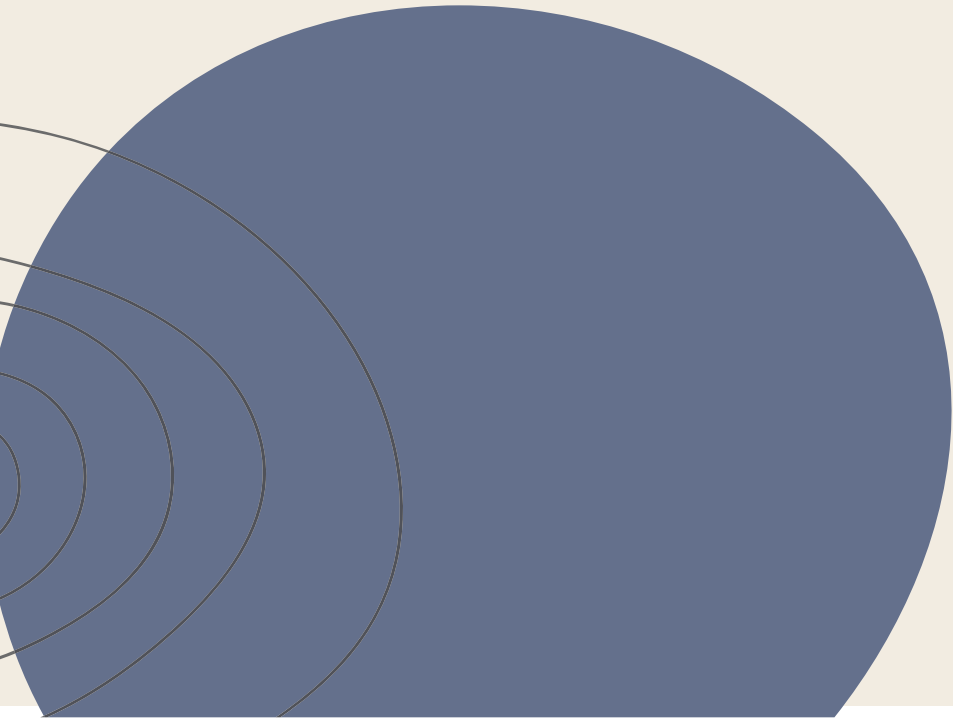


# Exploring barriers to women's access to communal land in selected provinces of South Africa

2024



Commission for Gender Equality  
A society free from gender oppression and inequality



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# Foreword and acknowledgements

Discussions on race often overshadow the issue of women's access to communal land in South Africa. However, discriminatory rules and patriarchal norms pose significant barriers for women in rural communities. Traditional authorities often restrict women from independently accessing land, with conflicts arising between the application of constitutional democracy and customary laws. Despite comprising more than 51% of the population, The Department of Agriculture, Land Reform, and Rural Development reported in 2017 that women owned only 13% of farms and agricultural land. It was against this background that the Commission for Gender Equality (CGE) placed this study on its research agenda to investigate barriers that women face when accessing communal land.

The findings of the study indicate that various factors hinder women's access to communal land. These include procedural disparities, cultural norms, marital status, family dynamics, sexual orientation, gender identity and expression, as well as socio-economic factors which impact women's access to communal land in a complex manner. Traditional leaders have a significant role in land allocation, but the lack of clear laws and national regulations has led to corruption, gender discrimination, and inequitable land allocations. Moreover, disparities in application procedures and costs, cultural expectations, and unfair land pricing have further restricted women's access to communal land.

The report concludes that women in rural communities face economic challenges that are worsened by the unnecessary costs of accessing communal land. The financial challenges leave women unable to support themselves, their children, and their families, resulting in ongoing disempowerment. The report also concludes that a call for interventions is necessary to align policy and practice for consistency and coordination in the land allocation processes due to significant procedural disparities in the allocation of communal land, affected by corruption, gender bias, and inequity.

The CGE expresses gratitude to all the women who participated in this study for sharing their views, insights, and experiences. Without them, this report would not have been possible. We also extend our thanks to the senior traditional leaders, members of traditional councils, and other community leaders who consented to be part of this study. The CGE would also like to thank its staff members in the provincial offices for assisting with the recruitment of participants for this study:

- Mr Tshepang Mokgokong – Limpopo
- Ms Nkhensani Hlekani – Limpopo
- Ms Joyce Khutsoane – North West

- 
- Ms Tsholofelo Sabole – North West
  - Mr Nceba Mrwebo – Eastern Cape
  - Mr Khaya Nkontso – Eastern Cape.

The CGE is also thankful for the help and support from Ms Zanele Ncwane and Mr Thamsanqa Mncube in KwaZulu-Natal.

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- Umtapo Centre for Social Justice – Limpopo
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- Ms Lieketseng Mohlakoana-Motopi
- Ms Thandiwe Lorraine Matshazi

The report was edited and finalised by Ms Naledi Selebano, Acting Head of Policy and Research.

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# Abbreviations and acronyms

<b>CEDAW</b>	Convention on the Elimination of all forms of Discrimination Against Women
<b>CLaRA</b>	Communal Land Rights Act
<b>CoGHSTA</b>	Department of Co-operative Governance, Human Settlements and Traditional Affairs
<b>CPAs</b>	Community property associations
<b>CPIs</b>	Communal property institutions
<b>CRLR</b>	Commission on Restitution of Land Rights
<b>ERAP</b>	Emergency Response Action Plan
<b>GBVF</b>	Gender-based violence and femicide
<b>HSRC</b>	Human Sciences Research Council's
<b>IPILRA</b>	Interim Protection of Informal Land Rights Act
<b>ISC</b>	Interim Steering Committee
<b>LRP</b>	Land Restitution Programme
<b>NSP</b>	National Strategic Plan
<b>PEPUDA</b>	Promotion of Equality and Prevention of Unfair Discrimination Act 2000
<b>PTO</b>	Permission to occupy
<b>SLLDP</b>	State land lease and disposal policy
<b>TLGFA</b>	Traditional Leadership and Governance Framework Act



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## 1. Introduction

The Commission for Gender Equality (CGE) is an independent statutory body established in terms of Section 187 of the Constitution of South Africa. The Commission is mandated to promote respect for gender equality and the protection, development, and attainment of gender equality in the Republic. The powers and functions of the CGE are outlined in the Commission for Gender Equality Act No. 39 of 1996. Specifically, in terms of Section 11(1)(a) of the CGE Act, the CGE has the mandate to monitor and evaluate policies and practices of State organs, State agencies, public bodies, and the private sector to promote gender equality and the rights of women and to prepare and submit reports to Parliament.

The CGE, in the 2023/2024 financial year, conducted a study to investigate factors that prevent women from accessing communal land in rural areas of South Africa. The study took place in three provinces: North West, Limpopo, and the Eastern Cape. The study was prompted by evidence indicating that women are more likely to experience land tenure insecurity compared to men in the country.<sup>1</sup>

Discriminatory patriarchal laws are among the key factors leading to unequal allocation of land in favour of men in communal land areas, while affordability is a major hindrance for women in accessing commercial land. Unequal access to land hampers efforts to achieve gender equity, economic growth, social development, and the mitigation of gendered impacts of climate change.<sup>2</sup>

The project builds upon the 2015 CGE campaign 'One Woman, One Hectare of Land'. The campaign aimed to promote gender equality by proposing that the State allocate one hectare of land for the growing of food to the poorest rural female-run households. This initiative would help alleviate poverty and empower rural women. The campaign was premised on the idea that when women have access to land, their families are generally better nourished and have improved access to education, leading to overall advancement.

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1 Masuku, M. M.N, Mthembu, Z., & Mlambo, V. H., (2023). Gendered effects of land access and ownership on food security in rural settings in South Africa. *Frontiers of Sustainable Food Systems*, 7:1158946. doi: 10.3389/fsufs.2023.1158946  
Department of Rural Development and Land Reform (2017). Phase ii: Private Land Ownership by Race, Gender and Nationality. Land Audit Report.

2 LandPortal.org. (2022). Land and Gender. Retrieved 7 August 2023 from <https://landportal.org/issues/land-and-gender>

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## 1.1 Problem statement and rationale for the study

The issue of land access in South Africa is often discussed in terms of race while overlooking the gender-specific aspects of land access. However, women in rural communities face numerous barriers that hinder their ability to own land. The CGE has noted an alarming trend of complaints from women struggling to access rural communal land in the country, which have been presented to some of its provincial offices.

The insecurity of land tenure for women in rural communities can be attributed to discriminatory land distribution laws that were created to favour traditional leaders and men, as well as to social practices and patriarchal norms that promote the exclusion of women from accessing land.<sup>3</sup> The legacy of past apartheid laws cannot be ignored, given the regulations that relegated women to the status of minors, subjecting them to the authority of their fathers and husbands in the area of land access and ownership. Even in the present-day democratic era, women continue to struggle with these discriminatory and unjust practices, as access to land for some women is still tied to male relations through marriage and kinship.<sup>4</sup> Traditional authorities often elevate the status of men above that of women, regarding them as the head of the family and therefore restricting women from independently accessing land. This exclusion is usually done under the guise of protecting marriages and families.<sup>5</sup>

Land registration through the permission to occupy (PTO) remains entrenched in patriarchal norms as newly married women may be required to re-register land acquired while single in the new husband's name while putting themselves as spouses and not as joint owners.<sup>6</sup> Divorced women also have vulnerabilities as they may be expected to leave the land after a divorce, especially if they choose to remarry.<sup>7</sup> For widowed women, land may be transferred to the husband's brother upon the death of their spouse, while unmarried women may be evicted from their homes and be further prohibited from inheriting any assets by their married brothers.<sup>8</sup>

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3 Masuku, M. M.N, Mthembu, Z., & Mlambo, V. H. (2023). Gendered effects of land access and ownership on food security in rural settings in South Africa. *Frontiers in Sustainable Food Systems*, 7:1158946. doi: 10.3389/fsufs.2023.1158946

4 Legal Resources Centre. (2022). The Tension between women's individual rights to tenure in communal land structures. Retrieved 4 September 2023 <https://africalive.education/>

5 Hanmer, L., & Klugman, J. (2016). Exploring women's agency and empowerment in developing countries: Where do we stand?. *Feminist Economics*, 22(1), 237-263.

6 Weinberg, T. (2015). The contested status of 'communal land tenure' in South Africa.

7 Claassens, A., & Ngubane, S. (2008). Women, land and power: the impact of the Communal Land Rights Act. *Land, power and custom: Controversies generated by South Africa's Communal Land Rights Act*, 154-183.

8 Land Portal (2016). South Africa: Women: A focus on land. Retrieved 12 October 2023 from <https://landportal.org/node/28207#:~:text=According%20to%20the%20former%20Department,the%20law%20and%20traditional%20practices.>

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In South Africa, communal land is owned by the State but is under the control of traditional authorities, trusts, and communal property institutions (CPIs). These entities make decisions on laws and regulations governing the allocation, use, transfer, and control of land and natural resources.<sup>9</sup> However, conflicts often arise between a constitutional democracy and customary laws, as they hold divergent views. Customary laws are often based on patriarchal norms, while the country's Constitution emphasises gender equality and equal access to resources. Women in rural communities often struggle to navigate these conflicting systems, leaving them in a vulnerable position regarding access to communal land. Women make up more than 51% of the South African population. However, less than 15% of the land lies in their ownership. Women own only 13% of farms and agricultural land, and men 71%. Even ownership is also disproportionately owned by men.<sup>10</sup> The 2008 census revealed that about 58.9% of women resided in communal areas of the country, yet in KwaZulu-Natal alone, men were at the helm of the 29.67% of the land that is governed by customary laws in the province.<sup>11</sup> This preponderance of men holding land is despite the significant presence of women in the agricultural labour force and their crucial role in all stages of the food cycle, including the unpaid care work involved in managing food consumption within households. Practices that restrict women's access to land lead to their disempowerment, economic marginalisation, and poverty.<sup>12</sup>

The CGE placed this study as part of its research agenda for the 2023/2024 financial year to study and unravel barriers faced by women in communal land access. The study aims to investigate and understand the barriers that women encounter when accessing communal land. It seeks to enhance the current knowledge on this topic and to provide insights to inform CGE's recommendations on practical measures to address the existing gaps in communal land policies and practices within the country.

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9 Legal Resources Centre (2022). The Tension Between Women's Individual Rights to Tenure In Communal Land Structures. Retrieved 4 September 2023 from <https://africalive.education/>

10 Department of Rural Development and Land Reform (2017). Phase ii: Private land ownership by race, gender and nationality. *Land Audit Report*.

11 Masuku, M. M.N, Mthembu, Z., & Mlambo, V. H., (2023). Gendered effects of land access and ownership on food security in rural settings in South Africa. *Frontiers in Sustainable Food Systems*, 7:1158946. doi: 10.3389/fsufs.2023.1158946

12 Land Portal (2016). South Africa: women – a focus on land. Retrieved 12 October 2023 from <https://landportal.org/node/28207#:~:text=According%20to%20the%20former%20Department,the%20law%20and%20traditional%20practices.>

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## 1.2 Primary aim and objectives

The main aim and objectives of the study are as follows:

### 1.2.1 Primary aim of the study

The study aims to investigate factors that act as barriers to women's access to communal land in the selected rural areas of South Africa.

### 1.2.2 Secondary objectives of the study

- To explore the social, cultural, and economic factors that inhibit women's access to communal land in the country.
- To investigate the effectiveness of current institutional, legislative, and policy frameworks in promoting women's access to communal land.

## 2. Methodology and approach

The study utilised qualitative methodology. Data was gathered through one-on-one, in-depth interviews with traditional leaders and members of the traditional councils in the North West, Eastern Cape, and Limpopo provinces. Focus group discussions were conducted with women in communal land areas of the same provinces to gain insight into their experiences with accessing communal land.

Qualitative research was chosen to be relevant to studying the participants within their natural environments to understand their perspectives regarding access to communal land as one of the drivers of economic transformation. Qualitative research techniques are essential for understanding people's lives, stories, and behaviour, especially in studies related to the day-to-day experiences of participants and their true reflections on a subject matter. As such, the qualitative research approach was selected as it is relevant for studying participants' perspectives pertaining to issues of access to communal land.

It is worth noting that in-depth interviews rely mostly on the views and insights of the participants and matters that they may take for granted, so participants help researchers probe for the unravelling of the deep-rooted insights and experiences of women's access to communal land for the purpose of getting rich data from the engagements.

The focus group discussions, on the other hand, constitute a form of a group interview with several participants, and the discussion is focused on a specifically defined topic. Focus groups have two elements: (1) group interviews where people deliberate on several topics, and (2) groups of people who have had the same experience discussing their experiences in relation to their shared experiences. The second type of focus group (as defined above as a group discussion) was utilised to carry out engagements with the women from their various perspectives and from their various locations. The discussions optimised the data collection process.

The technique utilised to choose the participants of the study was purposive sampling. This approach is also known as judgmental, selective, or subjective sampling, in which the researcher depends on their own judgment when selecting the population to participate in the study. The study focused on women over the age of 18 living in communal land areas for over one year. It also targeted members of traditional councils and leaders to explore their role in allocating communal land from a gender perspective. The study targeted women within communal land areas that rely on subsistence farming for their livelihoods. Moreover, the study also targeted the members of the traditional councils and the traditional leaders to explore their role regarding the allocation of communal land using a gender lens.

The study included 128 participants, with 110 women taking part in focus groups and 18 traditional and community leaders. Initially, the plan was to involve 24 women and four traditional leaders and community leaders per province. However, due to the high interest in discussing a topic that directly impacted them, the number of participants exceeded the initial plan.

	Eastern Cape	North West	Limpopo	Total
Women in the focus groups	34	28	48	110
Traditional leaders and community leaders	4	5	9	18
<b>Total</b>	<b>38</b>	<b>33</b>	<b>57</b>	<b>128</b>

## 2.1 Sample size

Focus group discussions in the Eastern Cape involved 34 women from various municipalities, including OR Tambo, Buffalo City Metro, Amathole, Alfred Nzo, Sarah Baartman, and Nelson Mandela Metropolitan Municipality. Four traditional and community leaders were interviewed in the province. In the North West, focus group discussions were conducted with 28 women from Madibogo, Six Hundred,

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Tsitsing 1, and Tsitsing 2 villages. A total of five traditional and community leaders were interviewed in the province. In Limpopo, focus group discussions with 48 women from the villages Selwane, Kanana, Ha Ntabalala, and Moletji were held. A total of nine traditional and community leaders were interviewed in the province.

## 2.2 Ethical considerations

The Human Sciences Research Council's (HSRC) Research Code of Ethics<sup>13</sup> is a key code to which the CGE subscribes and abides by. Some of its principles include:

- Respect and protection
- Transparency
- Scientific and academic professionalism
- Accountability.

This code includes key principles adhered to and entails commitments that CGE research staff should abide by in undertaking research work involving people, communities, and other social entities, which also have rights. The code primarily guides other research aspects that involve interactions with selected individuals, households, and communities, among others. Through this, CGE research staff are required and expected to comply with universally accepted professional standards and principles of research to ensure that all participants' rights and concerns that may potentially be impacted by activities related to the study are acknowledged, taken into consideration, and respected. Specifically, the CGE Research Department respects the following rights of interlocutors:

### 2.2.1 Informed consent

Prior to conducting interviews, in-person briefings, or focus groups, all participants were given a general understanding of the work and mandate of CGE. Then, they were informed about the main objective of the study. The goals, objectives, methodology, and approach were explained to them during the recruiting process. The participants were then requested to sign the two consent forms. The first form indicated that they consented to participate in the study, and the second was for the participants to give consent for the research team to record the interviews and the focus group discussions.

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13 Human Sciences Research Council (HSRC), Code of Research Ethics, Retrieved 3 May 2021 from <http://www.hsrc.ac.za/en/about/research-ethics/code-of-research-ethics> (January 2021)

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During interviews and focus group discussions, participants were given the opportunity to ask questions and seek clarification on any unclear matter that was raised.<sup>14</sup>

### **2.2.2 Voluntary participation**

The participants were informed that they were not forced or coerced into participating in the study and that they were allowed to withdraw from the interviews at any point if they felt any form of displeasure in continuing with the interview or the focus group discussions. The participants were not promised any incentives for participation.<sup>15</sup>

### **2.2.3 Confidentiality and anonymity**

The participants were promised complete confidentiality and anonymity throughout their participation in the study. They were informed that the information they provided during the interviews and focus group discussions would only be utilised to inform the study. Furthermore, they were informed that the findings would be presented to the relevant key stakeholders after the publication of the report. Participants were also notified that their names would not be mentioned in any documentation or presentations related to the research.<sup>16</sup>

### **2.2.4 Beneficence**

Participants' rights to be free from harm, uneasiness, and mistreatment were taken into consideration and always respected. Without this, the study runs the risk of being unethical.<sup>17</sup>

## **3. Limitations**

The study's limitations must be outlined as they impact its reliability and trustworthiness. One limitation was the language barrier, as researchers were not proficient in all the languages spoken by the participants. To address this challenge, the researchers sought assistance from CGE colleagues based in the provinces. However, these translators were not specifically trained for this task, and there was a risk of losing crucial information in translation. Additionally, using translators prolonged the focus group and interview sessions.

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14 Human Sciences Research Council (HSRC) (2021, January). Code of Research Ethics, Retrieved 3 May 2021 from <http://www.hsrc.ac.za/en/about/research-ethics/code-of-research-ethics>

15 *ibid.*

16 *Ibid.*

17 *Ibid.*



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In Limpopo province, there was a limitation when the traditional council was unwilling to engage with the research team on specific subjects. They claimed that the allocation of communal land was a private issue for them and that the CGE had no right to question them about their processes of allocating communal land. The CGE mandate and powers were explained to the traditional council, and the council members eventually provided the requested information. However, they may have withheld some of the crucial data as they provided this information reluctantly.

The three Provincial Houses of Traditional Leaders did not participate in the study as they failed to cooperate with the CGE researchers. The CGE is addressing this issue by using its legislative powers to confront these institutions.

In one instance, a provincial house replied to the CGE letter after the data collection process had already been completed. The participation of these provincial houses, including that of the provincial Departments of Cooperative Governance and Traditional Affairs, was crucial to this study, given the role of traditional leaders in the administration of communal land.

The study provides useful insights despite the existence of these limitations.

## 4. Legislative frameworks

South Africa is a signatory to numerous international and regional agreements that emphasise women's access to land as a crucial developmental resource. The following subsections also cover domestic laws and frameworks regarding land access.

### 4.1 Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

**Article 3:** State Parties shall take, in all fields, in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women for the purpose of guaranteeing them the opportunity to exercise and enjoyment of their human rights and fundamental freedoms on the basis of equality with men.<sup>18</sup>

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<sup>18</sup> CEDAW: [https://www.justice.gov.za/docs/other-docs/1981\\_CEDAW.pdf](https://www.justice.gov.za/docs/other-docs/1981_CEDAW.pdf)



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**Article 5:** State Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices as well as all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

**Article 14:** Stipulates that State Parties shall consider the problems faced by rural women and the significant roles which rural women play in the economic survival of their families. These include their work in the non-monetised sectors of the economy (such as care work) and shall take all appropriate measures to ensure the application of the provisions of the Convention to women in rural areas.

State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas to ensure the promotion of gender equality to ensure that women participate and benefit from rural development and to ensure that such women have these rights:

- To participate in the elaboration and implementation of development planning at all levels
- To participate in all community activities
- To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform, as well as in land resettlement schemes
- To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity, and water supply, as well as transport and communications.<sup>19</sup>

## 4.2 Beijing Platform for Action

The Beijing Platform for Action was adopted during the fourth International Women's Conference held in Beijing from 4 to 15 September 1995. The conference discussed key socio-economic, political, and cultural issues that hinder women's equal participation to their male counterparts in the formulation of macroeconomic and social policies and strategies for the eradication of poverty.

Women's access to communal land within the framework of the Beijing Platform for Action is a crucial element aimed at eradicating feminised poverty, especially among women in rural areas. The Beijing Platform for Action's Declaration highlights the significant economic factors rigidly linked to socially assigned gender roles, which contribute to women's limited access to power, education, training, productive resources, and emerging issues such as food insecurity.

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<sup>19</sup> OHCHR: <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf>

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The declaration serves as a crucial roadmap, emphasising the essential features necessary to achieve women's empowerment, making it a significant factor in the fight against poverty. Key components include land access, education and training, and participation in decision-making structures.

### 4.3 Maputo Protocol

**Article 15:** This article of the Maputo Protocol provides for Food Security, which is a universal basic human right. The article provides that the State Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to:<sup>20</sup>

- a) Provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food
- b) Establish adequate systems of supply and storage to ensure food security.

**Article 16:** This article, on the other hand, provides for the Right to Adequate Housing. The provision stipulates that Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, State Parties shall grant to women, whatever their marital status, access to adequate housing.<sup>21</sup>

Under the Maputo Protocol, African countries recognise that women and men have the right to an equitable sharing of joint property acquired during marriage. Articles 3 and 4 emphasise the right to dignity and the protection of women against harmful practices. These rights to dignity and protection highlight the responsibility of community leaders, the State, and traditional leaders involved in communal land allocation to treat women with dignity. Women should not be subjected to any form of abuse or forced to compromise their dignity to acquire land or seek access to communal land.

### 4.4 Constitution of the Republic of South Africa

*“RSA is one, sovereign, democratic State founded on human dignity, the achievement of equality and advancement of human rights and freedoms, non-racialism, and non-sexism, and is founded on the supremacy of the Constitution and the rule of law.”*

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<sup>20</sup> AUC. (2003). *African Charter on Human and People's Rights on the Rights of Women*

<sup>21</sup> Ibid.

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*It acknowledges its past divisions and injustices and founded its constitution on democratic values, social, justice and fundamental human rights to heal past divisions., to lay foundations for a democratic and open society where every citizen is equally protected by its supreme law to improve every citizens quality of life, and to rebuild a united and democratic South Africa as a sovereign State".<sup>22</sup>*

#### Section 25 of the Constitution and the Bill of Rights

No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property. The Bill of Rights mentions important rights of citizens of the country. Particularly regarding equality and property, the Bill of Rights states:

##### 4.4.1 Equality

- Everyone is equal before the law and has the right to equal protection and benefit from the law
- Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative, and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken<sup>23</sup>
- The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth
- No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of Subsection 3. National legislation must be enacted to prevent or prohibit unfair discrimination
- Discrimination on one or more of the grounds listed in Subsection 3 is unfair unless it is established that the discrimination is fair.<sup>24</sup>

In addition, the Bill of Rights (Sections 1, 5, and 9) states that:

##### 4.4.2 Property

- **Section 1:** No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

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<sup>22</sup> Constitution of RSA, 1996

<sup>23</sup> Constitution of RSA, 1996

<sup>24</sup> Constitution: <https://www.gov.za/documents/constitution/chapter-2-bill-rights>

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- **Section 5:** The State must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
  - **Section 9:** Parliament must enact the legislation referred to in Subsection 6.<sup>25</sup>

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

The main objective of PEPUDA is to provide measures to prevent and prohibit unfair discrimination, harassment, and hate speech to protect human dignity. The Act, commonly known as the Equality Act, was passed in 2000 and lists 17 grounds of discrimination, which include gender and sexual orientation.

Section 8(e) of PEPUDA states that no person may unfairly discriminate against any person on the grounds of gender, including any policy or conduct that unfairly limits access of women to land rights, finance, and other resources.

#### 4.6 Ngonyama Trust Act

The Act makes provision for the establishment of the Ingonyama Trust and for certain land to be held in trust.<sup>26</sup> The Ingonyama Trust was established in 1994 by the erstwhile KwaZulu-Natal provincial government in terms of the KwaZulu-Natal Ingonyama Trust Act No 3KZN of 1994 to hold all the land that was hitherto owned or belonged to the KwaZulu-Natal provincial government.<sup>27</sup> Sections 211 and 212 recognise the institution of traditional leadership and customary law, subject to the constitution. Section 2 of the Constitution provides for the supremacy of the Constitution and provides that law or conduct inconsistent with it is invalid and that the obligations imposed by it must be fulfilled. While the Ingonyama Trust predates the Constitution, its existence finds expression under the provisions quoted above and Section 25 of the Constitution.

#### 4.7 Communal Property Associations Act No. 28 of 1996

The Act makes provision for communities to form juristic persons, to be known as communal property associations, to acquire, hold and manage property on a basis agreed to by members of a community. The creation of juristic persons must be done in terms of a written constitution.<sup>28</sup> This Act is also subject to the Constitution, which is the supreme law of the land.

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<sup>25</sup> Ibid.

<sup>26</sup> KwaZulu-Natal Ingonyama Trust Act No. 3 of 1994

<sup>27</sup> Ingonyama Trust: <https://www.ingonyamatrust.org.za/about-itb/>

<sup>28</sup> Ibid.

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## 4.8 Communal Land Rights Act (CLaRA)

The government created the Communal Land Rights Act as legislation that would provide redress to people “whose land tenure is legally insecure as a result of past racially discriminatory laws or practices”, as stated in Section 25(6) of the Constitution.<sup>29</sup> The law was enacted in 2004.

However, according to many rural residents, CLaRA would have actually compromised their land tenure security by removing all layers of decision-making related to land, except for that of the traditional tribal authorities. The CLaRA granted extensive powers to traditional councils (which were known as tribal authorities during apartheid), including authority over the occupation, use, and management of communal land. The Constitutional Court struck down CLaRA in 2010 after facing strong opposition from rural people.

The main issues with CLaRA were that Parliament did not involve the provincial legislatures in the deliberations affecting customary law, as it should have, and the Act denied security of tenure to at least 16 million South Africans living in the former Bantustans. The Constitutional Court ruled that CLaRA was unconstitutional due to incorrect process and insufficient public consultation. This decision did not address the issue of providing a solution for rural people who still lack land tenure security as a result of apartheid and colonialism. Currently, there is no replacement legislation for CLaRA, leaving rural people in a state of uncertainty. In order to comply with constitutional requirements regarding land tenure security and public participation, the legislative process should include input from the broader rural public, particularly women, and not solely prioritise the voices of traditional leaders.<sup>30</sup> In practice, however, this is still the case.

## 4.9 Restitution of Land Rights Act No. 22 of 1994

In 1994, the first law to be passed by the first democratically elected parliament was the Restitution of Land Rights Act No. 22 of 1994. This law was passed as a conscious acknowledgement that land justice is important to deal with the challenges of poverty, unemployment, and inequality.

The Act makes provision for the restitution of rights to land for persons or communities that were dispossessed of such rights after the enactment of the Natives Land Act that came into force on 19 June 1913 because of past racially discriminatory laws and practices.

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<sup>29</sup> Constitution of Republic of South Africa, 1996

<sup>30</sup> CustomContested.co.za: <https://www.customcontested.co.za/laws-and-policies/communal-land-rights-act-clara/>

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The Act established a Commission on Restitution of Land Rights and a Land Claims Court. The Minister is authorised to purchase, acquire in any other manner, or expropriate land or rights on land for restitution and rectifying the past ills.<sup>31</sup>

#### **4.10 Interim Protection of Informal Land Rights Act (IPILRA)**

IPILRA is intended to protect informal rights to land, land held in terms of customary law, and interests in land that were not adequately protected by the law because of racially discriminatory laws of the past. IPILRA was adopted to protect those who held insecure tenure because of the failure to recognise customary titles. It came into operation on 21 June 1996 to provide temporary protection until 31 December 1997. However, IPILRA has been repeatedly extended in terms of Section 5(2) of IPILRA, and it was most recently extended until 31 December 2018.

Section 2(1) of the IPILRA provides that:

*“Subject to the provisions of Subsection 4, and the provisions of the Expropriation Act or 1975 (Act No. 63 of 1975), or any other law which provides for the expropriation of land or rights in land, no person may be deprived of any informal right to land without his or her consent”.*

Section 2(3) of IPILRA further provides that where land is held on a communal basis, a person may, subject to Subsection 2(4), be deprived of such land or right to land in accordance with the custom and usage of that community.

Section 2(4) of IPILRA provides that the custom and usage of a community shall be deemed to include the principle that a decision to dispose of any such right may only be taken by a majority of the holders of such rights present or represented at a meeting convened for the purpose of considering such disposal and of which they have been given sufficient notice, and in which they have had a reasonable opportunity to participate.

The Interim Protection of Informal Land Rights Act 31 of 1996<sup>32</sup> intends:

*“To provide for the temporary protection of certain rights to and interests in land which are not otherwise adequately protected by law; and to provide for matters connected therewith”.*

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<sup>31</sup> Restitution of Land Rights Act No. 22 of 1994

<sup>32</sup> Simmons-Simmons.com: <https://www.simmons-simmons.com/en/publications/ck0b4eectonuxf0b85ctclbp8c/201218-full-and-informed-consent-of-informal-land-right-holders>

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IPILRA was intended to be a temporary law that protected people against the deprivation of their land rights until a more comprehensive, permanent law could be passed. No such law yet exists. This means that Parliament consistently renews IPILRA annually.

IPILRA rights remain legally valid, however, and people can insist that they have the right to say no to developments that deprive them of their rights to informal land. If they say no, then the government or the developer must go to court to apply for an expropriation order.

#### **4.11 Traditional Leadership and Governance Framework Act (TLGFA)**

The Traditional Leadership and Governance Framework Act No 41 of 2003 is the first and pivotal law in the package of traditional leadership laws drafted during the 2000s.

This package comprises the Communal Land Rights Act, several provincial traditional leadership laws, and the Traditional Courts Bill.

Enacted on 19 December 2003, some of the TLGFA's stated objectives are to:

- Recognise traditional communities
- Establish and recognise traditional councils
- Provide a statutory framework within which traditional leadership will operate.

Section 28 deems the "tribes" that were created during apartheid to now be traditional communities. It also deems the tribal authorities created in terms of the Bantu Authorities Act of 1951 to now be traditional councils, provided that they comply with new composition requirements.

These requirements are that 40% of the members of a traditional council be elected, while the senior traditional leader can appoint 60% of the members. The Act also provides for a women's membership quota of 30%.

Section 20 enables national or provincial government to enact laws that empower traditional councils in relation to a wide range of roles and functions pertaining to, amongst others:

- Land administration
- Health and welfare
- Safety and security
- Management of natural resources
- Disaster management.



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Effectively, the TLGFA entrenches the controversial boundaries and structures inherited from apartheid, while other laws, such as the Communal Land Rights Act and the Traditional Courts Bill, provide traditional leaders with expanded statutory powers.

In practice, the effect of the Act and its associated laws is to subsume groups who oppose apartheid-imposed tribal borders within the boundaries of larger encompassing tribes. As a result, these groups, without their consent, become minorities subject to the powers vested in traditional leaders without their consent.

The TLGFA provides the national framework for the provincial traditional leadership laws enacted in 2005. One of these laws, the Limpopo Act No. 6 of 2005, authorises tribal levies, which critics regard as a form of extortion.

## **5. Literature review**

### **5.1 Issues of land access for women in Africa**

#### **5.1.1 The Case of Zimbabwe**

Land has been a highly politicised resource in Zimbabwe, with its ownership being racialised since the colonial period, similar to South Africa. During the colonial period, most of the communal land was forcefully taken by the White minority and was never fully restored to the pre-colonial land-holding system in the post-colonial period. Zimbabwe is one of the countries in the South-South subregion. The country battles with skewed land redistribution, which is divided into three categories: communal, freehold, and State land. Approximately 20% of Zimbabwe's population resides in urban areas and occupies State land, while about 60% of the population resides in communal land areas, which constitute about 40% of the total land area in the country.<sup>33</sup> The remaining 20% of the land is allocated for resettlement leaseholds on State-owned land, small and large freehold farms, and State land.<sup>34</sup> The racial restrictions on landholding were removed from all the legislative frameworks since the country's independence as part of effecting land reform and redistribution.<sup>35</sup> The King and the chief are the custodians of the land and are responsible for allocating the newcomers in line with the traditional land tenure rules and regulations. Communal land is considered collectively owned by everyone and cannot be sold to outsiders as it is considered a natural endowment.<sup>36</sup>

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33 Cheater, A. 1990. The ideology of 'communal' land tenure in Zimbabwe: Mythogenesis enacted? *Africa*, 60(2), 188-206.

34 Ibid.

35 Ibid.

36 Ibid.



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Some of the requirements for women to access communal land include being married and accessing land through their husbands. In cases where a man has multiple wives, he is expected to allocate land equally to all of them. Young men who are ready to get married are also allocated their own land to build on in preparation for their families. However, daughters are only given a corner on their mothers' allocated fields.<sup>37</sup>

In Zimbabwe, the issue of women's access to communal land is indicative of the sluggish level of transformation despite the existence of non-discriminatory land laws. Ribot and Peluso<sup>38</sup> proposed a theory of access that goes beyond the significance of access and offers a detailed explanation of how land ownership is connected to other aspects of empowerment, such as knowledge, social relations, authority, and political processes. They argue that learning gained through various forms of education and training coordinated by non-governmental entities plays a key role in this process.

### 5.1.2 The Case of Uganda

In Uganda, women comprise the majority of the population, and they rely on the land and other natural resources for their livelihoods. Notably, 80% of the land in Uganda is under the customary land tenure systems, and it is mostly unregistered.<sup>39</sup> Lack of land registration creates problems for the people, especially in relation to securing access for the eligible owners, and it poses discrimination against women. Women are unable to own or inherit land in Uganda as these restrictions are customarily imposed due to the patrilineal and patrilocal nature of the systems.<sup>40</sup> The lack of access to land has led Ugandan women to establish a Uganda Community Based Association for Women and Children Welfare, which implements pro-poor, gender-responsive land tools and approaches to secure land for all.

Despite the discrimination that women experience, Uganda has ensured the promotion of gender equality through provisions stipulated in the Constitution of the Republic of Uganda, as well as the Land Act of 1998. The law further prohibits discriminatory customary norms, values, and practices that undermine women's dignity, welfare, interests, and status in relation to customary land ownership.

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37 Ibid.

38 Ribot, Jesse C., & Nancy Lee Peluso. (2003). A theory of access. *Rural Sociology*, 68(2), 153-181. Sustainable Rangeland Management Project (SRMP). (2013). *Village land use planning in rangelands in Tanzania: good practice and lessons learned*. International Land Coalition.

39 UCOBAC. (n.d.). Securing Women's Land Rights in Customary Areas in Uganda. International Land Coalition. Retrieved from [https://d3o3cb4w253x5q.cloudfront.net/media/documents/ILC\\_Case\\_Study\\_0179\\_Uganda\\_ENSpread.pdf](https://d3o3cb4w253x5q.cloudfront.net/media/documents/ILC_Case_Study_0179_Uganda_ENSpread.pdf)

40 IFAD. (2022). *Securing women's resource rights through gender transformative approaches women's land rights in Uganda*.

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It is worth noting again that despite the presence of progressive legislative frameworks, many women in Uganda still lack access to land. The Ugandan women's lack of access is often due to a lack of awareness about laws that promote women's human rights, including access to customary land.<sup>41</sup> These violations also occur despite the established regulations that provide for quotas for women's participation and representation within the government structures responsible for land tenure interventions that lead to registration and certification.

The lack of knowledge, awareness, and education within Ugandan communities has led to the continued subjugation of women in relation to their communal land rights as stipulated by the Constitution and existing legislative frameworks. This practice demonstrates that customary practices in Uganda, which place women as secondary citizens in terms of access to communal land, override the existing international and regional instruments that Uganda is a State party to, as well as the country's domestic legislative frameworks. As a result, it is important to raise awareness, provide education, and build capacity for the implementation and enforcement of existing regulatory frameworks to realise Ugandan women's access to communal land.

### 5.1.3 The Case of Lesotho

Lesotho is one of the most rural countries, with the mountains occupying about 59% of the country. The arable land is in the foothills and the lowlands of the country. The lowlands cover approximately 35% of the country's area and accommodate 70% of the country's population.<sup>42</sup> According to the 2016 census, 68.3% of the population resides in rural areas and depends mostly on agricultural production to sustain their livelihoods. Literacy rates are relatively high at 80% for men and 97% for women within the age group of 15 to 49 years, which is an economically active population.<sup>43,44</sup>

Lesotho is another country that has the highest percentage of communal land, with the majority population residing in rural areas, with some places being the remotest to access. A shift to improve women's access to land commenced with the adoption of the three pieces of legislation. These legislations were intended to augment the historic minorhood status of women, especially in relation to their rights to land.

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41 Uganda Community Based Association for Women and Children Welfare. (n.d.). *Securing women's land rights in customary areas in Uganda*.

42 Leduka, R.C., Ntaote, M. & Takalimane, N. (2018). *Land Governance in Lesotho*. National University of Lesotho

43 Government of Lesotho. (2015). *Habitat III National Report*. Ministry of Local Government, Chieftainship, and Parliamentary Affairs

44 UNDP. (2015). *Lesotho National Human Development Report: Leveraging the power of youth to promote human development*. UNDP.

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The three laws were geared towards improving women's legal status in Lesotho, and these include the Local Government Act 1997 (which took effect in 2005). The law fully moves land allocation power from chiefs to elected committees (this practice is also seen in South Africa). Legal Capacity of Married Persons Act 2006 bestows full citizenship and full property ownership rights on women. It is this piece of legislation that removed the marital powers of men over their wives, as well as women's secondary citizenship, that imposed on women marginalisation in all spheres, making them minors to their husbands, fathers, and male next of kin.<sup>45</sup> In terms of land rights, the legislation culminated in the enactment of the Land Act 2010, which has been a major force in moving women's land rights from customary authorities to the open market.

Allocation of communal land within the governance structures rests with the Local Councils. These structures are also mandated to undertake physical and land use planning and site allocation functions in their respective areas of jurisdiction. They derive their powers from the Local Government Act of 1997 (as amended).

#### 5.1.4 The Case of South Africa

In South Africa, access to land has been one of the issues of contestation since the beginning of colonialism, when land was dispossessed by the colonialists in 1913.<sup>46</sup> The colonialists, like in Zimbabwe, operationalised the dispossession of land through the adoption of the 1913 Natives Land Act, which led to the forceful removal of Black people from their land. After the adoption of the Natives Act, which came into force on 19 June 1913, Black people's ownership of land was restricted and left at 7% and increased to 13% in 1936.<sup>47</sup> Women were subjected to secondary citizenship as they could not own land, and they could not vote or receive an education without the consent of a male guardian, such as a father, husband, or male relative. Women, despite their level of independence, could not apply for identity documents, apply for credit or bank accounts, or accept an offer for a director position without a male guardian's consent.<sup>48</sup>

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45 Mohlakoana-Motopi, L. (2019). *Views of married men and women regarding socioeconomic rights and entitlements in urban Lesotho*. University of Johannesburg.

46 South African Government. (n.d.). Land Reform Historical Context. <https://www.gov.za/issues/land-reform#:~:text=The%20dispossession%20of%20land%20throu,gh,under%20way%20since%20colonial%20times>.

47 Claassens, A. & Ngubane, S. (2008). Women, land and power: the impact of the Communal Land Rights Act. In *Land, power and custom: controversies generated by South Africa's Communal Land Rights Act*, p. 154-183.

48 Mohlakoana-Motopi, L. (2019). *Views of married men and women regarding socioeconomic rights and entitlements in urban Lesotho*. University of Johannesburg.

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Women's access to land has been a great part of the development agenda and was featured during the four international conferences that built up to the Beijing Platform for Action Conference, which was held in 1995 in Beijing. The conference was a result of the convergence and the resolutions that came out of the decade of women's conversation which started in 1975. The key rationale was advocating for the promotion of women's human rights and the promotion of access to economic resources by women, including access to land.

Over the last century, South Africa has made strides in gaining equal rights for women, even though there are still many who are grappling with this right due to several factors. South Africa's legal system is dualistic, which includes common law constituting the idealistic and customary human rights law administered by the traditional leaders within the communal rural areas. Some of the key legislations that govern communal land rights especially, include the Traditional Leadership Framework Act 41 of 2003 and the repealed Communal Land Rights Act 11 of 2004.

The two laws affect about 21 million South Africans who live in the poorest parts of South Africa (previously known as the Bantustans and determined by the apartheid regime). These poor parts of South Africa constitute only 13% of the land surface. Since the apartheid era, several pieces of legislation were adopted, and discriminatory pieces were repealed. The irony is that in the new legislative frameworks governing land reform, traditional leaders resisted relinquishing their power as communal land administrators, as their tribal authority powers would be compromised.

The control of communal land, as one of the crucial economic resources, continues to exclude women from economic opportunities. The control of communal land is why the issue of inclusive land reform has been dominating discussions and political discourse during the post-apartheid era. Tenure, among other challenges, mostly affects farm workers and people living on former native reserves that are now privately owned land known as communal land. This population constitutes approximately one-third of the South African population and remains the most poverty-stricken due to insecure land tenure.

It is notable that South Africa has grappled and engaged in robust conversations regarding land reform but is silent on women's land ownership. Women have been met with prohibitive barriers when accessing land. Contributory factors, trends, and practices will be explored in the narrative below.

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## 5.2 Barriers prohibiting women from accessing land ownership in South Africa

### 5.2.1 Barriers among cultural, norms, beliefs, and practices

Despite the sophisticated Constitution and progressive legislation in South Africa, women continue to suffer from discrimination and exclusion in the economic periphery. Gouws<sup>49</sup> emphasises that the unequal status of women persists within the traditional authorities. Power remains entrenched in the patriarchal social constructs that persist in present-day society. Access to communal land in rural regions reflects the influence and strength of traditional leaders.<sup>50</sup> Women are not allowed access to property, residence rights, or land usage due to patriarchal systems guiding the land allocation processes within rural settings.<sup>51</sup> Women also continue to be denied the right to own, inherit, or benefit from land due to customs and customary practices.<sup>52</sup>

The interplay between democratic legislation and traditional customs makes it challenging to address socio-cultural and socio-economic structures. This challenge remains despite South Africa's constitutional provisions and progressive laws. The existing cultural norms present significant obstacles to the structural changes required to ensure women's access to communal land in South Africa.<sup>53</sup>

### 5.2.2 Barriers within familial networks

Closely linked to cultural practices are subjective norms and values that are implored within households in relation to inheritance and succession.<sup>54</sup> Family law is as crucial as land legislation in terms of the provision of women's access to land.<sup>55</sup> Gender equality with respect to land is not only dependent on the legal ability to hold land rights provided for through land legislation but also upon family law, such as laws regulating marriage and inheritance.<sup>56</sup> One of the means by which women access communal land in rural areas is through inheritance, while other women resort to buying from allocated beneficiaries.

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49 Gouws, A. (2005). Gender mainstreaming and the politics of discourse construction. *Proceedings of Writing African Women: Poetics and Politics of African Gender Research conference*, University of the Western Cape, 19 – 22 January, p 5.

50 Mosse, D. (1994). Authority, gender and knowledge: Theoretical reflections on the practice of participatory rural appraisal. *Development and Change*, 25(3), 497-526.

51 Akinola, A. O. (2018). Women, culture and Africa's land reform agenda. *Frontiers in Psychology*, 9, 2234.

52 Eniola, B., & Akinola, A. O. (2019). Cultural practices and women's land rights in Africa: South Africa and Nigeria in comparison. In *Trajectory of land reform in post-colonial African states: The quest for sustainable development and utilization*, p. 109-123.

53 Hames, M. (2013). Rights and realities: Limits to women's rights and citizenship after 10 years of democracy in South Africa. In *The politics of rights* (pp. 139-153). Routledge.

54 Guyer, J. I. (1981). Household and community in African studies. *African Studies Review*, 24(2-3), 87-138.

55 Odeny, M. (2013, April). Improving access to land and strengthening women's land rights in Africa. *Proceedings of the Annual World Bank Conference on Land and Poverty*, The World Bank.

56 Albertyn, C. (2009). The stubborn persistence of patriarchy? Gender equality and cultural diversity in South Africa. *Constitutional Court Review*, 2(1), 165-208.

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Women who acquire land through inheritance and from their late husbands are often not permitted to sell it and can only pass it on to their sons or male relatives.<sup>57</sup> This maintains the continuation of family land ownership and the retainment of land in the family name.<sup>58</sup>

### 5.3 Land reform and government programmes, intervention, and initiatives to facilitate women's access to communal land in South Africa

Land and property rights increase women's self-sufficiency, reducing their possible dependence on men and possible entrapment in abusive relationships.<sup>59</sup> Women's self-sufficiency may enable greater control over sexual relations, empowering women and improving their ability to produce food for their families and selling the surplus produced.<sup>60</sup> Section 25(5) of the South African Constitution places the obligation of "taking reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis" under the auspices of the government.<sup>61</sup>

The South African land reform programme has been market-assisted and guided by the willing-seller, willing-buyer principle.<sup>62</sup> The effectiveness of the willing-seller, willing-buyer principle in addressing the land reform objectives, especially rural development and poverty alleviation, has in recent years been the subject of many emotive debates.<sup>63</sup> According to Sikor and Müller,<sup>64</sup> the expectation is for land reform to alleviate rural poverty, increase agricultural productivity, and strengthen the new nation state. It is this conviction that has led the World Bank to support land reforms at different levels in different parts of the world.<sup>65</sup> Land reform is also associated with rural development and employment creation as economic justifications.<sup>66</sup> In South Africa, the objectives of land reform are fourfold, namely, redressing apartheid injustices, fostering national reconciliation and stability, underpinning economic growth, and alleviating poverty by improving household welfare.<sup>67</sup>

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57 Agarwal, B. (2003). Gender and land rights revisited: Exploring new prospects via the state, family and market. *Journal of Agrarian Change*, 3(1-2), 184-224.

58 Khuzwayo, N. T. V. (2018). *A critical analysis of land tenure reform from a gender perspective in South Africa: a focus on women in rural Kwa-Zulu Natal, the case of UMnini Trust Traditional Authority Area, eThekweni Metropolitan Municipality* (doctoral dissertation).

59 FAO. (2010). *State of food insecurity in the world: Addressing food security in protracted crises*. FAO.

60 Ibid.

61 Fynn, M & Van Schalkwyk, C. (2022, February 7). Redistribution of land remains a man's world in South Africa. *Mail & Guardian*.

62 Makombe, G. (2018). Land reform in South Africa: The conversation that never took place. *The Qualitative Report*, 23(6): 1401-1421.

63 Ibid.

64 Sikor, T., & Müller, D. (2009). The limits of state-led land reform: An introduction. *World Development*, 37(8), 1307-1316.

65 Ibid.

66 Makombe, G. (2018). Land reform in South Africa: The Conversation that never took place. *The Qualitative Report*. 23(6): 1401-1421.

67 Government of South Africa. (n.d.). Land reform. Retrieved 24 July 2023 from <https://www.gov.za/issues/land-reform>.



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The three key elements of South Africa's land reform programme contained in the White Paper on Land Reform include three principal components.<sup>68</sup>

- Land restitution aims to return land lost since 1913
- Land redistribution makes it possible for previously disadvantaged people to purchase land using the grant system
- Land tenure reform aims to reform the tenure of land occupants to put them under a valid system of landholding.

The three principal components will be discussed in greater detail below:

### 5.3.1 Women and land restitution in South Africa

According to the White Paper on Land Reform,<sup>69</sup> the Land Restitution Programme (LRP) provides for the restitution of land rights to a person or community dispossessed of property after 19 June 1913 because of past racially discriminatory laws or practices; the person or community is entitled to the restoration of such property or equitable redress.

The performance of the land reform programme in terms of the political objectives of transferring land to previously disadvantaged groups, e.g., women, has been poor.<sup>70</sup> Although the transfer of land to these previously disadvantaged groups has been poor, Makombe<sup>71</sup> acknowledges that some land has indeed been transferred. In retrospect, between 1995 and 1999, 41 restitution claims were settled, affecting 3 508 households on 112 919 ha at a total cost of R12,601 million.<sup>72</sup> Between 1999 and 2004, 56,679 claims were settled, affecting 151 829 households on 697 373 ha at a cost of R4,065,950.<sup>73</sup> These figures are not gendered and show the slow pace at which restitution has been taking place. By 2012, only 7.95 million had been acquired.<sup>74</sup> During the 2018/2019 financial year, the Commission on Restitution of Land Rights (CRLR)<sup>75</sup> reported that the number of claims settled since 1994 reached its highest levels as the CRLR settled 80 664 claims, bringing to 2.1 million the total number of people who have benefitted from the 3.5 million hectares of land transferred through the land restitution programme.

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68 Government of South Africa. (n.d.). Land reform. Retrieved 24 July 2023 from <https://www.gov.za/issues/land-reform>.

69 Republic of South Africa Department of Land Affairs (1997). *White paper on South African Land Policy*. Government Printers.

70 Makombe, G. (2018). Land reform in South Africa: The conversation that never took place. *The Qualitative Report*, 23(6): 1401-1421.

71 Ibid.

72 Anseeuw, W., & Mathebula, N.2008. *Land reform and development: Evaluating South Africa's restitution and redistribution programmes (Research Paper No. 2008/1)*. Postgraduate School of Agriculture and Rural Development, Faculty of Natural and Agricultural Sciences. University of Pretoria.

73 Ibid.

74 Ibid.

75 South Africa, (2007). *Commission on Restitution of Land Rights Annual Report: 2018/2019*. Government Printers.

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More than 163 000 households that have received land are female-headed households and are mostly community claims situated in rural areas of the country.<sup>76</sup>

Despite the notable increase in the number of claims settled, including the number of female-headed households who benefitted from the 3,5 million hectares of land transferred through the programme of land restitution, Dlamini<sup>77</sup> shares that a number of studies conducted around this subject seem to suggest such settlements have not translated into something meaningful that benefits and empowers rural women.

On settled claims involving rural communities, the post-settlement failures on restitution projects have led the department to fall back on old elites. These traditional leaders are in full control of community property associations (CPAs) (known as trusts) and White farmers to manage the land.<sup>78</sup> What is even more tragic is that once land rights have been restored to communities, women tend to have less land, have weaker land rights, have less influence in community decision making and tend to lose access to land as a result of inheritance systems based on male succession.<sup>79</sup> This increase in fewer land rights for women since the land restitution policy implementation was further highlighted by Walker,<sup>80</sup> who argues that even where women have been listed as independent household heads and as beneficiaries in their own right, their access to land has been overwhelmingly mediated through their membership of patriarchal households.

Although the South African land reform programme appears to be failing, ways must be found to improve the programme's performance. According to Makombe,<sup>81</sup> this is particularly true for the restitution programme, as the programme addresses poverty alleviation in communal areas and rural development in general. Fraser<sup>82</sup> argues that the willing-buyer, willing-seller principle has restricted the pace of land reform, particularly restitution. It is due to the willing-buyer, willing-seller principle that the pace of land reform was slow as it was dependent on White farmers who were often unwilling to sell even if their land was part of a valid claim.

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76 Ibid.

77 Dlamini, M., D. (2021). The impact of land reform on rural women in South Africa: The case of Mkhwanazi Land Restitution Programme. University of KwaZulu Natal (master's thesis).

78 Ibid.

79 Ibid.

80 Walker, C. (2009). Elusive equality: Women, property rights and land reform in South Africa, *South African Journal on Human Rights*, 25(3), 467-490.

81 Makombe, G. (2018). Land reform in South Africa: The Conversation that never took place. *The Qualitative Report*, 23(6): 1401-1421.

82 Fraser, A. (2008). White farmers' dealings with land reform in South Africa: Evidence from Northern Limpopo. *Journal of Economic and Social Geography*, 88(1), 24-36.



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### 5.3.2 Women and land redistribution in South Africa

The White Paper on Land Reform of 1997 set out a radical vision for how to address racial inequality in land ownership and the stark disparities between men's and women's access to land.<sup>83</sup> In terms of the redistribution programme, the priority is to afford the poor the opportunity to gain access to land for both residential and productive purposes so that their livelihood is improved.<sup>84</sup> The government provides a single yet flexible redistribution mechanism that can embrace the wide variety of land needs of eligible applicants.<sup>85</sup> Land redistribution is designed to benefit those who are trapped in poverty, including farm workers, labour tenants, and emergent farmers.<sup>86</sup>

In November 2017, the then Department of Rural Development and Land Reform published a land audit showing how little progress had been made in realising the vision set out in the White Paper on Land Reform.<sup>87</sup> The numbers were discouraging as White people still held 72% of farm and agricultural land, and only 4% was held by Black people.<sup>88</sup> The audit also revealed that women only owned 18% of private land, dropping to 13% for farm and agricultural holdings.<sup>89</sup> These low percentages regarding Black-owned land confirmed that the State's approach to land redistribution was failing, especially for women. Furthermore, a study by Moseley and McCusker<sup>90</sup> revealed that no significant benefit to the livelihood systems of participants could be linked directly to land redistribution projects since numerous indicators seemed to depict either zero or limited impact on the economies of households. In fact, participants stated that the programmes were depleting social capital and increasing the conflict.

South Africa is a patriarchal society where women are disproportionately affected by unemployment, poverty, GBVF, and the added burden of running single-parent households. Fynn and Van Schalkwyk<sup>91</sup> believe that the right to use and control land is central to the lives of women (especially rural women) who depend on the land to feed themselves and their families and to derive an income.<sup>92</sup>

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83 Fynn, M & Van Schalkwyk, C. (2022, February 7). Redistribution of land remains a man's world in South Africa. *Mail & Guardian*.

84 Republic of South Africa Department of Land Affairs (1997). *White paper on South African Land Policy*. Government Printers.

85 Ibid.

86 Ibid.

87 Fynn, M & Van Schalkwyk, C. (2022, February 7). Redistribution of land remains a man's world in South Africa. *Mail & Guardian*.

88 Ibid.

89 Ibid.

90 Moseley, W.G., McCusker, B. (2008). Fighting fire with a broken teacup: A comparative analysis of South Africa's land-redistribution programme. *Geographical Review, American Geographical Society*, 98(3): 322-338.

91 Fynn, M & Van Schalkwyk, C. (2022, February 7). Redistribution of land remains a man's world in South Africa. *Mail & Guardian*.

92 Ibid.

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Land redistribution in South Africa has failed partly because of the lack of transparency surrounding the government's redistribution programme, i.e., the policies governing the allocation of land are opaque, and the data on land reform beneficiaries is rarely published.<sup>93</sup>

In a rare occurrence, the then Department of Rural Development and Land Reform released a land redistribution outcomes report in 2018, which revealed a decrease in the number of women beneficiaries under the redistribution programme.<sup>94</sup> Between 2009 and 2018, there were 8 763 women beneficiaries of land redistribution, making up 41% of the total beneficiaries over this period.<sup>95</sup> However, this was mostly due to the higher number of women beneficiaries between 2009 and 2011.<sup>96</sup> The absolute number of women beneficiaries plummeted from 5 795 in 2009 to 2010 to 334 in 2017 to 2018. In percentages, women beneficiaries also made up an increasingly dwindling percentage of the total between 2009 and 2010, when women beneficiaries made up 51% of beneficiaries, but by 2017 and 2018, this had fallen to 25%. In 2013, only 1% of the total beneficiaries for the year were women.<sup>97</sup>

In December 2020, the Department of Agriculture, Land Reform and Rural Development (DALRRD) briefed the Portfolio Committee on Agriculture, Land Reform and Rural Development on the number of beneficiaries that had benefited from the State land lease and disposal policy (SLLDP) between February and December 2020. The SLLDP provides beneficiaries with leases for redistributed land rather than full ownership rights.<sup>98</sup> It nominally gives priority to women, but with the requirement that they demonstrate basic farming skills or a willingness to acquire such skills before being considered.<sup>99</sup> Out of the 544 people who benefited from the programme in 2020, only 116 (30.5%) were women.<sup>100</sup> This distribution is even more unequal when the data is broken down into hectare allocation.<sup>101</sup> Male beneficiaries received 82% of the allocated land, while women only received 17.2% of the total hectares allocated.<sup>102</sup>

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93 Ibid.

94 Ibid.

95 Ibid.

96 Ibid.

97 Ibid.

98 Fynn, M & Van Schalkwyk, C. (2022, February 7). Redistribution of land remains a man's world in South Africa. *Mail & Guardian*

99 Ibid.

100 Ibid.

101 Ibid.

102 Ibid.

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The SLLDP comes with additional barriers to women's access to land. In 2020, 83% of the women beneficiaries of the lease and disposal policy formed part of a collective, which means that they did not hold individual leases for the land but were instead part of collectives that included men in its membership.<sup>103</sup> In comparison, 50% of the male beneficiaries were awarded the land as individuals.<sup>104</sup> When women are incorporated into collectives, they inevitably cannot use the land without consultation and collaboration with men,<sup>105</sup> somewhat reverting them to being perpetual minors who cannot own land in their own name. The policy's emphasis on demonstrated skills and experience in agriculture is also problematic because it is unclear how these skills and experience are evaluated when deciding who will receive land.<sup>106</sup> Although women in rural areas are the backbone of subsistence farming, Fynn and Van Schalkwyk<sup>107</sup> explain that these women are unlikely to own the land on which they farm and are less likely to have any formal farming qualification. They are also less likely to have farmed commercially and are less likely to be able to demonstrate that they have the skills and experience to run a commercial farm.<sup>108</sup>

### 5.3.3 Women and land tenure reform

Land tenure reform seeks to improve the tenure security of all South Africans and to accommodate diverse forms of land tenure, including types of communal tenure elsewhere in the country.<sup>109</sup> Land tenure reform has a legislative life and existence derived from Section 25(6) of the Constitution, which reads as follows:<sup>110</sup>

*“A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure, or to comparable redress”.*

The poorest sectors of rural society (and this includes women and the unemployed) are far more likely to obtain secure access to land in a communal/traditional tenure system (as it exists in South Africa) than under a freehold tenure system (that requires the financial resources not only to buy but also to keep the land).<sup>111</sup> However, in their land allocation roles, traditional authorities often place constraints on economic

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103 Ibid.

104 Ibid.

105 Ibid.

106 Ibid.

107 Ibid.

108 Ibid.

109 Republic of South Africa Department of Land Affairs. (1997). *White paper on South African Land Policy*. Government Printers.

110 Constitution of the Republic of South Africa, No. 108 of 1996.

111 University of the Witwatersrand. *Chapter 8. Tenure reform: The former homelands*. Retrieved 23 July 2023 from [Microsoft Word - chapter 8 tenure homelands.doc \[wits.ac.za\]](#).

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development and on greater social (particularly gender) equality.<sup>112</sup> Following the White Paper on Land Reform, tenure test cases highlighted the complexity of tenure reform, i.e., overlapping claims and rights, boundary disputes and the relative nature of land rights.<sup>113</sup> Addressing these overlapping land claims and land rights necessitates that the tenure reform programme includes making more land available for settlement, as well as government investment in rural economic development.<sup>114</sup> Addressing these issues inevitably raises questions about the ability and capacity of the South African government to implement the expansive nature of tenure reform.<sup>115</sup> International and South African case studies indicate that tenure reform programmes are highly complex, almost never successful, and generally beyond the immediate capacity of the government.<sup>116</sup> Tenure reform programmes are also incredibly expensive, administratively difficult, and very time consuming.<sup>117</sup> Given the budget constraints on restitution and redistribution in South Africa and the requirement for government investment in the rural economy, it seems unlikely that the South African government will be able to afford to implement a comprehensive tenure reform programme at a pace that is fast enough.<sup>118</sup>

#### **5.3.4 Emergency Response Action Plan (ERAP)**

The ERAP initiative came about in mid-2019 as the government's response to widespread public outcry for urgent action against GBVF, which has been dubbed the 'second pandemic'. The ERAP had a lifespan of six months (October 2019 to March 2020), and as part of the CGE mandate, the CGE reviewed the implementation of the ERAP. The evaluation culminated in the CGE report titled *Government's Emergency Response Action Plan (ERAP) on gender-based violence and femicide: Assessing progress on the establishment of a national coordinating structure on gender-based violence*. The ERAP had five thematic areas, numerous interventions, targets, indicators, and lead departments tasked with making sure that the objectives of the ERAP are realised. The CGE review<sup>119</sup> found that, in the ERAP's planned six-month time period, 17 targets (21.25%) were, 12 targets (15%) were only partially achieved, and a majority of 51 targets (63.75%) were not achieved.

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112 Ibid.

113 Ibid.

114 Ibid.

115 Ibid.

116 Ibid.

117 Ibid.

118 Ibid.

119 Ibid.

Although the ERAP period has lapsed, the ERAP can be noted as one of the government initiatives to facilitate women's access to land. In this regard, the ERAP offered the following under Thematic Area 5: Prioritise interventions that facilitate Economic opportunities for addressing women's economic vulnerability:

**Table 1: ERAP offering regarding land**

Intervention	Indicator	Target	Lead department
Land will be made available for economic opportunities for young women	Number of young women 15 to 34 years benefitting from land reform programmes	2 000 young women beneficiaries by 31 March 2020	DRDLR

Unfortunately, the above target was not achieved. In 2022, the CGE conducted another study to assess responses to CGE's findings on the Emergency Response Action Plan (ERAP). The findings showed that the overall number of ERAP targets achieved had increased from 17 to 27.<sup>120</sup> The number of partially achieved targets remained at 17, while the number of unachieved targets decreased from 51 to 37.<sup>121</sup> The target of 2 000 young women beneficiaries by 31 March 2020 was declared unachieved again as the CGE found that progress did not categorically speak to the target.

### 5.3.5 National Strategic Plan (NSP) on GBVF

The former Interim Steering Committee (ISC) on GBVF took on the responsibility of developing the NSP and setting up technical working teams to carry out the various tasks necessary for this development.<sup>122</sup> In fact, Article 4 of the summit declaration demanded that (within six months of its establishment) The permanent multi-sectoral national coordinating body for GBVF developed the national strategy and action plan for GBVF.<sup>123</sup> Nevertheless, the NSP comprises the following in relation to women and land:

<sup>120</sup> CGE. (2022). *Government's Emergency Response Action Plan (ERAP) on gender-based violence and femicide: Commission for Gender Equality review of implementation.*

<sup>121</sup> Ibid.

<sup>122</sup> CGE. (2020). *Accounting for work in progress? Assessing progress on the establishment of a national coordinating structure on gender-based violence.*

<sup>123</sup> Ibid.

**Table 2: National Strategic Plan Pillar 5 – Economic power**

Key intervention	Key activities	Indicators	Targets	Accounting lead department
Accelerate initiatives to address women's unequal economic and social position	Reconfigure land and agrarian reform funding to achieve Land and Agrarian reforms transformation deliverables	Land and agrarian fund established by March 2022	Annually April 2020 to March 2024	Lead: DALRRD Support: NT

It was unclear whether there was progress in this regard as the two entities assigned the task of ensuring that a land and agrarian fund was established did not report on the implementation of the indicator.<sup>124</sup> Furthermore, no mention of the establishment of a land and agrarian fund was contained in any published DALRRD reports.<sup>125</sup> The monitoring of the NSP is an ongoing initiative of the CGE, and thus progress in this regard will continually be monitored and reported.

## 6. Findings of the study

### 6.1 Eastern Cape province

#### 6.1.1 Contextual background

The Eastern Cape is the second largest province by area after the Northern Cape. According to the latest 2022 Population and Household Census results, Eastern Cape is the fourth most populated province of the nine with 7,2 million people, of which women are 52,6% and men are 47,4%.<sup>126</sup> This means that the Eastern Cape population has increased by 10,2% from 6,5 million people since the 2011 census. Interesting to note also is that the Eastern Cape consisted of mostly female-headed households in 2018.<sup>127</sup>

<sup>124</sup> CGE. (2020). *Accounting for work in progress? Assessing progress on the establishment of a national coordinating structure on gender-based violence.*

<sup>125</sup> CGE. (2023). *Missing pieces of the puzzle: CGE's assessment of the government's implementation of the NSP on GBVF between 2020 and 2022.*

<sup>126</sup> Stats SA: <https://census.statssa.gov.za/#/province/2/2>

<sup>127</sup> Municipalities of South Africa, (2018). Mbashe Local Municipality (EC121). Retrieved 8 May 2024 from: <https://municipalities.co.za/demographic/1006/mbashe-local-municipality>

The population demographics demonstrate that over 85% of the population in the province is Black African, 7.6% is Coloured, 5.6% is White, and Indian/Asian comprises less than half a percentage of the population in the province. The province has moved from third place in rankings to fourth due to high out-of-province migration to economically viable provinces.<sup>128</sup>

The economy of the Eastern Cape is largely based on agricultural activities, manufacturing, and tourism. Through observations and interviews in Nqadu in the Eastern Cape, Qomfo<sup>129</sup> ascertained that vast amounts of land were available for communal use and that an exceptional quantity of small-scale and subsistence farming was taking place. In terms of households involved in agricultural activities, the Eastern Cape had 26.2% of households participating in agricultural activities. About 78,3% of households produced only for their own consumption, with 7,8% of households producing mainly for sale with some own consumption. Also, there were 3,5% of households that produced food only for sale.<sup>130</sup>

According to the 2017 Land Audit Report,<sup>131</sup> men own farmland and agricultural holdings above the national average in all provinces except for Gauteng, where they own less than the ten-hectare provincial average. The Land Audit Report further indicates these points about land ownership in the Eastern Cape:<sup>132</sup>

**Table 3: Eastern Cape – number of individual land owners by gender**

Province	Male		Female		Other		Total
	No.	%	No.	%	No.	%	
Eastern Cape	6 145	53	3 016	26	2 519	22	11 680

The above table reflects the number of individual landowners in the Eastern Cape by gender. The percentages show that male ownership is more than double that of female ownership at 53% and 26%, respectively.

128 Stats SA: <https://www.statssa.gov.za/?p=16760>

129 Qomfo, A. (2020). The role of land reform in addressing women empowerment in the rural communal area of Nqadu, Eastern Cape, South Africa. University of the Western Cape (master's thesis).

130 Stats SA: <https://census.statssa.gov.za/#/province/2/2>

131 Government of South Africa. (2017). *Land Audit Report. Phase ii: Private land ownership by race, gender and nationality.*

132 Ibid.



**Table 4: Eastern Cape – individual landowners by gender in hectares**

Province	Male		Female		Male-Female		Co-owners		Other		Total
	Ha	%	Ha	%	Ha	%	Ha	%	Ha	%	
Eastern Cape	3 704 812	80	439 032	9	229 159	5	60 218	1	178 308	4	4 611 528

Overall, men and women own a total of 37 078 289 ha of farms and agricultural holdings land in the country: men own 26 202 689 ha (71%), and women own 4 871 013 ha (13%).<sup>133</sup> This 'male lead' also translates to the province because men in the Eastern Cape own 3 704 812 ha (80%) of farms and agricultural holdings, whereas women only own 439,032 ha (9%). When compared to other provinces, the Eastern Cape has the third largest amount of farmland in the country at 4 611 528 ha or 12%.<sup>134</sup>

### 6.1.2 Barriers to women's access to communal land

#### a) Leadership structures, rules, and procedures

The findings in the Eastern Cape were diverse. They show that different structures are responsible for allocating communal land across various districts in the province. Some communities had democratically elected structures, while others relied on the selection of senior traditional leaders. However, all these structures were responsible for creating rules and procedures for communal land access.

Communal land is allocated for various purposes, such as residence, farming, grazing, and special development projects. A common application process is applicable across all communities to access communal land for residence. Firstly, the applicant must express their interest in a piece of land to the headman by applying for the allocation of the land to build a house. The headman then applies to the governing committee, who then invites the applicant to identify the area of their interest. The land is allocated based on either individual applications or collective applications. In other communities, applicants are supposed to wait for the periodic opening of the applications as per the prerogative of the senior traditional leader or the headman. The process involves informing the community members about the date when the allocation process will be executed so that the interested parties can get the relevant requirements ready for the application process.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.



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The community governing committee reviews the applications and grants permission for the allocation of land to the applicants. The permission is authenticated by the chief or headman responsible for the area, who then grants permission to occupy the land with a date stamp, essentially creating a contract that finalises the land transfer.

Regarding women and the role of traditional leadership in land allocation, an article by Mhlathi<sup>135</sup> notes that women under the banner of the Inyanda National Land Movement in the Eastern Cape demanded to be part of the decision-making processes on land and traditional leadership. The movement accused traditional leaders in some parts of the province of denying women the rights enjoyed by men and expressed disappointment with the lack of significant improvement in women's landownership since democracy. One of the movement's members further shared that:<sup>136</sup>

*"The manner in which the land issue is addressed varies from one leader to another. At community level, there are a lot of issues. If there are 'issuers' that you don't see eye to eye [...] like political issues with that kind of leader, they will use that against you because you are a woman. And if you're outspoken, you can be punished and they will make sure you don't get your benefits and your rights because you got a 'big mouth'"<sup>137</sup>.*

The statement above indicates that the land application process was not clearly established, as it allowed decision-makers to determine whether or not to grant the land. The lack of established processes suggests that biases, including gender biases, could influence the process. The women in this study reported experiencing gender biases even in areas where gender was not explicitly stated as an exclusion criterion for land access. Furthermore, very few women served as senior traditional leaders and headwomen. There were instances where participants mentioned that women are not eligible to serve as traditional leaders, no matter their rank. When they were represented in leadership roles, they had very little control over rules and procedures. They felt that their role was to maintain existing rules and procedures, including ones rooted in patriarchy.

In the Eastern Cape, many of the rules and procedures were clearly aligned with constitutional principles of equality and non-sexism. For example, during the focus group discussions, it was mentioned that everyone was eligible to obtain land in their villages. However, there were subtle beliefs and practices of exclusion, such as

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135 Mhlathi, Y. (2019). Women claim rights, land ownership in E. Cape. SABC News. Retrieved 11 May 2024 from <https://www.sabcnews.com/sabcnews/women-claim-rights-land-ownership-in-e-cape/>.

136 Ibid.

137 Focus group discussion. Eastern Cape, November 2023.

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married women having their land registered under their husband's name and high application fees in a country where gender-based economic disparities exist and women are disproportionately affected by unemployment. There were evident areas of gender discrimination, as will be seen in the following sections.

*b) Family structure and other dynamics*

Participants from different districts and terrains in the Eastern Cape shared their unique experiences in accessing communal land in their localities. The findings revealed that the allocation of communal land is governed by rules and procedures crafted by traditional leadership and traditional councils. Some of the rules took into account family structures in efforts to sustain certain cultures and traditions. However, some of the practices were imposed by the families themselves.

In some villages, every parent must report the number of children they have. This information is used to make provisions for the children when communal land is allocated in the future. The age range for eligibility to apply for a piece of land varies between 18 and 21 years, depending on the area. Other criteria play a crucial role, including the applicant's financial ability to develop the allocated land.

While participants from different villages expressed that it was easy to access land from their localities, some women indicated that it was a challenge for them to access land without the assistance of their fathers or male next of kin. A woman from Ncera, who was over 30 years old and still living with her parents, mentioned that it was difficult to make money from farming in her area due to a lack of access to land. She expressed her passion for farming and mentioned that she had been applying for a lease for the past seven years but was denied access. She shared the following:

*"It is even more difficult as an unmarried woman who does not have children".<sup>138</sup>*

The woman was running a small farm in her parents' backyard and wanted to expand her business. She reported that to obtain permission to lease available land in the village, she was expected to register under her father. However, she did not trust her father and thus could not access the land. The participant said her brother was not struggling to access land in the same way that she did, even though he was unmarried. She, on the other hand, had to at least be married or have a child before she could even be heard.

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<sup>138</sup> Focus group discussion, Eastern Cape. November 2023.

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In some areas of the province, standard procedures require individuals to present their identity documents and a certain amount of money or goods to make an application. However, in other areas, written consent from the father is necessary. One woman mentioned that she was asked to bring her brother because her father was absent. Researchers found that cultural norms dictated that women livestock farmers could not register their livestock in their own names but rather in their father's or male next of kin's name. One participant shared that her livestock had to be registered in her father's name to have access to grazing land, which led to her father making major decisions about her livestock without her knowledge or consent. Her experience is captured in the following quote:

*“By default, the livestock belongs to the man of the house [...] he once sold my goat without telling me and I had to call the police to fetch it from where he sold it as it was still in a breeding process”.*<sup>139</sup>

In cases where married women are able to apply for communal land, the PTO or lease is issued in the husband's name, reflecting the cultural belief that the land belongs to the family, as the family name is based on the husband's name. One participant shared that she could not access land independently while married. She was required to bring her husband because she was not born in that area. Additionally, in some areas, when a husband passes away, a wife needs to be accompanied by a male relative from the late husband's side to the senior traditional leader to request land allocation. Not following this practice may lead to them losing their home.

In one of the focus groups, a woman mentioned that in her village, to apply for land, women were required to have a child. She pointed out that without a child, women were not granted any land. Without a child to legitimise a woman's land claim, she had to live with her parents for a longer period, while men were not subjected to the same rules.

By contrast, there were villages where women had positive experiences. One woman from the Qunu area shared her experience as follows:

*“Our chief is a woman, I was married and when my marriage ended, I went back to my home village and requested a piece of land to build a house. I was told to bring an elder person and I went with my mother as they did not specify whether to bring a man or a woman.*

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<sup>139</sup> *ibid.*

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*I went to the chief and the committee, which did not require masses of the people as they usually do. I was asked to bring a 'bottle'<sup>140</sup> and the food that was going to be eaten by the people who were going to allocate a site for me".<sup>141</sup>*

The rule for making a payment in the form of alcohol and food is applied to individuals of all genders, ensuring no explicit form of gender discrimination in this instance. In addition, another woman said:

*"If I die, my children are eligible to remain in the house as their home, and if my husband wishes to remarry, he has to request another piece of land to build a house for his new wife [...] in these communities, divorce is not recognised, if I move out of the house, the house is still mine and my children's home. [...] My husband remarried two months after I left and if I want to go to that house, I go because it is still my house and I am culturally protected".<sup>142</sup>*

Echoing the previous participant, another woman shared her experience, indicating that women seem to be protected in instances of divorce. In this instance, the mother-in-law played an instrumental role. The participant said the following:

*"I was married at Lusikisiki and left my matrimonial home, but my mother-in-law refused for my husband to marry another woman".<sup>143</sup>*

The woman believed that if her ex-husband remarried, her children would lose their inheritance of the land and house in which they lived.

### c) Sexual orientation

Sexual orientation, gender identity, and expression were additional factors affecting access to land. Participants expressed their views that in the Dujwa area, there is reluctance to accept gender diversity and a prevailing belief that individuals should conform to cisgender norms. The findings revealed that the LGBTIQ+ community is not recognised or welcomed in the area. Consequently, members of the LGBTIQ+ community are unable to be allocated communal land, and it is believed that they often leave and migrate to urban areas due to rejection by their families.

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140 A bottle represents alcohol whisky or brandy and beers.

141 Focus group discussion, Eastern Cape. November 2023.

142 Ibid.

143 Ibid.

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The issue sparked strong emotions, with some participants even standing up and using hand gestures to show that queer individuals were unwelcome. Ironically, this issue was more pronounced in villages where participants believed that the rules and procedures were non-discriminatory. However, it appeared that these non-discriminatory measures applied only to cisgender individuals and excluded queer individuals. One of the participants said the following:

*“Never! They [queer people] are not welcome here. You can't give birth to a girl child and then they choose to become a boy. A boy is a boy, and a girl is a girl”.*<sup>144</sup>

Another participant mentioned the following:

*“We are not discriminating against anyone. Those people [queer people] don't exist here. It's not that they are being denied their right. They don't exist here”.*<sup>145</sup>

The statements above illustrate that queer individuals were marginalised in society, ignored, and subjected to discrimination. The statements from participants also demonstrate that homophobia and transphobia were sanctioned and utilised to ostracise queer individuals.

#### *d) Economic barriers*

The cost of communal land varies across the villages visited for this study. The findings also show that there are different layers of costs imposed on applicants as part of administrative requirements. Unfortunately, the overall cost implications are high, especially for those who do not have stable employment or a source of income, particularly women who experience high unemployment rates and are economically marginalised. The costs range between R100 and over R100 000.

In some cases, applicants are required to slaughter sheep or chickens and cook for the entire community during the land allocation day. Along with having to buy bottles of alcohol such as brandy, whiskey, and beer, this makes the process a more expensive endeavour. A person's economic viability is taken into consideration when allocating land, as they must have the means to develop the allocated land. If they are unable to develop it within two years, the land is re-allocated to someone else. The two-year land development stipulation makes it difficult for unemployed people to access land and own houses. As a result, they continue to live with their parents until much later in their lives.

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<sup>144</sup> Focus group discussion, Eastern Cape. November 2023.

<sup>145</sup> Ibid.

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Additionally, it was observed that people from the farms are allocated land in grazing fields, and land around those areas costs about R120 000 and is sold from one owner to another.

The land closer to towns or new villages is expensive, with selling prices ranging from R40 000 to R70 000 or more. From the focus groups and the interviews, it was unclear where this money went. Views varied, as some believed the traditional councils enjoyed the payments, while in some instances, it was believed that the money was paid to CoGTA. What was apparent, however, was that the prices differed and that some participants faced much bigger financial barriers than others. The requirements depended on the village from which the women came. The criteria for determining prices were also obscure.

*e) Community development opportunities and benefits*

The findings reveal that despite economic barriers to accessing land, there are some areas where significant progress has been made. One such example is the partnership between the Ncera villages and Macedonian nut producers, where the communities collaborate with a private company to benefit the people of Ncera. This project has created employment opportunities for people living in nine villages. Additionally, the women in the area have established the Ncera Women's Association, which is leading development activities in the region. The association has set up a resource centre run by women, where they teach various skills, including sewing, and also operate a library for children. Furthermore, the resource centre has expanded to include the production of detergents. Researchers have noted that there is still potential for further community development opportunities in Ncera.

Alongside the gains noted, providing women with more opportunities to access land and financial support could lead to greater financial freedom and economic advancement for women. This is particularly true because women have expressed interest in running farming and other businesses but have been prohibited by a lack of access to land and financial backing.

## 6.2 North West province

### 6.2.1 Contextual background

North West was incorporated after the end of apartheid in 1994 and includes parts of the former Transvaal Province, Cape Province, and most of the former Bantustans of Bophuthatswana. North West is a Setswana-speaking population with minority groups speaking Afrikaans and Sesotho, while English is spoken throughout the province. In 2022, the North West had a population of 3 804 548 million people. Of this population, 1 885 033 million were men and 1 919 515 million were women.<sup>146</sup> It is also known as the platinum province for its vast underground resources. Its capital is Mafikeng, but the largest city is Klerksdorp.<sup>147</sup>

The northern and western parts of the province have many sheep farms, cattle, and game farms. At the same time, the eastern and southern parts are the crop-growing areas that produce maize, sunflowers, tobacco, cotton, and citrus fruits.

The 2017 Land Audit Report<sup>148</sup> offers the following regarding landownership in the North West:

**Table 5: North West – number of individual landowners by gender**

Province	Male		Female		Other		Total
	No.	%	No.	%	No.	%	
North West	11 154	46	6 739	28	6 228	26	24 121

The above table reflects the number of individual landowners in the North West by gender. The table shows male ownership is 20% more than that of female ownership, at 46% and 28%, respectively.

**Table 6: North West – individual landowners by gender in hectares**

Province	Male		Female		Male-Female		Co-owners		Other		Total
	Ha	%	Ha	%	Ha	%	Ha	%	Ha	%	
North West	2 047 590	62	487 229	15	523 392	16	120 084	4	132 914	4	3 311 210

<sup>146</sup> Stats SA: <https://census.statssa.gov.za/#/province/2/2>

<sup>147</sup> SA Specialist: <https://saspecialist.southafrica.net/in/en/topics/entry/north-west-overview>

<sup>148</sup> Government of South Africa. (2017). *The Land Audit Report, Phase ii: Private land ownership by race, gender and nationality*.



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The 'male lead' in landownership by gender in hectares seen in the Eastern Cape is also the reality in the North West. Males in the North West own 2 047 590 ha of farms and agricultural holdings (62%), whereas women only own 487 229 ha (15%). Indeed, female ownership of farms and agricultural holdings in the North West is more than that of the Eastern Cape. When compared to other provinces, the North West has the fifth largest farmland area in the country at 3 311 210 ha or 9%.<sup>149</sup>

## **6.2.2 Barriers to women's access to communal land**

### *a) Leadership structures, rules, and procedures*

In South Africa, every area, except for national parks, falls under the jurisdiction of a local government. In rural areas where traditional rule still exists, traditional councils serve as leaders due to their royalty. Municipalities were established with newly elected councillors who coexist with the traditional councils and their leaders.

The findings show that each district in the North West province is governed by headmen and senior traditional leaders who ensure compliance with the rules and procedures established by the royal houses and traditional councils/authority. These districts consist of multiple villages. It is important to have clear and easily understandable rules and procedures to facilitate the allocation of communal land. However, in the North West, many participants reported that they were unaware of who established the often undocumented rules and procedures. Some referred to rules that predate their era and have been in place for a long time.

In the Royal Bafokeng area, traditional councils and authorities did not seem to have much influence over the allocation of land compared to other villages in the province, as well as in Limpopo and the Eastern Cape. Participants revealed that the power was mainly vested in the senior traditional leader and the royal house (royal family/senior traditional leader's relatives and council). As such, even though women had specific quotas in the traditional councils, traditional councils did not really have the power to allocate land.

A participant from the area narrated that:

*"There is a committee that is assigned by the chief to deal with matters of land allocation, the committee's decision is not final, the committee can agree for you to get a stand, but while you are waiting for the final decision that comes with paperwork, you find that it was declined and you have already built, there have been cases where some stands were demolished with caterpillars [demolition vehicle] after the land was given or sold to investors, and residents were told that the land belonged to the King or Bafokeng.*

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<sup>149</sup> Ibid.



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*Sadly, the residents had no proof of certificate to occupy. The other sad part is that the royal house doesn't communicate directly with its people, so even if the feedback is delayed, you still have to continue to sit and wait".*<sup>150</sup>

In the above extract, participants expressed significant concern and displeasure over the extended waiting periods before being granted permission to occupy land. The senior traditional leader was seen as the source of frustration in this regard, while the council and its committee were perceived to be executing their functions appropriately.

The situation was different in Six Hundred and Madibogo, where the councils had the authority, when working with the senior traditional leader to allocate land. In both villages, women sat on councils, but in small proportions of less than 30%. While women reported no explicit issues of gender discrimination in Six Hundred in Madibogo, there were several rules and restrictions towards women. The women felt that these were fine as they were part and parcel of customs and tradition. Some of the rules and restrictions will be discussed in the sections that follow.

The basic rules for applying for a piece of land, especially for residential purposes, involve producing an identity document, birth certificates of children, and a marriage certificate for those who are married. Residents should make an appointment with the headman and later visit the senior traditional leader's council or tribal authority office, present their case, submit documents, and pay a fee. The next steps include getting a receipt as proof of payment from the headman or the tribal authority and then waiting for a response. Applicants are not guaranteed success, and they still have to endure a waiting period after applying. In Tsitsing village in the Royal Bafokeng area, the waiting period was much longer, and participants said they were not given reasons for this delay. Participants cited cases of applicants who had been waiting for over a decade for a response. In the other villages, applicants would be answered within a period of two weeks to three months.

#### *b) Culture, norms, and traditions*

Cultural norms refer to "shared beliefs, or values and the human behaviours that support these values within a given society, such as the standards of conduct that are met with social approval or disapproval".<sup>151</sup>

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<sup>150</sup> Focus group discussion. Tsitsing, North West. 24 October 2023.

<sup>151</sup> Heather, H (2023). Cultural norms. Study.com. Retrieved 23 May 2024 from <https://study.com/academy/lesson/cultural-norms-definition-valuesquiz.html#:~:text=groups%20of%20people.,A%20norm%20refers%20to%20the%20attitudes%20and%20behaviors%20that%20are,say%2C%20think%2C%20and%20do.A>

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The North West province has a diverse and unique culture that varies from village to village. Research findings indicate differing views on the acceptance and relevance of cultural beliefs, especially those that discriminate against women. Interestingly, older participants in their 60s and above seemed to embrace traditional beliefs more than younger participants in their 20s to 40s.

Men and women were expected to dress in specific attire when appearing before headmen, headwomen, or the land application committees. Men were required to wear trousers, a shirt, and a jacket, while women were expected to wear dresses, cover their heads, and wear a scarf around their necks. However, in Six Hundred, women arrived at the tribal authority offices dressed casually, without pressure to conform to the traditional attire. In Madibogo, specific protocols had to be followed, including observing when women should speak and that the women should always be respectful. In relation to protocols for women, one of the participants explained the following:

*“Women should follow the stipulated dress code when going to apply for communal land, i.e. wear dresses or skirts to look ‘decent’”.*<sup>152</sup>

The quote above addresses a long-standing issue in society, where women's clothing is often controlled in an effort to control their bodies. The rules regarding women's attire are frequently justified by culture or explained as a way to encourage women to be 'respectful', while those making the rules are often praised for 'protecting' women and cultural practices. These rules often serve to reinforce women's subjugation, especially because the dress code determines what is considered acceptable and dictates the issues that women can and cannot address. The dress code not only marks gender but also outlines how people wearing dresses should behave.

Another participant narrated the following:

*“Even with us being represented in the council committees, it takes a lot of convincing that you can do the job, on the Bafokeng, for starters, we have never seen a traditional leader, chief, or headman who is female. This shows you that women are not valued or given equal opportunities as men do. Also, women are still expected to sit down and conduct themselves with dignity when men talk in meetings, women are not allowed to participate freely, hence I still believe that my place as a woman is still in the kitchen, as I am treated as such here. [...]*

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152 Focus group discussion, Tsitsing, North West, October 2023.

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*There are women yes, in some sections who are part of the Lekgotla (traditional council), but I'm not 100% certain that they are treated equally as men".<sup>153</sup>*

This is another example of women being expected to dress and present themselves in a certain way in the presence of royalty and other men. Compliance with this is viewed and labelled as women being 'dignified and respectful'.

The dress code poses a problem for queer individuals, especially transgender individuals. The strict rules can alienate and make them feel uncomfortable. Queer issues were not extensively discussed in the focus groups. However, the language used was often heteronormative, mostly referring to men and women, which suggested that queer individuals did not have a place in these communities. In Tsitsing specifically, participants mentioned that individuals identifying as gay or lesbian were generally embraced in the communities. However, this acceptance did not extend to council meetings, visits to the tribal authority, or any interactions with traditional leadership structures.

As mentioned, participants expressed differing views about their connection to cultural norms and beliefs. For instance, some women in Madibogo believed that tradition should be fully embraced as it represents heritage and respect for their ancestors. On the other hand, there were participants in Tsitsing who felt that the cultural norms and traditions in their communities were outdated and sometimes worked against them. To this, one participant said:

*"It is unfair that the culture that our forefathers agreed on is still applicable to us when times have changed, we have a different breed of children now, at the age of 21 they believe that they should be at their own homes, but it is a different case at Bafokeng, you have to wait until you are 40 plus and married to move out of your parents' house unless you migrate to the city or a different province, which I feel it's unfair".<sup>154</sup>*

Issues of age and marital status as they appear in the extract will be discussed in the sections that follow.

### *c) Family structure and other dynamics*

Findings indicate that the villages visited in the North West still hold the nuclear family structure in high regard. Therefore, accessing land is easier for those with this family setup. It was often in cases where a family member or an unmarried child is known or considered to be an 'unruly or troublesome child' that other family

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<sup>153</sup> Focus group discussion, Tsitsing, North West, October 2023.

<sup>154</sup> Focus group discussion, North West, October 2023..

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members will have to vouch for that family member to be allocated communal land once they come of age so that they move out of home.

In Madibogo, the rules stipulated that land allocations were to be made to the first-born male child of every family. This rule applied in cases where the father was absent for various reasons, including death. Unmarried men had to be 40 years of age, while married men could be of any age. Married women had to be represented by their husbands, while unmarried women had to be represented by an elder. However, participants mentioned that the rules were beginning to be more accommodating, even though it was not always easy for land to be granted outside of the rules. It was noted that unmarried women often found it difficult to be granted land.

In Tsitsing, women had to be at least 40 years old, while men had to be 40 or 45 years old if they were unmarried. Participants noted that the rules were stricter for unmarried men than for unmarried women. In most cases, men had to adhere to this age requirement. In terms of age, one participant bemoaned:

*“Imagine having to wait to be 40 years as a female and 45 years old as a male, to be eligible to qualify for land is outrageous, in the meantime where should I stay, with my parents? I am restricted to building a home for my children, and at this point, I cannot even qualify to get land to farm or build a business to earn income. I wish to work so that I can save money so that by the time I reach 40, I have enough to build quicker as also if you are given land, you have a time frame to erect some structure, If not, then it’s a challenge as well”.*<sup>155</sup>

Another participant added the following:

*“At Tsitsing and the nearby villages, even if you are 40 as a female, without kids, and not married, you still do not qualify for land. You ought to be married. Hence the reason why most of the younger generation, after completing their university qualifications leave the villages, go to the cities and buy houses there or come back when they are married, and this has caused a lot of tension in homes. With the younger generation leaving, most people who stay behind are the grannies who are fragile and vulnerable to various attacks such as rape cases, theft, and they have no one to take care of them”.*<sup>156</sup>

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<sup>155</sup> Focus group discussion, North West, October 2023.

<sup>156</sup> Ibid.

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In this case, the issue of age is compounded by marital status and the issue of children. The participants said that the situation was better for unmarried women who had children, as they stood a much higher chance of being granted land for residing. In fact, in Tsitsing, it appeared that some form of hierarchy was created, with (1) married men and women featured on top, followed by (2) women with children, (3) widowers, (4) widowed women with male children, (5) widowed women, (6) divorced men, (7) divorced women, and then (8) 40-year-old women and 45-year-old men who do not fit the criteria above. It is clear that these issues create many problems for community members. For some, these problems include delays in the attainment of self-actualisation and disruptions in people's plans and way of life.

One participant shared the following:

*“If you are married, you do not go alone, but rather with your spouse”.*<sup>157</sup>

The research findings indicate that marital status plays a crucial role in obtaining communal land in the villages of Madibogo and Tsitsing in the North West. This requirement affects both men and women, leading them to live with their parents until they are eligible to access land after marriage. In relation to this, one participant shared that:

*“For you to have access to communal land, the chief and headmen, require you to provide proof that you are married, can be traditional or civil marriage, but that is the main determining factor. Then they can go on and ask for other things such as money”.*<sup>158</sup>

Widows and divorced women faced obstacles when trying to access communal land. Participants mentioned that widows and divorced women were often left out of meetings and community gatherings and had to “plead their cases” when applying for communal land. This situation seemed to affect women more than men. The widows and divorced women's challenges are highlighted in the following quote:

*“If you are a widow, it feels like you are an outcast. You cannot associate yourself with the day-to-day happenings of the community until the set time by the chief to mourn has lapsed. Also it is even better if you have male children as they can play that absent father role”.*<sup>159</sup>

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<sup>157</sup> Focus group discussion, North West, October 2023.

<sup>158</sup> *ibid.*

<sup>159</sup> *ibid.*

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The statement above implies that women's freedoms and rights in their communities depended on the presence of men in their lives.

In cases of divorce, another participant said the following:

*"If you are divorced, relatives or family representatives should also be present to plead the case".*

The participants expressed concern that divorced women were relegated to a subordinate status, being deemed unsuitable and incapable of applying for land on their own despite being grown women.

#### *d) Economic barriers*

Study participants explained to researchers during interviews that in their villages, individuals do not buy land but instead pay a fee to access it. The senior traditional leaders have the authority to determine who receives the land, its location, timing, and size. The fee for accessing communal land is R500 in all villages included in the study: Madibogo, Tsitsing, and Six Hundred. Non-Bafokeng individuals in Royal Bafokeng are required to pay R850. Additionally, community members pay annual levies ranging from R20 to ZAR 50, depending on the village. Land for business purposes is provided at no cost, but strong motivations are required.

Although some of the participants were displeased with the figures, North West was the only province among the three sampled in the study that had a consistent application fee across villages. This was not the case in the Eastern Cape and Limpopo.

While women in the North West seemed to be in a better position than others, the significant delays in land allocations in Tsitsing disproportionately affected women, especially those who were heads of households and raising children. The long waiting periods hindered their ability to start businesses or live independently with their children. Participants mentioned that existing land in the family was often divided among children, with sections allocated to daughters with children to create their own homes. This practice was common among many families as the challenge was pervasive. Age limits also posed concerns as they restricted the use of land for various purposes, including business endeavours.

## 6.3 Limpopo province

### 6.3.1 Contextual background

Limpopo is South Africa's northernmost province. It traces its historical background as far back as pre-1994, when the province was formed from the northern region of the Transvaal province, which was initially named Northern Transvaal. Limpopo is a long and narrow province with a diverse landscape that includes the northern part of the highveld, the central lowveld, the bushveld, and the Soutpansberg Mountains.<sup>160</sup> The history of Limpopo is steeped in the traditions and cultures of many different ethnic groups, including the Northern Sotho, Tsonga, Venda, and Pedi people. These groups have lived in the region for centuries, and their customs and traditions have shaped the province's unique identity.<sup>161</sup> In 2022, approximately 96,5% of the population were Black African, While 2.5%, 55,5% Sepedi, 17,4% Tshivenda, and 17,3% Xitsonga.

During the apartheid era, Limpopo was divided into three Bantustans or homelands: Gazankulu, Bophuthatswana, and Venda. These homelands were created to divide the Black population and maintain White minority rule and were not recognised by the international community as legitimate states.<sup>162</sup> Following the end of apartheid in 1994, Limpopo was reincorporated as a province of South Africa. The new democratic government sought to address the inequalities of the past and promote economic development in the province. Of late, Limpopo is home to a diverse population of 6 572 721 people, of which 3 099 416 are men and 3 473 304 are women.<sup>163</sup> The province also has a growing economy focused on mining, agriculture, and tourism.

According to the 2017 Land Audit Report,<sup>164</sup> landownership in Limpopo looks as follows in terms of gender:

**Table 7: Limpopo - number of individual landowners by gender**

Province	Male		Female		Other		Total
	No.	%	No.	%	No.	%	
Limpopo	8 135	51	5 283	33	2 495	16	15 913

The above table reflects the number of individual landowners by gender in Limpopo.

<sup>160</sup> SAHO- South African History Online. Retrieved 13 May 2024 from <https://www.sahistory.org.za/place/limpopo-province#:~:text=The%20Limpopo%20Province%20was%20part,part%20of%20Kruger%20National%20Park.>

<sup>161</sup> [https://www.limpopo.gov.za/?page\\_id=3390](https://www.limpopo.gov.za/?page_id=3390). Accessed 10 May 2024.

<sup>162</sup> SouthAfrica.net. Retrieved 13 May 2024 from <https://www.southafrica.net/mw/en/travel/article/history-and-culture-in-polokwane>.

<sup>163</sup> Stats SA: <https://census.statssa.gov.za/#/province/2/2>

<sup>164</sup> Government of South Africa. (2017). *The Land Audit Report, Phase ii: Private land ownership by race, gender, and nationality*.



Like the other two provinces included in the study, landownership by men is higher than landownership by women in Limpopo, which is 51% and 33%, respectively.

**Table 8: Limpopo - individual landowners by gender in hectares**

Province	Male		Female		Male-Female		Co-owners		Other		Total
	Ha	%	Ha	%	Ha	%	Ha	%	Ha	%	
Limpopo	1 022 742	58	275 057	16	315 703	18	46 164	3	90 310	5	1 749 977

As seen in the above table, the 'male lead' in landownership by gender in hectares is also a reality in Limpopo. Males in Limpopo own 1 022 742 ha of farms and agricultural holdings (58%), whereas women only own 275 057 ha (16%). When compared to other provinces, Limpopo has the sixth largest farmland in the country at 1 749 977 ha or 5%.<sup>165</sup>

### 6.3.2 Barriers to women's access to land

#### a) Leadership structures, rules, and procedures

In Limpopo, the leadership structures responsible for land allocation include the royal house, the traditional council, the village committee, and the headmen from the respective communities. Researchers were informed that the traditional council determines the terms and conditions for communal land applications in Limpopo. However, headmen also play a significant role and can determine applicable figures.

The application process begins with approaching the headman, who will then register the application with the tribal authority. After that, applicants have the chance to specify the place or land in which they are interested. However, communal land is allocated by the headmen and the tribal authority. It was mentioned that if a community member is considered to be taking too long to develop the land, it would be allocated to someone else. The window period was two years. However, participants indicated that in some cases, due to the high demand for land in the province, the two-year period was not adhered to. In fact, participants, particularly in one section of Ntabalala, mentioned that stands could be allocated to two individuals at the same time, often for the financial gain of the headmen, the senior traditional leader, and members of the traditional council.

<sup>165</sup> Ibid.



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The participants also mentioned that due to these money-making schemes, women who were allocated stands would be taken advantage of, especially single women. Stands would be allocated to them, only to be given to another person, usually a man. Some of the women in the focus groups mentioned having to cohabit with a boyfriend so that a male figure is present, providing them with some form of security. One of the participants had the following to say:

*"If you don't have a husband or boyfriend, the headman's eyes will be on your stand, if you perhaps travel for a longer period, or you don't erect a building structure quicker like they see no action, he can resell your stand, and you will hear by someone telling you that it's their land, and usually it will be a man, and you will lose the stand., so here being single and owning a stand is very difficult".<sup>166</sup>*

Another participant said the following:

*"Unfortunately, something comes up and stops you from having a fence. [...] The next thing, after a few months you find that they have put someone else there, is it right?".<sup>167</sup>*

Unfortunately, the reallocation of the piece of land also means the forfeiture of the application fee. One participant explained this as follows:

*"That means the money won't come back to you. If they took your stand and gave your money back, that would be something".<sup>168</sup>*

When applying for land in the sampled villages, an applicant has to be over 18 years old, have a South African identity document, and provide proof of income and proof of residence. Non-residents are also allowed to apply as long as they have a testimonial and pay the required fees. The price of the land will depend on its intended use and the discretion of the headman, which will be discussed later. However, pricing was closely associated with corruption. Participants in some of the villages visited mentioned that gender discrimination was not prevalent, as money was the key determining factor. The financial determinant was mainly the case in Phalaborwa and Ntabalala villages. Allegations were made that headmen and senior traditional leaders were directly benefiting from the corruption. Therefore, it did not matter much what the gender of the applicant was. One participant shared the following:

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<sup>166</sup> Focus group discussion, Limpopo, October 2023.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid.

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*“Here to get a stand, you need connections and perhaps you need to be beautiful so that the chief/headman or the person selling the land listens to you when you negotiate. It is like you looking for a job. In a nutshell, what I am saying is you need to bribe someone”.<sup>169</sup>*

While traditional councils were mainly constituted of men, women also had seats in these structures. It was mentioned that although the traditional leadership structures of the villages were aware of the corruption, they were not taking any action to address it.

Furthermore, women had to present themselves in a certain way in terms of dress code, behaviour, and conduct. They were expected to carry themselves modestly, and this was particularly relevant as they had to face traditional councils and headmen as part of land application processes. These rules also applied to the general council meetings, as well as meetings with senior traditional leaders. A participant articulated this experience as follows:

*“We still feel unfairly treated, even on council meetings, we don’t say anything at all, we are just there to listen, we are not given equal opportunities at all, because the leadership still believes that women should not speak when men speak, we are still to wear doeks [head scarves] and skirts when we attend meetings or related gatherings, and we sit on the floor not on chairs like men, this culture is unfair, but what can we do, even if you feel some way, you cannot take the chief anywhere, you just succumb to the culture and norms.”<sup>170</sup>*

#### *b) Family structure and other dynamics*

In the Moletji area, discriminatory practices against women were uncovered. Women were expected to have children for their land applications to be considered. Marital status was also found to be a factor that impacted women's ability to access communal land. Both unmarried men and women were victims of discrimination in this regard. A participant said the following:

*“It’s what the lady [another focus group discussion participant] was talking about, that if you are not married as a woman or you don’t have kids or a man that’s not married, they won’t give them a stand, it is common. It happens in these villages”.<sup>171</sup>*

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<sup>169</sup> Focus group discussion, Limpopo, October 2023.

<sup>170</sup> Focus group discussion. Bloedeivier, Seshego. October 2023.

<sup>171</sup> Focus group discussion, Limpopo, October 2023.

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Participants explained that when community members tried to inquire about these discriminatory practices, they were told that unmarried people and those without children are considered unstable and may abandon the land. However, this reason was discriminatory, as married people could also leave. One participant shared her experience as follows:

*“We don't give you a stand if you are not married because once you are married, you are going to leave this stand, we'll give you a stand and then you leave it, so if you are not married, you don't get a stand”.*<sup>172</sup>

Participants further explained that they had no hope of things changing, as they were not allowed to openly question the rules and procedures determined by the senior traditional leader and other traditional leadership structures. It was said that anyone questioning such leaders could find themselves banished from the community. Participants explained that they felt like their villages were run like little colonies in the country, as they did not feel that they could also enjoy the fruits of democracy like other women in the country. It was mentioned that even State services such as the South African Police Services could not enter a village and make an arrest or conduct an investigation without first engaging the senior traditional leader through the tribal authority. Participants expressed having deep fear and reverence for their traditional leaders, particularly in Moletji.

Another participant narrated the following regarding discriminatory practices in their village:

*“The rules here are unfair, men are people and women are their subjects, and we have to be married to acquire land, but once you divorce, the husband can even bring another woman to take over, and you can either leave or stay there and be victimised. According to how we understand it, even if you are married, the stand belongs to the husband because he has all the powers to either bring a woman but I cannot bring in a man, I will be told to go remarry or go stay at the new man's house. It is unfortunate that here, land cannot be resold, so if you want fairness, you can destroy/demolish the structure. [...] What we encounter here is unfair as women”.*<sup>173</sup>

Some participants believed that both women and men could inherit their parents' properties. However, in Kanana, it was mentioned that part of their cultural practices involved female children moving out of the house to allow male siblings and their families to inherit the property.

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<sup>172</sup> *ibid.*

<sup>173</sup> Focus group discussion. Limpopo, October 2023.

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While some felt that this was an unfair practice, others believed it was a tradition that had to be observed. One of the participants explained as follows:

*"That's why you see many of us here living in shacks in our stands. As Venda women you are taught from a young age that you must leave your home because it doesn't belong to you but to your brothers. It's how it is. We are raised like that".<sup>174</sup>*

One of the participants shared that she was involved in a court case with her male siblings, who believed they were entitled to the family property after their parents passed away. Some participants also mentioned that their husbands had forced them out of their homes and moved in with their girlfriends. Despite knowing that this was illegal, the women felt that they could only reclaim their property rights after their spouses had passed away. These women felt powerless in these situations.

### c) Economic barriers

As mentioned, corruption was said to be widespread in Limpopo, with traditional leaders accused of benefiting from it. Participants noted that prices for accessing communal land varied. The varying prices sometimes led to disagreements among participants during focus group discussions when they realised that the price they were quoted or charged was much higher than what others had paid. Participants believed that prices were determined on the spot, based on an individual's appearance. Those who seemed to have money, such as arriving in a car or dressing a certain way, were charged more than those who did not appear to have money. Appearing desperate for the land allocation also meant being charged exorbitant amounts. One of the participants shared the following experience:

*"Getting a stand isn't difficult, male or female, here your money advocates for you. I bought my stand at R3 000, only to find out a few months later that my friend bought hers at R4 000, but living in the same area, hence we say that the headman or the chief charges anyhow, but it's pricey if you aren't working, you won't manage".<sup>175</sup>*

The prices varied as the participant mentioned in the above extract. To illustrate these disparities, one of the participants said the following regarding fees charged:

*"This includes the pricing of communal land as well as the related application fees which range from R500 to R15 000".<sup>176</sup>*

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<sup>174</sup> *ibid.*

<sup>175</sup> Focus group discussion Limpopo, October 2023.

<sup>176</sup> *ibid.*

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Another participant said the following:

*“For business or a place of residence. As already mentioned, application fees range from R500 to R15 000. However, there are additional fees such as R850 for the PTO, R50 to R450 for being allocated a piece of land that is preferred by the applicant and R20/R50 for annual levies.”*

It was confirmed during interviews with members of traditional leadership structures that the accurate amount to be charged was R1 000 for residential purposes and R5 000 for business. In other words, the remaining funds would be appropriated by the traditional leaders and other involved parties. It was mentioned that the R1 000 would be paid to the Department of Co-operative Governance, Human Settlements and Traditional Affairs (CoGHSTA). It was, however, unclear what CoGHSTA did with the money as they did not participate in the research.

South African women generally experience greater economic hardships compared to South African men. In the sampled villages of Limpopo, participants were also affected by economic challenges in their efforts to access land, as already shown. High unemployment rates and lack of opportunities in these communities worsened the situation. The situation becomes even more difficult for applicants when the land is intended for entrepreneurial use, and they do not have the means to pay the fees. A participant said the following in this regard:

*“It will be hard to tackle the economic hardships we face as women, applying for stands that are solely for business is generally costly. Our amounts differ, some pay R8 000 and some R10 000, depending on where the stand is located and what business you want to venture into, what’s appalling is that the chiefs/headmen will advise you that whatever business you partake in, they own 50%. So that’s where the challenge is, we have greedy leaders, who want to reap where they did not sew”.<sup>177</sup>*

The issue of corruption was a serious concern that directly impacted communities. This problem hinders land attainment as advocated by the country’s Constitution, exacerbating inequalities, especially gender inequality.

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177 Focus group discussion, Limpopo Molefji, October 2023

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## 7. Overview of findings

The study was conducted in accordance with the CGE mandate to investigate the obstacles to women's access to communal land in rural South Africa. The research focused on the Eastern Cape, North West, and Limpopo regions, examining legislative, procedural, cultural, and socio-economic factors that impede women's access to communal land in the country.

The study revealed both anticipated and unexpected findings related to the complex and interlinked factors that obstruct women's access to communal land. More broadly, the findings are linked to the following factors:

- Procedural and cost disparities
- Cultural norms and traditions
- Socio-economic factors
- Family structure and other related dynamics
- Gender identity and sexual orientation and expression
- Marital status and age.

The research findings suggest that there is a fragmented approach to the allocation of communal land in the three sampled provinces. This fragmented approach is due to each senior traditional leader and their traditional councils adhering to their own cultural norms and beliefs, leading to disparities even within the provinces. It is evident that traditional leaders play a significant role in the allocation of land in all the communities visited for this study. However, despite their involvement in traditional leadership structures at the local, provincial, and national levels, there is no coordination or consolidated framework to guide the allocation of communal land.<sup>178</sup>

It appears that the repeal of CLaRA created a legislative gap in the administration of communal land, with traditional leaders left to oversee processes, however, in an unguided and unregulated manner. The findings revealed that there were no standard national guidelines or a policy for communal land allocation, resulting in corruption, gender discrimination, and queer invisibilising, resulting in inequitable access to land.

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<sup>178</sup> Senior traditional leaders convene at local, provincial, and national houses of traditional and Khoisan leaders in the country.

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The research findings indicate that traditional leadership structures, such as councils and land committees, did not fully represent all interest groups despite being constituted through democratic processes such as elections and representative quotas. As an example, women in these structures did not always effectively represent the views of other women in the community, perpetuating inequality and gender discrimination in some cases. It is important to note, however, that this was not universally true, as there were instances where women's representation positively contributed to change. As already indicated, the findings are complex and varied overall.

The study revealed significant discrepancies in the procedures and costs attached to communal land applications, with no clear justification. For example, while applicants in the North West paid a consistent fee of R500, those in Limpopo paid a fee ranging from R500 to R15 000 and from R100 to R100 000 in the Eastern Cape. In some cases, applicants were also required to pay application fees with sheep, chickens, and alcohol, particularly in the Eastern Cape.

In Limpopo, communal land became increasingly expensive when designated for entrepreneurial activities, with traditional leaders and headmen demanding a 50% share of the business. In contrast, land for entrepreneurial purposes was provided at no cost in the North West. Furthermore, there were allegations of corruption and unfair pricing of communal land in Limpopo, along with claims of judgments based on appearance. Ultimately, one of the members of a traditional leadership structure in the province confirmed that land that was designated for residential purposes was assigned a standard fee of R1 000 and R5 000 for entrepreneurship. It is important to note that the widespread corruption and deception had a negative impact on the economic situation of women in the province. Another procedural disparity regarding communal land applications is that in some areas, the allocation of communal land could take two weeks to three months, while in other cases, applicants had been waiting for years.

Cultural practices that required women to adhere to certain dress and behavioural expectations also affected their access to communal land. These expectations included dressing modestly, wearing dresses or skirts, covering their heads and necks, sitting on the floor in the presence of men and traditional leaders, and speaking softly to show respect. Clothing and behavioural expectations were used to marginalise queer persons in these communities, particularly transgender and gender non-conforming individuals. They seemed to have no societal place, to the point that findings indicated that in the Eastern Cape, they were ostracised.



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This ostracisation indicated that requests by queer persons for communal land access would not even be considered.

In addition, there were cases where cultural norms required women to obtain access to communal land through their fathers or a male relative. For instance, in a village in the North West, it was mandated that land be allocated to the eldest male child in the family. Inheritance also posed challenges, especially in Limpopo, where women were at times denied the opportunity to claim property inheritance under the pretext of preserving the family legacy by passing properties to male children.

It was evident that the nuclear family was considered ideal, and members of such a family structure could access land more easily. The family also played a role in cases of advocacy, where other family members had to advocate for land to be allocated to applicants who were seen as 'unfavourable' due to being divorced, widowed, or 'troublesome'. Issues of marital status also discouraged women from independently accessing communal land. In some villages, women had a better chance of accessing communal land if they were married with children. In Limpopo specifically, a married applicant was considered 'stable' and therefore allocated land. Unmarried women were often disadvantaged and risked losing their undeveloped land to reallocation and felt pressured to live with men for security as traditional leaders, who were often men, would grab their land. In fact, the two-year window given to develop land was sometimes not adhered to, as in some cases, a piece of land could be allocated to two applicants at the same time.

In some villages in the North West, there were rules stating that women had to be 40 years old and men between 40 and 45 years old to qualify for communal land allocation. In the Eastern Cape and Limpopo, the age requirement was either 18 or 21 years. These age restrictions, especially in the case of the North West, delayed individual development and served as an economic stumbling block, particularly given that land is an economic resource.



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## 8. Conclusions

Based on the findings of the study, the CGE concludes that women's access to communal land is determined by several factors that are often outside of the women's control. These factors stem from patriarchy, historical gender discrimination, and cultural norms and beliefs that dictate women's roles in South African society despite the progressive legislation in place. The right of women to own communal land is interconnected with other important issues for women and gender equality, including the unequal burden of unpaid reproductive labour on women, their rights to equality in marriage and family relations, their sexual and reproductive health rights, and the role of patriarchy in perpetuating violence and structural oppression against women. This CGE study demonstrated that factors that contributed to women's inability to access communal land, such as marital status, age, family structure, and sexual orientation, were often interlinked and complex.

The CGE also concludes that the ongoing economic challenges faced by women in the country are worsened by the unnecessary costs associated with accessing communal land. This situation leaves women unable to support themselves, their children, and their families, resulting in persistent disempowerment. The CGE has also determined that land is a significant socio-economic asset. As such, land empowers women in rural communities by providing and is crucial in addressing their economic hardships.

Finally, the CGE concludes that significant procedural disparities in the allocation of communal land exist, marred by corruption, gender bias, and inequity. The procedural disparities call for interventions that will align policy and practice to ensure consistency and coordination in the allocation processes.

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## 9. Recommendations

Based on the findings and conclusions of the report, the following recommendations are made:

- The CGE recommends that the Department of Agriculture, Land Reform, and Rural Development take the lead in ensuring that the necessary national legislative reforms related to communal land are introduced to replace the Communal Land Rights Act, which was repealed in 2010. The legislative reforms must address existing challenges of patriarchal practices, gender discrimination, and exclusions that are currently being justified under the guise of cultural beliefs and norms, which subjugate women and queer persons. Furthermore, such reforms must be in accordance with the Constitution, including the Promotion of Equality and Prevention of Unfair Discrimination Act.
- The findings revealed that there is a lack of unified guiding frameworks or policies in this area, leading to inconsistencies and fragmented approaches in communal land administration. It is thus essential to develop a national policy in this regard. In addition to this, women's involvement in the process of developing the land policy is crucial. The land policy should be based on the principle of gender equality in land rights and should have clear objectives and goals for ensuring equal land rights.
- The Department of Agriculture, Land Reform, and Rural Development must closely monitor the implementation of the legal framework in communities to ensure that progress is made in achieving communal land rights for women. The department must also develop national, provincial, and local level indicators with gender-disaggregated data to measure progress towards equity for women regarding their land rights. There is also a need to introduce technical systems of communal land administration to handle land registration. These systems should provide opportunities to ensure that laws and policies promoting equality in land rights are enforced and that informal land rights agreements are formalised to enhance land tenure security.
- The effectiveness of laws and policies in securing women's right to communal land depends on awareness, the ability to invoke the right, and social acceptance. As such, it is crucial that once the relevant laws and policies have been formulated, they are adequately disseminated to promote women's land rights. Dissemination of knowledge of the laws and policies will ensure that the laws and policies are known for implementation among government officials, traditional leaders, land allocation structures, and committees, as well as women in rural communities.







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