

Land Rights and the Gendered Path of Agrarian Transition within the African National Congress (ANC) Government in South Africa: Two Sides of the Same Coin?

Chitja Twala

*Department of History, Faculty of Humanities, University of the Free State,
Bloemfontein, South Africa
E-mail: twalacm@ufs.ac.za*

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ABSTRACT The year 2013 marks the centenary of the infamous 1913 Natives Land Act in South Africa. Although much has been written about the question of access to land, a part of South African history that receives little attention from historians, involves the lack of female representation in land administration. The aim of this study is to examine the relationship between gender and land rights in South Africa, with special reference to access to land by women. The study departs from the premise that access to land by women is to a certain extent hindered by formal and traditional rules. The study will also evaluate land legislations in relation to gender in a democratic South Africa. Furthermore, the study briefly traces the history as to why gendering the land question remains critical for the empowerment of women farmers in South Africa. The realities of changing land policies over time in South Africa will be compared with those promulgated by the African National Congress (ANC) government since the dawn of democracy in 1994. Thus, the study will attempt to determine why a difference existed between the public discussion of land issues and the realities of women accessing land. The findings of this study indicate that land rights can make a notable difference to women's bargaining power within the home and community; enhance their confidence and sense of self-worth; enable them to negotiate better deals; increase the respect they command within communities; and facilitate their participation in village decision-making bodies.

INTRODUCTION

It should however, be noted that for the purpose of this study that the term 'women' is used in two ways: firstly, to denote 'women in general' as a counterpoint to 'men in general'. This is not to argue that there are no differences among women, but rather to point out that women (in general) are disadvantaged, when compared to men (in general). Secondly, 'women' refers to (depending on the context) poor, black women in South Africa's rural areas. It is also widely demonstrated that rural women, as well as men, throughout the country are engaged in a range of productive activities essential to household welfare, agricultural productivity, and economic growth. Yet women's substantial contribution continues to be systematically marginalized and undervalued in conventional agricultural and economic analyses and policies, while men's contribution remains the central, often the sole, focus attention. Women are typically, and wrongly, still characterized as economically inactive in statistical surveys.

Equitable access to land in South Africa is a burning political, emotional and developmental

issue. In post-apartheid South Africa, there is a high level of constitutional and policy commitment to gender equality. Since 1994, the Department of Land Affairs (DLA) included considerations of gender equity in its policy documents. It is argued in this study that for the proper implementation of gender equity, in as far as the land use is concerned, detailed content, direction and guidance should be provided by all stakeholders involved with gender and land rights. In the past, agrarian reform debates focused mainly on the collective or patriarchal access to land. Furthermore, the study contends that the principle of gender equality in a democratic South Africa is premised on individualised rights, which counter patriarchal power relations and are often at odds with the key precepts of customary law. It should be noted that in South Africa, customary law is based on patrilineal forms of social organisation and the elevation of group rights and responsibilities over those of individuals. These ideological differences translate into significant personal differences.

The study attempts to answer the following questions:

- What are the support measures given to women farmers by the ANC government in South Africa?
- What is the impact of gendering land access in South Africa?
- Are women farmers exposed to the same treatment as their male counterparts?
- To what extent has the issue of gender imbalances, in terms of land access, been addressed in a democratic South Africa?

A Brief History of the Land Rights in South Africa

The structure of commercial farming and problem of access to land in South Africa today can be traced back to the slave plantations under colonialism at the Cape in the 1600s. Du Plessis argues that in terms of the Restitution Act, a right in land is defined as: 'Any right in land whether registered or unregistered, and may include the interest of a labour tenant and sharecropper, a customary law interest, the interest of a beneficiary under a trust arrangement and beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question' (Du Plessis 2004: 5).

The history of land ownership, land tenure, and access to land has been a history of struggle and conflict in South Africa. The possession of land has always been 'key for empowering and disempowering people' (Wachter 2010: 2). According to Feinberg (2006: 122), during the nineteenth century, Europeans introduced the idea of land as a commodity which could be bought, sold and divided into the Transvaal, Orange Free State and Natal. After the conquest, when some Africans desired land, they followed the European system of purchasing with title deeds and registering their land with the appropriate government officials, such as the Registrar of Deeds in the Transvaal.

The ANC's 1992 Land Policy document indicated that the organisation was committed to gender equity. The policy called for special procedures to ensure that women gain equal access to land and participate effectively in policy formulation and decision making. Furthermore, the Reconstruction and Development Programme (RDP) recognised women's land rights. This programme also called for a review of the practices and laws that discriminate against women's access to land. It also stated that the

national land reform programme should address gender inequities and that support services and government assistance for agricultural production should benefit women. As the composition and structure of rural households change, gender responsibilities are also undergoing change, with rural women becoming more responsible for household food security in the country.

The 1996 Green Paper on South African land reform expressed a clear commitment to end discrimination and ensure gender equity in land ownership. The Bill of Rights, of the 1996 Constitution of the Republic of South Africa, places an obligation on the government to take reasonable legislative and other measures within its available resources to ensure that equality includes the full and equal enjoyment of all rights and freedoms.

The White Paper on South African Land Policy was the first document to officially map out the ANC government's approach to land reform. It consists of three components: land restitution, land redistribution and tenure reform. These policy interventions form part of a broader state-driven approach to development that places an obligation on the government to progressively realise the social and cultural rights of citizens, while respecting existing property rights arrangements (Constitution of the Republic of South Africa 1996). Parenzee (2010: 3) states that: 'while these laws, policies and programmes have been created to respond to land reform, government has been criticized for developing policies and programmes which systematically overlook, and at times even sanction, sources of vulnerability other than race'.

RESEARCH METHODOLOGY

Irrespective of the history, rationale, and the approach to land restitution, the issue of gender and land rights has become a burning question for land reform policies in a democratic South Africa. In addition to a literature review, the analysis in this study draws from field research activities. The author combines observations, interviews, and a review of secondary sources, including government policy documents and legislation, to attempt to understand the issue of gender and land rights.

One of the first tasks in preparing for the study was to conduct a desktop search on liter-

ature relating to access to land by women in South Africa prior and after the democratisation period. The researcher's aim in doing so was to use the literature to inform the design of the research. In line with this aim, a literature review became significant. Furthermore, with reference to the above, for the purpose of this study, the researcher focused on empirical, rather than on theoretical research.

Literary Review

An understudied area in the literature on structural poverty is the challenge of access to land by women in a democratic South Africa. The persistence of this attitude eludes easy analysis. Different accounts of a lack of access to land by women are therefore useful in drawing attention to a range of challenges. It should be noted that in South Africa, the question of women being in possession of land or having access to land for agrarian purposes has not been an area for intensive academic study. Furthermore, there has been little policy focus on this question. A lot has been documented about the land question in South Africa; however, but little has been written about women's plight in this regard. Amongst other scholars such as Feinberg (1993); Francis (2000), Feinberg (2006), Hall and Ntsebeza (2007), Changuion and Steenkamp (2012) documented literature material on the land question in South Africa is limited. However, the lack of written material on the topic under discussion has triggered further research on the role of women concerning the question of land in a democratic South Africa. Despite the above, few researchers such as Walker (1997) attempted to unpack the access to land in relation to women in a democratic South Africa. This study traces the involvement of women in agrarian development in South Africa and the challenges with which they are faced.

OBSERVATIONS AND DISCUSSION

Previous Legislation and Its Impact on Land Use

During the colonial and apartheid era in South Africa, much legislation which impacted on access to land was passed. To a certain extent such legislation had an effect to women accessing land. Ironically, in the post-apartheid era the is-

sue of access to land by women raised critical questions. This section of the study highlights some of the few legislation of the past.

The Black Administration Act

The Black Administration Act deemed wives in customary marriages to be minors, subject to their husband's guardianship, which prevents women from owning property or contracting in their own right. The Act decreed that women married under customary law could not own or dispose of assets. In 2000, the above was repealed and women were given full status and the capacity to acquire assets and dispose them, as well as to enter into contracts and to litigate. Despite this, the impact of the Black Administration Act has had far reaching consequences for women as farmers. Even after the repeal of this Act, women still battle to be fully recognised as full-time farmers in a democratic South Africa.

The Recognition of the Customary Marriages Act

Prior to 1994, South African history was characterised by a system of institutionalised discrimination which permeated every sphere. Indigenous African customary law also fell prey to the apartheid system which created a dual legal system and recognised only customary law insofar as it was used to perpetuate discrimination. The study explores the interface between rights and 'custom'. The South African Constitution recognises and protects both customary law and the Bill of Rights. Customary law is thus accepted as a fully established system of law in its own right, not simply as a set of traditional or long-established practices (Budlender et al. 2011: 11). Prior to democratisation in South Africa, customary marriages were not recognised when wives had to claim land belonging to their late husbands. The Customary Marriages Act should be used to challenge discrimination on the basis of marital status, which is outlawed by the Constitution alongside discrimination on the basis of sex or gender. Therefore, a fully justiciable Bill of Rights in South Africa's new constitution heralded a fundamental change for all the laws inherited from the previous regime. African customary law was a particular target, since many of its rules were embedded within a patriarchal tradition, in direct conflict with the principle of gender equity (Bennett 2009: 1).

Land Reform and Gender Bias

On farms, the women's position is usually determined by her relationship to a male farmer. Women are seen in very literal terms as an extension of their husbands and represents an auxiliary source to their male counterparts. This meant that there exists a de facto restriction on a women's ability to engage in on-farm activities in order to ensure her worth in agricultural work. In cases where women are working the farms, in the main most of them do not own the land where their farms are situated. Many women can get access to land through their male partners. According to Agarwal (2003: 200), what characterises the gender bias in as far as access to land by women, is the question of 'one who tills the land' which in the main has supported men. In most cases, males are the ones who till the land. While this definition works fairly well if applied to the household; however, it is less applicable to individuals, given the gender division of labour. Generally, women would be excluded as they typically do not plough. This argument condones the stereotype that 'men are the breadwinners and women the dependents'.

AM Ntechane (2011), a woman farmer in the Ladybrand district, argues:

The ANC government is trying by all means to help us as small scale farmers. I think our male counterparts feel threatened by some of us and make it difficult for us to access the markets. As women farmers we are not competing with them. There is no need for them to look down upon us. We need our male counterparts in order to sustain the agricultural sector in our province.

Rural Poverty and Access to Land by Women

The negative relationship between the risk of rural poverty and land access is well established. Land can provide both direct and indirect benefits. Direct advantages can stem from growing crops, fodder or trees. Indirect advantages can take various forms: owned land can serve as collateral for credit or as a mortgageable or saleable asset during a crisis. Land, whether owned or controlled, increases the probability of finding supplementary wage employment; enhancing bargaining power with employers; pushing up aggregate real wage rates; and is an important asset base for rural non-farming enterprises (Agarwal 2003: 193-194).

With women's involvement in the farming sectors, a growing gender divergence in dependence on agriculture is envisaged. As more men shift to non-farming livelihoods, an increasing number of households will become dependent on women to bear the larger burden of farm management. Agarwal (2003: 193) contends that in most cases, women in agriculture operate as disadvantaged workers, whether they are casual labourers or self-employed workers. Unlike self-employed men, self-employed rural women are mostly unwaged workers on male-owned family farms. They seldom own or control the land they cultivate. Being in possession of land can empower women and place them in a stronger position to demand their dues in government schemes, and in infrastructure and services. It can also help them to be more assertive with agencies that provide inputs and extension information.

Challenges Experienced by Women in Accessing Land

The study discusses women's equal access to land within a broader discussion of land reform in South Africa. When considering the beneficiaries of land reform, the researchers noted the diversity of people involved in relation to matters such as, dwelling places, access to land, types of access and historical experience. In attempts to achieve the above, women have experienced some of the following challenges:

Limited Access to Financial Assistance

Cross and Friedman (1997: 23) opine that 'among the main problems faced by rural women were changes in role structure and concepts of gender. These changes affected land-holding, as well as financial support. Older African tenure systems regarded land more as a social and political issue than as one of production and reproduction'. According to Walker (1997: 55-73) it is clear that South African female-headed households, more so than male-headed households, are often prevented by financial constraints from participating in the Land Redistribution for Agricultural Development Programme. Moreover, even more women may be excluded from the benefits of the national land reform programme.

Limited Access to Training and Educational Opportunities

In most cases, women farmers in South Africa have to face a number of challenging situations in order to succeed. One such problem is the question of access to available training and educational opportunities. While market and training access is a problem for many people in rural South Africa, the situation is substantially worse for women farmers. In many instances, policies and programmes in rural areas, as implemented at the local level, are not responsive to women's needs. In part, this is because planners and policy-makers are often not even aware that women farmers face special and specific challenges and that programmes need to be designed with their situations in mind (Sibanda 2007: 4). One such farmer MM Raphoto (2013) observed:

We are given support by the ANC government on how to effectively run our farms. Our frustration is the issue of access to these training facilities. Sometimes after being trained as an upcoming farmer, there is no follow-up made to track our progress in the execution of our functions. Some women farmers tend to lease some of their farms to their male counterparts.

In justifying the above sentiments Sibanda (2007: 4) further argues: 'Even when supportive programmes and services exist in their communities, women may lack the information or community support to make use of these services. Women are often excluded from decision-making processes and local governance mechanisms. Groups and leaders that represent community interests do not understand women's needs and do not believe that women can articulate problems or assist in developing solutions. As a result, women farmers are excluded from most programmes and institutional arrangements designed to improve the livelihoods of farmers'. In order to address the above, Sibanda (2007: 4) suggests that three steps be undertaken. Firstly, women should be empowered to speak up for themselves so that they can express their needs and concerns, participate in developing solutions and advocate for appropriate programmes and services. Secondly, a capacity of researchers and policy-makers should be developed to collect more fine-grained and practical information from the field, so that assistance can be provided in a more responsive and nuanced way.

Thirdly, relevant policy-makers and advocates should be sensitised to the special needs of women farmers, thus creating an environment that is conducive to them.

Gittinger et al. (1990) argues that rural women seldom have autonomous control over the opportunities that may come their way or the benefits which flow from them. Many advantages won for rural women through development programmes are later lost.

Pressure to Ensure the Productivity of the Lands

Access to land dominates women employment in many countries in Africa. Women's possibilities in agriculture are, however, hindered by formal and informal rules restricting their opportunities for more productive employment and income. Women's access to land is hindered in many countries by formal and traditional rules. As a result, women often face difficulties in recruiting workers and obtaining credit for improving production, as they are not the rightful owners of the land. Women also often face restrictions in relation to the ownership of cattle and have little control over water resources (Adeniyi 2010: 3-4). Even if more conducive property systems are eventually implemented, a large group of women having small funds, very little in education and low social status, would still find it impossible to enter the market.

According to Budlender et al. (2011: 10) the workshops on the Communal Land Rights Act (CLRA) held during 2002 and 2003 and the meetings that were hosted by the Programme for Land and Agrarian Studies and the National Land Committee observed the following problems as experienced by rural women: women are often evicted when their marriages break down or end. In particular, widows are often evicted from their marital homes by their husbands' families. However, it should be noted that in most cases, divorced or widowed women, who return to their natal home when their marriages end, are often made unwelcome and are subsequently evicted by their brothers. Unmarried sisters are often evicted from their natal homes by their married brothers after their parents die. This occurs because sons assert that they alone inherit the land, even when the father may have chosen his daughter to be responsible for the family home. Married women are not treated as people who have rights to land. The land is treated as the

property of the husband and his natal family. Wives are often not consulted in relation to decisions about the land and are often excluded from traditional institutions, such as tribal and village council meetings where key decisions about land rights are taken. Tribal courts that decide family and land disputes are generally dominated by elderly men and are perceived to favour men over women.

Pressure to Ensure the Productivity of the Lands

In most cases, women indicated that based on the agreement with the municipality, in order to ensure that they do not have the land taken away, need to make optimal use of the land. However, they face social and environmental challenges which hamper the productive use of the land; for example, inadequate supply of water, no drought support, lack of resources to put up fencing, as well as inadequate infrastructure such as roads to enable ease of movement and transportation of produce, as well as affordable labour. All the above factors affect women's ability to utilise the land optimally which thus threaten their continual access to municipal land (Parenee 2010: 5).

Is the ANC's Government Failing Women Farmers?

The ANC's government is trying by all means to address the question of accessibility to land by women. Although there are criticisms that there are small achievements recorded in this regard, in the different provinces there are some notable strides made in this regard. For example, in the Free State Province, particularly the Thabo Mofutsanyana District, women farmers succeeded in grouping themselves for poultry farming as well as potato farming in the Harrismith area. With the financial injection from the government, such farmers are productive. Despite the above example of some successes, the government have failed to implement land reform programs that guarantee equitable rights of women to land. Like other governments around the world, the ANC is gradually trying to support small holder farming rather than large scale ones. However, such an activity needs huge financial commitment from the ANC's government. Women farmers need policies and laws that pro-

tect and promote women's land rights and prevent discrimination. The government agencies dealing with land should promote women access to land. Traditional Customary Laws be discussed and where necessary changed to ensure that they have equal access to land.

CONCLUSION

The support provided by the ANC in terms of land reform policies have articulated the government's commitment to address past injustices in as far as access to land is concerned. The study highlighted the challenges and practical barriers facing women farmers in South Africa. Thus, this situation contributes to the devastating consequences of locking women and their immediate families into poverty. In order to successfully address the above-mentioned challenges, the ANC government should vigorously introduce interventions. Conventional and new technologies, such as biotechnology and genetically modified inputs are primarily targeted at emerging commercial farmers and require management skills. Therefore, the education levels of women farmers need to be boosted, especially as farmers engage in more sophisticated input and output markets. The issue of land access takes on different forms, depending on whether those concerned live in urban or rural areas and whether they are married or single. South African rural-based women occupy and use land in a variety of different forms. Women's relationships to land use are determined by a mixture of policies, the contemporary South African economy and the nature of the specific rural areas.

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