ASSESSEMENT OF THE PROGRESS MADE TO GIVE WOMEN ACCESS TO LAND AND LAND RIGHTS IN RURAL AREAS IN SOUTH AFRICA SINCE 1994: FOCUSING ON THE VHEMBE DISTRICT MUNICIPALITY

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ABBREVIATIONS

Traditional authority/leadership- Powers that has been legitimized by long standing customs, usually patriarchal

Homeland- Also known as Bantustans, which were designated areas created and imposed on Black South Africans by the apartheid state.

VhaVenda- group of Venda speaking people

MuVenda- an individual who identifies themselves as one that comes from the Venda clan/tribe/ethnicity

Headman- leader or chief or overseer

Thovhele- King (rule the region of VhaVenda)

Khosi- Senor chief who rules two or more rural areas or villages

Vhamusanda- junior chief

Vhakhoma- the chief's mother

Makhadzi- usually one of the chief's sisters

Khotismunne- father's younger brother or half brother

The Constitution- The supreme law of the Republic of South Africa

Bill of Rights- Rights of the people in South Africa with the foundation of democratic values, equality, human rights, and freedom

TLGFA- Traditional Leadership and Governance Framework Amendment Act

TCB- Traditional Courts Bill

CPA- Community Property Association Act 28 of 1996

TKLB- Traditional Khoi-San Leadership Act 3 of 2013

CLARA- Communal Land Rights Act

PTO- Permission to Occupy

Abstract

The paper investigates the progress that has been made when addressing women's access to land and land rights in the Vhembe District Municipality in Limpopo since 1994. Which allows us to critically analyze what changes have taken place in rural areas for the marginalized since the transition into democracy. As a member of the Vhembe community, I have great interest to see what democracy looks like for people who recognize both traditional leadership, which comes with customary law, and the constitution built on democracy. So, when we investigate how women interact in a community where both traditional leadership and constitutional government coexist. The paper then looks at how women negotiate the interests of the conflict between traditional leadership and constitutional government (local government). When speaking on traditional leadership, the paper has made it clear the role that traditional leaders played or should play in their community before, during and after the apartheid era. This also sees the need to look closely into what powers legislation has with the aim to ensure equality and equality in the Vhembe District Municipality for women who were seen to be marginalized and oppressed. Examining to what degree the latter is true in a state that has one of the most progressive constitution in the world. Some of these key pieces of legislations that are explored in the paper, are the Traditional Courts Bill and Communal Land Rights Act that addresses problems linked to power, land and gender in rural areas.

However, overall through each legislation explored, one can see the lack of accountability on the part of traditional leaders. Much of what should be happening is not due to longevity of leaders who have been in power since 1994, and no desire to instill change that will bring on equality and equity for women and access to land because of what one describes as tradition, customs and values. However, one can see that the state recognizes the need for change as women in rural areas, especially the Vhembe District, rely on the land for their livelihood and development. As, women are taking up the responsibility as heads of households more and more, this has shown the state there needs to be progressive implementation of legislation. Thus, this paper finds that indeed women have been given rights to access land (on paper) in the area where traditional leaders still have a say however, this has also put women in a complicated position where they must speak up towards implementation of legislations. Even though one can argue that they are stuck between what customs and tradition says on the one hand, and what the law is saying about what role they should play in society on the other.

Introduction

In social science, the analysis of social, political, and even cultural dynamics is very important, as it gives a better understanding of why people do what they do and their association with the other. With history also changing, ideologies, customs, ideas and understanding also changes. Thus, the conversations of where the marginalized lie is being addressed now more than ever. Specifically, we need to note the effects of land dispossession for African people, and how that has led to several negative effects in African communities. Land dispossession in South Africa has resulted in economic, political, and even racial imbalances for over two decades now (Chingono, 2020). The effects of colonialism and apartheid when it comes to land dispossession and distribution, continue to foster imbalances in the ways that communities' function even today. This minor-dissertation will look at the continuing effects of race and gender dynamics in rural communities pertaining to land dispossession. Specifically, 'black' women in rural communities. Black people in South Africa have been placed in a dilemma since colonization, and the shift towards industrialization within the apartheid system. What the apartheid system managed to do is that its policies and the system made most black people to be landless in a country they call their home (Makhado, 2021: 2).

The latter then raises the topic of the paper, which investigates the changes that have come about in rural South Africa when we look at the land and land rights, but specifically for the marginalized black African women in rural areas living in former homelands who are also under traditional leadership and the South African Constitution in 2021. So, the relationship with land and land rights amidst the middle of the changes that women have is important to unravel. Specifically, the focus being black African VhaVenda women, who live in the Vhembe District, an area that holds huge potential when looking agriculture due to its great expanse of land. Noting that land is key to development and agriculture, tourism mining and industries in southern Africa (Moyo, 2007: 60). Thus, we cannot ignore the powers that land brings with it to individuals, household, and communities.

Exploring the progress that has been made since 1994 when it comes to access to land and land ownership under traditional leaders in a District such as Vhembe is important. We need to address if this indeed there has been progress and if not, why? Because we can see

that several legislations have been issued and passed in the past 28 odd years in South Africa that focus on land, women, and traditional leaders, however, it seems as if indeed customs, values, tradition and culture have influenced more than just legislation, but also the mindset of the people in question. The paper aims to unravel what this means for black African VhaVenda women in the Vhembe district and how this has come to be since 1994.

Problem Statement:

Land and the land question have always been of debate in South Africa even before the events of 1913 with the implementation of the Natives Land Act. There have been ongoing conversations regarding land since 1800's, as there has been ongoing conflict between colonial Europeans over land and natural resources in South Africa (Constant & Tshisikhawe, 2018: 3). The Europeans and Africans have had this contestation over the years due to the power that land has on the livelihood of individuals and even a collective, whether this be a country, region, ethnicity or even household. Therefore, it is important to explore what exactly is the effect of land access and lack thereof for VhaVenda women in the Vhembe District. One will explore what it means to own land and what effect it has on the lives of people who depend on the land. Access to land is key and has always been a big part of sustainability and success of economic developments in South Africa (Wolde, 2016: 48). The importance of this needs to be examined for those who need economic and social freedom through land.

Additionally, we cannot ignore the powers that traditional leaders have or think they have in their communities. Thinking of the fact that in many rural areas, traditional leaders believe that land under claim for restitution should be returned to them as leaders in the community (Fraser, 2007:841). This alone is a problem as it is showing us that land indeed is a contested resource and the conversation linked to access is why we need to find out who exactly has the powers when it comes to land. What needs to be considered is where traditional leadership stands within the conversation of land and gender dynamics that have come into play regarding access to the resource. Thus, the latter speaks to what needs to be investigated when we look at the law and customary law. Exploring what exactly is the clash or relationship between the way traditional leaders' exercise their power and how the state does it. Customary law at present is not only recognized, but also respected by the

Constitution of the Republic of South Africa as an independent source of law (Wicomb, 2013: 53). We cannot ignore its influence or involvement of customary law in issues linked to land and gender. Thus, what needs to be discussed is if some traditional leaders have alluded to the fact that their roles and responsibilities may be questioned due to plans of restitution in the new democratic South Africa, what then does it mean for the people and community who wish to own land but culture or traditional does not believe so. Having to recognize the role and place for women in democratic South Africa needs to be discussed further and the role that traditional leadership have when it comes to women and land access and land rights in such spaces.

Therefore, this minor-dissertation will want to know what the land rights are for women and what their relationship with land in their communities looks like in rural areas such as those in the Vhembe District, because women are the most marginalized in South Africa. In the 1930's when conversations regarding women and access to land was taking place, the conversation was always linked to women being granted access when there was the death of the "landholder'' (Weinberg, 2013: 104). This thus brings into the picture what exactly are other ways that women can gain access to land post-1994 when the discussion regarding race and gender has changed in South Africa since then. But also, we need to further explore land in rural areas and women as those dynamics have not entirely changed over the years since 1994 in the Vhembe District that is still under the leadership of traditional leaders and the local government. Therefore, we need to look into whether this influence whether women can own land or gain access to land without their male counterpart.

Why the focus on VhaVenda women from the Vhembe District? It is to better understand the problem of women access to land in South Africa? In rural South Africa, the highest level of power, in theory is said to still rest on the chief, who is seen as the head of the community who governs the people within his allocated jurisdiction (Wicomb, 2013: 68). The chief still has a say in how land is allocated for those in the community and women. We need to see why this is still so and if this has played at an advantage of women or rather if is a disadvantage for them in the new democracy. But also, how is this so when we are aware that the developmental local government of South Africa requires that citizens should be part of developmental initiatives in their areas (Ntsebeza, 2004: 68). People also include women who are a big part of agricultural development in rural areas, are also those who are those who are taking care of their families. Even as we are made aware that women are in power such as *'makhadzi', 'vhakhoma'* and other

marginalized leaders within the VhaVenda hierarchy and traditional leadership. However, we need to see if indeed the structure of leadership mixed within culture and law is indeed working out for the benefit of the marginalized, VhaVenda women. Many practices for Venda people today are embedded in culture and tradition such as that of preference of sons, the presence of gender-based violence, women's domestic roles in the household, and land ownership are capable of restricting women to fulfil positions of leadership and power too to some extent (Mudimeli, 2021: 11).

Rationale:

In the South Africa political and economic conversations for the past 28 years since democracy, have brought up the land question. It is an unavoidable conversation that needs to be had, as it has several layers attached to it, such as race, class, gender, ethnicity, and location, just to mention a few. Specifically speaking, over the years the conversation regarding the effects of the land lost by millions of South Africa due the 1913 land Act has been taking place. Thus, it then brought on a few questions that are linked to progress that have been made by South African leaders and South Africans during this era of democracy. The land question in South Africa and land rights are an emotive issue, which needs to be addressed with urgency and sensitivity and could lead to an implosion of the country according to Chingono (2020). The land question is very important when we look at the direction of the people and the country is taking, ensuring that what happened pre-1994 does not filter into post-1994 in a negative way.

Furthermore, when it comes to rural land in South Africa this is crucial question to look at. This comes with the understanding that home dynamics and family dynamics have changed over the years in rural communities with the changes of political systems over the years. Thus, it is important to firstly note that in Africa, community leaders such as chiefs and customary justice systems continue to dominate communities (Ubink & McInerney, 2011: 7). We cannot ignore the role of chiefs and how the customary justice system works when it comes to land justice and how communities work around land rights, even for the marginalized. Customs and tradition are beyond just looking into chiefs and officials in rural areas, but it is also about those who engage with and shape customs through daily activities (Claassens, 2013:72). Meaning that the conversation around rural land and traditional leadership is not only about land on its own, but also looking at the role that the people and customs plays, specifically here we are addressing women

and where they stand with land rights. Noting that the lines maybe a little blurred when it comes to latter. This is because women produce 80% of food growth, but they only own just 2% of that agricultural land (Bjuris & Daniels, 2009: 26). This is not the same in all cultures, religions and communities. For example, when one investigates Islamic law and daughters, they are given the opportunity to receive half the land that sons also receive if the father passes away, and this also goes for the mother in the family too (Adams, Cousins & Manona, 1999: 28). So, for certain cultures and religions, women are protected or rather considered when it comes to land rights and access to land, which African people still need to navigate around with their extensive history linked to race and gender. No clear correlation between working the land and owning, and having access to the land.

Thus, within these conversations about women and land in rural areas under traditional leadership in the new South Africa, we cannot ignore the direction towards restitution and redistribution. When it comes to restitution, Fraser (2007: 837) puts the point across that the pillar of land reform in South Africa is what many call restitutions, where individual's or even groups of people who were dispossessed of land rights by the law since 1913, should then be allowed to claim back particular pieces of land. When looking at the statistics of women and land access in South Africa of 2004 in South Africa, we saw that 2.9% of agricultural land reform took place in the first decade of democracy, as the budget for it was 0.5% of the national budge of South Africa (Hall, 2004: 219). Thus, where does the state lie when it comes with its goals and objectives on land rights as it has a strong stance on land redistribution and restitution, this is the question. The goal is simple, to ensure that the land is accessible to all, especially those dispossessed of land but because of the 1913 Land Act. Furthermore, when we have the conversations surrounding the initiative around 'willing seller and willing buyer', it has proven to be less effective when it comes to land redistribution for the people most affected (Makhado, 2012: 3). The problem is that those who have never been given the opportunity to own land because of gender, specifically speaking about women, were never part of the conversation pre-1913 and post-1913. Their views have not been considered even today. This is because after the 1948 elections, traditional leaders were placed in positions of power when it came to land and labour relations around gender (Fraser, 2007: 839). Therefore, if the state is taking part in the conversation now, then the conversation should continue to take place inclusive of those who are mostly affected.

In addition, the conversation brought about by the African National Congress (ANC) when it came

to ‘expropriation of land without compensation’ was also brought to the forefront when speaking on land reform (Branson, 2016: 1). Not much has been spoken of when it comes to progress that is being made when it comes to land reform conversation in the perspective of women and women in rural areas specifically. Migration and the rise of people in rural areas has also created a space where rural families are women headed households, but they still have the least social power (Adams et al., 1999: 28). Women are still the minority when it comes to social standing linked to land even when legislation is being implemented to increase participation, however they are not seen as a priority. We need to know why this is still so, and what the legislations established has done to ensure equality and equity for women, especially when phrases such as ‘willing-buyer and willing-seller are thrown around.

Research Objectives and Aim:

We need to investigate what land means for African people today. The conversation around land and access an important one as the concept of ownership is brought up too. The factors that surround land and access are very complex issues linked to tradition, culture and at times patriarchy. Furthermore, as we are looking closely into the Vhembe District who is under traditional leadership, it is of importance that we see how that may change the narrative for women when it comes to access to land in South Africa post-1994. Noting that women’s association with land is done so in a logical and controlled manner as rural communities have a clear line of power dynamics, even within a democracy. Therefore, the link that land has with the community and within gender roles needs to be established.

The latter is addressing the need for the paper to study the powers that traditional leaders and the local government have in the community. When it comes to land access for women, addressing the extent of powers that traditional leaders have in their communities pre- and post-1994. The powers of traditional leaders are critical to addressing the structure of rural areas as women occupy the space. In addition to the above, this also will need one to investigate the powers that local government has in the mist of the rule of traditional leaders. Remembering that local government officials are elected individuals by the community, whereas traditional leaders are non-elected individual, who rule through customs and values. Thus, addressing where each lie is vital to figuring out the dynamics of rural communities.

Furthermore, it will analyse how exactly women and their access to land has changed since 1994, specifically looking at whether their relationship with land is still contested. Noting that land and access to land in South Africa has gender roles elements too in rural communities. Hence the need to explore women in rural areas and how they can access land as the main breadwinners in their communities, if not their households. W omen face several setbacks and are oppressed because of their standings in the social hierarchy. More so, women in South Africa have had a history of facing oppression because of race and class too. This is where rural women fall, in the brunt of it all because of gender, race and class. Thus, we need to examine whether indeed the most progressive constitution in the world, the South African Constitution, has created opportunities and an unbiased access to land for women in rural areas. This will also need one to clearly understand how customs and South African legislation address land rights for women in rural areas within the complexities of the environment in question. Addressing if indeed the one has canceled the other or if they are working for the benefit of women who need the protection of the state/government institutions.

Research Questions:

Title: ASSESSEMENT OF THE PROGRESS MADE TO GIVE WOMEN ACCESS TO LAND AND LAND RIGHTS IN RURAL AREAS IN SOUTH AFRICA SINCE 1994: FOCUSING ON THE VHEMBE DISTRICT MUNICIPALITY

Main Question: What are the changes that have taken place when it comes to land access and land rights to women since 1994 in the Vhembe District Municipality?

Sub-questions:

- Is there a clash between the laws brought about due democracy and customary law?
- What does access to land and land rights mean for women?
- What progress has been made to give women access to land rights in rural area since 1994?
- What are the conversations that are taking place in the Vhembe District regarding land and women?
- Are there any lessons to be learn from the context of the Vhembe District Municipality?

- What are the components of the post-1994 Venda traditional leadership and their impact on women's land rights and access to land?

Overview of Paper:

The paper consists of four points of discussion. Firstly, the introduction will outline the origin of the topic and the importance of it, which is women and their access to land under traditional leadership. Secondly, the paper addresses what the literature published has said on land, land rights and women's relationship with land in South Africa. Addressing what land really means to African people and women in rural areas under traditional leadership. It will then give perspective on the methodology used to gather and analyze data collected as it is a desktop focused minor-dissertation. It shall then go into the overall findings of the topic. Dividing the outcomes into topics focused on giving basic context of the Vhembe District Municipality and VhaVenda people, traditional leadership in general, the use of land for women and the relationship that women have with the community and their leaders when it comes to access to land. Lastly, the paper wishes to then end by outlining key points throughout the paper that focused on tradition, customs and legislation played, in the Vhembe District, that have highlighted about women and then conclude with the limitations which were linked to lack of access to resources for the overall research due to time located to the research and the fact that we were in a global pandemic.

Literature Review

The social, political, and economic changes that came with the 1994 elections were changes which were not anticipated and difficult to adjust to by many, especially those who were under traditional authority in South Africa. As Claassens (2009: 10) makes known, what is not well known are the hard-fought improvements and changes that many rural women have struggled to achieve over the last 15 years since democracy. Other scholars, such as Pienaar and Ntsebeza, have also identified the changes that have swept South Africans since 1994, especially those that have affected the ten former homelands, as they work within both the democratic process and monarchy in their communities. The communities we speak of that were under the homeland system in apartheid system were known as; Venda, Transkei, Bophuthatswana, Ciskei, Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa and QwaQwa. All of which were created and imposed by the apartheid government to black South Africans in rural areas. But Venda being the focus of the paper, was established by the apartheid system in 1973 under the leadership of chief Patrick Mphephu (Constant & Tshisikhawe, 2018: 3). What is important to note is what exactly the challenges are when its coms to land access in former homelands in rural areas such as those located in the Vhembe District. This literature review will examine what exactly has been written about women in the former homelands who are still under the authority of traditional leaders, specifically when it comes to land access. Looking at who traditional leaders are pre-1994 and post-1994 and their relationship with the democratic system and the community. The literature will come in the form of academic papers, articles, books, and legislative papers that address topics linked to women, land and traditional leadership pre and post 1994 in South Africa. Additionally, we need to investigate what exactly the land question is alluding to and what it means for women in rural areas. Lastly, address the legislative measures implemented when it comes to the land question in rural areas under traditional leadership and how this effects women.

Traditional Leadership in Democracy:

South Africa has been a democratic state for around 28 years which meant that it has also changed the governing structure of many rural communities who were are still under traditional leadership. Democracy changed the way that rural communities under traditional leadership operated, specifically when it came to ensuring equality and equity of land. Benstien (1996: 9), explains that the National Party that brought about the apartheid regime, was interested in the agrarian sector of the community and that was key to their success. The focus of the state pre-1994 was land and the rights of land, which thus translated to leadership structures in these communities, specifically rural communities. The rights of rural women when it comes to land rights in what was once homelands, it is essential to examine, especially the powers that the authorities have and had in these communities. What needs to be established is who traditional leaders are to their communities.

Traditional leaders were, during apartheid and post-apartheid, not just community leaders but rather they are seen as political, military, spiritual and cultural leaders as they were custodians of the values of society at large (Rugege, 2003: 172). This addresses what Bekker (1993: 200) highlights, outlining the fact that they are non-elected, men given the responsibility to maintain the atmosphere of cultural identities, traditions, and values in their communities. Noting that their legitimacy is not questioned, as there is no comparison to a democracy given when speaking of the powers of traditional leaders, especially in the former homelands. In addition, what should be noted is the make of traditional leaders who hold not only cultural, political, and spiritual powers, but the military powers too. One can arguably state that they were the pillars in their communities to ensure law and order, but unelected.

The latter also brings up the conversation of checks and balances for traditional leader. Weinberg (2013: 29) notes that the apartheid government saw chiefs as the sole decision makers when it came to local issues, such as communal land. Therefore, for the state, according to Weinberg, traditional leaders were the end of it all and did not answer to anyone. However, the latter comes through the assumption that they were quantified in line with how a democracy works. Ntsebeza (2004: 73) explains how the latter was problematic when looking at how such communities' functioned, expressing that due to the powers granted by the apartheid and Bantustan regimes to traditional authorities, they were then seen as individuals who were feared

rather than respected by their communities. This then leads to questionable means of accountability within this institution. Accountability being a big factor in power and leadership, especially when and if it affects the majority. Scholars do not really drive into this as it is complex in nature, especially due to the makings of traditional authorities being different in nature across all communities.

Hence, the clash between traditional authorities and democratic leaders seems to be inevitable because of the essence of each and how each exercises power. Reminder that after the apartheid era, traditional leaders were the link between their communities and government departments (Ntsebeza, 2004: 75). There was a move towards democracy that traditional authority needed to be aware of and be part of. Noting that the democratic government was not trying to get rid of traditional leadership structures, which had some questionable contradicting objectives at times, linked to the operation of rural communities run by traditional leaders, but rather integrate them as key players in the community. What Rugege (2003: 171) notes regarding that fear that traditional leaders had towards the new democratic process, is that they feared that as municipalities became fully operational, they will no longer have the same influence they had before in their communities. Their role in their communities may become null and void, this is what traditional leaders feared with the drive towards democracy.

Unfortunately, the clash addressed above could be political, economic, and social, however for the sake of this chapter it is important to highlight the social clash, linked to land in South Africa. Claassens (2001: 3) expands on this when speaking on chiefs in former homelands, who were representatives of their communities and thus demanded that the title deeds to the land all be transferred to them as chiefs, tribal authorities, or tribes not individuals, which is new to the people who have never come across the concept of title deeds. There are two parts to latter that Claassen may want to highlight as problematic. One being that this is contradicting when speaking of ensuring democracy through equality and equity. Secondly, the argument that can be brought forward is that this may mean traditional authorities will be given full rights to the land which doesn't change the way things were in the past for the community. Basically, what these highlights is that the influence those traditional leaders had before 1994 may change as they (at times) clash with the new democratic process.

The above also brings into the conversation the points linked to how the community understand traditional leaders and the government in a democratic system. Tshitangoni &

Francis (2016: 242) suggest that in many communities, traditional authorities were preferred because they 'listened' to the concerns of the community and put a concrete effort to help the community also and helped in setting the issues timely. This speaks to what the democratic system aims for, which prides itself by the fact that people decide, and for those placed in power to fulfill the demands of the people. However, this relationship between the community and their unelected leaders is as strong as it was pre- 1994. The relationship between the people and their unelected traditional leaders cannot be ignored or eradicated over night because of the history, culture, and values linked between the two parties.

However, we cannot ignore the fact that there are some clashes between the people/community and their traditional leaders in a democracy. It has been recorded by many scholars that society begun to question the roles and responsibilities of traditional leaders within a democracy. Scholars such as Mathis (2007: 106) explains that the resistance that has come about from communities to traditional leaders has been focused on the powers of traditional leaders which have been described as authoritarian. Another term used is, traditional authority being seen as 'backwards'. What we can dissect from the latter, is that community members do not see the more towards modernity within the exercise of powers of traditional authorities. What Mathis is highlights a disconnect between the community and traditional leadership, which is a justifiable claim to make about traditional leaders. On the other hand, civil society organizations have shared that traditional councils are now being treated as the fourth level of government that only operates in traditional council areas (Claassens, Clark, Dasnois, de Saouza, Duba, Huizenga, Thipe, Weinberg & Achmat, 2015: 14). Meaning that, civil society organizations believe that the powers of traditional authorities are recognized by the state within the democratic system. The latter highlights the power and influence traditional leaders have in their communities. South African traditional authorities have been said to act in ways that disempower their local communities, where they (leaders)benefit as opposed to the community because of ineffective legislation (Msomi, 2015: 78). Thus, it is important to bring forth the argument about the stability of traditional leaders in their communities and what this means when it comes to access to resources such as land.

The Land Question:

Therefore, what does it mean when it comes to land in rural areas under traditional leadership? Noting that land at times is the basics of power, wealth, freedom, and prosperity for African people and the continent (Makhado, 2012: 2). For African people land is not just space, it is an asset that can determine the legacy of the people or an individual going forward. Adams et al (1999: 28), further adds by stating that land has cultural, legal, and religious significance in many communities as it brings with its status, wealth, power, and access to basic resources. Hence, the importance of the Land Act of 1913 is comprehensible, as it changed South Africa and the people. Especially because 87% of agricultural land belonging to 10% of the population, essentially white people who had access to land for commercial or agricultural purposes (Makhado, 2012: 3). What Makhado highlights above is a key link to the question addressed about where we as a nation are and where we should be in a democracy.

The question of land reform in South Africa that Fraser (2007: 873) addresses is that it requires restitution for individuals or groups disposed of land since 1913. One cannot agree more with the statement above as the country entered a political system fixated on equality and equity. This is because restitution means; change, reparation, progress or even development. These were the changes that were expected to take place during 1994 democratic elections through legislation discussion with state leaders. In rural areas, 90% of land is already under customary tenure, or what Paterson (2020: 7) calls, informal tenure. The latter basically insinuates that land in rural areas belongs to the community and not any individual or traditional leader. However, Ntsebeza (2004: 68), points out that although people in rural areas are the owners of land, as have a permit-to-occupy, this still does not mean they are legally able to secure the title comparable to a freehold title. Meaning that living on the land given does not make one the legal owner of the land, one just occupies it. Overall the land question is still as relevant as it was in 1913 when the Land Act was implemented, and there is no clear indication that change has come when it comes to access to land for African people.

Women in Rural Areas:

Within most of what has been written about the challenges that are faced when it comes to rural people and land, is the conversation about where women stand. Pheko (2014:1), notes that access to natural resources, specifically land, is a determinant of the ability for vulnerable rural and urban woman to improve food security and economic welfare. Land can be the first step towards sustainable development for women who are not only providers in their households, but also individuals who want a livelihood. This could lead to the understanding that indeed women are vulnerable when it comes to land and access to land. Weidman has written a chapter titled "Women, Patriarchy and Land Reform in South Africa" back in 2004, highlighting the importance of land for women and the obstacles that they face as they work towards, especially those in rural areas, having access to land. Weidman (2004: 364 & 368) clearly explains why the land questions is important when it comes to women, as women who make up 69% of the population in rural areas, however they also make up the bulk of those who are victims are when it comes to poverty in South Africa. The latter illustrates that family dynamics have not changed over the years as they still favor men; thus. Women, more times than most in rural areas, are left at home as they male counterparts go to the city for work. Which then puts them in a position where they need to fend for themselves and those who they care for. Essentially, the most vulnerable are the most neglected in this instance.

The latter links to caregiving and women and being allowed the "opportunity" to own land, where that alone is a privilege. Radimi (2014: 13) writes that women in former homelands are all traditionally aware that they're responsible for tasks linked to the household, even when it comes to farming. Highlighting that women have a role in their communities but its fixated more on the need for them to ensure the maintenance of customs and values in the community as caregivers. Thus, with modernization, we cannot ignore that women's role in society is changing, as more women are fulfilling the role of providers for their families, often without men (Claassens & Mnisi-Weeks, 2009: 500). The above statement by Claassens & Mnisi-Weeks alludes to the changing social, political and economic dynamics that women are engraved in throughout history, but in the same stance the roles remain the same just being that they are brought to the forefront a little more than before. Women are individuals who are circumscribes to reproductive work as those who will take the role as child rears and as wives in their households (Matshidze & Nemutandani, 2017: 2). The latter does not consider the fact that women's access to land is also linked to food security,

sustainable economic development, and gender-based violence responses (United Nations, 2013: 2). Which is why women should not be left out of the conversation of land restitution and redistribution. Traditional leaders have however also argued that woman who have land may act a certain way and outside the norms and customs of traditions. Claassens et al (2015: 37) shares a general understanding and analysis by society, which is the perception held women who own land were less likely to marry which led to declining marriage rates which also may result in the collapse of family networks and society at large. Basically, outlining that women will be given land according to patriarchal powers because of the fear that they may result in them ignoring tradition, customs and moving away from community values.

What needs to be made clear is the position that women are in, specifically 25 years into democracy within a community that still relies heavily on traditional authority. It must be mentioned that the struggle for democracy in South Africa also involved in the struggle for women's equality within the struggle equality of all (Andrews, 2009: 6). Women are essential when it comes to to the land question for several reasons, especially in a democratic state. Since, women make up majority of the population in rural areas. Many of the scholars that have written on land and access for women in rural areas, have written about the lack of changes that have taken place since democracy such as the reality that statutory laws in South Africa often does not provide for women's independence rights when it comes to land and access, the same statutory laws that were introduced during colonialism (Adams et al, 1999: 28 & Peterson, 2020: 7). The latter speaks to what is happening in many former homelands. Where females access to land has been limited due to their gender and social position in their communities even though they are agricultural producers who are skillful and work towards cultivating subsistence crops for their families (Wolde, 2016: 48). Women play a huge role in the economic running of rural communities; through the skills they offer and the responsibility they have as care givers in their homes, but we cannot ignore the reality that not much has changed when we speak on equality and equity to land in their communities.

The latter alludes to the fact that the negotiations, post-1994, saw rural women organizations fight traditional leaders who had detailed that their right to equality had to be in the confines of the official customary law, which unfortunately meant that married men were the only ones who could own land (Claassen et al., 2015: 35). This exposes the restrictions that women have in a democratic system under customary laws. Which is why Weidman (2004: 365) notes that the main point of the Department of Land Affairs 1999, which was to change the narrative for women as they

should be the focus when it comes to powers they have in the community as opposed to their male counterparts. Women need the assistance of the law, when it comes to accessing land. Women in rural areas need to be placed in the forefront of the conversation when it comes to land and access to land in South Africa as key contributors in their communities. The narrative needs to change as the system changes.

Some of the main issues emphasized above about women and what they are facing in rural areas is linked to their relationship with traditional leaders and the community. One of the main issues that Claassens (2009: 11) highlights is the fact that in rural areas women are not in councils, as women are excluded in the decision-making process in the community due to lack of representation in the council. Women related cases are usually not taken seriously by elderly male councilors as there is biased linked to their position specifically in the rural justice system. This highlight, or rather brings to the forefront that women at times have to rely on their male relatives to represent them even in matters when it comes to traditional courts (Claassens & Mnsis-Weeks, 2009: 511). Customary law has, to some extent, allows male counterparts of women to be their voice. Women are placed in situations where they have no say and no support because of their gender. Thus, when women were granted land in their communities, it was not because the system had changed, but they were granted land for other external reasons. Claassens (2013: 77), mentions one reason, where women gained access to land stating that it was because of their community membership standings or their children needed it to survive. This also justifies the claim made back in 1999 by Adams et al (1999:28), mentioning that traditional and customary societies in South Africa gave limited access to land to women through purchase or inheritance. This gives the impression that only through extreme cases women were granted land, or free access to it.

Legislation on Land Access:

When it comes to land access, one needs to consider what the conversation is when we explore role that the South African legislation plays in rural areas under traditional leadership, with consideration of where women are placed in all this too. As Ubink & McInerney (2011: 8) highlight that, when addressing customary justice in Africa, we cannot ignore customary justice system that governs the daily lives of those who have limited access to formal legal systems. This is important because traditional leaders do not only operate through customs, but they also operate

through the lines outlined by the state to ensure that there is law and order. There are several legislations that address traditional leadership and land and access to land in rural areas. The latter excludes the 1996 Green Paper on South African Land Reform which expressed that it would work towards eradicating discrimination and ensure gender equality when it came to land and ownership (Weidman, 2004: 365). Above is excluded as it speaks more on land reform in South Africa and not ultimately focused on women in rural areas under traditional leadership. The most formidable piece of legislation was the Traditional Leadership and Governance Framework Act of 2003 that flowed into other legislations such as the Traditional Courts Bill (TCB).

The Framework Act of 2003 works in conjunction with the TCB of 2008 as its focus is rural areas, governance, and gender in the mist of democracy. The TCB of 2008 has been said to challenge the powers of traditional leaders within the courts as it asks for 40% of the members to be elected and 30% of them to at least be women (Claassen, 2009: 14). A reminder that traditional leaders are not individuals who are elected, and women are not the main key players in the traditional courts or the structure. Hence, we can see that the adjustments asked by the government within traditional leadership is for the restructuring of the courts and how they have been operating.

One of the other issues that came up in the TCB was written extensively by Claassens. Claassens (2013: 76) illustrates that the TCB was legislation that saw the traditional courts hold procedures that that did not allow any lawyers when an individual was brought before the courts on criminal offences this could result in traditional leaders stripping people of their customary entitlements because of the lack of representation. Therefore, the TCB was there to change such operations of traditional courts that infringed on rights of individuals who were coming before the courts. As the traditional courts saw the powers with traditional leaders and not the community. Through the Bill traditional leaders were then meant to empower the community members (Claassens, 2014: 18). Because customary entitlements such as land which traditional courts had deciding powers over, were questionable in a democratic setting that South Africa was transitioning towards. The TCB also allowed a platform where the powers of traditional leaders could be exercised in a lawful manner, whether positive or negative in traditional courts. What Claassens (2009: 18), Claassens & Mnisi Weeks (2009: 511) and Moor & Himonga (2018: 65) highlight is the fact that according to many, the Courts Bill has affected the balance of powers as male councilors were and are not sympathetic to the problem's women face in the community. Worse when we see that woman are not allowed to represent themselves, which thus, centralized the powers of traditional leaders. This

highlighting the powers that traditional courts had to women and decisions linked specifically to women in their communities. Thus, with these issues being a central point that the TCB address, there was a perception that the legislation was more directed towards women and equality in the traditional courts as compared to the strengthening powers of traditional leaders. However, this was just perception and a reality.

Furthermore, another piece of legislation was the Communal Land Rights Act (CLARA). The CLARA, according to Claassens (2013: 75 & 2014: 20) and Claassens et al (2015: 14), was built on the Framework Act that considers traditional councils as administrators who represent the community when it comes to communal land, even land transferred to groups post-1994. There was the understanding that land ownership was seen to be under the care of traditional leaders rather than the community. However, according to Pheko (2014: 4), the objective of the Act was to provide the state with mechanisms to rectify land practices that have been taking place in communities linked to ownership. For years it was trying to change the direction that land practices were taking towards further discrimination or any sense of bias taking place in South Africa.

The CLARA, like the other legislations, was trying to rectify any injustices which are said to be in favor of traditional leaders as rural people's security to land tenure. However, the issues that are addressed with the legislation is that it gives traditional leaders more power and control over the people and the land. The latter is what the Department of Rural Development and Land Reform reiterated when it comes to the chief making the decisions on behalf of the people as this is 'customary' in rural areas (Weinberg, 2013: 31). Thus, the argument by Claassens (2013: 72), is justifiable, which states that since 2003 parliament has made laws that have further centralized powers to the chief which has resulted in them been granted the ability to determine customary law. Overall, to best summarize the above is what Claassens & Mnisi-Weeks (2009: 494) notes that the state opted for a top-down statutory power to traditional leaders when it came to controlling land and customs which challenges the balance of powers in rural areas rather than the latter. Meaning, that legislation implementation also saw traditional leaders at the focus forgetting about the marginalized

Another piece of legislation is questionable is the Traditional and Khoi-San Leadership Bill. The Traditional and Khoi-San Leadership Bill aims to restore the integrity and legitimacy of institutions of Traditional and Khoi-San leadership, in hopes to bring on rural democracy (Gerber, 2019). What is meant by 'rural democracy' is a little unclear. Like other legislations passed in South

African since 1994, this legislation had plans to change the existing narrative, even though many have argued that this piece legislation enhanced the powers of traditional leaders because of the effects it had on the community. The changes that Gerber (2019) focus on when speaking on the above-mentioned legislation is the fact that it allowed for traditional councilors to sign land agreements with investment companies without the consent of the communities or individuals who may be directly affected. This gave the impression that it belonged fully to the leaders and the community had no say. In conjunction with what Gerber explains above, Olofsson (2021: 3) states that the Bill gave more powers to undemocratic traditional leaders which changes the means of accountability from downward to upward within communities when it comes to land.

On the other hand, a positive reception to legislation linked to traditional leadership, land and gender is the introduced of the Communal Property Association (CPA) Act 28 of 1996. This Act works towards helping individuals by forming a group of persons to acquire, hold or manage property on the basis agreed on the community (Community Property Association Act 28, 1996: 1). The latter states that the community can come together and own the land as a collective and use it for commercial reasons if not social if necessary, not just as individuals owing land. Pienaar (2009:23) shares that the theoretical aspect of it has got lukewarm reactions to it, as it was too sophisticated, requiring for people to be trained, which was rarely done, and it resulted in power struggles in many communities. Therefore, its failure according to Pienaar would be justified. The rejection of the CPA by many traditional leaders was said to be justified since the Act allowed people to hold restored or redistributed land (Branson, 2016: 2). Today, one would not be surprised that this Act is still contested by many traditional leaders due to the nature of the agreements that accompany the Act, as it lacks consensus between the state, traditional leaders, and the community. Like what Msomi (2015: 78) outlines, the powers of traditional leaders in South African rural areas sometimes overshadows national legislation that is meant to protect people's rights.

Conclusively, the relationship between the leaders in the community and the democracy process plays a huge role in rural communities. This is because of the change that took place when it came to leadership in many former homelands with the transition to democracy. This has led to a clash in powers between traditional leaders who have led their communities for many years, and local government who have gained powers in communities through the democratic process with the mandate to enhance and promote democracy, and equality for all. This can be seen through the role that land has played in rural communities, not just for males but for women who make up the

majority in these communities. Land being a resource under contention since the implementation of the Land Act of 1913. Thus, the conversation which is being held today linked to women and land is an essential one as they have been left out of this conversation for years. Furthermore, we can see that women play a huge role in their communities as caregivers, but most importantly as individuals who rely heavily on land for their livelihood. Therefore, through all this we have seen that legislation still has a long way to go to ensure women in rural areas have access to land as many of the laws and policies passed have not made the process projected but have rather enhanced the powers of traditional leaders and ignoring the effects this has had on women in these communities.

Research Methodology

This minor-dissertation will be trying to assess the progress that has been made to give women access to land rights in South Africa since 1994 through the use of auto-ethnographic analysis, however highlighting throughout the paper that secondary literature has been used to outline how one has concluded. Noting that the paper is specifically looking into the women in the rural community of Vhembe District of Limpopo that are predominantly under the rule and under the leadership of both the democratic government and traditional leadership. These are the dynamics that will need to be reflected on when looking at the research methodology of the paper, such as the; approach used, the research design, population and sample of the research chosen, the way data will be collected through articles and journals, however noting that the data analysis used which may also bring about limitations too. Noting that the above will be done through the qualitative method.

Research Approach:

Due to the circumstances that one was found in during the construction of the minor-dissertation and the direction one wishes to take for this paper, this will be a qualitative research focused paper. The circumstances being the COVID-19 crisis that is taking place made meeting physically with people dangerous for the researcher and the subjects, which is why qualitative research method has been used, through the use of secondary literature and articles that have addressed women and their standings in the rural community when it comes to land. Qualitative research approach works on evaluation of events, actions norms or even values of those who are being studied (Bryman, 1988: 61). The use of qualitative research means that this paper will be focused on the experiences and data collected of women in the Vhembe District and their relationship with land rights in the new democratic state under traditional leadership through secondary sources. The focus is rather through desktop research methods that relied on secondary sources on rural women in rural areas through articles and journals written about their daily engagements with the community, legislation and their families. Also noting that throughout the research one had casual conversation with close family members who live in the area and asked about their knowledge on the topic at hand and the

reality of the matter on the ground. Thus, the paper will be examining women's relationship with land after 1994, specifically if they have the access to land as compared to pre-1994, if there are any changes, especially since they are still under the rule of traditional leaders and the democratic state and how that may have led to positive or negative relationship with land rights for women in the area.

As mentioned above, the "event" in this minor-dissertation is specifically the political, economic, and social structure of rural South Africa after the changes that came about post-1994. VhaVenda women's traditional leadership and their cultural authority are not recognized formally and they exist in tension with the South African legislation and traditional governance policies and even the traditional courts (Matshidze & Nemurandani, 2017: 1-2). The latter is showing some of the factors involved in the conversation linked to women and traditional authority in South Africa, that being legislation, gender, and location. In addition to what has been shared above, what needs to be noted is the qualitative research aims to explore the perception of people and their experiences of the world around then, wherever that may be (Ames, Gleton & Lewin, 2019: 2). Which is also linked to the fact that this is based on auto-ethnographic analysis of the topic of the paper. The use of qualitative research methods is essential to gain understanding regarding the women in the district of Vhembe, the conversations around land and where women have been placed. However, this is done through secondary sources obtained through articles and journals.

In addition, the paper aims to provide detailed descriptions of the social setting that is being investigated in hopes to go beyond description, by analyzing the environment that this is placed in (Bryman, 1988: 62 & 63). Analyzing the effects rural environment/ customary laws under traditional leadership and the democracy has on women's access to land in rural areas in a former South African homeland. The above is achievable when looking at qualitative research as being able to investigate and get a clear understanding of the assumption and therefore get detailed understandings of current and past sets of norms and values linked to VhaVenda women in the district and their relationship with land. This is because when one looks at how qualitative research works, there is anticipation to find 'ideologies' when it comes to the findings (Bryman, 1988: 94). Qualitative research brings on alternative understandings of how humans work or how time and place affect how people interact, through already collected data.

Lastly, even though there will be an analysis of data already produced regarding land allocation

and the use of land in that region, most of the information will come from qualitative research means rather than quantitative research due to the nature of the information that one will gather. Meaning it will come from secondary sources and not numbers regarding to how a people are affected by a particular lived experience. There will also be the gathering of information on what laws affect women, and women in rural areas when it comes to land and land rights, not forgetting the history behind land and land rights for women in these communities. Since it is seen as more flexible and fluid then quantitative research as the finding that come from that are unanticipated that can alter research (Bryman, 1984: 78).

Research Design:

Research design will focus on ensuring that it is an explanatory focused minor-dissertation research design. This paper will be drawing on what is known as explanatory research design which explores the 'why" of the studied phenomena at question (Akhtar, 2016: 77). In this minor-dissertation, the research conducted aims to understand why women (VhaVenda) in the Vhembe District, under traditional leadership, are treated the way they are, whether in a positive or/and negative way when it comes to access to land and land rights under traditional leadership. Like what Haradhan (2018:2) highlights, exploratory research looks at why things are the way they are in the social setting or social phenomena in a particular context in this social world we live in. The 'why' for this paper is essential, especially when looking at what the United Nations have written on land and women over the years. Stipulating that women's use and control over land and other resources are essential to the rights to equality and adequate standard of living (UN, 2012: 2). The social setting in South Africa, being a democracy mixed with the leadership of traditional leaders that are unelected. Thus, trying to answer questions of why traditional leadership is still active, in these communities even during an era where democracy is the political system at play. One can argue that it is more about what it defines as a sequential study, as we are studying whether what has happened in the past has influenced what will happen or happened in the future (Haradhan, 2018: 12). This then assists us in creating a hypothesis when it comes to the relationships between the groups involved and why this is so. Trying to look at the patterns that can answer the 'why'.

Additionally, we shall draw on limited and already existing research that has been produced to get

to a hypothesis. The latter is limited due to era, time and people affected by the topic at hand. This is not easily available information due to the lack of information, even as someone who is familiar with the people and environment. One reason is because in traditional or customary settings, direct access to land through purchase and inheritance was limited (Adams et al, 1999: 28). Women in the past were not given the opportunity to own land as this was not a 'privilege' that could be offered to women. The paper examines these relationships, but most importantly helps us understanding these relationships in detail with limited access to information. Looking at the past to understand the future, and whether there has been a change in the past 28 years since democracy for women in former homelands.

However, we cannot ignore the fact that indeed there was the use of the knowledge, observations and circumstances that community members shared to broaden the understanding of the research topic with the addition of the researcher who is a community member to. The researcher also relied on an important community leader/member, who happen to be family members, for this paper to produce the hypothesis on the findings mentioned. Although this member of the family was a male with high social standings, they were beneficial to the papers overall finding with the perspective of someone who lives and sees this reality on the daily. This allows there to be a vast ray of knowledge linking literature and experiences through casual conversations that the researcher had with family member who is also community members who understanding the operation for the community dynamics between the traditional leaders and local government.

Basically, the research design overall addresses the dynamics that women find themselves under as those who are under the leadership of both traditional leaders and local government in this new South Africa, and how they maneuver in this setting, specifically Venda women who also reside in the Vhembe District. Reminder that a case studies are in-depth examinations of people or a group of people to generate a hypothesis rather than test it (Haradhan, 2018: 11). This therefore adds to ensure that the information gathered is both explanatory although limited. Attempting to understand why these relationships have never been considered, questions or investigated by those around them and academics today and what can be the answer to the questions addressed above.

Research Population and Sampling:

Due to the nature of the study and research, the sample of the research is very specific to time, place and the people at question. We will be assessing VhaVenda women in the Vhembe District of Makhado, Limpopo Province in South Africa. This comes with the knowledge that women make up majority of the population in the Vhembe District of Limpopo, and many of them are Venda speaking. As stipulated the local municipality is made up of 546 721.572 hectares of land, where the population stands at 347 975 people, where 53 302 of them are women (Vhembe District Municipality Review, 2020: 5 & 10). The choice of women was very deliberate as they are those who play a huge role in their communities. Noting that with a resource such as land, women can provide for their families and there are several disparities linked to land ownership in rural areas (United Nations, 2013: 2). The latter clearly highlights the reason for the choice of population for this research.

Particularly, when we look at the sampling, there will be the use a specific group of people in the local municipality that is not entirely made up of VhaVenda people under traditional leadership, although that is the focus of the paper. The choice of the setting is because it is predominately a rural area that has gone through a few changes since 1994, especially when it comes to the land question and what the Land Act of 1913. In particular, the changes that came with a new political system and the limitation of powers of traditional leaders in former homelands had and currently have. As mentioned above, the characteristics that women in the Vhembe District share is that they are the majority in their communities and are also under the leadership of not only the local government, but also traditional leadership. The people in the community have the traditional leaders, *'makhadzi'*, and women make up the majority as read through all the secondary data gathered. This possibly will mean that it is a 'fair' representation of the population at hand, but those who have been researched produce a great deal of information on the population in question to answer the research questions (Turner, 2020: 10). Therefore, the information that is gathered may not produce the desired understanding of the people in question, but it does produce a good general understating of the setting and environment in question. Due to the fact that it is a qualitative researched paper and it has been done under times during the COVID-19 pandemic.

Data Collection:

Due to nature of the study, data collection will take part in the form of a desktop researched focus paper within the understanding that the researcher is familiar with the community in question as the researcher grew up in the community and has family members who stay there too. The biggest part of the paper will include data collection coming from journals articles written by those who have spoken on land, traditional leadership, and rural women in South Africa. One cannot ignore what has been written when it comes to the land question and women in the new democratic system, thus articles and books that focus on land (rural land) and women are the focus as we gain a deeper understanding of this through a fine lens within the Vhembe District. Like what Pienaar (2009: 17) highlights, we need to consider land reform, land restitution rights, redistribution, and tenure too, to secure land rights for women. Thus, the latter is trying to highlight that the paper needs to cover all aspects of land and not just women in rural areas. One needs to consider all the factors that are linked to the topic at hand. In addition, the paper looks into the relationship with land is for traditional leaders, the community, and women in general. Looking and what land means for the people in rural areas or women? What does it mean to own land? Therefore, looking into the connection between women and land in rural South Africa as illustrated above.

Moreover, what has been written on land and women will give us a clear idea about the relationship and the dynamics between the parties involved. Therefore, some of these include articles written by Claassens, Mnisi-Weeks, Cousins etc. They have all written several journal articles focused on women and their relationship with land in rural South Africa under both traditional leadership and the democratic state. Claassens specifically has written on the land question and women and how this has played huge role in maintaining some of the ideas of pre-1994. Most of what is written is criticizing the role that the government and democratic system has played in the way women are treated rural South Africa. Thus, they have then questioned the changes that democracy has had on women in rural South African when it comes to them trying to gain access or own land, not just for commercial reasons but for leisure too. Basically, looking into land reform in South Africa and how that looks like for women.

For this paper to give detailed analysis on the people in the Vhembe District, it is important to investigate government publications too as they will be able to show us where the Vhembe District is and where they aim to be. Their goals and objectives when it come to land, women, and access

in the local municipality in a democratic state. This will also help us understand the population, landscape, setting, and overall social structure of the district. This is because when we look at the Vhembe District area of Limpopo still exhibits many one may characterize this former homeland through looking at densely populated, high poverty levels and unemployment, and poor basic services and infrastructure (Olofsson, 2021: 4). This will help us understand where women are when it comes to issues linked to education, household dynamics and where their focus is as those who dwell in rural areas. What these government documents and publications help with is with giving context when it comes to the Vhembe District, women and the use or access of land statistics.

Furthermore, looking into legislation linked to land post-1994, like the Constitution of the Republic of South Africa of 1996, will be the foundation of the legislation. Noting that the Constitution of South Africa and the Bill of Rights to have had challenges of discourse linked to feminism and African nationalism by recognizing indigenous institutions and prioritizing the principle of equality (Andrew, 2009: 4-5). The Constitution and Bill of Rights will make room for us to analyze the Traditional Leadership and Governance Framework Act and the 2008 Traditional Courts Bill. The Courts Bill of 2008 has played significant role in traditional courts and the powers of traditional leaders (Claassens, 2009: 14). The courts have had a significant say in the functioning of rural communities as that is where people and traditional leaders are held accountable in a more controlled manner which is recognized by the community and the state. Additionally, the Communal Land Rights Act will also be investigated throughout the paper to find out the effects of these legislations that were aimed to sure they build on the foundations outlined by the South African Constitution. This legislation focuses on land and communal land which has no clear owner according to customs and tradition. The highly contested Community Property Association Act 28 of 1996 will also be studied and its effect on women and their goal to own land for personal use and not because of male related relations. Overall the use of legislations post-1994 will help show the reception that legislations as a whole have had in rural communities who are the most affected.

However, the use of legislation pre-1994 will not be used as it will lead to questions that may deter the research altogether into other social, culture and political issues the paper cannot currently address in its capacity. Namely speaking about the details concerning the 1913 Land Act that changes the lives of millions of black South Africans. However, it will be mentioned to show that

it really started off the conversation regarding land and conversations linked to race, class and gender in South Africa. Furthermore, the minor-dissertation is aware of the Natives Act of 1913 that extended the system of reserves to entire country and left restricted areas of land to Africans for ownership, which was about 13% (Mathis, 2007: 105). The dynamics at play when looking into the Land Act of 1913 are very vague and broad that need another minor-dissertation on its own.

Data Analysis:

Data analysis is one of the most important research methods as it assists one to makes clear and desired hypothesis. This is important as it helps us understand the kind of information that wants to be gathered and the direction the research will take. In this regard the data that will be gathered will really need one to clearly look at when we address the; why? who and how what is written out there translates to the conversation around women and their relationship with land in the Vhembe District. This way of analysis may draw on what is known as content analysis. Content analysis is the use of data to produce concepts that explain phenomena using the research question (Elo, Kääriäinen, Kanste, Pölkki, Utriainen, Kyngäs, 2014: 1). Looking to the question of women and land and understanding that from the perspective of those in the Vhembe District from a specific background and environment, is what this paper aim to discovery and draw on. Drawing on the above aspect of content analysis will allow there to be a broad way to look into the title at hand through qualitative means. Because the idea of qualitative research is about looking into how the individual defines the situation and how we could be viewed when it comes to our actions (Bryman, 1988: 54). The actors we need to see come to play are not just rural women, but traditional leaders who are accountable to the community and the community at large who should hold the state and traditional leaders responsible. The context of all these individuals will need to be established to get a clear understanding of the 'progress' that has taken place in the district.

Additionally, we will need to look into the social standings of particular individuals in the Vhembe District. Specifically, women, men, traditional leaders and even the state (local government) thus try to interpret how that all can lead us towards understanding why things are the way they are or may not be how they should be. In the context of the research, it is about understanding how we

can understand the dynamics of the lives women in the Vhembe District live and how land has impacted their lives over the years. Therefore, the data that will be gathered through the means mentioned under data collection will need one to arrange it into categories that highlight relationship that women have with the factors in question. Women and land, women and traditional leaders, women and the state, women, and patriarchy and women and values linked to the Venda culture and tradition. This is how one will investigate the data collected as it will give a good indication as to where women are and if indeed there are more positive than negative relationships between the parties involved. The paper will help show the significance of land for the women in the Vhembe District and why this is so.

Lastly, there is the use of auto-ethnographic research method of analysis. It is crucial in the study of secondary data on people's lives looks into what is happening in society today. Essentially, the use of personal experiences to describe current cultural texts, beliefs, experiences, and practices that may be influenced by cultural or political norms (Adams, Ellis & Jones, 1). Highlighting how the topic came about through the need to understand how culture has clashed with legislations over the years in the Vhembe District when it comes to women and their relationship with land in rural areas. The behavior of women in this environment where power dynamics are different. The behavior and influence of the Venda norms, values, and culture is what needs to be understood to comprehend where women lie when it comes to land ownership. Concepts linked to culture, belief, socio-political, historical context, and data sources are used to gain perspective and understanding of the studied group as it is group of people who share the same culture (Haradhan, 2018: 14 & Khan, 2014: 226). We are addressing women from a specific social group with similar settings; therefore, this form of data analysis will be used throughout the paper. However, we cannot ignore the use of secondary data in the form of articles, journals and books that had written on the Venda culture and their relationship with VhaVenada women. The conclusion of the matter will be unified as the sample in question is similar and there are no other external factors that will be considered when looking into the data produced, but rather trying to gather as much general information on women and where they stand today.

Limitations:

We cannot ignore the fact that the data linked to qualitative research cannot be objectively verified, making it easy to overlook or go unnoticed (Haradhan, 2018: 19). The nature of the data that is gathered is unpredictable and at times may not be a fair representation of the people in question as the quantity of that information is not known. Therefore, many can state that the outcome or hypothesis may not be the best representation of the data in reality. This is because the use of qualitative method, which make the outcome of the results limited. Additionally, the conversation that took place with the community member was one with a prominent member of the community who was both male and had high social standings, thus their view of things in the community comes with privilege. One cannot ignore this in the research looking into women and their experiences with a patriarchal traditional leadership. Furthermore, although the objective, participants and setting are chosen meticulously, this does not mean the data gained will be that which ensures full representation. as it rather works with the information that is readily available. As availability of research is another setback, especially when looking at the information out there on women from the Vhembe District who own or want to own land and how that came about in the past few years since 1994. The information is limited and thus needs further investigation from the side of the researcher.

Findings and Discussions

Context of Vhembe District Municipality

This chapter shall explore the changes that have come about in the Region of Limpopo, specifically in villages which were under Bantustan namely Venda after 1994, which will also address the Vhembe District Municipality. Specifically, it is addressing where the region is at now, as they are no longer under full authority of traditional leaders. This is since traditional leaders are functioning now in a democratic state with limited powers. Therefore, we are looking into the progress made to give women access to land and land rights in rural areas in South Africa since 1994, specifically focusing on the Vhembe District Municipality.

Background of Vhembe District Municipality:

The Limpopo Province is one of the nine provinces in the Republic of South Africa. It is in the northern-east part of South Africa with a population of over 5.5 million people and it is bordered by three countries, namely Zimbabwe, Mozambique, and Botswana (Cai, Magidi, Nhamo & van Koppen, 2017: 2). With a province with such a vast group of people, it is only just that it hosts several different ethnicities or even groups of people from different backgrounds. However, we will be looking at people in a specific District, the Vhembe District Municipality. The District Municipality, is home to the former Bantustan, known as Venda, which is known to is under Category C of Municipality established in 2000 with four other local municipalities known as Thulamela, Makhado, Musina and Collins Chabane (Vhembe District Municipality Review, 2020: 1). It was called Venda as it was and is home to a group of people known as 'VhaVenda'. The Vhembe District has the most 'African' people residing there, where 68% of them speak Tshivenda (Wazimap, 2016). Additionally, the District Municipality has a population of 1.4 million people, where 54% of the individuals there are women (Vhembe District Municipality LP, 2020: 4). Making most of the region being dominated by women, which is like the statistics that South Africa has when it comes to the ration of men to women

overall. The latter is basically making known structure of the district and the people who reside in the district as it has many linked to even the countries that it is surrounded by.

With that being said, the province is also known as the 'Garden of South Africa' with some the production of vast fruits and vegetables in South Africa coming from the province which is known to be an agricultural focused province (Cai et al., 2017: 2 & 3). This shows that agriculture and land play a huge role in the functioning of the province, and this is the same for the District Municipality too. This speaks to the fact that the District Municipality is largely rural which relies on subsistence farming (Limpopo Vhembe District Profile, nd: 6). The District is rural enough to focus on factors such as agriculture and overall land. This justifies the fact that in the district agriculture and manufacturing sector contribute about 3% of the Gross Value Added (GVA) of the district but they are both the primary sector in the region (Vhembe District Municipality LP, 2020, 9 & 19). These stats have made it clear that in a rural setting where majority of the area is made of land, the driving force for the area is not the agriculture sector but it is more modernized than anticipated.

When we look at governance in the district municipality, it has minor differences to that in some parts of South Africa because of the powers that traditional leadership still have in the area that are encouraged by customs and values, which is still protected by the South African Constitution. However, we cannot ignore that some communities in KwaZulu-Natal and the Eastern Cape, who still have active traditional leaders. In the Vhembe District, the Municipality is under a Mayoral Executive System with currently 11 traditional leaders and 59 elected and proportional representative leaders according to the Councilors and Traditional Leadership of the Council in the Vhembe District Municipality (2020: 1). Therefore, what is happening in the region today is that much of the land in this district is held by the Traditional Council, just like in the times of Apartheid, and have made it difficult for development to take place in the area (Collins Chabane Local Municipality, 2020/2021: 92). The powers that are vested to traditional leaders could be argued to have halted the development in the villages that are in this local municipality.

Additionally, one of the challenges that the district municipality faces as the clash between democracy within a Constitution and customary law with hopes to ensure economic development. Currently the biggest challenge the district is facing is the "strengthening cooperative governance between municipalities and traditional leadership institutions" (District Development Model, 2016: 29). The lines between the two is still blurred and needs to be addressed. However, the key challenge is the lack of title deeds in townships such as

Vuwani and Malamulele, that are under the Collins Chabane Local Municipality (Collin Chabane Local Municipality, 2020/2021: 98). However, this has been an ongoing issue as illustrated in the municipality review of 2020/2021, that is also linked to the shift from customary law to constitutional democracy. At times traditional leaders who should work with the local municipality are not willing to work with them and thus this also may lead to the lack of economic development in the areas affected (Collins Chabane Local Municipality, 2020/2021: 93 & 95). The latter does not state that this is the case all the times, however, at times we have seen traditional leaders protect the interests of the community against the state. But we cannot ignore that these misunderstandings of customs, tradition, laws, and direction that each have for the community as we are aware that traditional leaders' powers came with a little of what the apartheid system allowed and local government powers came with the democratic system. With this, one can see that there is a great need of economic, social, and political development in the area, and this translates to local and traditional leaders working together.

On top of that, the local government and traditional leaders within the district municipality were meant to work together but it failed. An example of this is the riots and protests in the region that have taken place, namely the event that took place in 2016. Being a newly named municipality within the district of Vhembe, the Collins Chabane local municipality under the Vhembe District was in the mist of it all as there came a few adjustments, precisely when it came to councilors and traditional leaders in the region due to the political boundaries that were being layout out at the time by the government. The disruption took place is 2016 with the civil unrest regarding service delivery and the role of local municipality in the local district. Some of the residents in the Vhembe District were unhappy with the decision made by the state to incorporate them into the Collins Chabane local municipality. At the time the people of Vuwani (made up of about 30 villages), which was a community within the region, were unhappy with the move from Makhado Local Municipality to Collins Chabane local municipality (Tau, 2020). The residents of the Vuwani area believed that they were being done an injustice to be part of the Collins Chabane local municipality without any consultation, and thus they decide to stage a protest to ensure that their grievances were being heard by their leaders and that they will not be part of a municipality that gives little to no service delivery to their residents (Ledwaba, 2019). The residents were aware that if they were to be part of this local municipality, it will really be difficult for them to get basic needs such as water and sanitation. This incident alone raised questions linked to local government versus traditional leadership in the district. This has also raised questions on how municipality matters are handled by traditional leaders who are also leaders in these communities.

Structure of VhaVenda Traditional Leadership and Link to Land Access:

When looking at the structure of VhaVenda traditional leadership there are 5 key players, respectively the king, chief, headman and *makhadzi* are those who play a crucial role in land allocation and running of the community at large for VhaVenda. The is King, or *'thovhele'* who is the King of Vha-Venda as a region, who is currently Toni Peter Mphephu Ramabulana (Constant & Tshisikhawe, 2018: 3 & Mabuza & Pijoos, 2021). The king represents the people of Venda as a whole. Then there is a chief, who rules in a specific area such as a village, in addition there are "*vha-musanda*", who are the headsman who can be known as 'junior chief' that work with "*mukoma*" and "*makhadzi"* (Constant & Tshisikhawe, 2018: 3). All these individuals play a crucial role in the operating of the community, village, and region respectively. All recognized individuals in the running of the community at large, with the people who are in theory, keeping them accountable.

This comes with the understanding that traditional leaders are not elected individuals, but rather individuals placed in power for the functioning of the community at large with such powers. It is believed that traditional leaders were and are created by 'God', therefore no human can abolish or question those in power (Tshitangoni & Francis, 2016: 446). Meaning all those placed in leadership positions are there through the ordination of a 'higher entity' according to tradition and custom of the people who reside in the area.

When bringing in the equation of women to the structure of traditional leaders in the community for VhaVenda people, the role of women is very distinct, such as "*vho-makhadzi*". In the study of the '*makhadzi*' by Matshidze & Nemurandani (2017: 4 & 5), she shared that they are they cornerstone of the family in terms of stability, stating that the ancestors have placed them in that position. This is the same understanding that was highlighted when it comes to the other members of the traditional council, such as the chief and junior chief of the community.

They *('makhadzi'*) are adamant that the role they play in their communities is bigger than what is displayed. Especially, as one considers that fact that indeed they are a part of the traditional council in the community. The latter speaks to the role that they play, but it may not be recognized due to some social issues in the community, such as gender and age. However, we must not ignore that fact that *makhadzi* is a part of the traditional council such as the chief and junior chief. This is an individual who is also recognized by the community as being a part of the traditional council, even though her voice within the council may be debatable. Individuals

who work with traditional leaders know clearly that the '*makhadzi and khotsimunne'* hold the reign of power on behalf of the 'Royal Council', especially when it is leading up to the installation of the successor (De Beer, 2004: 105). Crucial role in the council of traditional leaders that needs to be recognized with respect. The issue that lies now is the role that they play today. According to Matshidze & Nemurandani (2017: 8), the biggest concern for *makhadzi* today is that they feel like they are no longer being taken seriously due to western influence in traditional leadership. Western influences being the influence that were brought about through democracy, such as the legislation and the role of the South African Constitution of traditional leadership on the community and leadership. When we look into legislation below one will see the clash that traditional values and customs have with legislation when it comes to some practices that take place in rural communities that are rules by traditional leaders. This shows that *makhadzi* knows the role they play in traditional leadership which transcends into land access, however that impact and influence is not as visible as ever with the influence of the democratic process and legislation.

It is correct that we cannot forget the powers or rather the role, though limited, that *makhadzi* has in the community, as she has a place in the traditional council. This does not mean that they play any direct role to land access and ownership for women. Being what is known as the 'cornerstone' can mean many things, which may not be linked to land rights or access. Thus, we cannot necessarily state that having a female within the ranks of traditional leadership is a benefit if the role that they play is not one that is influencing land access and rights to land. One can argue that having one out of the five people in the leadership structure may not make a difference towards equality or equity. Therefore, the leadership structure of the VhaVenda people is highly questionable when it comes to representation and how that can influence access to resources such as land. Which we will look into when speaking on the process of gaining land.

Process of Accessing Land:

When South Africa became a democracy, this changed the narrative around powers and who held these powers. The CLARA was established to give much of the responsibility and powers when it came to communal land to traditional councils, as they are said to represent the community as 'owners of the land' (Claassens et al, 2015: 14). Although South Africa became a democracy, they needed to really work towards ensuring that they do not ignore those who

were there pre-1994 and the powers that they had. The establishment of one key piece of legislation in South Africa fixated on rural land and access to land was the CLARA. The CLARA alone was crucial in outlining the direction of traditional leaders in a democracy and the powers they would have. And, when it comes to land, it is important to consider the powers within the communities. As customary land is said to not only be land that belongs to the family, but land that also communities, not just individuals, and it is based on the relationship that one has with the community (Makonse, 2016: 33). What the CLARA makes clear is that customary land belongs to traditional leadership and not an individual or household. These powers are important to note and made clear especially when speaking of gaining access to land.

But what we need to be aware of is the process that comes into be when it comes to accessing land in rural areas under traditional leadership like areas in the Vhembe District. As illustrated by Ntsebeza (2004: 68 & 73), the steps that are undertaken to gain access to land in rural areas are at the local level, with the help of the sub-headman and magistrate or the district commissioner, as many people believed that with the new political system the allocation of land was the responsibility of the newly elected councilors. This thus meant that for those who were previously under the care of traditional leaders will now have a different system given to access land, but it still takes place with the acknowledgement of traditional authority.

What would happen is the sub-headman will gather and address the application to then be taken to the headman who will verify the application by checking of the applicant is married or/and a registered taxpayer (Ntsebeza, 2004: 73). Being a registered taxpayer and your status in the community, is all essential information in the process towards accessing to land, especially since these factors that were considered when people accessed land before the new democratic political system. In addition, the sub-headman and headman are community leaders who were put under the care of the administration of the community, one could say they are the mediator between the community and state, as they work within the sector of land the occupation process. Once the application is verified by the headman, the applicant, and the headman or chief needs to go to the magistrate and it is submitted to the Tribal Authority who sends it to the district commissioner, ensuring that the application form has the signature of the chief, councilors, and Tribal Authority Secretary (where the fee is paid) (Ntsebeza, 2004: 73). Throughout this process, we can see that the traditional leaders and authority are with the applicant from the beginning even before the local government gets involved when it comes to gaining access to land in rural areas. This is all ensuring the adaptation of customs and

legislation that came in 1994. This was all made possible by the White Paper on Land Policy of 1997, which made a clear distinction between own governance and ownership (Ntsebeza, 2004: 75).

The process when it came to land ownership or PTO in the past (pre-1994) had to be made more direct and easily accessible for community members when it comes to the Vhembe District who still needs to function under the laws brought on by democracy but also work within the lines of customs.? (What needs to be noted is that what is stated below speaks to land use for farming, not just for occupation for leisure). Once individuals had identified a piece of land, they would approach the headman and then immediate community members were consulted to ensure that the land was not already occupied by another individual (Olofsson, 2021: 5). The headman being the closets authority figure for the community and people on the ground had to be present so that the occupation of the land is not only done through agreement of the community but the necessary leadership structures too. This then led to a consult between the headman and the chief so the chief who will approve the land before the final permission to occupy is transferred by the agricultural extension officer to gain the PTO certificate from the local magistrate, so an application fee is paid to the tribal authority (Olofsson, 2021: 5). All that is stated above sees the involvement of both traditional leadership and the local municipality. But, when one looks closely the process that involves the traditional leadership is not the use of official documents or written proof, but all done through consultation and word of mouth, whereas the process that involves official documents are done through the co-operation of the state. This shows us that indeed the land that is there is under the power of traditional leaders and not the community as they need to be consulted for one to gain access or even PTO, all was done through external conversation with leaders and no clear guideline to be accountable to.

Many questions may arise when it comes to the transactions that take place when land access is approved, which may be mistaken for ownership or a means to 'buy' land. However, it needs to be made clear that indeed when it comes to rural land, specifically the land in Venda one can only get a PTO and not full ownership of the land. It is not a "buy and own for life" transaction that is taking place here, it is the ability to use as one wishes until otherwise, meaning that it can be taken away. Additionally, when it comes to the application fee that is paid, it is seen more as an administrative fee. The option to purchase is not granted but rather the conversation and the process that one partakes in is about PTO and being granted access to the land. Many have described the transition or rather the application fee as a 'gift' granted to the chief because when land was approved in the past it was not a monetary transition, but

rather a ‘gift’ of appreciation. Olofsson (2021, 5), explains clearly that land for VhaVenda was unanimously a ‘gift’ from the chief as it was not mandatory. However, overtime this gesture changed in the community, and it later became a part of the transaction, which is now known as a mandatory act to occupy and gain access to land with the same meaning it had before the influence of local government and other legislative factors imposed when it comes to PTO.

To conclude, the Vhembe District Municipality is in the former homeland known as Venda, and thus the population in question here is the VhaVenda people. The district has a high population of women there who are highly reliant on land for economic development and sustainable development for the livelihood. When we investigate the VhaVenda traditional leadership structure, it is very patriarchal although it does have a female in the structure within it in the form of *makhadzi*. However, those powers alone are not enough to highlight the influence of women in the leadership structure because of the responsibility they have to maintain tradition and customs rather than change it. Additionally, the VhaVenda traditional leadership structure plays a huge role in the access to land and resources in the region with the minor assistance of the local government officials for administrative official paperwork needed their side.

Traditional Leadership Versus the Democratic Process: traditional leaders' powers when it comes to women's land rights and access to land.

After the three spheres of government were established in South Africa after the 1994 general election, it could be a little tough especially when democracy is the driving factor behind the new political system. The question lies as to whether traditional leaders fit into local government structure or if they indeed are the setback many claims there are in a democracy when it comes to women's access to land and land rights in South Africa. This section will investigate the powers that traditional leaders had and have in their communities and how this affects people, especially marginalized women in rural Vhembe District. It will give context to traditional leadership in South Africa before Apartheid era and after (during democracy), and thus unravel how the apartheid system used that to their advantage. This section will also question the existence of traditional leadership in a democracy but also highlight how indeed democracy has worked to really accommodate traditional leadership even with contradicting values. Specifically drawing on legislation linked to land access and land rights for women today, but also highlighting where the local municipality stands in all of this. Although the focus may not solely be on women, but rather understanding the powers that operate in these spaces that women reside in.

Powers of Traditional Leadership in Rural Areas Pre-1994:

Traditional leaders are an institution, who for years have been able to create a strong relationship between themselves, the state, and the community. Institutions that even those who reside in the Vhembe District have recognized with their "limited", but visible powers. The powers that traditional leaders possess in South Africa come from times beyond colonialism. Thus, when the British entered and invaded African land, they needed to find a system to communicate with the local people, and traditional leaders were those who could ensure the means of communication took place as key power players. In basic terms the latter highlights for us that traditional leaders were political players in their communities as they spoke on behalf of the community and ensured that the peoples social, political, and social objectives were filled. Ntsebeza (2004: 69) explains it simply as traditional leaders exercising legislative,

judicial, and executive powers. Unfortunately, under colonialism which saw powers over resources entrusted to the British, there was dependence shifted towards traditional leaders to maintain powers of the chief who were forced into exercising the orders of the British in their communities as they were threatened through violence with the reward for power (Muller-Crepon, 202: 714). Traditional leaders had no choice but to follow the commands of the colonizer because all powers over a resource such as land were handed to the British. One can argue that this then created a shift in powers in communities, as now traditional leaders were not afraid of how the community saw them, but rather they were accountable to the British leaders who invaded the land. Therefore, traditional leaders were only there to keep order in their communities, resolve disputes and that power comes from the community who have given them consent (Rugege, 2003: 172). There were clear orders, structure and laws trough orthodox practices that were never questioned. A system of governance which was easy for the British to work with to achieve their goal as there was central form of power in the communities. The British colonizers had to ensure that they work closely with traditional leaders in order to gain access to the land that the community were using. Traditional leaders were basically the mediators between the British, who were outsiders, and the community, who occupied the land.

Additionally, when we look at the establishment of Bantustans in South Africa, they were established during the apartheid era. Bantustans were made up of reserves on the cornerstone built on what was 'separate' development and 'self-governing states' under Apartheid, and they comprised of independent Bantustans which were; Venda, Ciskei, Bophuthatswana and Transkei and 6 other 'self-governing' territories (Egero, 1991:2-5). Meaning that although the community was under rule of a traditional leader in their respective area, traditional leaders also had to answer to the state. As Bekker (1993: 200) states, chiefs were there to be used by the colonial authority to rule indigenous population and to help make the Apartheid system work. A form of power that Mamdani clearly notes as indirect rule. Questionable method, but effective method indeed as the community never needed to interact with the state. The state gave widespread powers to the chief and tribe authorities when it came to matters pertaining to land admin, judicial and overall government functions (Adams et al., 1999: 15). This was the same in Venda, and many community members who reside there today can attest to this functioning. Specifically, the powers that were granted to chiefs came from the Native Administration Act of 1927 and that ensured that traditional leaders did not go against the law of the land at the time. This Act stipulated that the governor, under the Apartheid system, was the supreme chief and as the governor who will be able to dispose and appoint chief at his will

(Claassens, 2001: 8). Many black South Africans were placed under the jurisdiction of chiefs as they were forcibly moved to the Bantustans (homelands) even though many of them did not have any reference to those in the inhabitants (Adams et al, 1999: 7 & 15). People who did not even recognize or understand the powers that chiefs had as they never encountered them before, now had to live their lives under the powers of traditional leadership, so the customs and traditions of the area were placed on them whether they liked it or not. Women, children and even households needed to now live under such authority with no questions asked.

Through the Bantustan, one can see strong influence of the state, even for VhaVenda who were under the system too. The state thus granted VhaVenda self-governance rights under chief Patrick Mphephu back in 1973, with his ancestry tracing back to the legendary leader known as Thohoyandou (Constant & Tshisikhawe, 2018: 3). Hence, through this traditional leader in Venda, and the Chief (head chief of the VhaVenda people) saw that if they were able to maintain their power if they did what was told, or rather if they followed the rules created for them by the oppressive system. A system that we are aware gave little to no power to those who were not of European decent. The system at the time was not working for their benefit as they gained power that compromised the powers that the community recognized. One can, however, argue that the powers granted to them were not power at all but rather control by the state through traditional leaders.

Traditional Leaders During Democracy:

However, looking at the establishment of traditional leaders who functioned under colonialism and the apartheid era, it has become questionable if they can survive under a democracy especially when looking at value that are pushed between the Constitution and customary law. Thus, this is important to note that the South African Constitution is the highest law of the land and no one is immune to it. Meaning it is the supreme rule of law of the land. But yes, Chapter 12 of the 1996 South African Constitution clearly lays out the role and place that traditional leaders have in South Africa as a democracy. That alone shows the willingness that the state has when it comes to incorporating traditional leadership in the South African democratic system, keeping them in mind when drawing up a new political system. Stating that the role, status traditional leaders and they are recognized by the Constitution of South Africa, so the courts are instructed to apply customary law when applicable (The Constitution, 1996: 123). This clearly states that the highest law in South Africa recognizes the impact, role, and status

of traditional leadership and the customs and traditions that surrounds them within this democracy. Furthermore, making it clear that within this new democratic South Africa, traditional leadership falls under the local level as a local institution who are on the ground with local communities (The Constitution, 1996: 123). Traditional leadership has found a place under local government to ensure that they can fulfil the needs of the people, their communities.

Indeed, we can say that in the past traditional leadership may not have gained powers that benefited the community, however what the South African Constitution is making known is now they need to work towards that as a part of the South African bureaucracy. The narrative and direction have changed when it comes to the people holding them accountable, even though they are not able to elect them. But as they work with the elected individuals (local officials such as mayors or councilors) the hope is for them to work towards the values of the South African Constitution which prides itself on being for the people and working towards eradicating the injustices of the past for a better future for all, not a selected few, but for all, especially the marginalized.

A lot was questioned when looking it whether traditional leadership can cope in a democracy and if they can function in the democratic process due to their functions, role and powers possibly clashing within a democratic state that emphasis equality, legitimacy of powers and elections. Debatable point overall and Bekker (1993:200) argues that this is so because chiefs are not elected, and they are mostly men. Reminder that traditional leaders before democracy had other forms of checks and balances that were not as democratic as one would hope and did not involve the people on the 'ground where as in a democracy checks and balances involve those who elected the leaders. In the democracy checks and balances are mainly there to ensure that there was no abuse of power by those who were seen as 'power hungry' that may disadvantage others, which limited powers of the leaders too (Koenane,2018: 63). The conclusion could be that indeed traditional leaders had far more reaching powers under colonialism and apartheid over their communities, under that oppressive system. Whereas today (in theory) under the law of the constitution, traditional leaders need to answer to the community and the state. Doubtful when looking at the treatment of the marginalized such as women and children today and the role which legislation plays in this.

Democratic Legislations on Land and Access to in Rural Areas Under Traditional Leadership:

With the birth of this new democratic nation in 1994, it was hard to see the role and space for traditional leaders when it comes to issues related to land and access to land for women in these areas. This debate comes after the establishment of the establishment of the Constitution and White paper on Local Government. The White Paper of post-1994 highlights through democracy elected representatives will be introduced, even in rural areas, as they draw more on the need to improve the standard of living of individuals for all but also try and better the quality of life of those who were previously disadvantaged (Ntsebeza, 2004: 68). One can anticipate that they will be challenges within tribal setting trying to implement democratic systems. But we still need to keep in mind that the powers of traditional leaders need to be protected, and be aware that traditional leaders are recognized by the Constitution and cannot be eradicated. Ntsebeza (2004: 69), states clearly that traditional leaders were those who were "protected from above and never elected", with no term in office and were in power as they enjoyed the support of their superiors. Reiterating to us that traditional leaders were groups of individuals who possessed powers that could not be placed under the same setting as a democracy, but they were inserted there to respect the powers and role they have played in the community for years.

Therefore, the establishment of CONTREALESA (Congress of Traditional Leaders in South Africa) was essential for traditional leaders in the new South Africa. It was established to bridge the gap between the state and traditional leaders. To bring together traditional authorities as they fight for a place in the new democratic government (O'malley, n.d). They were aware of the social and political changes and challenges that traditional leaders may face in the new democratic South Africa. However, it is also seen as an organisation which many believe the government put too much pressure in pandering their demands (Weinberg, 2013: 34). The state has been seen as those who have pushed the agenda of traditional leaders rather than the people, an ongoing conversation taking place. Forcing them to fit into a system that was not created for them. This is because there have been several encounters where traditional leaders threated to take the state to court. Consequently, one can concluded that CONTRESLESA was there to accommodate the needs that traditional leaders and acknowledged more than they were before in other political systems. However, in the same light, Claassens (2013:72) brings about the point that the state has made laws that centralized the powers to the chiefs and allowed them

the ability to determine customary law and the ways in which communities' function. Powers which are visibly benefiting traditional leaders in a democracy as there was no public consultation when it came to the drafting of the laws, even as they fight the state to be heard.

In addition to the above, we see the establishment of the Traditional Leadership and Governance Framework Act 41 of 2003 (TLGFA), Traditional Courts Bill of 2003 and 2008 (TCB), and the Communal Land Rights Act 11 of 2004 (CLARA). These are some of the laws which to some extent reveal the persistence of deeply internalized colonial and apartheid notions of how African societies were organised and ruled, as stated by Thipe & Buthelezi (2014: 204). TLGFA was the first impactful Act that affected land and access to land for those in rural areas under traditional leadership. It was the foundation for all the other legislation as it was a framework on how governance should work in such environments. This Act worked towards ensuring the functions stipulated in Chapter 5 of the TLGFA (2003: s26), which are functions linked to customary laws and customs of the traditional community concerned with some influence the National and Provincial government. Meaning that the state was also determined to respect the customs and rights that came with land and access to land too in rural areas.

Unfortunately, on the other hand, when the TCB was established, which was drafted by the National House of Traditional Leaders, it came with contestation due to the little to no engagement with women or other interest groups who are affected by it (Claassens 2009: 1). The contestation comes from the fact that through this law, one can see the powers which traditional leaders hold and exercise towards the marginalized and vulnerable in spaces as important at traditional courts. This is of course and issue that needs the Constitution to interfere in implementation of equality, justice, and non-bias. One key questionable terms and conditions in the TCB is that traditional leaders can stop people from gaining their customary entitlement (Claassens, 2013:76). This suggests that traditional leaders have the power to determine who no longer deserves or can be granted their customary rights, no matter race, class or most importantly gender. Where traditional leaders wish to make their powers clear to the community through denial of land or access to land, corruption has also been a driving factor according to community members.

Hence, when we speak of land rights it means that if a woman is to inherit land or ask to access land, she may not be able to do so if the courts (traditional courts within the community) do not agree with that motion. However, the courts did ask for there to be elections where 40% of all members of the courts to be elected and 30% of them to be female (Claassens, 2009: 14).

Already an issue as elections in a traditional, customary settings do not take place. The TCB was showing that there was lack of representation in traditional leadership in rural areas under traditional leadership. However, this all caused further conflicts between women and the traditional leadership who are not clear on democratic practices. Basically, it affects the balance of powers in traditional courts, and conflict as there was no women in the courts to hear disputes, especially women centered disputes and there are no lawyers allowed in traditional courts (Claassens, 2009: 11 & 18 & Claassen, 2013: 76). Women centered issues cannot be addressed if a woman is not present to hear them as the presence of a women is non-existent with issues of representation. Traditional leaders seem to hold all if not most of the powers when it comes to the courts, which is already questionable and problematic for the democratic process altogether. However, the Traditional Courts Bill is still contested today by both parties, traditional leaders and women.

Lastly, the CLARA was established with the hope of bringing order, structure and non-discrimination to traditional leadership in a democratic South Africa when it came to land issues. It addresses the issues linked to the powers that are vested on the chief over land in their communities, specifically land transferred post-1994 (Claassens, 2013: 75). This is because in some instances chiefs are given more power over the say regarding the land that is under their jurisdiction, with little to no power given to the people. A little contradicting, one might add, as we speak about legislation in a democratic state. Nothing that there was no free-standing land, as ownership belonged to traditional leaders, according to the state. Thus, this Act looks into closing the gap between the law and customs to benefit the people it may affect when looking at land and land rights in communities under traditional leadership. However, according to Weinberg (2013: 31), the Communal Land Rights Act is in favour of traditional leaders as it undermines the security of rural people's land tenure and heightens the power and control of traditional leaders through its policies. This is linked to the TCB where, if one wants to gain access to the land, they needed to go through leadership, where the courts themselves are already patriarchal in nature and favour traditional leaders. So, for women the system all together has failed them because of the policies and the lack of 'progression' due to the nature of the legislation. An issue that is still relevant in the Vhembe District, where women still need to negotiate terms of land and access to land in a state that is said to be democratic (this will be elaborated further in this paper). Giving traditional leaders more reason to suppress resistance while also distributing scarce resources to the community as they maintain power as they could not in confidence state that they are the owners of the land (Fraser, 207: 839 & Claassens et al, 2016: 14).

In contrast, one of the biggest clashes that traditional leaders have with democracy is the established of intuitions and organization that may undermine their powers, such as the Community Property Association Act 28 of 1996. This Act is there to "allow for communities to form juristic persons to acquire land, manage, hold property on the basis agreed to by the community in terms of the constitution" (Community Property Association Act, No.849 of 1996, 1996: s1). This is a government approved Act that encourages third-party organizations to form in order to help individuals or groups of people in communities acquire, hold or mange land. This however comes with great contestation with the ongoing conversation about land rights in South Africa. As some traditional leaders do not enjoy the fact that third party institutions have more power or equal powers to them, especially as an organization that has maintained powers for years. The have even demanded that title deeds of land be transferred to them as chiefs and traditional authorities of certain tribal communities (Claassens, 2001: 3). The CPA contests this means of ownership as it works with the marginalized who want to gain access to land and land rights in communities. Fraser (2007: 841), notes that traditional leaders are actively striving to ensure that issues pertaining to land reform do not undermine their social status in society and they too are able to receive the benefits that come with land and access to land in their communities. Traditional leaders do not want to be left behind, as they are already finding it difficult to function under a democracy as a non-democratic institution, and the CPA seems to be making it a little difficult for them to some extent to function and exercise their powers.

All three legislations mentioned above are questioned by Mnisi & Claassens (2009: 494) who highlight the use of "top- down statutory powers" which has changed the balance of powers in rural areas between the people and their leaders. They have put more powers in the hands of traditional leaders rather than the people on the ground. One can state that they have maintained the powers that they had even before democracy. Basically, one can come to the same conclusion as Ubink & Duba (2021:193) who have argued that with the introduction of the laws and bills linked to land in South African, in regions under traditional leadership, theses legislations have undermined property rights and basic rights of the citizens in that community. Especially for women in rural areas under traditional leadership. Some of the current practices that take place in the Vhembe District do stray away from what is required by the law. Specifically, where there are undemocratic traditional leaders that operate in the area who operate 'downwardly', as they have the same characteristics of the apartheid-imposed leaders where they also saw land allocation fixated on traditional leaders (Olofsson, 2021: 3). The dynamics within the mixture of democratic and non-democratic leadership in the district causes

confusion within the leadership structure for the people who see the set-backs brought upon by legislations such as the TCB and the CPA not forgetting what customs requires.

The most recently piece of legislation between the state and traditional leaders is the establishment of the Traditional and Khoisan Leadership Act. This is an act was implemented recently on the 1st of April 2021, where it sees the Khoi and San leaders serving in the national and provincial house (Khoza, 2021). For the first time in a democratic South Africa, the representation of the Khoi and San in parliament under traditional leadership will take place as they were not recognized in the past. Additionally, that sees the recognition of the Khoisan communities and involving them in the rural economic development conversation, but also in land reform policies (Seleka, 2021). These are institutions which they have never been able to participate in and exercise their rights due to misrepresentation. However, this is not only about the recognition of traditional Khoisan leaders who have been ignored by the system, but rather this is about recognition of traditional Khoisan communities. Ramaphosa has made it clear that the implementation of the Khoi and San into traditional leadership legislations will ensure that they are integrated into the structure that traditional leaders are in (Seleka, 2021). Once again allowing traditional leaders in South Africa partake in the works of democracy, which is what all traditional leaders in rural areas would like to be part of as their powers are not fully recognized due to their standing in the state by the people.

Therefore, Rugege (2003: 171) clearly states that traditional leaders have a fear of municipalities, as there is a possibility that once they are fully operational, they may end their influence as traditional leaders in their communities. There is clash between the municipality and traditional leaders as they both operate within the confines of the community. It has reached a point where traditional leaders believe that their role has been seized by local elected government councilors (Claassens, 2014: 19). This does justify the need for traditional leaders to have the government on their 'side', as there are laws and bills that affect land allocation in their communities that they cannot exercise their powers as much as they would like to because of legislation. However, we cannot ignore the fact that there are laws that are more beneficial to traditional leaders rather than the marginalized and majority, such as women. Mathis (2007: 106) makes the argument that many residents saw customary authorities as 'backwards' as most of these leaders are focused on maintaining their powers, which created more of an

authoritarian rule rather than democracy that South Africa is known for. Alluding to the fact that even the powers that traditional leaders hold and are seen as 'legitimate' by the state, are still questionable to the people in the community. The clash between the rights of the people and the rights of the leaders is still being contested. Noting that the abuse that came with power that traditional leaders had when it came to extortion and excessive tribe levies that were played on individuals in rural communities, was questionable (Claassens, 2009:15). The operation of two different types of leadership systems has created rifts within the community and it has resulted in the abuse of powers by both parties affecting the people on the ground, specifically the marginalized (women).

Thus, the latter has shown that indeed the powers that traditional leaders hold in their rural communities is powers which have come in different forms over the years depending on who is in power in South Africa. Specifically highlighting the fact that all leadership structures and systems in South Africa have always put in the work to accommodate traditional leaders. However, this meant that the systems of rule that traditional leaders use has continued to take place and at times clashed with the political system of today. This can be seen through the clash in values in the Constitution of South Africa and customs. Therefore, creating further setbacks rather than enrichments and developments in society for communities who have both traditional leaders and local government as their leaders in their communities, especially when it comes to the issue of land right and access. These rights are failing to empower women, but rather empowering traditional leaders who are being accommodated and priority to state.

Women's Need to Have Access to Land and Land Rights in Their Communities

History and current economic climate have seen the need for women to demand land and access to land. This section will focus on why land access is essential for women when looking at how far South Africa has come in giving them access to land. It will focus on the growing effects of the 1913 Land Act on women, then investigate women as primary caregivers and their need to depend on the state on farming for their livelihoods. In addition, it will address the effects that have come about as women work towards reliance on land and the role traditional leadership have played in helping women gaining access to land, with limited examples of the Vhembe District.

What needs to be addressed is that the demand for land by women is clear and visible in rural areas, however it has never been part of the conversation as much as the need for land for all. One cannot ignore the effects of the South African Land Act of 1913 on women, because the ignorance to how that historical event may have affected rural women more than men is not the forefront of the conversation in rural areas when speaking on access to land in the new South Africa. Hall (2014:6), notes that pre- 1994, the economic system made labour reserves and areas of social reproduction which were led by women and women's farming while men went to work for living wages. As women were left in vulnerable in these situations, being that they were not only denied access to security of tenure but also, now more than ever, they could not engage in economic agarin activities that were taking place (Pheko: 2014: 2 & 3). While men could go work in urban areas and stayed in hostels, women were left to think about what they could do with the land they occupied with their children, this is what the Land Act of 1913 did not consider when it was looking at reallocation of land for the "oppressed". Land for grazing, control, use and transfer was now questioned. The United Nations Women (2013: 2), makes it clear that access to land that women have is also linked to food security and sustainable economic development. All which can help in sustainability of livelihood of a community, if not a household. Over the years there has been a rapid rise in the number of rural families, which resulted in the heads of households being women who have the least social powers (Adams et al., 1999: 28).

Residents in rural areas, especially those who reside in the Vhembe District rely heavily on

natural resources as the main source of income as the market in the region is fixated around the agricultural sector. Besides we are aware that overall, in many rural areas access to natural resources such as land is crucial for women as they work towards food security and economic welfare (Pheko, 2014: 1). As primary care givers, women are placed in position where they too rely heavily on the land for agriculture and natural resources that come from the land itself as that is the only clear source of capital they can depend on. Specifically, in Vhembe they are focused on subsistence farming as it sustains the lives of those who live there. Every inch of land is used for farming, which has made it a part of the culture as explained by community members who reside in the district. And when we look at statistics linked to population and gender disparities, we see that in South Africa alone, 69% of the population in rural areas are women, and thus they make up the bulk of those who are living in poverty (Weideman, 2004: 364). As primary care givers living in poverty, this means that they also heavily rely on grants from the government. Cash provisions such as social grants are the cornerstone of many rural people's livelihood (Hall, 2014: 6). Although the new democratic system for many South Africans has brought a new outlook on life, we cannot ignore the lack of changes when it comes to one's livelihood, as now many women in rural areas are in a situation where they need to reply on the land still and do not have the privilege to access or own it.

Consequently, when we look at the current land rights and access to land it seems to be a little misleading especially when we look at the effects of lack of land for the people and what it means for them. The latter is especially true for women in rural areas. They are often those who are left out of land redistribution projects with limited access to training and educational opportunities, thus women access land through their relationship with their male counterparts (Weideman, 2004: 364 & 371). Even in this ever-changing democratic system, women are those who are forced to rely on men to gain access to land they need to provide for their families. They (women) are unable to represent themselves or speak for themselves when it comes to issues of land, heightened by the fact that male counselors are not sympathetic to women issues that are occurring currently, especially widows who are the only living caregivers for their families (Claassens, 2009: 19). Women are seen as inferior in their communities, still not given the ability to speak up for themselves in settings that should benefit them in the new political and social society, a sad reality because we live in a society that advocates for equality and freedom.

This may be because land comes with wealth and power in communities that rely so heavily on it, whose livelihood is determined by the grazing and farming of that land, like those who reside in the Vhembe District.

However, we can see that with the indispensable role that women in rural areas play, it is important to see the powers vested to traditional leader and what impact they have on rural women and their access to land in their respective communities. This is a factor as 16 million people (in counting as of 2018) live in former homelands under the authority of traditional leaders, who rule though customary law that is recognized by the state (Moor & Himonga, 2018: 61 & 62). It is important to see the role of traditional leadership in the process to make it accessible for women to own land apart from just the state, because they live under both customary and legislative law. Like in the Vhembe District, we must be aware that even though women make up a big part of the rural community there are no clear ways that show that women have been given the platform to access land. Women were in the past and still currently find difficulty in gaining to access land indecently due to their social standings in society, or rather the community they live in and this cannot be ignored in this political, social and economic climate in South Africa.

In conclusion, women need access to land as primary caregivers and as those who make the majority of the population in their respective communities. However, this is not aligning when we look at what has been done to rectify this when we look at the Land Act, which aims to rectify what the 1913 Land Act did to millions of Africans who were left vulnerable. Thus, today women need to ask for assistance from their male counterparts to gain access to land, and this is what customs and tradition has allowed to happen in many rural areas such as the Vhembe District which is also under traditional leadership and local government. Women are finding it difficult to gain land and access to it because they are not deemed 'worthy enough' as the conversation regarding land and access to land has never included them.

The 'Position' of Women in Vhembe District Under the Authority of Traditional Leadership (focus on land)

It's unfortunate that women in rural areas are obliged to fulfill their roles as providers for their families, often without the assistance of men (Claassens & Mnisi-Weeks, 2009: 500). This statement speaks to the position and role women in rural areas have in their communities and households, and how important it is for us to investigate what it means to be a Venda woman (majority of the people in the Vhembe District) under traditional leadership. This is crucial point to investigate when addressing the relationship that women have with traditional leaders, the state, their communities and how much this has changed over the years. Therefore, in this section we are examining how women are treated when it comes to access to land in their position in society. The paper will also look at position of women in the eyes of traditional leaders and how this can affect their access to land in the Vhembe District.

Traditionally, women are mainly responsible for tasks around the home, however, lately there has been evidence to show that women play an important role when it comes to activities linked to farming where the bulk of its used for grazing (Raidimi, 2014: 13 & Adams et al, 1999: 28). Farming, grazing and any agricultural activities play a huge economic role in rural communities, as it sustains their livelihood. Furthermore, when we look closely to the Vhembe District, women provide 50-80% of the agricultural labour in their communities, as they often assist in the production of cash crops and subsistence food in their communities (Raidimi, 2014: 17). The labour addressed in the latter, is labour used for grazing and farming for the community. Showing us that whether the community acknowledges it or not women play a significant role in their communities, especially when it comes to the use of land to benefit the people and their households. They are the primary users of land in their communities as compared to their male counterparts.

Unfortunately, when it comes to uplifting the community many people in rural communities have had unfavourable experiences with the new democratic structure in place that have shown that they too are not immune to the problems of corruption and abuse of power (Claassens, 2001: 92). As there are headmen in some regions who shared that the council was late in the allocation of land to women, because of internal disputes such as the need for them to see that women could indeed display that they were responsible and self-sufficient enough to be

allocated land, this was directed towards women who were single with children (Claassen, 2013: 77). Through literature, we can see that allocation of land to women was delayed as they were not seen as key players or contributors in their communities when we look at the land they own and the land they are given access too, and all this can be seen though the laws that the state has had to establish to encourage women access to land a land right. Such as the establishment of the Traditional Courts Bill and even the CLARA outlined above. Even though the blame falls on administrative setbacks that have come with the new political system, which is not true and a sign of abuse of powers. Abuse as the Constitution prohibits discrimination due to race, gender and age. One can assume that this is why women need to ask for the assistance from a male to be assisted when it comes to land allocation in terms of access or ownership. Women seem to still feel the brunt of the lack of progress in their communities who still exhibit pre-1994 policies and customs to land and land ownership, even in a democratic state with a 'progressive' Constitution. Noting that even today the community chief is said to be making decisions on behalf of the people because this is customary according to the Department of Rural Development and Land Reform (Weinberg, 2013: 31). So, not only are women needing to justify their access to land due to abuse of powers, but the abuse of powers by their traditional leaders is being justified by the state through legislation.

The latter is not ignoring the fact that women have a position in their communities even within traditional leadership. Such as *makhadzi,* who is part of the Royal Council, as she works closely with *khotimunne* in ensuring that indeed the interest of the Royal Council are of priority (de Beer, 2004: 105). The latter speaks to the fact that indeed a woman is a part of the traditional leadership structure, or rather the Royal Council in the Venda culture, as it is part of custom and tradition to have a woman to be part of it. However, the powers that lie for *makhadzi* is questionable as she needs to ensure that the interest of the traditional leaders are respected and a priority whether one agrees with it or now. So, she maintains the customs and traditions that are practiced, whether democratic or not. This is where the lines are blurred. What is more, is that we are aware that the Royal Council was created under the foundation of customs and tradition, which is very important, and they are accountable to their community and those who came before them too, however to what extent is the question. Making it difficult for the structure to change their ideas or ways or rather the way they function. So, when women, as heads of households, what to change the way things are done it may become complicated because of the powers that lie before them through customs and tradition in the Royal Council that distribute the land requested. Yes, agriculture production and preservation of land resources is the responsibility of women and children in rural areas (Wolde, 2016: 49), but the

structure of traditional leadership for VhaVenda has not changed much since 1994 as it was not established during the apartheid system, but rather worked its way through and within the system itself. So, we cannot ignore indeed the way in which Venda structure works and who the individuals within the structures are and their positions in society. Additionally, VhaVenda women are said to have the status and authority in their respective areas because they are custodians of the cultural practices and indigenous knowledge in their communities (Matshidze & Nemutandani, 2017: 1). Cultural practices that need to be passed on from one generation to the next. This is the role that women in these communities are asked to partake in. Ignoring the fact that most of what they need to uphold is patriarchal and controlled by men, especially when we investigated some of the changes that needed to take place with the dawn of democracy in South Africa. Basically, what is being outlined here is the need for women to uphold the structures that legislations such as the CPA and even Traditional Courts Bill are trying to eradicate even as they may disadvantage them in one way or another. Women are placed in an impossible predicament.

The position of women in such areas has not come without any contestation in many communities. One being that of the case in the Ravele village within the Vhembe District back in 2014. Where Itani Elisabeth Ravele wanted to break down some of the 'opinions' on customs and women. Stating that she was meant to be installed as headman for the Ravel Matshketsheke clan after her brothers passing, unfortunately she felt sidelined since she was a woman even though there was nothing (according to her knowledge) within customs of the VhaVenda that could not allow her to be a part of the traditional leadership structure as headman in her community (Mukwevho, 2018). This is an important case when looking at women and their access to leadership in their community. Linking back to the perception that people have of women in traditional leadership roles versus their role in the community. Itani Ravel not being granted her respectful position in the community also gives us a clear picture of how customs and tradition does not always favor women as it may be ignored to ensure that patriarchal standards are maintained. There are seen as caregivers and not providers and leaders, even as the reality may state otherwise, thus using customs as an excuse. Even though the matter was never resolved, through that we can see the role that gendered plays in whether one has power or not in their community.

Subsequently, the control that tradition and customs still have on its people through traditional leaders. How traditional leaders operate is that they evoke 'custom' on community members,

usually without consent (Pheko, 2014: 5). Traditional leaders who still hold some power in rural areas have strong powers over their fellow community members, usually speaking on "their behalf' without their knowledge, which causes conflict between them. For example, in the case of Venda traditional leadership, all the traditional council members of the seven Mutale Municipality were all males (Tshitangoni & Francis, 2016: 245). If all the members of the council are males, then there was lack of representation of the people they are speaking on behalf of, specifically women who make up the majority in that district. A fact that is questioning how far the country and the region has come since democracy. If women are not represented in the leadership and cannot speak on their own behalf then who is speaking for their interests, or rather the interests of the people as they are the majority. VhaVenda women appear to still not take any public roles in communal meetings, even though they carry authority in their family (Matshidze & Nemutandani, 2017: 2). In addition, women face injustice in rural courts where they wish to lay out their disputes. Not only are they expected to pay the high fees linked to access and use of the courts, there is a strong male bias that makes women vulnerable in these spaces where the issues they bring forth in the courts are not taken seriously (Claassens, 2009: 11-14). No progress for women and it seems we have a long way to go as a state when it comes to recognition of women.

Therefore, what we were able to be established is that women play a huge role in their communities as the primary care givers, but also as citizens that are there to uphold the traditions and customs of the community in theory. However, in reality they are key community players who need to be given more power to ensure that they can function in society to the fullest. Their powers need to be enhanced as it benefits the community as a whole and not just their households Thus, even though they may be part of the Royal Council the cannot continue to be placed in situations they do not have a huge say in customs or tradition, which in itself is fluid and not fixed. Subsequently, the silencing of their voices by legislation and customs/tradition due to gender needs to be eradicated to ensure progression and development.

CONCLUSION

The Vhembe District Municipality in Limpopo is made up of mostly women, and many of them live under the leadership of Venda traditional leadership, who pride themselves on tradition and culture in this democratic system. Which has of course created conflict between the democratic system and traditional system of leadership, especially when it comes to values and norms between the two for women. Specifically, it has created a clash when it comes to women's access to land through the leadership structure within this progressive political system South Africa is in since 1994. The clatter is not only between the need women who need land for their livelihood, but a misunderstanding related to how they can go about this process without having to gain through their fathers, husbands, sons, or any other male figures. So, we find ourselves in a situation where women have always been key players in their communities since the 1913 Land Act when men left the rural areas to the urban areas looking for work, thus leaving their wives back 'home' to take care of the elderly and children without the privilege to gain land to work on for sustainability. Now that women are left in the rural areas, they are still struggling to be given that privilege as tradition and customs has not even given them that platform to do so before.

Therefore, with the introduction of democracy this came with life changing policies that should have allowed these changes to take place, however this was and is not the case. Yes, we cannot ignore the impact of policies and legislations such as the TLGFA, TCB and CPA in the Vhembe District, which all work towards ensuring inclusion, equality, and recognition of women when it comes to land ownership, access, and rights. Additionally, recognizing that undeniably so, traditional leaders cannot be eliminated from the equation of leadership in the district too who has a rich cultural history ruled by tradition and customs. But rather what has occurred through these policies is that they have really went out of their way to accommodate traditional leaders in the picture more than looking at the need for the marginalized women who need the resources for their livelihood.

The whole status of women in the Vhembe District has created a situation where women are in a similar situation they were in before 1994, where men are still head of their households even though they are not physically active in their households, but they still have a say, eliminating equality, justice, and non-bias that the Constitution thrives on. The discussion itself is not one that is held in the community any longer because of the undercurrents of the situation at hand,

but rather between the leaders. Women are basically stuck between honoring culture and tradition by listening to their traditional leaders, but also needing the land for their personal livelihoods because this is also their Constitutional right.

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Annexure 1

Participant Consent Form

(Please note that this is a non-verbalconsent form as the research is done under strict COVID-19 restrictions)

Topic: ASSESSEMENT OF THE PROGRESS MADE TO GIVE WOMEN ACCESS TO LAND AND LAND RIGHTS IN RURAL AREAS IN SOUTH AFRICA SINCE 1994: FOCUSING ON THE VHEMBE DISTRICT MUNICIPALITY

[Consent to take part in research]

- I ***Colson Nditsheni Mbedzi*** voluntarily agree to participate in this research study.
- I understand that even if I agree to participate now, I can withdraw at any time or refuse to answer any question without any consequences of any kind.
- I understand that I can withdraw permission to use data from my interview within two weeks after the interview, in which case the material will be deleted.
- I have had the purpose and nature of the study explained to me in writing and I have had the opportunity to ask questions about the study.
- I understand that participation involves ***conversations pertaining to one's experience with traditional leaders and local government when it comes to land allocation and land access in the community and District of Vhembe.***
- I understand that I will not benefit directly from participating in this research.
- I understand that all information I provide for this study will be treated confidentially.

- I understand that in any report on the results of this research my identity will remain in anonymous. This will be done by changing my name and disguising any details of my interview which may reveal my identity or the identity of people I speak about.

- I understand that disguised extracts from my interview may be quoted in ***a minor-dissertation for a Master's student*****.**
- I understand that if I inform the researcher that myself or someone else is at risk of harm they may have to report this to the relevant authorities - they will discuss this with me first but may be required to report with or without my permission.

- I understand that a transcript of my interview in which all identifying information has been removed will be retained for ***March 2020-2024 Dec*****.**

- I understand that under freedom of information legalization I am entitled to access the information I have provided at any time while it is in storage as specified above.

- I understand that I am free to contact any of the people involved in the research to seek further clarification and information.

Signature of research participant

Signed by candidate

---------- *15 MARCH 2020* ----------

Signature of participant Date

Signed by candidate

Signature of researcher

I believe the participant is giving informed consent to participate in this study

Signed by candidate

15 MARCH 2020

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Signature of researcher Date