

**LAND USE SECURITY WITHIN THE CURRENT LAND PROPERTY RIGHTS IN
RURAL SOUTH AFRICA: HOW WOMEN'S LAND BASED FOOD SECURITY
EFFORTS ARE AFFECTED**

Vongai Gillian MURUGANI

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School of Agricultural, Earth and Environmental Sciences,
College of Agriculture, Engineering and Science
University of KwaZulu-Natal,
Pietermaritzburg**

ABSTRACT

Rural women's land rights in South Africa remain secondary in spite of laws founded on a constitution that promotes gender equality. Patriarchal customary laws prevail and women's land rights and use security are inextricably linked to their relationships with their male relatives. Rural women are key producers of agricultural products due to historical and continued male outward migration, which has led to a feminisation of agriculture. Although women farm the land, their land use security is poor and can be further threatened by divorce or widowhood. Given that most vulnerable women are based in rural communal South Africa, how can their land rights be secured under the customary law framework? While the statutory law framework seems to provide a solution, it is less applicable in rural areas where customary law and traditional practices prevail. If statutory law cannot be superimposed on the existing customary law framework, how can women's land use be further secured to support their household food security efforts? What kind of framework can be introduced to strengthen women's land use security? A study was conducted in rural Limpopo Province to explore this complex and yet important question. A mixed methods approach comprising interview style questionnaires with a mixture of closed and open-ended questions, coupled with focus group discussions and observation was employed. Qualitative data from the focus group discussions and open-ended questions was analysed for common themes using content analysis. Quantitative data was analysed using SPSS to establish descriptive data, frequencies and establish the relationships between variables. Results of the analyses were used for building blocks to develop a land rights framework that is more gender sensitive and secures the rights of the actual land users. Women's land rights were largely confirmed to be secondary and land use security was linked to the continued relationship to male relatives through marriage and natural blood lines. From these findings, a gender sensitive framework that enables and improves land-based food security efforts has been proposed.

Key words

Gender, food security, property rights, customary land laws, statutory land laws, land use security, Limpopo Province

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DECLARATION 1- PLAGARISM

I, Vongai G. Murugani, declare that

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.....
Vongai G. Murugani
March 2013

.....
Dr Joyce Chitja
Supervisor
March 2013

.....
Dr Unathi Kolanisi
Co-Supervisor
March 2013

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DECLARATION 2- DRAFT PUBLICATION MANUSCRIPTS

DETAILS OF CONTRIBUTION TO DRAFT PUBLICATION MANUSCRIPTS that form part and / or include research presented in this dissertation.

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Author contributions:

VGM conceived paper with JTC. VGM collected and analysed data, and wrote the paper. JTC, UK & HS contributed valuable comments to the manuscript.

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Author contributions:

VGM conceived paper with JTC. VGM collected and analysed data, and wrote the paper. JTC & UK contributed valuable comments to the manuscript.

.....
Vongai G. Murugani
March 2013

.....
Dr Joyce Chitja
Supervisor
March 2013

.....
Dr Unathi Kolanisi
Co-Supervisor
March 2013

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LIST OF ABBREVIATIONS

CLRA	Communal Land Rights Act
DLA	Department of Land Affairs
DOA	Department of Agriculture
FAO	Food and Agriculture Organisation
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
LRAD	Land Distribution for Agricultural Development
MDGs	Millennium Development Goals
PTO	Permission to occupy
RDP	Reconstruction Development Programme
RSA	Republic of South Africa
RWA	Rural Women's Assembly
SLAG	Settlement Land Acquisition Grant
SPSS	Statistical Package for Social Sciences
TCB	Traditional Courts Bill
TLGF	Traditional Leadership Governance and Framework Act
UN	United Nations
UNECA	United Nations Economic Commission for Africa

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CHAPTER 1: THE PROBLEM AND ITS SETTING

1.1. Introduction to the Research Problem

Land use security is said to lead to improved agricultural production in most developing countries (United Nations Economic Commission for Africa (UNECA), 2004; Agarwal, 2002). Farmers with secure access to land have better water rights, generate higher yields, and invest more in their land than do those without (Namara *et al.*, 2010). Land use security depends on the basis of the land property rights system in use and on who property rights are allocated to (Agarwal 2002; Yngstrom, 2002). The systems utilised by most developing countries allocate property rights for a household to that household's head, but this is not always beneficial to the other household members, particularly the women (Agarwal, 2002; Yngstrom, 2002). More recently, land reform and titling projects have attempted to strengthen rural women's land rights; these projects have met with varying degrees of success (ActionAid, 2005).

Women have been found to contribute to up to 80% towards food production, yet they own only 2% of the land in Africa, and that figure is even smaller elsewhere (UNECA, 2004). Women are the face of rural areas and agriculture in the developing world (Agarwal, 2002). They are less educated and less mobile than their male counterparts, which limits their off-farm employment opportunities (Agarwal, 2002). The largely disproportionate relationship between rural women's role in agriculture and their access to and control of productive resources at household and community levels in the developing world is well documented ((Food and Agriculture Organisation) FAO, 2011; UNECA, 2004; Agarwal, 2002). Rural areas are largely governed by communal law, and presided over by traditional authorities (Yngstrom, 2002). Most customary law is patrilineal, giving men primary rights to productive resources, and relegating women to secondary beneficiaries (Joireman, 2008; Lastarria-Cornhiel, 2006; Yngstrom, 2002). Agriculture is a key livelihood activity for rural women, providing them with both employment and food (Kent & MacRae, 2010; Agarwal, 2002). Increasing male outward migration has placed significant food provision responsibilities on rural women, in a largely unsupportive environment (Agarwal, 2002). The pervasiveness of patriarchal customary law in rural areas presents challenges to the livelihood activities of *de jure* and *de facto* female-headed households.

Recognising minorities' and women's limited human and property rights in the world, the United Nations (UN) has, since the 1948 Universal Declaration of Human Rights, organised different conventions and declarations in an attempt to bring equality to all (Lastarria-Cornhiel, 2006). Most countries have ratified these documents (Lastarria-Cornhiel, 2006). The African Union has also prepared similar laws for its member countries (Lastarria-Cornhiel, 2006). Signatory member countries have incorporated male and female equality clauses into their constitutions (Lastarria-Cornhiel, 2006; ActionAid, 2005). Yet in spite of this strong legal framework, women in Africa and the world still own a negligible amount of land (FAO, 2011; ActionAid, 2005). Property ownership in Africa is governed by statutory law and customary law, depending on where one resides (Toulmin, 2008). These two sometimes conflicting law regimes are based on different precepts and as such award different bundles of rights to the individual (Joireman, 2008). This complicates the issue of female property rights in Sub-Saharan Africa.

Under customary law, women access land through their male relatives, whose rights are superior because they own, control, use, allocate and can also alienate the land (Mutangadura, 2007; Yngstrom, 2002). Women's land rights are limited to user rights, which she holds as long as her relationship with the man has not changed and he does not want to use the land for something else (Yngstrom, 2002). This link between a woman's rights and her relationship to the male relative makes rural women vulnerable (Lastarria-Cornhiel, 2006). Married women seem to have the most secure land rights, but these rights can be lost on the death of the husband or in a divorce (Cousins & Hornby, 2009). The high incidence of disinheritance and loss of marital property upon divorce demonstrates the need for women to have secure rights which are independent of their relationship to their male relatives.

During the apartheid era in South Africa, land was allocated to male farmers in the homelands, disregarding women's prior claims to land (Mathis, 2007). Equality is the basis of the democratic South African Government's constitution and laws, and sections 9 and 25 of the Constitution are dedicated to equality and property ownership respectively (Republic of South Africa(RSA), 1996). Guided by its redistributive agenda, the post-apartheid Government launched a land reform programme to enable previously disadvantaged South Africans to own land (Department of Land Affairs (DLA), 1997). The process was carried out by way of the following three sub-programmes: land redistribution (first through the Settlement Land Acquisition Grant, or SLAG, and then through the Land Distribution for

Agricultural Development, or LRAD); tenure reform and restitution; and women were made a target group (Department of Agriculture(DOA), 2001; DLA, 1997). A revision of SLAG to LRAD in 2001 stated that 30% of land claims were to be allocated to women (DOA, 2001). While adopting these reforms, Government also passed legislation that strengthens the powers of traditional authorities in land governance by making them central to the land reform process it enacted the Traditional Leadership Governance and Framework Act (TLGF) in 2003 and the Communal Land Rights Act (CLRA) in 2004 (Mathis, 2007). CLRA is currently being contested because it is seen as legalising discrimination against women in rural and customary law settings (Cousins & Hornby, 2009).

Similarly, the current contestation of the Traditional Courts Bill (TCB) is based on the premise that should the Bill be passed into law, it will weaken women's rights (Hawkrige, 2012). The TCB intends to create a legal system that seems set to entrench the powers of traditional leaders in South Africa at the expense of rural dwellers, most of whom are female (Shirinda, 2012; Hawkrige, 2012). This raises serious questions about women's land access and land use security, because the current situation is undesirable and creates an insecure situation in terms of their livelihood and food security. Furthermore, gender equity in the land reform programme was hindered by poor implementation, meaning only a small percentage of women actually benefitted from it as individuals in their own right (Walker, 2003). Consequently, women have access, user and limited control rights over land, even in the absence of migrant male household heads. This significantly affects their ability to produce efficiently, make long-term improvements on their farms, and produce in an environmentally friendly way (Agarwal, 2002). A thorough investigation of women's property rights and land use security in the rural parts of Limpopo (South Africa's most northerly province) and the effect of these on agricultural production has not previously been conducted.

1.2. The Importance of the Study

Previous policies concerning land in rural and urban areas worldwide have been based on the assumption that the household is unitary and that resources are allocated fairly and equally within the household (Kerr, 2005; Agarwal, 2002). Consequently resources were given to male household heads, thereby disenfranchising women (Kerr, 2005; Agarwal, 2002).

Women play a significant role in rural agriculture but they do not own the land they cultivate (Kent & MacRae, 2010). Although they produce 80% of the food and cash crops, they own

about 2% of the land in Africa (UNECA, 2004). The land belongs to their husbands and other male relatives, so their access to the land depends upon the generosity of the men (Yngstrom, 2002). Land use insecurity is gendered and that gives women a disincentive to invest in land (Agarwal, 2002).

Deininger and Castagnini (2006) show that male farmers with secure land arrangements produce more and invest more in their land than do those without. In addition, where conflict prevails, farmers will produce less or nothing at all (Deininger & Castagnini, 2006). Conflict reduces production because it displaces farmers and also wastes time and money that could have been invested in agriculture (Toulmin, 2008; Deininger & Castagnini, 2006). These findings correlate with those of the household as well. Agarwal (2002) shows that women's productivity on land they do not own is much lower than on land they do own. This also applies for land owned by their male relatives, particularly if the woman will not control the produce (Agarwal, 2002). Agarwal (2002), quoting a Kenyan example, shows that harvests increase significantly when women control the land and produce, compared to when their husbands own the land. Most women have, in the absence of their male relatives, become *de facto* household heads (Kent & MacRae, 2010; Agarwal, 2003). Land use security and control of produce could have a significant impact on women's agricultural production and household food security (Kent & MacRae, 2010).

1.3. Research Problem

The study was guided by the question, "What constitutes land use security within the current property rights of women in rural South Africa?" An investigation was conducted first of all into the land arrangements under which women operate, and then into how these arrangements affect their water access as well as their land-based livelihoods and household food production, which are necessary for food security. Furthermore, ideal and context-specific land property rights as needed by rural women to make optimal use of land were sought.

1.4. The Sub-problems

1. What are the existing land property arrangements for women in South Africa?
2. How secure are the land property arrangements and do they influence female agricultural production?

3. How can rural women's property rights be strengthened in South Africa?

1.5. The Study's Limits

The study was conducted in rural Limpopo. Its focus was on land tenure reform beneficiaries, but the results will not pertain to all rural South African land tenure reform beneficiaries.

1.6. Term Definitions

Property rights:	the ways in which one has access to land for livelihood activities
Land use security:	a recognised and socially legitimate land arrangement that is not subject to conflict
Water:	water for livelihood activities such as farming
Land-based livelihoods:	crop and livestock farming and natural resource exploitation

1.7. Assumptions

The study was based on the following assumptions: (1) rural women living under either statutory or customary law have access to land; (2) rural women use land for agricultural production and other land-based livelihoods; (3) the women would be willing to respond to the questionnaire and would respond truthfully; and (4) the trained translator would translate the questions and answers accurately as the researcher is not conversant with the local languages.

1.8. Structure of the Document

The current chapter outlines the problem and its setting. Chapter 2 contains a review of the related literature. Chapter 3 is the framework of analysis. Chapter 4 contains Draft Manuscript 1. Chapter 5 contains Draft Manuscript 2. Finally, Chapter 6 presents the conclusions and recommendations of the study.

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CHAPTER 2: LITERATURE REVIEW

2.1. Introduction

Agricultural land is a critical resource in economies where subsistence agriculture is an important livelihood activity (FAO, 2011). Rural land ownership confers identity, power, belonging, the means to produce food, and a way out of poverty (Cousins & Hornby, 2009; ActionAid, 2005). Most rural women are unemployed, and engage in subsistence agriculture, contributing significantly towards household food production and food security (Kent & MacRae, 2010; Altman *et al.*, 2009; Kerr, 2005; Agarwal, 2003). Local institutions enforce property rights considered to be socially and legally legitimate (Mutangadura, 2007; Agarwal, 2002). Prevailing oral or written property rights determine land use and security, which are critical for efficient agricultural production (Lemmens, 2011).

South Africa, like most other Sub-Saharan African countries, has a dual land property rights system (Toulmin, 2008; Goebel, 2007; Deininger & Castagnini, 2006; Gray & Kevane, 1999). First, there is statutory land law, which is vested in the Constitution and accords equal rights to women and men (Torkelsson & Tassew, 2008; Deininger & Castagnini, 2006; Gray & Kevane, 1999). Under statutory land law, women can buy, sell, inherit or manage land (Lastarria-Cornhiel, 2006; ActionAid, 2005). However, statutory law has limited reach, and in reality applies to only 10% of Sub-Saharan Africa (Deininger & Castagnini, 2006). Second, there is communal land law, which is administered by tribal and traditional authorities in rural Sub-Saharan Africa (Toulmin, 2008; Deininger & Castagnini, 2006). Communal land law is largely based on a patriarchal system, where land is allocated to the male household head on behalf of his household (Deininger & Castagnini, 2006). Under this system, women access land as secondary beneficiaries whose rights are to cultivate and control what they themselves produced (Goebel, 2007; Yngstrom, 2002). However, they cannot own, inherit or allocate land (Toulmin, 2008; Deininger & Castagnini, 2006; Gray & Kevane, 1999). Women's rights under this land ownership regime are tenuous and dependent upon their relationship to men (Gray & Kevane, 1999). Generally, if a woman's relationship to a man changes, her rights to land access through him will weaken or cease to exist (Toulmin, 2008; Deininger & Castagnini, 2006; Gray & Kevane, 1999). Customary law prevails over 90% of the land in Sub-Saharan Africa and since most women live in rural areas, they are governed by these insecure land rights (Toulmin, 2008; Goebel, 2007).

The rural population in South Africa and other developing countries is largely made up of women, the elderly and children (Aliber & Hart, 2009; Goebel, 2007; Agarwal, 2003). Case studies of Zambia, South Africa, Zimbabwe and India show that rural women significantly outnumber rural men because of male outward migration (Kent & MacRae, 2010; Aliber & Hart, 2009; Goebel, 2007; Agarwal, 2003). Men have more opportunities in terms of non-farm employment because they often possess higher qualifications and will thus acquire relatively more secure and better paying jobs than women (Agarwal, 2003). Male migration, divorce, widowhood and desertion have given rise to more female-headed households (Kent & MacRae 2010; Agarwal 2003). These factors have transferred the responsibility of household food production to women who exist in an unsupportive environment (Kent & MacRae, 2010; Agarwal, 2003). In the face of limited livelihood opportunities, women have turned to agricultural production and other land-based livelihoods to improve their household food security (Kent & MacRae, 2010; Kerr, 2005; Agarwal, 2003). Altman *et al.* (2009) demonstrate the importance of agriculture to women who reside in the former homelands and rural reserves of South Africa.

Land use security is essential for agricultural production as well as engaging in other land-based livelihoods (Toulmin, 2008; Torkelsson & Tassew, 2008; Deininger & Castagnini, 2006; Agarwal, 2003). Secure access to land often means secure access to other natural resources such as water (Torkelsson & Tassew, 2008). However, due to the secondary nature of women's access to land and other resources, their access is often insecure (Toulmin, 2008; Kerr, 2005; Gray & Kevane, 1999).

Female land access is threatened by population growth, changes in land value, divorce and death (Torkelsson & Tassew, 2008; Kerr, 2005; Deininger & Castagnini, 2006; Gray & Kevane, 1999). When conflicts over access and control of land arise, they are settled in traditional courts where men have more influence than women and men's rights take precedence over women's (Toulmin, 2008; Deininger & Castagnini, 2006; Gray & Kevane, 1999).

However, women have adopted strategies and mechanisms to retain access and use of their land in this predominantly male arena. Some have resorted to "institutional shopping", quoting those rights that would serve their purpose from both the statutory and customary laws in tribal court arguments (Toulmin, 2008; Gray & Kevane, 1999). However, others have resorted to manipulating the existing customary laws, interpreting them in ways which favour

their cause (Gray & Kevane, 1999). Neither of these avenues are always successful and women's land access remains insecure (Rose, 2003). Yet, in spite of these insecurities women continue to engage in agricultural production because they view it as a way of escaping poverty and attaining food security (Kent & MacRae, 2010).

Investigating land use security options for women is therefore urgent in terms of combatting food insecurity and fostering sustainable livelihoods. The study consequently sought to establish the land arrangements and property rights under which South African women operate, and then discover how this influences their access to water as well as its impact on agricultural production and other land-based livelihoods.

2.2. Land Property Rights for Women

Women's property rights are a derivative of the prevailing property rights in a community (ActionAid, 2005). The prevailing laws regarding community property rights define human interactions, including interactions with respect to property (Lastarria-Cornhiel, 2006; ActionAid, 2005). Property rights in statutory and customary laws form part of a broader, resource accessing framework (Cousins & Hornby, 2009; Lastarria-Cornhiel, 2006). Statutory law is founded on the equality of individuals regardless of race, creed, sex or sexual orientation (Lastarria-Cornhiel, 2006). Customary law, on the other hand, is mostly based on patriarchal, tribal or community customs which are enforced by a local chief or traditional leader (Toulmin, 2008; Lastarria-Cornhiel, 2006; Yngstrom, 2002). Tribal customs are dependent upon (1) whether they are matrilineal or patrilineal, and (2) the history and interaction among groups. The latter is often influenced by, for example, the effects of colonialism, post-colonial governments, and social pressures (Toulmin, 2008; Lastarria-Cornhiel, 2006; Rose, 2003; Yngstrom, 2002). The tensions caused by the often conflicting natures of statutory and customary laws and their effect on women are articulated by Thamaga-Chitja *et al.* (2010), and are further explored in the sections that follow. The rights-based approach to land access is laudable because minorities and marginalised groups have equality before the law, but this approach has also been criticised for overlooking group dynamics and existing power structures (Bogale & Korf, 2005).

2.2.1. Statutory law

Many governments have ratified international laws and treaties around equality for women, so most constitutions contain clauses referring to equality between women and men (Lastarria-Cornhiel, 2006). Under statutory law, women can therefore own, inherit or dispose of land as individuals in their own right (Lastarria-Cornhiel, 2006). Women can also hold individual rights to land and register it in their own names, regardless of their marital status (Lastarria-Cornhiel, 2006). According to the South African Constitution, men and women – regardless of their race or creed – can own land as individuals in their own right, or as part of a group, according to group rules (RSA, 1996).

Land ownership under statutory law in most countries is symbolised by a title deed and land access by a lease certificate, both of which are acknowledged nationwide (Mutangadura, 2007; De Soto, 2000). This system is built on freehold or leasehold agreements which allow the document holder exclusive rights (Mutangadura, 2007). Title deeds and lease certificates are registered in a title registration system and the Government guarantees the rights of the land owners (Lemmens, 2011).

A title deed is transferrable through sale or inheritance; consequently land sales involving a transfer of the title deed could create a rural land market (De Soto, 2000). The title deed can be used to borrow money for investing in the land; however, it has been argued that poor farmers do not take loans against their land (Lastarria-Cornhiel, 2006). Alternatively, land can be rented out if the proprietor does not wish to use the land (De Soto, 2000).

Although statutory land law is presented as the ideal tenure system, it has several disadvantages for women. First, privatisation of land concentrates land in the hands of the elite and well-connected individuals, particularly if a title must be paid for (Toulmin, 2008; Lastarria-Cornhiel, 2006). Although women theoretically have an equal opportunity to own land, most women do not have the resources to participate in markets (Jacobs, 2004). Second, statutory law applies only to major urban areas, which account for only about 10% of Sub-Saharan Africa (Lastarria-Cornhiel, 2006; Rose, 2003; Yngstrom, 2002). This is because most governments do not have the capacity or will to widen the reach of statutory law and other institutions (Joireman, 2008; Sjaastad & Cousins, 2008; Toulmin, 2008; Boone, 2007). Third, statutory laws are premised on gender equality but there may be several other laws that contradict this in practice (Lastarria-Cornhiel, 2006). Some laws can unintentionally make

women secondary to men, for instance inheritance laws favouring sons over daughters, or laws giving men and women different grounds for divorce (Lastarria-Cornhiel, 2006). Finally, introducing statutory laws not supported by local institutions weakens and hinders land access for women both during titling projects and after those projects are finished (Lastarria-Cornhiel, 2006). For example, women in Vietnam were supposed to benefit from a land titling project, however, uncooperative implementers and communities caused women to remain as secondary beneficiaries (Lastarria-Cornhiel, 2006). In a Zimbabwean resettlement project, single women received land as individuals in their own right but upon their death it was a male relative who inherited the land because customary laws were applied (Mudege, 2008).

2.2.2. Customary law

Customary law governs most of the rural population in both Africa and Asia (Lastarria-Cornhiel, 2006; Cousins & Hornby, 2009; Yngstrom, 2002). It directs all spheres of a resident's life including marriage, divorce and inheritance (Lastarria-Cornhiel 2006; Yngstrom 2002). Although customary laws differ according to tribe and country, a common feature of patrilineal customary law is that women are secondary beneficiaries to resources since they are considered legal minors (Cousins & Hornby, 2009; Toulmin, 2008; Lastarria-Cornhiel, 2006; Jacobs, 2004; Rose, 2003; Yngstrom, 2002).

The argument exists that customary law is based on traditions and local values that have evolved over time (Lastarria-Cornhiel, 2006; Jacobs, 2004; Toulmin, 2008; Yngstrom, 2002). However, customary law is not static; it has evolved significantly since the pre-colonial era in response to alterations in social relations and other changes at national level (Toulmin, 2008; Yngstrom, 2002). These agents of change have had a predominantly negative impact on the property rights of women, who subsequently lost the right to own land and were reduced to beneficiaries (Yngstrom, 2002). An example of this is Tanzania, where in the 1920s its colonial Government gave land property rights to male household heads only, in spite of women's claims to land (Yngstrom, 2002). Also, the women of Dodoma Village in Tanzania who were part of the tribe could, up until the 1950s, inherit tribal land (Yngstrom, 2002). In response to population expansion in the 1950s, women were encouraged by traditional authorities to cultivate their husband's field and to also "give back" any land they possessed to their brothers so as to maintain good relations (Yngstrom, 2002). Given these examples of entrenched patriarchal attitudes in a customary law arena, the introduction of the Traditional Courts Bill in South Africa could negatively affect women's land rights by cementing their

secondary status and thereby reduce their access to resources (Hawkrigde, 2012; Shirinda, 2012). Furthermore, chiefs administer a system without much documentation on the rights of the individual and how they can be exercised; therefore traditional land administration systems are open to corruption and patronage (Toulmin, 2008). Colonialism disrupted communal land administration systems as well as traditional structures to foster the chief's accountability to his people (Toulmin, 2008). Women's weaker position in customary law puts their rights at risk if the chief or his officials are corrupt (Lastarria-Cornhiel, 2006).

Land in most rural areas under customary law is seen as a symbol of power and belonging (Jacobs, 2004; Yngstrom, 2002). The land is vested in the chief's trust and he allocates it to his citizens and adopted citizens on the basis of need and other social customs (Cousins & Hornby, 2009; Toulmin, 2008). Under customary law, the chief and then his council constitute the most powerful people in the village (Bogale & Korf, 2005). The chief allocates land to the male household head on behalf of the latter's family, not to the husband and wife jointly (Cousins & Hornby, 2009). Land allocations are largely modelled on the "unitary household model", which assumes resources allocated to the household head for his family will be distributed equitably (Agarwal, 2002). However, research has shown that household members have differential access to resources on the basis of their gender, age and position (Kerr, 2005). The household head who has more than one wife allocates them land according to their seniority, but his rights take precedence over those of his beneficiaries (Yngstrom, 2002).

Customary land is accessed through a combination of individual and collective rights, and only the citizens of an area are allocated land within that area (Jacobs, 2004). Recipients' rights differ depending upon their sex, which determines the extent to which they can be exercised (Rose, 2003; Gray & Kevane, 1999). Also, the rights to a piece of land may differ according to season and livelihood activity, whereas statutory law excludes secondary rights holders (Toulmin, 2008). In most customary law systems, there is no documentation of the rights one possesses and of how they may be used (Toulmin, 2008). Generally speaking, property rights for men are made up of control, access and influence, while women have only access rights and sometimes influence; consequently women have a smaller resource portfolio than men (Torkelsson & Tassew, 2008; Yngstrom, 2002). Land passes from father to son in order to keep it in the family (Yngstrom, 2002). Men also access land through grants from individuals and by way of other arrangements, but women's rights are linked to those of their

male relatives (Rose, 2003). These linked land rights give men power over women, weakening the latter's land use security since it will depend upon the women maintaining a good relationship with their male relatives (Cousins & Hornby, 2009; Rose, 2003; Yngstrom, 2002). So although families and other social networks are very important for women's access to land, women's position in the family and therefore in society is that of weak dependants (Lastarria-Cornhiel, 2006; Yngstrom, 2002).

2.2.3. Customary land access and marriage

Marriage is a major access point for both men and women (Lastarria-Cornhiel, 2006; Cousins & Hornby, 2009; Jacobs 2004; Yngstrom, 2002). In Msinga (KwaZulu-Natal), South Africa, married men receive land so that they can provide food for their families (Cousins & Hornby, 2009). In this instance, land is treated as essential to a household's land-based livelihood activities. For women, marriage presents a critical access point for land as well as other productive resources (Cousins & Hornby, 2009; Goebel, 2007; Yngstrom, 2002). A husband will allocate land to his wife to produce crops for household consumption (Cousins & Hornby, 2009; Yngstrom 2002). A man is expected to give residential and arable land to his wife in exchange for her labour (Yngstrom, 2002). In some part of Ghana, it is seen as justifiable grounds for divorce if, after years of marriage, a man does not allocate land to his wife (Yngstrom, 2002). The land a woman accesses from her husband is seen as safe as long as she stays married to him (Cousins & Hornby, 2009; Yngstrom, 2002). Some Swazi women have complained that their land rights are weak because they depend upon the benevolence of their husbands or in-laws (Rose, 2003). Some case studies on Msinga (KwaZulu-Natal), South Africa, and Murang'a, Kenya, revealed that sometimes married women inherit their mother-in-laws' land after having worked on it with her for years (Cousins & Hornby, 2009; Yngstrom, 2002). This land is seen as secure because once the mother-in-law has allocated it, it is recognised as the daughter-in-law's land, and the latter is allowed to allocate it to her own daughter-in-law one day (Cousins & Hornby, 2009). A woman in Murang'a Kenya can use her land to cultivate her crops, and she controls the work done on the field as well as the produce (Yngstrom, 2002). However, some Swazi women use the land according to the instructions of their male relatives, and cannot rent it out without permission from the relevant male relative (Rose, 2003). This is because land in some parts of Swaziland is viewed as a male domain, which women are not allowed to manage (Rose, 2003).

The fate of widows depends upon the customs of the area and her relationship with her husband's family. According to customary law, women cannot inherit land, nor can they inherit the matrimonial home (Toulmin, 2008; Gray & Kevane, 1999). In Tanzania, a widow manages the land as a trustee for her sons until they come of age and can represent themselves (Yngstrom, 2002). However, access to resources relies on the family and if relations break down, the widow usually returns to her natal village (Yngstrom, 2002). From a South African case study, Jacobs (2004) notes that widows can lose their rights to land to the deceased's relatives. In the rare case that she inherits, there is always some pressure to hand over the property to her husband's relatives (Jacobs, 2004). In Zombodze, Swaziland, a widow can stay on her husband's land provided the family of the deceased agree to this (Rose, 2003). In Msinga (KwaZulu-Natal), South Africa, when a woman is widowed she is faced with several options: (1) she can be 'inherited' by one of her brothers-in-law; (2) she can continue residing at the house without her brother-in-law's protection and risk the gradual loss of her property to the deceased's family; (3) she can ask for land in her own right, which she would be expected to hold for her son until he came of age; and (4) she can return to her natal home (Cousins & Hornby, 2009). However, a South African study conducted in KwaZulu-Natal's KwaThanya, Shayizandla and Mpumuza communities shows that older women retain access to their deceased husbands' land and that this is a significant access point to land use security for them (Thamaga-Chitja *et al.*, 2010). Although the land is said to belong to them only until the older son can claim it, the women are, until that time, in control of the land and make decisions about what to plant and how to use the produce (Thamaga-Chitja *et al.*, 2010). These differences demonstrate the importance of context and culture when discussing widows' property rights.

Single women face different challenges from women in other marital classes with respect to land access in a customary law environment, even if they have dependants (Cousins & Hornby, 2009). Land access for women who have never married, are widowed or divorced is deliberated upon on a case-by-case basis (Cousins & Hornby, 2009; Rose, 2003). Most of these women rely on their maiden families to represent them at local courts (Cousins & Hornby, 2009; Rose, 2003). The circumstances surrounding a woman's single status play a pivotal role in whether or not she will get land, as rural areas are conservative and the chief's court is the custodian of local customs (Cousins & Hornby, 2009; Rose, 2003).

Women who have never married but have children rely on their families to present their request for a land grant at the chief's court and show that they need land (Cousins & Hornby,

2009). Some single women who are allocated land by the chief register it in the name of a male relative or a son (Rose, 2003). Land use security for single women increases with the number of years she has cultivated a field (Gray & Kevane, 1999). In spite of these gains, a Swaziland case study revealed that single women there sometimes face land confiscations, threats of eviction, and threats of violence or sorcery if they resist eviction (Rose, 2003). In Msinga (KwaZulu-Natal), South Africa, some families allocate land to single female relatives on the family plot and on the family residential land (Cousins & Hornby, 2009). Their continued use of the land depends upon the maintenance of good relations between them and their family members, particularly the male relatives (Lastarria-Cornhiel, 2006). This situation further weakens the woman's position within the family and community because she cannot afford to disagree with the family as she may be in need of their help in the future (Lastarria-Cornhiel, 2006). Women with damaged or broken relationships with their natal family can lose their land (Cousins & Hornby, 2009). If the family head dies, the woman's continued stay is not guaranteed; sometimes women are evicted by their father's relatives (Cousins & Hornby, 2009).

Divorced women return to their natal homes because marriage is patrilocal and a woman cannot continue to stay at her former home as it belongs to her former husband and his clan (Cousins & Hornby, 2009; Rose, 2003). Alternatively, the woman can be allocated a plot of land within the same village, although this is less common (Cousins & Hornby, 2009).

2.2.4. Land rights and conflict

The fact that there is a multiplicity of land rights means rights often contradict one another; it then becomes an issue of the hierarchic importance of those different rights, which leads to insecure land rights, particularly when land rights must be defended (Toulmin, 2008). These contradictions are highlighted in areas where statutory laws have been applied to customary law areas without first engaging the local populace, as it is unclear which set of laws is superior (Toulmin, 2008; Gray & Kevane, 1999). Conflict may arise if there are overlapping rights to a plot of land, as happened in Uganda (Gray & Kevane, 1999). Toulmin (2008) questions the validity of a judgement by either authority in the eyes of the rights holders. Those individuals with resources and knowledge have been known to use the contradictory and differing rights to appeal to those aspects of both law bodies which favour them (Namara *et al.*, 2010; Toulmin, 2008). This dichotomy threatens women's land use security as they

may not have the resources or education to navigate both the customary and statutory law bodies (Toulmin, 2008).

Previously, conflicts in areas governed by traditional chiefs were resolved according to customary law (Rangan & Gilmartin, 2002). This did not always benefit women, because they could not present their case in front of men as most traditional courts were attended by men only (Toulmin, 2008; Rangan & Gilmartin, 2002). Jacobs (2004) notes that highly cultured rural women do not speak publicly to men, and when they do it is with deference. Tripp (2004) reiterates this, saying some rural Ugandan communities adhere to the image of a good woman as someone who is submissive and does not worry about owning land for herself, but instead is content to work for her family's well-being and depend upon her husband to provide for the family (Tripp, 2004). Women who work towards acquiring their own property are frowned upon and perceived to have no commitment to their marriage and marital home (Chapoto *et al.*, 2011; Tripp, 2004).

Should a gendered conflict arise, whose rights would take precedence and which decision making body would hold sway in a given area (Toulmin, 2008)? Some women were allocated land for gardening by their chief in Buffelspruit, Mpumalanga, but had no Permission to Occupy (PTO) (Rangan & Gilmartin, 2002). They lost the land when some men decided they wanted to use the land for grazing and the chief reallocated the land to them (Rangan & Gilmartin, 2002). The women petitioned the chief, but to no avail. Their case was in the news and the judiciaries were consulted, but the latter ceded to the chief's council since the land was under the chief's authority (Rangan & Gilmartin, 2002). Although the women used a combination of public petitions and protests, they lost the land because in the customary law arena they did not have access to the institutions the men could invoke (Rangan & Gilmartin, 2002). Since women have a strong presence in the rural areas of South Africa, this paints a grim picture for rural women's land use security as they are not accorded equal protection by customary laws and courts (Rural Women's Assembly(RWA), 2011). Would a judgement from the statutory authorities have secured the women access to the land in the above-mentioned case? Or would it have led to the women being ostracised and made into outcasts because statutory land law has no legitimacy in rural areas (Deininger & Castagnini, 2006)?

2.3. Land Use Security

Generally land use security for women who have been allocated land outside the household is not guaranteed and this negatively affects production efficiency (Deininger & Castagnini, 2006). Land use security under customary law depends upon the community and context. First, one's rights to land must be recognised and validated by one's neighbours and others, in accordance with local customs (Toulmin, 2008). Second, these rights must be supported by local institutions and processes (Toulmin, 2008). Third, full ownership of land is not seen as essential if the existing institutions and processes provide what is thought to be adequate land use security (Toulmin, 2008). Most rural dwellers perceive customary land laws as being secure and low risk (Toulmin, 2008). A Cameroonian example shows that most villagers did not go beyond the demarcation stage in the land registration exercise of 1974 as they perceived the land marking process as providing security (Toulmin, 2008). Finally, the perceptions of land ownership in a customary environment differ according to different individuals. Thamaga-Chitja *et al.* (2010) observe that some rural dwellers in KwaThanya, Shayizandla and Mpumuza, South Africa, perceive themselves as owning the land, despite their not possessing a legal title to it.

Generally speaking a woman's land use and access are considered to be secure if she is in a customary marriage (Cousins & Hornby, 2009; Gray & Kevane, 1999). A senior wife in a polygamous relationship has relatively more secure access to land than does a younger wife (Cousins & Hornby, 2009; Toulmin, 2008; Jacobs, 2004; Yngstrom, 2002). This is because of the value placed on seniority in African culture and also possibly because the senior wife has stronger social capital than the younger wife (Chapoto *et al.*, 2011; Yngstrom, 2002). In addition to this, the longer the duration of a marriage, the more secure a woman's access becomes (Cousins & Hornby, 2009; Toulmin, 2008; Jacobs, 2004; Yngstrom, 2002). Having children – particularly male children – also makes a woman's land access more secure (Thamaga-Chitja *et al.*, 2010; Cousins & Hornby, 2009; Toulmin, 2008; Jacobs, 2004; Yngstrom, 2002). Unmarried women who cohabit with men are frowned upon by the community and generally have fewer rights than do women who are in customary marriages (Cousins & Hornby, 2009). Gray and Kevane (1999) observe that most men in Gusii, Kenya, do not marry the mothers of their children, although they continue to live with the women as a strategy to maintain control over scarce land. These women cannot demand land as can wives, because they are not married and could thus easily be chased away (Gray & Kevane, 1999).

Threats to land access are largely brought about by the scarcity of land, increasing competition, the adoption of cash crops as opposed to food crops, the introduction of irrigation schemes, and divorce or the death of the husband (Thamaga-Chitja *et al.*, 2010; Cousins & Hornby, 2009; Toulmin, 2008; Jacobs, 2004; Yngstrom, 2002). Currently under customary law, married women have the most secure rights. A system that relied less on neighbour validation and more on documentation for land use security would benefit women; as Chapoto *et al.* (2011) observed that most land conflicts happen within the extended family and neighbours may have allegiances with either of the arguing parties. The possession of documentation would guarantee security to the holder and would act as an incentive to invest in land and improve its cultivation.

Agarwal (2002) notes that where land use security is not guaranteed, women are not likely to produce as much as they would if land use security was guaranteed. This is consistent with findings on male farmers working land they do not have secure access to. Land use security is therefore an incentive for efficient farming and delivers higher yields; this is pertinent because women are the main agricultural workforce in developing countries.

2.3.1. Security of property for food security

Secure access to land is essential for rural livelihoods (Li *et al.*, 2008; Toulmin, 2008; Deininger & Castagnini, 2006). Agriculture is among the top three rural livelihood activities for women, and contributes significantly towards household food security (FAO, 2011; Aliber *et al.*, 2006). Since the Millennium Development Goals (MDGs) were set, the female fight against poverty by way of agriculture has lost ground (Thamaga-Chitja, 2012). The literature shows that farmers with secure access to land and water are more productive than are those without (Quisumbing & Pandolfelli, 2009). In addition, it has been shown that land conflicts and speculation disrupt farming (Toulmin, 2008; Deininger & Castagnini, 2006). This can be attributed to the displacement of farmers as well as the loss of man-hours and money to litigation when they could have been spent on agriculture (Toulmin, 2008; Bogale *et al.*, 2006). To attain land use security, De Soto (2000) proposes that rural land be formally titled so that it enters into the formal economy. This would provide an incentive to the owner to invest in their land and make efficient use of it (De Soto, 2000). Sjostedt (2010) argues that the titling of rural areas would facilitate the delivery of water infrastructure, the absence of which currently limits production. In South Africa, however, this would perhaps be difficult to implement as it could cause conflict, since the traditional chiefs and their tribal authorities

are central to land management, and titling would exclude them from direct land management (Mathis, 2007).

Access to land has also been shown to improve one's access to water (Namara *et al.*, 2010; Pellizoli, 2010). Rural women are actively engaged in agriculture as a livelihood activity and produce a significant amount of food in the world (Kent & MacRae, 2010). However, they farm on their male relatives' land and this has implications on the kind of the resources they can access (Agarwal, 2002). Land use security for rural women would enhance their access to other productive resources and improve agricultural production.

2.3.2. Relationship between land ownership and access to other resources for food security

Women play a significant role in rural agriculture but they usually do not own the land they cultivate (Kent & MacRae, 2010). The land belongs to their husbands or other male relatives, and so women's access to the land depends upon the generosity of males (Yngstrom, 2002). Land use insecurity is gendered and it gives women a disincentive to invest in the land they farm (Agarwal, 2002). Minimising land use insecurity and conflict would improve household agricultural production by women. Conflict has been shown to reduce production because it displaces farmers and wastes time and money which could have been invested in agriculture (Toulmin, 2008; Deininger & Castagnini, 2006). Agarwal (2002) shows that women's productivity on land they do not own is much lower than on land they do own. This has been found to be true for land owned by male relatives, particularly if the women do not control the produce (Agarwal, 2002). Most women have, however, in the absence of their male relatives, become *de facto* household heads (Kent & MacRae, 2010; Agarwal, 2003). Land use security and control of produce could have a significant impact on women's agricultural production and their household food security (Kent & MacRae, 2010).

Women's agriculture is negatively affected by their poor access to resources such as seed, fertiliser and machinery (Kent & MacRae, 2010). Gardens are important and contribute significantly towards household food security (Backeberg & Sanewe, 2010; Kerr, 2005). Women cultivate food crops for consumption and view agriculture as the means to household food security (Kent & MacRae, 2010). Backeberg and Sanewe (2010) identify water as a limiting factor to women's agriculture and state that, given reliable water access and training,

gardens can grow from producing for the sake of household food security to producing an excess that is sold to neighbours and eventually to others, thereby generating an income.

Water is critical for agricultural production but most poor people do not have physical and economic access to adequate amounts of water for consumption let alone for productive purposes (Namara *et al.*, 2010). Access to water is linked to access to land and in most irrigation schemes, the size of the land one owns is directly proportional to the amount of water one can access (Namara *et al.*, 2010; Pellizoli, 2010). This link disadvantages women who mostly do not own land, and when they are allocated land, it is small in size, of poor soil quality and away from water sources (Namara *et al.*, 2010). Farmers with secure access to water have higher agricultural productivity than those without (Namara *et al.*, 2010). The increases in yield are attributed to having an increased area under cultivation, greater crop intensity, and a decrease in the crops lost (Namara *et al.*, 2010). In a study conducted in the South African province of KwaZulu-Natal, Thamaga-Chitja *et al.* (2010) also show that farmers with access to water are more likely to engage in agriculture throughout the year than those without. It has been shown that in Kenya, Nepal and India participation in irrigation schemes or having secure access to agricultural water leads to increased food security and dietary diversity for participating households as well as other households within the area (Namara *et al.*, 2010).

2.4. Case Studies of Positive Land Property Rights for Rural Women

In this section it is argued that a new customary framework is required in order to rectify the gendered insecurities connected with land access (Lastarria-Cornhiel, 2006; Jacobs, 2004). The framework should be context specific and should include access points for women of different social standings (Cousins & Hornby, 2009; Lastarria-Cornhiel, 2006; Jacobs, 2004). In order to design a robust and workable framework it is essential to incorporate the views of women and to study how women address land-related challenges (Cousins & Hornby, 2009; Lastarria-Cornhiel, 2006; Jacobs, 2004).

Although the literature shows that customary tenure is in some cases secure and does not discourage efficient agriculture, customary law needs to start embracing relevant political and economic changes (Toulmin, 2008; Tsikata, 2003). De Soto (2000) bemoans the 'dead' capital that is in the hands of the poor. He believes that registering land and giving titles that are equivalent to statutory law titles will enable rural dwellers to participate in the formal

economy (De Soto, 2000). In addition, he documents the benefits of legalising extra-legal assets by registering them nationally and making them fungible, arguing that this would in turn create a market for rural tribal land in the country and also allow the owners to access credit (De Soto, 2000).

There have been attempts to introduce statutory law pertaining to land use security into rural areas, with some varied results (ActionAid, 2005). These interventions were made after taking into account women's restricted access in customary law arrangements (ActionAid, 2005). In general the introduction of land titling in rural areas is said to improve efficiency by reducing conflict, increasing production efficiency, and consolidating small parcels of land (Sjaastad & Cousins, 2008). Titling would benefit women by strengthening their secure access to land and by improving their status within both the household and the community (Peterman, 2011; Agarwal, 2003).

In spite of these claims, the giving of titles to rural inhabitants thus far has had mixed results. There were some improvements in Cameroon but none in Kenya after the Swynnerton plan was implemented (Sjaastad & Cousins, 2008; Boone, 2007). Titling has often resulted in the loss of women's user rights because only the rights of the primary holder are recorded, particularly when the rights holder sells or mortgages the land (Joireman, 2008; Sjaastad & Cousins, 2008; Cousins *et al.*, 2005; Rao, 2005). Rights holders in a Cape Town, South Africa study sold the household land and houses, leaving their beneficiaries with nothing (Cousins *et al.*, 2005). These weaker rights for women can be attributed to women participating in titling initiatives as part of a household with predetermined roles as wives and other female relatives who hold secondary property rights (Razavi, 2007). The mass formalisation of land rights in customary law areas without considering the context and formalisation objective and without first determining the source and level of insecurity is not ideal because there may be negative and unintended consequences (Sjaastad & Cousins, 2008).

Whilst effective in most urban and some rural settings, statutory law cannot replace or be superimposed on customary law institutions (Sjaastad & Cousins, 2008). Apart from discrimination against women based on their gender and citizenship, customary law appears to function efficiently in most rural areas (Joireman, 2008; Sjaastad & Cousins, 2008; Boone, 2007). Critics of mass titling start by questioning the effect of formalising property rights on economic development (Boone, 2007). First, they attribute economic development to other factors such as education, employment creation, and infrastructure development (Cousins *et*

al., 2005). Second Sjaastad and Cousins (2008) and Cousins *et al.* (2005) suggest that mass titling would mean those with access to information and money end up acquiring all the land, creating a landlord-and-tenant system that would disadvantage the rural poor, many of whom are female. Third, the mass formalisation of existing rights would cement gendered discrepancies to land ownership since rural women currently cannot own land as individuals (Joireman, 2008). Fourth, women would be further disadvantaged if they had to pay for titling because they have no political power or money, which limits their ability to participate in markets (Toulmin, 2008; Cousins *et al.*, 2005). Lastly, if formalisation were to introduce aspects that contradict customary law (such as selling land and granting women land access), it would likely be rejected by communities because in their eyes the laws would lack legitimacy (Sjaastad & Cousins, 2008; Razavi, 2007).

As can be seen from the arguments above, securing women's land rights is a complex matter and possible strategies must be formed by considering the objective of any action and the context in which it is to be applied (Sjaastad & Cousins, 2008; Toulmin, 2008). If the economic concern of creating markets and fostering productive efficiency was the objective, then mass titling would be appropriate, but would it be socially legitimate (Peterman, 2011; Cousins & Scoones, 2010; Assies, 2009)? According to Boone (2007), rural areas in southern Africa are 'territorial entities' that are run by 'moral sovereignty', and the rights of these entities are recognised by modern governments. The introduction of statutory law threatens customary law institutions in rural areas and promises to alter community relations and structure (Sjaastad & Cousins, 2008; Boone, 2007). Rural inhabitants would gain political autonomy but lose the protection of the state, which is essential for weaker groups who could lose their land when exposed to the whims of the market (Boone, 2007). Furthermore, given women's current position within the household, their seeking individual rights in the new system could separate them from their families, who are, among other things, important for secure productive resource access (Jacobs, 2004).

However, if livelihoods and the rights of rural men and women were to take precedence, the rights framework based on the UN principles would be appropriate (Peterman, 2011; Cousins & Scoones, 2010; ActionAid, 2005). The South African Government has adopted the rights framework into the Constitution, with sections 9 and 25 addressing issues of gender equality and property ownership, but some laws still disadvantage women (Breeze Magazine, 2012; RSA, 1996). These discrepancies have been attributed to governments in developing countries

lacking the financial and human resources to implement these gender equal laws (Joireman, 2008; Sjaastad & Cousins, 2008; Toulmin, 2008; Boone, 2007). In addition to the rights framework, Breeze Magazine (2012) recommends the need for a feminist framework that would address the physical and structural limitations women face in accessing resources.

2.5. The Way Forward – Improving Land Use Security

Perhaps the solution for improving women's land use security could come from understanding what women in the applicable contexts want, and how they have strengthened their own rights in practise. Because women recognise the value of land to their household food access, many married rural women advocate for joint ownership (Jacobs, 2004; Tripp, 2004). Some groups of women want gendered access to land to cease, as shown by their contesting in South Africa of both the Communal Land Rights Act and the Traditional Courts Bill (Hawkrige, 2012; RWA, 2011). When their rights are at risk, most women use customary law channels where possible; such strategies include: (1) registering land in the name of a son or male relative; (2) approaching powerful members of society to mediate for them (Toulmin, 2008; Rose, 2003); (3) becoming celibate; (4) opting to be inherited by a brother-in-law in order to keep the marital land, and (5) remarrying so as to get access to new land (Toulmin, 2008; ActionAid, 2005). Where possible, women keep their strategising private, but when necessary they are prepared to adopt public protests in order to keep their land rights (Rao, 2005; Rose, 2003). In these instances, women are seeking to secure their user rights.

Some women want individual rights and have sought to buy land, but this is difficult in rural areas as they are viewed as lacking commitment to their husbands (Peterman, 2011; Tripp, 2004). In a study in Uganda, Tripp (2004) observed that women buy plots in case of a divorce or to enable them to bequeath it as they wish. Where it is not possible to buy land, women in Burkina Faso opt to borrow land, while their counterparts in Botswana, Zambia and Trinidad rent land (Sjaastad & Cousins, 2008; ActionAid, 2005). All-female farming groups also have the potential to secure rural women's user rights without women being accused of attempting to disrupt gender rules and society (Tripp, 2004; Agarwal, 2003).

While recognising that the implementation of statutory law into customary law areas is not viable, customary law cannot remain unchanged (Tsikata, 2003). In the battle between the right to cultural identity and the right to livelihood, women's rights as members of the

community must also be considered (Tsikata, 2003). Although customary law is evolving, it cannot be left to evolve without some influence being brought to bear so as to improve women's standing and rights, otherwise negative results could occur (Tsikata, 2003). Securing the rights of actual land users within the customary law framework would be ideal (Cousins, 2007; Tsikata, 2003). This could be done by recognising the land users' rights and their relationships to other rights holders at both household and community level (Cousins, 2007). The result would be acceptable if the process was consultative and inclusive, otherwise it would lack legitimacy (Cousins, 2007; ActionAid, 2005). It could build on the rights and strategies for accessing resources that women acquired as *de facto* household heads when the men migrated for work, particularly when extended family influence was limited (Tsikata, 2003). Securing women's user rights would be modernising customary law so that it adopts *de facto* developments in land rights at household level and recognises women's right to own land as individuals (Cousins, 2007; Tsikata, 2003). This recognition of women's user rights would weaken the rights of primary rights holders and the powers of local leaders, such a step would possibly encounter resistance, but it is essential nonetheless (Boone, 2007). The advantage is its incremental nature, and the possibility of it gradually creating new leadership structures with less reliance on custom for legitimacy (Boone, 2007).

Although the above-mentioned way of securing women user rights is ideal, women's secondary status in customary law is not restricted to land access only (ActionAid, 2005). Rural women's status is shown by (1) their lower literacy levels, (2) their being monolingual, and (3) their lacking national identity documents (Lastarria-Cornhiel, 2006; ActionAid, 2005). The education of women would address these concerns in terms of the younger women, but this must be accompanied by a social movement that empowers all women and frees them from being secondary citizens (ActionAid, 2005). The movement should redefine gender roles and give women stronger access and security to productive resources (Assies, 2009; Rao, 2005). For this social transformation to last, customary law institutions must be strengthened (but they must promote gender parity), and new roles must be created for those whose powers have diminished (Rao, 2005).

2.6. Summary

This literature review has highlighted the dichotomy in land laws in most rural areas of developing countries. It has shown that women's access to land in the two regimes is different, because statutory law offers equal access while customary law offers access to land

to the male household head. However, customary law is more prevalent because of the accessibility of tribal traditional authorities. So in spite of the existence of laws that support women's access to land, these laws are not known in the rural areas and women's access to land is still mediated by customary law, which discriminates against them. Women therefore still access land through their relatives. Women's critical role in agriculture for household food production is well documented; however, they have poor land use security because their access to land is determined by their relationship to a man. If the man dies or the relationship ends in divorce or abandonment, the woman's land use security weakens significantly. This is detrimental in light of the role women play in agriculture and the role of land use security in agricultural productivity. Access to land is also linked to access to water, and without land use security women do not have secure access to water, which is essential for agriculture. In conclusion, the literature review proposes a new framework that is based on women's response to threats on their land. The new framework would address issues of gender-based discrimination and would ideally embrace titling so that rural dwellers can become a part of the formal economy.

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CHAPTER 3: FRAMEWORK OF ANALYSIS

3.1. Introduction

Resource access in all communities is defined by a matrix of rules and laws which are linked to the customs of that specific community (ActionAid, 2005). This matrix may be defined by culture, religion and tradition, and it may also be gendered (ActionAid, 2005). While most matrices have evolved over time, some resilient aspects can remain untouched over time (Yngstrom, 2002). Gendered access to resources remains, and in some instances it is accompanied by a redefinition of rights for women (Joireman, 2008; ActionAid, 2005). Women, children, and the aged face significant challenges in terms of accessing lucrative resources. This chapter explores the factors governing women's access to land within the customary law framework, and attempts to articulate a framework for determining the security of rights to property for women. In doing this, the chapter first outlines the current resource access framework for rural women. Second, a detailed description is given of rural women's land access by class. Finally, the best possible framework within which access to property by women is secured or improved is considered.

3.2. Rural Land Access Framework for Women

Customary law governs all facets of rural life, from marriage and divorce to inheritance and even religion (Cousins & Hornby, 2009; Toulmin, 2008; Lastarria-Cornhiel, 2006; Yngstrom, 2002). In spite of the changes brought about by colonialism and wars, customary law has retained some of its fundamental principles. First, people are still identified primarily as belonging to a distinct family and lineage (Cousins & Hornby, 2009; Joireman, 2008). People are not viewed as autonomous, and their rights, responsibilities and obligations are defined within the context of social lineage (Joireman, 2008). Second, groups have retained their patrilineal or matrilineal identity, though the definition of rights may have been altered (Joireman, 2008). Third, land is still viewed as essential to the community's livelihood activities and it must be kept within the clan (Cousins & Hornby, 2009; Toulmin, 2008; Lastarria-Cornhiel, 2006; Yngstrom, 2002). This has become particularly important in light of population expansion and limited land stocks (Yngstrom, 2002). Finally, communal law has maintained the status of women as secondary citizens (Joireman, 2008). Women are still regarded as social and legal minors who cannot contract or own property individually (Joireman, 2008). The payment of a bride price transfers a woman's rights from the natal

family to the marital family (ActionAid, 2005). Women are then viewed as property and they themselves cannot own property (Tripp, 2004).

ActionAid (2005) notes that the discrimination against women in terms of land rights is just one of many such discriminations in communal law. The household is the smallest decision making unit with regard to access to property and women access resources through their male relatives (Yngstrom, 2002). Household members possess multiple, hierarchical rights to productive assets and property, and the male household head's rights are primary as shown in Table 3.1 (Yngstrom, 2002). Women's reliance on a social network and male relatives to access resources lowers their social status (Lastarria-Cornhiel, 2006). Women's lower status is worsened by the gendered allocation of social, political and economic resources within the community (Lastarria-Cornhiel, 2006). Table 3.1 shows the hierarchy of rights in the household.

ActionAid (2005) found that rural women in most of its research sites are generally less literate than their male counterparts of similar age and social standing. In addition, rural women are often monolingual, and do not possess identity documents; these observations are attributed to most rural communities valuing sons over daughters and therefore preferring to invest in the former (ActionAid, 2005). Tripp (2004) also observes that women have poor representation in rural courts and committees and this often works against them in conflict resolution judgements. The result is women are confined to a position of powerlessness, poverty and obscurity in the community.

Land is a critical resource in countries that depend upon agricultural livelihoods (Cousins & Hornby, 2009; ActionAid, 2005). In light of its value, land allocations at household and community levels are conducted in ways that protect the land from clan outsiders (Cousins & Hornby, 2009; Tripp, 2004; Yngstrom, 2002). Most fathers do not bequeath land to their daughters for the same reason (Tripp, 2004). In some Ghanaian communities, land is said to belong to senior family members and this restricts how it can be allocated (ActionAid, 2005). Some Zambian tribes believe the land to be a gift from the ancestors and that giving it to a woman would invite retribution (Chapoto *et al.*, 2011).

Colonialism bestowed upon Africa a dual law regime (Joireman, 2008; Toulmin, 2008; ActionAid, 2005). Statutory law and communal law both govern people's lives but they have different bases, and so in some instances accord different bundles of rights to different

individuals (Joireman, 2008). Table 3.1 shows that statutory law is based on equality, whereas customary law is based on the traditions and customs of a people (Toulmin, 2008). Under statutory law, women are equal to men, and can inherit, buy, sell or lease property (ActionAid, 2005). However, statutory law rarely applies beyond city boundaries because most governments lack the inclination or capacity to expand their reach (Lastarria-Cornhiel, 2006). Some governments have laws allowing men and women equal property rights, but because of poor publicity rural women are oblivious to them (Torkelsson & Tassew, 2008). Consequently, rural women are still governed by discriminatory laws because of where they live (Lastarria-Cornhiel, 2006).

In spite of the deeply entrenched discrimination against women, customary law still manages to provide women with a support system guaranteeing their secondary rights (ActionAid, 2005). Tripp (2004) observes that in some instances, secondary access to land is beneficial to women because they can have secure access to land even when they do not own it. Namara *et al.* (2010) also observe the superior protection of secondary rights in the customary law context because statutory law gives exclusive rights to the registered landholder. Table 3.1 below shows that the secondary rights holders' rights are more secure under customary law if they are married, have children and family support (Cousins & Hornby, 2009; ActionAid, 2005).

Marriage is a significant access point to property for both men and women (Cousins & Hornby, 2009; Jacobs, 2004). This is more significant for women because they have limited alternative access routes, while men on the other hand can inherit or be granted gifts of land (Rose, 2003). In Msinga (KwaZulu-Natal), South Africa, a chief allocates land to a married couple for the purpose of household sustenance (Cousins & Hornby, 2009). Similarly, a chief should allocate land to female-headed households for livelihood activities, but these households constitute a significant percentage of the rural landless (Cousins & Hornby, 2009). Often single and divorced females do not have much success in acquiring land, unless they are linked to a male relative (Cousins & Hornby, 2009); hence the proposed TCB is of great concern. A full traditional marriage that is based on local customs and traditions guarantees women secure access to property in some customary law environments (Cousins & Hornby, 2009; Gray & Kevane, 1999). The issue of marriage type also presents a problem for those women in customary marriages not recognised by statutory law (ActionAid, 2005). This is important when the deceased male's property is divided under statutory law or if the marriage

is dissolved, because such women then have no legal claim to marital property (ActionAid, 2005). Because of the patrilocal nature of marriage, divorced women have to leave the marital home as the land belongs to the husband's family (Cousins & Hornby, 2009; Rose, 2003). In the event of the husband's death, the land rights of a traditionally married woman in rural areas can be secured using the family and the established social network (Cousins & Hornby, 2009; Gray & Kevane, 1999). This is not however, always the case. For example, Joireman (2008) states that pervasive poverty and scarcity of property often result in widows fighting against disinheritance attempts by the extended family.

Most land rights conflicts take place within the extended family (Gray & Kevane, 1999). Tripp (2004) attributes this to increasingly decentralised household production while the extended family retains control of productive resources. Without a robust social network and family, most young widows find themselves disinherited; this is justified by the higher probability of remarriage for younger widows (Chapoto *et al.*, 2011). Some widows have contested the loss of their land, with mixed results (Rose, 2003). Knowledge of local customs, access to important and influential people, and respect for the chief and male authority have aided those widows who sought to secure their land (Rose, 2003). Some widows, however, choose not to fight back because they need support from their marital family in order to continue accessing other resources (Yngstrom, 2002).

There have been attempts to introduce statutory law in some rural areas, with varied results (ActionAid, 2005). These attempts highlight that without community engagement there is little buy-in, because often the land reform exercises resulted in a replication of the status quo (ActionAid, 2005). The isolated women beneficiaries were largely viewed as different for having 'broken rank', and were thus often targets of crime and violence (Thamaga-Chitja *et al.*, 2010; Jacobs, 2004). This was the case because in the eyes of the community the statutory laws lack legitimacy and because some implementing officials were against the development (Chapoto *et al.*, 2011; ActionAid, 2005). Although these exercises have been largely unsuccessful, they have still benefitted some rural women (ActionAid, 2005).

Where possible, some women have opted to buy land so that should they lose their marital property they will then have their own land (Tripp, 2004). This is said, however, to go against the behaviour of a 'good' woman, who is committed to her husband and family (Tripp, 2004; Jacobs, 2004). The stereotyped good woman is meant to be submissive, and content to let her husband provide for the family (Tripp, 2004). This woman does not speak in front of men

unless it is essential, and when she does speak it is with modesty and deference (Jacobs, 2004). She does not attempt to disrupt gender relations and social organisation with so-called worthless ideas of female emancipation (Tripp, 2004).

3.3. Rural Women Classes and Property Rights

The previous section shows that customary law, women's secondary status, social expectation, and extended family dynamics are some of the factors and context which govern women's ownership of land in rural communities. Different classes of women fare differently in the customary law regime of land ownership (Yngstrom, 2002). Most of the literature recounts rural married women's experiences of secondary access and control of productive resources, but there exist other classes of women (Cousins & Hornby, 2009; Rose, 2003; Yngstrom, 2002). In this framework of analysis, shown in Table 3.1 below, five other classes of women have been identified, namely single women with no children, women who have never married but have children, women in polygamous marriages, divorcées, and widows.

First, single young women in the household have no access to individual land, instead they work on their father's, uncle's or brother's land (ActionAid, 2005). Second, women who have never married but have children face significant constraints in terms of accessing land (Thamaga-Chitja *et al.*, 2010). Most live on their brother's or father's land, where they are sometimes allocated residential and arable land (Cousins & Hornby, 2009). In some cases, their male relatives request land from the chief on their behalf (Rose, 2003). They prove the woman's relationship to them, and her tribal membership, and a need for land (Jacobs, 2004). Despite these gains, such women often face threats of eviction and confiscations from other villagers (Rose, 2003). Security for them increases with the number of years a piece of land is cultivated, while it is reduced if the land is left idle, in which case other villagers or family members can appropriate it (Yngstrom, 2002; Gray & Kevane, 1999). A daughter's access to land is not guaranteed on the death of her father; some women have been chased away from the family home by their father's relatives (Cousins & Hornby, 2009). Individual land titles would be ideal for these single women with children who serve as female heads of household (Jacobs, 2004). An Ethiopian case study shows that single women were allocated land in a land reform programme (ActionAid, 2005).

Third, upon marriage a woman's rights are transferred to her husband's family, and her husband is allocated land on behalf of his family (ActionAid, 2005; Jacobs, 2004). Women

are not allocated land in their individual capacity, but instead receive user rights from their husbands for arable land in order for them to grow household food (Chapoto *et al.*, 2011; Cousins & Hornby, 2009; Rose, 2003; Yngstrom, 2002; Gray & Kevane, 1999). ActionAid (2005) and Bob (2002) observe women's plots of land to be far away from where they live and to have weak soils. A married woman's rights are secure as long as she is married (Cousins & Hornby, 2009; ActionAid, 2005; Gray & Kevane, 1999). When a married woman's parents die, land is not normally bequeathed to her because that would transfer it to another clan (Tripp, 2004). Joint titling would be ideal for married women as it is less disruptive to their marriages and families, which is important given women's strong reliance on family (Jacobs, 2004).

Fourth, land use security for the woman in a polygamous marriage increases with seniority (Gray & Kevane, 1999). This is because most African cultures respect seniority (Jacobs, 2004). Having children secures land access, and so some women have many children in order to increase the chances of having sons and thereby cementing their access to land (Tripp, 2004; ActionAid, 2005).

Fifth, divorced women lose their rights to the marital land due to the patrilocal nature of patrilineal marriages (ActionAid, 2005; Yngstrom, 2002). They return to their natal homes and ask their maiden male relatives for residential and arable land (ActionAid, 2005; Yngstrom, 2002).

Finally, widows' circumstances depend upon the cultural setting (ActionAid, 2005). A widow may be given access to land if she remains unmarried and holds the land in trust for her children, or if she marries a brother-in-law (Cousins & Hornby, 2009; ActionAid, 2005; Yngstrom, 2002). Staying on the land depends upon the goodwill of her husband's relatives, but a widow with young children may find that the extended family is a threat to her property and user rights (ActionAid, 2005; Rose, 2003). Some widows are chased away by their husband's families (Chapoto *et al.*, 2011). Chapoto *et al.* (2011), in a Zambian case study, set forth the following factors as contributing towards a widow's land access rights: (1) the number of years a household has lived in an area; (2) the nature of the woman's relationship with the husband's family, headman, other authorities, and other influential people; (3) the relationship of the deceased's family to authorities; (4) the duration of the marriage; (5) the age of widow; and (6) the wealth of the widow. Generally, younger and wealthier widows are more vulnerable to disinheritance by the extended family (Chapoto *et al.*, 2011). Chapoto *et*

al. (2011) attribute the vulnerability of young widows to their limited social capital in the marital family and village. The prevalence of rural poverty and notions of extended family property may increase the chances of the wealthy widow being disinherited (Chapoto *et al.*, 2011; Joireman, 2008).

Although rural women live in a patriarchal community with secondary access, this discussion would be incomplete without highlighting that they have found ways to navigate the framework to their advantage. Using a feminist ecology lens, women and nature are both viewed as being dominated by men under a system of patriarchy that separates men from women, humans from nature – so that the other may be exploited (Mack-Canty, 2004; Salman, 2008). In addition this separation does not recognise the interdependence of humans from nature. However, because more rural women than men are employed in agriculture and, they depend on land for their livelihoods, female activists have taken to protesting against developments which would threaten women's livelihoods (Mack-Canty, 2004). Related to this is the 'resistant feminist theory' which centres on patriarchy and how culture and religion have strengthened it, and how this is used to exploit women's labour, bodies and emotions (Lorber, 2010). To solve this, women should create their own public spheres in customary law; however this is not always possible given rural women's secondary status and societal limitations (Lorber 2010; Tripp 2004). Recognising that women are often without access to centres of decision making (Salman, 2008), they negotiate access to land using local strategies. Some register land in a young son's name, adopt celibacy, access land with the help of a male relative or even to buy land where land where possible (Toulmin, 2008; Tripp, 2004; Rose, 2003). These show that while rural women are mostly dependent on their male relatives, they have agency (Nazeen & Selim, 2005). Although patriarchy treats women as secondary citizens, it gives them a window to improve their access to land. These experiences and perceptions will be instrumental in developing a framework which secures rural women's land rights.

TABLE 3.1: Framework of Analysis

	COMMUNAL TENURE	STATUTORY TENURE
Framework base	<ul style="list-style-type: none"> The community's cultural beliefs (patriarchal or matriarchal) Rights vested in the male head of all households belonging to the group 	<ul style="list-style-type: none"> Equality of individuals regardless of sex, race or creed Rights are vested in the individual
Process of land acquisition for woman	<ul style="list-style-type: none"> Allocation by the Chief to a male relative, and then to the woman Inheritance is mostly from father to sons; older natal / marital female relatives may bequeath younger natal / marital female relatives with land Renting a plot from a neighbour Share-cropping Women's group allocations 	<ul style="list-style-type: none"> Buy (but they are poor and less literate) Inherit (legally, but cultural impediments and adverse social expectations) Lease / rent (but they are poor and less literate)
Land rights for women	<ul style="list-style-type: none"> Limited influence in land use decisions Access rights to household land and commons User rights to household land Control mostly limited to agricultural activity 	<ul style="list-style-type: none"> Access rights to land User rights to land Control over land that one owns – able to lease, mortgage, bequeath and sell
Land use security determinants	<ul style="list-style-type: none"> Chief allocates land using local rules Land belongs to family but often rights reside with the male head Neighbours know each other so can confirm ownership Marriage and children mean security Importance of maintaining cordial relations with natal and marital families Observing full local marital rites provides stronger security 	<ul style="list-style-type: none"> Legal muscle to enforce title deeds and lease agreements
Factors enhancing land access	<ul style="list-style-type: none"> Marriage Many young dependants Support from male natal and marital relatives 	<ul style="list-style-type: none"> Source of income Access to legal services Possession of lease agreement or title deed
Factors limiting women's land access	<ul style="list-style-type: none"> Gendered allocation of resources Social expectation of the so-called good woman (wife / sister / daughter) who is content with secondary land rights and does not seek individual rights 'Buying' future family support by renouncing legitimate claims to natal land Male-dominated land arena 	<ul style="list-style-type: none"> Little income; legal and general illiteracy Rural women are mostly monolingual, and cannot communicate effectively in official language Limited access to identity and other documents Discordant laws which counter women's constitutional right to equality Western laws are often socially illegitimate in rural communities, and are thus not accepted The poor implementation of laws limits the benefits they offer the target beneficiaries Cultural and legal impediments (i.e. women's secondary status limits their individual participation in government programmes)
Hierarchy of rights that determine land access (in descending order)	<ul style="list-style-type: none"> Male household head Senior wife (power and authority) Wife with children (boys and girls) Widow with children (boys and girls) Married or widow no children Single, with children Single, no children 	<ul style="list-style-type: none"> Title deed holder Lease holder

3.4. Conclusion

The profiles of rural women in different marital classes and how they access land reveal their vulnerability in the absence of male relatives. This vulnerability is defined by women's secondary status and secondary access to resources. Women have borrowed land and entered into sharecropping arrangements as strategies to secure land, but these remain insecure and inadequate. The solution may lie in cementing certain elements and practices that foster recognised internal arrangements based on *Ubuntu*, such as a leasing arrangement endorsed by recognised local leaders. Women's rights within the customary rights framework could possibly be elevated while at the same time maintaining the social network and kinship which define customary law.

In redefining this customary law framework, a context-specific solution is required, one that addresses women's rights while maintaining cultural identity. Several authors have offered different solutions, but all possess a common feature: a holistic transformation of gender relations in terms of customary law. The possible adoption of individual titles for land users in customary law would complement this transformation. The giving of individual titles has not always produced increased investment in land, but it could prime rural societies for development by creating formal capital for the rural dwellers.

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CHAPTER 4: MANUSCRIPT 1 -THE ROLE OF PROPERTY RIGHTS ON RURAL WOMEN'S LAND USE SECURITY AND HOUSEHOLD FOOD SECURITY FOR IMPROVED LIVELIHOOD IN LIMPOPO PROVINCE.

Authors: MURUGANI VG, THAMAGA-CHITJA JM, KOLANISI U, SHIMELIS H.

ABSTRACT

Small scale agriculture is a key land based activity for rural women, yet they own very little land. Rural land access is mediated by patrilineal customary law where women have mostly secondary property rights as wives. Consequently their land use security was derived from the family and other means of fostering accountability. As these have been lost with the developments in customary law, what is the source of women's land use security? Three communities in Limpopo Province were selected purposively; data was collected using a self-administered questionnaire, focus group discussions, key informant interviews and observation. Data analysis was through descriptive analyses (SPSS) and content analysis. The results show gendered access land access and secure access for mostly married women. In spite of their insecurities, women are motivated to farm for household consumption. A framework that recognises women as land users and rural development are essential to strengthen women's land use security.

Key words

Gender, food security, property rights, customary land laws, statutory land laws, land use security, Limpopo Province

4.1. Introduction and Background

Agricultural land is a critical resource in economies where subsistence agriculture is an important livelihood activity (Aliber & Hart, 2009). Rural land ownership confers identity, power, belongingness, the means to produce food, and a way out of poverty (Cousins & Hornby, 2009; ActionAid, 2005). Most rural women are unemployed, and engage in subsistence agriculture, contributing significantly towards household food production and food security (Kent & MacRae, 2010; Altman *et al.*, 2009; Kerr, 2005; Agarwal, 2003). Local institutions enforce property rights considered as socially and legally legitimate (Mutangadura, 2007; Agarwal, 2002). Prevailing oral or written property rights determine land use and security which are critical for efficient agricultural production (Lemmens, 2011).

There are dual property rights systems in most Sub-Saharan African countries including South Africa (Toulmin, 2008; Goebel, 2007; Deininger & Castagnini, 2004; Grey & Kevane, 1999). First, statutory law vested in the constitution accords men and women equal rights to own, and participate in land transactions (Torkelsson & Tassew, 2008; Deininger & Castagnini, 2004; Gray & Kevane 1999). Second, customary law vested in mostly patrilineal tribal traditions and customs (Toulmin, 2008; Torkelsson & Tassew, 2008; Goebel, 2007; Deininger & Castagnini, 2004; Gray & Kevane, 1999). Due to the largely rural nature of most Sub-Saharan African countries, about 90% of land is held under customary law (Toulmin, 2008; Goebel, 2007). Patrilineal customary property rights systems restrict most rural women to accessing resources through their male relatives, as secondary beneficiaries (Toulmin, 2008; Torkelsson & Tassew, 2008; Goebel, 2007; Deininger & Castagnini, 2004; Gray & Kevane, 1999). The rights of wives, sisters, and daughters, and rights security ceases when the relationship changes (Toulmin, 2008; Deininger & Castagnini, 2004; Gray & Kevane, 1999).

Investigating land use security options for women is therefore urgent in combating food insecurity and fostering sustainable livelihoods in the context of a largely female rural population. Male outward migration, divorce, widowhood and desertion have produced a high number of female-headed households reliant on agriculture for household food security (Agarwal, 2003). Women's secondary rights, render their tenure insecure when the population grows, land values appreciate, shocks, divorce or death (Yngstrom, 2002). Resulting land conflicts are settled in traditional courts where men have more influence and their rights take precedence (Tripp, 2004; Rangan & Gilmartin, 2002). Consequently, Thamaga-Chitja *et al.* (2010) questions the gender sensitivity of the South African government's land reform efforts.

What are the land rights South African women in rural Limpopo Province's small-scale irrigation schemes operate under, and how do they influence land use security and agricultural production?

4.2. Land Property Rights for Women

Women's property rights are derived from the broader statutory or customary community resource access framework (ActionAid, 2005). Due to differences in the dual rights system, women of similar status resident in statutory or customary law areas of a country have different property rights (ActionAid, 2005). Tensions caused by this dichotomy were well articulated by Thamaga-Chitja *et al.* (2010) and are explored below.

The South African constitution states all men and women can own land as individuals in their own right, or as part of a group, according to group rules (RSA, 1996). Most governments have ratified international laws and treaties around equality for women regardless of marital status (Lastarria-Cornhiel, 2006). Consequently, statutory law, where land ownership is symbolised by a title deed, allows women equal rights to own and conduct land transactions (Mutangadura, 2007; De Soto, 2000). Title deeds and lease agreements are registered in a government system which guarantees the exclusive rights held by freehold or leasehold land owners (Lemmens, 2011; Mutangadura, 2007). Land rights are transferrable temporarily through renting and mortgaging, or permanently with the transfer of title deeds through sale or inheritance (De Soto, 2000). Thus land markets where minorities and marginalised groups including women can theoretically participate equally are formed (De Soto, 2000).

The statutory land law is an ideal system but there are several disadvantages for women. First, land markets exclude most women who cannot afford to buy land, concentrating land in the hands of elite and well-connected individuals (Toulmin, 2008; Lastarria-Cornhiel, 2006). Second, statutory law applies in major urban areas, about 10% of Sub-Saharan Africa, excluding rural areas under traditional leadership (Aliber *et al.*, 2006; Lastarria-Cornhiel, 2006; Rose, 2003; Yngstrom, 2002). Most governments have failed to increase statutory law coverage due to capacity limitation and protection of traditional authorities, a key power base (Lastarria-Cornhiel, 2006). Third, while premised on equality, some statutory laws favour son over daughter inheritance, or give men and women different grounds for divorce (Lastarria-Cornhiel, 2006). Finally, statutory laws introduced without local consultation and which lack local institutional support, weaken women's property rights because they overlook group dynamics and existing power structures (Lastarria-Cornhiel, 2006; Bogale & Korf, 2005). A

Vietnam land titling project designed to benefit women left them as secondary beneficiaries because of uncooperative implementers and communities (Lastarria-Cornhiel, 2006).

Customary law governs all facets of life for most of the rural African and Asian population (Toulmin, 2008; Lastarria-Cornhiel, 2006; Jacobs, 2004; Yngstrom, 2002). It is based on mostly patrilineal tribal traditions and values but is not static (Toulmin, 2008; Yngstrom, 2002). Land, a symbol of power and belonging is vested in the chief, who allocates it to citizen male household heads, and women are secondary beneficiaries (Toulmin, 2008; Lastarria-Cornhiel, 2006; Jacobs, 2004; Rose, 2003; Yngstrom, 2002). Citizens have a combination of mostly undocumented individual and collective rights, men's property rights are usually access, user and control but women have access, user and influence (Toulmin, 2008; Boone, 2007; Bogale & Korf, 2005). Rights recognition is through neighbour recognition, local custom validation, and efficient local institutional and processes support (Toulmin, 2008). Allocations are modelled on the "unitary household model", wrongly assuming that household resources are distributed equitably, when gender, age and position differentiate access (Kerr, 2005; Agarwal, 2002). Household allocation is according to seniority but the household head's rights take precedence weakening women's access in the household (Yngstrom, 2002). Land passes from father to son, with women accessing it as wives, daughters and sisters (Joireman, 2008; ActionAid, 2005; Agarwal, 2003; Yngstrom, 2002). In addition to giving men power over women, secondary rights weaken women's status and rights security in the household (Joireman, 2008; Agarwal, 2003).

Like women, the youth account for a large number of the rural unemployed and yet their involvement in agriculture is limited despite its potential to create employment (Delaney *et al.*, 2011; Olujide & Ojo, 2011; Uli *et al.*, 2010; Thornton, 2008). This disinterest has been observed in Africa and Asia and is attributed to their being landless; agriculture's low returns on investment compared to other jobs; the lack of recognition and possibly acknowledgement and reward for the work they do; and the perceived lack of sophistication of agricultural work (Delaney *et al.*, 2011; Olujide & Ojo, 2011; Uli *et al.*, 2010; Thornton, 2008). In South Africa, the youth viewed agriculture negatively relating it to the apartheid era and the limited employment opportunities black South Africans had in the homelands (Thornton, 2008).

Marriage is a major access point to household agricultural land for rural men and women, for food production (Lastarria-Cornhiel, 2006; Cousins & Hornby, 2009; Jacobs, 2004; Yngstrom, 2002). Male household heads receive land from the chief or family, but wives are

allocated land for household food production by their husbands (Cousins & Hornby, 2009; Yngstrom, 2002). Women control the fieldwork and produce, and land use security is guaranteed for the marriage duration (Cousins & Hornby, 2009; Yngstrom, 2002). For instance some married women in Msinga, South Africa and Murang'a, Kenya also inherited their mother-in-law's land after working with her for years (Cousins & Hornby, 2009; Yngstrom, 2002).

Widowhood brings insecurity for most women who face eviction, disinheritance or widow inheritance depending on local customs (Chapoto *et al.*, 2011; Cousins & Hornby, 2009). Children and good relations with the marital family assured security and continued resource access in Tanzania and Swaziland (Rose, 2003; Yngstrom, 2002). However, older widows in KwaZulu-Natal, South Africa retained their marital land and controlled planting activity on it until their sons claimed it (Thamaga-Chitja *et al.*, 2010). Divorced women returned to their natal homes because the marital home belongs to the marital family (Cousins & Hornby, 2009; Lastarria-Cornhiel, 2006; Rose, 2003). Alternatively, she can be allocated a new plot in the same village (Cousins & Hornby, 2009; Rose, 2003). Single women with or without dependents are disadvantaged by gender based land allocations (Cousins & Hornby, 2009). Most used natal land but some were successfully allocated land through a male relative's advocacy (Cousins & Hornby, 2009). Land use security increased with time, although confiscations, eviction and violent threats sometimes arose (Rose, 2003; Yngstrom, 2002; Gray & Kevane, 1999).

While rural dwellers perceive their land laws as secure and low risk; widows, divorcees and single women face some insecurity (Toulmin, 2008). When gendered land conflicts arise, male dominated traditional court rulings seldom benefit women who are generally barred from attending and speaking for themselves (Toulmin, 2008; Jacobs, 2004; Rangan & Gilmartin, 2002). Should they disagree with the judgement, they have limited appeal options as national statutory laws lack legitimacy in rural areas (Deininger & Castagnini, 2006). The marital commitment of women who acquire individual property is questioned, yet the fairness and gender-equality of traditional courts is not guaranteed (Chapoto *et al.*, 2011; Tripp, 2004; Rangan & Gilmartin, 2002). This is significant given the absence of mechanisms and processes that hold traditional courts accountable to the people (Toulmin, 2008). These insecurities that women face could negatively affect women's role in agricultural production. Agarwal (2002) noted the direct relationship between land use security and agricultural production in Indian case studies.

4.3. Security of Property for Food Security and Sustained Livelihoods

Secure land access is essential for sustainable rural livelihoods, given agriculture's significance among rural livelihood activities (Li *et al.*, 2008; Toulmin, 2008; Aliber *et al.*, 2006; Deininger & Castagnini, 2004). Land access improves water access, and farmers with secure access to both are more productive than those without (Namara *et al.*, 2010; Pellizoli, 2010; Quisumbing & Pandolfelli, 2009). Increased productivity is due to reduced time and money spent on conflict resolution and increased water availability (Toulmin, 2008; Bogale *et al.*, 2006). This would benefit rural women, who are mostly landless agricultural workers on their male relatives' land with secondary access to water and other productive resources (Kent & MacRae, 2010; Agarwal, 2002). Rural women produce most of the food worldwide, but gendered insecurity prevents them from investing on the farms (Kent & MacRae, 2010; Agarwal, 2002). Women's productivity on their male relatives' land is much lower than on their own, particularly if they do not control the produce; a critical finding given the increasing number of *de facto* female-headed households (Kent & MacRae, 2010; Agarwal, 2002).

Women view agriculture as a means to household food security, thus they cultivate food crops from homestead gardens that contribute significantly to this goal (Backeberg & Sanewe, 2010; Kent & MacRae, 2010; Kerr, 2005). Water availability limits women's role in agriculture. Given access to irrigation water, their agricultural production could improve household food security, and produce excess to sell for profit (Backeberg & Sanewe, 2010; Thamaga-Chitja *et al.*, 2010).

4.4. Study Area

The study was conducted in three irrigation schemes in rural Limpopo Province, north of South Africa. In the Province 60% of the land is privately owned and 25% falls under traditional governance (Limpopo Provincial Government, 2009). Limpopo Province is South Africa's least urbanised province and has a 96% African population, most of whom derive significant amounts of their food from small-scale agriculture (Ramathoka *et al.*, 2009; Hope *et al.*, 2004). There are high rate of outward migration from the Province to Gauteng and Western Cape Provinces.

Three irrigation farming communities, Mashushu, Steelpoort Drift and Rambuda, from Capricorn, Sekhukhune and Vhembe districts, respectively, were purposively selected. Betterment policies in the apartheid era resulted in separate household and living sections;

therefore agricultural land was limited to a fixed number of hectares (Tapela, 2008). Mashushu was established in 1959 and has 42 hectares under irrigation agriculture, Steelpoort in 1972 and has 94 hectares and Rambuda in 1952 and has 120 hectares.

4.5. Sampling Procedure and Method

A mixed methods research approach and purposive sampling were used to collect data and select male and female respondents from the three study areas. The mixed methods approach combines the collection and analysis of qualitative and quantitative data, facilitating a comprehensive study of the problem and comparison of the results to existing data (Ivankova *et al.*, 2007).

With purposive sampling, the population are those who meet a list of predetermined characteristics and respondents selected from these (Teddlie & Yu, 2007). In this study, the selected communities had to have a functional irrigation scheme with existing agricultural activity and active female farmer participation. Convenience sampling was used to select 50% of the households with irrigation plots in the study areas to participate in the survey. The researcher first established the total number of farming households per scheme, the researcher assistants then walked into the irrigation scheme and interviewed the farmers they met over a three day period. During this time members of at least 50% of the registered households in the scheme were interviewed. There were a 115 questionnaire respondents from the three communities. Focus group discussions were also conducted in each of the three study areas with at least 8 members, and key informant interviews were held with the chief or headman, extension officers and the committee members of the scheme.

4.6. Data Collection and Analysis

Qualitative and quantitative data was collected simultaneously to compare the findings of the different methods and produce well-founded conclusions (Ivankova *et al.*, 2007; Creswell, 2003). Data was collected using a questionnaire, key informant interviews, focus group discussions and observation over a three week period. The data was subjected to descriptive statistical analyses using the Statistical Package for Social Scientists (SPSS) and content analysis. Content analysis is a method of analysing text data by studying language features and content in a given context and categorising the data into themes (Hsieh & Shannon, 2005). Data from the closed questions on the questionnaire was coded and the demographic, existing land property arrangements, land use security for food security and ideal property rights sections of the questionnaire were subjected to descriptive analysis (SPSS). The open

ended questions from the questionnaire, the key informant interviews and focus group discussions were analysed for the occurrence of common themes. The conclusions from the separate results were compared for similarity and the researchers used both to inform the discussion and conclusions arrived at.

4.7. Results and Discussion

The study sought to establish the role of property rights on women's land use security and agricultural production in rural Limpopo Province using three study sites: Mashushu (Capricorn District), Steelpoort Drift (Sekhukhune District) and Rambuda (Vhembe District) irrigation schemes.

4.7.1. A description of the sample

There were 115 respondents. 58 Respondents (50.4%) were from Rambuda community in Vhembe, a Venda speaking District in Limpopo province. 35 Respondents (30.4%) were from Steelpoort in Sekhukhune, a Pedi speaking district and finally 22 (19.1%) were from Mafefe in Capricorn, another Pedi speaking district.

The farmers in the study were mostly (81.7%) female and 69.6% were over the age of 50 years. The respondents were mostly married (59.1%), or widowed (27%). The other marital classes combined formed only 13.9% of the sample. Among the farmers 52% were household heads, while 40% were the spouse of the household head. The involvement of the predominantly female interviewees in agriculture reiterates its importance in rural women's livelihoods as shown by Altman *et al.* (2009) in their studies of former homelands and other rural areas in South Africa. Other studies by ActionAid (2005), Agarwal (2003) and FAO (2011) confirm the same. Most respondents had been married at some point showing that marriage is a key access point to land for women in these communities. Cousins and Hornby (2009), Yngstrom (2002) among others, have found similar patterns in communities they worked. Single women therefore seem to have limited land access in their individual capacity.

The age of the farmers shows a lack of involvement and seeming disinterest in farming activities by younger people, raising concern about the sustainability of rural farming based livelihoods and transfer of knowledge. Young people in the three communities mostly felt that agriculture was for the older generation and the work was hard with little returns. Some preferred to stay at home, look for work in the mines in Steelpoort Drift or engage in brick-making, for instance in Rambuda. However, one wonders if these young people did not

perceive themselves to have weaker rights than the household head and his spouse. If so, the profits would not come directly to them and this would be a significant disincentive to younger household members participating in agriculture.

Most (57.44%) of the households were male headed. The household heads were mostly (80%) over 50 years old. Of the total households, 61.7% were married and 29.6% were widowed. Although there were a high number of male-headed households, there was also a largely increasing class of *de facto* female-headed households. This could be attributed to the number of widows; and the women whose husbands had migrated to other provinces for work, 56.5% of married farmers did not reside with their spouses. But some of these women had never married, given the significance of marriage in land access; these female-headed households were more likely to be secondary users of other households' lands.

The education levels of the farmers and the household heads were equally divided among the three options: no formal education, primary, and secondary education. This shows that the older generation in rural Limpopo Province did not receive many opportunities for education in apartheid South Africa. All respondents reported that their households were involved in small-scale agricultural production. A few (12.2%) of the household heads were employed, and 40% of the households had a household member who was formally employed. These high unemployment levels and resulting income poverty mean small-scale food production which would otherwise be of little importance is a significant source of daily food and income. In addition, households derived income from state grants (85.2%), petty trade of agricultural produce (77.4%) and remittances (15.7%), clearly showing the diverse livelihood activities in rural households. Also most of the respondents were engaged in the petty trade of agricultural produce, which provided a key source of independent income for rural women. This income was spent on household necessities or saved to pay for school fees and uniforms, confirming Agarwal's (2003) findings in India that women's income is spent for the household's wellbeing.

Evidently, rural agriculture is a predominantly female activity, in both male and female-headed households. It is an activity for aged men and women, and the produce provides an important source of small daily income through petty trade for rural women and their households. Efficient irrigation facilities could improve the volumes and quality of agricultural produce for women in this sample, securing household food security and improving their cash income.

4.7.2. Prevailing land rights

From focus group discussions and individual questionnaires it was established that Mashushu, Steelpoort Drift and Rambuda communities were all under Tribal Authority. The land belonged to the chief or headman, and the resident households could apply for residential land because agricultural land within the schemes had been exhausted when they were established. The application was accompanied by an identity document and a fee ranging from R120 to R400 depending on the community, successful applicants received Permission to Occupy (PTO) certificates. In Rambuda, however, the Department of Agriculture issued the PTO. Households were not allowed to sell tribal land, although in Mashushu and Steelpoort they were permitted to sell their houses. Households held access, user and control rights to land in the three communities which were transferable through mostly patrilineal inheritance. Borrowing was a common means of temporarily transferring land rights in the communities.

The farmers in the three areas identified the two main sources of their households' agricultural land as the resident tribal authority and inheritance. Table 4.1 summarises the sample's sources of land in general and by district in the study areas.

Table 4.1: Household Agricultural Land Sources in the Study Areas

District (n=115)	Land source (%)			
	Tribal authority	Inherited	Government	Borrow
General	60.9	20.9	13.2	5.2
Mashushu	63.6	4.5	31.8	-
Steelpoort*	65.7	8.6	8.6	17.1
Rambuda	56.9	34.5	8.6	-

*The total is not 100% because not all respondents answered the question

Although allocations by the resident tribal authority were the most common in all districts, there were some differences in the second most common means of accessing land. In Mashushu, Government programmes accounted for 31.8%, in Steelpoort borrowing accounted for 17.1% and in Rambuda inheritance for 34.5%. Most respondents (64.3%) in the sample had used their land for more than 20 years, some saying they had been farming since the scheme started. The land access patterns and duration of use in the communities showed that having received land, rights were perceived as being held by a household indefinitely.

Land in the irrigation scheme was divided into plots and respondents held rights to between 1 to 14 plots. The initial criteria for allocating plots to households was not available although anecdotal evidence showed that land was allocated to households who had no alternative

employment. Some female respondents in Rambuda mentioned that female plot beneficiaries received 4 plots whereas their male counterparts received 12. This demonstrates gendered land allocation and negative perceptions towards women's ability to use the land efficiently, despite cultivating land owned by their male relatives. It was customary in the 3 areas for a man in a polygamous marriage to divide the plots among his wives. The wives involved in agriculture to produce food for their household and would leave their land to their male children. The average plot number was 7. Due to the central nature of the irrigation schemes, 87.8 % respondents lived within a 30 minute walking distance from the scheme with only 0.9% living about 2 hours away.

The land access and ownership processes described above show several similarities with documented cases of customary land law in rural communities. First, land administration is the responsibility of the tribal leader, an inherited political position (Mathis, 2007). The 'chief' or 'headman' is the local custodian of customs, culture and productive resources in his area (Cousins & Hornby, 2009; Toulmin, 2008; Bogale & Korf, 2005). Land was largely allocated to local households, strengthening a sense of belonging in community members. This method of land allocation also showed that the household was a primary means of grouping community members for resource allocation and community membership. Second, the communities were all patriarchal as evidenced by the predominantly patrilineal inheritance customs (Yngstrom, 2002). Also land allocations to the male household head gave the landholder power over the other household members (Cousins & Hornby, 2009; Kerr, 2005; Rose, 2003). This also strengthened the household's position as an important avenue of land ownership for the household head, and access and user rights for other household members.

Agricultural land was for household livelihoods and was a valuable asset that could not be mortgaged or sold (Cousins & Hornby, 2009). Instead land could be lent to a neighbour in need so that it could be used, and also safeguarded from loss due to idleness. Although this led to land loss in previous times, most respondents did not view it as a current threat. Also, all communities identified borrowing as a key land access strategy; though it was only practised in the Steelpoort Drift community. Could the land borrowing market be formalised in these three communities? If so, what potential does it hold for improving land access for landless community members?

Differences existed within the prevailing land rights in the communities. First, the inclusion of government departments in the Rambuda community land allocation process, an arena

largely left to traditional leaders. This could be attributed to the altering impact of apartheid and post-1994 policies in this particular district. Toulmin (2008) highlighted colonialism and post-independences policies as factors which could influence customary law. Second, the prevalence of documentation of rights, however rudimentary for old and new land holders in Limpopo Province, was an uncommon finding in customary tenure systems. Permission to occupy (PTO) documents, a receipt issued when a land application was submitted and a register gave security and recognition of rights to the community members. The respondents in these communities recognised these as legitimate sources of security. However, the unnamed female users of land remain vulnerable because when marriage ends in divorce, they mostly forfeited their secondary rights.

The prohibitive expenses households would incur when seeking to register their rural land rights have been observed in some studies but, these communities had a less expensive and locally valid means of securing one's land holdings in the communal tenure arena (Toulmin, 2008; De Soto, 2000). The development of local measures is also noted, the receipt issued by the chief, erecting a fence or marking the land with a pole, were all respected by the local community. This shows that the residents of the communities respected their individual evidence of security, however, De Soto (2000) while appreciating this evidence also highlights that it is useless outside the community as it does not attract investment. The introduction of external investment and loans into the customary tenure framework would lead to a better financed small-scale agricultural sector but it carries risks for defaulting farmers. Those who used their land as collateral would risk losing it, a great risk for vulnerable communities that rely significantly on agriculture.

From this section, rural land rights are shown to be customary and mediated by the resident traditional authority. The communities are patriarchal; their practises in local land allocation and inheritance demonstrate this. How do these general land rights define a resource access framework for women in rural Limpopo Province?

4.7.3. Women's land access

Rural women make up a significant proportion of rural dwellers. Their land rights are largely governed by customary tenure which is mostly patriarchal. In such communities, women's rights have been shown to be largely secondary user rights, with primary rights held by women's natal and marital male relatives.

There were four main means of accessing land described in the communities, land allocated by the resident tribal authority, through a government programme, inheritance and borrowing. From these four, a comparison of agricultural land access at household level for male and female-headed households was made as indicated in Table 4.2.

Table 4.2: Agricultural land sources for male and female household heads in rural Limpopo Province

Head of household (n=115)	Land access (%)			
	Traditional authority	Inheritance	Government Programme	Borrowing
Male	65.2	18.2	12.1	4.5
Female	56.5	26.1	15.2	2.2

Allocations of land by the resident traditional authority and inheritance contribute significantly to female-headed households' land access as they do for male-headed households (Table 4.2). The chi-square test shows that the sex of the household head is independent of land access in the three areas (data not shown). Of these female-headed households, 10.6% of those who accessed land from the resident traditional authority were married and 60.6% were widowed. Since most female household heads had been or were currently married, this implies that *de facto* female household heads "acquired" and inherited their husbands' primary rights. If that were true, then land access for women as individuals is limited in these three communities. Some key informants and single female household heads reported they had applied for land in their individual capacity, and the chief had awarded them land and the Reconstruction Development Programme (RDP) houses because they had dependents. Hence in these communities, marriage and children improved women's access to productive resources and assets, leaving single women with no children vulnerable as they were perceived as minors.

Land in the three study areas was mostly allocated to male household heads and 57.4% of the respondents originated from such households. Land was largely accessed through the family and 46.1% reported that the land rights were held by a male member of the family and 17.4% by a female relative. Only 27.2% of the women were using land they held rights to compared to 72% of the male respondents reiterating women's secondary rights in these three communities. The community of residence also influenced household land rights as shown in Table 4.3.

Table 4.3: Respondent description of primary land rights holders

District (n=115)	Male Respondent (%)	Male Relative (%)	Female Relative (%)	Female Respondent (%)
General [*]	12.2	46.1	17.4	22.6
Mashushu [*]	13.6	31.8	13.6	36.3
Steelpoort [*]	5.7	37.1	31.4	22.9
Rambuda	15.5	56.9	10.3	17.2

^{*}The total is not 100% because not all respondents answered the question

Mashushu had the highest female farmers (36.3%) using land they held rights to, although most were widowed. Steelpoort, however, had the lowest number of men working on their plots; although many more held land as shown by the 37.1% of respondents who used their male relatives' land. Did the men in Steelpoort have better paying sources of income? Could the possible lack of off-farm opportunities for men, make land a predominantly male resource in the other communities?

A woman's age, marital status, education level and district of residence influenced her land rights at household level. As women got older they were more likely to hold primary rights to land, 32.05% of the women over 50years held individual rights to land compared to none under the age of 35years and 0.04% in the 36-50years age group. However, only 12.5% of women who had never married and were over 50 years old, used land they held rights to compared to the 55.2% of widowed respondents. This shows that women in these communities have limited opportunities to access land themselves without getting married. Further, 56.7% of married women accessed land through their male relatives. This shows that the most important land access was through the family for women as wives, daughters and mothers of their male relatives, and was supported by Cousins and Hornby (2009), Rose (2003) and Yngstrom (2002). Wives used marital land allocated to them for the duration of the marriage and this was similar to observations by Cousins and Hornby (2009), ActionAid (2005) and Yngstrom (2002). Marriage provided women with a strong access point for land because it elevated the status of women in the household and community and gave them a responsibility to provide food for their households. A married woman therefore had access and some decision making power about land use compared to other women in the household (Yngstrom, 2002). This suggests the possible existence of a hierarchy of rights among secondary rights users, dependent on one's status in the household.

Inheritance was a significant access point to household land for widows in all three sites. Of the widows, 53.3% had inherited their husbands' land and used it until they died or their sons

grew older. This reiterates the belief that women only inherited the land in a caretaker capacity for their sons as observed by Jacobs (2004). Women in other marital classes in the study could not inherit land, for example, there was a strong view that single daughters were going to marry someday and the land would be lost to another clan or another family. Consequently, 65.2% of the respondents identified sons as rightful heirs, the rest said the eldest child regardless of sex should inherit and look after the younger siblings if they were still minors. Single daughters had weaker rights than sons who allowed them to use the natal land after the parents died. They could only inherit if there were no sons and married women could not inherit natal land because they now belonged to another family. Alternatively, single women in Steelpoort and Mashushu could apply for individual land with their families' assistance. Rambuda respondents did not give land to single children because '*they ate at home*'. While it was possible for single women to access land from traditional authorities, it was very difficult within the household. Why has household land inheritance remained gendered when strengthening women's land rights would benefit the household the most?

Divorced women returned to their natal homes, cutting off all ties to the marital family and its resources, and they were given land like other single women by their natal families if they had land to spare. The association between land access and relationship to the male household head was demonstrated by the loss of user rights on divorce (Toulmin, 2008; Deininger & Castagnini, 2004; Gray & Kevane, 1999). There were very few divorced women in the sample (1.7%) and this could be attributed to the envisaged loss of status and user and 'control' rights to marital land that came with divorce. It could also be due to the loss of land for the leaving woman's children. Verma (2001) showed that children with divorced parents who had relocated with their mothers usually lost claim to paternal land, and had very weak rights in their mother's natal homes. Maintaining a good relationship with male relatives was therefore a key for women's land access, but it also weakened women's position in the household and community (Lastarria-Cornhiel, 2006; Yngstrom, 2002).

Cohabiting women mostly used land that belonged to their partners or partners' families. Women in informal marriages hold weak user rights to their partners' family land. The man has no obligation to give her land because that obligation only lies with men for their wives (Cousins & Hornby, 2009; Gray & Kevane, 1999). Similar observations were also made in Gusui, Kenya, where due to land shortages men resorted to informal marriages that gave women temporary user rights but no security at all (Gray & Kevane, 1999). Cousins and Hornby (2009) also observed that women in informal relationships in Msinga (KwaZulu-

Natal), South Africa could use their partners' land until the relationship ended but even then access and user rights were not secure.

Borrowing land was a key strategy practised by 6.4% of the respondents and all were female. To borrow land, one approached a neighbour or family relative whose land was idle. The two parties made a verbal contract which specified time and conditions of use of the plots; which included any of the following: payment of irrigation scheme fees, maintenance work and produce as a token of appreciation. Although largely practised in Steelpoort Drift irrigation scheme, some respondents from Mashushu and Rambuda had taken part in such arrangements in previous seasons. Conflicts normally arose when the borrower did not honour the agreement and could have land taken away from them. However, a Rambuda respondent claimed that in spite of honouring the verbal agreement; the lender had been jealous of her harvest and had taken away the land the following season. Conflicts also occurred when one of the parties was deceased and their heirs were not aware of the agreement, given its verbal nature. Despite these challenges, borrowing land seemed to be a viable arrangement for those landless young households and landed older community residents whose children were not interested in farming or lived in other areas. Could borrowing be more efficient if the contract were written, giving its demand based nature? Its potential to succeed would be great; given its basis on social relations and that the contract is built on local customs and traditions.

Although women were mostly secondary rights holders, 50.4% were responsible for household agricultural land allocation. This allocation was for daily household production but also, some respondents in this sample identified their widowed mothers and mothers-in-law as having allocated plots to their children before they died. The ability of rural elderly women to give rights to land albeit temporarily in some cases gives them leverage in social relations. Agarwal (2003) showed that elderly women with property were treated in a better way than those without because they could leave the assets with those of their children who looked after them. This is important given the limited available plots in the irrigation schemes.

Only 3.5% of the respondents felt that it was not right for women to own land. These respondents were all male and from Rambuda community, 75% of them were over 50 years old. While they seem few in number, they constituted 30.8% of the male respondents in this community. Given older men's position as household heads, this could have a negative effect on female household members' ability to access land. Some 6.1% of the respondents felt that it was good for single women only to own land, citing that married women did not need

landas it could strain relations. These respondents were mostly (85.7%) female and were over 50 years old and had been or were currently married. Possibly their experiences as married women in male-headed households had demonstrated to them the lack of flexibility of the marriage institution and the suspicion with which a married woman with individual land rights was viewed. Tripp (2004) also observed the same in Uganda, where she found that women acquiring individual property rights were viewed as threats to social organisation and gender roles. The respondents identified potential land sources for women as the chief and male relatives, only 41.7% mentioned female relatives. A possible reflection of women's limited land access and resulting limited ability to alienate portions of it.

While a significant percentage of the women in this sample were shown to have access and rights to land as individuals, patriarchal attitudes prevailed. Women were mostly secondary beneficiaries of land in both male and female-headed households and accessed land through their male relatives in mostly private arrangements. This secondary access to land was secure for the duration of the relationship. Although women in Steelpoort were more able to access their own land, younger women still relied on their male relatives' support to accompany them to the chief's office to apply for land. This male reliance was because men were viewed as senior to women because *'The husband has more power and the son has more power because the girl leaves to get married.'* Land was therefore perceived to be secure if it was given to the male relative.

4.7.4. Women's land use security

Land use security is essential if rural farmers are to produce efficiently towards household food security (Aliber *et al.*, 2006). Women have been shown to be a key constituency in rural agriculture; however their access and security to land are mediated by their male relatives (Agarwal, 2002). In the three communities, it was established that women had largely secondary rights, accessed through marriage. This section outlines their source of land use security with respect to their land access.

In the three communities under study, 85.2% of the respondents had registered their land at the local traditional office. Other sources of land security were that the land belonged to their family and that community elders knew the local land owners. Most (70.2%) of the Rambuda respondents mentioned having a PTO document. Other local sources of security highlighted by the respondents were first, a receipt issued on payment of the land application fee bearing the applicant's name and date of payment as shown in the following quotation: "...the chief

gave me the land and a number and date of the transaction to show it is mine. If my date was before yours then there is no case.” Second was knowing one’s neighbours, and finally honouring the verbal terms of a land borrowing agreement. Almost all (98.3%) the respondents felt their land was safe from external appropriation because it had been in their natal and marital families for at least 39 years (when the last scheme was established), and they had registered it at the traditional office. Land use security is therefore defined by context and the land users’ perception of threats as stated by Toulmin (2008).

Within the household, however, respondents identified some scenarios that could lead to land loss as shown in Table 4.4 below.

Table 4.4: Perceived changes on women’s land rights in different scenarios

Land right (n=115)	Lost (%)	Retained (%)
Natal land on marriage*	67.8	27.0
Marital land on divorce*	79.1	10.4
Marital land on widowhood*	5.2	73.0

*The total is not 100% because not all respondents answered the question

Women mostly forfeited their rights to natal land on marriage, and marital land on divorce due to the patrilocal nature of marriage. Marriage transferred a woman’s rights to her marital family but these could be lost on divorce. The strength of men’s rights over women’s in patrilocal marriages is reiterated by 80.9% of the respondents who felt a husband had stronger land rights. However, 40.9% of the respondents in Mashushu felt that women had stronger land rights. From the focus groups it was established that these stronger rights were there because the women had to look after the children regardless of what happened. Once more, this stresses the importance of securing child welfare and household livelihood through agricultural production. Widows were safe from land loss because 83.5% of the respondents said they retained marital land if the husband held primary rights to land before his death. Therefore widows of landless men had to rely on other sources of land. In this study, 46.7% of the widows had secondary rights to land owned by other relatives, a very insecure arrangement because the land could be withdrawn when the primary rights holder decided to take back the land or give it to someone else. Borrowed land was perceived as secure as long as the individual who borrowed it honoured the terms of the verbal agreement. Respondents in Rambuda highlighted the importance of informing the chief to secure both the borrower and lender’s rights in the event of a dispute.

Respondents felt that marital status had an effect on a woman’s individual land rights. Table 4.5 below shows general perceptions of insecurity for women in different marital classes.

Marriage was a source of security for married women and land use was guaranteed through their husbands for the duration of the marriage. The respondents felt that marriage gave a woman status and a household to take care of, strengthening her land rights. For women in a polygamous marriage, security also increased with the birth of a child.

Table 4.5: Perceived insecurity of women in different marital classes

Marital status (n=115)	Insecure (%)[*]
Single, no children	11.3
Single, with children	5.2
Married	10.4
Married polygamous	13.0
Widow	2.6
Divorced	25.2
Cohabiting, no children	15.7
Cohabiting, with children	11.3

^{*}The total is not 100% because not all respondents answered the question

However, there was a class of respondents, 36.4% and 12.1% of the respondents in Mashushu and Rambuda, respectively, who felt that marriage weakened a woman's land rights because she forfeited her natal land rights for seemingly stronger marital rights. But the woman could be chased away in the event of a divorce. They felt that instead the single woman with children who had accessed land through her family's help had stronger land rights because she was the household head and not a mere user.

Widows land access was secure if she was married, and the land belonged to her husband, she had children, she observed the mourning rituals and maintained a cordial relationship with her husband's family. Divorced women were secure in their natal homes because they left the patrilocal marriage home. In Steelpoort, however the wrong party left the family home and assets. Cohabiting women were insecure because they could be chased away when the relationship ended and because their relationship was informal they had no family support. Single women with children were more secure than those without. Using natal family land or receiving an individual plot and being given a PTO were thought to provide security.

It is evident that there is a hierarchy of secondary rights that was based on the woman's rights in the household and the security of these rights holders also depended on their status. Given the changes in status that occurred during a woman's life cycle, her land rights and their security also went through these changes. As a young unmarried daughter, her rights were weaker than those of her male siblings, they became stronger if she chose to become a single mother but were still weaker than her male siblings' rights. Having lost her natal land rights

on marriage, a young daughter-in-law's land rights were weak but seemingly stronger than those of the resident unmarried sister-in-laws. Her rights became stronger with age and children born. But the uncertain nature of human relations meant that if she were to get divorced, she would lose her land rights security and status. The differing strength of rights held by a woman in the household creates an uneven landscape to establish a woman's source of security. This further complicates the secondary rights allocation and adjudication framework, tethering women to their families, thus limiting their independent and secure access to resources.

Although most respondents felt their land right were secure, their status and how they accessed land defined their security. Respondents with inherited or allocated primary rights felt their security stemmed from a record at the tribal office or some other locally acceptable means. Those with secondary rights gained security through maintenance of their relationship to the primary rights holders. Children and marriage were key to women's security. In the other areas, family land was perceived to be secure because it had been in the family for years. Neighbour recognition was also an important means of security. Borrowed land was seen as secure as long as both parties stuck to the agreement.

Land use security for rural women is therefore derived from family and the maintenance of good relations. In Msinga, South Africa; Cousins and Hornby (2009) observed that male relatives supported their female relatives in accessing land and resolving disputes, if the women maintained good relations with them and also observed expected marital processes. Without family support, a woman could easily lose her land (Cousins&Hornby, 2009).

4.7.5. Land use security for food security

The respondents used furrow irrigation to access agricultural water. Irrigation facilities in Steelpoort and Rambuda were operational but the Mashushu scheme was not fully functional. Agricultural water access in the schemes was reserved for plot holders and those who had borrowed land could use the water provided their benefactor had paid a stipulated fee. Scheme members in Steelpoort paid a R20 monthly fee regardless of plot size while those in Rambuda paid R2 annually for every plot they held. The Mashushu scheme had uncemented furrows and water was lost in transit due to seepage. Unlike the other schemes where the furrows were running parallel to plots, the Mashushu respondents said their plots were on average 13minutes away from the water source and this deterred frequent planting.

Although 41.7% of the respondents planted three times a year, the number of times a respondent planted a year was largely determined by their place of residence. Respondents in Mafefe planted mostly (86.4%) once a year, 91.4% from Steelpoort twice a year and finally, 79.3% of Rambuda respondents thrice a year. They planted a variety of cereals, legumes and vegetables. Below is Table 4.6 showing the most common foods grown in the three communities, with five of the most common crops per area in bold.

Table 4.6: Crops grown in the three communities

(n=115)	Communities (%)			
CROPS	MASHUSHU	STEELPOORT	RAMBUDA	TOTAL*
Maize	100	-	89.7	64.3
Nuts	66.7	2.9	37.9	32.2
Sugar Beans	50.0	2.9	27.6	24.3
Sweet Potatoes	20.0	20.0	81.0	50.4
Tomatoes	18.2	-	8.6	7.8
Cabbage	-	-	23.2	11.3
Spinach	4.5	97.1	20.7	40.9
Beetroot	4.5	91.4	6.9	37.2
Garlic	-	88.6	-	27.0
Onion	-	74.3	10.3	27.8
Carrots	-	68.6	1.7	21.7

*Totals for this section do not equal 100% because farmers grew different crops

The Mashushu community largely grew seasonal staples which contributed to household food supply for a significant part of the calendar year after harvest. They attributed their planting pattern to their reliance on rainfall to irrigate their crops. Since most farmers were elderly, carrying water from these distances would have been difficult and therefore a disincentive to frequent planting. The Mashushu respondents harvested seasonally and there was a general lack of fresh vegetables in the area. Due to their largely remote location, the respondents' incentive to produce frequently for sale could have been affected. They were surrounded by mountains and the area was difficult to reach.

The Steelpoort respondents largely grew fresh vegetables and 62.9% of the respondents grew for household consumption and petty trade. The respondents (82.8%) in this community largely harvested more than three times a week. They, unlike the Mashushu respondents, lived on either side of a busy road to Burgersfort and were close to Jane Furse (a town) and several mines. This created daily demand for their vegetables.

The Rambuda community grew a mixture of staples and vegetables and 67.2% grew for household consumption and petty trade. The respondents harvested the staples seasonally and vegetables three times a week. Rambuda was located near Sibasa and Thohoyandou which provided a market, also some farmers had trucks which they used to ferry produce to other districts creating even bigger markets for their wide range of produce. Respondents in a community grew similar crops regardless of sex.

Women were in charge of planting activities in 67.8% of the respondent's households. Where women controlled planting activities, 44.8% of the households were involved in agriculture for food production and the earning of a small income. This is compared to 78% in households where men allocated agricultural resources, and this could be attributed to women's resource poverty.

Women in the sample were involved in agriculture for household consumption and petty trade because they considered agriculture as the only available livelihood activity for unskilled women. Some of the women in this sample also identified seasonal public works contract employment and voluntary community projects as the only opportunities open to women. Kent and MacRae (2010), Kerr 2005 and Agarwal (2003) also observed that rural women's livelihood opportunities are limited, making agriculture a key activity. Therefore while some insecurity may have existed, women continued to engage in agriculture because they needed to eat and feed their families.

4.8. Conclusions and Recommendations

The prevalence of customary law systems in rural areas is well documented, as is the secondary rights that women hold to land. Rural Limpopo Province from this study is shown to be an area under customary law and with a patriarchal nature. Land access was mostly through the family and there was limited individual access for women. Old widows were most likely to have inherited their husbands if they had held primary rights to land. Outside the family, borrowing of land was seen as another viable means of accessing land in the three districts. Land use security in the three communities was determined by the source of land and a woman's status. Marital family land was secure if the woman remained married and had children, while borrowed land was secure if the contract was upheld. Being single and childless or cohabiting and childless significantly limited the security of a woman, thus a hierarchy of rights existed for secondary rights users. This hierarchy of secondary rights created much insecurity for women. A system of land rights that recognises the role and value

of women in the household and community must be developed. One that recognises women as local citizens and gives them rights that cannot be taken away if a relationship changes.

Agriculture was also shown to be a significant livelihood activity for rural women, and the need to farm for consumption was a stronger incentive than any perceived insecurity. Also more female-headed household than male-headed households were involved in agriculture for consumption only. Government and local institutions should invest more in women's agriculture given their role in household food production.

The area of residence determined the amount of planting that one was involved in, and this was attributed to limited water availability in one of the communities. While water availability played a significant part, the availability of markets and infrastructure in a community also influenced the planting frequency. There is a need to rehabilitate and maintain irrigation structures in the three study areas so that they can be used efficiently. Government cooperation is also required to improve road infrastructure in the rural areas, so that they are more accessible, this could possibly increase market access and other service delivery.

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CHAPTER 5: MANUSCRIPT 2 -RURAL WOMEN'S LAND RIGHTS: TOWARDS A GENDER SENSITIVE PROPERTY RIGHTS FRAMEWORK¹

Authors: MURUGANI VG, THAMAGA-CHITJA JM, KOLANISI U.

*African Centre for Food Security, University of KwaZulu-Natal, Private Bag X01,
Scottsville 3209. South Africa*

Telephone: +27 (0)33 260 6171

E-mail: Chitjaj@ukzn.ac.za

Abstract

This paper foregrounds rural women's rights to land access, ownership and use as a basis for a gender sensitive land property rights framework. Rural women's rights to land property have been affected by various dynamics of colonialism, customary laws and statutory laws. These dynamics have mainly served to constrain the critical roles that women are poised to play in sustainable rural livelihoods, mainly by denying or limiting women's access to and use of land. The study adopted a mixed method research approach to investigate the current land access frameworks and possibilities for gender sensitive land property rights frameworks. Descriptive and content analyses offered make use of the data generated through a questionnaire, key informant interviews, focus group discussions and observations conducted over a period of three weeks in rural Limpopo province, South Africa. The findings denote how patrilineage, through its institutions of marriage and customary laws relegate rural women to subservience, and how these consign women to a scheme of only having secondary rights to land property and access. The paper identifies the need to secure the rights of actual land users (who are mostly women) as a principle for harmonising the tensions between the statutory and customary laws. A move from the emphasis on land ownership rights to recognising land user rights would strengthen women's land rights in the household in ways that are responsive to the local challenges in these rural communities.

Keywords: Land rights; land use security; user rights; patriarchy; rural women; food production

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5.1. Introduction

Rural women's reliance on land based activities for household livelihoods and their landlessness is well documented (Joireman, 2008; Agarwal, 2002). Women are normally ascribed secondary rights to land, as a result of the prevailing land rights systems which has *de facto* remained intact since the introduction of colonial, apartheid and democratic land laws (Yngstrom, 2002). The administrative changes stemming from these political eras have only consolidated patriarchal institutions and resulted in the gradual weakening of women's property rights and relegated the majority of women to mostly having user rights (Tripp, 2004) as opposed to having primary land rights. Primary land rights were only allocated to the male household head for his household and he had superior rights at household level because he was responsible for land allocation (Yngstrom, 2002). Primary land rights constitute access, user, control and alienation, whereas user rights only include access, use and limited control (Bogale & Korf, 2005). Research (FAO, 2011; Peterman, 2011) has shown the critical roles that women play in sustainable rural livelihoods (such as food production and food security) as primary carers of families in rural contexts stricken by poverty and Human Immunodeficiency Virus(HIV) and Acquired Immunodeficiency Syndrome (AIDS) related diseases. Ensuring that women attain primary rights to land would enhance the abilities and agency of women in decision making authority related to food production and security in ways that might augment and sustain rural livelihoods.

Given women's contribution to household food production and food security, this article asks: What are the current land access frameworks for rural women in the context of three communities in Limpopo province in South Africa? How do these frameworks affect rural women's access to and use of land in relation to food production and food security? In what ways could the rights of rural women be strengthened to improve food production and security? The article adopts a mixed method research approach to investigate these questions, and utilises a questionnaire, key informant interviews, focus group discussions and observations as its methods of data collection. It begins with the discussion of rural land rights within the context of pre-colonial and apartheid South Africa, customary laws and statutory tenure and rural women rights, the study context, research design and methodology, and then proceeds to an exploration of the findings.

5.2. Rural Land Rights in Context: Pre-colonial to Post-Apartheid South Africa

Rural women's land rights have not changed much since black Africans were moved into reserves from as early as 1846 in Natal South Africa (Mathis, 2007). Reserves were areas specified by law that black people in South Africa could reside and were formalised across southern Africa with the enactment of laws (Mathis, 2007; Thwala, 2006). The reserves were scattered across the country constituted about 13% of total South African land (Thwala, 2006). Land in these areas was of poor quality as noted by Mathis (2007) quoting a respondent "...taking away our beautiful land and sending us to live among the cliffs and uneven land". The land rights held by Africans were weak and insecure as noted by Cousinset al. (2005).

Women's critical role in the use of land for household food production arose as a consequence of reserves which were used as a source of cheap male labour for mines and big farms, leaving many rural women as residents (Cousins & Scoones, 2010; Walker, 2003). Colonial and apartheid governments in Southern Africa promoted small scale agriculture at household level where women predominate by formally introducing farming units through the Native Land Husbandry Act of 1951 in Southern Rhodesia and the Swynnerton Plan in Kenya (Cousins & Scoones, 2010). For instance, in South Africa this was done using irrigation schemes and betterment following the recommendations of the 1955 Tomlinson Commission which estimated land between 1.3ha and 1.7ha as being enough for household livelihoods in Limpopo Province (Tapela, 2008). The plots were too small to provide for a household's needs, so the need for men to work and women to engage in subsistence food production remained unabated (Cousins & Scoones, 2010; Boone, 2007).

The bigger farming units were only allocated to male farmers, thereby depriving women of any claims and rights they had to land in the past (Cousins & Scoones, 2010; Tripp, 2004), as well as disregarding the crucial roles that women played for sustainable rural livelihoods through food production. These were mainly due to the prevalent power inequalities between men and women, which were supported by customary laws, and prohibited women from inheriting or owning land (Toulmin, 2008). Changes in the patterns of land use, occupancy and ownership were heightened by the advent of capitalism (Eppretch, 2000) with its introduction of cash crops which commoditised and monetised land use and food production in ways that only benefitted large scale farming at the expense of rural women's rights to and use of land. The farmers had usufruct rights and colonial governments set up structures for indirect rule in these reserves (Boone, 2007; Mathis, 2007). People in the reserves were

grouped in tribes and chiefdoms and the chiefs' powers came from ordinance which gave them the ability to allocate communal land in a system based on kinship, belonging and African ethic (Mathis, 2007). Their mandate was to maintain their borders, manage and allocate land and other resources (Mathis, 2007). Although they were not elected, tradition and traditional laws gave them social legitimacy (Toulmin, 2008; Mathis, 2007), and due to the limited nature of land resources in the reserves and the population growth, new land to allocate became scarce. This consigned those in lower tiers of the power continuum in these contexts, such as women, to landlessness and thus adversely affecting women's opportunities to have access to land for food production. The post-colonial and post-apartheid Southern African governments have largely maintained these structures and African rural women still have user rights (Cousins & Scoones, 2010; Boone, 2007) with limited decision making power over the land.

In response to these historically infused inequalities related to land use and ownership, the post-apartheid South African governments initiated market-led land reform projects, mainly driven by a redistribution agenda (Walker, 2003). The neo-liberal land reforms initiated by the democratic South African government have failed to redress past injustices that particularly rural women have endured as a result of the historically instituted male biased land rights and use arrangements. Women's benefits in the land reform programme remain unsatisfactory, RWA (2011) noted only 36% and 9% of beneficiaries in the redistribution and restitution programmes respectively were women. Walker (2003) attributed these low beneficiary statistics to high level policy that was poorly articulated for implementation. Thamaga-Chitja *etal* (2010) also observed the lower female beneficiary levels in tenure reform communities in KwaZulu-Natal and how this negatively affected household production for food security. Against this background of tenure reform and customary law in KwaZulu-Natal, they concluded that a framework to secure women's land rights was needed (Thamaga-Chitja *etal*, 2010). Scoones and Cousins (2010) noted that the food security component in the land reform programmes was never operationalised. Instead, a policy shift to allocate land to emerging farmers was initiated and women's participation in this programme was hampered by a financial contribution for women to pay at least R5000 before they could participate (Breeze Magazine, 2012). This is a classic example of how rural women continue to be tactically excluded from important aspects of food production through access to land, since the abject poverty most rural women face is well known. Other legal reforms such as the Traditional Leadership and Governance Framework Bill (2003) and Communal Land Rights Act (2004)

have accorded chiefs more legitimate power, thus continuing to threaten the rights of women as they were traditionally disadvantaged by patriarchy and customary laws (Mathis, 2007). Ramphela (2012) questions the relevance of perpetuating traditional governance in rural South Africa given its well-articulated gender bias and the high number of women who reside there.

5.3. Patriarchy, Customary Law and Rural Women's Land Rights

Studies (Morojele, 2010; Tripp, 2004) have shown that patriarchal communities are characterised by patrilineal inheritance and male household heads' primary access to resources, such as land, power to decide how land is used and its ownership. Women in patriarchal systems have secondary rights and access to most productive resources; their male relatives facilitate access (Joireman, 2008). This is because in patriarchal relationships, women of all ages bear a perpetual social and legal minority status, which requires a male relative to represent them (women) in both social and legal transactions (Morojele, 2010; Joireman, 2008). Marriage is also used as a symbol of women's subordination and relegation to subservience. When a woman is married, the payment of bride price is understood to be a symbol of transference of the rights of the woman from her natal family to the marital family (Action Aid, 2005). This culminates in the perception of women as inherently having less access to resources such as land and opportunities than male members of the household. These aspects of patriarchy were significantly indicated and played out in the three communities under investigation. For instance, widowed women had to maintain good relationships with their marital relatives by means of observing prolonged mourning rituals and remaining unmarried. These were thought to protect women's immediate user rights but carried no guarantee for future access. The dependence on families in this manner has been found to weaken women's status within the household as they sometimes fear to take a stand on certain matters as this might make them lose support from family members, and thus their access to land (Lastarria-Cornhiel, 2006).

The construction of women as social and legal minors who cannot contract or own property individually (Joireman, 2008), is in part, a culmination of the payment of bride price (the price of marriage), which is understood to symbolise a transfer of women's rights from the natal to the marital family (ActionAid, 2005). The dominant discourse, therefore, constructs women more as bought property and the denial of women's land ownership of property (Joireman, 2008; Tripp, 2004) becomes inevitable. Marriage in these rural communities

mainly served to support patrilineal procreation and thus ensured that household members possess multiple and hierarchical rights to productive assets and property, the verdict being - the male household head's rights are primary (Yngstrom, 2002).

However, in spite of the deeply entrenched discrimination against women, customary law provides women with a support system guaranteeing their secondary rights (ActionAid, 2005). Tripp (2004) observed that in some instances secondary access to land is beneficial to women because it accords secure access to land they do not own. Namara *et al* (2010) also observed the superior protection of secondary rights in the customary law context because statutory law gives exclusive rights to the registered landholder. It is worth noting that once such relationships that women have to forge with men in order to have security and access to land collapse; this normally militates against women to the point where women are likely to lose access land. The danger of this is that women might have to nurse and endure abusive and dangerous relationships with men in order to have access to land. Yet the question of the statutory laws does not seem to bode well in the rural contexts. If formalisation of land use and ownership were to be introduced by means of statutory tenure in ways that contradict customary law, such as land access for women, this would likely be rejected because in communities' eyes, such statutory laws would lack legitimacy (Sjaastad & Cousins, 2008). This is because rural areas in Southern Africa are 'territorial entities' run with 'moral sovereignty' and the rights of these entities are recognised by modern governments (Boone, 2007). Therefore, the introduction of statutory laws should be done in ways that do not threaten customary law institutions in rural areas. They should not purport and give the impression of trying to alter community relations and the structure of rural communities (Sjaastad & Cousins, 2008), without providing sustainable alternatives for women who might be adversely affected by such laws.

The issue with the statutory laws is that they might allow rural women to gain some political autonomy but lose the protection of the state and that of their communities. State and community protection is essential for weaker groups who would be threatened by the legalistic dimensions of the statutory laws (Mathis, 2007); especially against the current historical backdrop which has ensured that the majority of women have been deprived of their rights to land. Tripp (2004) has shown that some women want individual rights and have sought to buy land, but this is difficult in rural areas as they are viewed as lacking commitment to their husbands. For instance, Tripp (2004) observed that in Uganda women buy plots in case of a divorce or to enable them to bequeath it as they wish. Where it is not

possible to buy land, women in Burkina Faso have opted to borrow land, while their counterparts in Botswana, Zambia and Trinidad rent land (Sjaastad & Cousins, 2008; ActionAid, 2005). Farming groups for women also have the potential to secure rural women's user rights without them being accused of attempting to disrupt gender rules and society (Tripp, 2004; Agarwal, 2002). Also given women's position in the household, seeking individual rights in the new system could separate them from their families who are important for secure productive resource access (Jacobs, 2004). Apart from discrimination against women based on gender and citizenship, customary law appears to function efficiently in most rural areas (Sjaastad & Cousins, 2008; Boone, 2007).

5.4. Context of the Study

Limpopo Province was selected for its highly rural nature to facilitate the study of women's land rights under customary tenure in South Africa (Limpopo Provincial Government, 2009; Ramathoka *et al.*, 2009; Hope *et al.*, 2004). Also to show how their land rights affected their livelihood opportunities given the importance of farming to rural households in the province (Ramathoka *et al.*, 2009).

Mashushu, Steelpoort Drift and Rambuda irrigation schemes were purposively selected from Capricorn, Sekhukhune and Vhembe districts, respectively, on the basis of the following criteria. First, a small-scale irrigation scheme using canals in rural Limpopo Province; second, farmers engaged in some production during the year, and finally, that some of the farmers were female. The first scheme Mashushu was established in 1959 and has 42 hectares which are used by 39 registered households. It is located in Mafefe, GaMampa valley, which is a Pedi speaking area. The scheme was a significant contributor to household food access but since the canals were destroyed by the 2000 floods, production has gone down. Second, Steelpoort Drift is a vegetable scheme which was established in 1972 and has 94 hectares. It is located in Sekhukhune and is under Chief Malekane. Finally, Rambuda was established in 1952 has 120 hectares and 102 registered users. Rambuda is in Vhembe a Venda speaking district. Irrigation water in all schemes is provided through canals from local rivers.

5.5. Research Design and Methodology

The research team interviewed female farmers using convenience sampling of farmers at work in the field over a three day period per community. Data from individuals was collected using a questionnaire. A focus group discussion session was convened in each community to

discuss prevailing land use and to solicit views on an ideal framework. Key informant interviews were also conducted to help gain an understanding of land administration practices in the community. Apart from the demographic data, the data collected was mostly qualitative to allow for detailed responses. The demographic data was summarised using SPSS, while the qualitative data was analysed using content analysis to establish which institutions and practices secured rural women's land rights and to identify those which weakened them.

5.6. Description of the Female respondents in the three communities

There were 94 respondents from the three study areas. Most (68.1%) were over 50 years old. Most of the women were either married (52.1%) or widowed (31.9%). The women came from both male (48.9%) and female (47.9%) headed households. Most (62%) of the women had attained primary or secondary education. The women's households had accessed land from the chief or from inheritance. They used their land to farm mostly (56.4%) for household consumption and petty trade; however 83.3% of the respondents in Mashushu only farmed for household consumption. Interaction with the respondents and observation showed them to be mostly monolingual, only speaking their local language. Agricultural land is an important livelihood resource for older married and widowed women in these three areas, regardless of the sex of the household head. The rural women in this study had had some formal education and yet had largely remained resident in their rural communities, as evidenced by their being monolingual. This was because their male counterparts could speak some Zulu, Afrikaans and English; similar observations were also made by Lastarria-Cornhiel (2006). The reduced mobility of rural women can be attributed to the limited opportunities that had existed for women outside the reserves during apartheid times, creating a class of women who had only land as a source of livelihood as observed by Scoones and Cousins (2010) and Boone (2007).

5.7. Ethical Considerations

Permission to undertake the study in these communities was obtained from local traditional authorities and government departments. Informed consent was obtained from the chiefs and headman, and the females who participated in the study. The chief or headman in the community was the gatekeeper who had the power to provide or withhold access to the communities and the sites where the study was undertaken. The female participants, chiefs, and headman were assured of anonymity and confidentiality. All the participants were given a detailed explanation about the nature of the research, the data collection approach and the participants' role in the study. The participants were told that their participation was

voluntary, and they had the option to withdraw from the study at any stage. The questionnaires were written in English and the interviews and discussions were conducted in Sepedi and Tshivenda. These were later transcribed and translated in English. Ethical clearance was obtained to conduct this study through the University Research Office, University of KwaZulu-Natal.

5.8. Data Analysis

The data was analysed using descriptive analysis in Statistical Package for Social Scientists (SPSS) and content analysis. Content analysis is a method of analysing text data by studying language features and content in a given context and categorising the data into themes (Hsieh & Shannon, 2005). Data from the closed questions on the questionnaire was coded and the demographic, existing land property arrangements, land use security for food security and ideal property rights sections of the questionnaire were analysed using descriptive analysis (SPSS). The open ended questions from the questionnaire, the key informant interviews and focus group discussions were analysed for the occurrence of common themes. The conclusions from the separate results were compared for similarity and the researchers used both to inform the findings, discussions and conclusions of the study.

5.9. Results and Discussion

An investigation of the land access framework in rural Limpopo Province was conducted to establish the aspects of land rights in each community which could be used to design a framework which strengthened rural women's land rights.

5.9.1. Land access framework

From Table 5.1 below, it is shown that the three communities were under customary law. Each community had a resident leader who governed it like a small independent community. Although the presence of councillors and government officials was observed in all three communities, the chief was vital to granting research access into a community. The existence of local traditional authorities as an alternative governance structure was propagated by colonial governments for indirect rule as recorded by Mathis (2007) and Boone (2007). This created many small communities that were seemingly disconnected and had their own laws (Boone 2007). They also noted that the community was organised to revere a local chief and these structures still exist. Mathis (2007) adds that chiefs are even more powerful in

independent southern Africa. But what is the relevance of indirect rule in rural communities in the 21st century and how does this affect rural women's land rights?

Table 5.1: Summary of Community Organisation and General Land Access in Limpopo Province

(n=115)	Mafefe	Steelpoort	Rambuda
Community organisation			
Sovereignty	yes	yes	yes
Resident leader	tribal	tribal	tribal
Tribal group	Pedi	Pedi	Venda
Community type	patrilineal	patrilineal	patrilineal
Land admin	tribal	tribal	tribal
Irrigation est.	1959	1972	1952
Member identification	family	family	family
General Land access			
Free agricultural land	no	no	no
Free residential land	yes	yes	yes
Resource access	indigenous resident	indigenous resident	indigenous resident
Chief allocates	household head	household head	household
Current rights holder	female hhh	male hhh	male hhh
Rights recognition	family land community elders chief's register	chief's register family land community elders	family land chief's register community elders
Female access outside hh	little	some	little
Female res land outside hh	yes	yes	little

Key: hhh = household head

hh = household

est. =established

The chief was responsible for land administration in the three communities focusing mostly on allocation of residential land as agricultural land in the schemes had been exhausted. They were also involved in other community activities but for them, land was an important political resource, to be managed carefully as it was under their authority. All respondents in a community were of the same tribe. The communities were patrilineal as observed through the allocation of resources to men, son inheritance and daily interactions with the respondents. The tribal organisation of rural dwellers was part of the policy when reserves were established, as noted by Mathis (2007). The patrilineal nature of the communities could have arisen from these laws which allocated land to male farmers only (Cousins & Scoones, 2010; Yngstrom, 2002). With such laws, women's rights in their communities cease to matter, fostering secondary rights for them. While showing that customary law is strong and resilient, it also shows how the secondary nature of women's rights has been institutionalised.

Family names were fundamental to individual identification and those names gave members a place in the community. Land and other productive resources were allocated to indigenous members of the community, while settler members would be allocated residential land. This was shown by a Mafefe key informant who said community members who sold their houses, usually allocated their agricultural land to their extended family. This allocation of land to locals is an important aspect of customary law which protects locals, as observed by Boone (2007). The disadvantage is that permanent settlers were never assimilated into the indigenous group, so that even after several generations, one would still be regarded as a foreigner (Boone, 2007).

Land was mostly allocated to male household heads who mostly held primary rights, although in Mafefe women from female-headed households held most primary rights. However, these women were widowed showing the importance of marriage to land access. The gendered nature of customary access is shown in the three communities through women's loss of natal land on marriage and marital land on divorce, and daughters' general inability to inherit in the presence of sons. In addition, access to land outside the household was restricted to borrowing for women in Steelpoort, who were currently engaged in the practise. Although women play an important role in household food production, their access to land is weak depending on their relationship with male relatives. Divorce or being childless weakens their rights, while marriage or having dependents strengthens them. Customary law gives women secondary access to land mostly through their marital families, as Joireman (2008) and Yngstrom (2002) also note. Secondary access has several limitations as the primary rights holder can take away the land at any time. Women's land rights are weaker if relations with the family sour (ActionAid, 2005). Given the high incidence of women involved in small scale farming, how can customary law be strengthened to improve women's access? This secondary status of women through customary law goes against the provisions of the Constitution as stated in sections 9 and 25. This violation has been legalised through the enactment of Communal Land Rights Act and Traditional Leadership and Governance Framework Bill which strengthen the power of chiefs and traditional institutions as shown by Mathis (2007). Are women's land rights a priority to government, or is political expediency more important?

Table 5.2: Rural Women's Land Access Framework in Limpopo Province

(n=115)	Mashushu	Steelpoort	Vhembe
Land access for women			
Household land allocation	husband to wife	husband to wife	husband to wife
Daughter inheritance	no	no	no
Mother to daughter-in-law inheritance	limited	limited	limited
Borrowing	no	yes	no
Land use security for women			
Marriage	strengthens	no effect	strengthens
Children	strengthen	no effect	strengthen
Family support	strengthens	strengthens	strengthens
Adherence to contract	-	strengthens	-
Factors determining land access			
Marital status	yes	no	yes
Dependants	yes	yes	yes
Family support	yes	yes	yes
Factors limiting land access			
Gendered allocation	yes	yes	yes
Divorce	yes	yes	yes
Hierarchy of rights	gendered	gendered	gendered
	improves with age	improves with age	improves with age

Women in the three communities recognise the limited security in the rights they hold, as shown in their responses in Table 5.2 above. The strategies women employ include building and capitalising on a social network – asking for land in and outside the family, and applying for land with the help of their parents. Widows maintain good relationships with their marital relatives and may do so by observing mourning rituals and remaining unmarried. Such strategies protect women's immediate user rights but carry no guarantee for future access. This dependence on families also weakens a woman's status within the household as she cannot fully express herself in some matters without the threat of losing support as was also observed by Lastarria-Cornhiel (2006). In spite of their subservience, women who face disputes and land loss in their communities could directly approach the chief for resolution, with only younger women needing their families support. The theoretical ability of women to represent themselves when reporting a dispute shows a marked difference from how women would respond in other communities as observed by Rose (2003) in a Swaziland case study. How could this space that women have in communities be widened? How can they capitalise on the strengths customary law gives them in their different contexts?

Table 5.3: Perceptions Regarding Proposed Land Rights for Women in Different Marital Classes

(n=115)	Male Relative (%)	Joint ownership (%)	Woman ownership (%)
Single no children*	2.6	13.9	79.1
Single with children*	-	10.4	86.1
Married*	6.1	49.6	43.5
Married polygamous*	6.1	50.4	42.6
Divorced*	1.7	9.6	73.9
Widow*	1.7	13.9	82.6
Cohabit no children*	4.3	17.4	73.0
Cohabit with children*	4.3	16.5	73.9

*The total is not 100% because not all respondents answered the question

Table 5.3 above shows how women believe their rights should be secured. For women with no male partner in the household, the women felt that individual rights for the woman were ideal, compared to joint rights for married women. The place of residence seemed to have no effect on these responses, this shows that married women believe the household is a good means of accessing land. Joint rights would strengthen their household user rights within the context of customary law. They did not believe individual rights would be ideal for a married woman since in their way of life land came through the marital family. Their sentiments may be based on local perceptions of how married women behave and the potentially harmful and disruptive effects of individual rights on family life, as is supported by Tripp (2004). Jacobs (2004) states rural women's place in society is defined through the family and household. The way adopted to strengthen women's rights should keep them in the family but strengthen their position. How then can women's rights be strengthened effectively through joint rights, given women's secondary position in the household? Would this alone be enough?

5.9.2. Possibilities for a gender sensitive land property rights framework

From this study we can conclude that married women hold largely secondary rights to land for most of their lives, briefly gaining control when they become widows. These secondary rights are mostly secure but can be lost on divorce or in some circumstances widowhood. How then can women's land rights be secured without upsetting local social organisation? Also not all women marry, yet they need land for livelihood activities, how then can their access and security be mediated?

While, recognising that implementing statutory law into customary law areas is not viable, customary law cannot remain unchanged (Tsikata, 2003). In the battle between the rights to cultural identity and livelihood, women's rights as members of the community must also be considered (Tsikata, 2003). Although customary law is evolving, it cannot be left to evolve without some influences to improve women's standing and rights, otherwise negative results could occur (Tsikata, 2003). Securing the rights of actual land users within the customary law framework would be ideal (Cousins, 2007).

This points to the importance of recognising the land users' rights and their relationships to other rights holders at household and community levels (Cousins, 2007). If strategies for improving rural women's land access for food production are to be acceptable, they should entail a consultative and inclusive process that involves all the stakeholders and respects the established cultural and social relationships in order for these strategies to have moral legitimacy (Cousins, 2007). Securing women's user rights should entail an attempt to modernise customary laws, to initiate its evolution in ways that are responsive to demands for land access and use, rather than to try to crash customary laws (Tsikata, 2003). The goal should be to allow for an incremental process of change in traditional customs around land use, and to allow the gradual development of new leadership structures with less reliance on traditional customs as the basis for legitimately determining land use rights (Boone, 2007).

Tables 5.1 and 5.2 reflect some strengths of the customary law land access framework in rural Limpopo province which will be used as the basis for a gender sensitive framework. First, these tables show that customary law functions efficiently in the 3 communities and is accessible to most residents. It is a land management system for the community, mediated by the chief and at work even at household level. The framework ensures that the transition of land rights from one generation to the next is mostly seamless. Also, while land rights are held by men, the system protects a wife or widow's land rights to land held by her husband until she gives it to her sons. The chief's role was recognised and respected by the respondents who said the land belonged to the chief. These observations are similar to those of Joireman (2008) and Sjaastad and Cousins (2008) who notes the robustness and persistence of customary land systems in rural areas.

Second, customary law is based on family and household land access. A woman is guaranteed secondary rights to land as long as she remains a member of the household, although the strength of these rights depends on age and marital status. Jacobs (2004) also identified

women's access to land and other resources through the family as critical for their livelihood and social relations. In addition, the importance of family and other social relationships for women's land access is shown with the presence of a land borrowing system that is based on local customs and systems. Third, all the communities in this study had a close working relationship with local and provincial government departments. This relationship could be exploited to strengthen women's land access, as Cousins (2007) has observed, government is an integral part of transforming rural land rights.

In addition, male migration and widowhood have created *de facto* female household heads with an opportunity to strengthen their land rights at household level. Tsikata (2003) observed that rural women have strategically positioned themselves to strengthen their rights in the absence of a resident male household head, especially where the extended family has little influence or is absent. Rural women have secured their land rights through maintaining cordial relations with the extended family and using the land for agricultural purposes, thus providing food for their households.

In those households where the male head was in residence, the availability of other livelihood activities strengthened women's land access. Women in these households were largely responsible for household agricultural production and decision making. For instance in Steelpoort where there were other livelihood activities, agriculture was reserved for mostly older women. Designating the scheme a vegetable producing one could also have strengthened women's access, as these are traditionally female crops (Ward *et al.*, 2004).

In spite of these strengths, the framework has several weaknesses which lie in its gendered nature. In the three communities land was largely allocated to male household heads and inherited by sons. Women largely accessed land as secondary users, and their marital status affected the strength of their secondary rights. The current framework also did not regulate or manage land borrowing, a strategy that could potentially benefit landless rural women. While it is critical to address the gender bias in customary law to strengthen rural women's access, patriarchy is the basis of this framework. To gradually reduce the effect of patriarchy on resource access, the women's views on land rights as presented in Table 5.3 above can be adopted; while proposing joint rights for married women, the respondents felt that single women should also have the opportunity to own land.

According married women joint rights with their husbands could be achieved by introducing a system where wives' secondary rights would be recorded in the local land register. The rights

would be for a specific piece of land for livelihood activities. Land use security could be determined through marriage and bearing children, which are the current sources of land use security. In the event of a divorce, the women would be allowed to use some of the land for the welfare of the children until they grew older or until the woman remarried. Although the observed cases of divorced women were small in the study, the woman normally left with her children. While it has been correctly stated that land belongs to the marital family (Yngstrom, 2002), the divorced women's children are entitled to a portion of their father's land. Some studies have shown that the divorced woman's children would lose claim to paternal land should their mother leave, at the same time they would have weak claims to the mother's family land (Verma, 2001). Women are custodians of land for their children they should still transfer agricultural land to their children, even after divorce as is the case in Tanzania, if the mother remains unmarried (Yngstrom, 2002). The women as land users would also have the right to lend their land to another community member if they could not use it all during a given period.

The respondents felt single women should be allowed to access land as individuals if they had dependents. Since most single women had been allocated residential land in the study area, where arable land became available, they should also be considered as eligible households as was also proposed by Cousins (2007). Given the high incidence of male outward migration, these single women could also be incorporated into inheriting family land.

Land borrowing is another viable land access strategy for landless women and their households. Although the terms of use would be between the contracting partners, a register of borrowed land and contracts could be kept at the chief's office. Rural women would enter into such arrangements with formal protection from the chief.

For these changes in the framework to be well implemented, government departments and local traditional leaders must cooperate. The Constitution is based on gender equality and the 1997 Land Policy White Paper identifies women as a target beneficiary class of formerly disadvantaged citizens (DLA, 1997; RSA, 1996). The government departments responsible for land reform and agriculture must together outline a strategy to incorporate gender equality in new and old land reform and agricultural development programmes. A key aspect of such a strategy would involve convincing the traditional leaders to formally adopt joint rights for married women and individual rights for single women in old and new land records. Traditional leaders are influential in their communities and would be able to promote the

official recording of women's user rights. Government officials resident in the three communities regularly met with the community members for workshops and were well positioned to initiate dialogue on adopting land rights that would include the names of the rights holders and users in the local register. They could advocate for such a development by demonstrating the potential to improve agricultural production and household food security. In addition, they could show the limited livelihood opportunities women in the communities have, compared to their male counterparts.

Although securing women user rights as suggested above is ideal, this study found that women's secondary status in customary law is not restricted to land access only (ActionAid, 2005). Rural women's status is also indicated by their lower literacy levels, being monolingual and some of them lacking national identity documents when compared to their male counterparts (ActionAid, 2005). Educating women would address these concerns for younger women but must be accompanied by a social movement that empowers women and frees them from being constructed as secondary citizens (ActionAid, 2005). The movement should redefine gender roles and give women stronger access and security to productive resources (ActionAid, 2005). This should entail modernising the customary law institutions and to transform them in tandem with the requirements of a 21st century, the promotion of gender equitable rights that are sensitive to the critical roles of women in sustainable rural food production and security through land use.

5.10. Conclusion

A study on the land access framework was conducted in three rural communities in Limpopo Province. The study has shown that a balance between positive and negative factors is present in customary law. While it is gendered, patrilineal and awards rights to households; it also guarantees the land access to women in the family and offers them a strong and robust support system. Strengthening women's land rights can be achieved by building on these strengths because statutory law cannot replace customary law. The ensuing changes and introduction of a land market would negatively affect women who own no land now and have no money to buy land. Recognising user rights would strengthen women's land rights in the household and community, and should be accompanied with other development initiatives. The solution lies in coming up with a strategy with local fit and one that is socially legitimate, with time such initiatives will allow people to become accustomed to women having rights to land and possibly awarding them with individual rights. This process will be gradual as it demands the

transformation of customary law into a gender sensitive framework. For it to succeed, government and local leaders must embrace the essence of women's secure access to land, the potential to improve household food security, while engaging rural women – a key development constituency in the national economy.

5.11. Recommendations

First on the basis of this and past work on women's land rights, government should engage in a process of modernising customary law, so that in addition to being efficient, it also becomes gender sensitive. The cooperation of traditional leaders would be sought, as they are a legitimate authority in their communities. Possible interventions into customary law could include: the joint registration of men and women in the local community register for residential and agricultural land; the allocation of residential and agricultural land where available to households regardless of the sex of the household head; and possible daughter inheritance where sons are employed in urban areas and have relocated there. This work could also be supported by the work of civic society which is very supportive of rural women's rights.

Second, government and non-governmental organisations in the rural development sector could initiate programmes to improve female literacy and post-matric employment opportunities locally. Employment opportunities must also be made available for younger and older men in the community, as this was shown in the study to improve women's land use security. Finally, government should improve infrastructure available in rural areas, to improve their accessibility for trade and employment.

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CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS

6.1. Introduction

Small-scale agriculture is a key livelihood activity for most rural women in South Africa as in most other parts of the developing world. In spite of their significant contribution towards household food production through agriculture, most rural women can only access land through their male relatives, something that is prevalent in customary law systems. Because of their secondary access to land, women's land use security is tied to their relationships with their male relatives. There is evidence that secure land rights serve as incentive to better agricultural production. Given rural women's role in agricultural production and their poor access to land, a study was conducted to investigate current land rights and land use security, and how these affect agricultural production. The study was conducted in rural parts of the province of Limpopo and used the Steelpoort Drift, Mashushu and Rambuda irrigation schemes as study areas. This chapter presents the conclusions and recommendations of the study, which were guided by the following sub-problems:

1. What are the existing land property arrangements for women in South Africa?
2. How secure are the land property arrangements and do they influence female agricultural production?
3. How can rural women's property rights be strengthened in South Africa?

6.2. Conclusions

Customary law and patriarchy are prevalent in rural Limpopo and determine land rights within communities there. The tribal authority owns the land, which it allocates to male household heads. The land is then inherited by sons. There are limited allocations to women with children. Due to the predominantly patriarchal system in place, women mostly access land through marriage and can still use the land as widows. A hierarchy of rights exists within the household, and the strength of a woman's rights depends on her age and status. Outside of the family, the borrowing of land is seen as another viable means of accessing land. Divorce results in the loss of marital land and property.

Land rights are protected from external appropriation because a register of land rights holders is kept at the local tribal office. In addition, the land has been in most families for decades. However, at household level, a woman's land use security is determined by who holds

primary rights to the land, by her marital status, and on whether or not she has any dependants. Marital family land is secure if the woman remains married and has children, while borrowed land is secure if the contract is upheld. Being single and childless or being childless while cohabiting significantly limits the land use security of a woman, thus a hierarchy of rights security exists for secondary rights users. This hierarchy of secondary rights creates much insecurity for women. In spite of this insecurity, the female farmers are motivated to engage in agriculture so as to produce food for household consumption as unemployment is rife in the communities.

The study also shows that customary law has both positive and negative attributes for women's land use and land use security. In spite of being socially legitimate, guaranteeing land access to women in the family, and offering them a strong and robust support system, customary law is strongly patrilineal. The strengthening of women's land rights can be achieved by building on these positive aspects, because statutory law cannot replace customary law. The ensuing changes from introducing a land market would negatively affect women who own no land now and have no money to buy land. The land rights framework could be strengthened to secure women's rights by recognising their user rights and by allowing divorcées to use the land that will be inherited by their children for their mutual livelihoods. Recognising user rights would strengthen women's land rights within the household and the community, and should be accompanied by other development initiatives. The solution lies in coming up with a strategy that has local 'fit' and is socially legitimate; with time, such initiatives will allow people to become accustomed to women having rights to land and will possibly result in women being awarded individual land ownership rights. This process will be gradual as it demands the transformation of customary law into a gender-sensitive framework. For it to succeed, the Government as well as local leaders must acknowledge and embrace the practical and moral importance of women having secure access to land, understanding the potential behind such a change in terms of improving household food security. Such bodies must therefore engage rural women, who are a key development constituency in the national economy.

6.3. Recommendations

It is suggested that further research be conducted as follows: (1) undertake an analysis of different versions of customary law in place in South Africa and how these can be modified to strengthen women's land access as well as lessen gendered resource allocation; (2) investigate

possible ways of making the irrigation schemes more efficient and productive since most households rely on agriculture; and (3) investigate the low levels of agricultural participation by unemployed younger men and women.

It is recommended that the Government and all stakeholders engage in a consultative process that strengthens the land rights of the user. This could be done in conjunction with academia and civic society, both of whom have produced a great deal of work in this field and also represent the views of different stakeholders. The Government should also work towards rehabilitating existing irrigation facilities and building more of them in rural areas. Agriculture in all three districts visited would have been impossible throughout the year without irrigation. In addition to rehabilitation of irrigation schemes, there is need to train the small-scale farmers on more efficient ways of production. Also subsidised input access facilities for the farmer would improve small-scale agricultural production and household food security. Third, Government should introduce infrastructure development in rural communities to improve their accessibility and ability to market their produce and participate actively in the economy.

Also, there is a need to introduce other livelihood activities to rural women so as to reduce their dependence on farming. Poultry, piggery, sewing and other locally viable activities could be introduced to households with no land. NGOs together with Department of Agriculture officials could provide capital and training, respectively, so that the project is sustainable. There is also potential to process and preserve the excess vegetables produced, given the seasonal nature of some of them. These could be preserved for household use and even for sale in the community.

Finally, NGOs could help the communities' access markets which work with small-scale farmers. This would entail training on how to produce to meet market quality and quantity requirements. This would act as incentive for the farmers to produce more efficiently and even attract the youth.

APPENDICES

APPENDIX A: Respondent Questionnaire

DEMOGRAPHIC and OTHER HOUSEHOLD DATA

1. Please tick district

Vhembe	Sekhukhune	Capricorn	Other , specify
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2. Community name _____

3. Duration of stay _____

4. What is your home language? Please tick

Tshivenda	Sepedi	Xitsonga	Other, specify
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5. **Please record responses for the respondent and household head in the following questions:**

Sex of respondent and household head

	Male	Female
Respondent		
Household head		

6. Age ranges for the respondent and household head

	Below25yrs	25-35 yrs	36-50 yrs	Over50 yrs
Respondent				
Household head				

7. Respondent and household head's Marital status

	Never married	Married	Widowed	Divorced	Stay together not married
Respondent					
Household head					

8. If married please specify Marriage type

	Full traditional	Part of traditional	Church / court	Other, specify
Respondent				
Household head				

9. Respondent and household head's Education level

	No education	Primary	Secondary	Other, specify
Respondent				
Household head				

10. How big is your household _____

11. Are you living with your spouse? Yes ☐ No ☐

12. If No, where is the spouse?

13. _____

14. Respondent's relationship to the household head? _____

15. Occupation of the household head

Occupation	Tick
Salaried employment	
Self-employment	
Retired	
Unemployed	
Other (specify)	

16. Please select all your household's livelihood activities

Livelihood activities	Tick	Number of household members involved
School		
Salaries / Wages		
Government Grants		
Remittances		
Casual employment		
Petty trade		
Self employed		
Other (specify)		

17. What livestock does the household own? Please **tick** all applicable.

Occupation	Tick
Cattle	
Goats	
Other (specify)	

18. Do you own livestock? Yes ☐ No ☐

19. If No, who owns livestock?

LAND RIGHTS

20. What laws are used to allocate land in the area?

Chief	Local government	Other (specify)
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21. How did the household get its land?

General Land access options	tick
Given by father	
Given by chief	
Buy	
Inherit	
Gift	
Rent	
Government programme	
Other (specify)	

22. What rights do you have over the land? Please tick relevant options

Land rights	Tick	Explain
Use		
Access		
Control		
Title		

23. How long have you used this land? Please tick relevant box

0-5 yrs	6-10yrs	11-20 yrs	More than 20 yrs
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24. Please describe your Land's characteristics

Aspect	Description
Size of land	
Is household land joined to agricultural land?	YES
	NO
Distance from household in minutes	

25. What do you use the land for? Please tick all relevant

Options	Tick
Residence	
Household garden	
Livestock husbandry	
Farm (crops and grazing)	
Other (specify)	

26. What land preparation activities do you perform before planting?

Remove rocks	Turn the soil	Add fertiliser (manure)	Other specify
--------------	---------------	-------------------------	---------------

27. Do you think you have to perform more land preparation activities than other people in your community? Yes / No please explain

28. Is it good for women to own land? YES / NO. Please explain your answer

29. How can women access land for themselves in this community?

General Land access options	Please tick
Given by father, uncle ,husband, brother,	
Given by chief	
Given by mother-in-law	
Buy	
Inherit	
Gift	
Rent	
Government programme	
Other(specify)	

30. How many pieces of agricultural land does the household own? _____

31. Who makes decisions regarding the following in the household:

Household decisions	Decision maker
Land allocation to household members	
What to plant	
Time spent on land based activities	
What to do with harvest?	

32. LAND USE SECURITY FOR FOOD SECURITY

33. Who owns the land? _____

34. Is the land registered in the owner's name? YES or NO. If yes where?

35. How is land ownership recognised in this community for men and women? Please tick all relevant options for both?

Options	Men	Women
Title		
Register of land owners at local council		
Register of land owners at local chief		
It's family land		

Neighbours know each other		
Community elders know land owners		
Other (specify)		

36. Have any households in this community lost their land rights because of the following reasons in the last 5years? Tick all relevant options

Options	Tick
If household moves to a new community	
If household sell the land	
If household does not use the land for a long time	
If household does not respect local laws	
Other(specify)	

37. Has the household abandoned, lost or got a new plot in the last five years?

Person	Tick	Reason
Abandoned land		
Lost land		
Got new land		

38. If yes, how did this affect your land use activities?

39. In your opinion can women use their land without threats of eviction or losing it? Explain.

40. What are the common causes of land disputes involving women? Tick all relevant options

Dispute causes	Tick
Boundaries	
Real Owner	
Family issues	
eviction threats from community members	
Other (specify)	

41. When does a female household member lose land rights to household and other land in the community?

Option	Household land	Other Community land
Marries and moves to		

another family		
Gets a divorce		
Husband dies		
Someone else wants her land		
Has not used it for a long time		
Has a disagreement with family		
Other (specify)		

42. Who do you approach in a land dispute and why? Tick all relevant options

Person	Tick	Reason
Family members		
Local elders		
Local chief		
Ward councillor		
Other (specify)		

43. What role do the following play in solving land disputes involving women?

Group	Role
Marital family	
birth family	
Community leaders	
Local elders	

44. Please explain whether the following strengthen or weaken a woman's land rights?

Aspect	Strengthen	Weaken	explain
Marital status			
Education level			
Rich family			

Powerful friends and family			
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45. Describe the security of land for the following women;

Woman	Secure	insecure
Single no children		
Single with children		
Married		
Married no children		
Married polygamous relationship		
Married migrant husband		
Widow		
Divorcee		
Stay-together not married (no children)		
Stay together not married (children)		

46. Whose land rights are more secure in marriage, husband or wife and why?

47. What are the following people's land rights when the male household head dies?

Family members	Land rights
Widow	
Children	
Extended family	

48. What happens to woman's land rights when a marriage ends? Please tick boxes below.

Stays on husband's land	Goes back to her family	Allocated new land in village	Other (explain below)
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49. Can sons and daughters inherit land equally? YES or NO. Explain below

FOOD SECURITY

50. How do the land rights you have affect your farming efficiency?

51. Describe women's local employment opportunities?

52. Are men involved in crop cultivation Yes ☐ No ☐

53. If yes, what level of involvement (in the production cycle) e.g. Planting, harvesting, etc?

54. How many times do you plant in a year? Please **tick** where applicable.

Once	Twice	All year round
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55. Does water availability affect the number of times you plant a year?

56. Yes ☐ No ☐

57. What do you grow and why?

	Tick	To eat	To sell
Vegetables			
Mealies and other cereals			
Root crops			
Beans			
Fruits			

58. How often in a week do you harvest from garden?

Daily	3-4 times a week	Once a week	Never
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59. Please state how many bundles or buckets of produce you harvest in a week

Crop	Bundles/week	Buckets/ week

60. Do you have access to markets to sell your produce? Yes ☐ No ☐

61. What else do you harvest from land?

Firewood	Grass	Clay
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WATER ACCESS AND USE

62. What is the source of water you use? Please **tick** all applicable.

Water sources	Tick
River	
Communal tap	
Private tap	
Well/ spring/ borehole	
Other (specify)	

63. Who owns the water source?

Water sources	Tick
Government	
Community	
Individual	
Other (specify)	

64. Who collects water often? Please **tick** all applicable.

Person responsible for water collection	Tick
Mother	
Daughter(s)	
Father	
Son(s)	
Other (specify)	

65. How often do you collect water?

	Tick
Once a day	
Twice a day	
Thrice a day	
More than thrice a day	

66. What do you use water for?

	Tick
Domestic use (Drinking, cooking, hygiene, etc)	
Sanitation	
Crop production	
Livestock (including poultry)	
Other (Specify)	

67. How far is the source of water?

Less than 200m	Greater than 200m
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68. How long does it take to collect water?

Less than 30 minutes	Greater than 30 minutes
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69. Are water sources reliable? Yes ☐ No ☐

70. How do you get to the water source? Please **tick** all applicable.

	Tick
Foot / Walk	
Animal wagon	
Own or hired vehicle	
Other (specify)	

71. Do you pay for water? Yes ☐ No ☐

72. How much do you pay for water? Please indicate if you pay weekly, monthly, etc

73. How do you have access to water for agricultural production?

74. Who decides about how water will be allocated in the household?

75. Do you feel your household have enough access to water? Yes ☐ No ☐

If No, please explain why do you feel so?

76. What problems do you encounter when accessing water?

77. What do you think is the solution to the problems you mentioned above?

KNOWLEDGE GENERATION AND EMPOWERMENT

78. How do your land rights affect access to water and other resources?

79. Who manages water supplies?

80. Are women involved in management of water supplies? Yes ☐ No ☐

81. Are women involved in decision-making regarding water supplies? Yes ☐

No ☐

82. Are women encouraged and empowered about the importance of involvement?

83. Yes ☐ No ☐

84. Are meetings conducted in such a way that women are comfortable and understand?

Yes ☐ No ☐

85. Do women support other women in decision-making positions? Yes ☐ No ☐

86. What can be done to encourage more women participation?

87. Do you collect rainwater? Yes ☐ No ☐

88. If yes, how do you collect rain water?

89. Do you use water technologies for water, such as pumps? Yes ☐ No ☐

90. Can women operate these technologies? Yes ☐ No ☐

91. Do you irrigate your crops? Yes ☐ No ☐

92. What methods of irrigation do you use?

	Tick
Furrow irrigation	
Manual using buckets or watering cans	
Drip irrigation, spray or micro-sprinkler irrigation	
Other (specify)	

93. Why is the type of irrigation method mentioned above used?

94. Are you satisfied with type of irrigation system used?

95. Are you aware that water is a scarce resource? Yes ☐ No ☐

96. Do you use waste water to irrigate your household gardens? Yes ☐ No ☐

97. How can water be conserved?

98. How can water be made more available than it is at present?

Section E: Management of water irrigation scheme

99. Is there any common plan for agricultural production within the area of the scheme?

Yes ☐ No ☐

100. If **Yes**, who decides on the agricultural production plan

101. Who is making the decisions concerning the fieldwork?

Men	Women	Both
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102. Are all the farmers involved in the planning? **Yes** ☐ **No** ☐

103. How many people are in the water scheme committee? **Yes** ☐ **No** ☐

104. How many women are in the committee? _____

105. Are women able (allowed) to attend meetings? **Yes** ☐ **No** ☐

106. How many times do you hold meetings in a month?

Once	Twice	Thrice	Other (specify)
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107. Who determines the water fees?

108. How much is paid by each water irrigation scheme member towards the water fee? _____

109. Who collects the water fees from the scheme?

110. What is the water fee used for?

111. Is there a difference between the tasks performed by women and men in the irrigation scheme? **Yes** ☐ **No** ☐

112. If yes state the different roles

113. Have you (or your household members) received technical training in agriculture or on water Management in the last 2 years? **Yes** ☐ **No** ☐

114. If Yes, what trainings were attended and indicate who provided the training?

115. Do you know what Water Users Association (WUA) is? Yes ☐ No ☐

116. Do you know how the WUA works? Yes ☐ No ☐

117. Are you aware of your water consumer rights? Yes ☐ No ☐

“IDEAL” LAND RIGHTS FOR RURAL WOMEN

118. What do you think should be the ideal option for the following women in land ownership?

Woman	Individual title	Joint title	Women's group
Single no children			
Single with children			
Married			
Married no children			
Married polygamous relationship			
Married migrant husband			
Widow			
Divorcee			
Stay-together not married (no children)			
Stay-together not married (children)			

119. In the table below, list cultural practices which in your opinion protect and threaten women's land access

Protect women's land access	Threaten women's land access

120. How could women's land rights be secured using traditional laws?

121. How could women's land rights be secured using statutory laws?

APPENDIX B: Key informant Interview Questionnaire

1. Please tick district

A. Vhembe	B. Sekhukhune	C. Capricorn	D. Other , specify
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2. Community name _____

3. Duration of stay _____

4. What is your home language? Please tick

A. Tshivenda	B. Sepedi	C. Xitsonga	D. Other, specify
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5. Gender: Male ☐ Female ☐

6. Age ranges for the respondent and household head

	A. Below25yrs	B. 25-35 yrs	C. 36-50 yrs	D. Over50 yrs
Respondent				

7. Occupation: _____

8. Please describe statutory land rights in your area?

9. Please describe customary land rights in your area?

10. How are land rights recognised and recorded in your area?

11. Is it acceptable for women to own land in your area? Please explain?

12. How do women access land using statutory and customary law in your area? What are the procedures?

	Statutory law	Customary law (traditions)
married		
single		
widowed		
divorced		
married polygamous		
married – migrant husband		
single with children		
Live together, not married		

13. What other routes could women use to access land? (Buy, lease, sharecropping?)

14. What land rights are women accorded under the law which works in this area? How secure are they? Choosing from **individual, joint or women's group rights**, explain which rights would be good for each class of women.

	Current land rights (user, access, control)	Security of existing rights (secure or insecure)	Ideal land rights (individual, joint or women's groups rights)
married			
single			
widowed			
divorced			
married polygamous			
married – migrant husband			
single with children			
Live together, not married			

-
15. When a conflict happens, who is normally involved?
-

16. What route can women take in the event of a conflict?

17. Have any women in any cases been successful? Yes ☐ No ☐

If Yes, what led to this success?

18. What makes these claims unsuccessful?

19. List cultural practices which in your opinion protect and threaten women's land access

20. In your opinion what could be done to secure women's access to land?
