

# Gender, the Role of the Chieftaincy and Rural Women's Access to Land under the Land Reform Programme in KwaZulu-Natal

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## Introduction

KwaZulu-Natal is the most populous province in South Africa, with more than one-fifth (20%) of the country's total population. However, KwaZulu-Natal only occupies 8% of the country's landmass. Eighty percent (80 %) of the population are African and the majority of this group reside in rural areas. In total, 61% of the population live in rural parts of the province. The average annual household income for Africans in KwaZulu-Natal is R24 000 and that of Whites is R98 000 (DLA, 1997c). Average incomes tend to cluster around the R6 000-R23 000 bracket in the rural areas since most of the population are farm workers or are employed in semi or unskilled positions in factories. The question of survival is a real issue for many of the households. Also, this is one of the provinces that is faced with the dilemma of addressing the chieftaincy question. The rural areas constitute part of the most economically and politically marginalised regions in KwaZulu-Natal and have been the location of complex tensions over land and other scarce resources for decades (Turner, 1997). The lack of land and land resources, support services and systems for agriculture, credit, and other facilities such as roads, health clinics and educational institutions make many of the households in these communities extremely vulnerable to poverty.

Understanding the role of the chieftaincy is particularly important in analysing the relationship between women and land in rural areas. The chieftaincy as an institution and stakeholder in land allocation, management and control processes continues to be highly controversial. The chieftaincy is steeped in patriarchal relations. Controlling and allocating access to and use of land has been the primary way in which the chieftaincy has maintained and enhanced its power (Cousins 1996; Marcus et al 1996; McIntosh et al 1995; Levin and Mkhabela 1997). In this region, as is the case in many parts of South Africa, applications for land under the land

redistribution and restitution programmes are submitted via chiefs in the community (DLA, 1997b).

This article examines the impact of traditional practices and the institution of the chieftaincy on women's rights to own and access land in KwaZulu-Natal. In KwaZulu-Natal, as in other regions in South Africa, local structures and the chieftaincy tend to be steeped in patriarchy (Levin & Mkhabela 1997; McIntosh et al 1995). The gendered analysis adopted in this article also intends to look critically at the role of the local authority and the chieftaincy in terms of land reform and women's ability to be positively impacted by these processes. These institutions impact the way in which roles and needs of certain groups in the community are perceived. Few women hold positions of power in these institutions. Also, in many cases, these male dominated institutions have traditionally played a major role in marginalising women, reinforcing patriarchy and maintaining neo-apartheid structures.

This study draws from secondary sources as well as primary research conducted in three land reform projects in KwaZulu-Natal: Ekuthuleni (a redistribution project), Baynesfield (a restitution project) and Boiling Fountain (a tenure reform case). The study areas were specifically chosen so that a cross section of experiences from women in the context of different land reform projects and programmes could be examined. Intensive questionnaires were conducted with 20 women from each of the communities. Additionally, focus group exercises incorporating various participatory methodologies including mental mapping, ranking exercises, gender activities' profiles and venn diagrams were used. This study incorporates some of the pertinent findings of the research in relation to the issues under investigation.

In the context of rural KwaZulu-Natal, the multiple burdens on women are particularly acute due to women's economic dependence on men, reinforced by cultural traditions and religious practices that dictate women's relationships and roles in societies as well as the relationships to resources, especially land. Power relations from the household to the highest public level impede women's ability to lead productive and fulfilling lives. Extensive research shows that in comparison to men, women are generally at a disadvantage in terms of control and access to resources, including land (Agarwal 1996; Carney 1993; Kabadaki 1994; Rangan 1997; Small & Kompe 1991). Yet, women are key environmental managers and consumers. Their vast knowledge about the land they use is key to sustainable development in rural areas. The provision of women with land rights through the land reform program, either individually or through a system of group formation, is seen to be a way of contributing towards women's empowerment, both socially and economically. Hence, the anticipated outcomes of providing women with land rights and tenure security are very positive.

Cross and Friedman (1997) assert that women and men conceptualise land rights and land use differently. They argue that while men value land for its place in organising social and political relationships, women value it mainly for its productive and reproductive use:

Land was (under older African tenure systems), and still is, used as a means to form and maintain groups, to establish leadership and to obtain followers. Since land has become very scarce, its social and political value, as a vehicle for organisation and power, has tended to keep its value as a means of production relatively peripheral (Cross & Friedman 1997:23).

Given the scarcity of available land to African households, even with the land reform initiatives, women have to compete with men for land. The historical forces of vesting land in male hands together with pervasive patriarchal notions that inform social, political and economic processes stack against women winning this battle.

Land demand among women is differentiated by a cluster of factors related to socio-economic status and perceived needs. As stated earlier, there are also a range of factors that combine to mitigate against women gaining land rights. The most important are the prevailing forms and practice of agricultural production, household structure and the effects of restrictive legal and customary practices.

This article is divided into six sections. The first section examines women and land reform in the South African context. The next two sections critically assess the roles of traditional institutions in managing land generally and then specifically their roles in land reform processes. The fourth section undertakes a critique of the role of the chieftaincy in the implementation of land reform projects in KwaZulu-Natal from a gender perspective. The fifth section looks at attitudes towards granting women land and finally concluding remarks are made.

## **Women and land reform in South Africa**

The DLA has committed itself to:

Taking legislative and administrative measures to give women and men equal rights to economic resources including access to ownership and control over land ... credit facilities, natural resources and appropriate supporting technologies (DLA, 1997a:18).

This is to be achieved by:

The removal of all legal restrictions on participation by women in land reform. This includes reform of marriage, inheritance and customary laws which favour men and contain obstacles to women receiving rights to land (DLA 1997a:50).

Marcus (1991:26) aptly states that African women in South Africa have been disadvantaged within their class and strata. Male biased laws disempower women and bar the majority from land ownership. For example, the Black Administration Act of 1927 gave legal force to customary practices that limited women's access to land and subjected them to male authority. Also, the Proclamation R188 of 1967 bases the communal tenure of the homeland system on traditional, patriarchal African institutions. Under indigenous law although women were the principle land users and agricultural producers, they rarely owned land in their own name. Land was generally held and distributed by the *amakosi* (chiefs) to male household heads. According to Cross (1991), women were viewed as legal minors and the dependants of men. The only exception was generally widows who owned land under the assumption that the ownership was a transitional state in the transfer of land to the male son. Women generally held the land until the male heir came of age or until she died when the land would pass to the male heir or other male kin. Marcus et al (1996) further indicate that the decisions regarding the use of such land were to be made in consultation with the heir in question or male relatives. The conditions described above have remained more or less the same for rural poor women in KwaZulu-Natal despite major legal changes.

Gender and access to land is a particularly important concern in a land reform programme. Women are differentially and less favourably placed in relation to land and other resources.

Black women are the mainstay of peasant and simple commodity production on land. Yet their link to the land is inextricably dependent on men through whom access to land is rooted in 'white law' and indigenous law (Marcus, 1991:27).

This raises questions of inequality and discrimination that, although often reinforced by apartheid practices, needs to be conceptualised by incorporating traditional patriarchal relations. Land is allocated to male household heads either via chiefs or through inheritance. Women rarely have control or rights over land. This situation ensures that women remain dependent on men. Female headed households suffer from being unable to have even indirect access to land.

As a result of the devastating effects of apartheid policies, combined with patriarchal relations in South Africa few African women own land and even fewer

effectively control land. Studies from other regions, for example in India and Zimbabwe, that share similar histories to South Africa indicate that despite progressive legislation, women's ability to acquire and effectively control land does not change substantially after independence (Agarwal 1996; Small & Kompe 1991; Thorp 1997). A persistent gap continues to exist between women's legal rights and their actual ownership of land, and between ownership and control. Social, administrative and ideological factors are largely responsible for these inequities. Women are generally disadvantaged in relation to men in terms of status, property rights and representation and authority within the community. Not all women are equally poor and programmes aimed at benefiting the poorest of the poor need to be carefully targeted, rather than aimed at women in general.

### **The role of traditional institutions in managing land in rural areas**

There are different opinions on the role of tribal authorities and the chiefs. Often, there is contestation between traditional institutions and democratically elected local government structures to allocate and manage land. This has in some instances resulted in outright conflicts in certain localities, destabilising communities and impeding prospects for peace and development. The chieftaincy in the South African context is both a product of traditional African customary institutions and colonial and apartheid incorporation. Some chiefs were pseudo-custodians of colonial and apartheid practices as they often acted on behalf of the government during these periods to implement the indirect rule over Blacks by Whites (Harsch 1986). This history greatly influences the debates about the future roles of the chieftaincy in a democratic South Africa. Chiefs were often viewed as 'puppets' of the apartheid regime who played a major role in maintaining and benefiting from the creation of the Bantustans.

Cousins (1996), Marcus et al (1996), McIntosh et al (1995) and Levin et al (1997) argue that land allocation function is critical to traditional leaders because it is one of the few remaining actual powers and sources of influence they have. Chiefs have historically played an important role in the allocation and control of land in the rural areas. A disproportionate amount of land is used for their own agricultural, grazing and residential needs. Levin and Mkhabela (1997:161) argue that the chiefs also use their power for extra-economic purposes which includes forced labour and forced contributions:

Control over land allocation constitutes the centerpiece of the coercive power of the chieftaincy. This is not only because chiefs are placed in a position to determine who may have access to land for different uses, but also because they have the formal power to refuse their opponents entry into

a given territory or to banish them from it. This has in turn created conditions of dependency on the chief for access to land.

There are major regional variations in the form and roles of traditional authorities. Many traditional leaders argue that the problems of land management derive from land shortages that are inextricably linked to historical dispossession. On this basis, they claim that access to more land will help them meet the land demands of their constituencies.

Letsoalo (1987:45) argues that the solution to the land problem in South Africa needs to focus on universal access to land based on renovating the traditional land tenure system that is supported by communal values.

The traditional land tenure system of the Africans is not part of the problem today, neither was it a problem when the state initiated tenure land reforms. This system, which has been blamed for poverty and low agricultural production in the Bantustans, does not even exist anymore. It died in the process of underdevelopment. Thus, for instance, in the Bantustans there are alien features such as trust, private and tribally bought land, grazing fees, land rental, state farms. Even the famous 'one man, one plot' has become a myth.

As true as this statement may be, Letsoalo (1987) when suggesting resuscitating the traditional system fails to illustrate how this can be done. The continuation of the process is problematic in South Africa since many chiefs had been co-opted into the former White system and are viewed suspiciously by communities. Furthermore, romanticising traditional systems are problematic. The 'one man, one plot' vision reflects the inherent gender inequalities and patriarchal nature of some traditional systems even prior to colonial and apartheid influences.

Levin and Mkhabela (1997) argue that while there is widespread opposition to chiefs continuing to allocate land, there is ambiguity surrounding the institution of the chieftaincy. Mngxitama (1997:131) argues:

The trouble is that the new government, instead of encouraging a development of rural politics away from the authoritarian and patriarchal chiefly rule, has embarked upon a process of consolidating it, even in cases where the struggle of the people has eroded these forms of feudal-apartheid corrupted rule. The establishment of the House of Traditional Leaders is a case in point. Also the land reform process through the Restitution Act wittingly or otherwise encourages the revival of the institution of the chieftaincy.

Whatever the conflicting views, the institution of the chieftaincy remains empowered at the local level in many parts of South Africa. McIntosh et al's (1995) study illustrates that in KwaZulu-Natal both traditional leaders and communities expect the traditional authorities to play a central role in land administration, even with regard to newly acquired land. In many parts of the country, however, traditional authorities have lost legitimacy. The degree of power and local popularity of chiefs exhibits high levels of variation.

The major problems faced by land management under traditional systems are corruption, contradiction of traditional systems with modernity, selling or controlling of land for personal profit and benefits, and discriminatory practices. The latter includes discrimination against women and a move towards commercial practices and accumulation. Commercial agriculture results in the emergence of a new class who are encouraged to accumulate wealth and land. This can often result in an increase of the landless as wealthier segments of farmers buy out those who can no longer sustain production and survival given competition. Commercialisation may challenge traditional rights to the land as they often prefer freehold titles to land.

Whatever the debates surrounding the roles and form of the institution of the chieftaincy, few would argue against the position that the chieftaincy is highly patriarchal. Under most traditional systems land is not allocated to women but to men. However, each man is obligated to ensure that each wife has sufficient farm land. Although this obligation remains after divorce or separation, often this has not materialised. McIntosh et al (1995) indicate that legislation passed in 1987 allows women who are heads of households to acquire land. The article, however, does not illustrate if these sentiments are being practised. The roles that traditional authorities are playing in claiming land and in the Community Property Associations, for example, raise serious concerns relating to access to and protection of women's rights over land. The next section focuses on a more critical gender appraisal of the role of traditional institutions in land reform processes.

### **The role of traditional institutions in land reform processes**

In addition to the concerns raised in the previous section, a review of pertinent sections in the *White Paper on South African Land Policy* (DLA 1997a) suggests that there remains a vagueness and a lack of clarity about the future role of traditional authorities in the land management and allocation process. This has serious implications for gender issues since traditional authorities in South Africa are highly steeped in patriarchy. The DLA (1997a:30) states:

There are communal areas which have been occupied by groups, communities or 'tribes' for decades and sometimes over 100 years. These

groups regard themselves as the owners of the land; it is only because of racially discriminatory laws that their ownership is not reflected in the title to the land.

The DLA (1997a) also states that pending transfer of such land, these areas should be treated as privately owned by the communities who occupy the land. Another problematic position on the role of tribal authorities is articulated in *Land Info*. (DLA 1998:31):

We (the DLA) believe that the land belongs to the people and that they must make choices about the institutions which will preserve and manage the land on a day to day basis.

The government's view that 'the people own the land' tends to ignore the variety of discriminatory practices prevalent in rural areas. 'The people' is not a consensual group and power dynamics prevent many groups from articulating their views or being able to make choices. Women particularly are disempowered and marginalised.

Murphy (1990) argues that there is no tribal law that states that women cannot access land in their own right. This is a negotiable issue with the male tribal authorities. To a large extent it depends on the ability of the woman concerned to convince the tribal authorities to grant her land rights. Generally, it is difficult for women to access land in this way and when they do, their rights are often tenuous. Furthermore, Thorp (1997) suggests that there are no clear positions relating to land allocations and customary tenure. She asserts that land allocation depends on the position of the powerful in the community, usually the Chief or his headmen. However, there is evidence that suggests that the persuasiveness and the circumstances of women who apply for land are also contributory factors. The fact that there is no consistency in the way in which land is either allocated or denied (including inheritance practices) to women within a particular ethnic or cultural group suggests that customary or cultural notions of land rights are contextual and often ambiguous or non-existent. Berry (1993) illustrates that under customary systems of African tenure, property rights are not clearly defined or consistently enforced.

As stated earlier, many studies have indicated that traditional authorities in rural areas are problematic and in some instances prone to corruption. These institutions have been primarily responsible for allocating land in the past and are demanding that they maintain allocatory powers in a new dispensation. Men's greater access to these institutions and knowledge of the way in which 'things can be done' place them at an advantage over women in securing land access via these traditional structures. For example, they are often in a better position to deliver bribes.



Despite the calls for land to be allocated and managed more democratically, there is a strong suggestion from the DLA that traditional authorities will still be assigned a role in terms of service delivery and land allocation in rural South Africa. They cannot be left out because in many places they continue to exert power and influence that can successfully undermine the development initiatives undertaken within communities. Studies indicate, especially in KwaZulu-Natal and Mpumalanga, that opposition to traditional authorities comes mainly from the youth (Levin & Makhabela 1997; McIntosh et al 1995). As a large part of the older population, especially men, benefited or are part of the system, they still support these institutions. Despite the chaotic and conflicting perception of traditional authorities in rural areas, Westaway (1995:13) states:

The Department of Land Affairs (DLA) is reluctant to commit itself, preferring to merely note the need for clarity of the role of traditional leaders vis-à-vis local government in land administration, and to declare its intention to democratize land administration processes.

This currently remains largely the DLA's position on traditional authorities. The repercussions on the ground are that the confusion over the role of traditional leaders is contributing to uneasiness, sometimes open conflict as in the case of the Dukuduku forests and Cornfields in KwaZulu-Natal, as well as impacting the pace and effectiveness of land reform as a whole.

There is sufficient evidence that indicates that although traditional systems prior to colonisation might not have discriminated against women they do so today (Agarwal 1996; Ahonsi 1995; Carney 1993; Carney & Watts 1990; Schroeder 1997). Furthermore, nepotism, ethnicism and political affiliation are also widespread discriminatory practices associated with the chieftaincy (McIntosh et al, 1995). Thus, treating land under traditional authorities as privately owned, reinforces the power of the male chiefs who view themselves as the owners and the managers of land. It would seem that the DLA's position on traditional authorities is highly politically motivated and aimed at appeasing traditional authorities. This will fail to empower women to challenge these institutions that have in the recent past generally been oppressive.

The gap between legal rights and actual power needs to be reduced. Legal rights that do not confer the power to exercise these rights simply result in rhetorical and not real support for changing gender relations. Furthermore, as stated in *Land Info*. (DLA 1997d), in South Africa where customary, religious and statutory systems co-exist, the law least favourable to women is often selected. This situation leads to rural women being particularly vulnerable to 'laws' and customs that are outside the control of the legal system. Customary laws often declare women as dependants and

thereby deny the majority of women the right to own land. The issue of customary law and legal rights is indeed complex. This needs to be dealt with. One of the key issues is to have a clear distinction between land ownership and issues of governance and management.

Cross and Friedman (1997) argue that women are disadvantaged by social assumptions and informal land practices that are not controlled by law. The evidence presented in the literature review suggests that in numerous ways tradition in African cultures have been distorted and recreated. Thus, traditional practices must be subjected to a critical review. As Walker (1997) points out, the gendered nature of the discourse on tradition in South Africa must be acknowledged. The generally accepted male definitions of tradition are largely patriarchal. Furthermore, women often exhibit implicit and explicit support for traditional gender practices, internalising oppressive tendencies.

### **A critique of the role of the Chieftaincy in the implementation of land reform programmes in KwaZulu-Natal from a gender perspective**

The land reform process in South Africa has three components: redistribution, restitution and tenure reform. In this section, a brief appraisal of each programme will be undertaken highlighting the role of the chieftaincy and the concomitant gender implications.

#### **Redistribution**

Land redistribution is a broad-based programme which aims to provide the disadvantaged and the poor with land for residential and productive purposes. In terms of the land redistribution process, primary research conducted in land reform projects in KwaZulu-Natal clearly shows that the definition of a household tends to be problematic. Polygamy is a common practice in many rural areas in KwaZulu-Natal. Families married under customary law involving more than one wife qualify for only one grant. This has a detrimental impact on the women involved who need to secure their own and their children's future. This type of policy also ensures the continued domination of the male head and results in the creation of dependent females who have no access and control of land and other resources.

The use of the term 'household subsidy' tends to entrench stereotypical and problematic notions of the household. The tendency is to support and promote the idea of a nuclear family with a household head that is usually male. The reality is that households take different forms in different situations in South Africa. Ngqaleni and Makhura (1996) point out that gender power relations within households and

between urban and rural residences will usually result in the grant being made to the male household head who decide where to take the grant. They can, for example, decide to use the grant in the urban area. This leaves rural women extremely vulnerable and it is likely that they will lose out.

Research conducted by the Association for Rural Advancement (1996) in KwaZulu-Natal indicates that many households which need land, especially among women, are unable to do so even within land redistribution projects. The Land Acquisition Grant of R16 000 per household is unable to cover the costs of buying land, even when grants are pooled. This means that in many instances aspirant beneficiary households are required to raise additional monies which they find extremely difficult to do. The research further indicates that when potential beneficiaries need to make additional contributions they often sell cattle, the very resource that they need to generate wealth once they have settled on the land. As illustrated in the literature review, cattle are viewed as men's property and usually women do not own this valuable social and economic resource. Thus, aspirant women beneficiaries are even further disadvantaged in terms of being unable to raise the necessary finances to enter redistribution projects.

Communal Property Associations (CPA) is one of the mechanisms through which households jointly own land that is held in trust by the CPA. The CPA has built in procedures to protect individual rights and to ensure that gender equality is a prerequisite. Rules of membership and management are drawn up in the constitution. Despite these safeguards, CPAs confront numerous challenges. Democratically elected CPAs are often in conflict with chieftaincy structures. The formation of CPAs has often meant the creation of artificial communities with dramatically different needs and aspirations. Furthermore, the power dynamics within these structures are potentially dangerous, especially for disempowered women who cannot assert their views in the decision-making forums and processes.

### **Tenure reform**

The landless in South Africa include those people who have no fixed right to any land. They are not owners of land and have no tenure security. This may be due to past discriminatory laws as well as traditional practices. To address the needs of people who are already living on land but who are not secure in terms of their tenure, there will be tenure reform.

Tenure reform is also viewed as being one of the key programmes to enhance and protect women's land rights and tenure security. However, thus far there has been no attempt to articulate how the tenure programme will deal with the conflict between what the constitution states and customary laws and practices prevalent in rural areas that discriminate against women.

Tenure reform is extremely difficult to implement in the former homelands where the *status quo* is entrenched and information is limited. Tenure reform often directly threaten the power of White farmers and chiefs who are hesitant to relinquish the power they exert over their labour tenants or farm workers and subjects respectively. Meer (1997) argues that tenure reform can end up formalising existing inequalities. Since men traditionally held permits to occupy land, it is possible that the tenure reform process will usually upgrade men's rights making them owners. This type of upgrading can create greater insecurity for some, especially those individuals (women and children) who are dependent on men to access ownership rights through the tenure reform programme. This results in the women's and other dependants' land rights remaining insecure and they can potentially be evicted. This is likely to be worse if the man decides to sell his land. Women married to migrant workers with more than one wife are particularly vulnerable. It is imperative that women's land rights are assured in the tenure reform process. One way to do this will be to mandate that a new type of landholding system is created whereby the rights of all family members are stated in the title deed.

A final point of concern is that:

*There is a widespread belief among rural people that their land needs are self evident, and that they need to do nothing more than wait for land redistribution agents to find them* (Marcus et al. 1996:136).

This is a dangerous situation given the fact that the Department of Land Affairs is adamant that land reform be demand driven. While some groups such as the chieftaincy are well placed to articulate their demands, others like women are marginalised from being able to effectively do so.

## **Restitution**

The purpose of the Land restitution Programme is to:

Restore land and provide other restitutionary remedies to people dispossessed by racially discriminatory legislation and price, in such a way as to provide support to the vital processes of reconciliation, reconstruction and development (DLA 1997a:52).

Five different groups of potential land claimants are identified: victims of forced removals, labour tenants, landless people, current occupants without title and people with historical claims based on occupation of land by predecessors (Levin 1997).

Walker (1997) suggests that since restitution is about restoring the former *status quo*, it is likely that men who were the former owners will be the key

beneficiaries. The above points indicate that if these trends continue and there is no intervention to bring the rural poor and women into the programme then restitution will fail to contribute to one of the overall objective of land reform which is to prioritise the rural poor and women. For rural women who generally were not allowed to own land, the claims process of ensuring restitution is a major impediment.

The way in which the government is going to deal with traditional authorities as both claimants and accused also remains unclear. For example in KwaZulu-Natal, land under the Ingonyama Trust cannot be brought under the land reform program without consent from the Trust and King Zwelithini. Furthermore, key claimants are often chiefs who are more powerful than the average rural resident and are therefore in a better position to claim land. Many chiefs are also claiming land on behalf of individuals or groups. Whether the rights, compensation or land will eventually be conferred to individuals by the claims court within this scenario is questionable. A key issue is whether the Land Claims Commission can, while redressing the injustices of apartheid practices also attempt to undo patriarchal land practices that were also unjust. What rights, for example, will daughters have in claiming land if the legal and customary heirs to the father's estate are the sons? Will the Land Claims Commission intervene in these situations to restore women's rights that were violated as a result of patriarchal discriminatory practices? As the restitution Act exists, these types of concerns will be beyond the scope of the Land Claims Court mandate. This example illustrates the contradictory and political nature of including women as a key target group in the land reform process. If land reform is only about dealing with apartheid and colonial discriminatory practices to the exclusion of addressing other discriminatory practices, then targeting women in land reform objectives can be viewed simply as fashionable policy positions. It will be impossible to truly bring women into the land reform process without challenging the multitude of practices that have viewed and continue to view African women in rural areas as second class citizens.

In terms of the restitution program, the stated objective of restoring land rights which were enjoyed before racially discriminatory legislation resulted in dispossession (subsequent to the introduction of the 1913 Land Act) lacks a coherent gender analysis. The assumption is that before apartheid dispossession, land rights were equitably distributed and therefore 'restoring land rights' will be a process of redressing injustices and restoring equality. It is framed as if the only form of oppression that resulted in land dispossession and inequalities was racially motivated. This, of course, is highly problematic. Firstly, prior to 1913, racist practices were already deeply entrenched in traditional societies. Many Africans were already dispossessed as a result of widespread colonisation. Furthermore, patriarchal and other discriminatory practices associated with lineage and ethnicity were embedded

in traditional norms and values that largely determined how land was arranged and how it was used.

### **Attitudes towards granting land to women**

Conflicts over women's rights to own land is evident in many studies and is evident in the communities in which fieldwork was conducted. There are strong sentiments in many rural areas that women must not be allowed to own land. Cross et al's (1996) study on land reform pilot projects in KwaZulu-Natal reflects extremely conservative attitudes toward gender and land in the twelve sampled communities. In nearly all instances older men and elected (male) officials in community structures opposed the idea of women being landholders. The main reasons for this position was that it was against cultural traditions, that it will lead to the break-up of the family structures and that it would result in the limited amount of land being exhausted. Furthermore, this study indicated that in most of the communities where research was conducted unmarried women could be considered for land rights if there was a son in whose name land could be allocated. In most of the workshops participants insisted that women obtain rights to land through their husband by way of marriage.

The 'Household Research Project' conducted by the Centre for Rural and Legal Studies/ Surplus Peoples' Project (1998) found that in Elandskloof, single women with children are not eligible for access to a single house plot in terms of the interim constitution of the CPA and have to move in with parents. This obviously clashes with the Bill of Rights and Land Policy.

Despite the general trend on the ground to oppose women's rights to own land and participate fully in land reform programmes, there tended to be support by some men, generally those who are younger, and women, for women having rights to land independently of men or jointly with men. The support tends to coincide with sentiments expressed in opposition to the existing chieftaincy arrangements that in many communities translate to chiefs owning the land rather than managing the land. Additionally, there appears to be a growing recognition that women in rural areas are raising children alone. Granting women land rights is seen as being critical to ensure greater household security. What was clear from some studies was that gender relations in the countryside are changing in many quarters (Lipton et al, 1996; Marcus et al, 1996; Small and Kompe, 1991). The tension between male traditional attitudes towards women's rights to land and more contemporary views are a sign that there are forces that are contesting traditional attitudes and beliefs. Furthermore, as households are beginning to take different forms and are becoming increasingly accepted so too are gender relations becoming reconstituted and contested in households and communities.

## Conclusion

This article tended to support and stress the advantages of granting women ownership rights. However, the historical benefits of communal rights cannot be ignored. Customary law often allowed women rights to land, trees and water as well as usufruct rights. Du Guerny (1997:17) states:

Traditional communal rights are in many regions being replaced by land tenure systems based on exclusive use, ownership and titling which tend to erode the rights of vulnerable groups, including women and minority ethnic or nomadic groups.

It is important that future research focuses on whether independent land rights erode the benefits of communal rights. Having ownership rights as well as communal rights to land resources might be the most beneficial arrangement for rural women. This sentiment has been supported by respondents in the field.

A central issue that will confront government is the nature and extent of the roles that government structures and departments play in furthering gender equity and challenging patriarchal relations and ideologies. The government will often be forced to make controversial and highly contested decisions. For example, the current tendency when dealing with the issue of the chieftaincy is political expediency, allowing chiefs to function in government structures, particularly at the local level. It is true that in many areas, especially in KwaZulu-Natal, traditional authorities are strong on the ground and are very popular (McIntosh et al, 1995). Indeed, in these instances many women also support these structures, viewing them as cultural guardians. However, there is much evidence that indicates that with the exception of very few traditional structures, the rest are highly patriarchal. According to Westaway (1995), recent history has shown that the Congress of Traditional leaders of South Africa (CONTRALESAs) is one of the most organised and effective rural lobby groups in the country. Although its relationship with the ANC-led government has eroded in the last couple of years, it continues to stress and demand that from time immemorial the traditional rule was the most democratic rule in Africa. The government must challenge this notion. As Field-Juma (1996) warns, whilst there was a high level of consensus politics in pre-colonial Africa, this must not be confused with democracy. In terms of women's concerns, as highlighted in this article, it is important to note that whatever its historical evolution, traditional African institutions today are highly steeped in patriarchy. The government has to strike a delicate balance of respecting cultural tradition while at the same time ensuring that human rights are not violated.

An important issue raised repeatedly in this article is that laws and policies that protect and advance women's rights will ultimately not lead to changes in

women's status if we fail to address and challenge patriarchal relations at all levels. Although the DLA and the government in general have expressed commitment to granting men and women equal rights to resources, discriminatory legislation as well as customary practices continue to significantly restrain women from participating and benefiting in land reform initiatives. The literature review shows that after decades of independence in many parts of Africa and the initiation of new laws that allow women regardless of marital status to own land, very few women do (Ahonsi 1995; Ezumah & Domenico 1995; Meeker & Meekers 1997). The studies show that rural women have neither the knowledge nor the skills to take advantage of the new laws that promote and protect their land rights. Furthermore, it is contended that the lack of compliance to land reform laws is not only associated with a lack of knowledge but also with the tenuous and undocumented land use relationships at the local level. The government must develop strategies to win over men and chiefs in their attempts to eradicate sexism. Furthermore, measures must include women's legal literacy programs and campaigns to know and exercise their rights. One must remember that the success of the legal aspects of women's land rights is what goes into the statute books as well as the changes that happen on the ground.

This discussion supports the existing literature on women and land concerns in South Africa. This warns that policy formulation that attempts to provide simple mechanical answers for complex problems, that are associated with multifarious power relations, are bound to fail. The general consensus forcefully asserted in the literature is that a land reform process that does not confront and challenge unequal power and authority, will inadvertently reinforce the existing *status quo*. Furthermore, the resources spent on land and agrarian reform in rural areas will fail to give adequate returns unless the relationship to the recipients and the land is such that proper incentives for sustaining and making investments on the land is promoted. This is best realised if security of tenure becomes widespread.

The Government-led land reform program is indeed a commendable attempt to address the unjust and unequal relations that face South Africans. Undoubtedly, according land rights will have a positive effect in increasing security and helping to reduce poverty. The study, however, suggests that there are serious problems that mitigate against land reform adequately achieving its social justice and poverty alleviation goals. The various constraints and concerns highlighted will prevent the programme from reaching the vast majority of poor rural women who will remain outside the land reform projects or whose land rights will continue to be dependent on males: their husbands, their fathers, their sons, their chiefs. Overall, the practices of land reform policies and programmes in so far as women's land rights are concerned are in a conflicting state of rhetorical support and reluctance to implement.



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