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## **The South African Commission for Gender Equality Addressing Challenges of Rural Women**

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### ***Abstract***

*Over the years, empowerment of women has increasingly attracted huge attention in the scholarly world. Most of the scholarly works on empowerment seem to focus on pro-women policies, which appear attractive only on paper without critically paying attention to how those policies translate into reality. In South Africa, rural women continue to suffer despite the nation having one of the best constitutions globally. The South African Commission for Gender Equality (CGE), among other roles, is mandated to advance the concerns for the rural women. The main aim of this study is to investigate setbacks but also opportunities that the CGE encounters in fulfilling its mandate of addressing strategic gender interests of rural women. The paper also interrogates the social cultural challenges that those women face in accessing their rights through the CGE. The main geographical scope for this study is KwaZulu-Natal and Eastern Cape provinces because they are the areas populated with the Zulu and Xhosa communities who are the main targets of social cultural complexities highlighted in this paper. The study arrives at its findings through a qualitative study where data was analysed and corroborated with CGE operational documents, provisions in the Constitution, policy documents, monetary and evaluation reports, minutes of proceedings and paper publications. The study argues that the CGE cannot effectively empower rural women when the link with other statutory bodies and Civil Society Organizations nationally is weak. Also, the study argues that for CGE to effectively empower rural women, it must directly relate with local rural*

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*women and consult them from the grassroots and not solely rely on “elitist women” who risk misrepresenting or even ‘under-representing’ women interests.*

**Key words:** Commission for Gender Equality, Constitution, South Africa, Women, Women Interests.

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## **1.0 Introduction**

Due to a concentrated focus on eliminating racial segregation, before 1994 South Africa paid minimal attention to the gender equality agenda. The concerns about gender equality emerged only after a series of engagements by South African women who indefatigably pushed for gender equality to be listed among the significant agendas for the nation. Thus, buoyed by a ray of hope after Rolihlahla Mandela’s ascendancy into power in 1994, South African women formulated a Charter that exhorted the nation to put the welfare of women to the fore. The document was presented to Mandela who made sure that gender concerns became a central subject in the negotiation process prior to the writing up of the Constitution. In order to ensure that women issues were not overlooked, the negotiators settled on avoiding a structure where there is a specific ministry/department of women. Thus, a NGM (National Gender Machinery) was instituted. The Machinery consisted of the civil society organizations, the executive, the legislature, and self-governing bodies (Rai, 2018; African Development Bank, 2009). The establishment of the NGM was for the advancement of the status of women. A number of international women’s conferences such as the 1975 Mexico Convention, the Beijing Conference, the CEDAW had called for the national states to put gender concerns at the centre of the policy-making process. The necessity for a NGM was accentuated first during the Conference in Mexico City in 1975 (Rai, 2018).

The South African women constitute the highest share of underprivileged population in the country. This population is still affected by apartheid legacies (racism, sexism, authoritarianism, male chauvinism). The Commission on Gender Equality (CGE) aims at fixing those ‘ghosts of the past’ (as Ramphele, 2008 calls them) which are enmeshed in policies that engender marginalization of women. In spite of South Africa ratifying international protocols, I argue that the gender policy agenda is still far elusive as those neo-apartheid elements are still prevalent. Thus, this paper seeks to address these principal theoretical questions:

- What are the challenges that the Commission on Gender Equality (CGE) encounters in fulfilling its mandate of addressing strategic interests of rural women?
- What opportunities does the CGE have in fulfilling its mandate of addressing strategic interests of rural women?
- What are the complexities that those women face in accessing their rights through the CGE?

The CGE is one of the national gender machineries authorized to ensure the realization of gender equality in the country (CGE, 2019). This organ was instituted in consonance with the Gender Equality Act<sup>1</sup> 39 of 1996. The Gender Equality Act of 1996 directs the Machinery to evaluate policies; monitor activities of statutory<sup>2</sup> bodies so as to advance gender equality and give recommendations wherever necessary. The CGE, also disseminates public information and educates the public on gender issues. The Machinery evaluates and proffers recommendations on prevailing or projected laws. These laws include indigenous norms that are likely to affect or that are already affecting the status of women. The Commission is also mandated to recommend new laws on gender equality or legislature governing the status of women within South Africa. It works in liaison with other bodies with similar goals of promoting gender equality. The CGE monitors and gives reports on how South Africa is complying with various international protocols on gender equality. The CGE is also mandated to research about gender issues (CGE, 2018).

The Gender Commission at provincial, parliamentary and national office levels ensures a good working relation with other institutions, especially the South African Human Rights Commission and the Office of the Public Protector (CGE, 2018; Mvimbi, 2009; South Africa.info, 2014). Despite its numerous intricacies, CGE collaborates with the House of Traditional Leaders, the Office on the Status of Women (OSW) both at provincial level and nationally. The CGE liaised with the Office on the Status of Women (OSW) and with CSOs, scholars and lawmakers to draft an institutional framework and National Gender Policy that offer a deeper understanding of gender equality issues promulgated through the gender commission (CGE, 2018). The OSW, situated in the Office of the President harmonizes activities on gender equality for the national machinery. In fact, the OSW could be viewed as the nerve centre that advances the gender

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<sup>1</sup> Acts refers to an adopted and effective legislation.

<sup>2</sup> Statutory body: Refers to an organisation that has been created by the Parliament, such as the CGE.

concerns of the nation. The Office was also established so as to develop an action plan for gender mainstreaming within the government and to promote gender equality along with monitoring, implementation, and advancement of that equality (see The Office on the Status of Women Report 2006; Parliamentary Monitor Group, 2011).

The role of National Gender Machinerys, argues Rai (2018), gained an international glance in Mexico City (1975) at the International Women's Year Conference. The Conference called on the nation states to establish these machinerys nationally. There were two other women Conventions that were later held in Nairobi (1985) and Copenhagen (1980). The two advanced the impulse for the establishment of institutional machinerys nationally so as to promote the status of women. By the end of the decade (1980 to 1990) 127 member states of the United Nations (UN) had come up with NGMs appropriate for the political conditions prevailing in those nations (Rai, 2018). The purpose of those machinerys was commonly labelled as *inter alia*: facilitating effective women involvement in development; advancing the status of women in politics, decision-making roles, education, and health; fighting negative traditional practices and stereotypical media portrayal of women; enhancing research pertaining to the status of women derived from sex-disaggregated information (Rai, 2018). By the Fourth World Conference on Women held in Beijing in 1995, the discussion on the role of national machinerys had begun to shift from its conceptual focus on woman-centric issues to gender equality. These national gender machinerys support the governments in the gender mainstreaming within policies (Rai, 2018). The Platform for Action adopted at that Conference elaborated mechanisms, as well as offered recommendations, on strengthening national gender machinerys in order to realize gender equality and the nation's democracy.

The institutional mechanisms meant to advance the affairs of women were itemized among the twelve crucial areas of international concern spelt out in the Platform for Action (Rai, 2018). The processes were designed to ensure efficiency and effectiveness of the national gender machinerys through: (1) realization of good coordinating strategies that connect the national gender machinerys with CSOs nationally; (2) enhancing collaborations that are reliable, with various stakeholders, social partners and the National Assembly (3) adequate resources and good statutory support from the government and the parliament (4) facilitation of strong links with international organizations; (5) good interactions with other sister machinerys regionally, globally and nationally (public and private sectors); and (6) local knowledge mobilization for efficient and effective

delivery of service. A perfect example of such gender machinery described above is the CGE which functions within the South African context.

As an independent organ, the establishment of the Commission on Gender Equality was guided by the Commission on Gender Equality Act 39 of 1996 that elucidates its roles. The CGE has power to hold accountable private as well as public institutions and is mandated to safeguard and promote the rights of women (CGE 2018; 2019). Though the Commission targets all citizens, its chief targets are those on the side-lines, such as women domestic workers, poor women from rural settings, unemployed women, or those from informal settlements (2000).

The South African Commission on Gender Equality is accountable to the Parliament and, therefore, it must present an annual report on its performance. The members in the Commission are appointees of the Head of State, on the recommendation of the Parliament. However, the CSOs nominate their members whom they deem fit to go through the parliamentary recruitment process (SouthAfrica.info, 2014).

## **1.1 Literature Review**

### ***1.1.1 Feminist Debates on the National Gender Machinery (NGM) in South Africa***

The National Gender Machineries have not achieved much in Africa due to the institutionalized patriarchy that devalues the women's agenda. The state agents have co-opted women, a phenomenon that makes women-centric demands get overlooked. When women are co-opted, addressing their concerns is a Herculean task. This is because men tend to select pliable women who will willingly fall into male hegemony. In the scenario of CGE, for example, where the Head of State appoints a woman he trusts and works easily with her, women interests could be compromised. In this case, the interests of women become men interests.

Gouws (2010) asserts that, in South Africa, the NGM has little to show in terms of women's enfranchisement. She notes that these machineries are run by several egoistic individuals who cleverly marshal their interests with that of the governing party. This alignment with the ruling party ensures that those individuals maintain their positions. When women interests are overridden by alignment with the ruling party, the National Gender machinery becomes a disappointment to the disenfranchised population. The success of NGM, according to the state feminism theory of Stetson and Mazur is commensurate to the extent at which women interests are presented to the state. When the NGM

becomes partisan to the ruling regime, and compromised by those in the government, women's interests are simply devalued.

The National Gender Machinery in Africa doesn't seem to advance women interests effectively (Gouws & Madsen, 2021). They are constrained by inadequate government support, which is also inconsistent and, therefore, rely heavily on donor funding. The downside of this over-dependence on donor funding is that it could affect the credibility of executing what the NGM is mandated to do. Gouws & Madsen (2021) argue that the NGM must be careful about foreign support and that they need to ask the question about who pushes the agenda for the NGM. Though the donor funding could be a viable opportunity for NGM to subsidize their budget, it can easily affect the policies that it plans to actualize. In Africa, transnational interventions have produced ugly results, especially when foreign countries want to 'sandwich' their interests in between our policies. Thus, foreign funding should not entirely take over the responsibility of the state to fund NGM because of the risk to introduce foreign-driven ideas into their policies. The western-driven policies could conflict with African cultures. Contrastingly, if the National Gender Machinery turns down those donations, it risks failing to realize its mandate due to inadequate resources, especially when the NGM are not well sustained financially by the government. Though there have been intensive efforts to ensure that several establishments are available to advance gender equality, Mvimbi (2009) notes that the National Gender Machineries have minimal impact due to inadequate resources. Additionally, these NGM have limited understanding of their functions, and even their roles are normally duplicated. Inadequate resources, poor coordination and little communication are the leading causes of underperformance of those institutions (Mvimbi, 2009).

Funokwakhe Xulu (2013) argues that a good number of rural South African women cannot claim to enjoy South African democracy because they have inequitable access to resources and opportunities. Xulu argues that access to resources cannot be the ultimate solution to all of their complexities, but rather, acting towards changing gender relations that are based on hegemonic masculinity and women subservience to men. Gendered power structures have been the major hindrance that inhibit the progress of rural women. The realization of gender empowerment by the Gender Machinery would, therefore, be contingent on the intensity of engagement of the rural women in the policy making process, in order to understand gendered power structures in the local setting. South African rural women ought to personally make decisions about



their lives, and work towards raising their status. This cannot be realized when gendered power structures in rural areas go unchallenged.

Thaba-Nkadimene et al. (2019) claim that rural women are discriminated against in their household settings and local communities and denied access to property and other opportunities. They point out that women are subjected to early marriages and numerous instances of gender-based violence (rape, sexual harassment, femicide). The access to resources and opportunities could promote their access to knowledge about their rights, when subjected to gender-based violence.

### *1.1.2 Emancipation of the African Rural Women*

Ngcongco (1993) elucidates the significance of emancipation of women in their rural settings. He argues that this emancipation does not simply mean women being in the same status as men. Emancipation is about elimination of all factors, laws, norms, attitudes, and rules which prevent women from enjoying their rights or attaining development. Similarly, the concept entails providing education, skills, employment opportunities and decent wages to the disenfranchised rural women.

Although the traditional norms conflict with the South African constitutional provisions, they still guarantee equality rights to the population. The South African government and the judiciary have constantly upheld women rights, while insisting on the constitutional supremacy over any given power, perceived to be superior. Rural women remain exposed to numerous harmful religious and culturally based practices prevalent in African societies. These women are extremely vulnerable to tribal authorities who ignore women concerns.

Although the South African Constitution is rated among the most progressive ones in Africa and globally in terms of guaranteeing women their rights and upholding citizens' equality, it is being undermined by various harmful practices that are cultural and religious. The existing androcentric environment thwarts women's struggle to access social, economic, and political opportunities in society.

In rural communities in South Africa, there is a need for gender balance among South African leaders, who are very influential, particularly in the decision-making process. The efforts to advance women interests can only have significant impact on the rural women if the national gender machineries cease to be run by a small elite group. During Apartheid, women were socially regarded as community nurturers and household labourers while men were naturally

regarded to be decision-makers and leaders. Those gendered roles were buttressed in the family setting and in the media portrayals, thus restricting women's freedoms, and limiting their social, economic, and political potential. The Apartheid system still replicates itself in South African societies which are sexist, dictatorial, and patriarchal (Thaba-Nkadimene et al. (2019; Segooa, 2012; Ramphele, 2008).

## 1.2 Theoretical Framework

The current paper applies the gender interest theory which catalogues interests of women into strategic gender interests and practical gender needs. Practical gender needs underline the women demands that are immediate, for instance safety at the workplace, childcare, equal access to opportunities and shelter (Hosein et al, 2020; Molyneux, 2002; Molyneux, 2005). In spite of women getting those practical needs, male power structures remain intact and unchallenged. This is so because their goals are not strategic, and not capable to emancipate women on the side-lines. In the case of practical gender needs, it is presumed that the existing policies are compliant with the interests of women and therefore, there is no need to challenge them. On the other hand, strategic gender interests are interests that involve challenging institutionalized gendered power systems. In order to realize a long-lasting enjoyment of women rights, and an improved status of women, dissecting those power structures is a *sine qua non*<sup>3</sup>. The gender-based solutions are oftentimes temporary because of the deeply entrenched patriarchal system in the context of South Africa. To achieve enduring gender resolutions equality rights legislation should be enacted, decision-making power for women should be facilitated and they should have easy access to reproductive rights (Molyneux, 2005; Hosein et al, 2020;). In respect to advancing the interests of women, Molyneux (2005) asserts that autonomous institutions do not automatically empower women due to the fact that institutionalized power structures can function autocratically whenever there are no procedural rules that would guarantee control for that power. The aforementioned challenge happens because autonomy has the likelihood of marginalizing or reducing the effectiveness of institutions mandated to empower women (Molyneux, 2005; Molyneux, 2002).

The framework adopted in this paper serves as the platform on which the researcher unpacks rural women's practical gender needs and strategic gender interests. The CGE is a statutory body established to enhance equality, but it

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<sup>3</sup> *Sine qua non* is Latin saying that means an essential aspect that is indispensable.



cannot realize this equality if the political will to alter the prevalent hegemonic institutions is non-existent (Slamat, 2013; Matoos-Padayashie, 2011; Goetz, 2003). Strategic gender interests, observes Molyneux (2005) entail challenging and transforming the existing power relations. The gender interest framework guides the current research to investigate how the Commission addresses the strategic interests of South African rural women.

The paper was also guided by Social Relation Theory. The theory, pioneered by Kabeer (1994) demonstrates the manner in which inequalities are socially constructed in a society. The theory argues that social inequalities are constructed by institutions. Those institutions (family, community, and religious institutions), design regulations and policies that are male dominated. This theory is relevant to this paper because it shows that women's challenges are as a result of humanly constructed systems. The decision-making on cultural practices, land tenure issues and so on, are guided by institutions that are male dominated.

### **1.3 The Study Point of Entry**

The reviewed scholarly works indicate that National Gender machinery is an area that needs more attention as it has not exhaustively been researched. Besides, there is scanty literature on National Gender Machineries that have focused on the rural women, who make a huge component of the marginalized African population. Therefore, this investigation will add to the studies on Gender machineries in relation to rural women. It could be of interest for the CGE and other National Gender Machinery in Africa (though done in South African context) such as the Kenyan NGEC (National Gender and Equality Commission) to consider the findings of this paper and compare notes with their South African counterparts. Additionally, this work could possibly assist CGE and other African Gender Machineries to inform their review of policies and operations restructuring in order to improve their efficiency in advancement of the status of rural women in South Africa and Africa at large.

### **1.4 Methodology**

The paper espouses a qualitative non-empirical research design. A qualitative method describes and interprets a given social phenomenon (Busetto et al. 2020; Newman, 2011). The literature relied upon by the study was derived from CGE-related material such as the Commission's yearly reports, the Commission's strategic plans, documents from the Parliamentary Monitor Group, the CGE mission statements and legal documents. Although a review of documents in

social sciences is positioned at the side-line of consideration (Dalglish et al, 2020) and more emphasis given to interviews, Chapman and McNeill assert that (2005:147), a review of documents, in fact, aids in reflecting the norms and values of the particular society in which they are generated. Although these documents are reliable for data collection, it is the elites or people in offices who are the drafters of most such documents (Newman 2009). Thus, overlooking the perspectives of those marginalized, uneducated, or populations outside the official establishments is undeniable (Newman, 2009). The current work also relied on the secondary material such as conference proceeding papers, peer-reviewed journal articles and published books on Gender Machinery. This search of knowledge from the secondary material increases the dependability of the knowledge.

## **Challenges The Rural Women of South Africa Face**

In South Africa, women from rural settings exist in realities that demand an all-rounded reconstruction of gendered power structures to enable them access rights and privileges spelt out in the South African Constitution. Weiringa (2008) argues that any empowerment or gender equality approach must begin with the accurate understanding of the women's experiences. The Commission collaborates with state organs from the Civil Society Organizations to the Parliament to enhance understanding of those underlying elements related to their strategic gender interests. Thus, the CGE, in fulfilling its mandates of litigation, educating, lobbying and policy reviews, engages the transformation of the power structures that impede women from participating actively in public and private spaces. The South African rural women experience a state marked by harmful cultural observances, forced marriages, land tenure issues that makes them see those rights as 'paper rights' that don't make any sense to the improvement of their conditions (Msuya, 2020; Akinola,2018).

### **2.1 Harmful Cultural Practices**

The South African rural women face numerous harmful practices in spite of the well-spelt out Constitution that contains their rights (Haffejee, 2020; Mgidlana, 2020; Maluleke, 2012; Mntuyedwa, 2013). In spite of violation of human rights laws and the harmful nature of cultural practices, they continue to exist because they are hardly challenged or questioned (Haffejee, 2020; Mgidlana, 2020; Maluleke, 2012). This reality hampers rural women from gaining access to their privileges and rights guaranteed by the Constitution. This inaccessibility to their

rights is intensified by the prevalent traditional authorities that disfavour rural women's emancipation. The South Africa rural women experience the worst inequalities because of their unawareness of various advances pertaining to their status as women and the existence of traditional leaders who sustain male control (Mntunyedwa, 2013). The majority of these traditional leaders are still of the view that gender concerns are un-African and therefore, there is no need to waste time debating them (Haffejee, 2020; Mgidlana, 2020; Mntunyedwa, 2013; Thabiso, 2011). Moreover, most rural women are not aware of their rights as women as they have been socialized into taking gendered roles that are perceived to be of lesser value in development.

The CGE, in liaison with CSOs, has engaged actively in investigation and exposition of harmful cultural practices such as *Ukuthwala*<sup>4</sup> and *Ukuhlobwa Kwezintombi* that hampers advancement of their status. The Commission investigated how the South African government participated in reducing the *Ukuthwala* practice. The Commission discovered that the KwaZulu-Natal Provincial government had done very little pertaining to the protection of women rights. The CGE noted that the government of KwaZulu-Natal even lacked tangible statistics on how many women had been abducted. The rise of the women who had been abducted and later got into forced marriages was the reason for conducting the investigation. In the Province of Eastern Cape, the CGE reported that *Ukuthwala* and poverty are the pressing elements that principally affect rural women (CGE, 2021; Parliamentary Monitor Group, 2010; Mgidlana, 2020).

In Eastern Cape Province, it had a meeting with the House of Traditional Leaders and both of them drafted a Memorandum of Understanding (MOU). The Memorandum of Understanding was meant to forge cooperation among religious institutions, the House of Traditional Leaders, and the CGE to advance the gender equality concerns. The Memorandum accentuated the necessity to annihilate harmful cultural activities and embrace those practices that don't inhibit realization of gender empowerment. The approach has a huge possibility for rearrangement gendered power relations as long as the cultural leaders allowed the spirit of the Constitution to guide them with open mindedness, without clinging to their cultural belief systems that would ultimately violate the rights of rural women. Nevertheless, the customary laws have to be constitutionally aligned. The rift between the CGE and the House of Traditional Leaders has

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<sup>4</sup>Ukuthwala is activity that involves a woman being abducted and hidden for some time. The practice is very common in rural settings (SaNgoNet, 2012).

elicited the violation of the rights of rural women and passing of bills such as the Traditional Courts Bill which abates achievements on the status of women (CGE, 2018).

In the Province of Eastern Cape, the CGE confronted those cultural practices by organizing a workshop aimed at educating the rural population on the necessity of rising above various traditional practices that sustain women's disenfranchisement. The workshop raised the awareness on the ramifications pertaining to cultural practices such as *Ukuthwala* (CGE, 2018). The workshop was also a platform on which several institutions/civil society organizations discussed issues related to those practices and proposed a number of policy changes aimed at reducing the practices.

The Commission has been vocal in raising awareness on harmful cultural practices on social media and mainstream media. One case where CGE plays its educative role is on radio Talk Shows where it does awareness raising to combat *Ukuthwala* and other harmful practices (CGE Annual Report, 2019). The rural women from Umzimkhulu received weekly coverage live talk show on Bush Radio, where they raised various gender complexities.

## **2.2 Forced Marriages, Rape and Misplaced Masculinity**

According to the Universal Declaration of Human Rights, the only women and men that should get into marriage unions are those of full age (UDRC, 2014). The African Charter for the Rights and Welfare of the Child maintains that girls and boys' betrothal/marriage of minors shall be forbidden and a proper action taken against any offenders. Furthermore, the law stipulates eighteen years as the proper age of the union while making mandatory the recording of all marriages in the Registry. (ACERAW, 2014; Parliamentary Monitor Group, 2009). Besides, the South African Marriage Act (Act no 25 of 1961) describes marriage as a two person's union of *voluntary* nature. Therefore, any union that is forced does not qualify to be called marriage. Unfortunately, in South Africa, underage women are coerced into marriage unions, a phenomenon that inhibits their education opportunities. Due to lack of education the subjugation of women is prevalent in rural South Africa. Women from rural settings, who are less educated, have high likelihood of entering into marriages that are not voluntarily. Such women are denied power to negotiate for consensual and safe sex; relationships outside the household; or their own financial development (Haffejee, 2020; Mgidlana, 2020; Thabiso, 2011).

The *Ukuthwala Kwezintombi*, a practice in which young women are abducted with the aim of forcing the abductee's family to approve the union with the abductor, is an abuse of the law (Watt, 2012). The original *Ukuthwala*<sup>5</sup> was communitarian. The modern *Ukuthwala* is a distorted one whereby young women are subjected to sexual violence meant to serve egotistical interests (Watt, 2012). The Commission brands the practice of *Ukuthwala* as unlawful and camouflaged as part of South African culture (CGE, 2010; CGE, 2012; Haffejee, 2020; Mgidlana, 2020).

### 2.3 Virginty Testing (Ukuhlolwa Kwezintombi)

In KwaZulu-Natal and Eastern Cape, among the Zulu and Xhosa communities, *Ukuhlolwa*<sup>6</sup> *Kwezintombi* is a common practice. The inspection entails examination of a woman's genitalia to determine the status of girls in terms of chastity (Ndebele, 2020; Zayed et al. 2022). The ethnic communities that practice *Ukuhlolwa* observe virginty as a cultural heritage and due to the cultural pride and identity they preserve the testing practice (Mhlongo, 2009). In the Province of KwaZulu-Natal, *Ukuhlolwa Kwezintombi*<sup>7</sup> demonstrates the health and purity of the entire community (Ndebele, 2020). *Ukuhlolwa Kwezintombi* has been treasured among the Zulu and Xhosa ethnic communities as a practice meant to restrain early pregnancies, and prevent HIV/Aids (Mhlongo, 2009). During this cultural event, young girls are trained on retaining chastity before securing a marriage partner.

The *Ukuhlolwa Kwezintombi* has been challenged by Civil rights movements and various schools of feminism as they regard the practice as a human right's contravention since it tampers with one's bodily integrity and their privacy, moreover, young girls may not even understand the meaning of this inspection of their genitalia (CGE 2018; Mccaffrey, 2012; Rakubu, 2019). Not only are their human rights violated, but while intruding into their privacy their dignity is stripped off, too, through this practice. Although the Children Act 2005 legalizes the practice, it states that the practices should be both for girls and boys, and only with an informed consent by both genders. This is not the case, however. It selectively targets girls without much of their consent. the parents give their

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<sup>5</sup> *Ukuthwala* literally means carrying where one takes something on one's shoulder or hands. The traditional *Ukuthwala* was seen as an arranged "coupling", and the courts intervened in case the relationship was not working.

<sup>6</sup> *Ukuhlolwa* translates to check/inspect.

<sup>7</sup> *Ukuhlolwa kwezintombi* stands for checking of girl's genitalia (popularly called virginty testing).

consent in order to bring honour to the community. Thus, the *Ukuhlolwa Kwezintombi* is not at all voluntary as it should, but an activity whose symbolic value is to depict purity and health of the Zulu and Xhosa communities. The feminists have questioned why *Ukuhlolwa Kwezintombi*, a sexualized reaction to the HIV/AIDS pandemic is never applied to boys, yet their genitals could also require some inspection.

The Commission conducted consultative dialogues on *Ukuhlolwa kwezintombi* and *Ukuthwala* in the Umzimkhulu, Amazizi and Kwamafunze areas of KwaZulu-Natal Province, where the aforementioned cultural practices are performed (Parliamentary Monitor Group 2009). The dialogues intended to gather the opinions of rural women on those cultural practices, a strategy that would inform policy change on the elimination of virginity testing and *Ukuthwala* (CGE, 2021; Ndebele, 2020). These consultative dialogues revealed that the way *Ukuthwala* was originally conducted has been despoiled. *Ukuthwala* is practised by idle and vagrant men with selfish interests of self-gratification, unlike the original *Ukuthwala* where the abductor (*Umntu othwalayo*) was a familiar face to the local community, and the abductee's family was part of the practice (CGE, 2021; Ndebele, 2020).

*Ukuhlolwa kwezintombi* was performed by women who never charged money or anything for their service. The CGE questioned the meaning of the belief that *Ukuhlolwa Kwezintombi* is a means to prevent the spread of HIV/AIDS, given that young girls engage in unnatural sex such as oral or anal sex, to preserve their virginity. Those unnatural sex methods expose them to sexually transmitted diseases (CGE, 2021; Zayed et al. 2022). The CGE noted that there was a myth existing among South African men, that HIV/AIDS could be cured through having a sexual intercourse with a virgin lady. This mythical belief accompanies *Ukuhlolwa Kwezintombi*, which consequently exposes those virgin girls to the sex predators who rape and even kill them.

## **2.4 Land Tenure Difficulties**

In rural South Africa, land acquisition remains one of the main ways through which gender inequalities are glaringly manifested. The existing male hegemony that describes South African systems of land tenure hampers rural women from accessing land and property rights (Khuzwayo, et al, 2019; Segooa & Mhlongo, 2013; Segooa, 2012). According to (Teagle, 2021) women own 13 percent of the land in South Africa, which indicates that there is a very small change since the initial effort to address inequality in land distribution. The male power structures



are the greatest impediment to redressing equitable land redistribution. The voice of rural women regarding land ownership and use is never heard. In the event of the husband's death or a divorce the woman can never take land ownership or even rights to the use of the land (Khuzwayo, et al, 2019). The South African government started a tenure system known as Land Restitution and Land Reform (LRLR) with the primary objective of establishing more opportunities for rural women to acquire land and overcome the legacies of apartheid that reinforce land tenure discrimination based on the axis of gender and race. Although these programs are designed to facilitate women's access to tenure opportunities, many women are unaware of such opportunities. For instance, only a few women are cognizant of the fact that they can acquire land in polygamous unions if the families stand separately from their male counterpart (Khuzwayo, et al, 2019; Teagle, 2021; CGE, 2011; Segooa & Mhlongo, 2013). After the death of their partners, women are often ostracized and abandoned with nothing. Those women are cast out of the household with nothing and made to believe that property and land rights are 'reserved' only for men.

The South African rural women rely exclusively on subsistence farming for their living, particularly those with no other source of livelihood. This paper argues that land allocation is an uneven procedure meant to reward men due to their gender identity, a phenomenon that excludes women from development (Khuzwayo, et al, 2019; Teagle, 2021; Segooa, 2012). Inadequate distribution of land based on gender identity is among the most conspicuous inequalities in rural settings. Despite the existence of land legislation designed to enhance equal opportunities for everyone on acquisition of land, patriarchal mindset continues to manifest itself in the land policy reforms.

## **2.5 Health Related Issues**

Women in rural South Africa have inadequate access to health due to the fact that they lack autonomy in decision making on their wellbeing (Signé, 2021; Duxbury 2020; Thabiso, 2011). On the other hand, pregnant women experience difficulties in accessing maternal healthcare because they are not within their reach (Signé, 2021; Duxbury 2020; Segooa, 2012; Thabiso, 2011). Those rural women lack transport money, considering that the majority of them earn meagre wages while others are not employed (Thabiso, 2011). The meagre wages, coupled with institutionalized patriarchy in their own households, deny them decision-making power regarding their maternal and family health (Bangani & Vyas-Doorgapersad 2019; Thabiso, 2011). Even when rural women may be able to access those health

facilities, those centres are under-funded. The child and women mortality rates are more prevalent in the rural areas and are mostly health related. The rural zones of Eastern Cape, Free State, KwaZulu-Natal, Mpumalanga Provinces lead in health-related mortality cases of women (Signé, 2021; Duxbury 2020; Segooa, 2012).

### **3.0 Challenges Facing The CGE In Relation to The State**

#### **3.1 Political Interference**

The CGE is an independent institution. Nonetheless, that independence is not entirely guaranteed because the Head of State appoints the Chief Commissioner of the CGE and, therefore, compromises its independence. Additionally, the budget allocated to the Commission is disbursed through the Women's Ministry (that is fettered by the office of the President), which could control the CGE by releasing only a small allocation. One could thus deduce that the question of funds is primarily a political issue, since without a governance committed to gender issues, the funding of the gender machinery would undeniably be poor (Rai, 2018). During submissions done at the National Assembly, the independence issue has been raised several times without coming up with any tangible resolution. The lawmakers have constantly argued that the Commission's independence cannot be guaranteed if it was supposed to monitor the state departments while at the same time accounting to the same institution, even though it was only in relation to its budgetary allocations. The CGE's objectives and aspirations are restrained by inadequate resources and conflict of interests existing among government officials in the government ministries/departments.

#### **3.2 Insufficient Financial Resources**

In South Africa, the CGE is allocated a very skimpy budget that complicates its work in conducting gender-based research; lobbying, litigating, and monitoring (Ramparsad, 2019, Segooa, 2014; CGE, 2011). Although the Commission claims to be an autonomous institution, free from shackles of political intrusions, and only answerable to the Parliament, underfunding the CGE, however, is one way of trimming its powers, a rampant scenario in several other African nations where gender machineries are perceived as an economic burden or where political leaders are principally patriarchal (Rai, 2018; Ramparsad, 2019). Many governments in Africa frustrate such National Gender Machineries by underfunding them and disregarding their submissions. Therefore, being a

statutory body, granted powers by the Constitution, does not guarantee its effectiveness without suitable environment for its operation such as competent staff, vigilant communities, good leadership and liberal media and a democracy conscious government. The National Gender Machineryes that get sufficient government funding have much higher prospects of success than the ones that are not funded that well. In spite of the several programs for poverty alleviation, there is little to show on mainstreaming gender within these programs. This reality results from the state's prioritization on other millennium targets, particularly of economic nature. Gender issues suffer as a result. Ramparsad (2019) affirms that CGE, like other African Gender Machineryes, functions in an extremely bureaucratized form. This high level of bureaucratization and lack of political will hampers its access to sufficient resources, that consequently makes it unable to accomplish its mandates efficiently.

### **3.3 Religious and Cultural Constraints**

The CGE stays in contact with traditional leaders who cling tightly to their traditional systems of beliefs, which are not in agreement with the provisions of the South African Constitution regarding equality. There are numerous occasions where these traditional authorities have remained firm on virginity testing, customary marriage, inheritance of property, leaning on traditions with intergenerational gender-biased tenets that act as an excuse for ignoring laws that uphold women's rights. In the area of Mpumalanga land allocation founded on patriarchal mind-set that women should not own land, and that allotting land to women would contravene traditional systems among Swati and Zulu communities still exists. These two communities dominate the province of Mpumalanga.

An example of constrictions of religious nature could be the position taken by some religious institutions on the use of contraceptives such as condoms in an era when HIV/AIDS continue to ravage the population. The government should take the stand that the Church has no room for compromise on such issues under the claim of protecting morality. The CGE should go ahead to act upon particular crucial decisions that could threaten the believer's wellbeing. The CGE, being a statutory institution must intelligently rise above sentiments, traditional and church belief systems and prioritize the rights and welfare of the South African citizens. Experience demonstrates that religious-based beliefs and doctrines have not entirely answered human issues; the religious institutions as well tacitly recognize that combining varying approaches to solve our daily intricacies is

inevitable. The fact that the possible key solutions to women issues would in most cases differ with church doctrines and beliefs.

Therefore, in most cases the aforesaid conservative church beliefs are conveyed through the written knowledge and spoken language that constitutes the human thoughts or behaviourist psychology; Nonetheless, much of the literature used by the Commission has not been interpreted into African languages that the South African women can comprehend (Parliamentary Monitor Group, 2010). Due to this lack of CGE translated literature, it becomes hard for the Commission to address the women because finding words equivalent to a Western language may not be possible and thus the original meaning may definitely be distorted. Similarly, it complicates the women's access to information disseminated by the Commission.

### **3.4 Poor Coordination between CGE and State Departments**

Gender mainstreaming remains yet to be felt fully by the South African rural women because of inadequate engagement with the rural population at the grassroots. Moreover, the Commission has not shown much collaboration with other institutions (CGE, 2018, CGE, 2021). The tenuous coordination shows when the state officials fail to consider recommendations from the CGE, particularly at provincial level. The CGE could fruitfully address the issue of virginity testing and *Ukuthwala* if the Commission's officials worked together with local government officials in rural areas.

### **3.5 Poor Link between CGE and CSOs**

Although the CGE networks with CSOs, its linkage with those institutions is weak. The NGOs which are within Civil Society Organizations continuously work with women in rural settings, and thus the Commission could make use of these organizations to connect with the rural population at the grassroots. This could facilitate the Commission to hear and understand more deeply the gender interests of rural women. The Commission has a chance to work together with the CSOs which are well acquainted with gender interests for rural populations. These include SONKE Gender Justice Network and the South African Self-Employed Women's Association (SASEWA).

The SASEWA, is a non-governmental organization whose mission is championing the rights of women engaged in the informal sector, such as street vendors, household workers. On the other hand, the SONKE gender justice Network is an organization that combats sexual and gender-based violence

(SGBV), for the prevention of HIV/AIDS. These organizations would be useful vehicles for the Commission to attend to the rural populations, especially where CGE lacks representatives.

Some rural environments in South Africa are far away from the CGE offices, and thus the Commission could subsidize some of the budget allocated to reach such population by using the CSOs. In collaborating with CSOs the Commission has a possibility of improving its *modus operandi* because Civil Society Organizations are not part of the government and, therefore, they could comfortably act as a watchdog for the Commission. The collaborative engagement of the Commission and that Civil Society Organizations has higher potential to capture more robust attention than the “walk alone voice” by the CGE. The Civil Society Organizations with skilled people in various fields, would be of great use to the Commission where it lacks such personnel (CGE, 2018).

#### **4.0 Opportunities for CGE to Realise its Mandates among The Rural Women**

The CGE is constitutionally mandated to monitor all state institutions on gender equality. This gives the Commission an opportunity to occupy a central place in the state architecture, in the context of the National Gender Machinery, with the opportunity to ensure that the state is accountable (CGE,2021; Hick, 2010). Additionally, the CGE ensures delivery of international protocols designed to uphold gender equality and promote the status of women (CGE, 2018). The South African Constitution assures the autonomy to the CGE and empowers the Commission to monitor whether or not the government and the private institutions are implementing the Constitutional provisions and conventional commitments on equality.

The government instituted gender desks/gender focal points in all government ministries at provincial level. These centres were established to ensure implementation of gender mainstreaming within the government ministries in all activities of the State. The gender desks are at a privileged position to mobilize agencies, research institutions, departments, ministries, institutions of Higher Learning to advance gender equality. The CGE has a chance of working together with those Gender desks.

The religious institutions can be another source of strength for CGE. South Africa is a pluralist society with numerous co-existing religions. The adherents of those religions congregate on special days for their sacred worship. In this

regard, those worshipping communities are viable platforms to discuss religious and cultural elements that sustain male domination such as chastisement of women in the name of religion. In these religious institutions where men and women worship, their thoughts could be shared for an African generated solutions on women issues in the context of South Africa such as forced marriage, gender-based violence, genital mutilation, feminization of poverty, especially in rural settings and so on. Similarly, the religious institutions that train religious leaders should have gender, peace and justice among the core modules offered in their curriculum. The clergy must be conversant and well informed on gender matters. The Commission can lobby for religious institutions to become agents of knowledge for the disenfranchised rural women.

The Civil Society Organisations (CSOs) are crucial institutions towards supporting the functions of CGE. The small budgetary allocation to the CGE has negatively affected its performance within the rural population. The CGE has the opportunity of collaborating with the civil society organizations, and such joint effort could enable CGE subsidize its resources. However, most of the Civil Society Organizations obtain funding from abroad and those funds come with donor intentions and directives. Thus, collaboration with them would minimize penetration of Western ideologies meant to serve their interests, in the guise of rural women's empowerment.

Several committees in the South African National Assembly are tasked with different roles aimed at the attainment of equality and democracy. The Commission has an opportunity of collaborating with some of those authorities such as the National House of Traditional Leaders in an attempt to overcome cultural practices that impede rural women from accessing their rights. Those same traditional leaders hinder gender equality, and therefore, dialogue with those leaders and other partners should never be ignored.

The CGE, as an organ authorized to review policies and engender knowledge, is capable of coming up with effective knowledge production procedures that could boost its involvements at public education, policy advocacy and legislative issues (CGE, 2018). The reports and gender-based research conducted by the CGE members could be a means by which the gendered power relations could be challenged. However, most of those CGE generated reports contain no theoretical framework that could enable interpretation of the existing reality of the prevailing power relations within the rural communities. The CGE Policy brief for instance, specifies seven policy recommendations that could allow rural women's accessibility to land. The part on policy recommendation in



the text is quiet about the prevailing gendered power structure. Adopting a feminist framework could aid the work to unpack the various gendered structures that impede women access to land and other forms of property. The theory of gender interest differentiates practical needs and strategic interests. Rai (2018) argues that the national gender machinery should be able to not only engage in the clarification of the two aforementioned interests/needs but to strategize them within particular contexts which they function (Rai, 2018).

## **5.0 Conclusion**

Rural women encounter numerous gender-based complexities in South Africa. Those complexities range from inadequate access to basic necessities of life to the male chauvinism sustained by cultural and religious authorities that impede rural women's emancipation. The CGE, in liaison with other state institutions has participated in addressing the women concerns through its parliamentary submissions, lobbying the government, and educating rural women.

The CGE has experienced several challenges that, if properly addressed, would achieve a lot in terms of rural women emancipation. Thus, among the significant complexities that the CGE should address are the lack of adequate resources, weak linkage with the Civil Society Organizations, inadequate collaboration of the Commission with the government, state interference, and the tribal establishments. Despite the fact that CGE can monitor the activities performed by the government, it's still answerable to the same authority that allocates the funding and appoints the CGE officials.

The CGE has not fully discharged its functions as mandated, due to a number of setbacks that frustrate its mission of highlighting the South African women interests. Gender mainstreaming does not mean only having the notion 'gender' amalgamated into government policies but principally, it is about releasing adequate resources for gender projects in order to actualize them. The South African government's support to the CGE has been inadequate in terms of budgetary allocations.

The paper argues that the Commission on Gender Equality could utilize its statutory powers, and work with Gender Focal Points and various CSOs located among local communities to effectively discharge its functions. Despite the fact that the CGE possesses subpoena powers, few people have been subpoenaed by the Commission to appear in court. Additionally, the Commission has also not been able to challenge the state, despite those powers. The CSOs, Gender Focal Points and Civil society organizations are among the many unexploited

opportunities that the Commission could use to access women in rural settings. The two institutions are directly connected to women in their local settings, and therefore, are much better attuned to their interests than the Commission.

## **6.0 Policy Recommendations**

This work recommends CGE to exploit its constitutionally vested powers to execute its functions. Although the Commission has statutory powers to perform its duties, it has not been able to challenge the State, which is a huge failure to the population it is supposed to serve. The Commission possesses subpoena powers to order the offenders to appear in court. Despite these powers, there are numerous cases that have not been subpoenaed by the CGE. The CGE has received numerous criticisms for being passive or not being active enough to highlight issues related to rural women. Similarly, despite the fact that laws are vital in the rural women's emancipation, the Commission lacks participation in the write up of the legislation.

The CGE reports do not use any feminist theory to analyse women issues in spite of the Commission comprising women who are actively lobbying for the transformation of the structures that inhibit the access to women rights. This paper argues that, for the Commission to address the strategic interests of the rural women, members of the Commission must be conversant with the gender frameworks for analysis and be ready to adopt them in analysis and the report write up. The members appointed to serve in the Commission must have the capacity to make a distinction between the strategic interests and practical interests. In the submitted reports, it appears that the CGE commissioners focus predominantly on the practical needs, rather than strategic interests that pertain to power structures.

The existing link between the civil society organizations and CGE needs to be strengthened so that the Commission can successfully advance the welfare of the rural women. The Civil society organizations are familiar with the complexities that rural women encounter, and therefore, the Commission could collaborate with them so as to better understand the issues that rural women have to deal with. A strong connection between the two could also assist the CGE to supplement its small budget that thwarts the CGE from competently performing its functions.

This study found out that the majority of rural women are unaware of their rights. Thus, they do not access any rights they are entitled to such as health rights, education rights, property rights, customary rights, etc. The Civil society

organizations and the CGE must invest more on educating the South African rural women on human rights. Such education would demand organizing numerous workshops and using the teaching material translated into South African languages (Sesotho, IsiXhosa, IsiZulu, etc.).

The establishment of once dynamic women groups into government institutions by creating OSW, CGE, and the Joint Committee of Parliament led to the weakening of the grassroots women organizations within rural areas. There was an assumption that the women in state offices would be able to promote women interests, but those assumptions have been proved wrong. This work argues that the revival of those once vibrant women organizations cannot be underrated since it is through them that women's interests will be understood.

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