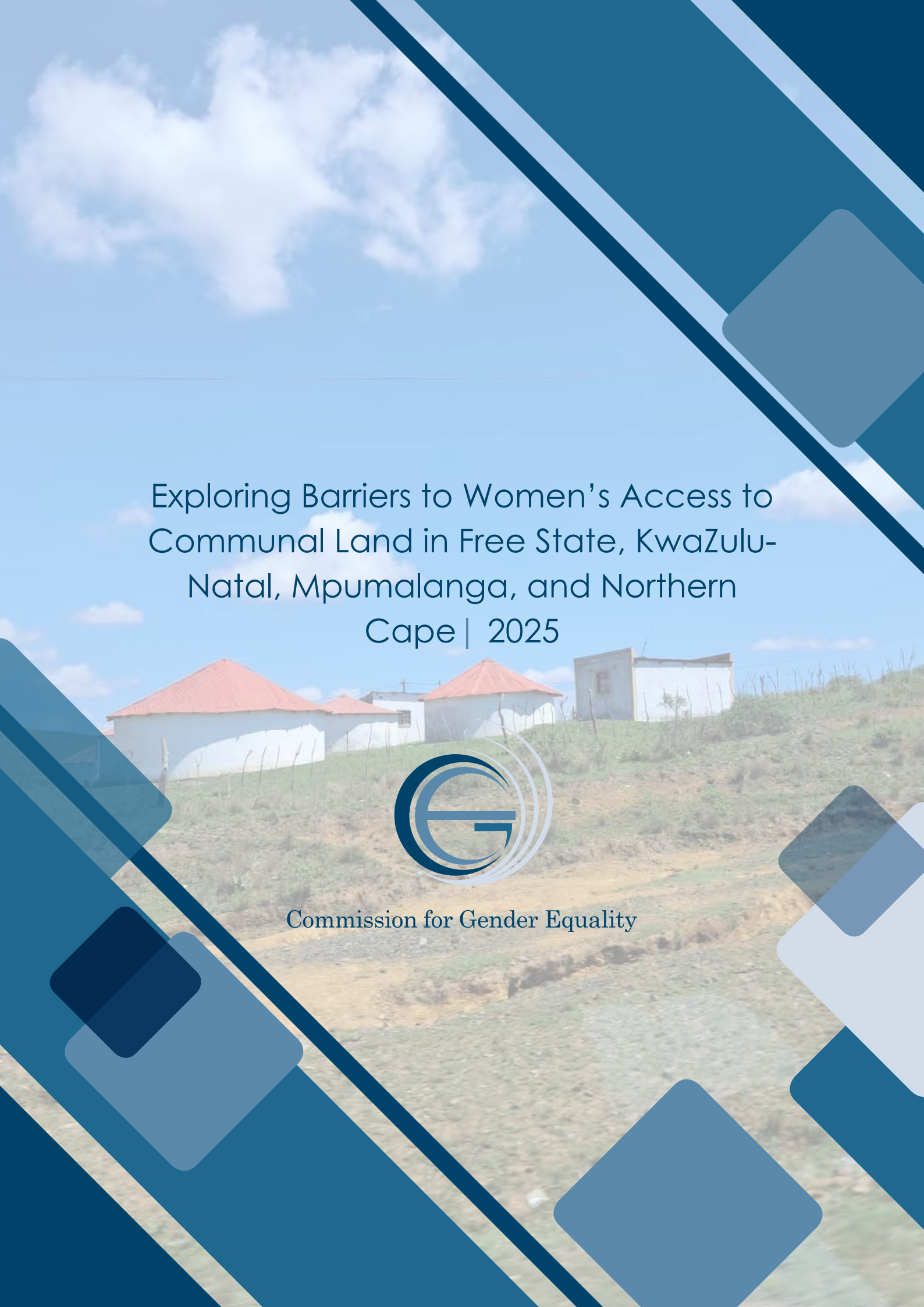
Exploring Barriers to Women's Access to Communal Land in Free State, KwaZulu-Natal, Mpumalanga, and Northern Cape | 2025



Commission for Gender Equality

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Commission for Gender Equality

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FOREWORD AND ACKNOWLEDGEMENTS

This report represents the second comprehensive research investigation conducted by the Commission for Gender Equality (CGE) on the obstacles faced by women in accessing communal land in South Africa. Building on the findings from the first report released in 2024, which focused on the provinces of Limpopo, North West, and Eastern Cape, the present study shifts its focus to the Free State, KwaZulu-Natal, Mpumalanga, and Northern Cape.

The CGE initiated this project to identify the complex web of historical, social, cultural, economic, and legislative barriers that hinder women from accessing communal land rights. This initiative was sparked by a noticeable increase in complaints from women across various provinces, who have reported persistent challenges in securing their rightful access to communal land within their rural communities. Many of these women face traditional customs that prioritise male ownership, legislative frameworks that do not adequately protect their rights, and economic constraints that limit their ability to assert ownership.

The study is conducted within the framework of the constitutional mandate of the CGE. The CGE is committed to the advancement of gender equality and the empowerment of women, particularly in historically marginalised communities. The project aimed not only to identify and illuminate critical issues affecting women but also to guide the development of tailored strategies designed to tackle the specific barriers that hinder women's rights to communal land tenure, improving women's livelihoods and restoring their dignity and economic transformation.

The study found that access to communal land in South Africa, particularly for women in Free State, KwaZulu-Natal, Mpumalanga, and Northern Cape, is fraught with challenges. Women face multiple barriers, including traditional governance systems, inheritance practices, financial constraints, and weak institutional support. The patrilineal inheritance system limits women's ability to claim land, as land is typically passed through male lineage. Widows are particularly vulnerable, often losing access to their deceased husband's land, which is returned to male relatives. Even in areas with some matrilineal influences, decision-making often remains in male hands.

Financial access remains another significant hurdle, as women face various costs for land occupancy. These fees, which vary widely, disproportionately affect women, especially widows and women with disabilities, leaving many without secure tenure.

Furthermore, traditional leaders play a substantial role in land allocation, typically favouring men, while women and LGBTQIA+ persons experience further exclusion,

especially because traditional structures often do not recognise non-traditional family arrangements. The study also found that institutional shortcomings in departments overseeing land governance exacerbate these challenges, with inadequate support for women seeking land for agricultural or business purposes, leaving women struggling to navigate the system, facing bureaucratic delays, and receiving limited financial assistance.

The CGE appreciates the contributions of all the women who participated in the study, as well as government departments, traditional leaders, civil society organisations, community leaders, and subject experts. This report would not have been possible without their valuable input. Specifically, the CGE would like to express appreciation for the efforts of the following staff members in the provinces who played a crucial role in facilitating participant recruitment and making logistical arrangements for the research team, as well as the Legal Services Department for guidance in strengthening the legislative approach of the study:

Free State

- Leandi Eesterhuizen – Provincial Manager
- Boitumelo Zwane – Public Education and Information Officer

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- Zanele Ncwane – Provincial Manager

Legal Services Department

- Nothemba Sonjica
- Kelebogile Aplane

Mpumalanga

- Moltah Mavuso – Provincial Manager
- Augustine Mabuza – Public Education and Information Officer
- Charity Khoza – Administrator

Northern Cape

- Keneilwe Mokalane – Acting Provincial Manager

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- Alliance for Rural Democracy
- Kukoere Youth and Community Development Agency (KYCDA)
- Sonke Gender Justice
- Gert Sibande – District Municipality, Transversal Manager
- eMalahleni Local Municipality, Transversal Manager

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ABBREVIATIONS AND ACRONYMS

CASAC	Council for Advancement of the South African Constitution
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CGE	Commission for Gender Equality
CLARA	Communal Land Rights Act
CoGTA	Cooperative Governance and Traditional Affairs
CPA	Communal property association
CRGE	Climate-resilient green economy
CSRC	Community self-reliance centre
DALRRD	Department of Agriculture, Land Reform and Rural Development
DMRE	Department of Mineral Resources and Energy
FFE	Department of Forest, Fisheries, and the Environment
GBVF	Gender-based violence and Femicide
GROOTS	Grassroots Organisations Operating Together in Sisterhood
HSRC	Human Sciences Research Council
ICCPR	International Court on Civil and Political Rights
IFAD	International Fund for Agricultural Development
KZN	KwaZulu-Natal
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex, Asexual, and other sexual orientations and gender identities.
LRC	Legal Resource Centre
NAP	National Adaptation Plans
NC	Northern Cape
NDA	National Development Agency
NDC	Nationally Determined Contributions
NFCFP	National Federation of Communal Forests and Pastures
NFNSS	National Food and Nutrition Security Survey
NGO	Non-Governmental Organisations
PTO	Permission to occupy

RTO	Right to occupy
SAHRC	South African Human Rights Commission
SDGs	Sustainable Development Goals
SEDA	Small Enterprise Development Agency
SPLUMA	Spatial Planning and Land-Use Management
TLGFA	Traditional Leadership and Governance Framework Act
WEGE	Women Empowerment and Gender Equality

1. INTRODUCTION

Equitable land access is a vital mechanism for fostering economic and social equity, yet women persistently face significant disadvantages regarding their ability to access communal land (CGE, 2024). Metro, Gumede, and Ramantsima (2023) demonstrate that numerous obstacles, such as policy bias and deeply rooted gendered barriers like cultural traditions, persist in hindering women's access to land and their ability to make decisions, resulting in fewer economic opportunities, increased food insecurity, diminished decision-making power in households, and a higher risk of poverty and exploitation. Despite the existence of land reform policies aimed at rectifying these inequalities, the structural issues rooted in patriarchal land governance systems and traditional laws, compounded by inherited socio-economic limitations, continue to undermine these efforts (Mtero et al., 2023).

This report serves as a continuation of the 2024 Commission for Gender Equality (CGE) research study *Exploring Barriers to Women's Access to Communal Land in Selected Provinces of South Africa*. This report aims to broaden the original study's scope by conducting a detailed analysis across four additional provinces. While the initial study concentrated on the North West, Limpopo, and Eastern Cape provinces, the continuation study encompasses the Free State, KwaZulu-Natal, Mpumalanga, and Northern Cape. These provinces were selected because they have communal land systems, which are crucial in understanding the dynamics of land access for women. Unpacking and understanding these systems is essential, as they govern not only land access, but also the social and economic dynamics that affect women's rights and opportunities.

This exercise is anchored on the CGE constitutional mandate. The CGE is an independent statutory body established in terms of Section 187 of the Constitution of South Africa. The CGE is mandated to promote respect for gender equality and the protection, development, and attainment of gender equality in the Republic of South Africa. 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 is granted the mandate to monitor and evaluate policies and practices of State organs, State agencies, public bodies and the private sector in order to promote gender equality and the rights of women, and to prepare and submit reports to Parliament.

By undertaking this study to examine the legislative and policy frameworks, specific cultural practices, and community norms within these provinces, the CGE aims to unearth greater insight into the barriers and facilitators that women face in securing

land access. This critical analysis is vital for developing targeted, evidence-based interventions that promote gender equity in land management and usage, enhance gender-sensitive land governance, and improve the enforcement of women's land rights.

The report includes the introduction section to ensure clarity and coherence, which provides the study's overview, context, and significance. The study aims and objectives outline the purpose and specific goals of the research. The research question section provides a clear guide to the study. The definition of key themes section clarifies essential concepts and terminologies relevant to the study. The methodology and approach section includes the research design, data collection, and analysis methods employed. The legislative and policy framework section examines relevant laws, policies, and regulatory frameworks that inform the study.

The report further includes a literature review section that explores existing scholarly work and theoretical perspectives related to the research topic. The findings section presents the research results, supported by data and analysis. The overview of findings section summarises key insights and patterns. Finally, the report concludes with a conclusion section and a recommendations section, synthesising the findings and offering policy and practice recommendations.

1.1 Problem statement and rationale for the study

In South Africa, women residing in marginalised communities, particularly those in rural areas, face significant barriers when it comes to accessing economic resources. Their struggles are often compounded by systemic inequalities, limited infrastructure, and a lack of support services, which further entrench their economic subjugation. These challenges not only hinder their ability to achieve financial independence but also contribute to a cycle of poverty that impacts generations (Benjaminsen & Lund, 2018).

Women from rural communities also face socio-economic barriers to accessing communal land, resulting in fewer women receiving land allocations than men. Although statistics on this issue are not readily available, the CGE found in its 2024 study that men have a significantly greater chance of being allocated communal land than women. This disparity perpetuates gender inequality, hinders women's economic empowerment, and undermines their food security and social dignity (Bose, 2020).

The persistence of patriarchal norms, discriminatory rules and practices, and limited awareness of available opportunities to access communal land contribute to gender-based discrimination in land allocation and governance. Additionally, women's inadequate representation within traditional decision-making structures exacerbates this problem, leading to ongoing adverse effects that perpetuate women's subjugation (CGE, 2024).

The restricted access of women to land for agricultural, residential, and economic use significantly exacerbates food insecurity and further marginalises them in terms of economic opportunities (Bose, 2020). This systemic inequity not only hampers their ability to cultivate resources and support their families but also perpetuates a cycle of unemployment, leaving many women without sustainable pathways to financial independence and empowerment.

According to Statistics South Africa (Stats SA, 2024), recent data indicates that South African women continue to face higher unemployment, underemployment, and lower workforce participation compared to men. From 2014 to 2024, women's labour market participation remained below 40%, declining from 36.9% to 35.8%, with a peak of 38.3% in early 2017.

Over the decade, a persistent gender gap in unemployment rates was observed across all education levels, with women, particularly women from rural communities, facing higher rates than men. A significant contributing factor is that women often take on household and childcare responsibilities that limit their labour market opportunities (Stats SA, 2024).

Woolard (2002) highlights that households headed by women are more likely to experience poverty. Woolard (2002) identifies four key factors contributing to this phenomenon: women-headed households are more often located in rural areas where poverty is concentrated; these households typically have fewer adults of working age; women's unemployment rates are higher; and a wage gap between men's and women's earnings persists. Furthermore, the Integrated Food Security Strategy (IFSS) states that "*within the household, food insecurity often affects the more vulnerable members of the family, namely children and women*". The Integrated Food Security Strategy also highlights that "the costs associated with food insecurity at the intra-household level relate to the slow educational development of female children" (Reddy & Moletsane, 2011, p. 4).

Women in rural communities often rely on land for their livelihoods, yet they face greater challenges in accessing land and agricultural resources compared to men (Woolard, 2002). Even when women engage in farming or other land-based activities, they frequently lack ownership or control over the land, making it difficult for them to secure loans, capital, or other resources to improve productivity or sustainability.

Women facing insecure land tenure and vulnerability to evictions, particularly regarding farmland or farm dwellings, continue to encounter incidents of gender-based violence and intimidation. This situation represents a historically unaddressed challenge that both farming and communal land present, especially for women, particularly those in rural areas (Andrews, 2018).

Over the years, little attention was paid to the social, financial, and psychological impacts of evictions on poor rural women, many of whom have lived on farms for decades. In the South African context, many of these evictions go unnoticed, while women's lives are uprooted as they struggle to make a living in settlements on the outskirts of the country's agricultural towns (Andrews, 2018).

In the post-apartheid era, large-scale commercial agriculture has generally remained dominated by White commercial farmers. As a result, land ownership is not only skewed along racial lines but also intersects with issues of gender and culture. The challenges that women face regarding land access and ownership continue to leave many Black, poor, rural women marginalised. Furthermore, for women living in former homelands and those working on White commercial farms, security of tenure is often attainable only through relationships with men, be they husbands, fathers, or brothers. This situation highlights the persistence of patriarchal tendencies, which continue to disadvantage women (Andrews, 2018).

In many South African rural communities, land is controlled through traditional leadership systems. These systems are often dominated by patriarchal norms, where land is passed down through male lineage and is typically allocated to men, especially male heads of households (Kingwill, 2016). Women, in many cases, have limited control over land and may face resistance when attempting to claim rights to land or land use. Women are often sidelined and underrepresented, lacking control over land use and decision-making processes within their communities. Both traditional leadership structures and cultural norms tend to be patriarchal, which leaves women in marginalised and vulnerable positions.

Customary laws often exclude women from participation. Although affirmative action has made some progress in addressing women's issues, these measures have not gone far enough. Furthermore, customary laws contribute to women's poverty by allowing men to have polygamous families, which evidence shows exacerbates poverty for both children and women (Cheteni et al., 2019).

In addition to the discrimination women face regarding customary laws and traditions, women are often marginalised based on their marital status. Kingwill (2016) provides a compelling illustration of the challenges that South African women encounter regarding access to and ownership of communal land. Specifically, Kingwill (2016, p. 219) notes that in Rabula (a farmstead located in the Eastern Cape), it is still uncommon for women, as sisters, to be recognised as both family heads and custodians of family property. While women in Rabula may have some authority over family property, that authority is often mediated through men and the family name (Kingwill, 2016). This situation highlights the existing power dynamics where, despite women sometimes having a say in decision-making, their choices still require validation from men, underscoring the patriarchal nature of certain norms and traditions.

In the Rabula tribe, married sisters are prohibited from accessing property rights unless they are separated, divorced, or single. This restriction also applies to wives married to male members of the patrilineage, who have considerably fewer property rights to the land than their husbands' sisters, who are seen as direct descendants (Kingwill, 2016). According to Kingwill (2016), wives in the Rabula tribe are excluded from the family kinship network and are considered full members of their own lineage.

In other words, women often have limited rights to land as they may not be able to inherit land or may only have secondary use rights, typically through their husbands or male relatives (Nhlapo, 2017).

Additional challenges highlighted by the CGE's 2023/2024 research report on communal land and barriers to women's access include the vulnerability of divorced women, as they may be expected to leave the land following a divorce, especially if they choose to remarry (CGE, 2024). In cases of widowhood, land ownership may be transferred to the husband's brother after the husband's death. Unmarried women risk eviction from their homes and may be barred from inheriting any assets from their married brothers (CGE, 2024). These challenges reveal that women often encounter significant obstacles in accessing and owning communal land.

The relationship between women's access to land and their economic empowerment is both profound and multifaceted. Secure land tenure provides women with a foundational asset that allows them to invest in agricultural endeavours, enhancing their livelihoods and contributing to broader economic growth. With stable land rights, women can confidently seek financial credit, unlocking opportunities for investment in tools, seeds, and technology that boost productivity. This increased involvement in economic activities not only strengthens their personal financial independence but also plays a crucial role in improving household income and ensuring food security for their families (Dlamini, 2020). Women often find themselves at a disadvantage, missing out on vital opportunities because of insecure land tenure systems. Instead of being granted title deeds that unequivocally establish their property ownership, they receive only permission to occupy certificates or receipts. This lack of formal recognition not only undermines their legal standing but also limits their ability to access resources, make long-term investments, and exercise their rights over the land they occupy.

Furthermore, lesbian, gay, bisexual, transgender, queer or questioning, intersex, asexual, and other sexual orientations and gender identities (LGBTQIA+) persons face discrimination due to heteronormative customs that do not recognise non-traditional family structures (PLAAS, 2023). The CGE's (2024) report highlights troubling findings regarding the treatment of LGBTQIA+ persons in the Eastern Cape. In some rural areas, LGBTQIA+ persons face significant exclusion and hostility, resulting in a lack of recognition and acceptance. Consequently, LGBTQIA+ persons find themselves unable to secure communal land, further marginalising them. Many LGBTQIA+ persons choose to leave their rural homes, driven by the pain of familial rejection and societal

discrimination, to search for a more accepting environment, often in urban centres, where they hope to find solace and a sense of belonging (CGE, 2024).

The impact of gender-based violence (GBV) significantly hampers women's ability to access land, creating a formidable barrier to their empowerment. Such violence not only erodes women's physical safety but also restricts their mobility and undermines their social standing in the community. In turn, their diminished social standing limits their capacity to make informed decisions regarding land ownership and usage. As noted by Andrews (2018), there are alarming instances where women are forcibly removed from their land by abusive partners, a harsh reality that exacerbates the struggle for secure land tenure. This complex interplay of violence and power dynamics further complicates women's pathways to autonomy and stability.

The CGE undertook this study as a continuation of its study from 2024, which focused on three provinces: Limpopo, Eastern Cape, and North West. This current study expands its scope to include the Free State, KwaZulu-Natal, Mpumalanga, and Northern Cape. By examining the legislative and policy frameworks, specific cultural practices, and community norms in these provinces, the CGE aims to gain deeper insights into the barriers that women encounter in accessing communal land. This crucial analysis is essential for developing targeted, evidence-based interventions that promote gender equity in land management and usage, enhance gender-sensitive land governance, and improve the enforcement of women's land rights.

1.2 Study aims and objectives

1.2.1 Aim of the study

By examining the interplay between cultural practices, leadership and governance dynamics, legislative and policy obstacles, and economic challenges, this study seeks to identify the systemic issues that hinder women's access to communal land in South Africa. The study focuses on four specific provinces: Free State, KwaZulu-Natal, Mpumalanga, and Northern Cape. The findings are expected to contribute towards the development and enhancement of mechanisms and strategies that ensure equitable access to communal land for women, thereby promoting sustainable development, gender equality, and women's rights.

1.2.2 Objectives of the study

The objectives of the study are:

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

2. RESEARCH QUESTION

What are the factors that serve as barriers to women's access to communal land in South Africa?

3. DEFINITION OF KEY CONCEPTS

3.1 Communal land

The definition of communal land refers to land that is collectively owned by a community or group, typically managed according to traditional or customary laws rather than by individual ownership. This land is often used for collective purposes such as agriculture, grazing, or community activities, and its management is typically overseen by traditional leaders or community structures (Hall, 2011; Lahiff, 2007).

In some cases, land may be allocated to individual families for farming or habitation, but overall ownership and control remain within the community. Communal land systems often serve to preserve cultural traditions, social cohesion, and sustainability.

3.2 Matrilineal system

A matrilineal system is a kinship structure where lineage and inheritance are traced through the mother, affecting family heritage, clan membership, and social status. Women, especially mothers and daughters, often hold significant roles in these societies (Narayan et al., 2024). This system contrasts with patrilineal systems, where lineage is traced through the father and typically results in different gender dynamics and power structures. In some cultures, matrilineal systems may provide women with more control over land and property, although this varies by society. Key components of kinship systems include family, marriage, postmarital residence, and rules regarding sexual relations among kin (McElroy & Townsend, 2011; Naylor, 2004).

3.3 Patrilineal system

A patrilineal system is a social structure in which lineage, inheritance, and descent are traced through the father's side of the family. In this system, property, family names, and clan membership are passed down from father to son. In patrilineal societies, males typically hold primary authority over family matters and inheritance, with women often having limited or no access to land or inheritance through their paternal line. Patrilineal kinship systems can influence social organisation, gender roles, and the distribution of power within a community, with men generally holding greater social, economic, and political power than women (Patterson & Meeker, 2012; Ruggles, 2015).

3.4 Patriarchy

A patriarchal system is a social, political, and economic structure in which men hold primary power and dominate in roles of leadership, authority, and control. This system is characterised by the dominance of men in key institutions such as the family, government, and economic spheres, while women and children are often relegated to subordinate roles. Patriarchy typically enforces gender roles that limit women's autonomy and access to resources, with power and inheritance traditionally passed through the male line. In patriarchal societies, the ideology of male supremacy is reinforced through cultural norms, legal frameworks, and social practices, perpetuating gender inequality and limiting opportunities for women (Connell, 2005; Walby, 2011).

3.5 Barriers

According to the *Collins Dictionary*, a barrier is referred to as "*anything serving to obstruct passage or to maintain separation, such as a fence or gate; or anything that prevents or obstructs passage, access, or progress; or anything that separates or hinders union.*"

Barriers to communal land are structural, legal, cultural, economic, or political impediments that restrict the ability of individuals, especially women, to access, use, or own land within a communal land tenure system. These barriers may be rooted in historical inequalities, gendered power dynamics, and traditional land management practices, often perpetuating marginalisation and exclusion from land rights (Agarwal, 1994; Deininger & Byerlee, 2012; Plessis, 2014). Such barriers often manifest in:

- **Legal barriers:** Legal constraints are the absence of clear, gender-sensitive legal frameworks that guarantee women's rights to communal land or discriminatory laws and policies that prioritise men's land ownership or control. These legal barriers often exist in the intersection of statutory law and customary law systems, where traditional practices may limit women's ability to inherit or control land.
- **Cultural barriers**: Customary practices and cultural norms may restrict women's land rights, often preventing them from inheriting or accessing land. In many communal settings, land is traditionally passed down through male heirs, and women's roles in land ownership may be overlooked due to societal norms that prioritise men's land control.
- **Economic barriers:** Economic constraints, such as limited access to credit or financial services, can hinder women's ability to invest in or improve communal land. Without financial resources, women may struggle to assert or formalise their claims to communal land, particularly if they lack the capital to engage in agricultural practices or related economic activities.
- **Political barriers:** The lack of representation of women in land governance and decision-making bodies within communal systems often leads to the exclusion

of women from decisions regarding land allocation, use, or distribution. The concentration of power within male-dominated traditional leadership structures may further perpetuate this exclusion.

- **Institutional barriers:** The failure of formal institutions, including government agencies, to recognise and support women's land rights within communal areas further exacerbates barriers to access. Institutional barriers can manifest in inadequate land registration systems, weak enforcement of land rights, or a lack of gender-sensitive policies to address the unique needs of women in communal land settings (Agarwal, 1994; Deininger & Byerlee, 2012; Plessis, 2014).

Barriers to communal land involve a combination of legal, cultural, economic, political, and institutional factors that prevent women from accessing, owning, or controlling communal land. These barriers often arise from the intersection of traditional norms, legal frameworks, and economic constraints that reinforce gender inequality in land rights, particularly in rural and communal areas where women may face significant challenges in asserting their land claims.

3.6 Woman

In the context of this study, the term "woman" encompasses any individual who identifies as a woman and is 18 years of age or older. This definition includes cisgender women, lesbian women, transgender women, and non-binary individuals who may identify with womanhood. The study aims to explore various experiences and perspectives within this demographic, ensuring an inclusive understanding of womanhood in contemporary society. This includes single, divorced, married, widowed, elderly women (60+ years), young women (18–35 years), middle-aged women (36-59 years), and women with disabilities, who reside in communal areas governed by traditional leadership structures under customary land tenure systems. These women often face systemic legal, cultural, and socio-economic barriers in securing land rights due to patriarchal norms, discriminatory inheritance practices, and exclusion from land governance and decision-making processes (Claassens & Ngubane, 2020; Walker, 2021).

3.7 Khonza fee

According to KwaZulu Amakhosi and Iziphakanyiswa Act No. 9 of 1990, a khonza fee means a fee payable by a person to an inkosi (senior traditional leader) to whom he wishes to owe allegiance. In practice, this fee is often required when an individual seeks permission from a traditional leader to settle on or utilise communal land within the leader's jurisdiction. The amount of the khonza fee can vary depending on the area and the specific traditional authority.

3.8 Communal property associations (CPAs)

Communal property associations are landholding institutions established under the Communal Property Associations Act No. 28 of 1996 (the CPA Act). Beneficiaries of land reform, restitution, and redistribution programmes can acquire, hold, and manage land by establishing legal entities as a group (Centre for Law and Society, 2015).

4. METHODOLOGY AND APPROACH

This study employed an exploratory qualitative research design to examine the legal, procedural, cultural, and economic barriers that women face in accessing communal land in South Africa. Building on the findings of the 2023/2024 CGE study, which focused on North West, Limpopo, and Eastern Cape, this research expanded to include Free State, KwaZulu-Natal, Mpumalanga, and Northern Cape. The selection of these provinces was strategic, given their reliance on traditional leadership structures, which play a central role in land allocation and governance (Plessis, 2023). Expanding the study's scope facilitated a broader understanding of the challenges women encounter, including lack of information, economic constraints, high crime rates, and the socio-economic impact of divorce and widowhood on land access and ownership.

4.1 Research design and approach

A qualitative exploratory approach was adopted to allow for an in-depth understanding of the lived experiences of rural women. Unlike quantitative methods, which impose predefined categories, qualitative research provides flexibility in questioning, enabling the emergence of unexpected themes and insights (Hunter, McCallum, & Howes, 2019). This approach was particularly suitable for deconstructing traditional institutions, assessing their recognition of gender-specific barriers, and evaluating their strategies for addressing these challenges. Since land rights are deeply embedded in socio-cultural norms, qualitative inquiry was the most effective method for capturing these complexities (Eriksson, 2017).

4.2 Study population and sampling strategy

The study employed purposive sampling, a method that allows researchers to deliberately select participants based on specific characteristics relevant to the research question (Campbell, Greenwood, & Walker, 2020). This strategy ensured diverse perspectives, including those of women facing land access challenges, traditional leaders, civil society representatives, and subject-matter experts. The study engaged 238 participants, consisting of 151 women in focus groups (including women with disabilities), 66 senior traditional leaders, 12 civil society representatives and subject-matter experts, and nine government officials.

4.3 Sample size

Participant type	Free State	KwaZulu-Natal	Mpumalanga	Northern Cape	Total
Women in focus groups	22	34	65	30	151
Traditional leaders	24	27	15	0	66
Government officials	3	2	2	2	9
Civil society and experts	-	-	-	-	12
Total	**49**	**63**	**82**	**32**	**238**

4.4 Research sites

Free State	KwaZulu-Natal	Mpumalanga	Northern Cape
Namahadi • Fezile Dabi District Municipality	Mtubatuba (KwaShikishela) • Umkhanyakude District municipality	Siyanqoba, Klarnet, KwaGuqa extension, 2, 5, 7, and 18 (Manala Mgibe) • Emalahleni-Nkangala District Municipality	Platfontein • Frances Baard District Municipality
Thaba-Nchu Merino • Mangaung Metropolitan Municipality	Melmoth, Matshantsundu • King Cetshwayo District Municipality	Mzinti • Ehlanzeni District Municipality	Kamden (Kuruman) • JoeTaolo Gaetsewe District Municipality
Qwaqwa, Thibella Phuthaditjhaba • Thabo Mofutsanyana District Municipality	uLundi • Zululand District Municipality	Jonilanga • Lillydale-Ehlanzeni District Municipality	
	Jozini (Maphaya) • Umkhanyakude District Municipality	Acornhoek • Bushbuckridge Ehlanzeni District Municipality	
		Msukalikwa • Gert Sibande District Municipality	
		Elukwatini Nhlazatshe • Gert Sibande District Municipality	

Adjustments were made due to data collection challenges. Some traditional leaders were receptive to the CGE researchers, while others were unavailable. Notably, the Ingonyama Trust in KwaZulu-Natal did not respond to invitations, and a key traditional leader in Northern Cape was occupied with other obligations and could not attend the interview. Despite these obstacles, unexpectedly high participation in Mpumalanga reflected significant local interest in land issues, leading to sample expansion.

4.5 Data collection methods

The study utilised semi-structured interviews and focus group discussions (FGDs) to collect rich qualitative data. Semi-structured interviews enabled deep exploration of individual experiences, while focus group discussions facilitated collective discussions, allowing participants to share and reflect on common challenges. Interviews were conducted both in-person and virtually via Microsoft Teams to accommodate participants who could not attend in person.

All interviews and discussions were audio-recorded with prior written consent, and supplementary notes were taken to capture additional context. To ensure confidentiality and data security, recordings were stored on CGE-encrypted laptops, accessible only to the research team and designated IT personnel. Transcriptions were conducted privately to maintain participant anonymity.

4.6 Data analysis

Data was analysed using thematic analysis, a qualitative method for identifying and interpreting patterns within data (Castleberry & Nolen, 2018). Open and axial coding techniques were manually applied to organise data into key themes. The thematic coding framework was informed by insights from the previous CGE study (2023/2024) to maintain research continuity while integrating new findings. The study's analytical approach allowed for continuity with previous research and novel contributions to the discourse on women's land rights.

4.7 Study limitations and constraints

While the study provided valuable insights, several challenges were encountered:

- Limited access to lesbian and transwomen, due to cultural barriers resulted in their underrepresentation. To mitigate this, snowball sampling was used to recruit diverse participants through trusted networks.
- Time constraints posed logistical difficulties in conducting interviews across multiple provinces, which was managed by scheduling interviews in advance and using Microsoft Teams for remote participation.
- Language barriers emerged in areas such as Platfontein (Northern Cape) and Free State, requiring local translators to facilitate focus group discussions and ensuring participants could express themselves in their native languages.

Despite these limitations, the study successfully captured a broad range of perspectives, strengthening its contribution to the discourse on women's land rights.

4.8 Ethical principles

The CGE researchers were guided by the HSRC ethical principles, which include the following:

4.8.1 Respect for persons and respect for autonomy

In the study, the CGE researchers aimed to uphold the rights and autonomy of the participants, ensuring they have the freedom to make informed decisions about their involvement (HSRC, 2024). This principle is particularly crucial when working with vulnerable populations or individuals who may have limited decision-making capacity.

4.8.2 Informed consent

The CGE ensured that participants provided informed consent. They were informed that participation in the study was voluntary and were given details about the study's purpose, procedures, potential risks, and benefits, as well as their right to withdraw at any time. Participants received information sheets outlining the study, their rights to withdraw whenever they chose, and all relevant ethical considerations.

4.8.3 Beneficence and non-maleficence

The researchers from CGE articulated to the participants the principles of beneficence and non-maleficence that are integral to the study. They emphasised the importance of ensuring that the research would bring tangible benefits not only to the participants themselves but also to society. At the same time, they were committed to minimising any potential risks and harms, carefully outlining the measures taken to safeguard the well-being of everyone involved.

4.8.4 Confidentiality and anonymity

The researchers took meticulous care to uphold the principles of confidentiality and anonymity for all participants involved in the study. They emphasised to participants that any information shared would remain private and secure, ensuring that the dignity of each individual was respected throughout the entire research process. To further reassure participants, the researchers clarified that all tape recordings made during the sessions would be utilised solely for the purposes of the research study, serving only the needs of the research and safeguarding the identities of those involved. This commitment to privacy was foundational in fostering a trustworthy environment for open dialogue and honest responses.

5. LEGISLATIVE AND POLICY FRAMEWORKS

5.1 International frameworks

South Africa is a signatory to several critical regional and international human rights normative frameworks focused on promoting gender equality in all areas of life, including land access rights. The frameworks are discussed below.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, known as the Maputo Protocol, includes specific provisions regarding women's access to land. Article 19 of the protocol addresses the right to sustainable development and mandates that signatory States take appropriate measures to promote women's access to and control over productive resources, such as land, while guaranteeing their right to property. Article 21 highlights women's right to inheritance. The protocol affirms that widows have the right to inherit their late husband's property and to continue residing in their matrimonial home. The protocol also states that both women and men have equal rights to inherit their parents' properties, regardless of gender.

The principles and guidelines for implementing economic, social, and cultural rights in the African Charter on Human and Peoples' Rights emphasise the importance of gender equality and affirm the equal rights of women to land and property. The guidelines specify that African States have a duty to ensure fair and non-discriminatory access to, acquisition, ownership, inheritance, and control of land and housing, particularly for women. This responsibility includes implementing measures to modify or prohibit harmful social and cultural practices that prevent women and other vulnerable or disadvantaged groups from fully exercising their rights to property, especially in relation to housing and land.

Through the African Union's Declaration on Land Issues and Challenges in Africa, African nations have committed to enhancing land tenure security for women who are in need of particular focus.

The Nairobi Action Plan regarding large-scale land-based investments in Africa also supports the advancement of alternative land investment models and emphasises the necessity of maximising benefits for Africa's farmers, especially smallholders. It highlights the potential adverse effects of large-scale land acquisitions, such as land dispossession and environmental harm, to facilitate a fair and sustainable agricultural and economic transformation that promotes food security and development.

The African Union also adopted the Framework and Guidelines on Land Policy in Africa in 2009, which address various barriers to women's land rights.

The Southern African Development Community Protocol on Gender and Development, ratified in 2008 and revised in 2016, aims for gender equality and

women's empowerment in the Southern African Development Community region, particularly regarding land and property rights. Key aspects include ensuring that women have equal access to and control over resources, including land. The protocol mandates the elimination of discrimination against women and girls regarding land rights; calls for equal legal status for women regarding property acquisition, credit access, and inheritance rights; obliges member states to provide legal remedies for violations of rights based on gender; encourages the development of gender-responsive laws and policies; and sets measurable targets and indicators for assessing progress toward gender equality.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) mandates that signatory States guarantee equal treatment for men and women in matters related to land and agrarian reform. To foster genuine equality, the convention emphasises that laws governing marriage and inheritance concerning land rights should be founded on equality principles.

The International Covenant on Civil and Political Rights (ICCPR) emphasises non-discrimination and equal rights for all individuals, including women. This covenant includes important rights that affect women's access to land, such as the right to own property and the right to equality before the law. Article 3 guarantees equality between women and men, while Article 2 prohibits discrimination based on sex, among other grounds. Additionally, the covenant recognises several rights, including the right to equal protection under the law, participation in public affairs, and access to remedies.

The Beijing Platform and Declaration for Action was adopted at the Fourth World Conference on Women in Beijing in 1995. The conference addressed key socio-economic and political issues that hinder women's equal participation in macroeconomic and social policies aimed at eradicating poverty. A crucial element of the platform is women's access to communal land, especially for women in rural communities, to combat feminised poverty. The Declaration highlights economic factors tied to gender roles that limit women's access to power, education, and resources, emphasising the importance of women's empowerment in the fight against poverty. Key components include land access, education, training, and participation in decision-making.

Guaranteeing equal rights for women in accessing and controlling land is crucial for achieving the Sustainable Development Goals (SDGs), particularly SDG 5 (Gender Equality) and SDG 1 (No Poverty). Based on the framework, empowering women enhances their economic and social status, which in turn supports broader development. The effective implementation of the SDGs is essential for eradicating poverty, eliminating hunger, ensuring food security, and promoting sustainable agriculture.

Article 3 of the International Covenant on Economic, Social and Cultural Rights obliges signatory States to guarantee that both men and women have equal access to all the economic, social, and cultural rights outlined in this covenant. The Covenant acknowledges rights to essentials such as food, housing, and education, among others, and forbids discrimination based on gender.

The Habitat Agenda, which was established at the second United Nations Conference on Human Settlements, pledged that governments would ensure legal security of tenure and equitable land access for everyone, particularly women and individuals living in poverty. It also called for legislative and administrative changes to grant women complete and equal access to economic resources, including rights to inheritance and ownership of land and other properties.

The Universal Declaration of Human Rights establishes the principle of non-discrimination in Article 2, which includes sex as a basis for ensuring equal enjoyment of the rights guaranteed by the declaration. In addition to numerous other rights, the declaration acknowledges the rights to property, food, housing, and education.

The United Nations Declaration on the Rights of Indigenous Peoples states that Indigenous communities have the right to the lands, territories, and resources they have historically owned, occupied, or otherwise utilised or acquired and that signatory States must provide legal acknowledgement and safeguarding of these lands, territories, and resources. Such acknowledgement must occur with appropriate consideration for the customs, traditions, and land tenure systems of the relevant Indigenous peoples. Additionally, the declaration stipulates that Indigenous women should be safeguarded against discrimination and that their rights and specific needs should receive particular attention.

Another significant global framework is the Universal Periodic Review (UPR) process, which serves to evaluate the human rights performance of all United Nations member states. The Universal Periodic Review increasingly emphasises the significance of women's rights to land and other productive assets, acknowledging the rights as vital for achieving gender equality and sustainable development. The Universal Periodic Review highlights that women's access to, utilisation of, and control over land and other productive resources are essential for realising their rights to equality, a sufficient standard of living, and overall human rights.

5.2 National legislation and frameworks

Women's access to communal land in South Africa continues to be a significant challenge, even with the existence of progressive constitutional provisions and other legislative frameworks. Although various policies were introduced to address these issues, not all were included in this analysis, as many remain unchanged from those discussed in the CGE report for the 2023/2024 financial year. The report indicated that, despite the numerous legal frameworks and policies, there was minimal progress

in securing equitable land access for women in communal areas governed by customary law. Land is often allocated based on male lineage, restricting women's ability to inherit or own property independently. Despite constitutional protections, statutory and customary legal contradictions persist, creating legal uncertainty and limiting the enforceability of women's land rights.

One of the key areas of concern is the Ingonyama Trust, which controls vast tracts of communal land in KwaZulu-Natal. The Ingonyama Trust Act of 1994 vests communal land in KwaZulu-Natal under traditional authority, requiring land users to enter lease agreements. The Ingonyama Trust Act has faced substantial criticism for reinforcing patriarchal control over land allocation and denying women equal land rights. Under the trust's governance, land tenure remains precarious for many women, as leases are often issued primarily to male household heads, sidelining female land users and excluding them from formal land governance structures (Claassens & Matlala, 2019). In 2021, a High Court ruling found aspects of the trust's administration unconstitutional, emphasising the need for legislative reform to align with gender equity principles.

Various legal challenges were brought against the Ingonyama Trust's practices, highlighting significant legislative gaps in providing secure land tenure for women in affected communities. The following serve as examples:

Council for the Advancement of the South African Constitution, Rural Women's Movement and Others vs the Ingonyama Trust, the Ingonyama Trust Board, the Minister of Rural Development and Land Reform, the MEC for Co-Operative Governance and Traditional Affairs and KwaZulu-Natal Provincial House of Traditional Leadership. Case No.: 12745/2018, Hearing date: 9-10 December 2020, Judgement date: 11 June 2021 (SAFLII, 2021)

In 2018, the Trust was taken to the KwaZulu-Natal High Court by the Council for the Advancement of the South African Constitution (CASAC), the Rural Women's Movement (RWM), and seven individual holders of informal land rights. The Legal Resource Centre (LRC) instituted the application. The trust initiated leases with people already residing on Zulu customary land (LRC,2021).

Many of women reported that, in addition to being forced to pay rent on land they had occupied for years, they were unable to sign the leases themselves and had to depend on male relatives to do so on their behalf. In June 2021, the Pietermaritzburg High Court ruled that the actions of the Ingonyama Trust were unlawful. The court also ordered the trust to repay all the money collected from these leases.

The Ingonyama Trust, Bongani Molefe and Others vs Umlalazi Municipality, Silver Back Properties (Pty) Ltd and HBC Investments (Pty) Ltd. Case No: 1421/2016, Hearing date: 31 August 2016, Judgement date: 10 October 2016

This case focused on whether the property owned by the Ingonyama Trust within the eThekwini Municipality was exempt from municipal rates. The Supreme Court of Appeal upheld the appeal, ruling that the property is not exempt from these rates (SAFLII, 2016). Although this case may not directly involve women and access to communal land, it underscores the ongoing legal challenges related to land rights, property rates, and the administration of land by the Ingonyama Trust.

These challenges illustrate the broader systemic failures in implementing gender-responsive land policies and the urgent need for reform in communal land governance.

Another critical issue relates to the permission to occupy (PTO) system and the *khonza* fee within communal land governance. The Interim Protection of Informal Land Rights Act (IPILRA) of 1996 provides legal protection to individuals and communities occupying communal land without formal ownership rights. Historically, the permission to occupy system permitted individuals to occupy land, but it did not confer ownership, making tenure security for women particularly fragile. In the case of the Ingonyama Trust, many permissions to occupy were converted into lease agreements, further restricting tenure security for women who often lack the financial means to meet lease conditions.

The *khonza* fee is a controversial customary charge required by traditional leaders for land allocation. While customary practices recognise this fee as a means of securing residence and land use, it is criticised for being a financial barrier to women's land access. Critics contend that these charges represent extortion and are inconsistent with the constitutional framework regulating the authority of taxation. The Traditional Leadership and Governance Framework Act (TLGFA) of 2003 indirectly legitimises this practice (the term is not explicitly defined in the Traditional Leadership and Governance Framework Act 41 of 2003 itself), allowing traditional authorities to maintain control over land transactions without clear oversight or gender-sensitive provisions. Women are often required to rely on male relatives to secure land, reinforcing systemic gender disparities in land ownership (Thipe, 2014).

The Traditional Leadership and Governance Framework Act further legitimises traditional leadership structures, granting them significant control over communal land. Section 3(2) of the Traditional Leadership and Governance Framework Act states that "*A traditional leader may, subject to the applicable laws, be responsible for the administration of communal land, and for that purpose may, in the exercise of powers conferred on him or her by any law, allocate land to members of the community, subject to conditions determined by the traditional council*".

The Traditional Leadership and Governance Framework Act is crucial to developing the governing structures of traditional leadership in South Africa. The Act establishes traditional councils and aims to secure women's representation through 30% quotas for women. However, while the objective behind the inclusion of quotas for women is to promote gender equality, the Act falls short, particularly in terms of empowering women to fully participate in and challenge these governance structures.

The Constitution of the Republic of South Africa (1996) is the supreme legal instrument that underpins land reform and gender equality. Section 9 guarantees non-discrimination based on gender, while Section 25 establishes the framework for land redistribution and equitable access. However, constitutional guarantees are often undermined by deeply rooted customary practices, which continue to limit women's land rights, particularly in rural communal areas.

The Native Land Act of 1913 has a strong legacy. The Native Land Act systematically dispossessed Black South Africans of land resources, reinforcing historical gendered inequalities. Despite the repeal of apartheid-era laws, the long-term impact persists, with many women still unable to access or own land due to patriarchal communal land tenure systems.

The Spatial Planning and Land Use Management Act (SPLUMA) of 2013 establishes a uniform framework for land use planning. While the Act mandates public participation, it lacks explicit gender-sensitive provisions, allowing for the continued marginalisation of women in communal land governance. The implementation is further hindered by the dominance of traditional leadership, which often excludes women from land decision-making processes.

The Restitution of Land Rights Act of 1994 seeks to restore land rights to those dispossessed due to racially discriminatory laws. However, restitution processes have disproportionately favoured male-headed households, reinforcing gendered land ownership disparities. Limited access to legal resources and bureaucratic complexities further impede women's ability to claim their rightful land.

The Communal Land Rights Act (CLARA) of 2004 was designed to formalise communal land tenure but was declared unconstitutional in 2010 due to excessive powers granted to traditional leaders, the marginalisation of women, and its failure to provide security of tenure for individuals. The Constitutional Court ruled in Tongoane and Others v. Minister of Agriculture and Land Affairs that the Communal Land Rights Act over-concentrated authority in traditional leaders without sufficient checks and balances, thereby undermining democratic governance. Stakeholders, including civil society organisations, gender rights advocates, and land reform activists, criticised the Act for reinforcing patriarchal land allocation systems that deprived women of independent land ownership. Additionally, the Act lacked clarity on dispute-resolution mechanisms and failed to align with the constitutional mandates of gender equality and tenure security.

The Interim Protection of Informal Land Rights Act (IPILRA) of 1996 was designed to provide temporary protections for informal landholders, including women, but its lack of permanent legislative status has made enforcement inconsistent (Hall, 2021). Many women in rural communities remain vulnerable to eviction or discriminatory land allocation practices by traditional leaders who impose fees such as the *khonza* fee, further restricting access to land.

The National Development Plan (NDP) 2030 was established to address South Africa's most pressing socio-economic challenges and to create a long-term vision for the country's development. The NDP prioritises increasing land access for women, aiming to address historical inequalities and empower women in rural communities economically by securing their land rights (particularly in communal areas, through targeted policies and initiatives focused on awareness campaigns) and legal support, as well as facilitating access to land ownership and control. Despite this commitment, women in rural areas still face challenges accessing communal land.

The Expropriation Act No. 13 of 2024 introduces new possibilities for land redistribution and gender-inclusive land reform. Unlike the Communal Land Rights Act, which concentrates decision-making authority in traditional leadership, the Expropriation Act centralises land redistribution under the State. The Act aligns with Section 25 of the Constitution, emphasising land expropriation in the public interest, which includes land reform objectives.

6. LITERATURE REVIEW

6.1 Historical legacy of colonialism

Communal land was already a contentious issue before colonialism, which significantly altered perceptions of property and the connection between place and identity (Peters, 2013). Colonialism denied full landholder rights and promoted the idea that communal land should prioritise commercial gain and modernisation. Customary land tenure law largely emerged from colonialism, with initial dispossession designed to disenfranchise Africans and protect colonial interests (Peters, 2013).

The British colonialists instilled discontent by asserting that land rights were derived from political authority rather than individual inheritance. They utilised traditional chiefs as 'trustees for the community', limiting their rights and involving Christian missionaries to quell dissent regarding these practices. Key effects of the imposition of customary tenure led to halting the development of a land market, intensifying competition among traditional leaders for land, reinforcing the link between political and land authority, shifting land authority from family setups to supreme chiefs, creating or reinforcing leadership hierarchies, and solidifying the connection between land rights and group membership, and the labelling of communities as 'tribal' by colonial and subsequent governments (Peters, 2013). When most African countries gained independence, these colonial structures and systems of communal land tenure continued after independence and are at the centre of many of the current challenges around the contestation of communal land tenure. In the South African context specifically, one of the key areas identified as contributing to the contestation around communal land tenure emanates from the colonial past tenure and is outlined in the White Paper (DLA, 1997, p. 57-66; Claassens & Cousins, 2008).

According to the White Paper, two fundamental problems the policy must confront are the dispossession of land from the Black African population by White settlers and the second-class status of Black Africans' legal rights that do not protect them from arbitrary decisions taken by those in control of land, whether it be traditional chiefs, the State, or government itself (Claassens & Cousins, 2008).

The colonial legacy included forced removals that dispossessed many black Africans of their land, often through violent means, particularly during the 19th and 20th centuries. These actions left victims with no recourse. However, the dispossessions are now the subject of restitution claims (Claassens & Cousins, 2008). Additionally, many farms are still occupied by their purchasers, yet the title deeds indicate that the Minister of Land is listed as the trustee-owner. This situation presents another challenge related to addressing the colonial legacy (Claassens & Cousins, 2008).

Land dispossession and segregation occurred under colonialism, and the apartheid system further entrenched this dispossession, particularly impacting Black South

Africans. Communities were forcibly removed from their ancestral lands, leading to land being concentrated in the hands of a few individuals (Djurfeldt, 2020). The effects of this dispossession continue to be felt by both men and women; however, women often encounter additional obstacles in accessing or reclaiming land due to historical and gendered disadvantages (Andrews, 2018).

During the colonial and apartheid eras, land ownership was predominantly restricted to White South Africans, while Black South Africans were often confined to 'homelands' or rural areas. In communal areas, land was typically controlled by male heads of households, which marginalised women regarding land rights, whether for ownership or access (Djurfeldt, 2020).

In summary, the impact of colonialism on women's access to and ownership of communal land in South Africa is a complex interplay of colonial history, traditional patriarchal norms, and contemporary inequalities. Addressing these issues requires a multifaceted approach that includes land reform policies prioritising gender equality, legal reforms that protect women's land rights, and efforts to change entrenched patriarchal norms within both traditional and legal systems.

6.2 Legislative frameworks addressing gendered land reform across the world

Communal land tenure in South Africa is addressed in a separate section. However, it is crucial to consider broader trends in Africa, Latin America, and Asia. In these regions, legislative frameworks governing communal land tenure have evolved to address historical injustices, customary governance, and socio-economic development. However, women's access to and ownership of communal land remains constrained. While several countries have attempted to integrate statutory protections with customary land rights, the effectiveness of these measures in securing gender equality in land ownership varies widely.

In Africa, legal frameworks such as Namibia's Communal Land Reform Act of 2002 and Mozambique's Land Law of 1997 have sought to provide formalised tenure while ensuring women's land rights. Despite these efforts, customary practices often continue to marginalise women in decision-making and land allocation. In Zimbabwe, the Communal Land Act of 1982 establishes a legal foundation for communal land management but lacks robust gender-specific protections, leaving women vulnerable to exclusion from land ownership.

Latin American nations such as Bolivia and Ecuador have taken significant strides in collective land ownership, embedding gender-sensitive policies in their agrarian reform laws. Ecuador's Agrarian Reform Law of 2008, for example, enforces quotas for women's representation in land governance, a mechanism that could serve as a model for other regions. Similarly, in Asia, India's Forest Rights Act of 2006 and Nepal's Land Reforms Act of 2019 have integrated gender-sensitive provisions, allowing women greater access to land titles and communal land governance structures.

6.2.1 Africa

Namibia – Communal Land Reform Act No. 5 of 2002

Namibia's Communal Land Reform Act No. 5 of 2002 establishes a structured legal framework for communal land governance while addressing gender inequalities in land ownership. Section 20 explicitly states that women have equal rights to apply for and register communal land tenure. The Act mandates that traditional leaders and communal land boards must not discriminate based on gender when allocating land rights. However, despite these provisions, the enforcement of gender equality remains challenging due to deeply entrenched patriarchal structures within traditional leadership.

Mozambique – Land Law of 1997

Mozambique's Land Law No. 19 of 1997 is one of the most progressive land laws in Africa, recognising customary land tenure systems while ensuring statutory protections for vulnerable groups, including women. Article 10 guarantees that customary land rights apply equally to men and women, regardless of marital status. Additionally, the law requires that women be included in all community land governance consultations. Despite these legal guarantees, traditional leaders often override statutory protections, limiting the law's full impact on women's land ownership.

Zimbabwe – Communal Land Act No. 20 of 1982

Zimbabwe's Communal Land Act No. 20 of 1982 provides the legal basis for communal land management but fails to incorporate explicit gender-sensitive provisions. Women's land rights remain contingent upon customary norms, which often prevent them from inheriting or owning land independently. The Traditional Leaders Act No. 25 of 1998 grants chiefs and village heads authority over land allocation, reinforcing male-dominated decision-making structures. However, recent amendments to Zimbabwe's National Land Policy (2020) call for affirmative action measures to promote women's land rights, signalling potential improvements in the legislative framework.

6.2.2 Latin America

Bolivia – Agrarian Reform Law of 1996

Bolivia's Agrarian Reform Law No. 1715 of 1996 (amended by Law No. 3545 of 2006) recognises collective land ownership for Indigenous and rural communities, ensuring women's equal rights to land. Article 3 mandates that land allocation decisions must consider gender equity and that at least 30% of all land titles must be allocated to women under collective tenure schemes. The law also creates mechanisms to resolve

land disputes through community-based conflict resolution, ensuring women have a platform to contest discriminatory land practices.

Ecuador – Agrarian Reform Law of 2008

Ecuador's Agrarian Reform Law No. 2008-004 integrates strong gender-sensitive policies, particularly in land governance structures. Article 19 enforces gender quotas, requiring that at least 40% of representatives in land governance bodies be women. Additionally, the law mandates that land inheritance laws must not discriminate based on gender, securing women's property rights. Despite these provisions, implementation remains a challenge in rural areas where traditional land allocation customs still favour male heirs.

6.2.3 Asia

India – Forest Rights Act of 2006

India's Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006, commonly known as the Forest Rights Act, provides legal recognition of communal land rights for Indigenous and forest-dependent communities. Section 4(4) explicitly states that women shall have equal rights to community forest resources, and all land titles must be granted in both spouses' names. However, cultural norms often hinder women from exercising their rights, as land registration processes frequently favour male family members.

Nepal – Land Reforms Act No. 1 of 2019

Nepal's Land Reforms Act No. 1 of 2019 introduces progressive policies aimed at improving women's land tenure security. Section 6 provides tax incentives for land registered in a woman's name, encouraging families to grant land ownership to female members. The Act also mandates that at least 33% of all land titles allocated through government land redistribution programmes must go to women. Additionally, Nepal's Local Governance Act of 2017 requires community councils to include women in all land governance decisions.

These regional legislative landscapes on communal land tenure demonstrate that many countries have introduced gender-sensitive land policies, but implementation gaps persist. Namibia and Mozambique provide strong legal protections for women's land rights, but traditional leadership structures continue to impede their effectiveness. Bolivia and Ecuador demonstrate the benefits of gender quotas in land governance, ensuring women's participation in decision-making. India and Nepal have integrated financial incentives and joint land ownership laws, offering models that South Africa could adopt.

The legal framework governing women's access to communal land is intricately linked to the concept of legal pluralism. Although the South African Constitution serves as the ultimate guardian of justice and asserts that State law takes precedence over customary law, the reality is often starkly different. In instances where these two legal systems come into conflict, the practical application of customary law frequently prevails over constitutional mandates. This disconcerting trend places women in a precarious situation, exacerbating their vulnerability and limiting their rights to land ownership and access. Djurfeldt (2020) noted that the implications of this legal dynamic are profound, highlighting the urgent need for reform to ensure equitable access to resources for women.

6.3 Land access and women's economic empowerment

Access to land is a crucial factor in promoting economic empowerment, particularly for women in rural areas. In South Africa, where communal land tenure systems dominate rural communities, women face multiple barriers to accessing land, hindering their economic participation and financial security. The intersection of social, cultural, economic, and legal barriers limits women's ability to leverage land as an economic asset. Research suggests that women's restricted access to land is not only a gender equality issue but also an economic development challenge, as it affects agricultural productivity, financial independence, and overall poverty reduction (Deininger et al., 2014; Wei, 2024; Bryan, 2024; Mhembwe, 2024; Perelli, 2024).

The barriers to women's land access in South Africa are rooted in historical and structural inequalities. Customary laws and patriarchal traditions continue to favour men's land ownership, limiting women's inheritance rights and tenure security. Although the South African Constitution guarantees gender equality in property rights, the dual legal system, which recognises both statutory and customary law, often creates contradictions that disadvantage women (Sida, 2022). Many rural communities in provinces such as Free State, KwaZulu-Natal, and Mpumalanga remain governed by traditional leaders who uphold patriarchal land allocation practices. For instance, the Ingonyama Trust, which administers communal land in KwaZulu-Natal, issues permission to occupy certificates rather than full ownership titles, making it difficult for women to secure financial credit or invest in long-term agricultural projects (Benjaminsen & Lund, 2018).

Legal ambiguities also exacerbate women's vulnerability to land dispossession. While progressive land reform policies, such as the Land Reform (Labour Tenants) Act of 1996, have sought to improve land tenure security, enforcement remains weak, and many women in rural communities continue to experience insecurity over land access (Walker, 2005). Additionally, high procedural costs and bureaucratic inefficiencies in acquiring communal land further restrict women's ability to formalise their land rights (Tshandu, 2021; CGE, 2024).

Women's access to land is closely tied to their economic empowerment. Secure land tenure enables women to invest in agriculture, access financial credit, and participate

in economic activities that enhance household income and food security (Dlamini, 2020). Studies indicate that when women have secure land rights, they are more likely to engage in sustainable farming practices, leading to increased agricultural productivity and financial independence (Deere & León, 2019; FAO, 2024; Agurwal, 2024). However, in South Africa, women farmers face significant challenges due to insecure tenure and lack of access to agricultural grants and financial services. Without land ownership, women are often unable to use land as collateral for loans, limiting their opportunities for entrepreneurship and business expansion (Levin & Weiner, 2017).

Countries that have implemented gender-sensitive land reforms have seen substantial improvements in women's economic empowerment. For instance, Brazil introduced a national land reform initiative that mandated joint land titling for spouses, resulting in a 35% increase in women-led agribusinesses (Deere & León, 2019). In Nepal, financial incentives were introduced to encourage land registration in women's names, leading to a significant rise in female landowners and improved access to credit (Acharya, 2017). India's matrilineal inheritance system in certain regions has also facilitated increased land ownership by women, promoting economic independence among women (Bose, 2020).

Conversely, some countries continue to struggle with gender disparities in land access. In Nigeria, customary land laws favour male inheritance, leaving widows and daughters at risk of land dispossession (Ndugwa et al., 2018). Similarly, in Kenya, despite legal reforms supporting gender equality in land rights, implementation remains weak, and traditional practices continue to marginalise women in land ownership (Benjaminsen & Lund, 2018). These cases highlight the need for stronger enforcement mechanisms and community-based interventions to support women's land rights.

The effective enforcement of existing land tenure laws, coupled with the inclusion of gender quotas in land governance structures, has also played a crucial role in strengthening women's land security. Furthermore, access to legal literacy programmes is vital in enabling women in rural areas to navigate land registration processes and assert their rights within customary systems. Addressing these challenges requires collaborative efforts among government agencies, financial institutions, and civil society organisations to create a framework in which women not only gain legal land rights but also derive tangible economic benefits from land ownership ((FAO, 2024; Hannan, 2022)

6.4 Women's right to land and climate change

The HSRC drafted the *National Food and Nutrition Security Survey, 2024* report, which depicted the significant effects of climate change on South Africa's agricultural productivity, which in turn impacts food security. The report shows that South Africa's land productivity was severely affected, especially in rural areas, due to fluctuating climate conditions, such as prolonged droughts and erratic rainfall. The National Food and Nutrition Security Survey (NFNSS) data shows that 63.5% of households in South

Africa experience food insecurity, with 17.5% classified as severely food insecure (HSRC, 2024). This food insecurity points out the pressure climate change places on food systems already strained by socio-economic challenges.

In the context of land use, climate change intensifies existing vulnerabilities in rural communities (Masuku, Mthembu, & Mlambo, 2023). For example, agricultural production, particularly in provinces like Limpopo and Mpumalanga, is hindered by crop failures, poor water management, and limited access to resources (HSRC, 2024). Climate shocks like extreme temperatures and irregular rainfall, put further pressure on land productivity, deepening the food insecurity situation (HSRC, 2024).

Women play a crucial role in climate adaptation strategies, especially in rural areas, where they are often responsible for food production, water collection, and household management (Masuku, Mthembu, & Mlambo, 2023). In the context of South Africa, however, women's contributions are often undervalued and unsupported. While women in provinces like KwaZulu-Natal, Limpopo, and Mpumalanga engage in subsistence farming, the challenges they face due to climate change are more pronounced compared to their male counterparts (HSRC, 2024). The National Food and Nutrition Security Survey indicates that women, particularly those in households without sufficient access to arable land, are at a disadvantage when it comes to coping with climate-induced stresses such as droughts and crop diseases (HSRC, 2024). Women are often burdened with the responsibility of feeding their families, yet they lack the necessary resources, such as agricultural extension services or access to credit, to adapt to changing conditions (Masuku, Mthembu, & Mlambo, 2023).

Masuku, Mthembu, and Mlambo (2023) add that although some women have adopted adaptive strategies, such as diversifying crops and incorporating traditional farming knowledge, these efforts are often limited by insufficient support systems. The survey revealed that agricultural extension services were nearly non-existent in several provinces, which directly impacts women's ability to effectively adapt to climate change (HSRC, 2024). Women's reliance on small-scale farming and vegetable production, as reported in the National Food and Nutrition Security Survey, demonstrates their resilience but also highlights the need for targeted interventions to empower them in the face of a changing climate.

The gendered vulnerabilities in climate change policies are also evident in South Africa (Masuku, Mthembu, & Mlambo, 2023), where gender disparities in access to resources, education, and land ownership limit women's capacity to contribute to and benefit from climate adaptation efforts (HSRC, 2024). While climate change policies have increasingly acknowledged the need for gender-sensitive approaches, the policies often fail to effectively address the specific needs of women in rural areas. For example, although the National Food and Nutrition Security Survey highlights land access as a key issue, women are less likely to have formal land ownership or control over agricultural land, which restricts their participation in climate resilience initiatives

(FFE, 2022). The Department of Forest, Fisheries, and the Environment (2022) adds that land redistribution and restitution are urgent needs, but the benefits of these policies often disproportionately favour male-headed households. This favouritism is further exacerbated by cultural practices and patriarchal systems, which tend to prioritise male control over land and resources and leave women vulnerable in the face of climate challenges (Dibakoane, Siyangwana, & Shabalala, 2022).

Further, the lack of tailored policies and climate adaptation programmes that specifically address the gendered impacts of climate change contributes to women's vulnerabilities. As developed above, while some households in Limpopo and Mpumalanga are engaging in agricultural activities, they face numerous challenges, including limited access to markets and extension services, factors that disproportionately affect women (Dibakoane, Siyangwana, & Shabalala, 2022). The National Food and Nutrition Security Survey shows the need for policies that promote equitable access to agricultural resources, with a particular focus on women's land rights and empowerment. Policies that integrate gender perspectives into climate adaptation strategies are crucial for addressing the underlying socio-economic and cultural barriers that hinder women's participation in climate resilience efforts (Nieuwkoop et al., 2022).

Patriarchal traditions deeply influence women's access to land and resources in rural South Africa (Dibakoane, Siyangwana, & Shabalala, 2022), restricting their economic empowerment and resilience to climate change. Across rural communities, land is often passed down through male lineage, leaving women at a disadvantage when it comes to land ownership and control. The HSRC (2024) alerts that land ownership in South Africa is low, especially among women, and where women do own land, they frequently lack the full control to utilise the land for agricultural activities. This issue is intensified by patriarchal structures that often see women relying on male family members or community leaders to access or manage land (Du Plessis, 2023).

Women's exclusion from climate adaptation initiatives in South Africa is a crucial issue that exacerbates their vulnerability to climate change impacts. The HSRC (2024) illustrates that the lack of inclusion of women in climate-resilience planning limits their capacity to engage in or benefit from adaptive strategies. The survey highlights how agricultural extension services, which could play a significant role in helping rural households adjust to climate change, are often inaccessible to women (Nieuwkoop et al., 2022). The report details the insufficient availability of extension services in provinces like Limpopo and Eastern Cape, where women's participation in agriculture remains low despite some land ownership (HSRC, 2024). This gap means that women, who are often the primary food producers within households, have limited access to knowledge or tools for climate-smart agriculture (HSRC, 2024), leaving them more vulnerable to climate shocks such as droughts, floods, and extreme temperatures (Haque, Kumar, & Bhullar, 2023).

Masuku, Mthembu, and Mlambo (2023) further underscore this exclusion by showing how women are often sidelined in policy and climate adaptation discussions despite women playing a key role in food security. In some provinces, climate change adaptation policies fail to consider gender-specific needs or barriers. Women's exclusion from decision-making processes means that their knowledge and strategies for resilience, grounded in local ecosystems and traditional practices, are not effectively integrated into national adaptation strategies (HSRC, 2024).

6.5 Social and cultural barriers to equal access to communal land

Du Plessis (2023) argues that traditional leadership in communal land governance operates within a hierarchical system where authority is concentrated among chiefs and their councils and often excludes the broader community participation. Decision-making responsibilities are largely male-dominated, with traditional leaders exercising control over land allocation, access, and use. This structure perpetuates power imbalances that expose unaccountability and further limits the ability of community members, especially women, to influence land governance processes.

Yeni (2019) explains how the role of traditional leaders in land-related negotiations frequently aligns with external interests, such as corporate mining ventures, rather than prioritising communal well-being. Traditional leaders are prone to enter into agreements that affect the livelihoods of people residing on communal land with little to no consultation with those residents (Yeni, 2019). This exclusion is intensified by using intimidation tactics to silence opposition, creating an environment where dissenting voices, particularly women and grassroots activists, face threats, exclusion, and delegitimisation of rights (Yeni, 2019).

Further, the governance system under traditional leadership tends to prioritise economic gain over sustainable communal development (Du Plessis, 2023), contributing to the dispossession of land-based livelihoods (Yeni, 2019). When resistance arises, the response from traditional leadership often includes coercion, manipulation of local governance structures, and the strategic redefinition of land boundaries to undermine community control (Yeni, 2019). These undermining responses by local governance structures point to the limitations of communal land governance under traditional authority, where decision-making processes lack transparency and accountability.

The persistence of patriarchal control within traditional leadership further worsens the state of gendered land inequalities (Du Plessis, 2023). Women remain marginalised in land governance discussions despite being central to agricultural production and household food security (Yeni, 2019). Women's exclusion from decision-making structures underscores their vulnerability to displacement and resource loss, demonstrating how traditional governance mechanisms fail to equitably distribute power and protect communal land rights (Yeni, 2019). Thus, traditional leadership continues to serve as a gatekeeper that selectively controls access to and ownership of communal land.

Communal land property rights are important for their effects on economic inequality and economic performance, unfolding at the intersection of law, the State, politics, and the economy.

Furthermore, engineered social factors and individual owners, not just elites, influence communal land or property acquisition. Communities influence what property women acquire and how they use the property (Carruthers & Ariovich, 2004). Carruthers and Ariovich (2004) further argue that social rules that constitute property are neither self-evident nor self-enforcing, and it is usually the State that enforces access to these property rights.

Often not seen or recognised is that the church and ecclesiastical law heavily influenced inheritance rules for centuries (Carruthers & Ariovich, 2004). This social and cultural influence or exertion by churches is recognised and is an important part of how social dynamics influence communal land acquisition (Carruthers & Ariovich, 2004).

Many inheritance rules like primogeniture and impartible inheritance favour particular heirs (sons over daughters, close kin over distant kin, eldest sons over others) and thus socially and culturally engineer how patterns of inequality are reproduced intergenerationally (Carruthers & Ariovich, 2004).

Kingwill (2016) argues that the normative patterns emerging from and shaping kinship-based social organisations are inherently gendered; however, these patterns do not produce a uniform structure or experience for men and women. Instead, Kingwill (2016) argues that the lines of gender differentiation are more nuanced, and therefore, the concept of gender should be disaggregated to take into account status and class criteria within and across the groups of men and women.

Even though gender intersects with a range of other socio-cultural criteria and economic processes, the combined effect on the outcome of property struggles suggests that analyses of gender relationships ought to move beyond a narrow focus on women as a single category. Rather, the analyses of criteria related to property struggles should embrace a more holistic conception of property relations, including the history, systems, and processes to understand the contestation around communal land (Kingwill, 2016).

In many parts of Africa, access to communal land remains deeply embedded within social and cultural norms that often exclude certain groups of women, particularly single women, divorced women, and those of certain age groups (United Nations, 2025). These exclusionary practices, rooted in patriarchal systems, significantly undermine the ability of these women to fully participate in land access, ownership, and management, perpetuating gender inequality and limiting their socio-economic empowerment (United Nations, 2025).

Single women and divorced women often face the most severe barriers to land access. Akinola (2018) argues that in many sub-Saharan African societies like Mozambique, land ownership is seen as a right reserved for men, particularly those who are married. Customary land tenure systems frequently exclude women from direct ownership or control over land, as it is presumed that women, especially those who are not married, do not need or deserve land (Land Coalition, 2025). The situation for divorced women is even more precarious. In Eastern African countries like Kenya, divorced women are often left without any claim to land that was previously shared with their husbands, as they are considered to have lost their rights once the marriage is dissolved (Akinola, 2018).

Although often under-discussed, important social and cultural barriers to women accessing land are laws regulating women's rights to property within marriage, after marriage dissolution, or after the death of a spouse (Djurfeldt, 2020). For example, in Uganda, the Customary Marriage (Registration) Act and the Marriage Act are both silent on the issue of rights to property brought into or acquired during a marriage or how such property should be divided upon the dissolution of a marriage (Djurfeldt, 2020).

Furthermore, Djurfeldt (2020) points out that widows in Uganda were hit hard by the Succession Act of 1972. The Act stipulates that in the case of intestate succession (where a will is lacking), the property of the husband, including "*the home, household chattel, and surrounding land, passes to the intestate's legal heir, which is the nearest male lineal descendant to the deceased, usually the eldest son*" (Djurfeldt, 2020, p. 7).

Age is another crucial factor that influences women's access to communal land in Africa. In Malawi, older women are often subject to additional social and cultural challenges that younger women may not face (Errico, 2021). In such communities, land inheritance is governed by strict patriarchal customs where land is passed through male heirs, leaving older women vulnerable to exclusion from land ownership and control. When a man dies, his widow may have no legal claim to the land, especially if there are male children or male relatives who can claim ownership (Lwabukuna, 2023). Similarly, younger women, particularly those who are unmarried, may find themselves excluded from land access due to their perceived lack of authority or social status (Lwabukuna, 2023).

Raseroka (2021) points out that in Botswana, age-based exclusion often intersects with other forms of discrimination, such as marital status or family dynamics. For instance, younger women may be less likely to inherit land if their family has strong patriarchal traditions that favour male heirs, which is common under the practice of "*inheritance grabbing*" (Raseroka, 2021). Additionally, older women may face challenges because of their gender and because they have reached a stage where societal attitudes often undermine their physical ability to manage land or participate in agriculture (United Nations, 2025). These age-based biases diminish the chances of older women securing land rights, further entrenching their marginalisation.

In North Africa, the intersection of religion and culture plays a significant role in shaping land access for women. In countries with Islamic law, including Morocco, Algeria, and Egypt, the laws and traditional practices often combine to create complex barriers to women's access to land (UN Women, 2018). While Islamic law, in theory, grants women the right to own property, in practice, social norms often undermine this right (UN Women, 2018). Customary practices in rural areas may continue to restrict land ownership to men, with women being viewed primarily as caretakers or secondary land users rather than landowners.

In some contexts, religious beliefs are used to justify exclusionary practices, with land being considered a 'man's domain'. This notion is especially prevalent in conservative rural communities where religious interpretations often reinforce the patriarchal status quo (Adname, 2018). The impact of religious norms on land rights is also seen in inheritance laws, where male heirs are often given a larger share of property than female heirs despite the religious stipulations of gender equality in inheritance. Women in these regions may find themselves excluded from inheritance if they are unmarried or without male heirs, and their access to land is often governed by the goodwill of male relatives (Adname, 2018).

Sexual orientation and gender identity, and Expression (SOGIE) also represent critical barriers to land access for marginalised groups, particularly within the African context, where countries like Zimbabwe, Namibia, and Uganda have strict laws discriminating against LGBTQIA+ persons (ISLA, 2022). LGBTQIA+ persons, especially those in rural communities, often face harsh social exclusion due to deeply ingrained homophobia and transphobia. These individuals may find it impossible to secure land, either through inheritance or ownership, due to the societal stigma and the criminalisation of same-sex relationships in many African countries (Tash, 2021). The LGBTQIA+ are marginalised, as they not only face traditional gender-based discrimination but also the additional barrier of being part of a socially rejected group (Tash, 2021).

In many parts of Africa, family structures are rigidly heterosexual and patriarchal, leaving little space for those who do not conform to these norms. The intersectionality of gender and sexual orientation leads to an exacerbation of exclusion, with LGBTQIA+ persons unable to claim land rights, even where legal frameworks may be supportive of equality (ISLA, 2022). The marginalisation of this group is further compounded by a lack of formal recognition in land tenure systems, which typically operate under norms that align with heteronormative family structures (ISLA, 2022).

7. FINDINGS OF THE STUDY

7.1 Free State province

7.1.1 Contextual background

Free State is the second least populated province in South Africa, with approximately 3 million people. Women are the majority at 52,5% and men constitute 47,5%. The most spoken language is Sesotho (72.3%), followed by Afrikaans (10.3%). The Free State is one of South Africa's nine provinces, centrally located in the country. The province is known for its flat, expansive landscapes and is often called South Africa's breadbasket due to its vast agricultural activities, particularly maize production. Agriculture is the backbone of the Free State's economy, with maize, wheat, sunflowers, and livestock farming being predominant.

The thriving agricultural production is attributed to the Free State's rich soil and pleasant climate. It has more than 3,000 farms, which produce over 70% of the grain in the country. Agriculture dominates the Free State landscape, with cultivated land covering 32,000 km^2 and natural veld and grazing a further 87,000 km^2 of the province. It is also South Africa's leader in the production of biofuels (fuel from crops), with several ethanol plants under construction in the grain-producing western region. Field crops yield almost two-thirds of the gross agricultural income of the province. Animal products contribute a further 30%, with the balance generated by horticulture.

The province is the second least contributor to the GDP of the country, contributing only 4,9%. The province also has a thriving mining industry, particularly gold mining, in the areas around Welkom and Virginia. Moreover, the Free State is also a tourist destination in South Africa due to its diverse terrain, with some areas being mountainous and attracting tourists with its beautiful landscape.

The Free State has a total area of 129,825 km^2, making it the country's third-largest province, only slightly bigger than the Western Cape, constituting about 10.6% of South Africa's land area (Census, 2022). The province has a house of traditional leaders representing the Free State's traditional communities. The membership of the Free State House of Traditional Leaders comprises 13 senior traditional leaders from the five traditional communities (Batlokwa ba Makgalong, Makgolokwe, Bakwena, Batlokwa ba Mota, and Barolong bo Seleka) within the Free State. Only one senior traditional leader is a woman.

The province also has a local house of traditional leaders, which is situated at the Thabo Mofutsanyane District Municipality, and its membership comprises the same members who sit in the Provincial House of Traditional Leaders. The province is constituted by the Mangaung Metropolitan Municipality (Bloemfontein, Botshabelo, and Thaba Nchu) and four district municipalities, which include the Fezile Dabi District Municipality,

the Lejweleputswa District, the Thabo Mofutsanyana District, and the Xarip District. The study focused on the areas within the Mangaung Metropolitan Municipality and Thabo Mofutsanyana District Municipality as the key localities with communal land governed by traditional leadership.

7.1.2 Barriers to women's access to communal land

Legislative, institutional, and procedural barriers

Participants explained the procedures they needed to follow to express their interest in acquiring land. They explained that the process begins with the applicant approaching the headmen to express their interest in a specific piece of land. The application must include an identified piece of land, an application fee ranging from R105 to R40,000, the applicant's identity documents, and, in the case of marriage, the spouse's identity documents and the children's birth certificates. From here, the headmen present the application to the traditional council, which conducts an investigation to verify two key points: first, whether the identified piece of land has already been allocated to someone else, and second, proof that the applicant is a born resident. The application fees vary and can range between R105 to R40,000, depending on the area.

Finally, the completed application is presented before the council, which consists of 40% elected community members and 60% representatives nominated by the senior traditional leader, 60% women and 40% men, and 20% youth members. Women make up the majority of the traditional councils, a striking contrast to the norm where men typically dominate these structures in many rural communities. Among the communities explored in this study, these council's unique gender constitution was a significant departure from the gender dynamics observed elsewhere.

To qualify for accessing land, the requirements are as follows:

- 21 years old
- Identity documents
- Marriage certificate if married (applicable to men, women, and LGBTQIA+ persons)
- Birth certificates or identity documents of biological children.

The rationale behind the stipulation that applicants must be 21 years old or older remained ambiguous. However, as observed in several other provinces, each traditional council, guided by its senior traditional leader, establishes its own set of regulations and procedures. In provinces such as Limpopo and North West, as highlighted in the previous CGE (2024) report, factors such as age and marital status were deemed indicators of maturity, serving as key criteria for eligibility.

When a person expresses interest in applying for land for business purposes, the application fee ranges from R1,000 to R10,000. Applicants are issued a five-year contract and must pay an administration fee every five years. The findings suggest that there is flexibility regarding the timeframe for developing the land after receiving the permission to occupy certificates. Although the official timeframe is three months, traditional leaders understand the economic situations faced by community members. As a result, the leaders do not strictly enforce the three-month development requirement and participants have reported that it can sometimes take three years or more to develop their allocated sites.

Additionally, these processes are reportedly applicable to men, women, and LGBTQIA+ persons without any reported discrimination. However, statistics that provide gender-disaggregated information to support the claim of no discrimination were not submitted to the CGE. Gaps in administrative processes were identified in this context, and this challenge is not unique to the Free State. A senior traditional leader shared the following:

"*Communal land is accessible for both men and women... issuance of the PTOs also prevent homelessness for the people who can get tempted to sell their family houses... under polygamy every woman has to have their own house, and the fee is determined by the Traditional Council in this regard*" (FGD, senior traditional leader, 19 November 2024, Thaba Nchu).

The main difference between the two applications is that the business application must be submitted with an identification document, as well as a business proposal that includes a financial plan. This documentation aims to establish the economic viability of the proposed business and demonstrates how the business will benefit the community. On the other hand, the requirements for the residential application are focused on ensuring that the applicant was born in the area and is applicable to the applicant, their spouse, and all their children.

Participants from the Free State have highlighted significant discrepancies regarding the application fees for land allocation, which vary dramatically from R105 to R40,000 for residency. This inconsistency, coupled with the absence of clear regulatory guidelines governing the land allocation process, forms a perfect breeding ground for corruption. Such systemic issues disproportionately impact women, who are often the most vulnerable beneficiaries within their communities, undermining their ability to access land and resources effectively.

The findings reveal a significant legislative gap in land tenure following the repeal of the Communal Land Rights Act. Traditional leaders primarily align their land allocation processes with The Spatial Planning and Land Use Management Act. Many traditional councils have noted that the absence of clear legislative guidance has prompted them to create their own internal policies to ensure that community members are

allocated land in a structured manner. Additionally, various strategic frameworks were identified as guiding the land allocation process, particularly in the absence of a comprehensive legal framework. These include the Institute for Poverty, Land and Agrarian Studies (PLAAS) Strategy and the State Land Lease. Furthermore, a disposal committee is responsible for monitoring the use of allocated land.

The traditional leaders explained that there are significant issues regarding the contestation of communal land versus municipal land. Contestations arise because the municipality encompasses all areas, including areas under the jurisdiction of traditional leaders. Land allocation has emerged as a point of contention between municipalities and traditional leaders, which in turn affects governance within traditional communities. This conflict was highlighted as a key issue, causing instability and discord within the communities.

A senior traditional leader stated:

"*There is a disjuncture between the traditional leaders and municipal structures that is if you live in Tshiome, you will get a title deed and across the street is the PTO holder. They are neighbours but they do not get the same benefit*" (FGD, senior traditional leader, 21 November 2024, Qwaqwa).

The presented scenarios highlight the unequal distribution of benefits between community members who hold title deeds and those with permission to occupy certificates. The findings indicate that individuals with title deeds receive more advantages and enjoy guaranteed ownership of their allocated land. In contrast, those holding permission to occupy certificates do not have secure ownership, as traditional leaders can reclaim the land, or the municipality may issue a title deed and demolish any structures on that land without facing the consequences. This situation was identified as a significant source of instability within the communities.

It is important to highlight the intervention the Department of Traditional Affairs implemented to promote capacity building on gender mainstreaming issues. Mainstreaming must be considered when executing administrative and governance responsibilities within their jurisdictions. This mainstreaming initiative includes inviting Chapter 9 institutions, such as the South African Human Rights Commission and the Commission for Gender Equality, to provide training on human rights, encompassing women's rights and the rights of LGBTQIA+ persons. The capacity-building sessions were considered positive and valuable by the traditional leaders who participated.

Socio-economic barriers

Women in the rural areas of the Free State face significant economic challenges, including high unemployment rates and limited access to resources. They experience extreme poverty that exceeds national averages. The province's gender gap in

unemployment reflects systemic disparities, highlighting the challenges rural women face. While many women in rural communities engage in agricultural activities mainly for subsistence, government initiatives designed to promote women's access to land often hinder their opportunities because the initiatives target women who are already established and financially secure in agriculture. To improve the economic status of women in rural Free State communities, it is essential to provide support for startups, enabling women in startups to become increasingly capacitated and to enhance their livelihoods.

Nonetheless, the findings indicate that the Free State province has made strides in ensuring women's access to communal land. Notably, the Department of Agriculture, Land, and Rural Development within the province, through its unit responsible for women, children, and persons with disabilities, is tasked with promoting women's access to land. This project was commissioned in the 2022/2023 financial year to focus on economically emancipating women to ensure that they are prioritised during the processes of land allocation.

The Department of Agriculture, Land, and Rural Development's primary mandate is to purchase land from private owners. The land is acquired by the Strategic Land Acquisition Directorate (SLA) and allocation begins when the available land is advertised on its website, in newspapers, and through various agricultural offices. Following this, the District Beneficiary Selection Committee will carry out the selection process. During this phase, women are prioritised as previously disadvantaged beneficiaries.

Some of the hindering factors are the stringent requirements for eligibility, which mostly disadvantage women. Most of the prioritised women get disqualified at the verification stage, which precedes the interview process. To qualify, individuals are expected to be actively farming. If they require land to run the livestock, they are expected to already have livestock that has the brand mark, which costs about R500 to R600, which is in the individual's name. The findings indicate that most married women do not have the brand mark in their name, which disqualifies their eligibility to be considered for land allocation. The findings also demonstrate that the department does not have the power to buy as that falls is the traditional leaders' jurisdiction. Also, the land bought from the private owners is kept under the care of the municipalities, as the land is near the townships. As such, this programme is not necessarily geared for women in rural communities or on communal land.

Furthermore, while the programme is purported to prioritise the needs and benefits of women, it remains ambiguous how many individuals have reaped the rewards of these initiatives, as pertinent data has not been disclosed.

Another way of accessing that land is through negotiating with the municipalities on how much they should pay for the commonage land. The findings further indicate that there are circumstances where women from the communal communities form

cooperatives as their strategy to generate income for their economic viability. The process begins with women collectively soliciting the land where the intended project would be developed, which entails going to the respective traditional leader to collectively request a piece of land.

The Department of Agriculture, Land, and Rural Development has established the Community Economic Development (CED) directorate in line with its mission to empower women, particularly in relation to access to communal land. This directorate is responsible for supporting women who are already involved in projects and those who wish to develop initiatives through cooperatives. The unit collaborates with traditional leaders who serve as key figures in their communities to promote the empowerment of women, particularly women in cooperatives and those interested in joining such groups.

Upon approval of their business plans, the women forming cooperatives can source funding from other agencies, such as the National Development Agency (NDA). One specific cooperative observed while conducting this study was a food security project that creates employment for several women within the various communities. The product of this project manages to feed the members of those communities. The women were proud that they provided three meals for every family under that jurisdiction. The success of their project has motivated them to generate more income through supplying retail establishments such as Shoprite and Pick n Pay.

The findings also indicate that women are the initiators of income-generating projects within traditional communities. They expressed their eagerness to engage in more income-generating activities, but they indicated that they do not have capital. They expressed that they acknowledged the assistance that the National Development Agency and the Department of Social Development are doing, as well as the training conducted by the Small Enterprise Development Agency (SEDA), which the women indicated is not enough. They pleaded that the government should contribute more to assisting them.

There is a relationship between traditional leaders and the Department of Agriculture, Land, and Rural Development due to their co-management of land and other assets within communal communities. A key intervention that improves women's access to communal land is the creation of awareness by the department. This awareness is important because traditional communities are often governed by a patriarchal system that significantly restricts women's full access to land. Additionally, regular training provided by various stakeholders empowers traditional leaders to be transformative in their roles and to embrace the constitutional principle of non-discrimination.

While Free State demonstrated transformed initiatives regarding the prioritisation of women for the allocation of land, some participants indicated that the process is not as transparent as it may seem. One of the participants lamented:

"*For businesses, also there are no requirements when land is available, you can be allocated but the traditional leader's demands are sometimes more*" (FGD participant, 19 November 2024, Merino-Thaba Nchu).

The conflict between the municipality and traditional communities was seen to create barriers to economic development for these communities. Findings indicate that when traditional leaders secure private investors to develop businesses, such as petrol stations within their jurisdiction, approximately 95% of these proposals fail due to compliance issues. Participants also noted that even investors wishing to develop shopping complexes in these areas have encountered challenges resulting from complications created by the municipalities, primarily because these initiatives originate from the traditional leaders.

A traditional leader expressed:

"*We sometimes see the malls being erected within our jurisdictions without being consulted, …. when we ask, we are told that the municipality has proclaimed the land where the mall is developed so as a result it does not fall under our jurisdiction even though it is in my area*" (FGD, senior traditional leader, 21 November 2024, Thaba Nchu).

Another senior traditional leader lamented:

"*We do not have power as the traditional leaders over our land, even if I see developers coming in the community and digging, I do not have the power as a traditional leader to stop them*" (FGD, senior traditional leader, 21 November 2024, Thaba Nchu).

However, the complexity surrounding land demarcations appeared to have some advantages for women. Land reform programmes focus not on what was traditionally considered communal land but rather on land designated under municipalities. For example, the programme discussed in this section is run by the Department of Land Reform and Rural Development. As such, this intricate issue of demarcation presents both benefits and drawbacks.

The traditional leaders highlighted the challenge regarding issuing permission to occupy certificates instead of title deeds and concerns about their inability to allocate land, particularly for residential purposes. These issues were escalated to the relevant government department. Additionally, the traditional leaders mentioned that the land currently available for allocation is not habitable, making it unsuitable for residential use.

Socio-cultural barriers

Based on the findings of the study, participants generally felt that land allocations were not significantly influenced by gender discrimination or biases. However, the CGE analysis encountered challenges in obtaining comprehensive data to evaluate the distribution of land allocation by gender, including the specific sizes of these allocations. One notable positive aspect of the findings is the strong representation of women in traditional councils, which play a crucial role in land governance. In the rural communities visited for the study in the province, women constituted 60% of council members, a remarkable statistic that appears to be distinctive to this province, as similar levels of women's representation in governance have not been documented in other provinces included in the research.

This increased presence of women in leadership positions not only enhances legitimacy in decision-making processes but also suggests a pathway for broader advancements in gender equality and women's empowerment. By ensuring that women's voices are heard in land governance, the potential for equitable resource distribution and community development is significantly bolstered, fostering a more inclusive environment for all members of society, as illustrated.

Despite the initial impression that women did not encounter systemic discrimination regarding communal land access, this situation did not automatically lead to significant advancements in women's economic empowerment. Evidence indicates that while some women have indeed benefitted from land reform and economic empowerment programmes, particularly those targeted at improving access to resources, these gains were not universally experienced.

A closer examination reveals that the women who predominantly reaped the benefits of these programmes were often those who already had a certain level of skills, education, and prior experience in agricultural practices or business management. As indicated in the discussion on socio-economic barriers, this subset of women was better positioned to take advantage of the resources and capacity building provided.

In contrast, many women, particularly those from marginalised backgrounds or with limited access to education and resources, found that simply gaining entry to communal land was insufficient for translating this access into tangible economic benefits. The structural challenges they faced (such as lack of support networks, inadequate market access, and ongoing societal norms that may stifle their entrepreneurial efforts) meant that mere participation in land access initiatives did not guarantee significant economic empowerment or improvement in their livelihoods. Thus, while the framework for land access may exist, the lack of holistic support and capacity-building for all women undermines the intended positive impacts on economic equity.

Furthermore, due to the nature of communal land tenure, permission to occupy certificates are issued instead of formal land titles, and women's access to financial support and credit is significantly limited. This restriction is compounded by the lack of capital available to women, which hinders their ability to establish start-ups or even build homes. Traditional leaders in these communities often provide additional time (up to three years) for the development of allocated plots of land, which demonstrates the extent of financial constraints faced by women and communities.

This situation underscores a crucial need for targeted support that empowers women to leverage land as a vital resource for economic empowerment and food security. By enhancing their understanding of land rights and providing access to financial resources, women could unlock opportunities for entrepreneurship and sustainable development. Furthermore, raising awareness within the community about the importance of women's contributions to land management and economic activities is essential. Such initiatives would not only benefit individual women but also promote overall community resilience and food security.

Furthermore, even though women were not explicitly barred from accessing communal land, they continued to face a myriad of challenges that severely limited their ability to utilise these resources effectively. High levels of poverty and unemployment in the regions disproportionately affected women, leading to heightened vulnerability and reliance on unstable economic conditions. In other words, despite having legal access to communal land, many women in the rural communities visited for the study continue to experience high rates of unemployment and persistent poverty, illustrating the gap between access and empowerment.

Moreover, issues such as drug abuse and crime, particularly stock theft, which are often worsened by socio-economic stress, disproportionately affect women, further obstructing their empowerment and agency.

The findings illustrated that access to land should not merely be defined by the ability to enter communal land systems or achieve numerical representation but rather must include the concept of substantive equality. Such equality entails ensuring that women not only have entry points but also the necessary resources, support, and social conditions to thrive in their use of communal land. Such equality is vital for fostering genuine empowerment and enhancing women's roles as active participants in their communities and economies.

The findings further demonstrated that in the context of communal land access for women, numerous invisible barriers significantly impact their rights and participation. Among these are deep-rooted reproductive and cultural norms, as well as entrenched beliefs that dictate women's roles within families and society. These norms not only impose an unequal burden of unpaid reproductive labour on women, such as caregiving, household management, and child rearing, but also challenge their rights

to equality in marriage and family relations. Pervasive beliefs among participants, for example, that men are inherently the heads of households and should serve as the primary providers, not only reinforce traditional gender roles and stereotypes but also perpetuate a cycle of internalised discrimination that limits women's aspirations and opportunities. Consequently, even when women have rights to communal resources, these ingrained societal attitudes significantly hinder their ability to utilise those resources effectively and assertively.

The findings regarding the LGBTQIA+ community indicate that individuals do not need to engage in performative acts of cultural acknowledgement. Traditional authorities, in turn, accept LGBTQIA+ persons as they present themselves. Both the community and the traditional council reportedly approach issues related to LGBTQIA+ persons with respect and humility. This inclusive stance is largely attributed to the efforts of the Department of Traditional Affairs, which aims to enhance the capacity of traditional leaders and the wider community to understand diversity and inclusion.

It was revealed that the community takes pride in being loving and accepting, positioning itself as a champion of transformation in line with the principles of diversity, inclusivity, and equity. As a result, LGBTQIA+ persons reportedly do not experience exclusions or overt discrimination in land allocations. However, it is worth noting that these claims were not supported by evidence.

Similarly, women with disabilities, despite the absence of targeted initiatives to promote their inclusion, were generally not outrightly excluded from land allocations. However, it is crucial to acknowledge that the lack of comprehensive data makes it difficult to substantiate this observation. Historically, women with disabilities often face multiple barriers, including systemic discrimination and societal biases, which can inadvertently result in their marginalisation. These barriers underscore the importance of implementing affirmative action measures, as in many cases, without such proactive efforts, individuals with disabilities are unintentionally overlooked.

7.2 KwaZulu-Natal province

7.2.1 Contextual background

KwaZulu-Natal is one of South Africa's nine provinces, characterised by a diverse landscape of urban centres, rural settlements, and vast communal land areas. The province is divided into 11 district municipalities and one metropolitan municipality (eThekwini), making it a key administrative region with both urban and rural governance structures. A significant proportion of land in KwaZulu-Natal falls under communal tenure, where traditional leaders play a pivotal role in land administration and allocation (Cousins, 2020).

The name KwaZulu-Natal reflects the province's colonial and Indigenous history. The term 'KwaZulu' means 'Place of the Zulu' and honours the Zulu Kingdom, which was established under King Shaka Zulu in the early 19th century. The region became central to British colonial expansion in the 1800s, with the area being annexed into the British-controlled Natal Colony in 1843. The British administration systematically dispossessed Indigenous communities of their land, relegating much of the African population to reserves while establishing settler-owned farms and plantations (Ntsebeza, 2019). The forced segregation and land dispossession led to the creation of the Bantu Authorities system during apartheid, further entrenching communal land tenure under traditional leadership structures.

KwaZulu-Natal has a rich cultural heritage, with IsiZulu being the dominant language spoken by the majority of the population, alongside English and Afrikaans as secondary languages. The province remains a stronghold of Zulu traditions, with its cultural identity deeply embedded in customary governance, rituals, and land administration practices. Communal land in KwaZulu-Natal is managed according to customary law, where land is traditionally allocated by senior traditional leaders to community members for residential, agricultural, and other purposes. However, this customary tenure system was criticised for its lack of formal ownership rights, particularly for women, who often access land through male relatives rather than holding direct ownership (Claassens & Matlala, 2019).

KwaZulu-Natal has a well-defined traditional leadership system consisting of *amakhosi* (senior traditional leaders), *izinduna* (headmen and headwomen), and local traditional council members who oversee communal land governance. The province is home to over 290 senior traditional leaders who exercise authority over land allocation, conflict resolution, and local governance matters (Claassens & Matlala, 2019). These leaders derive their authority from the traditional leadership and Governance Framework Act of 2003 and the KwaZulu-Natal Traditional Leadership and Governance Act of 2005, which outline their powers, roles, and responsibilities. However, despite their administrative role, concerns were raised regarding gender biases in land allocation, where women continue to face systemic exclusion from direct land ownership under customary tenure systems (Walker, 2021).

7.2.2 Barriers to women's access to communal land

Legislative, institutional, and procedural barriers

In KwaZulu-Natal province, women face significant barriers to accessing communal land due to the interplay of customary laws and formal legislation. Customary laws often prioritise male lineage and inheritance, which can exclude women from land ownership. Additionally, the enforcement of formal laws that support gender equality is inconsistent, leading to discriminatory practices in land allocation. These legal

barriers are further aggravated by procedural inconsistencies and the absence of clear regulations, leading to gender discrimination and inequitable land allocation. In KwaZulu-Natal, traditional leadership lacks explicit guidelines on communal land matters, and the absence of clear national laws, regulations, and policies creates opportunities for corruption, reinforcing gender disparities in land access.

The Ingonyama Trust Board (ITB) was reported to enforce policies that undermine women's land rights. Women are often compelled to sign leases through male proxies, effectively stripping them of direct land ownership. In many cases, the Ingonyama Trust Board or local traditional leaders insist that leases be registered under a male person's name based on the presumption that a man must head the household. This practice not only contravenes women's constitutional rights but also perpetuates gender inequality in land tenure (Mail & Guardian, 2018).

Traditional leaders play a pivotal role in land allocation within communal areas. However, the absence of standardised national guidelines or policies for communal land allocation has led to inconsistent practices.

In KwaZulu-Natal, particularly in Jozini, under the Myeni Ntsinde Traditional Council, women expressed concerns that senior traditional leaders do not actively oversee the councils they appoint or elect. They also noted that these leaders lack awareness of how women should be prioritised or treated in matters of communal land access. This governance gap creates opportunities for corruption, gender discrimination, and inequitable land distribution.

In some instances, traditional councils lack representation from all interest groups. Even when women are included, they may not effectively advocate for the broader women's community, further entrenching inequality. In Mtubatuba and Melmoth, women explained that it is rare to see female representation in traditional councils or for women to be elected or appointed as senior traditional leaders.

One participant remarked:

"Even though there are one or two Amakhosi in KwaZulu-Natal, it's just for numbers—to fulfil government requirements for representation. But I bet they don't take or make decisions. They are just there to listen to Amado da (men) because that's how Zulu culture is. Umfazi akakwazi ukuphatha nokulawula umuntu wesilisa – a woman cannot lead while men are present" (FGD participant, 23 October 2024, Melmoth).

The Department of Agriculture, Land Reform, and Rural Development (DALRRD) is responsible for spearheading the introduction of comprehensive national legislative reforms concerning communal land. However, many residents in communal land areas complain about a lack of awareness of existing frameworks and policies. They claim that government departments only become visible during election seasons.

One participant noted:

"*Remember, the Department of Agriculture has its annual deliverables and submits reports. They only come to us just after the voting season, bringing starter kits for women interested in agricultural projects. They give us wheelbarrows and seeds that we don't even know how to use. You plough, but you never get a harvest because you are not offered any training. It feels like they throw whatever they want at us without consulting us. Even now, there are communal land spaces left unused because no one assessed whether they should be for subsistence farming, commercial agriculture, or residential use*" (FGD participant, 22 October 2024, Jozini).

A key issue is the timely relevance of the information provided to women in communal areas. Many women in these areas are disadvantaged and illiterate due to limited access or lack of information. Women especially lack online facilities that they can use to enhance their knowledge of available programmes. Communication barriers, including language and accessibility, further hinder women's ability to benefit from these services.

Participants also raised concerns about the short duration of training programmes. They argued that a three-month training period is insufficient, particularly for women engaged in commercial farming. Additionally, favouritism and nepotism reportedly influence the allocation of resources and training opportunities.

A participant from Mtubatuba explained:

"*Most of these services are spread through word of mouth. It's usually the royal households and those connected to council members who hear about training programmes, startup kits, and job opportunities. We don't even have an internet café, and the network here is terrible. Smartphones don't work well in this area, and sometimes, you have to walk to the main road just to get a signal. Imagine being given seeds that require online research to learn how to plant and make a profit*" (FGD participant, 23 October 2024, Mtubatuba).

Traditional leaders oversee land allocation processes without clear regulations or guidelines, especially from a gender perspective. This inadequate policy environment has resulted in practices that disadvantage women, including inconsistent application procedures, arbitrary fees, and cultural norms that marginalise women and queer individuals.

It must be noted that the requirements for accessing communal land vary across district municipalities, and they are primarily influenced by the authority of the senior traditional leader.

In Jozini Municipality, the application process begins at the *induna*, who provides applicants with detailed requirements. Once these are met, the applicant receives a referral letter and a date to appear before the *umkhandlo* (traditional council). At this stage, individuals must present necessary documentation, including an identity document, proof of marriage (either a marriage certificate or a *lobola* [bride price] letter), and the tentative stand number allocated by the *induna*.

Applicants seeking residential land under traditional authorities in KwaZulu-Natal are required to pay a fee, which varies depending on the governing authority within various district municipalities. For instance, in Maphaya, a tribal area under Jozini Municipality the fee is R1,000, in the Ntside Traditional Authority the fee is R1,800. However, in Nongoma and Phongolo, which fall under uMkhanyakude District Municipality, the fee is significantly higher at R5,000. This variation occurs despite all these areas being within the same province, highlighting discrepancies in land allocation costs set by various traditional authorities. Business-related applications range from R3,500 to R7,500, depending on the nature of the business. For instance, fees differ for establishments such as crèches, taverns, and spaza shops. For land intended for resale, residents pay R12,000 or more. These variations highlight the decentralised and tradition-driven nature of communal land allocation processes within the province.

In addition to the initial fees, once the *umkhandlo* (traditional council) approves the application, applicants must pay a *khonza* fee. The *khonza* fee is believed to serve a symbolic purpose, facilitating the introduction of the new resident to the ancestral spirits of the land. This practice is deeply rooted in the cultural and traditional customs of Jozini, where ancestral reverence plays a significant role. The *khonza* fee may include an *ibhodlela* (bottle of whiskey), crates of beer, soft drinks, traditional beer, and a prepared meal for the *umkhandlo* (traditional) council and neighbouring community members.

The applicant must then inform the *induna* of a suitable date for hosting this *ukubekwa* (gathering). On this day, a small celebration takes place where the council and neighbouring residents formally welcome the new landholder.

Many women have expressed concerns over the financial burden of these requirements. After paying substantial sums for land allocation, they are also expected to fulfil these various cultural obligations, making land access increasingly difficult. Furthermore, the requirements often vary from one applicant to another, creating additional challenges, particularly for women who may lack the financial resources to meet these expectations.

Focus group participants in Jozini Municipality highlighted that while land allocation fees are formally communicated (R1,000 for residential and +/-R3,500 for business stands, depending on size), significant challenges arise due to the structure of the traditional

council. A key concern is the role of *amapoyisa enduna* (headwomen stewards), who act as intermediaries in the land allocation process. Participants explained that these stewards impose additional, unofficial fees for stand segmentation, with no receipts provided as proof of payment. In some cases, the same stand is allocated to multiple individuals, leading to disputes. However, reporting such issues to the *induna* is difficult, as these stewards often work in collaboration with traditional authorities.

Furthermore, members of civil society organisations interviewed for the study emphasised several challenges that women face when trying to access communal land, reporting that many women complained of feeling that their voices are not heard and that their concerns are not adequately taken into account during land allocation processes. A significant issue raised was the common practice of land repossession, which often occurs with little or no communication. Women expressed frustration about instances where two stands are assigned to one individual, leaving them feeling powerless to contest these decisions with traditional leaders, as they believe their claims are unlikely to succeed.

Additionally, the interviews revealed concerns about gentrification and the impact of prominent organisations taking over business and farming stands previously occupied by women. The expansion of these organisations frequently leads to the displacement of local women from their economic spaces, further marginalising them in terms of land access and economic opportunities. Women face additional barriers, as appearing before the *umkhandlo* (traditional council) without being formally summoned and without a male family member is nearly impossible. Participants further shared experiences of verbal abuse from various *induna* when attempting to voice their concerns. Traditional customs are frequently used to justify these discriminatory practices, reinforcing the belief that a woman cannot directly address the *induna* without male representation.

Moreover, participants reported that *amapoyisa enduna* (headwomen stewards) allocate stands unsuitable for residential or business purposes. In some cases, once individuals begin making progress on their land, the stewards attempt to repossess it or demand that the landholder shares ownership, often requiring a 50/50 split with the *induna*. These exploitative practices create further obstacles, particularly for women, who struggle to defend their rights in an environment where traditional leadership structures often lack transparency and accountability.

A participant in the group mentioned:

"*One of the major challenges we face here is the issue of land being sold to multiple people. In many cases, a single stand is allocated to more than five individuals. Although we receive receipts upon payment, we do not receive permission to occupy certificate to officially confirm ownership. This makes it easy for the induna to repossess land without warning or justification. Another pressing concern is the allocation of business land. The reality is that much of it is given to 'friends', often Somali nationals*

and other foreign traders. How this happens remains unclear, especially since they do not possess South African identity documents. Widows are particularly vulnerable. When a woman's husband passes away, she is often required to pay an additional fee of R8,000 or more, essentially repurchasing land that already belongs to her family. This exploitation makes land security uncertain for women. If you visit eMthunzini Village, you will be shocked by how the indunas treat us" (FGD participant, 22 October 2024, Emthunzini, Jozini).

On the other hand, in Mtubatuba, KwaShukushela, oPhondweni the fees are expensive (R20,000), and there are signs of discrimination against women, the queer community, and persons with disabilities by the traditional council members or leaders. These issues are elaborated on in the section on socio-cultural barriers.

In Mtubatuba villages, the land allocation process follows the same procedures as in Jozini; however, the fees are high, starting from R20,000. Additionally, for those seeking business stands, the *induna* may require further payments, including livestock (such as a cow). Despite these high costs, the stands allocated are often very small, raising concerns about fairness and affordability. Participants expressed frustration over the *khonza* fees, describing them as excessive and exploitative. Many feel that instead of benefiting the community, these fees primarily serve to enrich traditional leaders while residents continue to struggle with poverty. They also noted that obtaining a stand is relatively easy as long as one has the financial means. There are few formal requirements beyond payment.

However, a major concern is the lack of official documentation. Applicants do not receive a permission to occupy certificate or even a receipt to confirm their land rights. Furthermore, access to the *inkosi* (senior traditional leader) is restricted, making it nearly impossible to report misconduct by the *induna*. As a result, landholders have little recourse when faced with unfair treatment or exploitation. After paying R20,000 or more, applicants are still required to provide additional items, including *ibhodlela* (bottle of whiskey), a case of beer, and a case of cold drinks. The *ukubekwa* ceremony, where new landholders are formally introduced to the community, follows the same process as in Jozini, adding yet another financial burden to an already costly process.

A participant in Melmoth narrated:

"*Women aren't allowed to have a conversation with Izinduna, only passing greetings when you meet them, but you cannot even go to their homes on your account; a male figure represents you. There is also no communication from the traditional council or our leaders, if it happened, maybe once a year, we are suffering here from unemployment, poverty, and lack of access to basic services, which we hear some women benefit from the royal house such as seeds for our subsistence farming, job opportunities, you need to know someone from the royal blood or related to the headmen*" (FGD participant, 24 October 2024, Melmoth).

Department of Cooperative Governance and Traditional Affairs (CoGTA) is responsible for overseeing traditional leadership structures and ensuring that customary practices align with constitutional principles. However, several challenges were identified in the province. Under previous administrations, significant emphasis was placed on empowering traditional leaders through legislation such as the Traditional Leadership and Governance Framework Act No. 41 of 2003. While this Act was intended to address historical inequalities, it has inadvertently reinforced male-dominated structures, as traditional councils remain predominantly composed of men.

In King Cetshwayo, uMkhanyakude, and Zululand district municipalities, the participants expressed concerns over the lack of effective oversight or monitoring mechanisms in the communal land allocation process, leaving women marginalised and reinforcing gender-based discrimination in rural customary governance.

In some parts of the province, women expressed that they are not fully recognised as leaders in any capacity, particularly in communal areas. Patriarchal norms continue to dominate, reinforcing the perception that women are subordinate to men and are not suited for traditional leadership roles. Additionally, societal expectations often confine women to the roles of child-bearers and caregivers rather than recognising them as landowners, leaders, or entrepreneurs. This entrenched gender division of roles perpetuates disparities in land allocation and decision-making processes, further limiting women's access to economic opportunities and leadership positions (Ncapayi & Wotshela, 2019).

The Act permits senior traditional leaders to appoint 60% of council members, while the remaining 40% are elected by the community. Moreover, the Act also includes a provision for a 30% quota in the councils to ensure gender representation, ensuring that at least 30% of council members are women. This gender quota is outlined in Section 6 of the Act, which aims to promote inclusive governance within traditional councils. However, women themselves acknowledged a reluctance to vote for fellow women, often preferring male candidates for reasons rooted in deep-seated societal norms.

Additionally, in many areas, traditional councils are largely composed of individuals from the royal lineage, further limiting opportunities for broader community participation. Women from various parts of the province expressed concerns that they are often excluded from council proceedings. One participant from Melmoth shared her experience:

"*In this town, the structure of the council is dominated by those of royal blood. We rarely have meetings to appoint council members, and we are not informed about when or how the election process takes place. Our Inkosi [senior traditional leader] or his council never calls meetings. The only time I saw him was when he came with investors to take our land and give it up for a mining establishment, which is now a burden to our community. It didn't even yield the intended results, and that was it*" (FGD participant, 24 October 2024, Melmoth).

Another significant barrier is the lack of representation of women in traditional courts, which oversee land disputes. Women are significantly underrepresented in these institutions, reducing their ability to influence land-related practices and decisions. The female senior traditional leaders expressed that leading in a male-dominated structure is not easy.

A senior traditional leader shared:

"*It is unfortunate that even in this meeting, there are only four of us. In the Zulu nation, a woman does not receive equal recognition as men in leadership. We are leaders, but the challenges we face are immense. Some women don't even recognise us as their leaders. As female amakhosi, we are often expected to marry within a certain clan, as the inheritance is tied to that clan. I cannot transfer my inheritance rights to another clan if I marry, which is why I remain unmarried*" (FGD participant, 12 November 2024, uLundi).

This lack of inclusivity marginalises women's voices, as traditional leaders primarily appoint individuals who may not prioritise gender equality. As a result, women's concerns regarding land access are often ignored or inadequately addressed (Ncapayi & Wotshela, 2019). Additionally, Yeni (2019) points out that traditional leaders often prioritise external interests in land negotiations, such as corporate mining projects, over community well-being. They frequently make agreements affecting livelihoods on communal land with little community input. This situation worsens due to intimidation tactics that silence dissent, particularly from women and grassroots activists, leading to threats and undermining of their rights. This intimidation appeared to have been the case in this instance.

Furthermore, land grabbing and gentrification by senior traditional leaders and their councils without proper consultation create severe institutional barriers to women's access to communal land, particularly for subsistence farmers who rely on it to support their families. Many women depend on communal land for small-scale farming, using their harvests to feed their households, selling surplus produce to generate income, and paying for essential needs such as their children's school fees. When land is reallocated to investors without community consent, these women face forced displacement and economic devastation, losing both their primary food source and financial stability. The promised economic benefits of these investments rarely materialise for local communities, as investors often bring in their workers rather than hiring residents, further entrenching poverty and joblessness. With women already excluded from formal land governance structures, they have little power to challenge these displacements, leaving them vulnerable to deeper socio-economic marginalisation.

Socio-economic factors

Women face significant economic barriers that restrict their access to communal land, further deepening their socio-economic marginalisation. High unemployment rates limit their financial independence, making it difficult to invest in land or agricultural activities. In rural communities, particularly in Mtubatuba, severe poverty, high crime rates, and rising population pressures exacerbate the situation. Many young women are reliant on child support grants for survival. Women in rural communities face significant economic barriers that limit their access to communal land, thereby deepening their socio-economic marginalisation. Studies from various institutions such as the Institute for Poverty, Land and Agrarian Studies (PLAAS) and the South African Research Chairs Initiative (SARChI) have shown that high unemployment rates, particularly in rural areas, restrict women's financial independence and make it difficult for them to invest in land or engage in agricultural activities. In areas like Mtubatuba, where poverty rates are particularly high, women are disproportionately affected by socio-economic challenges, which include rising crime rates and population pressures (Stats SA, 2021). Many young women in these communities highly rely on child support grants for survival, which further limits their ability to break free from cycles of poverty and access resources like land for development (Van den Heever, 2012). These factors contribute to the continuing marginalisation of women in the pursuit of economic empowerment.

One participant in Mtubatuba said:

"*I am in my early 30s with four children, and I survive solely on social grants because there are no job opportunities. This area is dominated by the timber industry, which primarily employs men, and our royal house only shares employment opportunities with those connected to them. We lack essential facilities like shops, clinics, and schools—where can one even find work? The land here is expensive, and the stands are extremely small. If you drive around, you'll see how overcrowded our homes are, with multiple generations—parents, siblings, and children—all living together. I am unmarried, unemployed, and have no means to afford a stand, pay the khonza fee, and still build a home afterwards*" (FGD participant, 23 October 2024, Mtubatuba).

In Jozini, residents under the Ingonyama Trust Board (ITB) faced significant challenges, including being compelled to sign leases that were often co-signed by male relatives, which led to unexpected financial hardships. These practices not only reflect governance issues but also raise concerns about corruption, as residents reported inconsistent fee structures and unclear processes for payment. Participants revealed that broader reports from the province suggest that women frequently encounter socio-economic barriers to accessing communal land, although specific evidence of corruption and fee disparities in Mtubatuba, Jozini, and Melmoth remains limited. Additionally, many women are single heads of households, bearing the sole responsibility for childcare and household expenses, which further strains their financial

resources and reduces their ability to engage in land-based economic activities. The rising divorce rates and death rates also place women in precarious economic situations, as they often lose access to land previously held through marriage, leaving them without a stable source of income or residence.

In Mtubatuba, land access fees are generally expensive (R20,000), making it unaffordable for most women. While marital status can be bypassed if one has the financial means, the high cost remains a significant barrier.

In Melmoth, the situation is different; land for business, particularly farming, is more accessible and less financially burdensome. However, the additional *khonza* fee poses a challenge, with residential stands costing around R500 and business land starting at R800. Safety is another major concern, as the area lacks proper residential demarcation, with farms fenced off and frequent monkey invasions destroying crops.

Disparities in application procedures and associated costs further hinder women's access to communal land. Application processes are often complex and require resources that many women do not have, particularly women in rural areas. Moreover, the high costs associated with securing land use rights disproportionately affect women, who generally have less financial independence than men.

Unfair land pricing also limits women's access to land. Due to economic disparities and gendered wage gaps, women struggle to compete with men in purchasing or leasing land (Yengo, 2024). This economic barrier reinforces the cycle of land dispossession and exclusion, particularly for widows and single mothers who lack male advocates in the community.

Additionally, gentrification has worsened the situation for women in communal land. As wealthier individuals and businesses acquire land, prices increase, pushing marginalised women further away from access and ownership opportunities. Many are forced into informal settlements or remain dependent on male relatives for land access, limiting their economic independence. This shift also reduces communal farming spaces, leaving women with fewer resources to sustain their livelihoods.

A participant narrated:

"*Our biggest challenges here are unemployment, safety, and a lack of job opportunities. Most residents rely on farming, but even that is difficult because livestock—cows, donkeys, and goats—often destroy our crops before harvest, making it hard to sustain ourselves*" (FGD participant, 24 October 2024, Melmoth).

"*Another major issue is the greed of our local chiefs. When big investors or companies show interest in our area, instead of bringing development, they create more problems. A mining company once arrived, and our chief promised jobs and better*

living conditions. However, instead of progressing, we lost our livestock due to open traps left behind by the mine. Some of our farmland was taken, and the mine never materialised. Now, the land is damaged—drilled and worked on but left abandoned. Even our crops no longer grow as they used to, and we suspect harmful chemicals were used. This area is no longer a healthy place to live" (FGD participant, 24 October 2024, Melmoth).

Poverty remains a persistent challenge, particularly in rural areas, where limited access to education and skills development opportunities prevents women from securing well-paying jobs or entrepreneurial ventures (Hall & Aliber, 2010). Furthermore, women experience restricted access to crucial resources such as credit, farming inputs, and market linkages, hindering their participation in profitable agricultural and business enterprises (Doss et al., 2015). These structural inequalities, rooted in patriarchal systems, continue to disadvantage women, reinforcing their economic dependency and limiting their ability to secure land rights and economic stability.

Moreover, another major challenge is the lack of formal land ownership, which significantly impacts women's economic empowerment. Financial institutions typically require collateral, such as title deeds or formal lease agreements, which many women in communal areas do not have. Without legally recognised ownership, they struggle to secure loans for agricultural development, entrepreneurship, or land-related enterprises. A participant shared that while she has access to land for farming and business purposes, she faces significant challenges in securing funding from financial institutions and government departments. Since a permission to occupy certificate or a land receipt in communal areas does not equate to a lease or title deed, she is unable to use it as collateral for financial assistance. Consequently, many women remain economically disadvantaged.

Additionally, she observed that men in her community seem to navigate these barriers more effectively, as most successful businesses and high-yielding agricultural farms are male dominated. This male domination suggests that structural and institutional biases may further disadvantage women, reinforcing gender disparities in land ownership and economic participation. Addressing these challenges requires policy interventions that promote women's land rights, ensure equitable access to financial resources, and dismantle patriarchal barriers that hinder women's economic empowerment.

Socio-cultural barriers

KwaZulu-Natal province is rich in cultural heritage and is primarily influenced by the Zulu people, the largest ethnic group in the region. Zulu culture places great emphasis on respect, community, and ancestral reverence, with traditional beliefs often blending with Christianity. Key norms include the practice of *ubuntu* (humanity towards others), respect for elders, and communal living. Traditional ceremonies such as the *umemulo* (coming-of-age ceremony for young women) and *umkhosi womhlanga* (Reed Dance)

celebrate identity and heritage. The Zulu royal family remains an influential institution, upholding customs like *isivivane* (throwing stones on a pile for good luck) and *ukusaisa* (loaning cattle to the needy).

Despite modernisation, many in KwaZulu-Natal still value their Indigenous languages, beadwork, music, and dance, which are deeply tied to their identity and history. However, research findings reveal differing perspectives on the relevance and acceptance of cultural traditions and norms, particularly those that do not promote gender equality, inclusivity, and social equity. Practices that marginalise women, persons with disabilities, and LGBTQIA+ persons face growing criticism as they conflict with contemporary human rights principles. While many uphold these traditions as essential to cultural identity and heritage, others advocate for their adaptation or reformation to align with values of dignity, respect, and equal rights for all (Scanlan, 2024).

Broadly, cultural practices in KwaZulu-Natal province communal communities dictate that women must adhere to specific dress codes, values, norms, and behaviours to access communal land. Additionally, some areas require women to obtain land through male relatives, and marital status can influence a woman's ability to access land independently.

According to participants in Jozini, the rules and procedures for acquiring land were merely entrenched in the cultural and social norms of the area:

"*In this community, access to land is traditionally determined by marital status and gender roles. A woman cannot independently request land; she must be accompanied by her husband, who communicates with the induna on her behalf. In cases of divorce or separation, a woman can only advocate for land ownership if she has a male son to represent her interests. If I don't have a male child, I feel pressured to keep reproducing so that, in the event of my husband's passing, I am not evicted, and my home is not taken away from me. This is why many of us have multiple children—we are trying to comply with the rules of this place. Similarly, men seeking land must be accompanied by a woman, whether a wife, girlfriend, or children, as this is seen as a sign of responsibility*" (FGD participant, 22 October 2024, Jozini).

Customary practices further intensify these challenges, particularly inheritance laws that discriminate against women. Under traditional practices, land ownership and inheritance are typically patrilineal, meaning women often cannot inherit land from their fathers or husbands.

The senior traditional leaders were enthusiastic and eager to participate in the study, as the subject significantly impacts their role. However, the leaders felt that in recent years, they were unfairly blamed for obstructing effective and efficient access to communal land across various districts in KwaZulu-Natal. Yet, based on findings, senior

traditional leaders, headmen, and other traditional structures have considerable power in land allocation processes.

Moreover, the senior traditional leaders emphasised the importance of preserving the remaining aspects of their culture. They expressed concerns that the Constitution and various gender-related institutions perceive them as perpetrators of discrimination against women, accusing them of using tradition and culture as a shield to justify exclusionary practices. Yet, this was a reality in many areas, even though it was not common everywhere.

The senior traditional leaders further emphasised the value of their traditional beliefs and norms, as these principles shape their upbringing and help preserve ubuntu. However, they acknowledged that certain laws, such as those guaranteeing LGBTQIA+ rights, are not explicitly communicated or taught. Their understanding comes mainly from occasional news reports, and they expressed uncertainty about how to engage on issues they perceived as relatively new to their communities.

Senior traditional leaders also highlighted the need for training from the Department of Cooperative Governance and Traditional Affairs (CoGTA), the South African Human Rights Commission (SAHURC), CGE, and other institutions to better understand their roles in modern South Africa. Many still base their leadership on cultural norms and traditional practices. They stressed the importance of preserving culture and tradition, including dress codes for women, and argued that discrimination emerged during colonisation when men were separated from their families for labour while women bore the burdens of survival. Despite these challenges, the senior traditional leaders asserted their efforts to nurture and honour women, treating the women with as much respect and dignity as possible.

Socio-cultural barriers were a significant challenge for women in the province. One participant in Jozini explained the following:

"*These laws once served us, but now they suppress us, silencing our voices. My husband divorced me verbally and moved another woman into our home, leveraging his connections with traditional leaders, SAPS [South African Police Service], and local clinics. I cannot approach the council alone to request land, as I face daily abuse. He has even attempted to have me killed, sending hitmen after me, but by God's and the ancestors' grace, I have survived. I have nowhere else to go. These laws must be reconsidered, and in cases like mine, traditional leaders should have the flexibility to adapt the rules. I have endured relentless abuse, and my children are also victims, witnessing the violence and gender-based abuse inflicted by their father*" (FGD participant, 22 October 2024, Jozini).

"*Neither my family nor my in-laws support me, as they uphold polygamy and adhere strictly to Zulu Kingdom rules, leaving me without a voice or recourse. The law has also*

failed me—when I requested a divorce, they required my ex-husband's presence to finalise it, but he refused to cooperate. All I want now is land to start over with my children. Perhaps then, I can escape the torture and corruption that persist around me and reclaim my life" (FGD participant, 22 October 2024, Jozini).

In many communities, societal attitudes dictate that women should not control significant assets, reinforcing male dominance in land ownership. These deeply ingrained gender norms hinder women's economic empowerment and limit their participation in land governance structures.

The study participants, particularly in Jozini, Melmoth, and Mtubatuba, explained that deeply entrenched patrilineal inheritance systems served as a key barrier to women's land access. Customs informed by this system prioritise male lineage in land ownership and succession, restricting women's ability to inherit or independently acquire land. This exclusion is further reinforced by patriarchal structures, such as traditional leadership, that regard women as dependents rather than economic stakeholders, limiting their financial autonomy and decision-making power.

The findings revealed that land is passed through the male lineage. Under these customary practices, sons inherit land from their fathers, while daughters are expected to marry into another family and access land through their husbands. This system reinforces the notion that women do not have independent land rights but are instead dependent on male relatives for land security. In patrilineal communities, widows often lose their land rights after the death of their husbands, as male relatives of the deceased claim ownership. This loss of land rights contributes to high levels of landlessness and economic vulnerability among widowed women.

Another participant shared her challenges regarding her father's land, highlighting the gender-based barriers that hinder her ownership rights. She explained that her brother actively discouraged her from getting married, warning that upon marriage, she would lose her claim to the land due to the change in her surname. Furthermore, she noted that the local council does not recognise her as the rightful landowner solely based on her gender. Transferring the permission to occupy certificate into her name has proven particularly difficult, as the process requires the presence of a male figure, creating an additional obstacle for her.

One of the challenges women face, as alluded to by the participant quoted above, is the practice where women must have male relatives, such as brothers, to accompany them in land dealings or lease agreements. In such cases, when disputes over land ownership arise, women often lose their claim to the property, leaving them economically and legally exposed.

The study also raised important concerns regarding the challenges LGBTQIA+ persons and women with disabilities face.

A participant in Melmoth narrated:

"*In this community, members of the queer community are not openly recognised unless they conform to traditional gender roles. Their presence is only acknowledged if they present themselves within the conventional male-female framework. Similarly, women living with disabilities are subject to the same customary rules as everyone else, with no exceptions or special considerations. If tradition dictates that a woman must be accompanied by her husband to access land, she is expected to comply, regardless of her circumstances. These customs are deeply rooted in long-standing cultural norms, and there is no alternative to following them*" (FGD participant, 24 October 2024, Melmoth).

The participant's account highlights the deeply entrenched traditional norms that dictate land access and recognition within the community, particularly impacting marginalised groups such as LGBTQIA+ persons and persons with disabilities. The fact that LGBTQIA+ persons are only acknowledged if they conform to traditional gender roles illustrates the rigid binary gender expectations that exclude those who do not fit into conventional frameworks. This lack of recognition not only erases LGBTQIA+ persons' identities but also limits their access to resources, rights, and participation in communal affairs.

Similarly, individuals with disabilities face additional layers of discrimination, as they are subjected to the same customary rules as able-bodied persons, without accommodations for their specific needs. For example, if land access requires the presence of a husband, persons with disabilities who may not be married or who need assistance are left without viable options. This situation highlights significant gender equality concerns, as these customs reinforce structural inequalities, deny autonomy to marginalised individuals, and fail to consider diverse realities.

The rigid application of traditional practices exacerbates social exclusion and perpetuates a system where only those who conform to prescribed roles can fully exercise their rights, leaving vulnerable groups without equitable access to land and economic opportunities.

7.3 Mpumalanga province

7.3.1 Contextual background

Mpumalanga province is located in the eastern part of South Africa. The province is divided into three district municipalities, namely Ehlanzeni District Municipality, Gert Sibande District Municipality, and Nkangala District Municipality. These districts are further subdivided into seventeen local municipalities.

The province is known for its agricultural activities, including the production of maize, wheat, sugarcane, citrus fruits, and subtropical fruits. About 40% of South Africa's sustainable forests are located in Mpumalanga, making forestry a vital part of the local economy and a major provider of job opportunities. The province is at the core of energy production with several power stations, but it is still reliant on the mining and burning of fossil fuels, especially coal (Mpumalanga Economic Growth Agency, 2025).

Depending on the district, the most dominant languages are IsiSwati, IsiNdebele, and Xitsonga. For this study, the dominant languages were Xitsonga in Lilydale and Sepulana in Bushbuckridge local municipality, Siswati in Ermelo, Lukwatini, and IsiNdebele and IsiZulu in Emalahleni.

According to the Mpumalanga House of Traditional Leaders, there are 61 senior traditional leaders in the province. There are two Ndebele kings in the Nkangala district. The Traditional Leadership and Governance Framework Act No. 41 of 2003 mandates that at least 30% of the members of a traditional council must be women. The Traditional Leadership and Governance Framework Amendment Act No. 23 of 2009 did not introduce new quotas for women but reinforced the existing provisions.

Land allocation in Mpumalanga is overseen by traditional authorities. Although official policies prohibit gender-based discrimination, women still encounter challenges when trying to access communal land. Despite the existence of legal frameworks that promote gender equality, deeply rooted cultural norms continue to restrict women's involvement in leadership and land governance in many areas of the province. Traditional leadership plays a vital role in governance, but achieving gender equality within this system remains an ongoing challenge.

In the province, there are more headmen than headwomen. While women are open to nominating more headwomen, they are apprehensive about participating in elections. Their concerns arise from ongoing conflicts among the headmen, which create fears of becoming involved in these disputes. The processes for land allocation differ by location, with each traditional council managing these matters in its own way. Although practices that restrict women's access to communal land are officially banned, the practices persist.

7.3.2 Barriers to women's access to communal land

Legislative, institutional, and procedural barriers

Traditional councils oversee land governance and administration in the province. When an individual seeks land, they first visit the tribal office to inform the *induna* about their intention, whether to acquire land for residential, agricultural, or entrepreneurial purposes. Accompanied by the *induna*, the individual identifies the desired site, and then the *induna* measures the plot for them. The common standard measurements

are 30 m x 20 m for residential stands, 60 m x 40 m for double stands, and 30 m x 30 m for business stands.

The findings showed that, at face value, women faced no systemic barriers to land allocation, as there were no formal rules prohibiting allocation.

The senior traditional leader stated:

"*The rules are the same for men and women when applying for land, we don't judge whether you are a man or woman and your marital status, you can apply for land from the age of 18 and have an identity document, however, you cannot get land if you are a foreigner. Married women can come and apply for a stand on their own without needing the husband's permission, they can have the stand in their name without the husband's name*" (Interview, senior traditional leader, chief magistrate, 2 October 2024, Lukwatini).

In practice, however, the women interviewed in the study expressed significant challenges in acquiring land, highlighting the intricate web of cultural biases rooted in deeply entrenched patriarchal norms and beliefs that consistently prioritise men in property ownership and land rights. Many participants described feeling disheartened and disillusioned by their experiences, as they often faced bureaucratic obstacles and were subject to dismissive attitudes when seeking to navigate the processes involved in land acquisition. This dismissive attitude led to instances where they felt frustrated and discouraged, often receiving vague responses or being passed between various individuals without resolution. The systemic barriers not only hindered their ability to secure land, but also impacted their overall confidence and empowerment in a society that undervalues women's contributions and rights regarding property and land ownership.

A participant said:

"*It's hard to get land in our area because you are told different things; they tell you this and that, and you end up not knowing what to do*" (FGD participant, 2 October 2024, Lukwatini).

In this system, there are no title deeds; instead, there is a permission to occupy certificate. Community members are required to pay a *khonza* fee to the traditional council. The *khonza* fee is documented as starting from R300, and the funds were said to be audited by the provincial CoGTA. In some cases, community members were also expected to bring a gift for the traditional leaders. Although the land is considered to belong to the family, ownership is retained by the senior traditional leader.

Furthermore, despite the appearance of well-defined systems and procedures, reality revealed significant flaws and biases within the land allocation framework, particularly

disadvantaging women. Focus group discussions conducted with women highlighted their struggles and the lengths to which they felt compelled to go to secure land. Some participants reported resorting to informal or even illegal means to occupy and utilise land, a stark indication of the discriminatory practices embedded within the existing processes.

One participant shared her story of unlawfully cultivating a small patch of land for her small-scale farming enterprise. Her inability to formally obtain land was a direct consequence of systemic gender biases, which led to women being frequently overlooked in allocation processes.

Despite claims from traditional leaders (including representatives of the Provincial House of Traditional Leaders) that the systems were fair and impartial, they could not provide any verifiable data or statistics to support these claims. The collection, documentation, and dissemination of data were significant challenges faced by traditional councils and CoGTA. Data collection shortcomings and the lack of comprehensive monitoring and evaluation frameworks were a problem in the province. The inadequacy of these mechanisms not only hindered transparency but also perpetuated existing inequalities, leaving women marginalised in their pursuit of land and resources essential for their livelihoods.

Participants also noted that permission to occupy certificates and other types of certifications were not consistently issued. While permission to occupy certificates offer minimal legal security and may not guarantee long-term rights, operating without any form of official documentation places the woman in a precarious position. This lack of documentation exposes women to numerous risks, such as potential eviction by authorities, increased vulnerability to disputes with neighbours, and limited access to resources or services that require proof of residence. Without the essential papers, their ability to advocate for themselves or protect their interests is severely compromised, leaving their situation even more unstable.

This situation was predominant in Lillydale, a rural community situated under the traditional leadership of Njongilanga in the Bushbuckridge Municipality. Community members in this area face significant challenges regarding land tenure, as instead of receiving formal permission to occupy certificates, individuals are only issued a receipt that indicates payment. This situation created a precarious environment for land access, as the headmen have the authority to sell the same plot of land to multiple buyers, leading to potential disputes and insecurity among residents.

A focus group participant said:

"*Having a receipt doesn't guarantee that the stand is yours; the headman can give the same stand to several people, and all of us will come with our receipts that indicate that we paid; the headmen are the cause of this problem, we don't even have stand numbers here*" (FGD participant, 4 October 2024, Lillydale).

Furthermore, the findings reveal that women advocating for land access have encountered intimidation and harassment from traditional leaders, particularly headmen. Participants in the Mzinti village explained that women seeking land access face significant challenges, including intimidation, harassment, and victimisation. This situation is especially troubling for single, widowed, and unmarried women who seek land. Participants indicated that women frequently experienced severe forms of intimidation when attempting to claim or assert their land rights within the community. Some of the women had even resorted to owning firearms as a form of protection against intimidation and victimisation.

For example, one of the participants explained as follows:

"*We are intimidated daily by the headmen; I have received threatening messages on my life and my family as I am a widow raising young girls. I have a gun to protect myself, I have no other choice. There are young boys who wanted to steal my land, which I found lying idle and I cleaned it myself, they came in and threatened to take it. I bought a gun and chased them away*" (FGD participant, 3 October 2024, Mzinti).

The participant further shared the ongoing threats:

"*Numerous times the conniving headman has sent me texts to meet him in dodgy areas in plotting to assassinate me and strip me away from my hectares of land as he believes it is very rich, I have dodged being killed in broad daylight and I live in fear, hence I have to have a gun and always protect myself and this land as it is my bread and butter*" (FGD participant, 3 October 2024, Mzinti).

The participant's statement highlights both the physical dangers she faces and the psychological impact that harassment and fear have on her daily life. Despite experiencing violence and threats, she remains committed to her land, which serves as her only source of livelihood. This commitment illustrates her deep attachment to the land and its essential role in her economic survival.

Another participant, who had been almost silent during the discussion, became visibly emotional as she shared her experience. This participant described a traumatic incident that nearly cost her life:

"*As a single parent, widowed, I have had encounters that almost cost me my life and those working close to me. Few months ago, as I was on my farm land, we were attacked, ambushed by gentlemen who came to send a message for me to give up the land as my husband had died, the men in question had guns, tied us upside down on the trees within the farm, took away my car and other belongings*" (FGD participant, 3 October 2023, Mzinti).

The powerful testimonies from women in Mzinti village vividly illustrate the profound violence and intimidation they face while striving to assert their rightful claims to land. Their narratives not only expose the immediate physical dangers posed by headmen and other community members but also highlight the emotional anguish that this relentless fear inflicts upon them. For these resilient participants, land transcends mere ownership; it embodies their livelihood, offers a sense of security, and, in many instances, constitutes their only means of survival. The relentless harassment and threats they endure in their quest for land access reflect entrenched patriarchal practices that continue to marginalise and silence women's voices in rural communities.

Furthermore, the participants recounted their experiences of sexual harassment. One participant shared:

"*I am an older woman who wants to access land for farming, these headman take advantage to a point where there are sexual connotations, this young headman said to me I should come to his house if I want land, he said "Ngimncane kodwa embhedeni ngimkhulu", which implies that he may be young, but capable of sleeping with the older woman*" (FGD participant, 3 October 2024, Mzinti).

Women farmers face significant challenges when trying to enter the formal market. A common obstacle is the lack of access to established market channels; some of the women operate without reliable market connections. The findings revealed that when these women attempt to break into the market, they encounter stringent requirements from the Department of Agriculture, Land Reform and Rural Development (DALRRD). The participants asserted that the department places a strong emphasis on quality assurance, necessitating that farmers provide extensive documentation and verification of their produce's quality and safety. These rigorous standards were daunting, as they often involved multiple inspections and certifications that many women farmers may not have the resources or knowledge to navigate. Consequently, breaking into the market becomes a complex process, limiting their opportunities for growth and profitability.

A participant shared this experience:

"*I am a pig farmer, I got one hectare from my family as they had a big stand, I need more land for my pigs but I am not able to access it and I struggle to get funding and I don't have a market, I end up selling at the auction and the auction is not good because you end up operating at a loss*" (FGD participant, 2 October 2024, Lukwatini).

The participants expressed a need for support and capacity building to better comply with industry standards and penetrate the markets. However, this need for information and training was not met.

Consistent with civil society organisations' assertions on the exclusion of women in the traditional council leadership and women's lack of representation in land governance, Mpumalanga has 61 senior traditional leaders; however, there were only 58 at the time of interviews due to three vacant positions. At the time of data collection, 52 men and six women were in these senior traditional leadership roles. This data highlights a significant gender gap in senior traditional leadership in Mpumalanga, with women making up only 10.34% of the positions, compared to men at 89.66%. This imbalance indicates a male-dominated leadership structure. Additionally, women's representation in traditional councils varied significantly across various communities, but men predominantly held the majority of these positions. The situation of men dominating leadership structures reinforces existing gender imbalances in leadership. Societal norms deeply entrench the belief that leadership roles are inherently suited for men, leading to the ongoing underrepresentation of women in influential positions within traditional governance. This dynamic not only limits women's participation but also perpetuates a cycle in which male leadership is viewed as the norm, undermining efforts toward achieving gender equality in community decision-making processes.

Socio-cultural barriers

Patriarchal systems have historically shaped the social landscape in various South African provinces, including Mpumalanga. In this province, deeply rooted cultural norms play a crucial role in determining how resources are allocated, often favouring male authority and impacting women's access to opportunities and support. These traditional practices continue to influence lives and livelihoods, reinforcing existing inequalities within the community.

Based on the data collected, the rules and traditions of the Embhuleni Royal House dictate that women must wear long dresses or skirts and a headwrap when entering the Royal House of the Tribal Authority premises. In fact, these rules applied across many of the rural communities visited in Mpumalanga for this study.

The findings revealed that LGBTQIA+ persons are allowed to apply for land, yet this permission comes with stringent expectations regarding attire. Applicants are mandated to conform to specific heteronormative and cisgender clothing standards that serve as external markers of masculinity or femininity. These requirements are deeply woven into the cultural fabric of the community, becoming an intrinsic part of the established rules and procedures. Consequently, the inherent freedom to express one's gender identity is significantly constrained by these prescriptive norms, stifling personal authenticity and self-expression.

The rules acted as significant barriers for individuals who challenged traditional gender norms, creating a sense of discomfort for those who felt constrained by the expectation to wear prescribed clothing. The rigid, gendered guidelines governing attire and behaviour within these communities added to the feeling of exclusion, making it difficult for them to express their true selves.

For single women, the processes of acquiring land differ significantly across various regions, influenced heavily by local cultural norms. In many communities, there seems to be a progressive stance, allowing single women to apply for land access in their names. However, numerous challenges persist, as stated, largely rooted in institutional and procedural barriers. As indicated, often, societal norms prioritise men in the quest for land rights, leaving women to navigate a landscape fraught with intimidation and victimisation. Additionally, women encounter various administrative hurdles, compounded by a lack of knowledge and capacity, particularly in the agricultural domain. Furthermore, it seemed that initial applications for land allocation by single women were met with more acceptance than their attempts to inherit land. For example, one participant, whose father had passed away, attempted to transfer her late father's land into her name. This land was farming land that the family actively cultivated. The father would routinely pay a *khonza* fee to the traditional authority, a customary practice that acknowledged their use of the land. However, when the woman approached the traditional authority to request the transfer, her request was denied. This incident highlights the complexities and challenges that women face in navigating land ownership and inheritance rights within traditional systems.

The participant shared her experiences:

"*I went to the chief to change the PTO to my name, the traditional leader said, where are the boys? Girls are not allowed to inherit land. I was also told to bring my brothers or other senior male members to change it to their name, and not mine because I am a woman*" (FGD participant, 3 October 2024, Mzinti).

In Lillydale, married women cannot independently apply for a land stand as their husbands' names must appear on the receipt to indicate ownership. A married woman must be accompanied by her husband to make an application. However, only he can have his name on the document. It was indicated during the focus group discussions that the community in Lillydale is rooted in cultural traditions and does not accept the idea of married women having land registered in their names. In this community, it is a customary belief that the head of the household, typically the man, should take the lead and have family properties registered in his name. The cultural norm, however, has significant long-term consequences for women, as they may not be protected against the risk of losing access to the land they share with their spouses.

This practice appeared to be widely accepted and normalised among the women in the study, highlighting the intersection of societal norms and personal experience. The participants demonstrated a remarkable acceptance, reflecting a deeper reality that these patriarchal norms are not merely visible, but are profoundly entrenched within the fabric of their lives. The women appeared to have been socialised and indoctrinated to embrace these conventions as inherent truths.

A participant articulated:

"*I am content with it, we are married; we are one; the home belongs to the husband*" (FGD participant, 4 October 2024, Lillydale).

Age emerged as another barrier to accessing land and opportunities, particularly for older women. While they were not explicitly prohibited from obtaining land, many felt that government programmes, especially those related to farming and entrepreneurial opportunities, predominantly favoured younger women, leaving them feeling overlooked. The women felt they also deserved the opportunities as they regarded themselves as the backbone of their families, shouldering the crucial responsibility of providing for their loved ones, often in households where men were present.

A participant shared her experiences, highlighting the incongruity between her contributions and the recognition she felt she deserved:

"*As older women in rural areas, we want to be empowered. We are the same as women in parliament, and we also deserve opportunities. Opportunities come to young women to get involved in agricultural activities; however, they don't go to the fields, and we end up doing the ploughing. We are capable of working as older women in the community; we just need opportunities from the government as well to be empowered*" (FGD participant, 4 October 2024).

Socio-economic barriers

Despite Mpumalanga being a central hub for economic activities, women in the province continue to encounter significant financial challenges that hinder their ability to support themselves and their families. This situation contributes to a cycle of disempowerment that affects their overall well-being. Access to land is vital for fostering economic independence among these women, as it would enable them to engage in sustainable agricultural practices and generate income.

In the Lukwatini community, women involved in farming reported facing considerable obstacles imposed by traditional leadership structures. Although the women were granted land through these traditional authorities, they felt marginalised, especially when compared to their male counterparts. They asserted that application processes for land access tend to favour men, who find it easier to secure land rights without facing the same bureaucratic hurdles.

In Lillydale specifically, focus group discussions highlighted significant concerns among participants regarding land access for business opportunities. Many pointed out that the majority of landowners and entrepreneurs in the area are men, raising questions about the fairness of this distribution. Participants noted that these men often lack transparency regarding how they obtained their land, with some suggesting that the process may be marred by corruption.

This issue is particularly exacerbated by the high unemployment rates among women prevalent in the region. According to the Quarterly Labour Force Survey for the fourth quarter of 2024, women's unemployment rate in the province was 34.2%, while men's unemployment rate was 30.5% (Stats SA, 2024). Unemployment often leaves women with limited financial resources. As a result, men, who typically have more access to capital and financial support, are more likely to access land for business ventures. This economic disparity not only reinforces existing inequalities but also raises concerns about the sustainable development of the community, as the concentration of land in the hands of a few can stifle opportunities for women and marginalised groups who face additional barriers to entry into the business landscape.

Additionally, women are required to establish cooperatives to farm effectively. However, this requirement places an extra burden on them, as men commonly bypass such processes when seeking land for personal or commercial ventures. For instance, in cases where land is allocated for the construction of a tavern, men are frequently granted land with minimal scrutiny or requirements for formal organisation. This disparity not only highlights the systemic bias against women but also underscores the urgent need for reforms that ensure equitable access to land and resources for all members of the community.

In Lukwatini, women engage in farming activities such as cotton, maize, peanuts, and sugar beans. However, bureaucratic processes make it difficult for them to acquire land and trade in their businesses. Some acquired land through communal property associations, but these communal property associations in South Africa face numerous challenges related to land governance. One major issue is the lack of institutional capacity within communities, which can lead to political decay and threaten the sustainability of governance structures (Pinfold & Mokhele, 2024). Additionally, communal property associations often struggle to succeed due to differing opinions and perspectives on how they should be managed.

The women expressed a strong belief that they could have achieved significant advancements in their business ventures if they had received adequate support from their communities and government. They highlighted specific obstacles, such as difficulties in acquiring land due to stringent regulations and discriminatory practices, as well as challenges in securing State support due to bureaucratic red tape. Despite their eagerness and determination to expand their enterprises and contribute to the local economy, the participants felt stifled by these systemic barriers. This repression not only limited their individual growth but also hindered the overall economic potential of their communities.

An example involves the women farmers from Lukwatini, who identified land and expressed their desire to farm. The women were already engaged in agricultural activities when the Department of Agriculture, Land Reform and Rural Development (DALRRD) promised them funding to start a moringa project. Although they were

informed that money had been allocated for this project, the money never reached them.

A participant shared the experience:

"*There was vacant land, and we were promised by the Department of Agriculture that we would farm moringa when the funds were available, the funds came but we don't know what happened to the project going forward because everything became quiet after that*" (FGD participant, 2 October 2024, Lukwatini).

Furthermore, the women face significant challenges in securing funding from sponsors for their projects, primarily due to their lack of ownership over the land they are using. When they approach banks for loans or seek financial support from private sponsors, they often encounter obstacles because they hold only permission to occupy certificates. These documents do not confer true ownership; rather, they signify temporary rights to use the land, which is under the control of the local chieftaincy. This lack of land ownership creates complications in the funding applications, as financial institutions and sponsors typically prefer to invest in projects where the beneficiaries have secure and verifiable property rights. Consequently, the women frequently find themselves losing out on essential financial support that could help advance their initiatives and improve their communities.

According to Corruption Watch (2013), the administration of communal land in Mpumalanga is plagued by corruption, including the abuse of power by government officials, bribery, and the mismanagement of funds (Corruption Watch, 2013). In Lillydale, the official application fee for acquiring land is documented as R550. However, community headmen are known to demand unofficial fees exceeding R1,000, presenting an additional financial burden to prospective landowners. Participants highlighted that the headmen imposed arbitrary fees, leading to inconsistencies where the amounts demanded differ significantly from one individual to another. The headmen also expect compensation for petrol used driving to identify land and gifts as payment.

Payments for acquiring land for entrepreneurial purposes ranged between R1,500 and R3,000, depending on the type of business to be operated. Traditional healers in the area faced significant financial challenges, as they were required to pay a one-time fee of R1,200 for land acquisition and an annual levy of R700. This situation placed considerable strain on them, especially since healers are vital to the community's wellness.

In Mzinti, headmen reportedly charge R500 merely to show available plots of land. The fees escalate based on land size, with prices officially set at R25,000 for 10 hectares of farming land and R30,000 for business plots. Moreover, residential fees have dramatically risen, increasing from R100 in the late 1990s to an alarming R2,000 in 2024.

This inflation often appeared to be driven by the opportunistic nature of headmen taking advantage of the community's needs.

Additionally, residents are required to pay *kuthela* ('an annual levy' in Xitsonga). This levy is paid to the traditional council each year and acknowledges the residents' occupation of land that traditionally belongs to the local authority and their ancestors. *Kuthela* is viewed as a form of allegiance to the local senior traditional leader, and payments can be made in various forms, including money, livestock, or other goods. While this practice is defended as a traditional custom, it has also faced criticism as an informal land tax, particularly when applied inconsistently or when it becomes exploitative.

The levy in Lukwatini is known as *imali yamahlahla* (money given freely or a token of gratitude; often seen as an obligatory fee to secure communal land and gain the right to settle in a specific communal area). This fee amounts to R20 per month for residential properties, while businesses are charged R100. Annually, agricultural land leases can cost residents up to R10,000, depending on the number of hectares owned. Similarly, in Mzinti, fees are also proportionate to land size, further complicating the issue for landholders.

The foremost challenge with these levies is their unregulated nature. Representatives from the Provincial House of Traditional Leaders disclosed that attempts to regulate access fees and levies may be inappropriate, given that each traditional council operates based on its own cultural rules and customs. However, this lack of oversight exacerbates inequities, resulting in significant disparities in land allocation and access within the community. Ultimately, the inconsistent practices employed by headmen create an environment marked by unfairness and hinder the equitable distribution of land resources.

Women are disproportionately affected by corruption, especially in contexts where land rights and access are crucial for their well-being. Securing land access is vital for women as it directly addresses issues of poverty, enables them to escape abusive relationships, and empowers them to support their families. According to the General Household Survey (GHS, 2023), 43.6% of Mpumalanga's homes are headed by women. These households often struggle with financial insecurity, making excessive fees, bribes, and high levies a significant burden. Such financial constraints siphon money away from women who desperately need these resources to provide for their families, thereby perpetuating cycles of poverty and dependence. Ensuring equitable land access for women is not just a matter of justice; it is essential for fostering economic stability and resilience in communities.

The study revealed that levies and access fees were collected and paid to CoGTA. However, it was unclear how these funds were being allocated, particularly given the stark contrast between their intended purpose and the reality faced by the rural

communities. Many of these areas remained significantly underdeveloped, lacking essential facilities such as healthcare centres, clean water supply, and adequate educational institutions. Moreover, the absence of basic services like reliable transportation and electricity further exacerbated the challenges these residents faced. The study raised crucial questions about the transparency and effectiveness of the financial management processes, highlighting the pressing need for clarity on how the funds were intended to benefit these communities and improve their living conditions.

7.4 Northern Cape province

7.4.1 Contextual background

The Northern Cape is South Africa's largest and most sparsely populated province, covering approximately 372,889 km^2 (Stats SA, 2024). The province is characterised by an arid and semi-arid climate, which significantly influences its economic activities, with agriculture, mining, and tourism being the dominant sectors (Stats SA, 2024). Despite its vast landmass, the province has a low population density, with many rural communities heavily reliant on communal land for their socio-economic well-being. The two key communities examined in this study are the Batswana people in Kuruman and the Khoi communities in Platfontein. These groups have a history of residing on communal land, with traditional leadership structures managing land allocation and governance.

Kuruman, often called the Oasis of the Kalahari, is an important agricultural and historical centre for the Batswana-speaking communities (Stats SA, 2024). Many rural residents depend on livestock farming, small-scale agriculture, and mining, making access to communal land vital for survival and economic progress. Platfontein, on the other hand, is home to the Khoi and San communities, who were displaced during colonial and apartheid rule and later resettled in the area (Soskolne, 2007). These communities continue to operate under customary land tenure systems, with local *dikgosi* (traditional leaders) overseeing land distribution and governance.

7.4.2 Barriers to women's access to communal land

Legislative, institutional, and procedural barriers

Although South Africa has a progressive legal framework guaranteeing equal land rights for women, customary practices often dictate the realities of land access in rural areas. In Kuruman, women reported that while they were able to access land for residential purposes, they were not permitted to lease communal land for commercial use. This restriction is not explicitly outlined in formal law but is enforced by traditional councils, which prioritise land allocation for household settlement rather than economic development.

The CGE researchers found that women in Kuruman and Platfontein are not aware of policies or laws that could assist their situation or advocate for them. Another key legislative barrier relates to land allocation fees, which vary based on place of birth and residency status. Women born in the village can access residential land for R250 in Kuruman and R150 in Platfontein. However, individuals not born in the village must pay higher fees ranging from R600, and foreigners are completely prohibited from accessing communal land. The absence of formal land titles in communal areas further complicates women's ability to secure long-term land rights. Communal land remains under the authority of traditional councils, meaning that women cannot claim individual land ownership or use their land as collateral for loans or business investments. Without formal documentation, women are often unable to challenge land allocation decisions or secure legal protections against potential dispossession.

These legal barriers, as found in the Northern Cape, have also been highlighted by several scholars in the field of communal land, including Claassens (2011), Ntsebeza (2005), and Cousins (2007), who argue that legislative frameworks often reinforce traditional authority at the expense of individual and community land rights. Additionally, Djurfeldt (2020) points out that in most of sub-Saharan Africa, land access is based on user rights rather than individualised ownership. Typically, communal land is held in trust either by the State or community leaders on behalf of the community. The right to such land is therefore influenced by belonging to a descent group through birth, marriage, or other social arrangements and individual claims are deeply embedded in kin-based social relations.

However, this system presents significant challenges, particularly for women and marginalised groups. Access to land is often mediated through male lineage, making it difficult for women (especially single, divorced, or widowed women) to claim land rights independently. Furthermore, the authority of traditional leaders in administering land is criticised as being opaque, exclusionary, and at times corrupt (Claassens, 2011; Ntsebeza, 2005; Cousins, 2007). Consequently, these structural and gendered barriers limit secure land access and undermine national gender equality goals (Djurfeldt, 2020).

Focus group discussions revealed that traditional governance structures and weak institutional support are significant challenges for women in the rural communities. Many women expressed frustration with the role of traditional leaders (particularly the senior traditional leader in Kuruman), who they believe lack the political will to develop their villages. Participants noted that the senior traditional leader is not an active leader and has failed to call *lekgotla* (community meetings) to update the community on important developments. Additionally, participants highlighted his inability to resolve disputes related to land, often delegating his responsibilities to his headmen.

Furthermore, the women pointed out that the senior traditional leader is violating their cultural belief that *kgosi ke kgosi ka morafe* (a leader is because of the people he leads – loose translation). The findings from the study indicated that the community

feels disconnected from the senior traditional leader and is increasingly disgruntled with his leadership.

The women in Kuruman expressed that the senior traditional leader is primarily focused on his business interests and acts as a political gatekeeper. They feel that his position as a traditional leader gives him greater authority over them. This perception is reinforced when they raise their complaints with the CoGTA and find that their challenges go unaddressed. As a result, they believe that he undermines their concerns.

A participant explained:

"*[The senior traditional leader] is not one of us, he does not know the community. Yes! He is of royal blood, but he grew up in Mafikeng. He does not understand the community's grievances. He is in fact aloof and only cares about tenders that will benefit him*" (FGD participant, 22 October 2024, Kuruman).

A participant emphasised that the senior traditional leader's business and political interests create a conflict of interest with his traditional role as a leader.

Elaborating on this, another participant explained:

"*While [the senior traditional leader] was born into a royal family, he did not grow up in Kuruman but in Mafikeng. Hence, the community thinks he is an outsider who doesn't know the local tradition, which includes to knowing community member's surnames and attending funerals*" (FGD participants, 22 October 2024, Kuruman).

The participants in Kuruman further pointed out that the senior traditional leader also does not call community meetings and does not mediate conflicts affecting the community members. Due to this, the community recommended that CoGTA should play a mediating role in ensuring such issues are addressed. The community further expressed discontent with the traditional structure, particularly with the ascension to becoming a senior traditional leader, which is structured through a royal bloodline.

Traditional councils wield significant power over land allocation, with decisions regarding access to land often made without clear regulations or guidelines. As a result, there are inconsistencies in the land allocation process. Some applicants wait over five years to receive land, while others secure it based on personal relationships or informal negotiations. The women in Platfontein have noted that this issue disproportionately affects them and young people. Participants in Platfontein have also expressed dissatisfaction with how the community property associations manage the land allocation process.

Inadequate women's representation in traditional land governance structures further exacerbates these challenges. Although women have the legal right to participate in land administration, very few hold leadership roles within traditional councils. The

representation of women in the council is 42% (Interview, CoGTA official, 25 October 2024, Kimberly). As a result, decision-making remains male-dominated, with women's economic interests often overlooked in village development strategies.

Regarding some of the institutional processes to acquire communal land, the findings showed that when applying for land individually, both men and women would write a formal letter expressing their interest in an identified piece of land, submit it to the headmen or headwomen together with the fee of R250 in Kuruman and R150 in Platfontein.

In Kuruman, community members independently select vacant land. Then, the traditional council holds a community meeting to determine whether the applicant qualifies for that land. This process reflects a custom where the community either accepts or rejects an individual into their way of life. Participants from the LGBTQIA+ community emphasised that this process applies to everyone without reservations; however, this will be discussed further under the socio-cultural barriers section below.

In Platfontein, the process is different in that individuals must write to their community property association, and the chief must be informed and must then discuss land allocation with the association. If the request is approved, the individual is assigned a plot number. However, the community property association sometimes allocates land in duplicate and issues unclear plot sizes, leading to conflicts within the community. One of the participants in the focus group discussion in Platfontein highlighted this issue.

A notable contrast emerged in the province as women in Kuruman navigated the complexities of land access for commercial purposes, facing significant obstacles in their pursuit. However, when acquiring land for residential use, these women encountered far fewer barriers, allowing them to easily secure their homes. Conversely, in Platfontein, women reported facing pronounced discrimination, particularly in their quest for residential land, which impeded their ability to establish stable living environments. Nonetheless, regarding economic opportunities, the community property association appeared more inclined to facilitate their access to land, highlighting a nuanced landscape of support and challenges that women experience in these distinct communities.

The findings revealed that the structures responsible for land allocation in Kuruman are the traditional council, while in Platfontein, the community property association is in charge. Additionally, in Platfontein, there is no standard waiting period for land allocation due to a lack of information from the community property association. Claims of incompetence have been levelled at its members. In contrast, individuals in Kuruman must wait for the next *lekgotla* (community meeting), which occurs monthly, to discuss their land allocation.

The observations made by community members in Platfontein concerning the community property associations reveal a disconnect between the community and the community property associations. This disconnection is supported by various scholars in the literature. For instance, Mpekule (2022) found that "*there is growing evidence to show that community property associations are neither transparent nor accountable to their members or to the State that facilitated their formation*". Additionally, some community property associations are involved in allegations of corruption and fraud, exhibit a lack of accountability, and misrepresent the community's needs regarding communal land allocation (Mpekule, 2022).

Regarding the challenges surrounding community property associations, officials from the Northern Cape Department of CoGTA recommended that community property associations should ideally be under the jurisdiction of a traditional council as this would promote cohesion and collaboration, given that both entities hold authority over communal land. This jurisdictional allocation may be a viable way to enhance administrative processes; however, challenges observed among community property associations are also common within traditional councils in various provinces.

Furthermore, CoGTA and study participants in the Northern Cape suggested that traditional councils should receive training and be equipped with the necessary tools to navigate their roles, power dynamics, development, and gender issues. This training would enhance their understanding and awareness of gender matters, which is often lacking.

Socio-cultural barriers

Cultural beliefs and social expectations shape women's experiences with land access and usage in the Northern Cape. While women are permitted to acquire residential land, communal land remains primarily viewed as a social asset rather than an economic resource. This perspective limits women's ability to use the land for commercial farming, rental housing, or business ventures.

Gender roles also play a role in shaping women's economic independence. The women reported that they were expected to prioritise family and subsistence activities over commercial enterprise. The expectation was that men should handle large-scale economic activities, reinforcing a division of labour that marginalises women in rural economies.

In both Kuruman and Platfontein, land allocation favours village-born residents, while migrants and foreigners face higher costs or complete exclusion. The exclusionary costs have created barriers for younger generations whose parents have left the village for education or employment but struggle to return and access land. Similar to the sentiments shared about the senior traditional leader being alien to the community, the argument is also advanced to those who left the community, migrating for socio-economic opportunities.

In Kuruman, although the rules and procedures governing land acquisition are ostensibly inclusive, extending to all genders and LGBTQIA+ persons, a stark contradiction emerges when it comes to women. Despite the formal policies that permit individuals to apply for land, women are systematically denied the opportunity to acquire land for entrepreneurial endeavours. This pervasive restriction not only underscores a deeper societal belief that women are primarily suited for homemaking but also perpetuates harmful gender stereotypes that categorise women as unsuitable for business pursuits. Thus, while the regulations may theoretically provide equal access to land, the reality is that women face significant obstacles in realising their entrepreneurial aspirations.

However, the women who participated in the focus group discussions expressed a strong sense of equality with men despite facing challenges of limited access to land for business opportunities. One participant passionately articulated this perspective, stating that women play a significant advisory role to men. She emphasised their equality, saying: *Ke traina monna* (I discipline a man to respect me – *loose translation)*. This powerful assertion highlights the women's ability to command respect and assert their influence within the community (FGD participant, 22 October 2024, Kuruman).

In Platfontein, the women voiced concerns regarding experiences of discrimination when it came to accessing residential land. While their opportunities for economic use of the land remained relatively unaffected, they felt sidelined in matters of residential access. However, there is a glimmer of hope, as the community property associations are expected to allocate land to them, suggesting a potential shift toward greater equity and empowerment within the communities.

Claims were asserted that LGBTQIA+ persons do not face discrimination regarding land allocation issues and that they are embraced within the community. However, the findings gathered from participants in both areas reveal a concerning trend that there is a complete absence of records indicating that LGBTQIA+ persons have any land. It is often the case that when there are no dedicated efforts to incorporate LGBTQIA+ persons in any programmes and initiatives, their perspectives often go unheard. As a result, despite not experiencing direct discrimination, they frequently find themselves rendered invisible within the discourse.

Socio-economic barriers

Economic barriers profoundly restrict women's opportunities to harness the benefits of land access in the Northern Cape. In Kuruman, women voiced their struggles, highlighting that while they can secure land for residential purposes, they encounter significant obstacles when attempting to obtain land for commercial farming, tourism, or other entrepreneurial ventures. These hurdles are compounded by age discrimination and a senior traditional leader who offers neither support nor access to vital commercial land.

Participants in Kuruman further articulated their frustrations, noting that although they have the financial resources necessary for commercial farming, their ambitions are stifled by the senior traditional leader's lack of engagement and responsiveness. In a bid to address these issues, the women have taken the initiative to register their grievances with CoGTA through their ward councillors. Unfortunately, these efforts were met with further disappointment, leaving them feeling disenfranchised and disillusioned about their prospects for business engagement.

A participant said the following:

"*[The senior traditional leader] is not for the people; he is in fact for himself and his self-enrichment. The traditional leaders, including the senior traditional leader and ward councillors give us a run-around when we want land for business. All tenders are hoarded by the senior traditional leader who does not share the profits or benefits with the community*" (FGD participant, 22 October 2024. Kuruman).

The cost of land allocation presents another challenge. While the R250 and R150 fees for residential land may seem low, the higher fees imposed on non-locals, which range from R600 and above, discourage women who migrate from other villages or provinces from pursuing land access. Another limitation is the lack of financial support for women in communal land areas. Most financial institutions require formal land titles as collateral for loans. However, since communal land in the Northern Cape is not privately owned, women cannot use land as an asset to access credit or investment opportunities. This policy limits their ability to start or expand agricultural businesses, leading to a cycle of economic dependency and stagnation. The challenges around economic barriers, as per the findings in Northern Cape in communal land for women, speak to the effects of economic inequality and economic performance and how property rights intersect with law, the State, politics, and the economy (Carruthers & Ariovich, 2004). The challenges also speak to a political economy dominated by men and patriarchy, as pointed out by one of the subject experts interviewed for this study.

The subject expert pointed out the following regarding some of the economic barriers women face when it comes to communal land:

"*There is a lot of land politics, a very entrenched kind of patriarchy, and by patriarchy, I mean power that was in men, particularly men who are born into a particular kind of status. But despite changes in political economy men now can get that power not just from their status, but they're born into, but also from, you know, education, owning businesses, and all the rest. Women are oppressed, and women are rebelling against it, and the government is trying to do something about it, however, women still face these challenges*" (Interview, subject expert, 15 November 2024, MS Teams).

8. OVERVIEW OF FINDINGS

Access to and ownership of communal land in South Africa remains a deeply contested issue, with women in Free State, KwaZulu-Natal, Mpumalanga, and Northern Cape facing multiple intersecting barriers that limit their ability to secure land rights. While the broader structural and systemic challenges are common across provinces, the intensity and nature of these barriers vary depending on social, cultural, political, and economic dynamics. Traditional governance systems, inheritance practices, financial constraints, and weak institutional support have contributed to a reality where women, particularly widows, unmarried women, and LGBTQIA+ persons, remain largely excluded from land ownership and decision-making processes.

One of the most significant challenges lies in the inheritance systems that dictate how communal land is passed down. In KwaZulu-Natal and Mpumalanga, the dominance of patrilineal inheritance structures means that land rights are almost exclusively transferred through the male lineage, with sons inheriting land from their fathers while daughters are expected to access land through marriage. The male lineage leaves women dependent on male relatives, making it nearly impossible for women to establish independent land claims.

Widows in these communities face particular hardship, as traditional norms dictate that a deceased husband's land should revert to his male relatives rather than remain with his wife. In many cases, widows are forced to leave their homes or seek the approval of male family members to continue using the land, reinforcing their economic vulnerability. Although some areas in the Free State and Northern Cape have matrilineal elements in land inheritance, this does not necessarily translate into full autonomy for women. Even where land is passed through the female line, male relatives such as maternal uncles or cousins often assume control over decision-making, ensuring that women's authority over land remains largely symbolic.

Another major obstacle is the financial cost associated with accessing communal land. Communities in all four provinces included in the study were expected to pay access fees, including monthly and/or annual levies. Traditional leaders require individuals to pay these fees in exchange for permission to occupy land. These fees are not standardised and vary widely, often acting as an informal tax that disproportionately affects women, who typically have lower access to financial resources. For widows, single women, and women with disabilities, paying these fees can be particularly burdensome, leaving them without secure tenure. Since these fees are negotiated within male-dominated traditional councils, women often face additional challenges in asserting their claims or challenging arbitrary fee structures. Those who cannot pay risk losing access to land altogether, reinforcing their marginalisation.

The role of traditional leaders in communal land governance remains a critical factor in shaping access and ownership. As custodians of communal land, traditional authorities

exercise broad discretionary powers over land allocation, and this authority is often exercised in ways that favour men. Women seeking land for farming or business are frequently overlooked, with preference given to male applicants or male-headed households. LGBTQIA+ persons face even greater exclusion, as many traditional councils operate under rigid heteronormative frameworks that do not recognise non-traditional family structures as legitimate. Without formal recognition in land governance systems, queer women in particular struggle to secure communal land rights and are often forced to leave their home communities in search of economic opportunities elsewhere.

Beyond customary land governance, institutional weaknesses within State departments further contribute to the challenges women face. CoGTA, which is responsible for overseeing traditional leadership structures, has yet to implement strong oversight mechanisms to ensure gender equity in land allocation. Despite constitutional guarantees of equality, traditional councils continue to function with unchecked authority, and women's land rights remain largely subject to the goodwill of male decision-makers. The Department of Agriculture, Rural Development, and Land Reform (DARRDL) has similarly failed to address the specific needs of women who require communal land for farming or business. Many women who attempt to secure land for agricultural purposes face bureaucratic delays, unclear application procedures, and an absence of financial support programmes. In the Free State and Northern Cape, where land for commercial farming is particularly valuable, women struggle to compete in male-dominated agricultural industries due to limited access to credit, infrastructure, and technical training.

Despite these challenges, civil society organisations have played a crucial role in raising awareness and advocating for women's land rights. Legal aid groups and advocacy organisations have worked to educate women about their rights, provide legal support in cases of land dispossession, and push for policy reforms to improve access to communal land. However, their efforts are often met with resistance from traditional authorities and government institutions that are slow to implement reforms. In rural areas where land rights abuses are most prevalent, many women remain unaware of their legal entitlements and lack the resources to challenge unfair practices. Greater collaboration between civil society, government agencies, and traditional leadership structures is needed to bridge the gap between legal protections and the reality of land access for women.

While the challenges faced by women across Free State, KwaZulu-Natal, Mpumalanga, and Northern Cape share common themes, the specific barriers differ based on provincial dynamics. In KwaZulu-Natal and Mpumalanga, strong cultural and institutional resistance, rooted in traditional leadership structures and customary laws, continues to prevent women from independently accessing communal land. In the Free State and Northern Cape, economic barriers and weaknesses in policy implementation are the primary obstacles, with women struggling to access the financial and technical

support necessary to use land productively. Across all provinces, a significant gap exists between constitutional provisions for gender equality and the lived experiences of women in rural areas. Without targeted interventions ranging from legal reforms and economic empowerment initiatives to increased oversight of traditional councils, women will continue to be systematically excluded from communal land access and ownership.

9. CONCLUSIONS

Based on the findings of the study, the CGE draws the following conclusions:

- In provinces led by traditional leadership, such as Free State, KwaZulu-Natal, Mpumalanga, and Northern Cape, women confront significant and multifaceted barriers to accessing and owning communal land. These challenges are deeply rooted in a complex interplay of historical, economic, legal, cultural, political, and institutional factors, with the lingering effects of colonisation and the apartheid regime still affecting gender dynamics in the present day. Colonial and apartheid systems entrenched a discriminatory framework against women, reinforcing patriarchal values and adhering to patrilineal inheritance practices that prioritise male lineage.

- The right of women to access and utilise communal land is intricately connected to a multitude of vital issues surrounding gender equality and women's empowerment. These include the overwhelming burden of unpaid reproductive labour that disproportionately falls on women, their rightful claims to equality within the spheres of marriage and family relationships, and their entitlements regarding sexual and reproductive health.

- The pervasive influence of patriarchy plays a significant role in the systemic oppression of women, complicating their struggle for access to communal land, personal autonomy, and justice. This deeply rooted societal structure not only undermines women's rights but also makes it more challenging for them to assert their agency and reclaim their rightful place within their communities.

- The barriers encountered by women in communal land access are exacerbated by high registration fees, complicated bureaucratic processes, and deeply rooted cultural norms that traditionally assign land ownership to men. These factors work together to systematically exclude women from land rights, diminishing their voices in an area that is vital for economic stability and empowerment.

- The inadequate policy and regulatory environment, combined with insufficient systems for monitoring, evaluation, and oversight in communal land allocations, significantly worsens conditions for women, creating pathways for exploitation, corruption, and systemic exclusion, further entrenching gender disparities in access to land and resources.

- The inadequate representation of women within land governance structures significantly hampers their participation, resulting in a marginalisation that silences their voices and diminishes their influence. This lack of equitable representation not only inhibits women's contributions to decision-making processes but also perpetuates systemic inequalities, hindering progress toward gender equity in land rights and ownership.

- Despite South Africa's robust constitutional commitment to achieving gender equality, which is highlighted by provisions that protect women's rights to property, traditional governance structures often perpetuate a model that prioritises men's land ownership. Customary laws, which regulate many aspects of land distribution and ownership among communities, frequently take precedence over the legal frameworks designed to foster inclusivity and protect the rights of women.

- The processes involved in communal land allocation often lack deliberate strategies to include LGBTQIA+ persons and women with disabilities. This oversight not only ignores the complex intersectionality of gender and identity but also worsens the marginalisation of these already vulnerable minority groups. As a result, their needs and voices are left unheard in land allocations and important decision-making processes.

10. RECOMMENDATIONS

The CGE makes the following recommendations:

- Key departments, including the DALRRD and CoGTA, should take proactive steps to enact comprehensive legislative frameworks that effectively tackle the enduring gender disparities in access to communal land. This legislative framework development must involve targeted policy interventions designed to bolster the implementation of gender provisions. The legislative and policy mechanisms must establish robust measures that not only safeguard women's land rights but also incorporate clear accountability mechanisms to ensure enforcement.

- Customary laws should be harmonised with constitutional provisions that promote gender equality and safeguard against discrimination based on sex, gender, and sexual orientation, particularly in relation to land access. This alignment is crucial for creating a legal framework that not only supports equal opportunities for all individuals but also addresses historical injustices and empowers marginalised communities in their quest for land rights.

- Women's active participation should be enhanced in traditional leadership frameworks, land governance structures, and decision-making processes, which are essential for cultivating a more equitable and just society. CoGTA must pursue initiatives aimed at amplifying women's representation within land governance and traditional leadership structures. A pivotal strategy could involve increasing the existing 30% quota for women's representation in traditional councils to 50%. This adjustment is vital, considering that women comprise the majority of the population in the country and in rural communities. This increased quota will ensure that women's voices and perspectives are significantly represented, leading to more inclusive and informed decision-making processes that benefit all members of society.

- CoGTA should prioritise the development of comprehensive strategies aimed at enhancing the representation of women in senior traditional leadership roles and as headwomen. These positions hold significant power and influence within the decision-making processes related to land allocations, as well as the associated procedures and practices. By empowering more women in these crucial roles, CoGTA can foster a more equitable and inclusive environment that acknowledges and integrates the perspectives of women in the stewardship of land and resources. These efforts must also include women with disabilities and LGBTQIA+ persons.

- Data collection, monitoring, evaluation, oversight, and reporting are essential functions that have largely been overlooked by DALRRD and CoGTA. To effectively address this oversight, it is crucial that the departments create comprehensive technical indicators that incorporate gender-disaggregated data. The technical indicators will enable a more nuanced understanding of progress toward equity for women, particularly persons with disabilities and LGBTQIA+ persons, in relation to their land rights. Establishing such measures will not only provide clarity on existing

disparities but also foster accountability and drive meaningful change in land rights policies.

- Fostering collaboration among government entities, civil society organisations, and non-governmental organisations (NGOs) is essential for tackling the complex social, cultural, institutional, and economic barriers that hinder women's land rights. Efforts must focus on enhancing public awareness and legal literacy, empowering women to understand their land rights fully and navigate the legal pathways available for securing their tenure.

- Enhancing women's access to justice is pivotal, particularly through the provision of legal aid specifically designed for those seeking to assert their land rights. This support should include not only traditional legal resources but also accessible and affordable alternative dispute resolution mechanisms.

- Formalising access to commercial land for women is a crucial step in empowering them to actively engage in business and agricultural activities. This initiative has the potential to significantly expand their economic opportunities and improve their livelihoods. Additionally, enhancing governance transparency is important by ensuring that traditional councils follow clearly documented land allocation policies. This practice will help mitigate inconsistencies and favouritism. By adopting this structured approach, DALRRD and CoGTA will not only promote fairness, but also reinforce trust within communities, paving the way for more equitable distribution of land and resources.

- To address the significant gap in access to traditional banking systems, the introduction of strong financial inclusion programmes is crucial. One effective approach could be the implementation of microfinance schemes specifically tailored for women residing in communal land areas. These initiatives would empower women by providing them with the necessary resources and support, enabling them to build businesses, improve their livelihoods, and foster economic stability within their communities. By prioritising the unique needs of these women, such programmes can bridge the financial divide and promote sustainable development in rural communities.

- Training and capacity building for government officials and traditional leaders at various levels of their hierarchies are vital components for ensuring the successful implementation of land reform, particularly in the context of communal land. By enhancing their understanding of laws and policies, these stakeholders can better navigate the complexities of land management, fostering more effective governance and community engagement. Comprehensive training programmes not only empower leaders but also strengthen the collaborative ties between authorities and the communities they serve, paving the way for more equitable and sustainable land use practices.

- Finally, ministers linked to DALRRD and CoGTA must demonstrate genuine political

will to effectively implement strategies aimed at closing the gap and addressing the inequalities in women's land rights. Without this commitment, efforts will remain merely theoretical, lacking the necessary action to bring about meaningful change.

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