

**UNIVERSITY OF THE WESTERN CAPE
POST-GRADUATE PROGRAMME IN LAND AND
AGRARIAN STUDIES**

**Gendered Land Rights in the Rural Areas of
Namaqualand: A Study of Women's Perceptions and
Understandings**

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**A mini-thesis submitted in partial fulfilment of the
requirements for the degree of Magister Philosophiae in the
Institute for Poverty, Land and Agrarian Studies, University of the
Western Cape**

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ABSTRACT

Title: Gendered Land Rights in the Rural Areas of Namaqualand: A Study of Women's Perceptions and Understandings

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This study focuses on women's perceptions of land rights in the communal areas of Namaqualand in the Northern Cape province of South Africa. Here women farm land which they can access only through their relationships with male kin. Women's use rights are dependent on their relationships with fathers, husbands and sons; and it is virtually impossible for women to obtain land in their own names. Women's own views of rights, of access, of control and authority over land display a significant gender bias in favour of men. This study explores women's understandings and perceptions of land rights and agriculture and other forms of land use.

The objectives of the study are to explore the links between patriarchal social systems and women's conservative attitudes towards holding land; and to show how current policy processes and legislation – aimed at strengthening the rights of existing landholders in communal areas – allow local customs to continue to entrench gender discriminatory practices.

A small study was conducted through in-depth interviews with sixty-five women and two focus group discussions with women in Namaqualand. The scope of the study was limited to exploring the nature of women's land rights in five of the communal areas of Namaqualand; formal and informal "rules" around women's land rights; women's practices of asserting or realising land rights; challenges and opportunities that women experience in claiming their land rights; the views and understandings of women in relation to land use and its contribution to livelihoods;

and how women understand the impact of current land reform policies on their access to land.

For the purpose of this thesis, literature on land tenure, gender and land rights as well as on the history of the former Coloured rural reserves of Namaqualand was considered. The key findings of the study indicate that women are disadvantaged by historical norms, values and attitudes, which afford them only secondary rights to land. Yet, informal land practices – however limited – show that in some cases women are creating opportunities to gain access to land independently. For this to become the norm rather than an exception, these practices need recognition and support within the on-going land reform transformation process in Namaqualand.

DECLARATION

I declare that *Gendered Land Rights in the Rural Areas of Namaqualand: A Study of Women's Perceptions and Understandings* is my own work, that is, it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

Full Name: Date:

Signed:

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This thesis grew out of realities and perceptions of the rural women in Namaqualand whom I owe a debt of sincere gratitude for participating in my study. Their stories enabled me to explore and rethink the assumptions, the understandings and prevailing ideas of rural women's land rights in communal areas. You helped me to look beyond the aridness to see the Namaqua daisies. *"We women are like Namaqua daisies. You don't see us, but when we flower... this is the place where we grow"* (Namaqualand woman (38) from Leliefontein, 2005).

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I dedicate this thesis to the happy memory of a remarkable woman who had gone before me, yet remains ever present, my mother Rhona, who would have been so proud of me. Ma, I've made it.

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1. CHAPTER ONE: BACKGROUND AND CONTEXT

1.1 Introduction

Was there any way that gender equity could be pursued if women did not directly participate in the decisions governing how collective land was distributed to households and the individuals within them (Deere and León 2001:6)?

Empowerment of women challenges the patriarchal familial relationships, for it may lead to the disempowerment of men and certainly to the loss of the privileged position they have held under patriarchy (Deere and León 2001:25).

The content of tenure systems is determined by the values of the community, by prevailing power relations and unspoken assumptions and so never needs to be stated in the form of official rules (Cross and Friedman 1997:17).

This chapter describes the rationale for this study. Here I set out the objectives of the study and the research questions to be addressed, and outline the methodology employed as well as the limitations of the research.

1.2 Problem Statement

Questions of women's land rights are reflected in the link between land tenure, gender roles and relationships; which accounts for their complexity (Grigsby 2004). In poorer societies where land scarcity is high, the struggle for land often becomes a gendered power struggle, and women are granted only limited rights to graze, cultivate, dispose of produce and generate incomes from produce. These limited rights are often based on their position in the family and the low value placed on that position, irrespective of their contribution of valuable labour to household farming activities. Agarwal (1994) suggests that this subordinate position is often linked to the fact that women are not considered as "breadwinners"; have limited access to cash and credit; are not assigned authority; and subsequently have limited decision-making powers. In traditional or hierarchic societies the allocation of land

rights is largely vested in men; who are widely regarded as household heads and breadwinners. Women are regarded in their capacity as daughters, wives, mothers and sisters; who have ambiguous and dependent rights to land which are derived from their relationships with kinsmen (Agarwal 1994).

According to Bernstein (2002) inter and intra-household social relations govern access to land and resources. Women's contributions to the subsistence enterprise are often considered by men as secondary to their own responsibilities for organising communal production (Grigsby 2004). Secondary land rights leave women vulnerable to uncertainty and insecurity through death, divorce or in some cases abandonment. Their diminished tenure status underlies and reinforces their economic and social insecurity. The literature on women's access to land is filled with examples of these dramatic reductions in rights (see for example Gray and Kevane 1999). With diminishing status women who wish to farm in their own right face enormous difficulties and challenges in accessing land and making decisions about land use (Kleinbooi and Lahiff 2007).

Meer (1997) argues that the conceptualisation of land rights as belonging to a household obscures the position of women in the distribution of power and resources; and insufficient attention is paid to both formal and informal laws, norms and practices that disadvantage women in comparison to men. Ikdahl et al (2005) are of the opinion that gender-biased norms and practices favouring men prevent women's land rights from being effective. In their view tenure policies based on the assumption of a household does not allow equal access to land and protection of women's land rights.

Land remains a critical welfare asset in sustaining the livelihoods of the rural poor. In sub-Saharan African societies women have a strong historical link with land through which they make significant contributions to the rural household. Yet, in considering the fundamental relationship between women in African societies, access to land and the maintenance of the household, Deere and León (2001)

contend that inequities around land are driven by legal, cultural, structural and institutional mechanisms which exclude women from holding substantive land rights, leaving women with limited control over and independent access to land. Particularly in communal areas, access to land is mediated through social relations and practices which provide, claim, and plan the use of land. Within this form of kinship land tenure, the bundle of rights which comprises women's land tenure status is differential and significantly smaller than that of men. Their land rights are also often weaker and less acknowledged under "cultural contracts" such as marriage (Van den Berg 1997:245). Jacobs (2002:888) concurs and suggests that where rights are acknowledged and understood along patriarchal lines, women have had difficulty in asserting and exercising independent land rights. Studies in Namaqualand clearly demonstrate that entitlements to land rest with the institution of the household; invariably interpreted as an adult man and his dependents (see for example Lebert 2004, Jacobs 2002). This implies men are viewed as having the dominant and most important social identities and women are less likely to have autonomous land rights or access to land.

Further studies highlight the dynamics around gender-differentiated patterns in the allocation of land, and the recognition of women's land rights. Agarwal (2003) questions whether women themselves are demanding primary land rights and, while she recognises that in some difficult contexts they do, it is also evident that societal attitudes influence the way women's land rights are viewed by themselves and subsequently continually entrenched by men. Cross and Hornby (2002:24) suggest that "gender attitudes" towards land, holds the key for access to land and also define how women are allowed to think about and use land". Women's unwillingness to articulate their demands for independent land rights as a priority means that there remain unexpressed needs, and they are interpreted as unimportant.

The study of women and land reform in Namaqualand remains relatively marginalised in the literature. I hypothesise that in their context women's unclaimed land rights relate not only to customary practices traditionally advantaging men, but also to women's own understanding of their land rights. It is an example, of what

Agarwal (2003:189) describes as, the “lack of a voiced demand” for autonomous land rights. While the wider authority and power relations in society often suppress women’s claims to land rights, I argue that a shift in women’s own understanding of their position in relation to land will encourage their increased demands and claims for land and more explicit expression of their land needs. Older and more recent studies of Namaqualand focus predominantly on the racial inequality of land ownership, and attempted political redress through land reform. Very little research emphasises women’s perceptions of land tenure in communal areas in Namaqualand. A theoretical analysis of women’s identities in relation to land rights is absent from most of the literature on land in this region. Furthermore, within the context of the Transformation of Certain Rural Areas Act (Act 94 of 1998) (TRANCRAA), an on-going process in Namaqualand, it is still not clear what the impact will be on women’s access to land and their existing land rights. Kleinbooi and Lahiff (2007) suggest that the noticeable lack of attention to the position of women within the TRANCRAA land reform process perhaps reflects on their invisibility and their interests within discourses and practices of land reform in Namaqualand today.

1.3 Significance of the Study

A range of arguments has been raised in support of women’s equal access to land and independent land rights (Meer 1997; Agarwal 1994; Walker 2003). Independent land access for woman is highlighted as critical for the increase of women’s power in social, economic, and political relationships. Thus, secured land rights and land access can increase women’s bargaining position in the domestic sphere and provide the opportunity to secure other social and economic rights; while also enhancing food security and nutrition for their families and a degree of economic autonomy (Jacobs 2002). In her well-debated argument Agarwal (1994) suggests that secured land rights increase both efficiency and the welfare of women. This may not fully address the transformation of gendered land relations as Jackson (2003) points out, yet Agarwal’s (1994, 2003) robust arguments remain significant. I consider these arguments by looking at the land reform transformation process in Namaqualand, which holds the potential to contribute to changing women’s social

power in relation to land. The thesis may contribute to policy thinking, in particular in relation to women's and men's access to communal land in the former coloured rural reserves. In these areas land remains an important safety net against the risks of rural poverty.

This study analyses the nature of women's land rights in a context of communal land tenure where land scarcity, changing livelihood strategies as well as entrenched social norms and institutions increasingly deepen a struggle for land; primarily between men, which further marginalises women. The study continues to examine the views of women on how land rights should be held in Namaqualand. It then seeks to provide a better understanding of how perceptions shape the realisation of such rights in practice, how they continue to leave women's land rights undervalued, and how, where these are recognised, they often are misunderstood. These are key issues in policy which are rarely considered or addressed. Meer (1997) argues that changes in law may do little for women's ability to claim rights if they are not accompanied by changes in attitude. I hope this study will raise awareness of how underlying perceptions influence women's land rights and how they manifest in articulated – or unarticulated – land needs. I highlight research findings that could contribute to the debate on women's land rights and inform the tenure reform policy process in Namaqualand, specifically the implementation of TRANCRAA.

1.4 Research Methodology

Both primary and secondary sources of data were utilized in the study. Data on the views, perceptions and attitudes of women in relation to land rights in the communal areas of Namaqualand were collected using a thematic approach. These themes were constructs and were identified ahead of the initial interviews, but shifted during and after data collection as recorded interviews were analysed. The five key themes on which this dissertation is based are:

- a) The nature of land rights
- b) Involvement in farming

- c) Land use and livelihoods
- d) Awareness of recent land reform processes
- e) Land aspirations for the future.

The thesis is essentially a qualitative study. Qualitative research is deemed appropriate in order to understand personal views, attitudes and perceptions. The flexible nature of qualitative research allows it to develop in-depth insights into what women believe, whereas research of a quantitative nature provides the breadth of a theory, it does not often permit depth (Babbie and Mouton 2001). The main source of data was a series of in-depth interviews conducted with women from various rural areas in Namaqualand. These included the municipal areas of Concordia, Leliefontein, (including Kharkams, Rooifontein and Spoegrivier), Kommagas, Steinkopf and the Richtersveld (Lekkersing, Khuboes, Eksteenfontein). Two focus group discussions were conducted to further examine themes and to complement the individual interviews. The research also draws on insights gained from participation in and observation of relevant household and community processes.

The primary data were gathered through semi-structured interviews with sixty-five (65) female respondents. One day was set aside to visit the various research areas and a small number of women were informally met and informal conversations on women's access to land were held which assisted in identifying women that could be interviewed. Respondents were selected on the basis of their willingness to participate. During the interview process further recommendations of possible respondents were identified from those already interviewed and through the informal network of rural women that exists in the various towns. These women were all involved in community interventions by Surplus People Project as part of their land reform programme in the Northern Cape. I conducted face-to-face interviews with women with an interest in land, and the respondents included both women who have access to land and those who do not. Interviews were conducted at the homes where women were residing and lasted between one to one and a half hours each. Two focus group discussions were conducted with groups of five women each.

These groups were selected on the basis of marital status. One group comprised single women and the other married women, and both groups included women whose ages varied between 18 to over 61 years of age. The variation in ages proved to be problematic as views expressed were so diverse that I, in illustration of findings, selected individual responses from the focus group discussions.

Additionally, some of the impediments or difficulties in the available data is the result of drawing on existing research from a research cooperation between the Institute of Poverty, Land and Agrarian Studies (PLAAS) at the University of Western Cape, and the Department of International Environment and Development Studies (Noragric) at the Norwegian University of Life Sciences in Oslo, Norway in which I was a principal researcher. The cooperation focused on the dynamics of poverty and land reform in Namaqualand. The research project was launched in 2004 and finished in 2007.

The profile of the interviewed respondents¹ was as follows:

Table 1: Age of Respondents by Location

	Steinkopf	Concordia	Komaggas	Leliefontein	Richtersveld	Total
18-30 yrs	2	2	1	2	-	7
31-40 yrs	1	1	1	1	1	5
41-50 yrs	2	3	2	3	2	12
51-60 yrs	2	2	2	2	2	10
61 yrs or older	-	1	2	1	1	5
Total	7	9	8	9	6	39

(n=*39)

Table 2: Marital Status of Respondents by Location

	Steinkopf	Concordia	Komaggas	Leliefontein	Richtersveld	Total
Single, no children	1	-	-	2	-	3
Single with children	2	1	2	2	1	8
Married, no children	-	2	1	1	2	6

¹ *Information collected was not available for all the respondents in relation to age and marital status. Due to the semi- structured nature of the interviews which often started on an informal note, complete demographic data (for example age, marital status and occupation) was not collected during all the interviews. This explains the variation in available data in the demographic tables

Married, with children	3	5	4	4	3	19
Divorced / separated	-	-	-	-	-	0
Widowed	-	1	2	1	1	5
Total	6	9	9	12	7	43

(n=*43)

All interviews were conducted in Afrikaans, tape-recorded, transcribed and translated into English. The data was interpreted using a range of descriptive techniques for the analysis of qualitative data, including selection of key themes and coding of verbatim quotes (Silverman 1993; Neuman 2000). Finally, the following questions framed the research (see Appendix 1 for the semi structured interview schedule):

- How do women in Namaqualand view the nature and strength of their land rights?
- What is women’s experience of asserting and claiming their rights to land?
- How does the nature of land rights and their views impact on how women access land?
- In what ways do women make use of land as a livelihood asset?
- How do women understand Transformation of Certain Rural Areas Act No. 94 of 1998 (TRANCRAA) and its impact on their access to land?

1.5 Objectives of the Study and Research Questions

This study sets out to describe women’s experiences which influences their perceptions of and attitudes towards land rights in the communal lands of Namaqualand and to assess contemporary “customs” – acknowledged or unrecognised – and practices surrounding land rights. It explores how women demand, assert or realise their land rights. The objectives of this study are to explore women’s understanding of the nature of their rights to land; their experiences in securing tenure and asserting land rights; and to explain how their perceptions of

land rights have shaped access to land for farming activities in the rural areas of Namaqualand (see Appendix 1).

The scope of the study is limited to these areas of investigation:

- a) The nature of women's land rights in the communal areas of Namaqualand
- b) The formal and informal "rules" around women's land rights
- c) Women's practices of asserting or realising land rights
- d) Challenges and opportunities that women experience in claiming their land rights
- e) The views and understandings of women in relation to land use and its contribution to livelihoods
- f) How women understand the impact of current land reform policies on their access to land

The study portrays subject matter that is located in a very specific part of South Africa and may not offer an original topic, yet Namaqualand's position, evolution and specific dynamics make this an interesting place of study and it presents nuanced insights and additions to the subject of gendered land rights in areas of communal tenure.

1.6 An Overview of the Thesis

Chapter One provides the background and context and explains the topic and key concepts of the study. I address the significance and the limitations of the study conducted in Namaqualand.

Chapter Two explores the theoretical considerations of tenure reform and women's land rights and highlights the key international debates.

Chapter Three reviews the history of land tenure in Namaqualand and provides the social context of the former coloured rural areas of Namaqualand. The chapter further considers the policy context and the policy evolution in post-apartheid land reform in South Africa. The analysis includes how Namaqualand fits into the broader policy framework and how it differs in important ways.

Chapter Four addresses gender, agriculture and land-based livelihoods in Namaqualand. This chapter gives accounts of women's participation in farming and their contributions to land based livelihoods, including through livestock production, crop production and natural resource harvesting.

Chapter Five discusses the key findings of the study and presents an overview of factors that affect women's access to and control over land. The analysis of these aspects is based on women's own perceptions and understandings of their land rights. The chapter concludes with an overview of the policy framework in which land reform operates in Namaqualand and assesses how gender and women's land rights are addressed in the policy transformation process in Namaqualand.

As a conclusion, Chapter Six summarises key insights from the research in relations to the key research questions listed above. The chapter reflects on recent policy developments and the transformation process that aims to address governance of the communal areas in Namaqualand. Shortcomings and contradictions in current policy frameworks that constrain achievement or that diverge from the state's aims of ensuring greater achievement of tenure security for women are briefly addressed. Finally, a few recommendations for reformulating the policy and practice of tenure reform in Namaqualand are offered.

1.7 Limitations of the Study

The focus of this study was to examine the actual situation and experiences of the small group of women towards land in Namaqualand and how these experiences

shape their perceptions of women's land rights. The desire to reflect how women identified themselves in a changing land rights process was a central goal. I have omitted comparative considerations of the views and perceptions of men. A primary bias towards women means that the analysis may be one-sided and skewed yet it remains a valid decision to interview women about their own experiences, attitudes and perceptions. I consciously limited my study to women's differences, both their differences from men and their differences from each-other to understand the inherent beliefs inherited from customs and practices in Namaqualand. Some teaching was drawn from the feminist standpoint, theory which posits feminism and attention to women as a way of conceptualising from the vantage point of women's lives to deepen understanding women's issues (Hennessy 1993). I therefore heavily relied on women's individual responses, and their responses from the focus group discussions.

During the research process I relied heavily on the non-governmental organisation, Surplus People Project (SPP)² in Springbok, for information, in order to understand the Namaqualand land struggle and their facilitation of access to the rural towns. This organisation has a history of supporting communities in Namaqualand through facilitating community participation in land reform and management processes. They have also been instrumental in the mobilisation of communities in the area which resulted in the transfer of 400,000 hectares of land to the rural towns. The organisation has also contributed towards the improvement of the socio-economic conditions of men and women in Namaqualand since its inception. As an organisation advocating for transformation of rural areas in Namaqualand, their experiences of engagements with the communal communities, views of the policy processes and their understanding and opinions of the community process in respect of TRANCRAA may have influenced and shaped my own interpretation of these communities and may have biased my own observations of Namaqualand women.

² Surplus People Project is a non-governmental organisation which is historically instrumental in advocating for land rights for the poor.

Thirdly, the land reform and transformation process in Namaqualand has not been completed as of yet and the assessment of its gender impacts is necessarily tentative. No interviews with policy makers were conducted and information on the policy process was obtained mainly from SPP, local municipalities and secondary sources.

Fourthly, as a female and Afrikaans-speaking researcher who has personal experience living in a rural community, I assumed I had a fair chance of “blending” in with the respondents in my study. However, coming from different socio-economic standings influenced the women’s association with me as a researcher. For instance, I entered the field as a resourced person whereas most rural women from Namaqualand are unlikely to get access to similar resources. As a result class differentiation was evident and I was probably viewed as someone “important”, and possibly as someone relatively privileged with power similar to their male partners and kin. This may have hampered the way in which they conveyed their stories to me.

I on the other hand was influenced by the “unspoken tradition” with regard to “respect of elders” common in rural communities which I remember vividly from my own childhood experience. Older people are meant to be treated with respect, particularly in the way they are addressed. However, this appeared to have been reversed in my fieldwork and elderly women treated me with the “higher” level of respect generally assigned to older people and men in particular. I suspect this mirrors their views of entrenched class and gender hierarchies and the “chiefly” status of men. While I felt the women I interviewed generally spoke openly about their views and their experiences, this may have influenced their responses in relation to issues of power.

2. CHAPTER TWO: THEORETICAL CONSIDERATIONS: COMMUNAL TENURE, LAND REFORM AND WOMEN'S LAND RIGHTS

2.1 Introduction

This chapter reviews theories of land tenure, with a particular focus on the land rights of women and how land rights differ between different tenure systems. The chapter presents an exposition of land tenure regimes from post to pre-colonial era's globally and in wider Africa, discussing general concepts and approaches which include the notably diverse and complex nature and characteristics of communal tenure as well as the emerging debates of the flexibility of contemporary systems of communal land tenure. The chapter also considers addressing land rights; the entrenched patriarchy reflected in rural land tenure systems; and the highly gendered nature of these land rights. I subsequently narrow it down to systems of communal tenure in South Africa. The introductory section defines and analyses the main concepts used in this thesis, "communal tenure" and "land rights". The chapter theoretically augments the considerations of the ways in which women assert access to land and make land-based livelihood decisions in the communal areas of Namaqualand.

In the context of this thesis, "communal tenure" refers to a system of collective land holdings by group members who constitute a community – non-members being excluded from accessing and using the land. Cousins (2000:152) defines communal tenure as a degree of community control over allocation of land and landholding. As such, communal tenure defines who qualifies as part of the group and thereby has rights to access and use land and other shared resources used by the group – i.e. the commons. While the allocation of residential and arable land provides strong rights for individuals or families, outsiders can be excluded. Usufruct rights are allocated to member individuals or households. This usually involves the allocation of long-term rights for individuals or households to use land, and may include

inheritance rights, but this does not necessarily imply that land can be sold; often the community retains the right to reallocate landholdings among its members (Bruce 1998:3).

In this thesis I take land rights to mean: legally and socially recognised claims to land, enforceable by a community or the state, with provision of limited freedoms to transfer between parties in the form of leasing, bequeathal, and inheritance (Agarwal 1994:19; see also Deere and León 2001). Ownership or usufruct rights enable enforcement of land boundaries and the adjudication of disputes around land rights and boundaries (FAO 2002). Bruce (1993a) is of the opinion that the way tenure is governed is a major influence on how people hold rights to land. Yet, this is never straightforward and the complexity of land rights in customary tenure systems has been discussed at length in the academic literature (see Whitehead 2003, Toulmin and Quan 2000, Okoth-Ogendo 1998). Additionally, the question of independent land rights for women in land tenure systems where land is held communally has been widely debated in the literature.

This chapter considers variety of concepts and theories used to understand communal land tenure, how it is constructed, perceived and used in practice and what the outcomes of gender ambiguity and social norms are for women's land rights. I will assess women's rights to land within communal tenure and will then develop a perspective on how the ways in which land is held and used in practice shapes and translates into gendered perceptions of land. These perceptions reproduce asymmetrical and unequal land relations between men and women.

2.2 Land Tenure Systems

Land is a fundamental component of rural property relationships, and access to land remains vital within rural communities. In many developing countries where land is a primary livelihood asset it is held communally. In Africa land tenure for large parts of the population has always been firmly based on a communal regime,

governed by traditional customs and practices. Feder and Feeny (1991:136) suggest it is important to place rights in the overall context of the institutional structure and arrangement of society – both formal procedures and social custom. They also emphasise Hallowell's (1943) description of property:

...as a social institution [implying] a system of relations between individuals... It involves rights, duties, powers, privileges, forbearance, etc., of certain kinds. Property rights are then a bundle of characteristics: exclusivity, inheritability, transferability, and enforcement mechanisms. Thus property rights define the uses which are legitimately viewed as exclusive and who has these exclusive rights. Uses of land may include hunting, passage, gathering, grazing, cultivation, the mining of minerals, the use of trees, and even the right to destroy the resources.

The literature often describes land tenure as a social relationship which governs the rights of individuals or groups to land; be it in terms of access, withdrawal, management, exclusion and/or alienation (Ostrom and Schlager 1996:130-131). In customary systems, access to land and resources is an integral part of social relationships. In other words social relationships manifest in certain relations around land. These relations are not straightforward and may be – and in most cases under customary tenure are – very ambiguous. Peters (2004:287) states that land relations are “embedded in social, cultural and political relations” and argues they are underpinned by, amongst others, relations of class and gender inequality. Land tenure systems therefore must be understood in relation to the linkage between land use and the kinds of rights attached to land; and the social, cultural and politico-ideological systems which either produce or influence them (Grigsby 2004:208). Cross and Friedman (1997) put forward that because of tenure's base in unspoken social assumptions:

Tenure is best understood as a social and political process rather than as a system of laws or rules. A large part of the content of tenurial systems is determined by the values of the community, by prevailing power relations and by unspoken assumptions about how people ought to act, and so never needs to be stated in the form of official rules (Cross and Friedman 1997:17).

The right to exclude others from using land or resources and the ability to legally prevent loss or arbitrary eviction constitute tenure security (Bruce 1998). One form of secured tenure is through title, a legal instrument (Smith, 2003:213). Place et al.'s (1994:20) identify three components that define tenure security as; the breadth, or how it is composed; the duration, or legal length of time; and assurance rights, which entail the certainty and enforceability of these rights. Lund (2000:6) further explains that the degree of tenure security depends on the substance of these rights. He holds that 'the weakest right is considered to be simple use right; shared use rights being weaker than exclusive use rights; and temporary and short-term use rights being weaker than long-term or permanent use rights' (Lund 2000:6). Land tenure systems are also not static but undergo continual processes of change. Cotula (2007:103) suggests customary systems are continually reinterpreted and readapted to fit changing economic, social, political, cultural and environmental contexts – primarily by those who hold the power within the system. Yet what has remained constant is the tension between the dominance of the collective land rights of indigenous communities and guaranteeing stronger individual rights to women.

2.3 “Customary” and “Communal” Land Tenure

The various forms of land tenure include private or freehold land, leased land or common – communal – property, particularly grazing land (Bruce 1998). In the literature the term “communal” tenure tends to be used interchangeably with “customary” and “traditional” tenure [(Walker (2004:5), cited in Cousins (2009:2). Grigsby (2004:202)] points out that specific rights may be held by individuals, households, descent groups, or even entire communities; his view is that the “social scope” of usufruct may differ with land use, seasons, or fallow cycles.

According to Ostrom et al (2002) and Hardin (1968) in his *Tragedy of the Commons*, confuses the concept of the commons with “open access” situations, where no rules and regulations apply, implying a form of tenure where there is no exclusivity or defined rights assigned to users [(see also Ciriacy-Wantrup and Bishop 1975) and Thompson (1975)]. Hence Hardin postulates that no criteria exists that

can limit access and as such it is regarded as a resource that is open and accessible to all. In contrast to this loosely ordered open access regime, common property is now widely defined as having shared use and access by community members of common-pool resources (Otsuka and Place, 2001:12). Similarly, McKean and Ostrom's (1995:5) characterisation concurs that in a common property regime, resource users in the group have a guaranteed share in rights and duties towards a resource. In order to administer these rights institutional mechanisms exist to communally enforce rights. Hence, these collective rights are governed by collective regulations, decision-making and management (Ostrom 2000).

While there is no consensus amongst scholars on many of these issues, both Cousins (2000) and Okoth-Ogendo (2002) are of the opinion that communal tenure needs to be located conceptually as a distinct property rights regime if it is to be properly understood. Feder and Noronha (1987) suggest that customary tenure rights to property are neither clearly defined nor consistently enforced. Hence Cousins (2000) and Okoth-Ogendo (2002) argue that communal and shared individual ownership are often confused, and posit that the concept "communal" actually refers to restricted access, including who is permitted into a group and who therefore has access to use shared resources or land. Similarly the FAO (2002:44) suggests the community exercise controls over the use of the common-pool resources and have the right to exclude non-members from using it. Okoth-Ogendo (2002:10) further suggests that the commons form of tenure is resilient and carried through from the "past to the future" within the structural parameters of a social hierarchy consisting of the family and community. Hence the commons provide controlled, not open, access (Ostrom 1998; Adams et al in Toulmin and Quan 2000). There are commonalities between communal tenure and common property as concepts. Land is allocated by the community and those recognised receive long-term land rights (Bruce 1989; Feder and Feeny 1991). Land is held jointly and rights are divided between households in the community. The multiplicity of collective and individual rights tends to foster the development of hierarchies among different users; and social customs and attitudes concerning the legitimacy and recognition of those rights often reflect unbalanced dynamics of access. In contemporary Africa,

rural land holding is mainly characterised by local level forms of land management arrangements based on custom (Lavigne-Delville 1999).

2.3.1 Pre-colonial Land Tenure Systems

The pre-colonial land tenure system in Africa can be described as communal tenure; the notion of absolute ownership was unknown and land was vested in groups that constituted a community (Rihoy, 1998 cited in Ravnaas 2005:6). Cousins (2007:282, 2005) describes these systems as dynamic, flexible and adjustable to social change and local conditions, mainly because land was in abundance. Under the colonial construct of land in customary tenure, the rights, claims and authority over land were altered through the allocation of exclusive and permanent individual rights, which also became narrowly interpreted and described as “communal tenure” and became embedded in African rural societies both by affected communities and post-colonial governance regimes (Peters 2004).

A much nuanced analysis of customary tenure is provided by Whitehead and Tsikata (2003). They discuss recent views of anthropologists and historians who argue that the framework for Africa’s communal tenurial systems is as much based in colonial policies as it is in the nature of indigenous land holding. Both Chanock and Basset (cited in Whitehead and Tsikata 2003:70) are of the opinion that the evolution of Africa’s land tenure was shaped by colonialism. Chanock emphasises that the categorisation of indigenous land holding defined as “communal ownership”, was distinct from a more developed land tenure based on the notion of individual ownership. Basset (1993) focused on the argument that the very nature of communal land tenure was utilised by colonial rulers to alienate and gain control over indigenous land by imposing Western categories onto African land holding, largely leading to displacement of rural communities. Until the 1930s it was a colonial objective to maintain Africans’ “communal ownership” until it became an obstacle to growth and agricultural development (Basset, cited in Whitehead and Tsikata 2003:71).

2.3.2 Post-colonial land tenure systems

Key debates arose in response to Platteau's formulation and critique of a post-colonial, modernised, "evolutionary theory of land tenure" (Whitehead and Tsikata 2003:71). This theory emphasised the natural evolution of tenure systems towards individualisation and demand for privatisation and suggested that the state should promote land titling (Platteau, 1996, 2000, in Toulmin and Quan 2000:52). In this view, titling provides tenure security and incentives to invest in land; leads to increases in production; and creates a market in land (Platteau, cited in Cousins and Sjaastad 2008: 2; see also Yngstrom 2002:22).

Counter to this school of thinking, emerging perspectives increasingly recognise that titling has not improved the efficiency of production systems in sub-Saharan Africa. Many analysts now regard land titling as an ineffective and counter-productive system (see e.g. Atwood 1990; Bruce and Migot-Adholla 1994; Platteau 1996; Deininger & Binswanger 1999; Toulmin, and Quan, Yngstrom 2002). However, according to Yngstrom (2002:22) landholding systems are evolving spontaneously as market integration progresses, even in the absence of state intervention in the protection of private land rights. The assumption is that claims on land, based on kinship, will eventually be substituted with private claims. The wider impact of formalisation of land on women's land access remains a concern (Ik Dahl, et al 2005, Meer 1997, Agarwal 1994, Davison 1987). In agreement Yngstrom (2002) reiterates these concerns, in her observation that:

The decisions driving the evolution of landholding systems are taken by men as heads of idealized "households". Women exist only as the wives of household heads; their actions are considered secondary or unimportant to the changes that landholding systems undergo. [G]ender is central to understanding the organisation and transformation of landholding on the continent, shaping women's differential experience of tenure insecurity. Evolutionary models and the policies they generate render women's land claims and the forms of tenure insecurity that they face, invisible (Yngstrom 2002:22).

Despite efforts to adjust local practices and customary forms of land holding, these continue to exist alongside the statutory system, with the relationship between statutory and customary administration becoming more and more complicated (Berry 1997). In a wider overview of the resilience of communal tenure, Whitehead and Tsikata (2003) suggest that the colonial creation of communal tenure, including the recognition of hierarchical interest in land and the creation of authoritarian chiefly powers, were largely sustained under post-colonial states (see also Okoth-Ogendo 1989; Yngstrom 1999).

In contemporary South Africa the legacy of apartheid continues to complicate communal tenure (Cousins and Claassens 2005). The fundamental feature of communal tenure in this context is that it provides access to and use of land owned by those who identify themselves as a collective community. However, whether every individual in the group is entitled to hold rights to land equally is called into question – particularly in the case of women. As in many African societies, under communal tenure men gain access to land through their lineage, while women's land rights are of a secondary nature acquired through their husbands and male relatives. Bruce (1998) argues that many stereotypes of communal tenure assume homogeneity within a community, and do not acknowledge that ownership or the rights to use land are not uniformly distributed.

2.4 The Complexities of Communal and “Customary” Land Rights

The debate in the literature about communal land rights presents many divergent arguments. The premise I will adopt in this thesis is that central to communal land rights is a lack of legal ownership, but these systems do allow claims to certain entitlements. The notion of ownership is often misconstrued. Communities often consider themselves to be the “owners” of such lands yet they have no formal rights to do so. Cousins (2000) argues that complex *de jure* and *de facto* rights are combined, but land is legally owned by the state, although secondary long-term rights apply to occupants. Similarly, Kingston (2005:19) points out that those communal rights constitute “a guarantee” that is allocated by a collective authority.

These rights to enter upon and use the land are therefore not exclusive rights but usufruct, heritable rights (Drimie 2000). These rights are multiply varied and commonly referred to as a bundle of rights. This bundle can include; use rights, such as grazing, planting crops and gathering natural resources; control rights, such as decision-making on the uses of land; rights to transfer or pass land on to others, including the reallocation of use and control rights to others in the household, family or community; rights to exclude others from use of land; and powers to restrict control or transfer to outsiders (adopted from Cousins 2000; FAO 2003).

Okoth-Ogendo (1989:11) suggests that these rights are vested in a given collective society in both the household and the community and sanction a measure of power to permanent members in such a collective society that can be utilised over a range of functions – i.e. ‘access’ to cultivation and grazing (see also Ostrom and Schlager 1996). He further argues that control focuses on the enforcement of rights; the regulation of land and resource use; allocation of access – e.g. across generations; and arbitration of disputes over land. Yet, Sara Berry (1993) in her analysis of communal or collective land relations, points out that the rights and obligations to access and use resources are defined by various relations – i.e. kin, the community and those that fall outside the communal constituency – which socially provides the necessary legitimacy and a sense of belonging in a community where access has been allocated. Inversely, it could also reflect local relations of power, and exclusion. Cousins (2007) suggests the struggles over land in tenure regimes need an understanding of the scope of the power relations and authority at work and how they impact on access to resources.

Deere and León’s (2001) pioneering argument – amplified by Agarwal’s (1994) – contends that there is a difference between rights and access and the kind of security it provides. Rights, they suggest, represent “freedoms” which are important elements underlying effective control and guaranteed access, yet “access does not only include land rights but also informal means of obtaining land”. The measure of security categorically increases with rights but not necessarily with land

access. Hence, in communal tenure regimes access to land is distinct from control of land.

Debates around the definition of customary systems have shifted in recent decades to reflect the flexibility and adaptability of communal tenure regimes (Whitehead and Tsikata 2001:15 and Walker 2002:40). Analysts largely concur that the character of contemporary rural societies and communal areas in particular, is in constant change, and acknowledge that institutions are complex, indeterminate and dynamic representations of constantly evolving and adapting societal practices, strategies and choices. According to Walker (2002) this flexibility is inherent in these systems. This view is echoed by Cotula and Toulmin (2007:105-107) who state that, “the adaptive character of customary system is nothing new... [and] such systems have always been reinterpreted to fit changing circumstances”. Ostrom (1990) acknowledges the notion of informality and suggests when the need arises “working rules” are developed, enforced and operated in their own terms by communities, even if they do not comply with the centrally determined, traditional rules and laws of such a community. Cousins also points to an earlier observation by Leach et al (1997:94) whose perspective begins to clarify the institutional interactions as well as the dynamics of rules, practices and the relationships between them, which mediate access to and use of natural resources. Cousins (2000:165) specifically highlights their emphasis on the contestations and undefined nature of institutional orders which is entrenched in unequal and dynamic social relations.

These dynamics and contestations are a product of the co-existence of formal and informal institutions within common property regimes, hence creating a conflicting and often competing body of rule-orders. Bentzon et al, (1998:34-9, referenced in Ikhdal 2005:4) argue that the dichotomy of the modern versus customary realm created new norms as a result of reciprocal influence between the written general law; state-sanctioned customary law; and people’s local practices”.

Claassens (no date)³ (see also Mnisi 2011, Bennet 2008) refers to such changeability as the “living customary law”. What is at issue here is how the interpretation of this flexibility is accommodated in leveraging opportunities for securing women’s land rights.

Much has been written about the gendered nature of customary land rights and land access, but increasingly the analysis of gender is informed by debates about what constitutes ‘customary law’, and how inherent ambiguity manifests in limitations of formulated laws in practice (Nyamu-Musembi 2002, Okoth-Ogendo 2002). More often than not, however, women do not benefit much from tenure reform even where women have patchy rights to some land for cultivation. Claassens and Ngubane (2008:176), however, argue that as a result of women’s agency, – shaped within existing cultural institutions - they are able to challenge customary law by altering their own practices and asserting their right to equality. Following from this, Claassens and Mnisi (2009:499) posit that more recently, “the changing content of land rights and custom is intimately linked to which voices are permitted to engage in their contestation and further suggests that struggles over the content of land rights are inextricably linked with struggles to be part of the process of their definition”. They augment their statement with their discussion of the “Bhe and Others v Magistrate, Khayelitsha and Others; Shibi v Sithole and Others judgment” which asserts that what has become known as official customary law is a distortion of the true customary law. It holds that “[t]rue customary law will be that which recognises and acknowledges the changes which continually take place” (Claassens and Mnisi, 2009: 494).

These shifts – where women under traditional tenure are able to widen the scope for land allocations and land access – are increasingly acknowledged in the literature. One of the key controversies, however, is over how these customary shifts can be articulated in statutory law. Claassens (2008) points out that a fundamental

³ <http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/7391/457.pdf?sequence=1>

shortcoming of tenure reform is the recognition of the significance of locally negotiated changes which integrate wider social values such as equality, dignity, and equal citizenship. My research in Namaqualand is supportive of this argument: women's agency in advocating for and claiming rights is reconstructing "traditional" practices and opening up spaces for rural women to increasingly leverage the little power they possess; demand access to land; and assert their land rights. These practices, albeit limited in scope, are slowly being accepted socially as the norm.

2.5 The Socially Embedded Nature of Communal Tenure

Existing communal tenure has been shaped and influenced by a variety of social, political and policy processes. Evidently, all attempts to replace the customary systems with statutory frameworks have manifested in conflicts and challenges, and have seen in response a reinforcement of "customary" practices and claims to land on the local level. According to Okoth-Ogendo (1989:2002) the resilience of indigenous norms is inherent in customary tenure systems, hence their persistence despite statutory tenure reform. This notion of social embeddedness is extensively discussed and contested in scholarly debates (see Cousins 2007 and Cousins and Claassens 2006). Hence, Razavi (2003) convincingly argues that there is a fundamental difference between women's and men's claims to land and that these gendered claims in tenure relations are embedded socially. She suggests a central role for the state in regulating both the market and the customary. Cousins (2007) submits that a necessary approach for resolving competing land claims and land administration is to legitimise current and practised social occupation and use rights, through providing statutory and effective institutional frameworks.

In an issue paper for the International Land Coalition in respect of the gendered nature of land rights Lastarria-Cornhiel (2006:10) emphasises:

The embeddedness of land rights in gendered social relations, and the primacy of land rights in society's array of human rights, dictate that gender relations in general and land rights in particular need to be addressed simultaneously. If local norms and practices deny daughters and women

direct rights to land, women will understandably be reluctant to insist on formal legal rights that are gender equal. A daughter will not press for her inheritance rights, for example, in order to keep the good will of her brothers. She does not know when she will need his support or protection if she is living in a society where women are vulnerable and have secondary status, and where the social safety net is gendered (i.e. dependent on men's disposition to extend protection).

Understandably then, theoretical discourses on women's land rights focus on these considerable problems in achieving gender justice and the promotion of more secured land access to rural women. According to Mokgope (2000) the right to land is a fundamental issue, yet, in a customary context, equal legal rights do not absolutely guarantee access. Agarwal (1994) further elaborates that these rights do not guarantee control either, since these rights – irrespective of being real – might not be socially or culturally recognised. She asserts women are not a homogeneous social group, but are differentiated according to class; age; household composition – e.g. whether male or female headed; relation to land – e.g. tenants or land owners; applicable personal law – e.g. on religious belonging; marriage order – where polygamy is practised; belonging to an indigenous community; etc. Women, as was prominently observed in Kenya's formalisation process, were considerably affected. Men, as household heads, were increasingly favoured by formalisation and could further strengthen their holding of land; while women's customary claims to use land – as mothers, wives or daughters – were increasingly not recognised (Mackenzie in Gray and Kevane 1999; see also (Platteau 1996; Golan 1994; World Bank cited in Yngstrom 2002).

Poor women in particular are important beneficiaries of access created via common property arrangements. Independent and effective land rights for women have been identified by researchers and policy makers as vitally important for family welfare, food security, gender equality, empowerment, economic efficiency and poverty alleviation (Agarwal 1994, 2002). Very often however, women have only secondary use rights. For example, a woman may have the right to use land to grow

crops to feed the family, while exclusive decision-making may be held by her husband and she may not get her views heard or satisfy her own land needs.

While such simplifications can be useful, it should be noted that the exact manner in which rights to land are actually distributed and enjoyed can be very complex. Unequal rights of control of land adversely affect women and marginalise them in relation to economic well-being, social status and empowerment. There is a need to unpack wider socio-cultural attitudes to land and embody principles that address land rights from a gender perspective to (a) provide women more substantive rights to land and (b) improve women's access to land to enable them to derive independent economic benefits from land.

2.6 Gendered Land Tenure, Rights and Access to Land

Women are differentially and less favourably placed in relation to land than men (Marcus, 1991:26).

Gender disparities in land access remain significant around the world. Gender inequalities in land rights are pervasive. Not only do women have lower access to land than men. They are often also restricted to so-called secondary land rights, meaning that they hold these rights through male family members. (FAO, 2010:1)

Whitehead and Tsikata (2003) maintain that in the last century the pressure on land in Africa shifted from relative land abundance to relative land scarcity. Peters (2004) concurs and states that land in Africa is not as plentiful as widely assumed and the landless are steadily increasing. Peters (2004) therefore draws attention to the need for more analyses of processes of exclusion and deepening social division brought on by the competition and conflict over land in sub-Saharan Africa. This resonates with Whitehead and Tsikata's (2003) argument that land tenure of a customary nature is predicated upon local-level rural power relations that operate against the interests of women, and hence, gender justice in land rights. One presumes that, in this context of land scarcity, conflicts over land presumably

increase and intensify neglect of women's land rights (Peters 2004). She further emphasises that analytical debates should be placed in the context of broader political, economic and social change that has emerged.

The question of who benefits and who loses hence becomes more significant in the intensifying conflict over land and what Peters (2004) conceptualises as the subsequent limited negotiability for certain social groups and categories – particularly women – in land access in customary systems of land holding and land use. Hence, the on-going concentration of men's power over land access, in what Jackson (2003) refers to as the consolidation of the male identity through a reconfiguration of their position to land. Jackson (2003:464) cites a significant observation by Yngstrom (1999:262) that:

...the male identity has become increasingly more significant as a channel to access land through lineage and gender identity for women has increasingly become more significant to exclude women from inheriting lineage land.

Agarwal (2003) argues that women are able to find spaces in patriarchal land systems to benefit their land access and rights. However, Jackson (2003:456-457) critiques and contests what she regards as Agarwal's (2003) minimalist conception that gendering land rights for women can have a transformative nature. In counter response Agarwal (2003:573) insists that – independent – land rights in themselves will not bring about social change, but “effective” land rights signify “actual” instead of only “nominal” control over land.

A widely debated aspect criticized for weakening women's land access is the “head of the household” argument, a concept which subsumes or excludes women from holding – independent – land rights, despite greater dependence on women to assist household subsistence farming while men increasingly engage in non-farm livelihoods (Deere and León 2001; see also Agarwal 1984). In many communal areas men are traditionally deemed as household heads, and women's access to

land is linked and dependent on their male relatives, reinforcing the fact that women's access to land is a product of circumstance rather than a matter of course. Colonial integration of customary law reshaped tenure systems and purposely promoted the rights of male heads of households, while rights of both single and married women were downgraded (Delius 2008). Deere and León (2001) argue additionally that gender inequality in land tenure is not only attributed to the family but to the community, state and market. This is translated in male prejudice in inheritance practices, adjudication by the state and bias in state programmes of land redistribution and gender inequality in the market. Addressing this legacy of gender inequalities remains a major challenge.

2.7 Patriarchy and Communal Tenure

A contested issue – in contemporary policy discourse on women's land rights in sub-Saharan Africa – is the capacity of communal systems of land tenure to secure women's land rights through evolution and whether state-law intervention is necessary (Kameri-Mbote and Mubuu 2004; Whitehead and Tsikata 2003). The gendered position of women in differing economic, social and political contexts requires an examination of the attitudes of women (Griffiths 2006). Peters (cited in Ikdahl et al 2007) has, in reference to a wide range of empirical studies, argued that unequal power relations in terms of class, age and gender have far-reaching implications for the ways in which land rights are negotiated. Affirmatively, systems based on kinship – including communal land tenure regimes – often take on a gendered dimension; impact on communalism; and affect the configuration of rules – often unwritten but entrenched – in communal tenure. For the purposes of this thesis I will focus on the patriarchal paradigm of patrilineal kinship systems to explain how gender is manifest in historical practices and perceptions. In a communal context patriarchy has often been derided as obstructive for women because of inherent insecurity of their land rights and how it translates into weak access to land for women. Namaqualand has characteristics of a patrilineal society as men are regarded as the head of the family.

Peters (1997) argues that in a patrilineal society authority is inherent in men and consequently predominantly privileges men; at a micro level, rural households are characterised by gendered control of household assets. Hence, the dominant prerogative of rights resting with men as heads of household only provide women rights to land via the male lineage and often these secondary rights are weak and limited (Lastarria-Cornhiel 1997; Rocheleau and Edmunds 1997). Women subject to patriarchal norms of this nature have limited control of power over land and other family resources. The lack of power impacts on how rights are allocated and secured and how communal resources are used respectively by women and men. In Namaqualand this system of land holding developed and shaped perceptions of both women – and men – about who holds primary rights to land.

In the history of South Africa – and other countries such as those in South Asia – where rural land rights conflicts exist, these have been understood as taking place between men and analysed in terms of a unitary household (Agarwal 1994). In a traditional or “communal” system local complexities around land have been squarely based on the assumption that the household is a homogeneous unit. However, Agarwal (1997) holds that this supposition – that the household is uniform and coherent, with matching needs, interests and equitably shared benefits among members – is fallacious and in law and practice neutralises the gender aspect and essentially obscures women’s land rights.

Under the colonial administration, legislation was introduced to regulate land and resource use in Africa. According to Ikhdal et al (2005:6) the scope of regulations included expropriation and displacement of local people through “various forms of nationalisation and exclusion, systems of permits and concessions, to the delegation of control to local chiefs who represented the indigenous groups of people” (see also Berry 1993; Chanock 1985; Mamdani 1996; McAuslan 2000; Moore 1986; Okoth-Ogendo 1989).

In contemporary South Africa the legacy of both colonialism and apartheid continues to complicate communal tenure (Cousins & Claassens, 2005). According to Meer (1997) one of the fundamental features of tenure systems in most rural areas of South Africa remains the prejudice against women in the allocation of land and the holding of rights. Women who wish to farm in their own right face numerous challenges, including access to land, social exclusion from traditionally male activities such as commonage committee meetings and the herding of livestock, and difficulties in accessing government grants and commercial loans (Kleinbooi and Lahiff 2007).

Davison (1988:7) situates the position of women in agriculture in terms of broader social and economic relationships, using the concept of gender relations of production, defined as “socioeconomic relations between females and males that are characterized often by differential assignments of labour tasks, control over decision-making, and differential access to and control over the allocation of resources – including land and income”. Davison (1988) continues to allude to the flexibility of customary land rights and stresses the inclusive nature of historical patterns of landholding in Africa; but also the inequalities based on social status and lineage, of which gender is a key element. She observes that:

[W]omen’s access to land is often dependent upon their relationship to men and their marital status. While most women-as-wives had, and still have, access to some land, unmarried women who are prevented from inheriting property in most patrilineal societies, have little access to land. They must depend upon fathers or brothers to provide them with land or seek wage work elsewhere (Davison 1988:19).

Gender inequality is deeply entrenched in South African communal tenure. The 1913 and 1936 Land Acts defined areas along racial lines, resulting in areas delineated as black “reserves”. Under the apartheid regime the racial demarcation led to Bantustans or homelands which fundamentally skewed land holding in South Africa. It is commonly argued that eighty-seven per cent of the land was reserved for occupation by the twenty per cent of white population while the black population

(eighty per cent) were confined to the remaining thirteen per cent. The subsequently skewed and unequal distribution of land remains a defining feature of the apartheid legacy.

Post-apartheid, the democratic government – led by the African National Congress – adopted a land reform blueprint in 1997. This is set out in the White Paper on South African Land Policy (Department of Land Affairs 1997b). This programme consists of three pillars aimed at restoring claims to dispossessed land that was legislated through the 1913 Land Act – restitution – and redistribution of land to landless South Africans. To protect insecure forms of tenure on farms and communal areas, the government embarked on a tenure reform programme.

According to analysts the latter was a hugely complex undertaking, particularly in the former Bantustans where overlapping, insecure and weak land rights prevailed over a protracted period (Cousins 2008; Walker 2002). Walker (2007:138) remarks that:

Redefining this relationship, and determining the most suitable locus of land ownership and what the different possibilities for individuals, households, groups and tribes mean in practice, have been among the most vexing policy challenges the DLA has had to face since 1994.

In the former homelands, chiefly trusteeship under a system of indirect rule was an integral component of land relationships and land was primarily allocated and controlled by chiefs (Cousins 2009b). In contrast, in the former coloured reserves, the mission churches constructed systems of power, which further reinforced male authority over resources both in the household and in society (Archer 1993, Lebert, 2004). Hence, in Namaqualand, communal land tenure relations developed along these lines, and as such men as heads of households were allocated land rights. Both tenure regimes have, however, sustained communal land holding through a system of kinship and hereditary allocation. Land reform in recent years has so far failed adequately to address the gendered nature of access rights to communal land.

A full discussion of the land reform process since 1963 and its impact on Namaqualand appears in Chapter Three.

2.8 Agency and Winds of Change

The research presents a very strong sense of conformity of Namaqualand women's perceptions to traditional views – not uncommon in the understanding of gendered communal land rights. Yet despite the state of affairs in which women in Namaqualand find themselves, it is important to focus on their efforts and attempts in finding alternative ways to assert their land rights; therefore the the concept of agency is important in understanding gradual shifts in women and land in Namaqualand which are both reflected in individual choices and by larger frames of action and meaning as a rural women's collective. Paradza (2010) suggests agency refers to people's capacity to integrate experiences into their strategies and identifying openings for ambitions or solutions to problems. Giddens (1984) treats culture as part of the broader social forces that enable, constrain or inhibit social action. Giddens (1987) recognises similarly that social conditions are reshaped by agency. Though agency decisions and actions are informed, and structures may be challenged, adjusted or transformed (de Haan, 2000). Women who challenge gendered and customary stereotypes push boundaries and shift communities' expectations about gender, customary roles and relations (Paradza 2010).

Agency and challenging action, shifts embedded assumptions about power and may lead to a reconfiguration of how local gender relations are viewed in practice. This study uncovers evidence of shifting gender relations. For example, the study presents findings which suggests even though women do not have independent land rights they are working the land and interacting in the production of land as independent individuals even though these incidences are hardly acknowledged by the women who were interviewed. Hence despite having limited power to challenge the tradition of land allocation and ownership in Namaqualand, certain instances suggests that what the rural women in Namaqualand do belies their action and points to the existence of a growing agency.

2.9 Conclusion

The literature clearly emphasises customary land tenure systems, with their underlying changes and continuities, involving relationships based on power and competing interests. The deeply gendered nature of these interests is clearly evident in the definition of women's land rights as secondary and inferior to those of males. This overall perception in the literature of the dominance of land rights allocated to men leaves a highly unequal distribution of ownership of land resulting in fewer women than men receiving access and cultivation rights. Consequently the dominant view held by analysts in their arguments around the nature of rural land rights reflects the fundamental feature that land rights within communal tenure systems have a discriminatory character against women which is deeply rooted in this type of land holding. The Namaqualand research augments this theory and proves that women fit into the typology of weaker rights relative to that of men and this notion is expressed throughout this thesis.

Evidently, the unequal position of women in social relations has far-reaching implications for the ways in which women are able to leverage and negotiate rights, access, power and control over land (Griffiths 2006). Yet, under customary tenure, women's land rights are considered in relation to her household – predominantly headed by men – hence in the broader community context they are only able to access land without long-term security and with only limited power and control. Tenure reform has been analytically described as a complex undertaking meant to strengthen tenure rights. While some analysts encourage, amongst others things, the formalisation of land rights, tenure reform may reinforce gendered rights; and reform processes may not address the issue effectively. The research highlights that tenure reform in Namaqualand certainly provides stronger tenure rights to communities but fails to address unequal tenure rights between women and men – see further discussion in Chapter Three.

Women are often the primary land users and consequently it is essential that formal recognition is given to women's primary rights that will guarantee independent

access by de-linking rights of ownership and control from their relations with male counterparts and discriminatory cultural contracts and norms. Yet the way land is held and land rights are practised is far more dynamic on a local level than is recognised – or not – in both statutory processes and institutional frameworks. Evidently, the complex and dynamic realities of securing the land rights of women and other vulnerable groups had proven particularly difficult and the challenge theoretically is the expansion and application of more appropriate concepts and theories, which could in turn influence the policy arena and discourse on gendered land rights.

The theoretical considerations assists in outlining the concepts needed to understand the land rights of women and the ways in which gender inequality in relation to control of land made women particularly vulnerable. Despite the descriptions in the literature my research came across examples of women who accessed land through alternative ways, either via invasion, or interestingly through accessing the openings in paternalistic system – where male relatives becomes unemployed and are facing problems that are undermining their traditional roles – and through the formations of women’s groups. It clearly indicates agency, despite deeply embedded notions of tradition in communal land rights. The research identified that the complexity of the distinctions between primary and secondary traditional land rights are far more obscured than it appears to be.

3 CHAPTER THREE: THE SOCIAL AND POLICY CONTEXT: NAMAQUALAND IN HISTORICAL PERSPECTIVE

3.1 A Brief Background on the Origin of the Rural Coloured Reserves of Namaqualand

The Khoikhoi – Hottentots – and the San – Bushmen – were the original inhabitants of Namaqualand. The Nama originates from these earlier indigenous tribes. As indigenous pastoralists they inhabited the area for several centuries before the arrival of the Dutch settlers in the seventeenth century (Carstens 1983). These groupings lived a nomadic lifestyle and occupied and used vast tracts of land as pastoralists and hunter-gatherers. The concept of “ownership” was not defined in terms of individuals. Instead, use of land and water was a general understanding albeit unwritten between the indigenous kinship groups in the area (Davenport and Saunders 2000, Penn 2000, see also Wisborg 2006). While these tribes lived semi-interdependently, Mitchell (2001: 432) discusses earlier evidence of resource conflicts between these tribes. However, with the arrival of the Dutch in Namaqualand, the history of the area was irrevocably altered and their lifestyle and cultures became diluted (Kingston 2000). Legislated dispossession of land later led to the creation of the rural reserves of Namaqualand, but from as early as the early 18th century, the Dutch colonisers had undermined the livelihoods of the indigenous inhabitants of the Cape Colony through encroachment on the vast accessible lands in the area.

Around 1847, after the massive expansion of colonial boundaries, land inhabited by the indigenous groupings increasingly came under pressure due to colonial encroachment. From then on colonial boundaries advanced further into the north-western part of the Cape; threatening the indigenous land-based nomadic, pastoral lifestyles and land rights of the inhabitant population groups (Boonzaier 1980). After colonisation, reserve boundaries remained ill-defined and the occupational rights of the original inhabitants uncertain. According to Surplus People

Project (1995:7-8), increasing settler occupation and land seizures resulted in the formal allocation of land to white settlers in an attempt to secure the border and stabilise the area.

At the beginning of the 1900s, the territorial advantage of the settlers was immense and the land area occupied by the original inhabitants was considerably reduced. Through the proclamation of their settlements as mission stations, a few indigenous groups were able to retain rights to land. This proclamation placed indigenous populations under the administration of the London Missionary Society, the Wesleyan Church and later the German Mission Society (Boonzaier 1980). In recognition of these mission stations – and to assert control – the government of the Cape Colony formally granted indigenous populations access to settlements through “tickets of occupation”. These tickets of occupation provided registered inhabitants some permanent form of access to land; a tenuous form of autonomy; and a limited means to production for some form of self-sufficiency. However, with time, the free access of dwellers within the missions contracted considerably, restricting advances from peasant farming into commercial agriculture, in contrast to their white farming neighbours (Boonzaier 1980). The acquisition of large tracts of farming land for the settlers also coincided with further land expropriation due to the discovery of copper in the Northern Cape (Sharp 1984). Ellis, Hendricks and Lever (1994:7) were of the indisputable opinion that the advent of the reserves distorted the tenure system and affected the pastoralists’ self-sufficiency; leaving them with restricted conditions – no different, albeit less restricted, than the homelands developed under apartheid.

There are contesting arguments over why these mission stations were established. Certain scholars argue that they safeguarded indigenous groups from total land expropriation (Boonzaier 1980; Krohne and Steyn 1991); others argue (see Ellis et al 1994) that the mission station under colonial control was formed to “proletarianise” pastoralists to serve the labour needs of the missionaries, colonists, boer farmers and later the fishing industry. Many indigenous families later turned to wage-labour – mostly on farms or in the copper mines – as limited land access led to impoverishment and overcrowding. The inhabitants could no longer sustain their

nomadic, pastoralist lifestyle as agricultural land became increasingly marginal (Ellis et al 1994).

At the beginning of the 20th century the twenty-three mission settlements became known as the “rural coloured reserves” after the proclamation of the Mission Stations and Communal Reserves Act (No. 29 of 1909). This separated the functions of church and state. The state exercised control, regulating these reserves first through councils chaired by the missionary, and later through Advisory Boards under district magistrates. By 1952, after the introduction of segregation, the Department of Coloured Affairs administered the reserves, and by 1969 administration was handed to the Administration of Coloured Affairs, with the introduction of the Rural Coloured Areas Act (No. 24 of 1963) (Boonzaier 1980). With the advent of democracy, the reserves were placed in trust by the Minister of Land Affairs and are referred to as communal areas. These are administered by local municipalities, mandated to manage the commonage and provide services to the residential areas of the reserves.

3.2 The history of the Namaqualand political community

Namaqualand depicts a very complex political community. Carsten (1966) argues that the introduction of the Mission Stations and Communal Reserves Act No. 29 of 1909 imprinted a strong secular and significant religious influence in Namaqualand’s community system. The influence of biblical teachings is as deeply seated in the social structure of the family as it is in the governance of land. This is manifest in some of the responses by the women interviewed in the study (see Chapter Four). Gender and kinship relations played a fundamental role in the way in which relations around land and productive resources were determined. According to Carstens (1966) the overlapping lines of gender and kinship in Namaqualand portrays “racial and social integration on the one hand, and segregation on the other” and control over land and resources operated along clearly gender-segregated patterns, giving secondary status to the rights of women (Carstens 1966, see also Tengey 2008). Christian values and social constructs powerfully influenced conceptions of

women's rights to land, shaping both practices and assumptions around women's land tenure and deeply embedding the marginalisation of women's land rights in the structure of social life. This embeddedness has continued to shape ideas and practices under post-1994 democratic institutions.

The Namaqualand coloured reserves can only be understood as forming part of a wider system of economic exploitation of the indigenous population, governed by the segregation policies of colonial governments and the apartheid policies of the post-war era (Terreblanche 2002). The establishment of both coloured and black reserves was, amongst other things, a response to both the demand for cheap labour by capital and the protection of white South Africans' property rights (Terreblanche 2002:11-12). While political interventions and power shifts affected rural blacks and coloureds differently, a fundamental commonality is the insecurity of land tenure which is still evident today, and remains a political and policy conundrum (Cousins and Claassens 2008).

3.3 Culture and Identity

Historically, culture and identity in Namaqualand are ambiguous, and hence are widely debated and contested in the literature. According to Elphick and Malherbe (1989:5) the San people were a diverse group with no overarching group identity; in contrast the Khoikhoi people had a far more homogeneous identity in terms of language and culture. It is not possible from the literature to clearly establish the pre-colonial history of the Nama (Robins 2008, see also Elphick and Malherbe 1989) nevertheless the Nama are the descendants of the San and the Khoikhoi and the product of racial interplay with colonists and white 'afrikaners'. Broadly speaking, however, after colonial subordination into slavery and bonded labour the social structure of the Khoisan eroded extensively, as part of the group was pushed westward up into the northern Cape Colony "homeland", with one group moving north into Namibia and the other group remaining in what has become known as Namaqualand (see for example Boonzaier et al 2000:14; Elphick and Malherbe 1989: 5).

The Nama-identity was never a uniquely distinctive identity but an emphasisation and interpretation of a close association to early inhabitants and later the intermixing between different races (Boonzaier et al 2002). It however eroded even further with the shift to a Christian coloured identity, when the indigenous Nama-language was exchanged for Afrikaans (Robins 2008). Carstens (1966) argues that the social structure and culture of Namaqualand is a blend of different traditions and cultures into a relatively homogeneous community. Cousins (2007:294) suggests there is a relatively close relation between the “principles of land tenure” and the “features of social and political organisation”. He emphasises Gluckman’s (1965:78) argument that land rights in African land tenure “are an occurrence of political and social standing”. Hence, in understanding the concept, “Nama community”, as a political category in the contemporary context of Namaqualand, I need to make a clarifying distinction. I draw on Carstens’ (1966) description that the Nama-community is a political collective of individuals, commonly held together by a shared territory which is socially and culturally distinctive by their shared identity and connecting social relations. Boonzaier and Sharp (1994), however, suggest that the people of Namaqualand are:

...no more Nama today than they were before. In fact, by any 'objective' measure of similarity to, and difference from, the culture of the pre-colonial inhabitants of the region, contemporary people are less Nama than their forebears were (Boonzaier and Sharp 1994:405).

Robins (2008:31) interprets their argument to mean that the colonial history to a certain extent eroded Nama “indigenusness” and that from the 19th century onwards, people themselves suppressed their indigeneity by seeking acceptance as members of higher status social categories. He further offers that Boonzaier and Sharp (1994) base their contention that the Nama-identity is in fact a contrived consciousness which is “permeable, negotiable, inclusive and reinvented” and should be placed in the context of the land struggles of the late 1980’s and early 1990’s of the Richtersveld community. The Richtersveld local management – in a bid to leverage political recognition for themselves – initiated a legal challenge and gained an interdict against authorities who sought to proclaim the area a nature

reserve – in order to protect the area from its inhabitants. The inevitable outcome of such a park proclamation would have been dispossessing the community from their own land. Boonzaier and Sharp (1994) in their comparison of the Nama identity to a much stronger Zulu ethnic identity posit the lack of a strong sense of a Nama-collective is due to the lack of a unifying Nama leadership. They state:

There is no single leader, no leadership clique that has the power to create and enforce a vision of what it should mean to be Nama. Nama-identity is negotiated by a group of people who are not homogeneous – some are farmers, others workers; some are poor, others relatively well-off; some are politically conservative, others more radical. No sub-division of this group dominates any other, and Nama-identity must be formulated, and qualified, in a way acceptable to all. The formulation of this identity is a dialogic process, both within the Northern Richtersveld reserve and across its borders (Sharp and Boonzaier 1994:414).

This reference to the Richtersveld land struggle contextualises their perspective of the ambiguity of race and ethnicity in Namaqualand. In their view insisting on a “political and social parochial identity” on the part of the Nama could lead to both political and social marginalisation in the broader South African context:

There was also, of course, a serious intention here. Given an occasion on which to dwell publicly on the positive aspects of Nama ethnicity, the people of the Northern Richtersveld sought to draw others into the ambit of this identity, and to show that it could serve as a means of making common cause with people both in and beyond the Namaqualand region. This was not opportunism: their behaviour in this instance was of a piece with a growing realisation that, although they live in a remote part of the country, they are also part of the working class and the politically oppressed in South Africa as a whole (Sharp and Boonzaier 1994:412).

In his analysis, Robins (2008:30) opposes Boonzaier and Sharp’s assertion of a strategic “staging” of ethnicity/indigeneity as a political tool, and maintains that it is precisely their marginalisation in various periods of history that prompted the fragmentation and submergence of a Nama-identity. He suggests that despite the

erosion of the Nama-identity, it is inherent and visible in symbolic and cultural acts in “marginal spaces and social practices of everyday life” – however inconsistently – and is not solely confined to politically-motivated agendas (Robins 2008:36). Hence the terms “customary” or “traditional” in the context of this thesis must be understood against the backdrop of the complicated political history of the people of Namaqualand (Sharp 1977; Boonzaier et al 1996, 2000). The way in which “social embeddedness” is interpreted in Namaqualand needs to be understood against a mixed blend of culture and identity, influenced by colonialism, and segregation, the missionary institution and contemporary adaptations of collective norms as a result of apartheid, where “custom” and “tradition” became interspersed with “race”, and the people of Namaqualand were classified as “coloured”.

A fundamental historic interplay of race and ethnicity is, however, still evident in Namaqualand today and the historic Nama identity continues to frame political discourse (Boonzaier 1980, Sharp and Boonzaier 1994, Robins 1997). These authors draw attention to the history of classification and reclassification of people as citizens (‘boorlinge’), bastards (‘basters’ or intermixed European and indigenous inhabitants); incomers from other areas (‘bywoners’), and then classification as ‘coloured’. The remnants of the fragmented identity continue to subtly divide Namaqualand inhabitants in land relations and related struggles.

3.4 Communal land tenure in Namaqualand

3.4.1 Pre-colonial land tenure system

The Namaqualand literature documents a history of settler invasion, secularisation and commodification of land which gradually infringed on the indigenous stock-owning pastoralist communities, but no mention is made of the dispossession of land held by women and the impact it had on women’s land rights. It is assumed that roles within the kinship unit were divided along gender lines and land use practices reflected accordingly (Boonzaier et al:36-38). Seasonal and periodic movements were not restricted as referred to earlier (see Chapter 3). No

one held land rights yet. It is presumed land movements were 'negotiated' by men and that subsequently women had no independent say into these matters. What already emerges perhaps in the broader framework of land rights is the obscurity and invisibility of women in relation to land tenure.

3.4.2 Colonial Land Tenure

My assumption, therefore, is that before the arrival of the colonialists the Nama-speaking pastoralist clans already functioned under a highly gendered hierarchical system; "Tribes" were controlled by chiefs who ruled over clans comprising a patrilineal line of male descendants (Boonzaier et al 2000:38, see also Carstens 1966). The sharing of possessions and livestock was managed by the most senior male members of the patrilineage, who were recognised as headmen (Boonzaier et al 2000:39). They further elaborate that headmen and chiefs, in accordance with the land tenure system of the time, did not own the land; access was based on agreements and recognition of rights to access between male clan leaders. While women played an important role in relation to land, decision-making about land was the prerogative of the male leaders of the clans.

With the advent of colonial control and legislation demarcating boundaries for access by the indigenous inhabitants of the areas, the mission stations did away with chieftaincies, and headmen were stripped of authoritative powers over tribes and clans. Nevertheless, male power soon manifested once again in the revival of traditional hierarchies under the missionary regime (Boonzaier *et al* 2000). They later gained further – yet still limited – authority as elected members of the council responsible for the governance of land in the reserves. The mission system introduced a membership system through the registration of citizens – "burghers" – and the issuing of "tickets of occupation" (Boonzaier 1980, 1987, Sharp 1994 and Archer in Meer 1997) to the inhabitants in the reserves. This was meant to allocate rights of residency and permission for the keeping of livestock – although restricted – in the area. Women were formally excluded from being considered burghers in their own right through this procedure (Archer 1993). Ironically, and although contested in analytical debates (see Boonzaier 1980, Carstens 1966, Wisborg 2007), the issuing

of citizenship – “burgherskap” – to men on behalf of their families was an attempt to safeguard further loss of land by a growing number of white settlers in the area, but in so doing, the power of men as the heads of households were thus entrenched in the new system of land rights (Krohne & Steyn 1990).

In 1909 the Mission Stations and Communal Reserves Act (No.29), with the intention of locking in place political control over the reserves (Wisborg 2006), defined land tenure through three categories of rights in land:

- (a) Rights to residential plots – stands in the demarcated towns
- (b) Rights to graze livestock on the commons – “meentgrond”
- (c) Exclusive rights – tantamount to ownership – to mixed grazing/arable plots – “saaipersele” (Kleinbooi and Lahiff 2007:804).

Furthermore, the establishment of a Board of Management through the Act increased the degree of state regulation, undermined local autonomy, and brought about tighter control of rural communities by shifting governance from the local councils to a new authority consisting of six community elected members and three members appointed by the Governor of the Cape (Wisborg 2006). The literature contains no mentions of women’s involvement and engagement in the new governance structures. It is fair to assume, therefore, that the 1909 Act further entrenched the marginalisation of women in relation to land access by granting individual residential rights and a measure of permanency in the rights to access arable and communal grazing land to families within the reserves (Sharp 1977). Within this context a patrilineal hereditary system of land rights emerged, with the further strengthening of land rights vested in male heads of households. While it cannot be ignored that the embedded – “traditional” – practices of the indigenous communities were also organised along patriarchal lines, as emphasised by Boonzaier et al (2000), the registration of primary land rights by men alone legally excluded women from owning usufruct rights and failed to consider women as rights

holders. Vesting primary rights in men resulted in women becoming secondary rights holders. This construct remains a stumbling block for women attempting to accessing land in their own right in Namaqualand today; despite the notional transition to a regime of “equal rights for all” under the South African democratic dispensation.

3.4.3 Tenure reform in Namaqualand

In an effort to curb the further demise of communal lands, the Rural Coloured Areas Act (No. 24 of 1963) was introduced, repealing the Missions Stations Act of 1909 – including amendments – and transferring ownership of the land to the Minister (Wisborg 2006; Krohne and Steyn 1991). Under so-called “state-backed trusteeship”, the lands were held for the Namaqualand citizens by the state and administered by local authorities in the form of transformation councils and later by municipalities (Wisborg 2007:324). This was effectively the first attempt to reform tenure in Namaqualand after the distortion of tenure during the colonial and Apartheid period (Boonzaier et al 2000, Khrohne and Steyn 1991). In the history of tenure reform it constitutes a landmark and, as May and Lahiff (2007:786) note, the tenure reform process in Namaqualand proceeded in advance of the wider South African process and was characterised by a “longer, and highly contested, history”.

Boonzaier (1987:479) reports that the Coloured Rural Areas Act of 1963 introduced “development schemes”, which made provision for divisions into “economic units” for selected individuals or small groups of farmers on communal land. The system was implemented in the second half of the 1980s, and made provision for tracts of land from the communal patrimony to be re-allocated to individuals who could afford to rent or purchase the land. The rationales behind the privatisation of communal lands were “to improve agricultural production and protect the land from overgrazing and soil erosion” (Surplus People Project 1995:17); and to encourage entrepreneurship and the development of the region, since lessees would run farms “more” profitably (Archer et al 1989). Furthermore, it was envisaged that “privatisation would lead to more developed farming techniques, to conservation of the area, and subsequently this development would rid the area of the whimsical and

irrational traditions which were retarding development” (Rohde et al 2006:312 and Archer et al 1989). However, vehement opposition from those who risked losing their land use rights in the communal areas of their communities led to the demise of the proposed system:

The eventual implementation of the ‘economic units’ policy in the 1980s in three of Namaqualand’s coloured rural areas - Steinkopf, Leliefontein and the Richtersveld -led to the majority of the inhabitants losing access to both grazing and arable land. Many people in these areas strenuously opposed this act of dispossession and their struggle for the return of their land bore fruit when, in April 1988, the Cape Town Supreme Court set aside the system of ‘economic units’ (May and Lahiff 2007:785).

During apartheid, black people were confined to three categories of demarcated land. The first constituted state land in self-governing territories which became known as “homelands” or “bantustans” (Bophuthatswana, Gazankulu, Lebowa, KwaNdebele, KaNgawane, KwaZulu, Transkei and Venda). Access to land under this system was regulated by traditional authorities, and governed on the basis of customary law. The second category was state land purchased by traditional African communities, but never legally registered to these communities. The final category of state-controlled land was traditional communal land allocated to communities under government proclamation. Land was registered in the name of the state and held in trust for communities. While these systems provided access to land for use, it was limited and precarious, and ownership of the land was vested in the state (Sibanda 2001). Post-1994, the aim of policy has been to get ownership of this land returned to its rightful owners. This applies to the former coloured reserves as much as it does to the former homelands, the African reserves.

The first major attempt to address communal tenure in post-apartheid South Africa was with the introduction of Transformation of Certain Rural Areas Act (Act 94 of 1998) (TRANCRAA). This Act makes provision for the transfer of former mission land or coloured reserves that are currently held in trust by the Minister in charge of land affairs to either a municipality or a Communal Property Association (CPA).

According to May and Lahiff (2007) the likelihood is that this Act will impact greatly on the property rights of most people in the six coloured rural areas in Namaqualand: Komaggas, Leliefontein, Steinkopf, Pella, Concordia and Richtersveld (Act 9 or communal land), which are currently administered through the commonage committees in the local municipalities of Richtersveld, Khai-Ma, Kamiesberg and Nama-Khoi. TRANCRAA marked a significant moment in the history of communal land in Namaqualand, but also in South Africa, as it was the first major reform of communal land tenure anywhere in the country and was therefore the precursor to much more extensive reforms planned for the former African homelands.

TRANCRAA emphasise individual rights and allow for community decisions about land ownership and was enacted in the context of the 1997 White Paper on South African Land Policy (DLA, 1997). The Act gave emphasis to municipalities both in the implementation of tenure reform and envisaged future governance. Wisborg and Rohde (2004:3) comment:

Replacing authoritarian, permit-based control, TRANCRAA honours the rights of residents by requiring that people must be consulted about land ownership, that their user rights will be respected and that future land governance will be democratic and non-discriminatory.

Yet, disappointingly, the Act appears to be gender blind. It stipulates principles for municipalities to follow in implementing tenure reform – i.e. all residents must be afforded an opportunity to participate in the decision-making processes regarding governance of communal resources. The Act also prohibits discrimination against any resident. Yet, given the history of women’s invisibility in land matters, women’s dependency status – very few women have land legally registered in their names – and the fact that their land needs remain largely unarticulated, it is unsurprising that the Act is silent on distinctive rights for women and men (Wisborg and Rohde 2005). At best the Act neutrally refers to “he or she” throughout its short content (RSA 1998:6).

The provision for referenda⁴ in the Act enables community decision processes about ownership. Widespread consultation and referenda took place in nearly all the rural areas in Namaqualand. Some leadership demonstrated a preference for Municipal ownership on behalf of communities. This preference was amongst other things based on, (a) their fears of financial exclusion if the state's financial obligation ended, thereby increasing communities' liabilities and (b) the belief that municipalities could potentially safeguard access to land for vulnerable groups such as women and the poor (Wisborg and Rohde 2005). According to Wisborg and Rohde (2005:420), "the consultation process represents a small but significant investment by the government, but the time, funding and institutional support required for an effective reform appeared underestimated". Furthermore, despite the majority of referenda being concluded the process of the formalisation of land rights remains a protracted, unresolved process (Lebert 2005:6).

To address the urgent need for tenure reform on communally occupied land in the former homelands as well as communally occupied state land since 1992 outside the borders of the former homelands, the government drafted the Communal Land Rights Bill (CLRb) (RSA, 2002). In 2004 a controversial Communal Land Rights Act (CLRA) was passed by Parliament and signed into law by the then president, Thabo Mbeki (Walker 2002). The Act was widely criticised for various reasons, one of which Walker (2002) describes as the colonialist distortion of the concept of 'customary' law and the potential for abuse in its interpretation. The Act afforded traditional leaders considerable power and control over the allocation and administration of communal land by making provision for traditional councils – under the control of traditional leaders – to function as Land Administration Committees (LACs). What constitutes a "community" was ambiguously defined in the Act. Another key criticism

⁴ In January 2003 with the exception of Komaggas – due to significant conflict over the outcomes of TRANCRAA – referenda in the form of community meetings under facilitation of SPP were held in each rural town in Namaqualand and residents could debate and indicate under which entity ownership of their trust land should be vested.

of the CLRA was that the Act was a step backwards in terms of securing gender equality within rural communities characterised by patriarchal social relations. According to Cousins (2008), the proposed titling and registration processes of the CLRA would disadvantage women and make their tenure more insecure.

A legal challenge was instituted in 2006 by four rural communities that stood to be directly affected by the Act. In October 2009, Judge AP Ledwaba of the North Gauteng High Court in Pretoria handed down judgment in the CLRA legal challenge and declared that the Act is unconstitutional in its entirety and therefore not valid (RSA 2009). This judgment was confirmed in the Constitutional Court in March 2010. In this judgement chief Justice Ngcobo ruled CLRA provide traditional councils – despite being contested in certain areas – extensive powers, including control over the occupation, use, and administration of communal land. The implications of this could be at the expense of the rights of current land holders. The Department of Rural Development and Land Reform (formerly DLA) did not oppose the judgement and undertook to correct the shortcomings in the Act through the Green Paper on Rural Development and Land Reform policy (Cousins 2009).

3.5 Conclusion

The history, culture and identity of the Namaqualand political community remains contested in analytical debates and points to a complexity that underpins the tenure history of the rural towns. It is evident that the political dynamics of Namaqualand land tenure demonstrate the colonial image manifesting in many African communal societies. The impact of the colonial state and apartheid on Namaqualand society in the 19th and 20th centuries, particularly the loss of land, undermined the traditional agrarian economy as indicated by Archer and Meer (1997). The effects of the different periods of conflict and oppression were both shaped and influenced by the church and state and entrenched a patriarchal system in respect of land rights that diminished the status of women's land relations. The vesting of rights in communities – which did not demonstrate neatly homogeneous, congruent units – adversely affected the diverse social cultures, and reinvented new

political systems under a membership system. This created a politics which remains fluid in contemporary Namaqualand.

Namaqualand is not new to tenure reform. In fact land reform in Namaqualand has a somewhat longer, and more highly contested, history, than the wider South African tenure reform process of communal land. As May and Lahiff (2007) point out, this complex history left the democratic government with a complexity that needed a distinct policy response within the wider national land reform programme. However, the reform of tenure in Namaqualand is far from complete and Cross and Friedman (1997) warn that legal reform does not necessarily address the gendered nature of rural women's land rights. The Act is relatively silent on transforming women's land rights and will presumably continue the dominant status quo of a relatively gendered customary tenure where women's land rights hold a subordinate value.

4 CHAPTER FOUR: WOMEN'S LAND RIGHTS IN NAMAQUALAND

4.1 Introduction

This chapter examines women's land rights in Namaqualand by exploring the options women have to gain access to land and what the nature of these options are. It explores how women in Namaqualand acquire rights to land and analyses their understanding and general perceptions, making use of interviews conducted with sixty-five women from the area. Entitlements to communal land in Namaqualand have generally been institutionalised in the household, which has been widely interpreted as comprising an adult, married man and his dependents (Lebert 2004:2). Within both the longstanding traditional and the formal systems of male-dominated land rights, women have had some success in accessing land. However, as in many traditional societies, women have not enjoyed *independent* rights to land. The level of success in accessing land has generally been understood as access to *secondary* rights acquired through their links with fathers, brothers, husbands and uncles – i.e. as daughters, sisters, wives, nieces or cousins. Previous studies on land issues in Namaqualand have attempted to highlight the inequalities in access to land; but have neglected to give a clear description of current practices and perceptions of women's land rights and access to land. In contrast, my interviews with women focused on how land is acquired in practice and their current position in respect of land access and rights to land.

This chapter examines the ways in which women understand both the broad social context of Namaqualand and their individual perceptions of traditional social systems and beliefs. The land tenure system in Namaqualand will be discussed in terms of:

- How land is acquired or held in general
- How land is acquired by women
- How women inherit land

The analysis will consider the aspects of inheritance of land, livestock or access to the family home and the role of tradition in shaping succession; marital status and the position of wives and widows, as well as the importance of surname and male descent; the position held by daughters, and the wider neglect of the interests of daughters. I will also assess the security of land tenure for women in Namaqualand. A description of land reform programmes currently under way in respect of commonage, TRANCRAA and LRAD, and their impact on women in Namaqualand, will conclude this chapter. It suggests that patriarchal customs and traditions reinforce the ways in which women themselves approach their land rights, and militate against the enforcement of equal rights for women ostensibly gained under the democratic dispensation.

4.2 Women's land rights

4.2.1 A history of gender discrimination and inequality

The earlier disruption and destabilisation of the traditional Namaqualand tenure regime – which started as early as the 17th century and distorted the tradition of pastoralist usufruct rights over land and resources – forms an essential historical backdrop to the present land tenure context, but accounts of this history have tended to emphasise racial discrimination, not the gendered dimensions. The fact that the entrenched traditional system of land tenure was already gender biased has meant that women's land rights have received little recognition or acknowledgement in the literature or in policy documents.

4.2.2 Land tenure in a patrilineal system of descent

The right to occupy land on the basis of community membership continues to apply in post-apartheid Namaqualand. Presently the municipalities are responsible for allocating occupational and use rights. Land rights are held by families and by the community and no individual land ownership exists (Lebert 2004). According to Mann (2000), in a patriarchal community the custom of succession of land rights follows a patrilineal line and the right to occupy is passed between male kin – i.e. fathers and sons, or any male relative where sons do not exist. Accordingly, the right to occupy – under which citizenship is recognised – is understood as right of

birth, that is, if you are male and have been born in Namaqualand. This right to occupy entrenches independent tenure and use rights to men, although these remain somewhat insecure, since the ownership of land is vested in the municipalities and does not involve individual ownership (Lebert 2004). An inhabitant of Namaqualand can apply for the right to occupy land at the age of eighteen.

There is a strong association between land and the family. Marriage is virilocal since wives normally move to live with their husbands. Descent is traced through the male line only. The importance of the family name – surname – should not be underestimated in land relations in Namaqualand. The concern with retaining land within the family was evident in the beliefs of both women and men. As one woman in Steinkopf reported:

I do not have a problem with any of my daughters. They would be good farmers. The only reason why a man is so central in the issue of land is to make sure the family maintains the right to the land which we felt became ours by virtue of transfer from generation to generation.
(S2: 12).

4.3 How women access land in Namaqualand

4.3.1 Female inheritance

Female inheritance appears to be ambiguous in Namaqualand and although the articulation from the women in the study lean heavily towards an indication that the custom as a rule is for men to inherit, the findings portray women as an increasing exception inheriting or standing to inherit land. The increased pressure on land and land shortages, however gradually leaves inheritance as the principal means by which people in the communal areas of Namaqualand gain access to land. In the historical context inheritance meant the transfer of land rights from the male head of the household to the first male descendant or eldest son, a system of male primogeniture (Kleinbooi and Lahiff 2007).

I was married to the eldest son. He got the land rights from his parents (C4: 2).

My husband's father had land which he transferred to one of his other sons ... Traditionally land is passed on to the youngest son (L6: 3-4).

There was, however, considerable disagreement amongst key informants about which son should inherit, with some informants insisting that tradition dictates that it is the eldest son, and others insisting that it must be the youngest. There is some indication that the choice of eldest or youngest son may have changed over time and that preferences are now given to the younger son instead. However this was not widely reported. The choice of son depends entirely on who shows the most interest in farming. In some instances, respondents reported how families came up with more creative solutions to the transfer of land. In one case, a father chose a middle son as his heir, because he considered him the most dependable, and went to elaborate lengths to ensure that this break with tradition was not subverted after his death:

My husband inherited [an arable plot/"saaiperseel"] from his father. His father called all his twelve children together and informed them of his decision to give the land to my husband and all twelve children had to sign the transfer agreement. This was to ensure that on his passing the children would not fight about who should get the land.... When his father passed away my husband took the letter to the municipality and the land right was transferred into his name... My husband's brothers drink and smoke and their father felt he couldn't trust them to keep the land in the family. His choice fell on my husband who was the second eldest because he thought my husband would look after the land and would ensure that it is kept in the family (S2: 3).

The dominant view is that daughters have a marginal position when it comes to inheritance of land and rarely inherit land where sons exist. In just one case in the study was there a report of subdivision of land as a pragmatic solution to rivalry

between sons but, here as in many other cases, we see differences in status creating differential land rights with daughters being relegated within their birth family. One woman from Steinkopf reported that her husband's father had three sons and decided to split the land and divide it between his sons and each received a piece of land. The same women reported that her husband's sisters were not considered for the land (S5:1-2). This inherent exclusion has led to a common sentiment amongst women that, when it comes to land, they will take a backseat. The view is thus widely held that women are "*not entitled*" to primary land holding. However, intergenerational inheritance in Namaqualand has seen some shifts over the years and variations were expressed in the research. A married woman from Lekkersing, who had herself inherited land from her mother, offered her own view of tradition and suggested their land will go to her daughter because she illustrates a greater affinity for the land and livestock and her youngest son will stand to become heir to the status of head of the family, "*That is how the tradition works*" (L1:10).

Jackson (2003:466) stresses "that the analysis of gendered land relations in particular social contexts requires consideration of the diverse subject positions of women, the relations they involve (e.g. with fathers, brothers, husbands) and the implications of these in relation to land". The social conception of where daughters are positioned in what Carstens (1966:72) refers to as the "elementary" family continues to inform decisions about where the right of land should be vested within families on the death of the patrilineal head of the household. This is evident in respondents reporting:

If the father passes away the farm goes to the mother and from there on to the son. It never gets transferred to the daughter. (C6:3)

"I married the eldest son. He got the land rights from his parents."
(C4:2)

Archer (1995) substantiates the tenuous character of women's land rights in Namaqualand and agrees there are evident shifts since 1994 which was unheard of before the advent of the country's democracy (see also Archer and Meer (1997):

There are certain people who are neglected when it comes to [land] rights. The most important group is women who may have virtually no rights... registered in their names. In a regional workshop which was held for women in August 1994, women indicated that they would also like to be registered as the owners and tenants of sites; they are no longer satisfied that only men have formal rights. As far as rights are concerned, unmarried people are particularly discriminated against – their rights go in the name of their father. Until recently it was virtually impossible for unmarried women and men to get a site in the rural reserves. After such a need was recently expressed, unmarried young people may now have such rights. In the Richtersveld a young woman was also allowed to hire a site from the management board – unheard of before 1993 (Archer 1995:47).

Daughters' positions in relation to parental land are very different and more tenuous than those of mothers and of wives. There is a general reluctance to bequeath land to daughters since on marriage daughters may alienate the family from these rights. Jackson (2003:466) argues that in patrilineal societies this view is widely held, and suggests that in the context of India, for instance, "boys may be held to be the rightful inheritors of land, those who remain in place and continue the line, whilst girls marry out and reproduce other lines both in terms of the inheritance of property but also of the descent ideology". This also rings true for Namaqualand, where interviewees argued that the practice of excluding daughters from inheritance of land is justifiable, as daughters may impart land to her husband's family upon marriage:

Most fathers focus on their sons when it comes to farming, with the understanding that they will become the breadwinners one day. They see women as a potential risk. They get married into another family and might take the land out of the family, and in any case if you are lucky you get married to a man that has land in his family. Our parents have the same attitude or belief when it comes to education.... Our parents believe they cannot invest in a daughter who will live with

someone else's son.... The sons in the family later become the providers for the mother and the father. (C1:3)

Strong Christian influences and beliefs were also evident in views about the different roles of men and women when it was suggested that it is the husband's duty to provide land for his wife and family and, if women have access to land, the family into which she marries may end up with the benefit from this land.

[Fathers] feel women leave the family to marry into another family and will take the land out of the family. We consider ourselves lucky if the husband's family has land. It works exactly as the Bible prescribes. The son is the head... The opinion of our parents is that your husband must take care of you in the same way your father takes care of his family. (C6:2).

Keeping land in the family through inheritance and the preference for males in the succession system is often expanded to well beyond the immediate household into the extended family. In some cases fathers would prefer to bequeath land to another male relative, or even return the land to the municipality, rather than leave it to their daughters.

My brother works in Cape Town and he is next in line for the farm and my father often says that if my brother is not interested then he will have to go and talk to one of his brothers' sons. (C6:14).

The findings above indicate there is deviation and cultural practices are eroding, yet it does not allow for all women to equally access land through inheritance; and while there are gradual shifts these have not shifted entirely beneficially towards women and inheritance is skewed towards men.

4.3.2 Marriage and access to land

Given the difficulties with women inheriting land, marriage provides a substantial form of leverage for women accessing land. Women who marry a man with land are often described as “lucky” and those who do not as “unlucky”. A woman from Steinkopf portrayed it as follows:

I was lucky and married a man that received land from his father. Otherwise I would probably not have been involved [in farming] at all (S3:5).

On the death of a husband, land rights usually pass to the widow, but this is not always straightforward. In general, widows may have a slightly advanced position when it comes to land tenure. While this may come with its own complications amongst more traditionally-inclined family members, land is at the present more often passed on to the longest living partner and, if applicable, the widow on the death of her husband. As a woman from Steinkopf suggested:

I will take the land right over from my husband (S2:8-9).

She also added:

In turn, when I die, my two sons will get the right to land transferred into both their names ...My daughter will get married and leave the home and the land [would] get alienated from the family (S2:8-9).

A similar response was echoed by a woman in Spoegrivier:

That land will come to me. I am his wife and he will have to transfer the registration in my name. It will happen the same way as it happened with my mother. My father gave the land to my mother. That is the tradition; unless the mother passed away before her husband, he will transfer it to the youngest son. These things are discussed in families long before land gets transferred. (S6:6)

Clearly the responses indicate marriage may provide women with a greater claim to land rights, yet widows often only act as an interim holder of the land right – often until their sons are old enough to take over. This is achieved through a “temporary inheritance” from husbands, which is an informal family arrangement on the death of fathers with young sons. However, this was only an interim arrangement prior to bequeathing the land to a son. Holding land in this way prevents women from freely disposing of land as they wish, or making any decisions regarding the use of land.

Bequeathing land to widows does not happen automatically, and what might transpire on widowhood remains uncertain. Yet evidence suggests that women are able to assert greater control over *where* the hereditary land rights should be vested in the event of their own passing. One woman from Steinkopf expressed the view that she would want to have the land formally transferred into her name on the death of her husband. This arrangement would allow her to continue farming as part of the household’s livelihood and afford her time to assess who next should be in line to inherit the right:

The land is registered in my husband’s name... I wish it would be transferred to my name [after his death] because I would still want to farm, even if it is just enough for the pot. I then would transfer the land right to the son who looks the most interested in farming. That will be very difficult, however, because they all are interested in farming... Maybe it would be better if the farm is first registered in my name because I do not know how the sons will react if one gets the land. If my husband passes away I will try and work out something fair with my sons. (S5:6)

Where no formal recognition – such as a will – is in place to ensure widows formally inherit the right of occupation of family land women may experience delays or other difficulties in formally having land registered in their own names. Some

women suggested that it is not a straightforward process to get land re-registered upon widowhood. Often land remains in deceased husbands' names – as a result of the financial obligation that accompanies re-registration – or in many cases accumulate outstanding tax debts which make re-registration unaffordable for women. A widow from Kommagas explained:

...my residential plot is still in my late husband's name because I do not have the money to pay the taxes in arrears (K6:22)

While a woman from Leliefontein reported:

When my father passed away the land was transferred to my mother... My mother wasn't able to continue with the farming on her own and gave the land back to the council (L4:24)

Similarly, the difficulty posed by what is often a tedious process in local government was raised as another reason why widows retain family land still registered in deceased husbands names:

During the referendum (2003) I applied for the land to be registered in my name but it is still in the system and not in my name yet (L3:6).

While not yet common, there were, however, some indications that widows are increasingly able to directly inherit land rights from their husbands. This was evident in responses by two women from Steinkopf and Concordia:

It has become common to transfer land from husband to wife. In my case, if my husband dies the land will come to me and I will then pass it on to our son if I am not interested or are not able to farm. (S3:2)

Land always had to be [in the names of] the husband. It was only later, in my father's time that they were able to leave the land to their wives. (C3:17)

The options for married women to obtain the rights of use to land are clearly limited and obscured, especially in terms of direct inheritance of land. Yet, the tradition is far more fluid than many analysts would want to acknowledge, and some women have benefited where there have been no male descendants, or increasingly where the men next in the lineage line did not portray an interest in taking over land from their fathers, as was recollected by a woman from Concordia. She affirmed that:

In 1978 my father passed away and I got the farm from him... We were five girls and we were raised as good as boys. We harvested, sowed, ploughed, milled and did everything with the livestock that had to be done. In the end I was the only one left on the farm and I was also my father's favourite daughter. I knew I would get the farm. (C8:3)

What was clear from the interviews however was that while women are marginalised in respect of land, they are more likely to benefit from other forms of inheritance, either in the form of livestock or access to the family home. A woman from Concordia affirmed that while women do not tend to be recognised in allocation of land, it is not that women do not get a share of other family assets such as livestock:

We do get something out even if it is just one sheep. When my mother passed away the livestock were divided between the four of us (two sons and two daughters) and the farm went to my eldest brother. (C1:4)

There are also two cases of married woman who report that they inherited land from their mothers and have indicated they will allow their daughters to take over their land. A woman from Leliefontein said:

The land will go to my daughter because she loves the land and the livestock and the house will go to my youngest son. (L1:10)

A single mother from Kharkams reported how her father, although still alive, had arranged for his land to be transferred to her because her two brothers were not

interested in farming and, unlike her, had no livestock. Her father has made a will allowing the land to be inherited by her; she has attempted to register the will with the council but this had not yet been processed (K3:5).

4.4 Women's direct access to land

Prior to 1994, woman rarely obtained land rights independently directly from the authorities and, as demonstrated above, there are limited ways for women to obtain direct access to land. Furthermore, 'traditional' land tenure in Namaqualand is rarely openly and directly challenged. Limitations are overcome to a degree by a few women, predominantly through exploiting variations within 'traditional' land tenure. The study demonstrated there are ways and mechanism in which women negotiate and mediate direct access to land outside of the family confines although the successes of these efforts varied.

4.4.1 Allocation by municipality

A minority of women in the sample had managed to acquire land in their own names, whether by default or the powerful tradition to keep land in the family. A woman from Steinkopf, for example, was able to apply to the Council for unoccupied land that had previously belonged to her parents. The municipality as administrators and managers of land on behalf of communities in Namaqualand regulate land fees and allocate use rights to land⁵. In the case of the Steinkopf woman, the application was successful, despite a rival application from another – unknown – source. Here, it appears that direct descent from the previous landholder was of importance:

Earlier the farm was on my father's name. When my father passed away the land was transferred to my mother... My mother wasn't able to continue with the farming on her own and gave the land back to the council... In 1996 I moved back here and I heard there was an

⁵ Where the obligation of land fees is not honoured the municipality reserves the right to retract the allocation on the commonage.

application on the same piece of land. I also applied for citizenship and the same piece of land was registered in my name. That is where I am now. (S4:2-4)

In a similar fashion, a 78-year old woman in Spoegrivier obtained a “saaiperseel” – arable plot – as a single woman as far back as 1955. Her family’s interpretation of who was an eligible land rights holder differed from the mainstream belief that land cannot be held by women. In her case, she was the secondary rights holder. This was partially due to the fact that her husband was regarded as an ‘incomer’ – from Kommagas, elsewhere in Namaqualand – and therefore in line with the town’s traditional norm, not eligible to hold land in Spoegrivier:

When I was 25 years old I asked my father how he would feel if I apply to get occupational right to land. My father gave his permission and I got access to land. This piece of land was handed to me for occupation in 1955. ... When this man [my husband] married me I already had this land. My husband is an incomer [“married in”]. He is from Kommagas and is not originally from Spoegrivier. He won’t get land here. (S2:2)

While these occasional and seemingly increasing shifts in social relations around land are evident in my sample, household affairs are more commonly conducted within the tradition of men being the primary land holders. Women may also combine their own inheritance with that of their husbands, but, as in the following case, it is likely to end up formally registered in the name of the man. A woman from Leliefontein reported that she inherited the “saaiperseel” (cropland) from her mother and her husband inherited the “kameelgrond” – land for grazing – from his father. However she also reported:

...the land was then registered in my husband’s name. Both mine and his own.... When I got married the land was transferred into his name because he was the head of our household. That is how it worked in those days. (L1:3-4)

Again, yet another substantive portrayal of the perception of the societal embrace and entrenchment of what could commonly be considered by women – and men – as “a field”, as coined by Agarwal (1994), as “not quite of her own”.

4.4.2 Informal access to land (via invasion or land sharing)

Given the limited availability of land in Namaqualand, and the particular difficulties faced by women wishing to acquire land, different ways of responding to the need for land are emerging. Although not common, unauthorised occupation does occur; by women who identify unoccupied lands where the right to use has been reverted back to the municipality due to a default in payment by the registered user. One woman in Kharkhams identified a piece of land as unused and erected her own stock post, without receiving the necessary permission from the municipality:

My stock post is [located] as you come into town. There are two corrugated iron huts on that land... I just invaded that land. Nobody gave it to me... I have never registered that land. I just use it. I must probably go to the municipality to get it allocated to me. (K6:3-4, 12)

This is not a frequent occurrence and invasion of unoccupied land is not readily available. Furthermore, invasion of unoccupied land guarantee that land will automatically or eventually be registered to occupants. Security of tenure cannot be assured in this way; the risk of alienation is exacerbated and women remain vulnerable to loss of such land. Moreover, in the event of death if the right is not registered, transferral of the right becomes problematic, intergenerational inheritance cannot occur and consequently no claim can be made by family members. A more common arrangement is that women access land by entering into informal land sharing arrangements, usually with male relatives. Research elsewhere demonstrates that such partnerships enable women to create new routes of access to land and/or resources (Kevane and Gray 1999). Such arrangements reduce risks and enable women to share the cost and threats of farming with the persons they are partnering with, and may also assist women to be better protected against stock-

theft, as proposed by some women in the study. One woman from Concordia suggested that close familial partnerships enable them to access land for their livestock:

I farm with my brother. Actually my brother farms and I have livestock on his farm. (C3:2)

One woman from Kommagas raised concerns about the lack of support that came about with her brother-in-law's passing, with which she had a sharing arrangement:

I worked with my one brother-in-law but he passed away. The costs for medicines, the herder and animal feed were shared between the two of us. (K3:14)

The indication from the study is that women generally find it easier to gain access to residential land informally rather than by formally applying for commonage and "saaiperseel" rights. Although access to land for a woman may increase after marriage, this does not create a legally recognizable right; and women may act only as interim rights holders and as guardians over land until their sons are old enough to become the primary right holders. Some shifts in practice are beginning to occur, yet it appears that deeply-held perceptions have a limiting impact on the real opportunities for women to gain primary rights to land.

4.4.3 Private Leases (Okiep Copper Company)

Namaqualand also has substantial areas of land held as mining property by the private sector, accounting for approximately 397,000 hectares or 7.54% of the total land area (May & Lahiff 2007). Some of this land was made available to employees; who were regarded as 'citizens' of those particular communities in Namaqualand. Similar governance arrangements exist for those in the former reserves, often with comparable outcomes in respect of the exclusion of women. Hence, it is not just pressure from within families that poses a threat to the land

rights of women, but also pressure from external institutions. One woman who 'inherited' the Okiep Copper Company (OCC) land from her father felt obliged to transfer the lease to her husband's name – when the company suggested her husband should sign for the transfer from her father's name – even though both of them would have preferred to leave it in her name. This land was transferred from her deceased father who worked on the mine:

At that stage the OCC was the owners of this land and we had to sign a lease agreement and [my husband] signed. Before that the farm was on my name. [My husband] is the head of this household and they wanted my husband to sign. My husband was happy when the contract was on my name. He did not expect me to change it. It was only when we had to sign a new agreement that we decided he had to sign since they [OCC] insisted he signs the contract. (C8:5-6)

4.5 Land reform and gender in Namaqualand

Namaqualand has a long history in respect of land tenure reform, which started around 1980s with the introduction of a privatisation programme, which involved dividing the land into economic units selected for individuals or small groups of farmers (Boonzaier 1987). In 1988, the Cape Town Supreme Court set aside this system of "economic units" as it was alienating the majority of existing users from the grazing and arable land (see Chapter 3:43 in this thesis). The second phase of land tenure reform began in 1994 when all three components of the national land reform programme – i.e. restitution, redistribution and tenure reform – were introduced in Namaqualand.

The national land reform programme is aimed at improving land access, improving livelihood opportunities and developing the local economy for the disadvantaged local communities in Namaqualand. Gender, however, has been a particularly neglected area in land reform (Walker 2002). This is no different in the case of Namaqualand. While opportunities to address gendered inequalities in land holdings appear to exist, land reform programmes in Namaqualand have to date

been unsuccessful in addressing such inequalities. Land reform processes to date have not directly and specifically targeted women. I contend that equal participation of women and consequently visible beneficial outcomes for women cannot be expected if gender targeting remains only vaguely mentioned and described in the land reform policies.

4.5.1 Municipal commonage

The area of land reform where potential progressive advances in relation to women's land rights in Namaqualand could potentially be leveraged is through redistributive reform in Namaqualand. Under the commonage programme, municipalities have to establish a management committee that will include representation of people using the commonage and members of the relevant Department of Agriculture (DoA). These committees are required to formulate a land use management plan to set out conditions of use; how commonage use will be monitored; and how rules and regulations will be enforced (Anderson and Pienaar, 2004).

The programme is aimed at addressing the pressure on existing municipal commonage and the land ministry provides funds⁶ to enable resource-poor municipalities to acquire additional land for this purpose (DLA 1997). The commonage programme also enables municipalities to buy out an existing commonage lease concluded with a commercial farmer (Anderson and Pienaar, 2004).

New commonage has been acquired as an addition – and adjacent – to existing commonage. In line with the dominant approach of land redistribution in general in South Africa, the new commonage combined the existing land use with an older order holding and management regime – i.e. (a) white commercial land use

⁶ Grant for the Acquisition of Land for Municipal Commonage as provided for in Section 10(1)(c) of the Provision of Land and Assistance Act 126 of 1993. (commonly referred to as 'Act 126')

practices and (b) expanded access for existing commonage users (Lebert 2005). Anderson and Pienaar (2004:10) state in relation to the later:

A material difference with 'new' commonage is that the title conditions make it clear that the land was not set aside for the use of inhabitants in general, but that it must be earmarked for use by the 'poor and less privileged'.

As a result, it enables existing – male – herd owners to be the primary beneficiaries of the new commons and little or no emphasis has been placed on proactive provision of land to previously marginalised groups, such as women.

Predictably, not being targeted directly, women held little expectation of accessing land on the farms acquired through the municipal commonage programme. Many women had limited awareness of the programme and their views of the process were consequently framed by the understanding that such land was only available for men in the community; and some felt that not just they, but their husbands, were marginalised and that the more affluent – and influential – men in particular dominated access to the additional commons. Clearly a lack of attention to women's land needs is evident in the implementation of the municipal commonage redistribution. Additionally other impediments are also hindering women from increased benefit from the additional commonage. This was suggested in the dissatisfaction that was expressed over the great distance to these farms, which makes them practically inaccessible for women with no transport. The women – of whom the majority in the study were unemployed – also emphasised that fees charged by the municipality for grazing were another obstruction to access:

I am not interested in it though it is too far out and if you do not have transport it is difficult. You also have to pay your animals per head. I do not pay at the moment and there is enough grazing. (K6:21)

Where interest in the new farms was expressed it was not based on own needs but largely premised on their own perceptions of the existing land tenure regime that privileges men's access and men's involvement with land and the indirect nature of women's benefits. Women in the study did not express an intention to apply for grazing rights on the new lands in their own name. A woman from Kommagas mentioned that their support to access the new commonage would not be for themselves but rather for their husbands:

We [women] do know about the new farms but everything is done in our husband's names. We are bound to tradition and our husbands are very dominating. (K2:16)

It appears that women's literacy and economic status is an important factor in mediating their capacity to negotiate and maintain access to land. In Steinkopf, a group of poverty-stricken women applied to the municipality for access to a small piece of land on the new commons for use as a vegetable garden. They had an immediate need for land, but complained about the length of time and the bureaucratic processes involved to get access to the land. They complained that they were not always aware of what was happening; nor did they know how to address their frustration; or via which relevant avenue to do this. This clearly indicates the kinds of gaps between women's land needs and government's ability to respond timeously to those needs. It also highlights the institutional obstacles that exist when women portray a measure of agency. It took two years before they were granted access to the land and was able to start their community vegetables project:

I could see that many women were suffering in poverty. They didn't have husbands as breadwinners and had children to support. I also knew we could live off land. These women were all eager. I wrote a business plan. It took two years before we were informed by the municipality that it has been successfully granted to the women's group. We got a piece of the new land that the municipality purchased recently.... I felt I had to take all the responsibility to deal with the municipality and it wasn't always easy. (S2:14)

Another aspect of tenure reform in Komaggas is the implementation of the Land Titles Adjustment Act (Act 111 of 1993), which allowed for the update of formal land titles on the state-owned farm Meskraal 283. This land, adjacent to the Komaggas communal land, involved 40 plots that were granted to certain individuals from Komaggas in 1883. Intergenerational inheritance and communal use of these plots created uncertainty around the legal deeds holders. By 2001, thirty-seven legal owners were verified, and their title deeds were registered and transferred to them. However not a single women had land registered and transferred.

4.5.2 Tenure reform

While TRANCRAA has the potential to significantly influence reforms that were subsequently planned for the former African homelands, it has dismally failed to do so (Kleinbooi and Lahiff 2007). Shortcomings in this regard are discussed in Chapter Six. TRANCRAA sets out mechanisms for the management of land and safeguards the rights of all current rights holders. TRANCRAA portrayed a number of innovations – i.e. Grazing regulations could be adopted and regulations for arable allotment and irrigation could be put in place. In addition – in terms of the Municipal Systems Act – draft regulations determined which user group management entities will be established as municipal entities. These entities will then take on delegated grazing management powers in terms of service delivery agreements (Kingwill, 2003).

TRANCRAA presented a significant opportunity to create a platform for women to gain greater access to land. However while reports are indicating the process included women (May and Lahiff, 2007), the process was not specifically focussed on women and the referenda held in five areas of Namaqualand – which were facilitated by Surplus People Project (SPP) between 2005 and 2006 – were mired in contestations between those who wished to have the ownership of land transferred to the local municipalities and those who wanted to retain community ownership of land by transferring it to the CPAs. Women in this study generally had some awareness of the TRANCRAA process, and participated in the process to

varying degrees, but many admitted they had a poor understanding of what was going on (Kleinbooi & Lahiff 2007). The lack of awareness and comprehension of the details of the referendum in general amongst women manifested in the following responses by women from Leliefontein, Concordia, Kharkams and Steinkopf:

Many women participated and I think they understood. When it comes to land everybody knows what they want. (L4:19)

Many people attended the meetings and, yes, women did come to the information sessions. (C1:21)

I voted and understand from my sister and brother's explanation what it is all about. (C3:22)

No I didn't know about the voting. We are much divided and I am too stupid to participate. But I went to the meetings. (K9:29; 33)

We all had to go and vote but I do not fully understand [the process]. (S2:25)

A woman from Rooifontein reported her non-participation:

I myself did not participate. My husband was on the committee. (R5:20).

Common to matters related to land, many women deferred to their husbands or to other men in their community, as reported by a woman from Concordia who stated that women participated in partnership with their husbands rather than independently:

[Women] participated with their husbands. That's how it works here with such community processes and as with farming women stand behind their husbands. (C1:5)

However, women raised a number of criticisms of the process. These criticisms appear to be informed in part by women's general exclusion from society

at large, and these sentiments were repeated across the various areas of Namaqualand. They included women's mistrust of political parties, lack of confidence in various local institutions – including the municipalities – and a sense that better-off people in the community were dominating the process for their own advantage. Women equally considered all the main options promoted through the TRANCRAA process including: the transfer of land to the local authorities; a community structure; or to remain with the Minister of what was then known as the Department of Land Affairs – Department of Rural Development and Land Reform since June 2009. Interestingly, and perhaps an explicit reflection of women's position in Namaqualand society, is that very few women expressed positive opinions, expectations and outcomes for women's land rights through this process.

In their choice of what should happen to land in Namaqualand it became apparent that opinions regarding political parties and institutions were not based on their performance in the transformation process alone, but rather in what ways the citizens could hold them accountable in future. This is reflected in the most frequently favoured option amongst women – i.e. the preference for land to be transferred to the municipality. For some of the women from Steinkopf and Concordia, other community-based structures were seen as most likely to be dominated by elites and narrow interest groups, and they made reference in particular to influential men in their communities:

I hope the municipality are able to hold the responsibility of the land because in Concordia you get those who only want to create benefits for themselves, [those] who doesn't care about other small farmers. (C1:23)

I would want the land to stay with the municipality. In Steinkopf there is a lot of infighting amongst people and some farmers only care about themselves. And politics will make that families lose the land they have held for all these decades. What will become of Namaqualand if people can't farm anymore? The land is their lives. (S2:26)

My personal feeling is that the municipality must retain the land although there are many things they will also have to sort out in-house to make the management of the land smoother. Some issues about land get very tense here in Steinkopf and not even the “meent [komitee]” [communal committee] and the municipality is able to fix some of those things, especially when politics are dragged into it. What will be left for our children and their children? Where would the land in Namaqualand go? (S5:16-18)

Opinions on community control of the land were varied. A greater degree of “ownership” was equated with handing control of the land to a community structure. A few women suggested that having control over land by a structure closer to the household will restore dignity and strengthen the tradition of livestock farming, while others see elite capture as a danger:

The land should be transferred to the community. It will make Coloureds feel that we do have something. It will also give the value of farming back to our children. At this stage they are not interested because you do not own the land your livestock are grazing on. Where in the world do people farm like that? (L5:21)

I am not so sure that our community is ready for such a responsibility. The only experience in this town is about those “voorstanders” (and there will always be “voorstanders”) who will only advantage themselves. They would not care about the smallest farmers. (S5:16)

One respondent preferred the continuation of the status quo. This was supported by a fear of alienation from the land which could happen as a result of detrimental actions either by the municipality or the community. A woman from Steinkopf stated she “*prefers that the land remains in trust with the Minister*”, fearing that the communities may “*...lose the land if the communities control it*”, however she also sounded unsure about the local authorities and feared, “*... unprecedented shifts in the municipality [may lead to] decisions... sometimes taken without involving the*

communities” (S3:13). In fact, a strong streak of cynicism about all public institutions was evident from numerous responses in the study:

I wasn't sure what the right decision was. So I just closed my eyes and voted. I was still shaken over that whole process of the land survey and didn't trust the municipality but I didn't trust the CPA either. The problem was also with political parties, you do not trust political leaders who make promises and do not keep their promises. (C4:21)

There was a political struggle/fight in Kommagas. Earlier it was a conflict within the church ... Then the ANC and the DA came and then there was the transformation. It was supposed to create a better position for our people but it became a power struggle between political parties. (K2:19)

However, none of the respondents related the process of land reform, land rights and governance directly to women. Minimal engagement in policy processes reflected the status of women in relation to land, either as an invisible entity, or as secondary, and as unequal to men. There was very little comprehension of what benefits the land reform processes could or would provide for strengthening women's access to and control over land and the strengthening of insecure land rights that have wider implications for their farming activities.

4.5.3 Insecure land rights and threats to women's farming activities

As mentioned before, marital status largely determines women's rights and access to land. Access to land without secure tenure, lack of authority over land and other resources within the household, and the character of formal inheritance all tend to place women and widows in particular, in a vulnerable position. Threats to women's farming livelihood often intensify on widowhood as a result of the insecurity of women's land rights. According to women from Concordia, women may lose all or parts of their land access on the deaths of husbands:

My husband's brother-in-law... and his brothers moved their landmark [it subsequently included a portion of my land] and because I was the woman I had to take the smaller plot. (C4:9)

I went to the municipality and they replied that I did not sign the letter that confirmed my landmarks. ...before they started the [land] survey I did not understand the whole business about the [land] survey and I was not prepared to sign until I fully understand it. Their response was that I missed the opportunity and I said to them: Go to hell! How do you sign something that you do not understand? (C4:10)

I lost access to the land. They called me an 'incomer'⁷. I have been married to my husband for 27 years and he still calls me an incomer! All of this happened just a year after my husband's death and I was struggling financially otherwise I would have taken it further through a legal process. (C6:11)

Similarly a woman from Khuboes detailed her struggle with official institutions to maintain her access to occupy and use the land that was registered in her late husband's name. It appears that some women do struggle to get land reregistered in their own names on widowhood:

[T]he other parcel was given to his brother after a fight [between us]. I went to the "meent" (commonage) committee to apply for the use of that land because it was still on my husband's name (after his death and I was chased away from that land. I gave it back because I didn't want to get into a fight over land. (K3:4-5)

⁷ A person who is not a registered community member, ('burger') but in many cases by virtue of marriage becomes a member of the community.

4.6 Conclusion

In Namaqualand – similar to many other customary societies – the land tenure regime is based on the problematic assumption of household and community unity, which results – in practice – in gender inequality (Ikdaahl et al 2005). In comparison to men's land rights, women's land rights intersect with both direct and indirect discriminatory customary norms and practices and prescriptions that formally and socially dilute these rights. Women's positions as daughters, wives and widows deprive them of full acknowledgement as rights holders and do not allow them to benefit from land allocation through direct applications for land in their own right.

The municipality as a state institution and custodian of the communal commonage in Namaqualand will continue to play a crucial role in the realisation of fundamental rights; yet has not been proactive in providing a priority framework for women to benefit from commonage. Hence, while the rights of women to land have been *formally* acknowledged on paper within the reform process, the law appears to be weak on giving specific definition and effect to women's land rights in its implementation. As such, the position of women has remained largely unchanged in practice; and the number of women who have managed to acquire additional land as part of the reform process has remained relatively low. Accordingly, single women experience a range of problems in both accessing and using land. Yet some forms of 'traditional' practice appear to allow the barriers preventing women from land access to be breached. These limited opportunities for women are however exacerbated by their inability to pay. Despite the latter, women's need for land foster the emergence of incidences where women directly access land without direct male linkages. It remains to be seen in what way these will be recognised in the law and implemented by statutory institutions.

CHAPTER FIVE: FARMING AND WOMEN'S INVOLVEMENT IN LAND USE PRACTICES IN NAMAQUALAND

5.1 Introduction

Women's role in agriculture, and women's access to land and related resources, has emerged as a major concern for academics, social activists and development planners in recent years. Razavi (2003:3) outlines the trajectory of international debates around women in less-developed agricultural economies, which became prevalent in the 1980s with the recognition by economists of the important contribution of women to the "reproductive economy" and further developed in the early 1990s as the debates shifted to women's direct involvement in agricultural production. By the late 1990s, emphasis was being placed on processes of democratisation and decentralisation, with specific attention being paid to weak land rights as a key constraint for the economic advancement of rural women, particularly within customary systems of land tenure (Razavi 2003).

This chapter discuss the importance of agriculture in rural livelihoods in Namaqualand. It assesses women's farming history, the contemporary context, and the challenges facing women in relation to agriculture.

5.2 Farming history of the inhabitants of Namaqualand

The way farming activities manifest today in Namaqualand reflects a range of processes which operate at different levels and periods (Hoffman et al. 1999). Details of women's involvement in farming seem lost in the institutionalisation of patriarchy that characterises accounts of the history of Namaqualand. Hence there is not sufficient detail in the literature about women's involvement in agriculture. Yet, it cannot be overlooked. The wider understanding of the influences of colonial dispossession, the subsequent social organisation and the construction of rights of occupancy and accompanying rights to graze, irrigate and sow granted to male

heads of households explains in part the lack of recognition of women's engagement in farming.

Traditional land use practices – mainly livestock production through mobile pastoralism – have a long history in the Namaqualand region which spans over 4.8 million hectares. Livelihoods were thus dependent on access to land and livestock/cattle. Elphick and Malherbe (1989) suggest that for pastoralists, the one is useless without the other. Historically this type of land use has always been based on a flexible system of movement and use. With time and various influences the nature of this flexible system changed considerably. The vast and semi-arid environment determined a heavy reliance on pastoralism (Boonzaier 1987; Archer and Meer 1997). Before the 17th century the area was sparsely populated and provided unrestricted movement for hunting and gathering purposes. The Khoisan – hunters – and San – gatherers – had a complex relationship which later, during the pastoral revolution, merged hunting and gathering into herding (Boonzaier et al 2000; Elphick and Malherbe 1989). The pastoral lifestyle was characterised by reasonably high numbers of cattle, goats and sheep. The Khoikhoi introduced sheep farming into the area, which was later replaced with goats as the main subsistence animal (Webley in Hendrikcs, Bond, Midgley and Novellie 2007). Seasonal and inter-annual climatic changes governed cattle and herd movements and pastoralist groups aggregated with their herds in areas where water and grazing areas were available (Rhode, Hoffman & Allsopp 2003). The trans-human cycle which allowed vegetation for grazing to recover required these nomadic movements and in this way various ecological zones could freely be exploited (Webley 2007).

Another change in land use practices by the Nama inhabitants occurred from the mid-1700s. This shift was brought on by changes in the human population (Hoffman & Rhode 2007). The gradual encroachment of the European settlers, who initially imitated the movements on the traditional hunting and grazing grounds of Namaqualand, changed agricultural systems irrevocably. It created great insecurity and restrictions on the pastoral movements of the pre-colonial indigenous hunter-gatherer – San – and pastoral – Khoisan – people (Hoffman & Rhode 2007; Penn

1986). Later, outright dispossession by the “*trekboere*” through individualised ownership of land pockets locked out the native livestock and herding families, and very little land was available to maintain the grazing patterns as was known and understood by the Nama inhabitants at the time.

Before the colonial incursion, crop production was not practiced; and where harvesting was applied it was predominantly on the natural vegetation, for medicinal purposes. However by the 1800s “*trekboer*” crop production intensified and the traditional pastoral lifestyle of the Namaqualand pastoralist was also later supplemented with crop cultivation as a way of sustaining household food security. Hoffman and Rhode (2007) report that: wheat, barley, oats and rye were planted and harvested. The pastoral transhumance patterns, now relatively confined as a result of the colonial dispossessive intrusion, were adapted to the crop production cycle calendar. Households constructed more permanent dwellings and started cultivating on available arable plots around the villages that were erected through the mission stations, and traditional pastures were replaced with smaller areas surrounding the mission station to maintain their stock grazing (Lebert, 2005).

Confined to the mission land, the result of the loss of traditional grazing land led to the introduction of communal grazing alongside crop cultivation (Boonzaier et al 1996). Today twenty-seven per cent of the total area of Namaqualand is under communal tenure (Rhode, Benjaminsen & Hoffman 2001). The majority of these communal lands are used for communal grazing. Agricultural development was highly influenced by this approach to stock farming. The land limitations confined stock-keeping families to semi-pastoralist communal farming practices which became an integral part of the reserve families’ livelihood strategy (May & Lahiff 2007). Stock farming remains dominant in the area; however, the number of livestock reflected a gradual but significant decline by more than fifty per cent from the middle of the 20th century (Rohde, Hoffman & Cousins 1999).

By the early 1990s, after a history of poorly regulated activities and poorly maintained authority on the commonage, the land available to the reserve families

was heavily degraded and overcrowded. This impacted on the farmers' ability to survive from agricultural activity alone. Rhode *et al* (2001) observed that by confining many farmers to small communal reserves and curtailing opportunities for seasonal transhumance, peasant agriculture became a relatively unimportant activity among a suite of livelihood options involving low-paid wage labour in the area's commercial farming and mining sectors. As a result, many families adapted livelihood strategies which included – but did not entirely depend upon – a low input; limited capital; labour intensive; risk averse livestock farming system. The result was that a large number of small-scale farmers had to find ways of coexisting within a limited area of communal land (Rhode *et al* 2001). This led to informal arrangements within and between families and herders and began to reduce their movements to livestock posts within the village boundary (May & Lahiff 2007).

5.3 The contemporary farming situation in Namaqualand

The main economic activities in Namaqualand today include mining and agriculture – extensive livestock, dry land plots and irrigated lands. The current agrarian structure in Namaqualand is dualist in character with farmers on privately owned farms effectively confining communal area farmers to their designated rangelands and reducing their grazing areas significantly (Baker and Hoffman 2006). Communal farmers are free to move within the restricted village commons according to their own needs and circumstances; and each individual herder is faced with unique economic, social, and personal situations. This results in livestock herds of variable size; with some households keeping small herds while the more affluent livestock keepers are able to maintain relatively high stock numbers. Additionally, livestock production is combined with crop production.

5.4. Women's history in farming

Historically there has always been a noticeable and prominent division in farming activities between women and men. As care takers of families, women prioritise activities that support their productive and reproductive roles. Hence, women focus on harvesting natural resources closer to the home; mainly for

medicinal use or for human consumption but also fuel for fire. Historically women co-operated in family farming activities and played an integral part alongside their fathers and husbands (Vedder 1928). Yet women in general had less status, power and control over these resources (Archer & Meer 1997). Subsequently, while women had access to the land on the basis of their familial ties, it was their labour more than their control over resources that maintained their involvement in household farming activities. Towards the mid-1800s the erosion of the Namaqualand economy and the resultant decreasing livelihood options left many reserve households destitute, and ushered in yet another shift in the household economy. The intensification of the demand for labour from the reserve by surrounding white farmers, and from emerging fishing and mining industries, introduced wage labour and increasingly rendered husbands absent from their homes and farming activities (Lebert 2005).

Conceivably this is the time in which women's role in the household farming activities intensified substantially, and their direct involvement maintained household livelihood security alongside wage incomes from their male counterparts. Yet the rights to land and the resources on it, in most cases, remained under the authority of the male household head, and women's productive role in household farming – both stock farming and cropping on the arable plots – were either not recognised, or considered less valuable compared to the wages earned by men. The general practice that emerged was that women – and children – acted as extended labourers and women took full responsibility for certain – if not all – parts of the farming activities while husbands worked full-time, and women's livelihood relied heavily on cash earnings from fathers, husbands and sons (Archer & Meer 1997).

5.5 Women's role in family farming

Women continue to make a substantial contribution to the economy of their households through their engagement in family farming activities, both indirectly through their domestic work and in the household and directly through involvement in a range of farming activities, particularly in the context of widespread on-going out-migration by men in search of paid employment. Yet, while it is common for women to own livestock, the management of herds is primarily carried out by men (Kleinbooi

and Lahiff 2007). In this study, women described their engagement in livestock keeping and arable plot cultivation as labouring for relatives and husbands. The majority of women as well as men articulated women's contribution to the family farm as their "support" of what is seen as the husband's domain. Thus, very limited recognition is given to the significant role women play in farming, even by women themselves. A Concordia man – who was not part of the interview process but walked in on the interview with his wife – offered a very prejudiced opinion of why women could not independently be involved in land-based production and activities:

My wife would not be able to stand on her own like I would. A woman is placed underneath. My wife would stand outside the kraal where I would be inside the kraal to catch the animals. She is physically weaker (C5:16-18).

The evidence suggests that in reality women play a far greater role in agriculture than partially supporting the farming livelihood. For example, a woman from Concordia reported how as a young child she helped her father with practically everything on the farm (C1:5) and similarly many women in Concordia farm together with their husbands (C1:9). This was reiterated by other Concordia women who cited the central role women hold in relation to households' land based livelihoods:

We had to help with things... We made sure that the animals are fed during the day and we tended to the house. My mother helped with the new born lambs. [Wives] farm with their husbands, some farm with vegetables and some have livestock but their husbands are in charge. He is the head of that house. Women do not work, they are house wives and do not have incomes other than what they get off their husbands' wages/salaries. (C3:15-17)

My father [is the farmer] and we all help. I look after the livestock. (C6:5 & group)

I milk the goats and I help where I can. (C6:6 - group)

My husband started working and we were three women left to tend to the farm that was my mother-in-law, her mother and me... My husband said

to me he has to work and I have to work the farm. He was the breadwinner and I helped him otherwise we will not survive... I couldn't get pregnant because every time I fell pregnant I lost the baby because of the hard physical labour livestock farming entails. I lost six babies because I ran that farm like a man... Later we got a herdsman to help me with the livestock. (C4:2-3)

Another respondent articulated the reduced role of men in farming activities as a result of the shift to wage labour:

"[My husband] is a 'guest' on his livestock post" (C1:16).

Yet, women themselves are reluctant to recognise their increased role in agriculture. A woman from Spoegrivier articulated a sentiment shared by the majority of respondents:

As women, most of us are afraid to make or take decisions about anything. We grew up with the stigma that a woman should keep quiet and leave the husband's area alone. So in the end you become your husband's helper. You go with him and assist with the livestock. You trek with the animals, and you do everything else that needs to be done, but what is sad is when we trek the land just lies fallow and I would want to do something [with it]... In the past women were seen as unwise, you know – it was a question of "what do you know?". And in many cases we didn't know where to go to get the land tilled, and tested. So I was always afraid to raise things with my husband because I was expecting him to think I am stupid or ask stupid questions. And besides the farm was his area he made the decisions (S3:7).

5.6 Differentiation of roles in household farming

Unmarried women are often involved in agriculture, in a range of capacities, but struggle to access land in their own right. Despite this obstacle, many women

engage in relatively autonomous farming activities, ranging from small-scale vegetable production to livestock farming, and a few women see themselves as fully-fledged farmers comparable to their male counterparts.

Many women start working as young girls on their parents' dry land plots, often together with their mothers, but also alongside their fathers, and perform tasks such as herding, milking, lambing, ploughing, planting and harvesting. Later in life, many women get drawn into the livestock farming activities controlled by their husbands. However women's farming activities remain relatively separate from those of their husbands or other male relatives, and are mainly in the areas of vegetable and poultry production but also, in some limited cases, livestock farming:

Many women plant their little vegetable gardens and the husbands are mostly into big and small livestock farming. That is their business; we have ours (S4:14).

Vegetable and crop production may be carried out on home gardens or on fields (*saaipersele*), and some are able to produce a surplus for the local market. While some women consider their agricultural activities to be subordinate to the more demanding livestock farming of husbands, others – including unmarried women, widows and the wives of migrants – see themselves as the principal farmer within the household despite the difficulties they face in gaining access to land and engaging in farming activities. A Concordia woman in a focus group discussion suggested:

I did everything with the livestock, every single thing, probably better than most men. I wasn't really a housewife even though I was also responsible for cleaning the house but I prefer to be a farmer. But even if I believe this tradition I made all the decisions with the farm. I did not have to discuss anything with [my husband]. I told him afterwards what I have done. He did not interfere in my farm (C:4-18).

Two women from Spoegrivier and Concordia had the following to say about their roles in farming:

My husband works away during the week so I am responsible for everything until he comes back. I move the livestock or do what needs to be done. [O]n weekends we do everything together (C2:14).

On our own 'saaiperseel' [arable plot] I tilled about eight hectares with my own hands and I planted my garden and built my own borehole and plant there every year. (S2:6)

Such direct involvement often does not appear to be fully independent, and as such is highly dependent on male relatives' involvement. Women in the study expressed that they themselves rarely value their involvement as independent individuals, and see it as an extension of what seems to be considered as the more significant activities of their husbands:

I looked after the farm with his brother. Weekends we walked to the farm and we lived there tending to the farm. I farmed full-time while he was working and he was a weekend farmer. (C7:9)

I worked all these years alongside my husband. We did everything on the saailand and with the livestock. We never needed to hire a herdsman. We did it ourselves and when the children were older they herded the livestock. [What belonged to my husband belonged to me]. We farmed together. We decided together when we had to slaughter, when we had to sell I use to tell him it is time to sell. ... [my husband] made most of the decisions in a way. We lived as our parents lived and for us the man is the head of the household but I had my say. (S7:6-8)

When we stay on the farm over weekends I cook, I bake breads, I help when he slaughters, and I help with the dipping of the livestock. I look after the livestock to give the herder a break and walk all over with them with my husband. I just want to make things as comfortable as possible for my husband because he works hard during the week and he works hard over the weekend. (S6:5)

The wife is the labourer on the farm. The expectation is that you are able to do anything. I am able to milk, I help with ploughing. I even helped with building. The men are the bosses. That is the tradition. The farm belongs to the husband. (K1:7)

Some interviews suggest, however, that while women are centrally involved in manual farm labour of various sorts, they also play a notable role in dealing with the “management” dimension of the household farming activities – although this is not widely evident and, where it is, it is often overlooked. For instance:

I deal with the municipality directly if there is a problem for example with water because we pay our grazing fee. I apply to move our livestock. I fill in [the application] and my husband signs. (C2:24)

My husband [makes the choices about what to grow]. Sometimes I plant my own things and [my husband] would buy the seeds. (L6:10)

My husband and son work the land but when they are away and there is problems with sick animals I have to see to it. Herders disappoint us and disappear. I deal with those kinds of problems. (L6:11)

I sometimes had to go to the farm during the week if the herder informed us of sick goats. My husband had many business ventures and was not always able to attend to the farm. I had to take full responsibility when he was away (S4:12).

I supervised the workers and I planted, I cleared the area. I was [also] responsible to handle the cash income. I had to keep track of our orders. (S4:12)

5.7 Women’s involvement in and experience of their own farming activities

The study revealed that some women do engage in independent farming activities, albeit on a much smaller scale than men. Where women are independent farmers, they are predominantly involved in vegetable gardening – e.g. beetroot,

potatoes, etc.; small stock farming – e.g. chickens, goats, sheep; fruit production – e.g. sweet melons, water melons, fruit trees; and grain production. Although a few women indicated that their land-based production is large enough to create a relatively comfortable income, the majority of women tend to grow vegetables and fruits on small scale for household use only. Those who sell, sell to the community and a few indicated sales to formal businesses. A number of women in Concordia, Leliefontein, Lekkersing and Steinkopf indicated they have livestock and small quantities of crops which they are able to capitalise on:

Most women prefer to have land for vegetable gardens because it is manageable and they use it for the pot and sometimes sell in the community but some women like myself, apply for land for livestock. It depends on what you can manage. (C1:16)

I was farming. I was always responsible for everything. ...I hired herders and shearers and I got the grain to the mill when we stopped milling on the farm, I sold the livestock or bought when I was able to see a good deal. (C8:8-9)

That is why I farm small, only twenty goats. I keep the herd small. It is easier to slaughter that way. If we need to slaughter then they are ready and I can sell them like that because people prefer good grade stock. [T]hat is where I get all the vegetables from [including] pumpkins, onions, carrots, watermelons, guavas, sweet melons. The garden keeps my pots cooking and I can send some to the children. (L1:13/15)

[I have] more or less 150 sheep. I also have a fruit and vegetable garden (L2:8).

I have sheep and goats. I have to live off this (L3:17-18).

I have goats and a part of [the] land I use for cultivation (L4:5).

It is only for grazing. The soil is good for planting/gardening. I prefer to make a garden (vegetable). My husband once planted onions, pumpkins, tomatoes and it carried and harvested well (L5:14)

We have big stock and sheep and goats and if we can manage with the water I will plant vegetables, fruit and lucerne. But the water access is a problem. I have a love for both crop and livestock farming (S3:6).

5.8 Women's access to other resources

*We do not have access to all the things that men have access to.
(C6:27)*

This statement is a telling assertion by a young Concordia woman, which mirrors a fundamental problem for women in Namaqualand.

5.8.1 Finance

As a result of the underdevelopment of the former coloured reserves, economic opportunities are limited and many women in the area are unemployed, or at best engage mainly in low-paid employment – mainly domestic work. Hence for women in the study:

...it is difficult to farm without the support of a husband and his income. Many widows have tried and most of them hand the land rights over to their sons if they can't afford the tax and the maintenance anymore" (a Steinkopf woman, 5:12).

The overwhelming majority of women in Namaqualand are not wage earners but self-employed through their farming activities. Their male counterparts earn wages and families predominantly use part of these earnings to invest in daily farming activities and improvements where they can be afforded. Yet women, in contrast, are mainly dependent on financial support from male relatives. While some of them are able to source relatively small incomes from selling crops or livestock

sales, these are generally not enough to rely upon and ensure substantive investments in growing their farming activities well beyond the household level.

Finances are the problem. You have to be able to pay the inputs. If your sheep needs medicines you have to be able to get it right away. You have to pay your annual taxes and grazing fees, transport, herders. (C1:11)

...if there is no income you cannot afford to pay the tax, the grazing fees and the medicines and buy the fodder the animals need in drought. ...You need money to farm. (C5:9)

A man gives up the moment hardships hit. They would rather drink than to struggle with farming. I think generally that women have a better future at farming if only they have the resources. It is only when a husband dies that a woman has access to land. But it is then the lack of finances hit. That holds many women back. If you have access to money you will always have access to land here. (K8:17-18)

Despite land reform initiatives in the Namaqualand region, new entrants – both younger and older women – who are interested in farming reported that it is the lack of both land and finances that hampers their entry and engagement with agriculture:

[We] lack both money and land. I would start small. Just for the pot but I would want to be able to farm in such a way that I can sell sheep or goats from time to time. It is better to sell and get an income. I would also want to have a saaiperseel to grow lucerne as fodder. We need at least a hundred sheep and thirty goats. (C5:26)

5.8.2 Water and other resources

In addition, two other major constraints that were highlighted by women in the study are limited access to water resources and to transport. Semi-nomadic livestock keeping is practised in Namaqualand, as noted above, and movements with livestock occur mainly to provide access to water. Seasonally, when water resources

are limited and scarce, livestock keepers move between the summer and winter rainfall areas.

We have to transport water to the farm and my mother and father are not employed anymore and we have to cover the costs of these things with our meagre part-time income. (C6:8)

We can farm on our own if we have the right resources. We need transport and a regular income. You spend more on the transport and maintenance of transport than on the livestock. You need medicines and fodder or lucerne. And land with water. (C6:21-group)

We need to plough which we are only able to do after winter rainfall which we didn't get for a couple of years. The finances are the biggest part lacking to get back into farming (S5:7).

5.8.3 Levies and Taxes

Some women also mentioned onerous payments to local government bodies as a constraint, and complained of their inability to keep up with municipal taxes and levies:

The laws changed dramatically. In the old days you paid taxes but you were able to take your livestock, your cattle and your trekker, and trek to the Boesmanland. You didn't pay anything. Today you have to pay taxes, grazing fees at 20c a head for sheep or goat, R1.20 for big cattle and R1.20 per head for donkeys and horses and [you need] diesel and oil to keep the water pump running. They have made everything difficult for us. We cannot afford anything. The rules of the game changed (C7:3).

I farm outside town and I do not have a driver's license and I am dependent on my sons and as you know they have their own lives (K3:13).

I know about the new farms [but] I am not interested in it. [I]t is too far out and if you do not have transport it is difficult. You also have to pay

your animals per head. I do not pay at the... My residential plot is still in my deceased husband's name because I do not have the money to pay the taxes in arrears (K6:21-22).

5.9 Women's experiences with markets and the business aspects of agriculture

Agriculture in the Namaqualand – former – reserves is predominantly semi-subsistence in character, and it is mainly the surrounding white farmers that are commercially-oriented. Additionally because the communal land is degraded and overgrazed, the rangelands do not support superior quality livestock; if the livestock quality were better, market access would be easier and higher prices would be realised at markets (Rohde *et al* 2006). In general, subsistence farmers in Namaqualand struggle to access formal markets and rely on local informal sales between communities. The majority of women in the study kept stock and grew crops for household consumption, while some implemented a combination of sales and household consumption and are moving to value adding as an extra income generator. This appears, however, not to be common practice as yet:

I was able to use 50% for the pot and 50% [of the livestock went] for selling in the community. (C4:8)

I sell in the community and once a year an exporter comes around to buy prime goats for exporting and you make up to R300 per sale. I also go to the butchery and sell to them if needs are pressing. You have to tattoo or mark your meat and it is R400 for that but you do not have the guarantee that they will buy it. The butchers grade it and if the quality is not good they do not accept the meat. I want to rent my marker out. It will provide a small income. (C4:23)

We plant and harvest off the community garden and [all the women] bring their produce to me and I sell it and share the profit and earnings with everyone who contributed. (K1:12)

5.10 Benefits of involvement in family farming

The single most important benefit from involvement in farming activities mentioned by women were that it provides an important contribution to their livelihoods. It contributes greatly to meeting household expenditures:

I suffered a lot with my land but I endured and at the end of every year I was able to buy my children's school clothes because I was able to slaughter and sell. (L1:20)

We always have food on the table and we are able to help others. At Christmas we are able to slaughter and we give to our children too. (K1:11)

It is life. If you have vegetables you use it or sell it for money... [L]and... [is] important to women... We raise our children through land. (K1:13)

Women from Lekkersing, Steinkopf, Spoegrivier and Concordia augment an opinion that is commonly held; which is that women's on-going farming activities keep their households functional despite the stability – or sometimes not – of their male counterparts' wage earnings. Their – mainly – subsistence farming activities provide a safety net in case wage earnings of male relatives are no longer available; either due to retrenchment or on the death of male income earners:

It also has economic value to me. If there is no money we can sell a sheep to get some income. It is a real back door for [the] survival for my family. (L2:9)

With the crop garden, you plant and you irrigate and you harvest. It is easy to sell the crop to other women in the community as well. That is my income, since I do not work for a salary... It fills smaller household gaps. (S2:20)

Every year we were able to sell and basically got back what we have ploughed into the animals by selling them off. We were able to save for the next year from that income. (S3:13)

No we made enough money out of the 'saailand' (arable plot) and the livestock. Some of Jan's [my husband's] income went into the farming but we literally got it back from our sales. (C8:12)

For many widows their access to land is essential to their livelihoods. The women in the study felt they had to be involved in farming; this sentiment is evident in a response from a woman in Lekkersing (3:20) who stated, “[B]ecause that is our only income and livelihood”. Women across the sample identified how farming enables them to source basic foods such as bread, milk, vegetables, meat, and that they do not have to purchase these if they have them available from their own production:

It is much cheaper to farm. It is only now with the drought that we put it more than before. In the good times we have enough for the pot, we sell, and we give away to neighbours, family and friends. Even if we are only able to grow and slaughter for the pot it is still better. Some families do not have anything or a regular income and they live off the land. But that is how nature works. It gives a lot and after a while it expects you to give a little bit more. (S2:21)

At some stage in my life I got a grant because I have had trouble with a broken arm that took years to heal. Some of that money I saved and bought a few goats. I herded those goats every single day, in the rain, the wind and the sun. I sold the lambs and bought my fridge with that money. That is what land means to me. (S5:8)

I think it is worth the effort to farm. It is my whole life. It is my income and when I have hardship I can slaughter and sell one or two sheep and there is always milk. (K6:8)

We could make our own butter [and] ...flour for bread and porridge. We made our own soap. We baked our own bread. We hunted rabbits. (K7:19)

Yes it is worth the while to farm. You get your food, your vegetables, and you can take care of the children and the next generation. (K8:12)

Some women felt that their expenses in maintaining farming activities is at times disabling, “*I spend more [on farming] than I get out of it*” (K3:15). However, despite the many obstacles and threats many women would prefer to farm independently: Two women from Spoegrivier and Kharkams offered:

I would prefer to go on my own because every one person has his or her own way of farming. (S6:10)

Yes farming is not easy especially when the finances are lacking. Women are often not heard and therefore we are not taken into account when important issues are discussed. I think it is also because women do not want to take the lead. It is always men in front. That is why I prefer to [farm] on my own. (K6:28)

5.11 Women’s views of the future of farming

Varying attitudes towards women’s access to land and their involvement in agriculture surfaced. One woman was hopeful that her daughters would get involved in farming through what she considers the dominant mode of access to land, marriage: “... *hopefully they will get husbands with land*” (C2:22). A young woman from Concordia expressed a reserved attitude towards farming and did not see it as an immediate priority. She seemed determined in wanting a future that was different from the historical land-based subsistent lives lived in Namaqualand and wanted to have formal employment with a stable income, but saw access to land as a form of security: “*I would always want to have access to our farm. That is our family’s land and I would want to keep a few livestock later in life...*” (C3:16). On the other hand, a number of women were tired of what they considered to be a difficult source of livelihood. Many felt that many – especially subsistence – farmers in Namaqualand were farming “backwards”, causing economic stagnation and no development for the communities:

We do not want to struggle any further. I don’t want to touch another black pot, or carry another bundle of wood. I just want to be

comfortable. If I work the whole week in the field and there is no payment at the end of the week, then it is not worth the while. They say Namaqualand's second name is "precarious existence" and believe me it is true. (L5:24)

Another young woman had a more visionary outlook and said she wanted to move away from the tradition of subsistence farming to become more commercially-orientated:

But I do not want to be a struggling farmer I want to be a successful farmer with a vehicle. (C6:7-group)

Given the decline in the rural agriculture in the reserves it was not surprising a number of older women indicated that they wanted to try something different with land, given the resources:

We can only challenge anything if we have money. Even if we do get a piece of land we will have to continue in the same way our parents do because we would not have the money to do things differently. We do want to farm big. There are many things that you can achieve if you have your own land. ...I can do gardens, chickens, livestock or even tourism but you need money. And that is the one thing we do not have. (C6:40-group)

I would like to farm again and maybe this time on a full-time basis if the land is right. Our people need to learn that you do not only have to farm for the pot. It is not just a life line. You can make it a business like the white people. (S4:18)

No but I want to farm successfully. I don't want to waste my time. I want to give my children a better life. I want to make a profit. I want to employ people. (C6:25- group)

Despite the hardship experienced by several women in the sample, many women displayed positive attitudes towards the future of their daughters in farming, and said they would like to see their young daughters more involved in agriculture, in order to continue the tradition of farming amongst families in Namaqualand:

The land is there for us to use. Land is important. If we plough and look after the land it will provide us with everything. I don't like it that land lies fallow. This is not the purpose of land, whether it belongs to us or not. (L1:23)

[W]e are all born into farming and it is in our nature and irrespective of setbacks we continue farming. More women are getting involved in farming out of their own right and as time progresses I do believe women will become, I almost want to say equal, to men in farming. (S3:12)

Despite earlier expression that women themselves undervalue their contribution to agriculture several women voiced the view that they wanted greater recognition of their significant role in relation to land and farming. Two statements, one from a woman from Concordia and one from Steinkopf, suggested that women's contributions to farming and land-based livelihoods needed to be more valued:

We want to be reckoned as women in our own right. We need to prove ourselves. Talking doesn't work. ...If I can make an income out of farming, I would not even need a husband. Men have so little trust in us. They believe we would destroy a farm. [O]ur fathers and brothers also make judgement mistakes with farming but they are allowed to do that. Can't we make mistakes and learn from that? (C6:41-group)

There is no Namaqualand without farming and simply no farming without women. Tradition has it that women must stand behind their husband and support him to keep the farm running. But we sometimes stand stronger when they are not around. (S5:12)

5.12 Conclusion

Stock farming and to a lesser extent crop farming remain significant land use practices in Namaqualand. Women tend to focus more strategically on crop farming as a supplement to the household production. While very little is recorded in the literature, this study suggests that women have played a significant role in agricultural livelihoods throughout the history of the region, mainly as harvesters of natural medicinal herbs, collectors of wood, and planting of household crops.. Yet women continue to maintain marginal positions and face many challenges as farmers or in implementing farming activities. Women portrayed mixed views on their role and involvement in agriculture and while some recognise the contribution they make in their own right, some women upheld the importance of and entrenchment of custom – i.e. farming is predominantly a male domain and should stay as such.

With the introduction of land reform, the possibility of greater participation in farming by women arose, yet in reality women's agricultural practices are still not regarded as important in the understanding of farming in Namaqualand. As a result women – irrespective of the significant role they play in practice and the new rights that law and policy appear to afford them as individuals – still do not get recognition as farmers in their own right. As a result, the opportunities afforded to them are not on the same level as their male counterparts. Women thus remain the “invisible farmers” of Namaqualand. This devalues the important contributions they make to land-based livelihoods, but also influences how women themselves view their own status as farmers.

6. CHAPTER SIX: CONCLUSIONS

6.1 Introduction

Citizens in the former 'coloured reserves' of Namaqualand continue to struggle to address the challenges to their land-based livelihoods left by several historical eras and recent periods; from the pre-colonial period, to the colonial and apartheid era, and into the contemporary period. These struggles reflect the gendered nature of communal land tenure regimes in South Africa in general, as manifested in patriarchal impositions and controls over women, with their consequent subordination to male kin. Yet some women do manage to access land for farming, despite these constraints, exploiting opportunities that arise from time to time. The qualitative data analysed in this study of women and land in Namaqualand demonstrates the complexities of gendered systems of communal land tenure. In this conclusion I return to the set of questions I posed at the onset of my research, and summarize my answers.

6.2 How do women in Namaqualand view the nature and strength of their land rights?

The evidence suggests that women's perceptions of land rights and their position in social relations are influenced by a range of factors, including, history, culture, tradition and religion. The in-depth interviews show that women perceive themselves to be secondary land rights holders. These perceptions tend to conform to traditional views held by the Namaqualand rural population at large, which continue to inform land practice.

Limited substantive societal or political processes of transformation do not create a space for substantive shifts in women's narrow views of the ways land should be held, used, controlled and disposed of. Unbalanced land relations continue to govern practices around land in Namaqualand and leave limited

opportunities to reshape perceptions. There are no formal measures which support the cracks in tradition and customs that practice on the ground is opening up; as described in Chapter 4, where some indication is evident that women want to have the land formally transferred to them independently to maintain greater control over their livelihood. Similarly one woman from Leliefontein, who had herself, inherited land from her mother, indicates how such a break in tradition allows women to occasionally defy the commonly accepted tradition of handing over land rights when she indicated that the land that she owns will be transferred to her daughter (p.64).

6.3 What is women's experience of asserting and claiming their rights to land?

While the study demonstrates that some women successfully challenge traditional land relations, most women in the study do not. The main constraints are derived from women's fragile economic, political power and authority within the current male dominated structures which uphold, interpret, administer and govern land in the rural towns of Namaqualand. The research suggests that women either work within the current land systems, or, to a very limited degree, defy the existing status quo. For example, the case of the Steinkopf woman who managed to get access to land through directly approaching the municipality and applying for the registration of unoccupied land (p.65). Similarly a minority of women in the sample had managed to acquire land in their own names. Usually this was through inheritance of land from parents, or some other familial link. What is particularly interesting is the ability of a few women to retain control of such land even after marriage (p.61, also see Kleinbooi and Lahiff 2007:808). In a more common and beneficial approach women – particularly unmarried women – access land by entering into some form of land sharing arrangement with male relatives. Such arrangements are financially and technically advantageous because men are able to share the costs and risks of farming (p.67, see also Kleinbooi and Lahiff 2007:809). However this was a limited gain.

In just one case in the study was there a report of subdivision of land as a pragmatic solution to be fair and inclusive to both sons in the family; but here as in many other cases, we see daughters being marginalised within their birth family. A woman from Steinkopf reported that her sister-in-laws were not considered for land when her husband and his brothers benefitted from land allocation by her father-in-law. And the evidence suggests that this inherent exclusion fortifies the common perception that women should take a backseat when it comes to land.

The lack of clear visibility of women's assertiveness in practising their land rights renders these efforts and attempts largely unnoticed by policy makers and women's rights to land and security of tenure remain predominantly tenuous. There are indications that, gradually, women are successfully asserting their land rights, yet these cases remain isolated. The allocation of land to women independently is not yet substantive enough and, in several cases where women in their own right received access to land, they were unable to sustain this. Consequently the incidences of women's assertiveness in claiming land are not yet extensive enough to transform the context to one where women's primary relation to land is socially acknowledged, accepted and secured in law and in practice.

6.4 How does the nature of land rights impact on how women access land?

The research shows that land practices in Namaqualand are prejudicial to women. Despite women playing a primary role in household farming, their access to land continues to be dependent on their relationships with male kin. While their membership of a family or household allows a relation to land, the system of community membership, or citizenship, introduced in the broader context of Namaqualand tends to disadvantage women. The issuing of citizenship to men as representatives of their families is a major determining feature in the definition of only secondary land rights for women.

The formalising of men's rights to land on behalf of their families was accepted into local norms and values and seen as flowing from their justifiable obligations as heads of households. Women themselves have internalised the discrimination and most women now see land as the man's domain, devaluing their own contribution and undermining their right to independently access land. The demonstration of this internalisation of women's marginalisation is illustrated significantly by the commonly-held view: "*That is how the tradition works*" (L1:10) (discussed in Chapter four). The study highlights incidences of opportunities for women to access land in their own right, yet indications are that women do not always take the full responsibility for becoming independent land rights holders. One reason may be that women need to develop the skills and confidence to claim entitlement to and assert authoritative power over land. The result is that women prefer to be linked to male kin with respect to their access to land. The study also suggests, however, that there is a growing agency amongst women who want to access land autonomously. In their view women have become breadwinners in their own right, who engage in independent or equally-shared livelihoods with male kin and therefore need access to land that is not determined through their relationships with male kin. This was demonstrated by a Kommagas woman who told how she identified a piece of land as unused land and erected her own stock post, without asking for official permission:

My stock post is as you come into town. There are two corrugated iron huts on that land... I just invaded that land. Nobody gave it to me... I have never registered that land, I just use it. I must probably go to the municipality to get it allocated to me (K6:12).

Clearly this and a number of other findings indicate a gradual increase in agency amongst women in advocating and claiming rights – however minimal – does exist. This is also evidence that women do attempt to push the boundaries of custom; either by pushing the boundaries of the confined space of customary land rights, or stepping beyond the boundaries of customary land practices by finding alternative ways of accessing land.

6.5 In what ways do women make use of land as a livelihood asset?

Overall the study suggests that women use land mainly to supplement the livelihood activities engaged in by men. Yet, as primary land users, the obligation to produce increasingly rests with women. There is broad agreement and society-wide recognition that women are the backbone of Namaqualand subsistence farming. Their contribution to meet basic household needs through their land-based activities is considerable. Women view their livelihood contribution as highly valuable and their perception is that having land is an asset – whether access is dependent or autonomous – in sustaining the livelihoods of many poverty-stricken families in the rural areas. This was clearly illustrated in the reports by women of Concordia and Lekkering who suggested farming is an important aspect of the sustainability of their households. Through their continued involvement they are able to maintain the family farming activities as a supplement to their husband's wages (see p74: *My husband said to me he has to work and I have to take the farm... but I had to farm. He was the breadwinner and I helped him otherwise we will not survive and p84: "because that is our only income and livelihood"*).

The indication from the research is that the contribution of land to household food security is primarily maintained by women. Hence, women are very dependent on land access. Women in the study described using land as a livelihood asset that enables them to supplement non-farm income and maintain the family livelihood as a safety net. The research further indicated substantial usage of land in the form of both cropping and livestock keeping. The narratives also suggest that women continue to invest in land and that land is a primary – though unrecognised – priority for women's economic position both in the family and the community.

6.6 How do women understand TRANCRAA and its impact on their access to land?

TRANCRAA represents a lost opportunity to solidify the small gains women made in breaking the traditional land holding patterns in Namaqualand. Yet, the process of strengthening rights and determining the governance structures of land in

Namaqualand's rural towns – as required by TRANCRAA – falls short of recognising the importance of women in land matters. TRANCRAA is seen by government as embodying its commitment to gender equality and effective implementation thereof in land matters. Yet the outcomes of the policy process demonstrated that women were not prioritised; and no clear process was set in motion to identify challenges for women realising independent land rights and what women's land needs are. Instead, communities were approached as homogeneous groups. Women in the study either indicated they did not understand the details of the process, or highlighted that many women did not participate in the referenda. As with other matters related to land, many women deferred to their husbands or to other men in their community. A woman in Nourivier reported that she did not get involved with the TRANCRAA process because she felt she was fully represented by her husband. In some areas women were side-lined because it was seen as the men's issue. Where women participated in referenda, this was in the same spirit as the cultural norm in which land matters are implemented: to support the decisions made by their fathers, husbands, sons and the male leadership of their communities.

The majority of women in the study were ignorant of the ways in which TRANCRAA could or should improve their access to land. This is clearly indicative of the lack of political legwork that went into creating awareness about the content and implications of the Act; particularly in respect of women's participation in the process, but also in allowing women to articulate their own land priorities. There was little opportunity for these to be clearly voiced. An effective legal and policy framework, combined with transformation processes that address and support these attempts, could augment women's efforts to claiming and asserting rights. The state's failure to respond to and acknowledge shifts on the ground in relation to women's land access through the TRANCRAA process – however flawed the overall process appears to be – is a missed opportunity to regulate shifts in practices around land in Namaqualand.

6.7 Challenges and opportunities that women experience in claiming their land rights in Namaqualand

In conclusion, generally different familial circumstances have developed to be beneficial to women gaining access to land over time. The indication from the research is that women find it easier to gain access to residential land independently than applying for commonage access and arable land or "saaipersele". These accesses are generally acquired through customary channels. Although access may increase through the institution of marriage there is often no legally recognizable right in place. Women may only act as interim rights holders and act as guardians over land until their sons are old enough to become the primary right holders. Some shifts are gradually occurring and women in the study indicated they find alternative opportunities to secure land. However it appears perceptions have a limiting impact on the real opportunities for women to gain primary rights to land.

The traditional norms, practices and beliefs in Namaqualand, imbedded in family and kinship structures – and which view women's land rights as a privilege afforded through their relationships with men as "heads of households" – continue to shape women's perceptions and the understanding of their land rights. These historical conceptions of social relations around land continue to leave women's views of their land rights as undervalued links to the land rights of their male counterparts, and where social relations around land are beginning to shift, they are often not formally recognised and remain overlooked by both men and institutional structures in the rural areas. However, despite not having substantive formally guaranteed land rights, some women continuously find ways and opportunities to push the gendered boundaries of land rights and access, and the accompanied changing and social realities wider – whether purposefully or by chance as they assert their land rights beyond the customary practice of land holding in Namaqualand. A supportive policy might enable more of them to shift their own perceptions of access to land and their land rights status over time.

APPENDIX 1

Semi-structured interview schedule

- Key guiding issues and questions

- **Women's access to land**
 - Do women have access to land?
 - In circumstances where women do not have formal land access do they have any other informal access to land owned or controlled by a either the community, a private individual, or any other institution.
 - What options do women have to get access to land?
 - How did they get access to the land (community membership, tenancy, inheritance on an individual or joint family basis, state transfers, purchased)?
 - What type of land (arable, arid) do women have access to?

- **Nature of women's land rights**
 - Do women's land rights differ from men's rights to land i.e. right of use, in/formal concession and ownership?
 - What is the nature of these rights? (temporal, locational, hereditary, accrue only for a person's lifetime?)
 - Are women's land rights formal or informal rights, legal, effective rights?
 - Are these rights socially recognised? Are these rights enforced and not merely a right on paper? Will women be able to prove their rights to an external legitimized authority (i.e. via a court of law)? Are there mechanisms in place to address land disputes?
 - Are women able to voluntarily lease, bequeath or sell the land to others?
 - Are there circumstances under which women can forfeit the rights to the land or that rights can become insecure?
 - How easy or difficult is it for women to apply informal land rights?
 - What weakens women's land rights?

- Under which circumstances are women's rights to land strengthened?
- If women have access to land are they able to voluntarily dispose of land?
- What circumstances will force women to dispose of land?
- Where women have rights and access to land what do they do with the land?

- **Women's use of land**
 - What uses of land do women prioritise?
 - Do women have the freedom to make independent decisions and choices over what to do with the land? (Independent control)
 - What type of decision-making is assigned to women?
 - If women are involve in farming, to what extent do women management and control the operations on the land they have access to?
 - How is household production and women's land use organised?
 - How do women see their role in agriculture, as farmers or are women treated as labourers?
 - Do women have access to other resources?
 - Are there cases where women do not use the land at all? What prevents women from using the land?

- **Women's status in the household**
 - Married women's rights to land and those of divorced women and the question of widow succession to land rights are amongst the contentious issues facing women in many rural areas.
 - What is the situation about this in Namaqualand?
 - What is the situation for single women with regards to access?
 - How easy is it for women in different categories to exert their land rights?

- **Livelihoods**

- For those who have land, how much does it contribute to their livelihood? How does land fit into the livelihood of women?
 - What percentage does it contribute to household income/food security?
 - How are livelihood choices related to the level of land access and the security of land tenure which women feel in specific situations?
- **Women involvement and awareness of the land reform process**
 - TRANCRAA and the demarcation is two on-going processes in Namaqualand and what impact it will have on women's access to land and their existing land rights is still vague at present.
 - Do women engage with the TRANCRAA process of transferring management of Act 9 Land to either CPA's or Municipalities?
 - What knowledge do women have of the process?
 - If they are involved, how are women's interests considered and articulated in the processes?
 - Are current land reform processes influenced by (or influencing) women's land rights and access to land?
 - Has anything changed in terms of women's land rights or land access and how has it affected women?
 - Is there a difference in the rights women are enjoying between old municipal commonage and 'new' commonage land?
 - What is women's views about the
- **General questions based on women's perceptions**
 - What are your views and attitude towards land?
 - What kind of land use do women want?
 - What are the things that affected women's access to land in the last few years?
 - What do women think needs to happen to strengthen women's land rights and access to land in future?

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