



IJR
THE INSTITUTE
FOR JUSTICE AND
RECONCILIATION

POLICY BRIEF

Policy and Analysis Programme

Number 1 | July 2014

WOMEN, LAND AND LIVELIHOODS IN SOUTH AFRICA'S LAND REFORM PROGRAMME

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INTRODUCTION

Since 1994, the government has moved at a ponderous pace towards land restitution, and often has perpetuated invidious land settlements. In common with other ex-colonies, socio-political hierarchies, particularly with regard to women, remain entrenched in the land and agricultural sector. In addition, the inherent and instinctive reluctance of agricultural industrialists to cede power and access has diminished the efficacy of the land-restitution processes.

Access to natural resources, especially land, is a critical determinant of the ability of vulnerable rural and urban women to improve their food security and economic welfare. Such access remains peripheral at best. The South African government has enacted gender-sensitive legislation to achieve alignment with international and regional protocols that call for gender equality and the empowerment of women. Nevertheless, this paper argues that, despite constituting 52 per cent of the population and producing up to 68 per cent of agricultural output (Stats SA 2011), the participation of women in agriculture has been fettered by restrictive legislation and deeply patriarchal policy planning.

BACKGROUND OF LAND DISPOSSESSION IN SOUTH AFRICA

The annexation of land in South Africa preceded the apartheid regime and was initiated by the white minority government in the late nineteenth century. This began as a discriminatory regional process with the appropriation of agricultural land. The Glen Grey Act of 1895 galvanised the seizure of prime agricultural and grazing land in the former Transkei and Pondoland. In the former Natal, the Zululand Land Delimitation Commission proposed that 'from January 1906, 40 per cent of the best and [most] fertile land' in Natal was to be reserved for white occupation. The 1909 Commission on Natives and Native Affairs noted that coloured and African people could not own land outside of demarcated reserves in the Orange River Colony (SA History n.d.).

An inevitable result of the state's land tenure system was its contribution to women's exclusion from access to land (DLA 1997). The state was disinclined to acknowledge the systemic and social problems resulting from African people's exclusion from land, and portrayed these as being of their own creation. In order to obfuscate its racially skewed policy design, the state instead created a discourse on land scarcity and purported to deal with overcrowding by removing women from the land. They were emboldened by a corruption of the customary law, assisted by magistrates and Bantu Commissioners, who advised complainants that it was not 'customary' for women to manage or inherit land.

The institutional framing of women's access to land adeptly supported inherent paternalism and problematic notions such as 'head of household'. There was and remains a deep dichotomy between this construct and the relative autonomy many women had in their households. The state and officialdom coalesced with patriarchy to enable the extension of power over women and over Africans to sanction discrimination and sexism (Tsikata 2009).

In the 1990s, land reform was initiated partly to redress the violent and racially motivated removal of land from the African majority population. The conundrum of the post-1994 dispensation was how to concurrently protect the capital-driven economy while trying to correct the effects of dispossession. The glaring fissures between these opposing objectives found their nexus in agricultural and land policy. In particular, the prevalent interests of agribusiness and the interests of the market overtly shaped the policy landscape at the expense of redistributive justice (Greenberg 2013).

The ascendancy to power of the National Party in 1948 was facilitated largely by the white commercial agricultural sector (O'Meara 1996). The gradual decline of the political and economic power of commercial farmers has occurred in tandem with the decline of agriculture as the mainstay of the political economy. The elimination of the National Party as a key political player has not fundamentally diminished the influence of commercial farmers, although their role has been less overt since 1994 (Bayley 2000).

The 1980s brought a radical restructuring in the South African agricultural sector, partly due to the declining influence of the agricultural lobby, AgriSA. Greenberg (2013) and Gelb (1991) argue that this was the result of financial deregulation and a shift from import substitution to export orientation. South Africa's

struggling economy was subject to sanctions in the 1980s, which necessitated a reduction in state subsidies, decreased public expenditure, and privatisation, all of which impacted on the means that were required for agricultural processes (O'Meara 1996).

IMPACT OF THE NATIVES LAND ACT 1913

The ruthless execution of the Natives Land Act left the majority of Africans concentrated in homelands and residing in townships, dispossessed of productive agricultural land. They were also expected to provide cheap labour to the country's mining, agricultural and industrial sectors. At the same time, forced removals resulted in the displacement of millions of people. It is estimated that between 1960 and 1983 more than 3.4 million people were forcibly removed. This figure includes:

- > 1 129 000 people removed as a result of evictions from farms;
- > 614 000 people removed as a result of forced removal and homeland consolidation;
- > 730 000 people removed under the pass laws from major metropolitan areas, on the notion that the scheduled and reserve areas provided the only permanent homes for Africans;
- > 130 000 people removed from urban informal settlements, under laws curbing 'illegal squatting'; and
- > 860 400 people removed in terms of 'group areas' legislation, to divide the country spatially along racial lines (Dodson 2013).

Using a feminist prism, Nkomo (2011) evokes the narratives of RW Msimang and Sol Plaatje, who documented the terrible experiences of the displaced and dispossessed after the enactment of the prejudicial land legislation. While the writers of the day may have been unwilling or unable to explicitly deconstruct the gendered nuances of these evictions, the stories of women are woven throughout these narratives. African women, in particular, were left in perniciously vulnerable situations after the enactment of the 1913 Land Act. They were subjected to a physical, social and economic plundering of resources against which they had no recourse. Widows were deprived of the modest livelihoods that land and cows had previously provided. According to Nkomo (2011: 96):

The farmer, who had benefitted from the labour of her household, offers her the option of indenturing her children to him and disposing of her stock.

When Maria finds this unacceptable, the landlord orders her to clear out immediately.

The fragile situation of such women was exacerbated if they were unmarried, which did not warrant visibility in society or allow them to own the valuable resource of land. Plaatjie (in Nkomo 2012: 96) recorded the following bleak advice:

find another man before you reach your next place of abode as the law will not allow you to stay until you have a man to work for the Baas.

The social and physical hostility directed at women included the carrying of pass books permitting their presence in areas from which they had been displaced, and physical violence:

in particular, the high incidence of rape. They hint at high levels of this scourge without expressly naming it, leaving only enough indications to point to its pervasiveness as part of the 'hardships' engendered by the Act. (Nkomo 2012: 99).

The consequences of these forced removals and physical violations carry with them gendered economic and tenure implications that are explored further in this paper. Women were not only denied access to security of tenure. Opportunities to engage in subsistence or economic agrarian activities were closed permanently, forcing them to join the throngs of cheap labour on farms belonging to whites, in factories or as domestic servants.

Letsoalo (2013) raises, in addition, the following issues to stimulate reflection and policy activism in relation to women's access to land held by white farmers under state ownership or freehold. Her standpoint is that the Convention for a Democratic South Africa (CODESA) was an inherently flawed process that dispossessed women by neglecting to address the following fundamental concerns:

- › access to credit and labour-saving technology for women;
- › access to agricultural skills, ranging from handling machines, accounting to management;
- › remuneration based on labour and skills input rather than women being preferred because they are exploitable;
- › the legal status of women as minors, through customary and not indigenous law; and
- › the oppression of women through attitudes that have nothing to do with legislation.

The contention above correlates well with the position that the constraints placed by market-driven economics on transformative policy stem from the inception of this dispensation, and continue to privilege the race- and gender-based hegemony of agri-business.

THE CONSTITUTION AS A SITE OF STRUGGLE

The Constitution is evoked and referenced as the pre-eminent instrument to equilibrate land restitution. According to Letsoalo (2013: 5, 6) this is contradicted by the inclusion of the 'willing buyer, willing seller' principle, which is an anomalous addition to an already problematic Constitutional framework:

In South Africa, the willing buyer is the landless aspirant farmer under the re-distribution programme. Clearly, a misnomer, since they are not willing, but coerced through Settlement and Land Acquisition Grants (SLAGs) and later Land Redistribution and Agricultural Development (LRAD) grants. That restitution has been turned into a willing-buyer-willing-seller is beyond comprehension. The land for restoration is designated in terms of The Restitution Act of 1994. No landowner is a willing seller under this programme. The law compels him or her to sell – or so it should.

The unregulated and escalating price of land severely hampers women's ability to participate in large- or medium-scale land acquisitions. The consistent demands of the market model necessitate access to collateral, venture capital and fast loan repayments, which are largely unavailable to African women. Alternative forms of compensation for land reform might have yielded different results for women. Co-operative farms and non-financial forms of land acquisition linked to productive land value might have accelerated women's access to land and land ownership.

The restrictive grants that the State has made available for women to purchase land have resulted in the perpetuation of white, male ownership and beneficiation patterns in this country (Weinberg 2013). Section 25(6) of the South African Constitution provides that:

A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

Letsoalo (2013: 6) notes:

To date there is no such Act of Parliament. The main reason being that key policy engineers such as academics, legal practitioners and even the Constitutional judges have concentrated on the role of traditional leaders and their possible violation of the gender equality provision in the Constitution. The aborted Communal Land Act of 2004 was no panacea for land reform, and definitely not for women's economic equality. Not unlike its predecessor, the 1991 upgrading of Land Rights Act, the legislation promoted freehold tenure under the cover of the registration and titling of the old and new order rights. The rationale of the apartheid government was to bring equality in the land tenure; give title on tribal land; and convert communal tenure to freehold. Thus, the land was to be privatised. Through the Abolition of Racially-Based Land Measures Act of 1991, African men and women now have the right to compete on the land market; they have the right to inherit land; they have the right to mortgage their land; and they have the right to alienate their land. The rationale of the democratic government was for the democratization of such land. Thus democracy equals privatisation of land and its administration by anybody, except traditional leaders.

Key constitutional clauses allow for the three land reform interventions in South Africa: land redistribution; land restitution; and reform of tenure systems. Land redistribution intends to provide the landless with access to productive and residential land. Land restitution seeks to return land that was wrongfully taken. Land tenure reform acknowledges communal land, also recognising the rights of tenants on white-owned farms. It is not within the ambit of this paper to explore in detail the restorative instruments created by legislation, but the main laws and policies are outlined below.

- › **The White Paper on South African Land Policy of 1997.** This White Paper considered the three main objectives – redistribution, restitution and tenure reform. Particular emphasis was placed on access to land for dispossessed and indigent communities. See DRDLR (2012).
- › **The Land Reform (Labour Tenants) Act of 1996.** This Act aims to give security of tenure to land occupants and labour tenants, and to support them in the acquisition of land.
- › **The Extension of Security of Tenure Act of 1997.** This Act's main objective is to safeguard security of

tenure, particularly of long-term tenants who are often subject to evictions without notice.

- › **The Communal Land Rights Act of 2004.** This Act's objective is to provide the government with a mechanism with which to rectify and amend land practices. The Act is applicable mainly to people or communities whose tenure was made insecure by discriminatory or racist practises of the past.
- › **The Green Paper on Agrarian Transformation, Rural Development and Land Reform of 2011.** This Green Paper was gazetted and outlines seven areas of strategic land reform, drawing from land reform experiences elsewhere.
- › **Agricultural Landholding Policy Framework of 2011.** This framework is drawn from the 2011 Green Paper, and suggests that the government sets minimum and maximum land holdings across all districts, in order to rationalise the use of farmland and maximise its productivity.
- › **Recapitalisation and Development Programme.** Previous forms of funding will be replaced by the grants envisaged by this programme, including restitution settlement grants. The reasoning for this is that the failure of most land reform attempts stems from a lack of concerted post-settlement support.

The following is a broad summary of the impact of the legislation:

- › *Registration made tenure less secure, as by mortgaging their land farmers ran the risks of losing it, and farmers tended to sell their land because of severe poverty.* The Extension of Security of Tenure Act has not yet been able to address security of tenure or to prevent evictions from farms.
- › *Freehold tenure was not a guarantee for credit – as banks consider creditworthiness and the ability to offer security is only a small aspect of this.* Essentially, this means that long-term tenants who want to buy a portion of the land they have rented or occupied need to access other forms of capital in order to provide collateral to purchase it. This requirement is prohibitive for the majority of tenants.
- › *A general increase in ownership disputes.* This is the result of vaguely worded tenancy agreements. Often, these are not documented but have arisen through intergenerational occupancy normally related to working on the land.
- › *Land grabbing and the erosion of the rights of the poor and women to land (Bruce 1986; Coldham 1982; Migot-Adhola et al 1990).* (Italicised text from Letsoalo 2013: 6, 7)

Typically, the most dispossessed are excluded further by legislation that is not easy to implement because of the requirement that land claims be proven in writing or that tenancy be verified by landowners. In addition, communal claims are often obstructed by traditional leaders and the power they wield over land access.

To date, the government has not extended security of tenure in proportion to the urgency required for land transfer. Rural women's right to security of tenure encompasses the practical and legal capacity to protect their ownership, occupation, land use and access to land without extraneous or external obstruction. While a measure of protection is available through Section 25(6) of the Constitution, most residents of communal areas remain unprotected. Many of these areas are erstwhile bantustans with a population of nearly 17 million people, 59 per cent of whom are women. The ambiguities around communal land tenure law and policy excessively disadvantage women and severely hamper their land use rights (Weinberg 2013).

CURRENT CONCERNS AROUND LAND REDISTRIBUTION

Immediately after the transition in 1994, the government passed legislation that potentially created a pathway towards a structural shift in land ownership. Although, most regrettably, colonial dispossession was not addressed, there was the intention to correct the manifest and ongoing injustice wrought by the 1913 Land Act. Weinberg notes that:

from 2000 onwards, many of the government's laws and policies have frustrated the move towards tenure security and have been characterised by a new form of paternalism. While paternalism in the past was underwritten by a belief system that black people were racially inferior, the current paternalistic discourse seems to be based on the notion that rural people are inferior. The similarity between the two is the assumption that poor rural people are not entitled to landownership, and cannot be trusted, and that the government 'knows what is best' for rural people. Seemingly government is more comfortable acting on 'behalf of' rural people than giving them the power to make their own decisions.

The redistribution of land to women holds the potential to advance their economic position. On the basis of international experience, success is dependent on sound, gender-aligned policy reform and a well-directed land transfer programme. The demands of

collateral, for example, can be obviated by cash credits in lieu of collateral, as illustrated in countries like Nicaragua, Bangladesh and Madagascar (Tsikata 2009).

Various observers contend that the government has exercised unnecessary caution regarding white agri-business, and has promoted legislation that privileges traditional leadership. An example of this is the Communal Land Rights Act, which was enacted in 2004, months before the general elections. Several rural constituents and communities correctly expressed the opinion that the Act would subvert their security of land tenure, as a result of the overwhelming jurisdiction that it grants traditional leaders to determine the occupancy and administration of communal land.

The market orientation of the same Act has made it attractive to mining companies, which can focus controversial negotiation and acquisition processes on individuals rather than entire communities. Typically, the problematic collusion between state, power and traditional leadership finds an easy nexus in the decision-making processes of chiefs, who evoke 'custom' to make unilateral rulings on community members' behalf, more often than not without their consent. As mentioned above, history contradicts this rendition of 'tradition' (Weinberg 2013). Feminist land activists and writers have referred to this phenomenon as 'the invention of tradition' (Tsikata 2009).

Although the Constitutional Court struck down the Communal Land Rights Act in 2010, several other legislative instruments still provide traditional leaders with unfettered authority to determine rural people's access to land and tenure. The Bantu Authorities Act of 1951 has been 're-enacted' by the Traditional Leadership and Governance Framework Act of 2003. The Traditional Courts Bill has received attention because it not only removes women's voices from governance processes but unequivocally channels power toward male 'heads of household' and traditional leadership. Unmarried women, particularly those who do not have the patronage of male relatives, are impacted upon most by the patriarchal rendition of custom. Accordingly, they are deemed by social and traditional authorities to be of very unfavourable social standing, which gives the leaders the right to prevent autonomous self-organisation and independence.

Policy recommendations

Progressive land and agrarian researchers and practitioners favour the sustainable rural livelihoods framework, which approaches livelihoods from the

perspective of assets, access and activities (see Tsikata 2009). The framework suggests that the following factors should be considered:

- › natural (soil, water);
- › economic or financial (cash, savings, equipment);
- › human (skills, labour);
- › social (networks, associations); and
- › physical (roads, tools).

In addition, the following are suggested to enhance policy frameworks:

- › A clear housing rights framework for farm workers, whose tenure is often precarious.
- › Social service provision for farm workers, and clear obligations on farm owners to provide access to healthcare, education, decent housing and transport for farm workers.
- › Policy to enable stronger transitional mentoring for new farm owners and tenants who want to sub-lease or purchase land from established farm owners.
- › Stronger moves to expedite the finalisation of landownership claims, including community ownership within the next 15 years.
- › New models for monitoring and evaluating the productivity, technological capacity and economic activity of emerging farmers to ensure greater transitional support.
- › Recognition and support for farm workers' unions, including freedom of organisation and access to these formations, particularly because farm workers are physically isolated.
- › Enforcement of the Extension of Security of Tenure Act to support lease agreements and secure ownership for farm dwellers is critical. Security of tenure must be protected, particularly where it is inextricably linked to security of employment. Fair compensation, equitable and clear legal processes, adequate opportunity to source alternative work, and accommodation for secure livelihoods are necessary pillars of a progressive land policy.
- › Feminist policy-making principles of gender equality should frame any land policy and drive:
 - › access to training and tenure for women;
 - › protection from sexual violence on farms, whether transactional or coerced, including confidential reporting systems, possible resettlement, counselling and health care; and
 - › a reassessment of settlement patterns and the division of families.

CONCLUSION

In the post-1994 dispensation, the country's first democratically elected government has prioritised a market-led strategy for land reform, which continues to privilege agri-business and traditional authorities. As a member of the Cairns Group of exporting countries that push for tariff reductions and more open agricultural sectors, South Africa has continued to promote export-orientated liberalisation. The primary producers and drivers of the agricultural sector are rural communities, particularly women who contend with the continuing drive towards deregulated markets.

The two fundamentalisms (tariff reduction and export-orientated liberalisation) serve complementary functions, in that they relegate personal autonomy, economic self-determination and decision-making to unaccountable or inaccessible entities. The outcome is that there is a negligible difference between rural women's existence before 1994 and after 1994. Current land restitution processes fall short of the necessary efficacy and speed to create transitional and sustainable economies for women.

A stream of paternalistic syntax still characterises institutional approaches to land policy. Although distinguishable from the methodology of the apartheid era, the complexity of transforming land management and ownership patterns has scarcely been addressed. Equally unpalatable is the continued dispossession of indigenous landowners from historical and community terrain. Unless the government engages with these processes respectfully and transparently, the legacy of the 1913 Land Act will not be remedied.

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