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What has she gained after all? Still no land for her own. A Rereading of Deuteronomy 25:5-6

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This paper is an attempt to reread and reinterpret Deuteronomy 25:5-6 from the perspective of women within the context of *Jambanja* land politics in Zimbabwe. Issues of culture and tradition as far as women land ownership in both Ancient Israel and Zimbabwean contexts will be investigated as we endeavor to understand women land ownership in the two situations. The laws of Zimbabwe will be interrogated in a bid to establish an understanding of the Zimbabwean government's position on women land ownership. A theological reflection will be done so as to establish and understand what God says about women land ownership. Finally, this paper will investigate whether the church has fulfilled its mandate as the voice of the voiceless.

The Text: Deuteronomy 25:5-6

According to this text, “if the brothers dwell together and one of them dies and has no son, the wife of the dead shall not be married outside the family to a stranger, her husband's brother shall go in to her, and take her as his wife, and perform the duty of a husband to her. And the first son whom she bears shall succeed to the name of his father who is dead, that his name may not be blotted out of Israel.”

This text comes from a context whose custom or culture elevated males and denigrated females. The content and mind of the text is meant to serve the man at the expense of the woman. The first thing this text advocates is that “the wife of the dead shall not be married outside the family...” This part of the text in its own mind is the issue of wife inheritance, which is done to save the name of the dead man. The text goes on to say, “so that his name may not be blotted out of Israel” and does not make any reference to the name of the woman. This is a clear indication that the text comes from a patriarchal context, in which the male is understood as superior and the woman as inferior. A further important issue that is within the mind of this text is the idea that the woman may not inherit the property that is left by his deceased husband. In this case some man should act as a husband to her so that an heir may be born. In this context the most important part of the inheritance was the land which was not allowed to be moved outside the family or tribe. This brings us to our next issue which is the customs of Ancient Israel.

Customs and traditions of Ancient Israel in relation to land

Whether Ancient Israel acquired its land by divine conquest, immigration, or revolution, or a combination of those, Ancient Israel understood land as owned and given to her by Yahweh (Wright 1990:4; Flensy 1991:3). Leviticus (25:23-24) spells the above idea in clear terms, “The land shall not be sold in perpetuity (NIV: permanently) for the land is mine; for you are strangers and sojourners with me.” Ancient Israel, according to this statement did not own the land but it was owned by Yahweh who gave it to Ancient Israel as a trust. In this state of affairs, one would be justified to argue that everyone in Ancient Israel had access to land. Wittenberg (1991:59) upholds that after the settlement period the whole

of Ancient Israel had equal access to land. However, it should be noted that land in general was not distributed to women, but to males. Therefore, it is not true to argue that at the period of settlement everyone in Ancient Israel had equal access to land. This disparity is echoed in the passage that concerns the daughters of Zelophehad (Numbers 27:1-11; 36:1-12) in which a case is presented to Moses, though we know now that Moses had died; to decide over, so that the daughters could get the inheritance of their father. In this case God or Yahweh ruled in their favor. However, the daughters' access to their father's inheritance was a hindrance to their freedom as far as marriage was concerned. They were not allowed to marry anyone but to marry within their father's kindred (Wright 1990:123). So in this case to get one's father's inheritance meant to lose some degree of freedom. These traditional customs, norms and values we developed to ensure that land stayed with a specific tribe or family not with the rights of the women in mind.

The text in light of the Zimbabwean situation

Our text is closely related to the situation in Ancient Israel. In Zimbabwe, though this idea of raising sons for a dead brother is absent, this idea was popular in a case in which a brother is/was infertile. In such a situation a brother was advised to enter the house of his brother so that his brother could have children. This again was done to save the name of the brother and that of the family. The whole idea was raise sons who would perpetuate the name of the infertile brother within the family. They would inherit his possessions that included land.

Within the traditions and customs of Zimbabwe women do not own land. The original thinking was (and possibly is) that women are regarded as foreigners in the families in which they are married and the girl child is understood as on transit. For this reason she had no need of the land because she will always go. Thus the woman would not have access to land either in her family of birth or the one she is married to. Chanetsa (2005:23) argues that "even though 86% of women in Zimbabwe's communal lands and rural areas depend on agriculture for their livelihood, customary laws do not permit them to own land". They can farm at the pleasure of their husbands or male relatives in the case of single or divorced women and not otherwise.

As enshrined in the customs and traditions of Zimbabwe, at the death of the father, land was distributed to the male relatives, and not to his wives and daughters. This was supported by the idea that women are foreigners. They have even become foreigners in their places of birth. Under the customary law the woman who is regarded as a perpetual minor cannot claim any meaningful property ownership. All important property at home is owned and controlled by the husband. In this way for women to survive they have to submit to the will of the husband, without which they may forfeit their rights to property all together. Women in actual fact can only have access to land in association with their husbands. This ownership in ownership is not permanent. At the death of the husband this right automatically falls off leaving the widow with nothing but a black dress. According to Zvingowanisei (2005:32), the customary law stipulates that the property of the deceased man is shared among his male relatives and children, especially the eldest son, who is understood as taking over from the deceased father. A woman, as we have noted above, has no right to inherit her husband's property. She is supposed to be inherited since she is regarded as part of the inheritance.

Women and Liberation Wars in Zimbabwe

Since the first war of liberation, the women have played a pivotal role. A good and clear example is the figure of the women who was called Nyakasikana, popularly known as Mbuya Nehanda. This woman was possessed by the spirit of Mbuya Nehanda, who was understood as guiding and coordinating the first liberation war together with other male mediums, for example, Sekuru Kaguvi and Mukwati. Mbuya Nehanda is said to have worked tirelessly in Mashonaland as she and the male counterparts coordinated the first war of liberation in the land that we call Zimbabwe now.

During the second *Chimurenga* (1970s), many women were politically active in this war, where the land question dominated the agenda. Let us explain how women participated in this war. Some of them joined the guerilla forces and went around in Zimbabwe in combat to fight for their country. Those who remained at home cooked and provided food and all that was required by the guerillas. Imagine the women carrying containers of warm food and warm water on their heads into the guerilla bases across Zimbabwe. Still others died in this protracted war, while others lost both husbands and children and became widows of desperate levels, who were not acknowledged by the State. Still some women were raped and abused during this war, whose main agenda was to access land. There are many terrible things that befell the Zimbabwean women as they offered their support as well as participate in this war.

It should be clear that during the war, males and females fought side-by-side, but at independence the traditional customary laws are reintroduced to reduce the women to second or third group citizens. At independence the issue of land was structured in terms of race, and gender issues were sidelined or ignored. Whose wars were the women participating in? Whose liberation were they fighting for? It seems the women were cheated to fight for the liberation of the male Zimbabweans, and their gain was continued oppression, abuse and discrimination as far as the distribution of land was concerned. Listen to what Mudege (2008:456) has to say in relation to the above,

“A large number of women were politically active during the liberation war, and the Zimbabwean Government publicly acknowledged this. However, in spite of the fact that women had actively participated in the war of independence, at independence the land question was framed in terms of its racial component, and solving the land question was equated to increasing racial equity in terms of land ownership. As Mushunje notes, while colonial injustices were being corrected, post-colonial injustices were emerging and those manifested in the discrimination against black women by the black men.”

The first phase of resettlement in the 1980s did not target women, and for this reason it was criticized by some scholars. For example, Jacobs, cited by Mudege (2008:457), is reported to have been disappointed by this land reform because it did not challenge gender relations. Moyo, cited by Mudege (2008:25), also argued that the patriarchal land tenure system has discriminated against women. It was the nature of these resettlements that no women had plots registered in their names. At this point we may ask, what has she gained after all? Still no land for a Zimbabwean Woman.

The Zimbabwean laws in relationship to women land ownership

Because Zimbabwean society is governed by two forms of laws, that is, the customary law that we have discussed above and the common law which was introduced in the country by the dawn of colonization. The government of Zimbabwe is said to have made remarkable developments and progress in changing and correcting some of the discriminatory laws. It introduced the Majority Act of 1982, which granted majority status to women at the age of 18 (Zvingowanisei 2005:29)). It also introduced a change to inheritance and child custody laws and practices. Now the father has no automatic guardianship of the children, the courts have to decide in the best interest of children. Courts were empowered to order maintenance for deserted and divorced wives and children regardless of the nature of the marriage. The amendment that was done to the Inheritance law changed the concept and mind of the inheritance law under the traditional customary law. It allowed spouses to inherit from each other and had granted children the right to inherit equally regardless of sex (Zvingowanisei 2005:23).

The aim and objective of all those changes that were championed by the Ministry of Justice was to improve the position of women in the Zimbabwean society. This, to some degree, was achieved, but still there are areas in which the law continues to discriminate against women. A good example is the current law of inheritance which still treats women as minors and many others which are not within the scope of this paper (Goebel 2005:154). Therefore, despite the legal positive developments that appeared to have been achieved by the Zimbabwean government, violation of the rights of women continued and many of the majority of the women remain disadvantaged.

In connection with the above, Goebel (2005:154) has the following to say about the legal developments and their failure to deliver as regards women freedom, in relation to the *Magaya versus Magaya* case, “in the ruling of this inheritance case, the five judges agreed unanimously that a woman had no rights to her deceased father’s estate, ruling that it is the nature of African society that women are not equal to men.” A further blow came in 1998 from Joseph Msika, the then Minister in charge of resettlement, who rejected women’s demand for land permits to be automatically and jointly registered in their names and those of their spouses, he reasoned that such policies would lead to the break up of the home. Bearing in mind that women participated in liberation war hoping to achieve freedom; their rights were thus smashed by such positions that were propounded by government officials. In actual fact the Zimbabwean constitution does not protect women’s rights, but allows them to be overrun by the customary law, in which the rights of women are not an issue. This kind of law is said to put women in their right place. It seems that since 1999 to the present day Zimbabwe, the customary law has come back in full force.

The Fast Track and Women’s Land Ownership

The “fast track” land reform has introduced the customary law in its full force. The “fast track” is a process of land reform which was meant to formalize the occupations and encouraged further land appropriation and redistribution in Zimbabwe. The “fast track” practices privileged men as primary recipients of resettlement land. The emerging role of traditional authorities marginalized women (Goebel 2005:145). This period saw the dawn of *Jambanja* land politics (land invasions). The nature of the land invasions was violence and

this makes the land invasions a domain of the men than women who would decide to stay away from such activities.

In the paragraph above I mentioned something about the emergency of traditional authority, which works closely with the customary law. In such a state of affairs, that women who participated in the liberation war found themselves in, whose aim was to regain the land could not have access to this land. Why, because they were women. So, according to customary laws of Zimbabwe to be born, woman was to be cursed and hence all their land rights are dashed because of their gender. It should also be noted that according to the customary law women have no rights; they are always second to men.

It is true that many households have relocated in the resettlement areas. These are made up of the father, mother, girl children and boy children. Have we ever paused to enquire whether the women and children were forced by the father to go into resettlement areas, considering the hardship that accompanies relocation in African contexts? It is most probable that most women had to follow their husbands for fear of breaking their marriages, which may mean losing everything. Others followed because they were forced or threatened by their husbands and because they could not stand the idea of going back to their parents had to succumb. Most of these women do not own the land on which they toil.

In these areas there are no clinics, hospitals, schools, water points or boreholes are very far if they are available. It has become the work of the women to make sure that water and firewood are collected and these are carried by head. It has also become their mandate to provide food for the men and children. In the resettlement areas there are no grinding mills. Most of the families in the resettlement areas have no donkey or ox drawn carts that can help in transporting the maize to the grinding mills. Therefore, it is normally the work of the women to carry the maize to the grinding mills that are located very far away. Most of the time the men are loitering around and when they come home they expect food to be ready. Where children have to be taken to clinics for immunization, women would carry them on their backs and travel whatever distance to have the children immunized. Sometimes the clinics that they visit have no drugs and they would have to come back on another day. After walking the long distances the women come to prepare food for the family. The hardship in the resettlement areas has become some kind of their culture and the women have no choice but to be resilient and soldier on. Because of the teaching of the Shona society women have to put up with such unbearable load. They are taught that they should be hard working. It is unfortunate that they are hard working on the land that is not or will never be theirs.

Some men in key positions have even had land allocated to their male relatives, for example, brothers, both young and old, but never to sisters. Most of the widows who are in resettlement areas or farms are either some form of managers for their sons who are working in town and cannot be on the farm every time. In some instances the position of the overseer at the plot or farm is given to the sister who was widowed, divorced or never married. But the land belongs to their brother the man.

So even after *Jambanja* land politics in Zimbabwe, women are still without land. Liberation did not bring land to the women and now the land invasions do not give land to the women. Therefore, we ask, what did she gain after all? Still, she has no land of her own.

Now let us attempt a theological reflection on the land issue as related to the women. According to the Ancient Israel's understanding of land and that of the African Zimbabwean land is a gift from God for the totality of humanity. It is meant to sustain the human family in their needs. Land has resources above its surface where the human family farms and produces food. Land also provides resources from underground, where the human mines for special rocks called minerals for use in their life. This gift from God is meant for both the female and the male, who are the images of God as spelt out in Genesis 1:27. The image of God suggests equality between the female and male. Since creation the land belonged to God and those who fear God should be guardians of the things of God. If the human family fears God they would be able to share and distribute the gift from God among God's people, women included. And if Ancient Israel and the Zimbabwean people believe that land is a gift from God, why do Zimbabwean women go without land? If we agree that, women like men were created in the image of God, why discrimination against women? It seems our customary laws Zimbabwean have superseded the will of God. In other words those who govern the land are failing to give us a chance to see and experience the will of God in God's creation. If our race, language, church, country which are within the created order of God should be considered as equal to each other, what makes the female gender second to the male gender on issues of land ownership. Our customary laws and traditions should be called to account for this disparity. The patriarchal customary tradition should be challenged in a bid to provide a position that upholds the will of the creator so that the women may be freed from this bondage.

Fellowship does not discriminate. When God created Adam and Eve, God put both of them in the field on the land to till. I do not think that the command to till the land was specifically referring to Adam and not Eve. In the New Testament, Jesus is said to be in fellowship with all, inclusive of the tax collectors, prostitutes and outcasts. Fellowship does not discriminate. It is a theology of inclusion and not exclusion. How then does the Zimbabwean men fellowship with the women who they discriminate against? This is because the Zimbabwean men do not fear God. This may mean that they are not supposed to govern those things that belong to God.

The Church teaching on Soteriology rejects the theology of salvation after death. Salvation means freedom from all forms of bondage or oppression, and discrimination. It means the justice of God. Then as long as our communities discriminate against women and fail to administer the justice of God, our communities are guilty of making the women unable to experience God who is just. This is because the women are a part of society that is not experiencing the justice of God which entails freedom from all forms of oppression and discrimination. Thus the church requires a radical theological approach that dismantles our common as well as customary laws that buttress the oppression and discrimination of women especially on issue of women land ownership.

The Church's Response to the Discrimination of Women in Land Ownership

When I speak of Church within the Zimbabwean context, I need to explain what I mean. The church may mean the institution of a denomination, for example, the Lutheran church in Zimbabwe; or the church at the level of ecumenical organization, for example, the Zimbabwe Council of Churches; the church may refer to the voice of either the Catholic church, the Protestant churches or the Pentecostal churches; and finally church may refer to

the individual Christian. In most cases the church in Zimbabwe is divided and cannot give one unified voice on many issues in the country, though some Christians have done remarkable work to ensure the oppressed experience the presence of God.

The Catholic Church has done its best in its prophetic ministry in other areas. As for the issue of women land ownership, the church general has not said much, if she said anything at all. It seems most of the times on this issue of women land ownership the church is silent. Just like the government, the church is aware that most or a great majority of women suffered for the liberation of Zimbabwe and they acknowledge, but when it comes to women land ownership, the body of Christ becomes silent. The church as the right hand of God in Martin Luther's theology of the Two Kingdoms should champion the freedom of the women in our societies. That is, freedom from the bondage of culture, traditional customary laws, the government common laws that denigrate our sisters, our mothers, the women. I am of the opinion that the church can introduce teaching that challenge the status quo with its traditional customary laws. The church needs to take it upon itself to see to it that women land ownership is put on high agenda and be addressed forthwith for the freedom of the women. The church has to act justly for the redemption of the other, the women. The church's mandate is to be the voice of the voiceless, but it seems these days the voice of the voiceless is voiceless itself.

On the other hand, while the church remains silent, the women, due to the pain they experienced have joined their voices in organizations to conscientize the women and to call the government to address the issue of women land ownership, for example, the Zimbabwe Women's Lawyers association which is prepared to work for the justice of women.

Conclusion

In Conclusion, this paper has attempted to investigate and interrogate the issue of women land ownership in scripture as well as in the customary and common laws of Zimbabwe. A text has been singled out for interpretation of Ancient Israel's dealings with women land ownership. The paper has also looked at the role of women in the liberation wars and also investigated how the women were treated in terms of land reform and redistribution in the 1980s and 1990s. It has gone further to look at the women land ownership in the Jambanja land politics and investigated the role as well as their benefit. Then a theological reflection had been conducted in a bid to listen to what God's position on the issue of women land ownership. We have looked at the role of the church on this issue and pointed out the women's response to their plight.

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