity. They both need cleansing rituals, Christianity; they use the ritual of prayer, whilst cultural customs expect a widow to go through bathing rituals. For this woman I would say Christianity was the "better devil" because the rituals are not gruesome. However, it is important to note that Matshabalala does not completely give up her tradition for the Christian culture, she accepted to be bathed and use herbs, just in a way that was acceptable to her. This cogently reflects that there is confusion between what culture is and what religion is. The scenario above is described by Aguilar (2000) as "religion as confused culture". Aguilar contends that some communities confuse what religion is and what culture is. They take both as the same and in many instances practice religion as if it was part of their culture or adopt some of the old cultures thinking that they are doing a religious thing.

The excerpt above shows that there is a very thin line (if any) dividing what is rendered as culture and what is rendered religion. This also accords with an ethnographical study by Aguilar (2000) that reports that the Boorana people of Northern Kenya and Southern Ethiopia consider themselves Muslims but they continue practicing Boorana rituals and chanting Muslim songs during some of the Boorana rituals. This brings to light Sewell's (1999) contention that cultures are not bounded entities, through their relations with religious and political ideas they go through exogenous development. Societies contain "a multitude of overlapping and interpenetrating cultural systems" (Sewell 1999: 55).

Furthermore, as an extension to the fact that there is a thin line separating culture and religion, the study further revealed that there are aspects of African culture in Christian practices, even though some widows considered themselves Christians, they have a very strong allegiance to their cultural traditions. They continue practicing African traditional rituals such as cleansing rituals, communication with the world of spirits acknowledgement of forces equally powerful (amadlozi), and practicing of mourning rituals. This finding is in line with Aguilar's (2000) finding that the Boorama people of Northern Kenya and Southern Ethiopia considered themselves Muslims but they continued practicing Boorana rituals such as the communication with the world of spirits, sacrifice of coffee beans and Boorana prayers (Aguilar's 2000: 236).

The study ascertained that Christianity discriminates against and isolates widows. This is clearly demonstrated in the narratives of two other widows. Elizabeth and Nomathemba (discussed earlier in this chapter) revealed one unexpected finding. I met these women when they had just lost their husbands and were still in mourning. Upon asking Elizabeth how widowhood had affected her interaction with people in her community, she responded:

> I am a Christian you see, the people I interact with are people from my church. They are very sympathetic. As we speak, after three months I will be allowed to go back to church. When your husband dies, you have this black cloud hanging over you. So you cannot be interacting with people as normal but after 3 months I am considered clean and can go back to church but other churches take longer [Interview Elizabeth, 15 August 2014].

I had not anticipated the response and I was taken aback. Later on in the fieldwork, I asked Nomathemba if she had approached anyone for her help with her problem and she responded:

> I have not gone to church because I am not allowed to go to church until I remove the black clothing. You see when you are in these black clothes you are not allowed to mix and mingle with people. I belong to the Methodist church and I will only go there after a month. You are not even allowed to visit people or go to public events. You also cannot accompany people beyond the gate otherwise; you will bring bad luck to those people [Interview Nomathemba, 20 August 2014].

It is important at this point to note that Nomathemba is a Xhosa woman and according to the Xhosa culture, the mourning period will be one year, which means that for one year she is not permitted to go to church. On the other hand, Elizabeth is of the Shangaan culture and their mourning period is six months. These two cases demonstrate that Christianity and culture connive in their operations leaving the women involved without any alternative; they are forced to compromise. It can be interpreted as an expression of Christianity as culture as described earlier. The alienation results in a situation whereby these widows could not interact with other people where they can get information on how to deal with the problems they face as widows. It was a disadvantage to them because even though they seemed not to realise it, they were suffering alone barred from the rest of the world. This is an advantage to the patriarchal system because the widow is not given a chance to interact and consult on matters of property sharing and administration.

One of the most interesting findings of this study was that Christianity acted as a drug that causes passivity; it actually supports the customs that the patriarchal society uses to silence women.

The muzzling role of Christianity is evident when widows in this study prefer not to challenge the practice of disinheritance and widowhood rites that discriminated against them because a higher power (God) will fight on their behalf:

> I told myself that they are adults and they know what they are doing and it is up to God to punish them [Interview MaHlongwane, 18 August 2014].
>
> I also asked God to give me power to forgive them [Interview MaHlongwane, 5 September 2014].
>
> God will sort them out. ([Interview Elizabeth, 15 August 2014].)

The participants quoted above clearly highlights that Christianity plays a vital role in silencing the widows' voices. In this sense, widows do not seek legal redress or exploit the resources available to them because they believe that as Christians, they must never fight anyone and they leave the fighting to a higher power that is depicted by widows as having unsurmountable power and has control over any situation. The very fact that Christianity emphasises life after death deters women from confronting the present situation with the hope that life will be less miserable in the afterlife. The available literature on Christianity and patriarchy in South Africa centres more on how the Christian concepts of sexuality, marriage and family were imposed on the indigenous people in South Africa and invented domesticity as a sphere specifically ordained for women (Gaitskell 1990, Cock 1990). This report adds on to the available literature by arguing that, in addition to encouraging women to respect their husbands and take pride in their confinement in the domestic sphere (Gaitskell 1990) Christianity also has a silencing effect, it works alongside patriarchy and helps patriarchy strive in its mission to dominate women.

Conclusion

The meaning of widowhood that runs through the narratives discussed above presupposes a single notion of what it means to be a widow. The common elements of widowhood that appear in traditionally framings of their experiences include the widow as disinherited, victim of violence, evicted, victim of property grabbing, and marginalised. A complex mix of various factors reinforces these elements. Topping the list are prejudicial customary and religious laws and practices, poor implementation and enforcement of laws, biased attitudes, women's

ignorance of the law and their rights and the fear of being seen as cultural traitors or greedy, disrespectful women if they assert their rights. An important picture emerges if one adopts a more localised approach to the question of widowhood and patriarchal customary law. The widows I encountered in this study, have not just submitted to male dominance, they have developed numerous and often effective ways of challenging patriarchal domination. As we have seen, the three women discussed under the theme *Challenging Patriarchal Authority* adopted various strategies to resist patriarchy and traditionally defined widowhood. Other women used rather covert expressions of resistance. A key observation was that widows are not defenceless, they are not a homogenous group, and key dynamics such as class, level of education and marriage type distinguish widows and determine their responses to patriarchal domination.

CHAPTER FIVE

Conclusion

The study investigated the widowhood experiences of 10 women in order to ascertain if the customary law of succession and inheritance has violated women's inheritance rights bearing in mind that post-apartheid South Africa enacted legislative measures to protect women's rights to inheritance, equal rights and dignity. The study also investigated why efforts to protect the rights of women in inheritance have failed. Specifically, the study explored the ways in which patriarchal cultural customs and religious beliefs have contributed to the violation of widows' inheritance rights. Furthermore, the study endeavoured to investigate how individual elements relating to widows' experiences interrelated to all women's experiences. Furthermore, how widows' social identities (with focus on female gender identity) contributed to their particular experiences. In addition, the study focused on their individual attributes that included age, level of education, and type of marriage to ascertain if these had any effect on the paths that they take as individuals to claim and assert their rights as well as their responses to the violations of their inheritance rights.

The study was conducted through listening, documenting and analysing the narrative accounts of the widows. The analysis utilised a feminist narrative analysis approach coupled with qualitative thematic content analysis to explore shared aspects of women's experiences. To realise the central aims of the study, a qualitative narrative approach that prioritised the life histories of respondents was adopted with the necessary ethical considerations observed as discussed in *Chapter 3.* The research was primarily based on the views and experiences of the narrators concerned with the view that they are the experts in their own lives. With that in mind, the limitations of the study is that the findings may not be generalised to a wider population or offer overall voices to women's experiences. Nevertheless, the experiences of this small group of widows provides the kind of detail and in-depth insights into the nature of widowhood that is important in understanding how to prevent the persistence of the negative experiences outlined in this report.

Widowhood was chosen to investigate customary law of inheritance and succession social ill in a women's life that the discriminatory tendencies of customary law are overtly displayed. The customary rituals and practices that a widow is expected to undergo are highly gendered because of patriarchal ideology embedded in them. During widowhood, such dynamics as culture, custom and traditions operate in various complex ways that ensure the continued subordination of the widow as a woman in a patriarchal society. Widowhood also constitutes a heterogeneous group of women from different background and with diverse personal attributes, these diversities present different experiences all defined by the condition of widowhood. Furthermore, widowhood is an under researched area in academic studies and hence research in this area is needed.

The study was taken within two significant categories. First, it provided a historical view of customary law and patriarchy prior to 1994 and argued that customary law and patriarchy in contemporary South Africa is mostly a colonial creation and consisted of customs that were detrimental to women. Secondly, the study illustrated that oppressive customary laws and state laws that governed apartheid and its patriarchal ideology were used to perpetuate many forms of unfair discrimination against black people and black women.

As a result of these challenges, the post-apartheid government promulgated laws, including extending the Intestate Succession Act 81 of 1987 to cater for the administration of estates of all people regardless of their race and marriage contracts. The RCMA was also enacted for among other things to provide for the equal status of spouses in customary marriages and to regulate property appropriations upon the death of one spouse. As legislative processes were put in place to solve unfair discrimination of women in post-apartheid South Africa, the research found that customary inheritance systems persist and conflicts are still resolved customarily. In cases where the knowledge of the law exists, the law is simply ignored because it clashes with the principles of customary law, which is still very influential in the private sphere of the family and marriage. It emerged that legislation is not sensitive to the context to which it is applied because the Intestate Succession Act ignores the fact that African societies value group rights rather than individual rights; as a result, the law is disregarded as a foreign law that does not take into cognisance the idea of the extended family. In addition, widows are afraid to take their in-laws to the courts for fear of intimidation and dissolving of family ties. It also emerged that

perpetrators go unpunished, because most widows displayed ignorance about how the law operates and about their rights, this coupled with the high legal costs which are out of reach of the poor township women ensured that even those with limited knowledge on the law could not contest the customary law that disinherited them.

The findings and information produced in the study results in the central message of the study that customary law of succession and inheritance can be vastly discriminatory in inheritance matters. As a result, these findings, which suggest that inheritance under customary law is highly gendered as widows are usually excluded from inheriting from their late husband's estates, are discussed as per individual story in *Chapter 4*. In sum, widowhood is a dreadful experience, whereby a widow becomes an object of "collective repudiation" (often seen as "unclean" and "dangerous" (Young 2006: 200). For most women, the patriarchal customary customs, beliefs and practices ensure that women do not inherit. To ensure that, measures are that include, cultural beliefs that widows are responsible for their husband's deaths, reiteration of customary laws that women cannot be heirs, dehumanising practices that stigmatise and exclude the widow from the public, patriarchal religious and cultural religious beliefs that widows are infected with bad luck. This further perpetuates widows' isolation from society and inheritance discussions and appropriations and beliefs that women cannot and do not own property which justifies dispossessions and disinheritance. All these mechanisms in most instances silence the widows from voicing their concerns, asserting their rights as well as resisting and questioning patriarchal authority. This is a significant finding of this study as it indeed confirms that customary law of succession and inheritance uses various cultural mechanisms to violate women's inheritance rights.

The most important theme that emerged from the thematic content analysis of the shared experiences found in widows' narratives include that widows are not helpless victims of patriarchal dominance and its cultural beliefs and practices. Some widows in this study employed various mechanisms to contest biased patriarchal cultural tendencies. These included, firstly, taking advantage of the changing discursive environment on women's rights in post-apartheid South Africa, using these to assert their inheritance rights and resist harmful customs. Secondly, younger widows with higher levels of education displayed a degree of awareness of their rights hence were active in resisting their violations. Thirdly, family support emerged as a powerful

tool towards the emancipation of women from prejudiced customary law. Fourthly, access to lawyers and money proved vital in women's capabilities to claim their inheritance right. Fifthly, characteristics of these women determine who loses and who wins in the battle for the property and other resources. Widows with strong willed characters were at an advantage compared to their more reserved counterparts. Sixthly, the type of marriage contract mattered in these contestations for inheritance. Women not married under customary law displayed awareness that the law protected them compared to those married under customary law who felt that they were vulnerable to dispossession and eviction from their marital homes. Lastly, the other form of resistance identified in this study was silence itself. Drawing from the works of Ramphele (2002) and Motseme (2004) that encourage researchers on women's experiences to hone in on silence as a form of resistance, I argue that although some women in this study did not show overt signs of resistance, their actions, words, thoughts and silences were interpreted as resistance in situations where resisting would incur dire consequences.

The study also established that the flexible nature of customary law is not only a threat to its credibility but it has been manipulated and its legitimacy has been largely compromised by greed. The study finds that widows have been dispossessed of their belongings and disinherited by greedy male relatives and their female counterparts in the name of culture. With that said, it emerged that the state presents a difficulty to widows' inheritance rights because of the existence of a dual legal system in South Africa posed serious challenges for the widows in this study as some were confused on which law between customary and common applies to their particular situation. Most widows who were in customary marriages seemed oblivious to the fact that they had rights and they could approach the courts for help. Hence, this demonstrates that there is a wide gap between law and practices as in most instances in this study, the customary law took precedence over common law.

The literature together with the information generated by the study, have attempted to highlight as much as possible the ways in which customary law of succession and inheritance and the underlying patriarchal customs and beliefs influence the inheritance rights of the women and thereby their social and economic positions. Furthermore, the study has attempted to gather knowledge on the widows and their responses to patriarchal domination and contribute towards fostering research on widowhood, the law and culture in South Africa. Considering the limited

studies given to widowhood in the law especially as the law and customary law are concerned, this study endeavoured to fill that gap. This information may be valuable considering that research in this area is lacking. It potentially serves as a source of information for those who want to conduct research on the subject.

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List of Interviews

Name	Date
1. Mrs Ngema	24 September 2014
2. Matshabalala	28 July 2014
3. Mahlongwane	28 July 2014
4. Elizabeth	15 August 2014
5. Nomathemba	20 August 2014
6. Iris	16 September 2014
7. Thokozile	5 September 2014
8. Mrs Zungu	1 August 2014
9. Mpho	17 September 2014
10. Phumzile	1 August 2014

Appendices

Appendix A

Participant information sheet

My name is Thatshisiwe Ndlovu. I am studying towards my Master degree in the department of Development Studies at the University of the Witwatersrand on the project titled: **Silent Victims or Agents of Change? An Exploration of The Lived Experiences of African Widows Confronted with the Practice of Customary Law of Succession and Inheritance in South Africa.** My research focuses on the question, **Have customary laws of succession and inheritance in post-apartheid South Africa infringed on inheritance rights of black South African women? If so, why have efforts to discontinue its authority failed?**

The core of my research lies in exploring the experiences of South African women in Johannesburg about inheritance and customary law. I will be asking you a number of questions trying to find out how the violations of inheritance laws have affected the socio economic positions of women (widows). The core of my research lies in exploring how customary practices have obstructed widows from inheriting and how this has affected their socioeconomic status in post-apartheid South Africa and how the widows themselves perceive and articulate customary law and its principles. I will be interviewing among others widows, lawyers and community leaders. Widows will be requested to tell me their life stories and their perception about principles of customary law that deter them from inheriting. Lawyers will be asked about the legislation concerning inheritance and its implementation. It would be my pleasure to have you as one on my informants on the subject mentioned above.

The interview is a conversation between you and me and you are free to stop the interview at any point you might feel like taking a break. You are free to express yourself in the language that you are comfortable with. During the interview, I will be asking you questions about widows, customary practices, culture, and tradition. In addition, I will ask you about your perceptions about the South African legislation and the dedication of the South African government in reducing gender inequality in post-apartheid South Africa.

You can choose any time that is convenient for you to be interviewed. Your name and information would be treated with confidentiality. Your name will only appear when you want it to appear. The interview will last for approximately an hour. You are also allowed to talk as

much as possible about yourself. If you agree to be interviewed, your participation is voluntary and you are free to stop the interview at any stage you might feel uncomfortable. In the written report, pseudonyms will be used, unless you do not have any reservations about the use of your name in the written report. In order for me to capture the information that you will give me, it would be essential to record the interview. However, I will only record the interview with your consent and will take down notes, should you feel uncomfortable with being recorded. The final product of this research would be a Master's thesis, which will be possibly completed in February 2015. The raw data of this interview will be kept accordingly at the University of the Witwatersrand and will only be done with your consent. A copy of this thesis will be availed to you if you wish to read it. You are kindly invited to participate freely during the course of the interview.

Appendix A

Participant's consent form

Dear participant, thank you for giving me the opportunity to discuss with you issues concerning my study titled: **Silent Victims or Agents of Change? An Exploration of The Lived Experiences of African Widows Confronted with the Practice of Customary Law of Succession and Inheritance in South Africa.** It should be understood from the beginning that your participation is voluntary and that you have the right to stop the interview when you feel that you cannot continue with it.

- Your participation in this study is voluntary. If you feel that you are not comfortable with participating anymore you are allowed to withdraw the interview even after if it has been recorded.
- If you decide to participate, I plan to interview you preferably for an hour. You may conclude the interview at any stage you feel like doing so, and we can reschedule the interview for a date most convenient to you.
- The interview will comprise of some pre-scheduled questions but you are free not to respond to some questions that you might not be comfortable with answering them.
- You are also free to share with me anything that I might not have asked you that might be relevant to the study.
- You are guaranteed anonymity. Your name shall appear on the report only if you agree that it appears.
- This research has no monetary benefits attached to it and hence no payment will be given to you for participating in this research.
- In order for me to have an accurate record of what you have shared with me during the interview, you would be welcome to allow me to record the interview. The recording is voluntary and you may choose not to be recorded. If you do not want to be recorded, I will make notes during the interview.
- A copy of the report will be made available to you if you wish.

Please sign below if you agree to be interviewed.

Participant's signature_____

Appendix B

Participant consent form: Recording of the interview

Thank you for agreeing to participate in my research. Your participation is voluntary and you have the right to stop the interview if you feel uncomfortable with carrying on with the discussion.

(a) I would therefore love to record each interview in order to ensure that I keep an accurate record. The recording is voluntary and you may choose not to be recorded if you wish. I can also take down some notes during the interview if you do not wish to be recorded.
(b) A copy of your transcribed interview will be brought to you if wish to keep it as well.

Please sign below if you agree to be recorded during the interview.

Participant's signature_____

Appendix c

Participant Information sheet:

My name is Thatshisiwe Ndlovu. I am studying towards my Master degree in the department of Development Studies at the University of the Witwatersrand on the project titled: **Silent Victims or Agents of Change? An Exploration of The Lived Experiences of African Widows Confronted with the Practice of Customary Law of Succession and Inheritance in South Africa** My research focuses on the question **Have customary laws of succession and inheritance in post-apartheid South Africa infringed on inheritance rights of black South African women? If so, why have efforts to discontinue its authority failed?**

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The core of my research lies in exploring how customary practices have obstructed widows from inheriting and how this has affected their socioeconomic status in post-apartheid South Africa and how the widows themselves perceive and articulate customary law and its principles. I will be interviewing among others widows, lawyers and community leaders. Widows will be requested to tell me their life stories and their perception about principles of customary law that deter them from inheriting. Lawyers will be asked about the legislation concerning inheritance and its implementation. It would be my pleasure to have you as one on my informants on the subject mentioned above.

The interview is basically a conversation between you and me and you are free to stop the interview at any point you might feel like taking a break. You are free to express yourself in the language that you are comfortable with. During the interview, I will be asking you questions about widows, customary practices, culture, and tradition. In addition, I will ask you about your perceptions about the South African legislation and the dedication of the South African government in reducing gender inequality in post-apartheid South Africa. You can choose any time that is convenient for you to be interviewed. Your name and information would be treated with confidentiality. Your name will only appear when you want it to appear. The interview will last for approximately an hour. You are also allowed to talk as much as possible about yourself.

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