

# Land Rights: Mpumalanga Communities' Attitudes Towards Women's Land Ownership

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**Abstract:** The role played by women in agriculture in the world is a salient one, though they continue to face discrimination in accessing and owning land. Notwithstanding the fact that most countries worldwide have signed treaties on women empowerment, and laws that protect women's land rights, women are still unable to assert equal land rights. Patriarchy with its discriminatory social norms and practices is cited as barriers between women and their land rights. Inadequate enforcement of laws regarding women's land rights compounded by poor implementation of policies and lack of political will exacerbates the problem. The South African Constitution of 1996 coupled with other legislation, protects the full rights of all citizens as enshrined in the Bill of Rights under Chapter 2. Access to land for women is said to be crucial in combating discrimination and alleviating poverty. Women who own land are said to have better financial autonomy than those who do not. This qualitative study analysed Mpumalanga communities' attitudes towards women's land ownership. Data was collected through semi-structured interview schedules from one hundred and twenty-three (123) members of the community.

**Keywords:** Access, Attitudes, Communities, Customary, Land ownership

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## 1. Introduction

In many countries, land is indicated as a right as it is with other rights like housing, health and equality. Rights are described as claims bound by law and socially recognisable. They can be enforced through the courts or at village level. Rights to land can be classified under three categories, i.e. (i) use rights, which are the rights to use land, (ii) control rights, which are rights to make decisions about the land, deciding on the type of crops to plant and benefits from the sale of crops, and (iii) transfer rights which include to right to sell, lease, giving the land to someone else through inheritance and making overall decisions about use and control rights. From the three rights that have been mentioned above, most women only have use rights which can be changed or taken away at any given moment by the person who has transfer rights. Having legal rights however does not mean that rights to land by women are recognised socially (Paradza, 2011; CSV, POWA & WCNOVAW, 2011; Massay, 2019; Veit, 2019; Claeys, Lemke & Camacho, 2022). Culturally, there are predetermined gender ideologies which describe rights and responsibilities for both men and women. Access to and control of resources such as land is mainly in the hands of men who,

culturally, are seen as decision makers. These ideologies reinforce the position of women as inferior or dependent on men. Women can only have secure land rights if the rights to the land are documented like having a title deed which renders the rights enforceable by courts should problems arise (UN, 2012). Women's security of land tenure is said to depend on women keeping good relationships with male relatives, should such a relationship change, her security tenure becomes non-existent (Villarreal, 2006; Kathewera-Banda, Kamanga-Njikho, Malera, Mauluka, Mazinga & Ndlovu, 2011).

## 2. Statement of the Problem

Even though equality between men and women has been enshrined in constitutions and other legislation around the world, structural disadvantages, discrimination and gender inequalities still persist, especially for rural women (Federici, 2011). Access, control and ownership of land and other productive resources is crucial not just as an economic tool but as a right to equality. Studies indicate that women who access land directly are few (Kambarami, 2006; ICRW, 2008) and most women who have access do so through marriage or family ties. Access to land by women is normally through male kinship (Nyukuri,

2006; Paradza, 2011a). As an effort to eliminate discrimination against women and improve access to resources, most countries signed treaties which are legally binding and thus enable women to have access to productive resources as well. The aim of such statutory laws is to protect the rights of women and assist with easy access to land, however, that is just in theory because it is the implementation of these laws that is a problem (Nyukuri, 2006; Villarreal, 2006; Federici, 2011).

### **3. Theoretical Perspective**

This paper is anchored on the Patriarchal Theory which refers to a system of male dominance that is characterised by dominance where men are the dominating ones and thus viewed as superior and women the dominated ones and hence viewed as inferior to men (Kambarami, 2006; Stopler, 2008; Rao, 2012; Sultana, 2011). This system defines women in relation to their reproductive roles only, which has a direct impact on the allocation of resources both within and outside the household. Since there is no monetary value attached to reproductive roles, the patriarchal system then relegates women to positions of subordination to men. Patriarchy is also embedded in cultural beliefs and norms which dictate masculinity and femininity roles attached to each gender. Due to their low status, women face a lot of constraints like inability to participate in politics, decent work, access to land and other resources (Palama, 2008; Albertyn, 2009; Stanford Encyclopaedia of Philosophy, 2010; Sultana, 2011; Kabeer, 2012). Reproductive work is crucial for the existence of families and communities. These roles make it easy for everyone; men included, to go about everyday business because there are people who take care of the children, the cooking, fetching of firewood and water and also involved in community businesses like attending funerals and tending to the sick.

In terms of access to land, due to the inferior status assigned to women by patriarchal practices, it becomes difficult for women to access land (UN, 2008; Swaminathan, 2008; Sultana, 2011). Land is owned and controlled by males who are regarded as head of households, irrespective of the fact that there are other people, mostly women, who are contributing or working on it without necessarily being recognised (World Bank, 2013; Federici, 2011; UN Women, 2013; Claeys, Lemke & Camacho, 2022). The violation of women's land rights is often hidden within culture, tradition and religion

(Benschop, 2002). When social responsibilities are deeply entrenched and defined along gender lines, it becomes very difficult for women to deviate from what is socially acceptable. In patriarchal societies, husbands are supposed to take care of their families hence they are regarded as head of households. These cultural patterns according to Shaffer (2019) help perpetuate household and community poverty because they do not allow women to own land.

### **4. Methodology**

A snowball sampling method was utilised to collect data through semi-structured interview schedules from one hundred (100) members of the community from three districts in Mpumalanga, i.e. Ehlanzeni, Nkangala and Gert Sibande in a four months period. A semi-structured interview schedule was utilised to probe societal attitudes towards women's land rights. Collected data was read and notes of emerging themes were made. Summaries of each interview discussion capturing opinions, attitudes and perceptions were drawn. Most community members were able to answer the questionnaire unassisted whilst some were assisted due to their low literacy levels. Thirty-five percent (35%) of the respondents were interviewed at Ehlanzeni District, thirty-two percent (32%) from Gert Sibande and thirty-three percent (33%) from Nkangala districts. Fifty-three percent (53%) of the respondents were Swati speaking, nine percent (9%) IsiZulu, two-percent (2%) IsiNdebele, nine percent (9%) XiTsonga, twelve percent (12%) SeSotho, nine percent (9%) TshiVenda and six percent (6%) Afrikaans speaking. Forty-nine percent (49%) of respondents were between the ages 18-30; twenty-five percent (25%) between the ages 31-35; twelve percent (12%) between 36-40; eight percent (8%) between 41-55 and six percent (6%) were from 56 years upwards. Fifty-six percent (56%) of the respondents were males and forty-four percent (44%) were females. In terms of educational levels of the respondents, twenty-eight percent (28%) had grades 1-7 and fifty percent (50%) grades 8-12, fourteen percent (14%) had degrees or diplomas whilst eight percent (8%) had post graduate degrees.

### **5. Literature Review**

#### **5.1 Legislative Framework on Land Rights**

Land rights are human rights and these are contained in treaties and conventions which are legally binding, especially to countries that have ratified

them. Despite the provision of laws and ratified treaties, women still struggle to access, control and own land. A few legislative frameworks with regard land will be briefly outlined below.

### **5.1.1 The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is based on the principle of equality between sexes with emphasis on the discrimination faced by women. Countries are expected to submit reports about periodic progress made with regard to gender equality with specific reference to women (Nyukuri, 2006; Villarreal, 2006; IWRAW, 2008; Palama, 2008). Article 14 of CEDAW is more relevant to rural women and their access to land. Agriculture is the main source of living for most rural women, yet women have less access than men to agriculture related assets, inputs and services including land ownership. CEDAW calls for incorporating the principle of equality of men and women in legal systems, tribunals and other public institutions to eliminate discrimination against women by individuals, organisations or enterprises.

### **5.1.2 International Covenant on Civil and Political Rights (ICCPR)**

Article 2(1) of this covenant specifically addresses women's property rights amongst others. In many countries women are regarded as minors hence they cannot enter into contracts without the assistance of male relatives. This is because women's roles are defined along the lines of motherhood, domestic workers and child-rearing (Pati, 2006; Lorber, 2010) and thus are viewed as unable to own land. There are similarities between CEDAW and ICCPR (Lastarria-Cornhiel, 2006) because both recognise customary, traditional, historical and religious attitudes and practices employed as a reason for the oppression of women.

### **5.1.3 African Charter on Human and People's Rights (ACHPR)**

The African Charter on Human and People's Rights recognizes women's equal right to an equitable sharing of the joint property deriving from the property of separation, divorce or annulment of marriage.

### **5.1.4 The Beijing Platform for Action (BPA)**

The Beijing Declaration and Platform for Action (BPA) of 1995 is a visionary agenda for the empowerment of women and is the outcome of the Fourth

World Conference on Women, held in Beijing, China, in September 1995. It emphasises the protection of women's human rights, the eradication of poverty and promotion of women's economic independence, including ensuring equal access for all women to productive resources including land. Member States are mandated to put in place legislation regarding inheritance rights of girls and women, access to land, control of productive resources, access to credit, capital and property (Nyukuri, 2006; Lastarria-Cornhiel, 2006; UNECA, 2007; UN-Women, 2013). The BPA is critically concerned about persistent and increasing burden of poverty on women and inequalities (Palama, 2008). The equal distribution of economic resources such as land will assist in reducing feminisation of poverty.

### **5.1.5 The Constitution of the Republic of South Africa, 1996**

The South African Constitution of 1996 prohibits discrimination on the basis of sex, gender, age, pregnancy, disability, sexual orientation, marital status, language, social origin, culture and religion, conscience and belief. It also includes non-sexism on the Bill of Rights (RSA, 1996; Ikdahl, Hellum, Kaarhus, Benjaminsen & Kameri-Mbote, 2005; Knox, Duvvury & Milici, 2007; Budlender, 2011). These rights are listed in the Bill of Rights, in Chapter 2 of the Constitution of the Republic of South Africa, 1996. Whilst the constitution has the equality clause, it also recognises customary law. The Constitution allows that "a traditional authority that observes a system of customary law to function subject to any applicable legislation and customs, which includes amendments to, or repeal of that legislation or those customs." In some instances, the courts apply customary law recognising and acknowledging traditional leadership and its role in democracy. This then creates conflict between customary law and statutory law in terms of implementation since it is in customary law where women's land rights are violated (Albertyn, 2009; Mhago & Samson, 2011; Budlender & Alma, 2011; Ndulo, 2011; Nnadi, Chikaire, Osuagwu, Ihenacho & Egwunwu, 2012). Religious and customary laws are known to perpetuate discriminatory practices towards women.

### **5.1.6 The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) No. 4 of 2000**

The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) prohibits unfair discrimination on the grounds of gender and sex both in the public and private spheres which includes

relations, employment, land rights and social benefits. It calls for South Africa to develop plans and legislation that promotes equality. Both government and private sector are compelled to come up with programmes and action plans that will show how gender equality plans will be implemented and measured (Mutangadura, 2004). In terms of inheritance, PEPUA prohibits norms and practices that unfairly discriminate against women in terms of inheriting property (sec 8(c)). PEPUA also played a role with regard to inheritance; important advances were made by courts through judgements on cases such as the *Bhe vs Shibi*. The Constitutional Court declared the African Customary rule of male primogeniture which allows the oldest male descendant or relative to inherit in terms of a deceased black person, unconstitutional (Palmary, 2006; Joireman, 2006; Albertyn, 2009; Ndulo, 2011; Budlender & Alma, 2011). Sec 8(e) deals specifically with access to land and admonishes the discrimination of women from accessing land, finance and other resources. PEPUA was instrumental in the establishment of Equality Courts which are responsible to deal with matters covered by PEPUA. The Equality Courts are housed within Magistrate's Courts in all the nine (9) provinces of South Africa.

### 5.1.7 Chapter 9 Institutions

The Commission for Gender Equality (CGE) was established according to sec 184 of the Constitution of the Republic of South Africa 1996, and has the power to monitor, investigate research, educate, lobby, advise and report on issues regarding gender equality. Its mandate is to check compliance of the country with international and regional treaties and local legislation about human rights (RSA, 1996; Palmary, 2006; Budlender, 2011; Williams, 2014).

The South African Human Rights Commission (SAHRC) has the powers, as regulated by the national legislation, to investigate and report on the observance of human rights; take steps and secure appropriate redress where human rights have been violated; carry out research and do awareness campaigns on rights and responsibilities of all South African citizens (RSA, 1996). There are however challenges that are faced by the commission which include budgetary constraints due to underfunding, the location of the offices which are in urban areas and thus making the commission to be inaccessible to the poor or people in rural areas and the monitoring of adherence to ratified treaties due to shortage of staff (RSA, 2014/2015).

## 5.2 Women and Access to Land

Studies on poverty and development indicate that 80 million hectares of land has been leased for agricultural purposes but only one percent (1%) of the world's women own land (Lorber, 2010; UN, 2012). Despite the provision of laws and ratified treaties in countries such as Uganda and South Africa, women are still the ones who suffer from discrimination, which is caused by customary and religious laws that seems to overrule property laws and constitutions (Veit, 2019). A study done by Moyo (2000) on the analysis of the socio-economic and political implications of land acquisitions in Zimbabwe revealed that eighty-seven percent (87%) of registered landowners are male and less than five percent (5%) are women. According to Veit, (2019), whilst Ugandan women cultivate about 80% of food, they own less than 8% of the land. In Kenya, 98% of men have access to land as compared to 1.6% women (Shaffer, 2019), whilst South African women own 18% of the land (Fynn & van Schalkwyk, 2022).

The fact that only a few percentages of women have access to land, unlike their male counterparts means that wealth lies in the hands of men since land is equated with wealth. It is documented that an increasing proportion of the world's poor are women (Moghadan, 2005; Harrington & Chopra, 2010). Poverty is thus said to be characterised by an increase in female-headed households (Lingam, 2005; Quan, 2006). It can then be deduced that the increasing level of female-headed households is attributed to lack of access to resources that can uplift their economic statuses, such as land. It is postulated that women who access land directly are few (Kambarami, 2006; ICRW, 2008) as access to land by women is normally through male kinship. The kinship can be in a form of a marriage relationship, through their sons, fathers or male relatives; they however have to give consent. This is because patriarchy dictates that men are head of families and thus decision makers (Duncan & Brants, 2004; ECA, 2004; Nyukuri, 2006; Paradza, 2011a; Veit, 2019; Shaffer, 2019). Unmarried women, widows, childless women or women who cannot bear male children will assumably have difficulty accessing land since there won't be anyone to veto for them.

Formal policies and informal cultural norms and expectations impact on women's potential and must be acknowledged and changed to achieve household

resilience and women empowerment. There is dire need for behavioural, attitudinal and drastic change in norms and practices that discriminate against women in order to create an enabling environment for women to access and own land (Pathways Theory of Change, 2014). For women to have a voice, they need to be involved in important structures that determine how resources are to be distributed.

Female headed households, unlike male headed ones are the one who suffer the brunt of poverty since they are the ones who are less likely to have access to land and other services like water, financial inputs and extension services (Lingam, 2005; Quan, 2006; Morrison, Raju & Sinha, 2007; World Bank, 2012). This can be attributed to societal patriarchal tendencies that regard male headed household as legitimate than female headed ones. Formal and customary practices like inheritance are some of the obstacles that make it difficult for women to have access to and control of land. Patriarchal tendencies seem to favour men over women in terms of land inheritance reaffirming the position of women as inferior and thus their land rights (Deininger, Goyal & Nagarajan, 2010; Harrington & Chopra, 2010; Murungani *et al.*, 2014; Veit, 2019; Shaffer, 2019). Whilst addressing the female land rights through inheritance practices it is important to note that since women are not a homogenous group, there are women who are able to inherit and have secure

land rights and tenure especially women who have inherited through matrilineal descent.

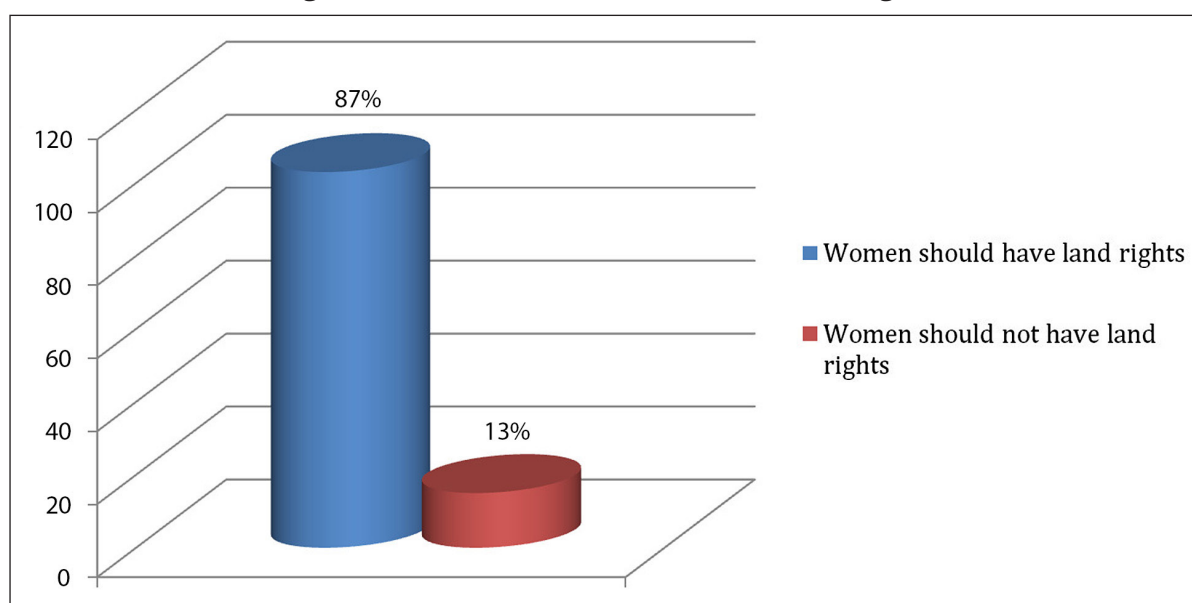
## 6. RESULTS AND DISCUSSION

### 6.1 People's Attitudes Towards Women's Land Rights

According to the perused literature in this paper, of all the three categories of land rights which are stated as use rights, control rights and transfer rights, it is argued that women only have use rights. Use rights are not secure for women because they can be taken away at any time due to change in women's relationships with men such as divorce or widowhood. The variable was used to determine respondents' views on women having land rights. See Figure 1.

Eighty-seven percent (87%) of the respondents are of the opinion that women should have land rights. The South African constitution was cited as the basis of women having land rights. Respondents argued that since women have been and are still the ones who provide food for their households through agriculture, it makes sense that they have land rights as well. Most respondents indicated that having land rights will enable women to feed their children, eradicate hunger, increase their bargaining powers at household level, assists them to

**Figure 1: Attitudes Towards Women's Land Rights**



Source: Authors

become financially independent as they contribute to the household thus lessening the burden of taking care of families from men and create jobs for others.

The twenty percent (13%) of respondents who argued against women having land rights indicated that women would be disrespectful towards their husbands and would be controlling should they have land rights. They also indicated that since women marry into other clans, having land rights will enrich other clans and disadvantage the clan they are born from. The findings of this study thus reveal that women should have land rights because women provide food security, take care of their households by contributing financially using proceeds from land.

### 6.2 Opinions on Whether Women's Land Rights are Regarded as Having the Potential to Cause Conflict in Marriage or Other Relationships

The aim of the question was to determine if respondents viewed women's land rights as having a potential to be a source of conflict in marriage or other relationships. See Figure 2.

Forty-nine percent (49%) of respondents said women's land rights can be a source of conflict in marriage and other relationships whilst fifty-one percent (51%) said women's land rights cannot be a source of conflict in marriage and other relationships as it benefits households financially and with the provision of food. Those who viewed women's land rights as having the potential to cause conflict in the marriage and other relationships (49%) said

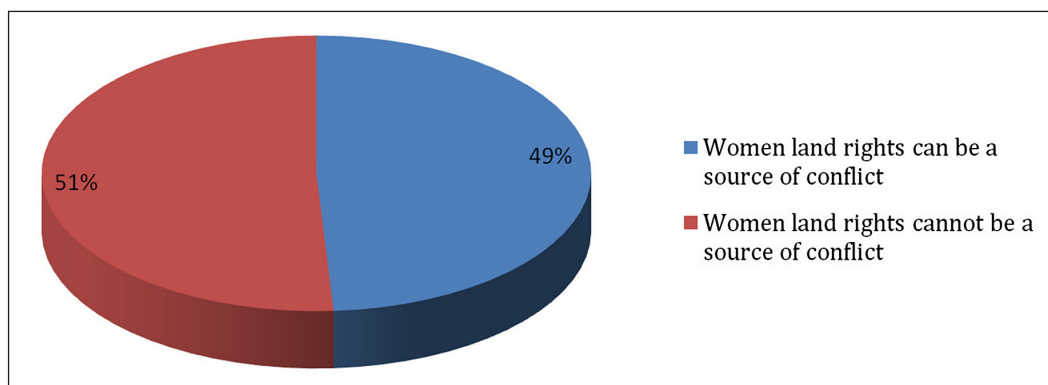
women's land rights contribute to the high divorce rate as women disrespect, control and divorce their husbands. A woman is said to be brought into a family to increase a clan and not to own land. The findings of the study indicate that customary barriers still play a role in the inequalities of access to land since almost half of the respondents regard women's land rights as having a potential to cause conflict in the marriage or other relationships and the other half of respondents regard women's land rights as not having the potential to cause conflict in marriage or other relationships.

### 6.3 Attitudes on Women Inheriting Property on Equal Footing with Men

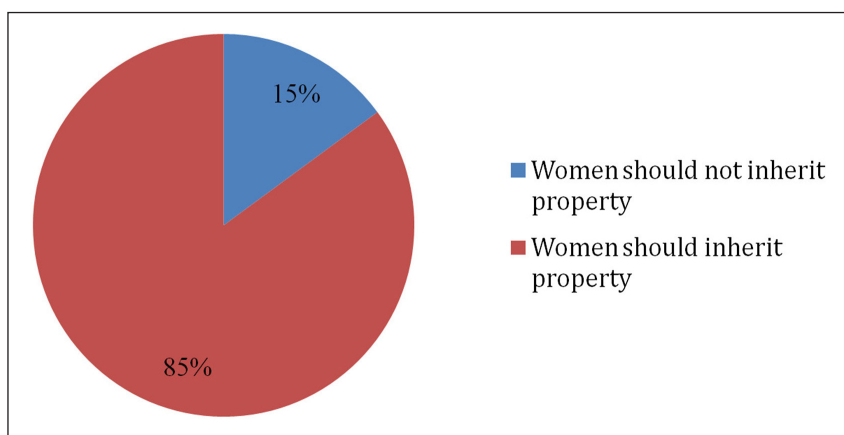
Respondents were asked for their views on who should inherit marital property including land should a man pass away, the variable intended determining attitudes towards women inheriting property should a man pass away. See Figure 3.

Eighty-five percent (85%) of respondents said women should inherit property on equal footing with men whilst fifteen percent (15%) said women should not. The eighty-five percent (85%) quoted the South African Constitution's equality clause which indicates that women and men are equal before the law and thus should inherit equally. Respondents who said that women should not inherit property argued that the first born son is the one who should inherit because he will be able take care of the mother. They argued that a man continues the family name and if a woman remarries into another clan she will unfairly enrich the other clan.

**Figure 2: Opinions on Whether Women's Land Rights are Regarded as Having the Potential to be a Cause of Conflict in Marriage or Other Relationships**



Source: Authors

**Figure 3: Attitudes on Women Inheriting Property on Equal Footing with Men**


Source: Authors

**Table 1: Attitudes on Women Forming Part of Political, Traditional and Other Structures that Deal with Land**

Responses	No	Percentage
Women should form part of political, traditional and other structures that deal with land	90	88%
Women should not form part of political, traditional and other structures that deal with land	14	12%
Total	100	100

Source: Authors

#### 6.4 Views of Women Forming Part of Political, Traditional and Other Structures That Deal with Land

The prohibition of women's participation in structures that deal with land is said to have a negative impact on women having their needs articulated and thus enabling development initiatives to take their needs into cognisance. The variable was used to determine respondents' attitudes towards women forming part of political, traditional and other structures that deal with land. See Table 1.

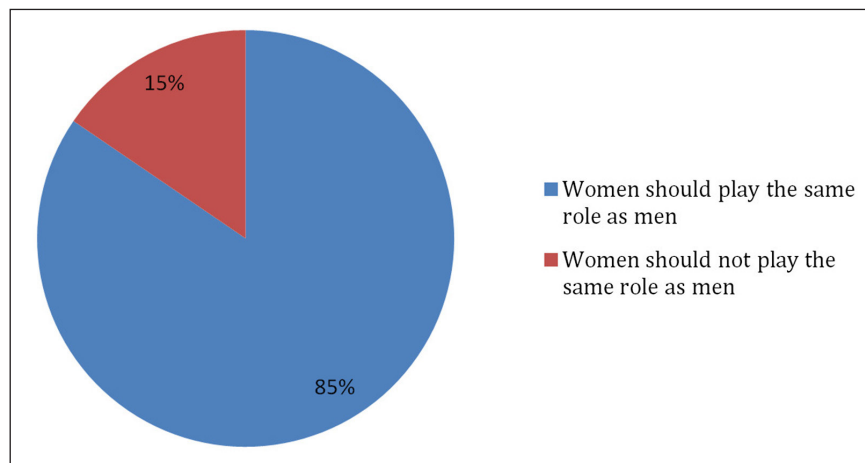
Eighty-eight percent (88%) of the respondents support women forming part of political, traditional and other structures that deal with land. They said such structures give women a voice whilst allowing them to gain information about processes and regulations regarding access to land. The twelve percent (12%) of respondents who said women should not form part of political, traditional and other structures mentioned that women become disrespectful when

they form part of such structures because they tend to look down upon their men. Participating in such structures is said to cause division in some marriage structures. They said women must take care of their children and husbands and leave traditional and political structure participation to men. Responses by the majority participants in this study support women forming part of political, traditional and other structures that deal with land.

#### 6.5 The Role Women Should Play Within Structures that Deal with Land

Perused literature postulate the lack of representation of women in decision making structures such as traditional, political and other structures that deal with land as contributing to their difficulty in having their needs articulated and being involved in development initiatives. The variable was therefore used to probe societal opinions on what roles women should play in political, traditional and other structures that deal with land. See Figure 4.

**Figure 4: Opinions on the Role of Women within Structures that Deal with Land**



Source: Authors

Eighty-five percent (85%) of respondents are of the opinion that women should play the same role played by men. Women should make decisions about processes or requirements regarding land allocation and leadership roles. Fifteen percent (15%) postulated that men should make decisions about finances and play leadership roles whilst women must execute decisions made by men. According to the respondents, the first priority for women should be taking care of the husbands and children. Customary practices are regarded as a barrier towards women participating in decision-making structures where decisions are made about land. This view is supported by the response from the fifteen percent (15%) of respondents who are against women forming part of political, traditional and other structures that deal with land. The responses from the majority of respondents (85%) are supported by body of literature which support the involvement of women in structures that empowers them and facilitate their access to land.

## 7. Conclusion and Recommendations

For women to access land there should be huge changes in laws and negative societal attitudes towards women owning land. Accessing land increases the security of tenure for women. Women with secure land rights are less likely to become vulnerable and dependant on other people for their survival. Secure land rights for women ensure that the livelihoods of their families are taken care of. The results of the study support women's land rights in that eighty-seven (87%) of Mpumalanga community members endorsed women's land rights as a

human right and also that access to land by women has the ability to eradicate hunger and poverty. They did not view access to land for women as having the ability to cause conflict in marriage but said it lessen the burden of providing for families for men. The results also support women's property inheritance on the same footing as men. Eighty-eight (88%) percent voted for women's involvement in traditional and political structures citing the fact that it gives them a voice for fair representation and ability to influence policy. This is also the results of the good work done by government, NGOs and Chapter 9 institutions on raising awareness and empowering communities on women's human rights. The paper therefore recommends the following:

- Work with the house of traditional leaders, to assist in the monitoring of violations and the implementation of women's land rights. This will assist in addressing violations of women's land rights especially since there are those who still believe women should not have land rights, although on a small scale.
- Advocate for the representation of women in decision-making structures both within government and outside.
- Continue involving multistakeholder participation to assist with raising awareness of women's land rights.
- Create easy access for rural women to institutions that assist with redress on violations.



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