



## Women and Land: Working It, but Never Owning It

### 1. Introduction

According to the UN Food and Agricultural Organisation (FAO), women's access to agricultural resources is more limited than that of men, and in fact, general access to "productive resources, services and opportunities, such as land, livestock, financial services and education" is less for women than for men.<sup>1</sup> According to Africa Renewal, experts found "that women in Africa contribute 70 % of food production. They also account for nearly half of all farm labour, and 80 - 90 % of food processing, storage and transport."<sup>2</sup>

It is generally agreed that in rural areas, including in South Africa, the majority of people who do actual work on the land are women. This includes not just commercial agricultural work, but domestic food production and smallholder farming. With all these women working the land in all these agricultural and domestic spaces, why is it that women are a minority of land owners or land-rights holders?<sup>3</sup>

Many studies have shown clearly not just the high levels of poverty among rural women, but also how the women end up working the land as many men go to the cities and towns for cash-paying work; but in spite of that, control and ownership still rests with the men.<sup>4</sup>

### 2. History of Exclusion

Colonial rule around the world brought various problems with regards to land, and dispossession led to crises of ownership at independence from colonial rule for many countries. Certain countries found themselves with a well-developed commercial agricultural sector and a very poor

subsistence sector. This was more extreme in some countries such as Namibia, Kenya, Zimbabwe and South Africa that had settler colonial regimes. Subsequent governments have struggled with land reform processes, generally leading to few beneficiaries and perpetuating the inequalities and land poverty. In South Africa, for many years under colonial rule and under apartheid, women were considered to be minors and their husbands and sons assumed automatic control of the family's estate, to varying degrees, especially for black women living under customary law.<sup>5</sup>

Especially in traditional communities women constitute the bulk of people working the land. This is partly due to the migrant nature of many rural communities, with men working in the cities and women left behind in rural spaces.

Only 10 - 20 % of land holders in the developing world are women, and women-headed farms tend to be half to three-quarters of the size of male headed farms. By way of contrast, in Lithuania for example, around 50% of agricultural land holdings belong to women. This compares to around 35% in Malawi and 15% in Zambia, raising questions about why these levels are low in some countries.

Though there are statistics for many third world countries about who owns the land, South Africa has a huge problem as there is insufficient clear data about who owns what land. In 2014 there was a state land audit, but not one of privately owned land. An audit by the Department of Rural Development showed that about 79% of South African land is in private hands, but the racial and

gender nature of the ownership is still largely unknown.<sup>6</sup>

Two studies have shown that the majority of agricultural land in South Africa is white-owned, with for instance 86% of agricultural land in the Free State owned by white farmers. With the majority of white farmers being male,<sup>7</sup> it means that even within the white community, women still constitute a minority of agricultural land owners. What is clear, though, is that while white women constitute a certain minority in agricultural land ownership, hardly any of them work that land; instead, it is worked by other women, mainly black women.<sup>8</sup>

Historically, because of colonial and apartheid dynamics, women's rights to land have been linked to marriage and inheritance laws, meaning that women's rights to land have been determined and shaped by linkage to men. Hirut Girma, an Attorney, and a Senior Land and Gender Specialist at Landesa Centre for Women's Land Rights, points out that

"In Namibia, land is a contentious issue rooted in the legacy of a century of colonial and apartheid rule constructed on a dual land tenure system. During colonial rule, indigenous Namibians were systematically dispossessed of land and confined to underdeveloped communal lands in the northern regions while European settlers were granted freehold rights to commercial areas in the central and southern parts of the country (...) Regardless of race, women were precluded from owning property during colonial rule, and gender inequality was institutionalized through discriminatory colonial policies and laws."<sup>9</sup>

Though Ms Girma spoke of the Namibian conditions, because of the similarities in the history, the conditions in Namibia reflect those of South Africa. In general, pre-colonial African communities availed land to everyone based on familial need and not on the basis of private ownership. This access by women was lost with the advent of individual ownership.<sup>10</sup> In some of these societies, where families were organised around patrilineages, women received usufruct rights. Similarly, the issues of communal lands added other social dynamics to women's land ownership.

### 3. Traditional Custom

In many traditional communities where land is not directly owned, but functions on the principle of allocation according to need, traditional leaders are in control of land allocation. In most of these communities, the traditional leaders are male. Thus the reality is that control of the land and its use lies in the hands of men. On top of that, with many traditional communities organised on the principle of male primogeniture, it means that by default land ownership goes to the men and male children.

In South Africa, though the 1996 Constitution and various land laws have taken a very clear position against any form of discrimination, changing decades- and centuries-old patterns of behaviour and tradition has not been, and is not, easy.

### 4. What the Law Says

In South African law, the two main concepts that contributed to discrimination against women in matters of land and property ownership have been dealt with primarily by the courts. First of all, the tradition of male primogeniture which gave the first born son inheritance of the entire estate, as provided under customary law, was found to be unconstitutional (*Bhe v The Magistrate, Khayelitsha*; *Shibi v Sithole*; *South African Human Rights Commission v President of the Republic of South Africa*).<sup>11</sup> Secondly, the 'marital power' principle in the matrimonial property laws, which was "the common law rule in terms of which a husband obtains the marital power over the person and property of his wife,"<sup>12</sup> was declared unconstitutional in the 2008 'Gumede' Constitutional Court decision. This ruling finally closed a discriminatory chapter that had perpetuated blatant discrimination against married women, especially when it came to land and other property ownership in traditional regimes dominated by customary marriages. As Justice Moseneke put it:

[17] This grudging recognition of customary marriages prejudiced immeasurably the evolution of the rules governing these marriages. For instance, a prominent feature of the law of customary marriage, as codified, is male domination of the family household and its property arrangements. Whilst patriarchy has always been a feature of indigenous society, the written or codified rules of customary unions fostered a particularly

crude and gendered form of inequality, which left women and children singularly marginalised and vulnerable. It is so that patriarchy has worldwide prevalence, yet in our case it was nurtured by fossilised rules and codes that displayed little or no understanding of the value system that animated the customary law of marriage. As Professor Nhlapo poignantly points out:

*“[L]egislating these misconstructions of African life had the effect of placing women ‘outside the law’. The identification of the male head of the household as the only person with property-holding capacity, without acknowledging the strong rights of wives to security of tenure and use of land, for example, was a major distortion. Similarly, enacting the so-called perpetual minority of women as positive law when, in the pre-colonial context, everybody under the household head was a minor (including unmarried sons and even married sons who had not yet established a separate residence), had a profound and deleterious effect on the lives of African women. They were deprived of the opportunity to manipulate the rules to their advantage through the subtle interplay of social norms, and, at the same time, denied the protections of the formal legal order. Women became ‘outlaws’.”*

[18] In our pre-colonial past, marriage was always a bond between families and not between individual spouses. Whilst the two parties to the marriage were not unimportant, their marriage relationship had a collective or communal substance. Procreation and survival were important goals of this type of marriage and indispensable for the well-being of the larger group. This imposed peer pressure and a culture of consultation in resolving marital disputes. Women, who had a great influence in the family, held a place of pride and respect within the family. Their influence was subtle although not lightly overridden. Their consent was indispensable to all crucial family decisions. Ownership of family property was never exclusive but resided in the collective and was meant to serve the familial good.<sup>13</sup>

## 5. Complexities

Trying to quantify and assess these ownership and land-use control issues brings up numerous other complexities. In many rural places land use and ownership is at subsistence level, and often involves not individuals but groups and families.

“Determining the gender of the person who controls these resources is far from simple: if a crop is grown on land owned by an extended family, ploughed by a man, planted by a woman, weeded by their children and harvested collectively, what share can be attributed to the woman?”<sup>14</sup>

This does not only apply to small scale farming but to commercial agriculture as well. On a farm where a group of men and women share equity in the ownership of a farm, it is clear that women own a certain amount. But where women invest in a company, or have an interest in an investment entity that then has ownership of the farm, determining what percentage of the farm is owned by women becomes a lot more complicated. Even where a family collectively owns a commercial farm that employs a large number of men and women, determining who in the family actually owns what percentage becomes quite difficult.

It is also necessary to realise that modes of exclusion function in subtle ways that seem innocent, but which contribute to the problem of ownership. For instance, because of long distances to school or unsafe spaces, or even the idea that women do not need to get education because their husbands will look after them, the default will be that the girls will not go to school and only boys will be educated. If, then, a state policy says those who have a certain level of education will be given land to farm, so as to ensure that they can cope with modern day farming methods and increase productivity, land ownership will default to the men.

This is particularly ironic because, even though women do not control or own significant amounts of land, much agricultural development and work depends on them, meaning that the country’s food security actually rests on them.

## 6. Conclusion

Just because determination of the precise percentage land holdings women have in various contexts is very complicated, it does not mean that the problem articulated above does not exist, nor

that it is impossible to quantify, and thus nothing can be said about it. What it means is that the entire process of determining who owns what land is complex but not impossible. It also means that it is easier to hide the reality of exclusion of women from land ownership by throwing up the complexity of statistical analysis of gender issues in land ownership.

What is clear and undisputed is that in many spaces men have much more control of land, and have greater land ownership levels, than women. But it also means that the question of ownership is not simply about percentage holdings but also about direct control of the land.

Furthermore, the 2008 Gumedede Constitutional court ruling points out very clearly how the question of the ownership of the land is not just a simple matter of economics, but is part of a much bigger interplay of various discriminatory policies, pieces of legislation, and perverted social paradigms and social norms, including the discriminatory patriarchal manipulations of social structures.

This also means that the solutions need to come from various interventions that go beyond simply selling pieces of land to more women. If a woman buys a piece of land, and then when she gets married her husband assumes control over the land by law or custom, that would be no progress at all. Thus, all discriminatory rules and practices, even those that seem innocuous but lead to the exclusion of women in matters of ownership, form part of the barriers that need to be removed for women to achieve the equality in land matters that forms the basic foundation of a just society.

Finally, because of the high numbers of women dependent on land for survival, land issues, environmental issues, agricultural commodity prices, and so on, all have a disproportionate impact on the lives of women. Thus, ownership and control become more important than simply matters of statistical equalisation.

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<sup>1</sup> <http://www.fao.org/gender/gender-home/gender-why/why-gender/en/>

<sup>2</sup> <http://www.un.org/africarenewal/magazine/special-edition-women-2012/women-struggle-secure-land-rights>

<sup>3</sup> <http://www.fao.org/gender/gender-home/gender-why/why-gender/en/>

<sup>4</sup> <http://ftepr.org/wp-content/uploads/journal.pdf>  
<http://alternation.ukzn.ac.za/Files/docs/15.1/06%20Bob.pdf>

<sup>5</sup> [http://uir.unisa.ac.za/bitstream/handle/10500/13849/thesis\\_rakolojane\\_mj.pdf;sequence=1](http://uir.unisa.ac.za/bitstream/handle/10500/13849/thesis_rakolojane_mj.pdf;sequence=1)

<sup>6</sup> <http://city-press.news24.com/News/Who-owns-the-land-Ownership-by-numbers-20150503>

<sup>7</sup> Many news reports refer to “a farmer and his wife”, again expressing the social perception and reality that a farmer is male.

<sup>8</sup> “Black” here is defined as per the South African Employment Equity Act

<sup>9</sup> <http://www.the-eis.com/data/literature/Land%20reform%20and%20the%20Arts%20in%20Namibia.pdf>

<sup>10</sup> <http://www.sida.se/contentassets/3a820dbd152f4fca98bacde8a8101e15/women-and-land-rights.pdf>

<sup>11</sup> <http://www.dejure.up.ac.za/index.php/volumes/45-vol-3-2012/122-article-7.html>

<sup>12</sup> <http://www.justice.gov.za/legislation/acts/1984-088.pdf>

<sup>13</sup> CONSTITUTIONAL COURT OF SOUTH AFRICA Case CCT 50/08 [2008] ZACC 23

<http://www.saflii.org/za/cases/ZACC/2008/23.pdf>

<sup>14</sup> *The Role Of Women In Agriculture* by the SOFA Team and Cheryl Doss. ESA working Paper No. 11-02 of the UN Food and Agriculture Organisation. March 2011 <http://www.fao.org/docrep/013/am307e/am307e00.pdf>