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# **A gendered perspective on issues and challenges surrounding land tenure security in South Africa: An analysis of critical security studies**

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**As a result of the inequalities of social exclusion by the Apartheid regime, the women of South Africa declined to carry pass (compulsory identity document carried by women) in 1956. Finally their protest to be recognised not only as house wives belonging in the kitchen were a success, this meant that they were part of the decision making in the country. The euphoria experienced by the South African society in 1994 with democracy, brought with it policy reformation and transformation and also uniting the different cultures. Under the transformation umbrella the ANC government made its task to address policies that fostered inequality and damaged the social aspects of the country and divided it. This resulted in restructuring social policies that also included land policies which were to be a priority. Land in Africa has been considered as the most important in all (social) aspects. This report will look at the government policies on land redistribution and land tenure security with a gender perspective. Looking at mechanisms, criteria and approaches that government of South Africa has taken to address and promote the distribution by access of land to women. Particular attention should be paid to undoubtedly the land reform policies designed by the government; however gender equality should still be at the forefront of government legislation. Gender equality on land reform process should be viewed as the most important aspect of poverty alleviation and sustainable development within the South African society.**

**Key words:** Gender, land tenure security, South Africa's land reform policies, critical security studies.

## **INTRODUCTION**

This essay will give a report towards the handling of land reform policies by the South African government on a gender basis. Gender is described as culturally prescribed social roles and identities of men and women within a society. These identities are highly variable across cultures and are subject to change, as contrasted with sex that is the biological difference between men and women determined at birth (UN-HABITAT, 2008). The security of women is important as it contributes to protecting the group which is vulnerable to abuse. This paper will draw on literature on aspect related to the development of gender sensitivity the access and rights of women to land and tenure security. It will provide a framework on the recent focus of policy development by the government and the position they play in securing land tenure security in South Africa. By development

meaning there should be creation of institutions and for those that are already there to be improved. On critical level the analysis of the South African land reform programmes is said to have three elements; Restitution, redistribution and tenure reform. Restitution deals with historical rights in land and tenure reform with farms of land holding, redistribution is aimed at transforming the racial pattern of land ownership (Land Reform in South Africa June Report, 2005). The UNAIDS-led global coalition suggests that through greater ownership and control over economic assets women are more empowered and that women who own property control economic assets have higher incomes, a secure place to live, and greater bargaining power within their household (Economic Security for Women Fights AIDS, The global Coalition on women and AIDS; issue#3, *See online web-*

site, <http://www.womenaids.org>). They can, it is argued better protect themselves against social ills such as domestic violence and meet their essential economic needs.

“Tenure is best understood as a social and political process rather than a system of laws or rules” (Cross and Friedman, 1997). It can be understood as the process that defines the kinds of households that qualify socially and politically for land. Property rights include the right to own, acquire and manage, administer, enjoy and dispose of tangible and intangible property including land, housing, money, bank accounts, livestock, crops and pensions (Williams, 2007). When access is denied or restricted women may find themselves struggling alone with fewer resources and less support from their husbands. The burden on women thereby increases, without the control of resources shifting to them. Family status, gender and age all contribute to the widely agreed hierarchy of entitlement to land. Married, older men have greater rights and access; unmarried younger women have the least access. Gender inequality continues to cause serious problems in Africa. Women mostly lack control over resources such as land and it is difficult to make decisions that can improve family income. Without any control of family income, for example by growing cash crops, women contribute their time and labour only for subsistence and are more likely to be affected of poverty than men. Thus gender equality means equality at all levels of control over resources and equal representation in public and political life. Customary or traditional laws have hampered the way in which women can enjoy their status and positions within the household. This paper defends the fact that women do have the right to land tenure security and rights to access land and to own property under their name. There are minimum efforts placed by the government of South Africa as it is failing, practically to address gender policies effectively through land reform. Without the development of proper structures and land tenure systems it is unlikely that women can enjoy security. The paper will draw on sections related to feminist perspective on the role of gender on land issues and positions that the government legislations could adopt. Followed by the traditional customary laws that describe the position that women have played throughout history within family structures and how it impacts on property rights and security of tenure towards gender. Furthermore articulating the critical issue that government are faced with in land reform programmes should improve their land reform policies and encourage ownership of land and the importance of encouraging women to know their rights in that regard. The core point is in the introduction of tenure security and land reform policy as a means of human security focus that government of South Africa should primarily take cognisance In South Africa’s post apartheid era “it is democratic forces that have brought about land reform and constitutional

changes that had unlocked the potential for women to access land and natural resources in ways that could enhance their livelihoods” (McCauser and Oberhauser, 2006). Never the less there is still a lot of transformation and negotiations of land from farm owners (with title deeds) that the government should address as current policies fail to adequately provide land tenure security to women.

### Land tenure security in South Africa

Security of Tenure implies access to land with protection against forced eviction, the right to enjoy the land including the possibilities of transferring rights and access to mortgage and credit under certain conditions (UN-HABITAT; Mechanisms for Gendering Land Tools, 2006). Land tenure security is such a burning issue in South Africa and Africa as governments are faced with the challenge of restructuring what the colonial powers overruled. In South Africa it has recently reported on the analysis of tenure reform. That land tenure is insecure in the former homelands (Thwala and Khosa, 2008). This is where a third of the South African national population live. The insecurities that arise in land tenure is due to the controversial and conflicts amongst greedy traditional leaders, political parties and other local factions. It is the structure of land reform that is hampering the government to successfully implement its policies to those community or group of women to eliminate poverty and create a stable economic base for the future. Women’s rights to land and ownership in particularly Southern Africa, the approaches are based on rights-base approaches and but do not effectively address the women’s access to communal land. They are a marginalised group and (mostly those in rural areas) have a lack of process in their communities. Various problems includes their increased poverty burden, coping mechanisms and their efforts to sustain their livelihoods, collective initiatives to access land, gender violence, and other mechanisms through which men resist women’s attempts at independence, and the nature and capacity of the institutional structures found within the traditional communities (Thwala and Khosa, 2008).

The constitution guarantees:

Section 25 (6) 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.<sup>25</sup> (9) Parliament must enact the legislation referred to in subsection (6) (The Constitution of the Republic of South Africa 1996).

These provisions put the Department of Land Affairs under a constitutional obligation to develop a law which

sets out the types of vested interests in land which were undermined by discriminatory apartheid laws and a mechanism to convert such interests into legally secure tenure rights. Many women in rural areas are marginalised and do not have full control of any of land because of traditional route of marriages. This implication is on the notion that women get married and leave their parents (land) to leave with their husbands being introduced into the 'new family'. Mostly rural women are often poor and too illiterate to deal with bureaucratic procedures that are necessary to gain access to title deeds, or fight for their rights to land in court. This lack of access to land threatens women's security and leaves them vulnerable to poverty. The provision on the Communal Land Rights Act of 2004 (CLRA), states out that

4(3) 'A women is entitled to the same legally secure tenure rights in or t land and benefits from land as is man, no law, community or other rule, practice or usage discriminate against ant person on the ground of the gender of such person'(Communal Land Rights Act, number 11 of 204, Section 4).

Claassens argues that CLRA is likely to enhance or undermine security of tenure for women and for rural people generally and that tenure reform should be to assert and secure the rights of the people who use and occupy land, most of whom are women. Regarding section 4(3) of the Act, the interpretation of the article is important to understand were government places women status on land tenure security and the protection of their rights in this regard by the CLRA. There seems to be a contradiction on this matter as the focus should be on the entire use of land. The problem stems from the entire process of land allocation by women. The Act will give powers to the tribal authorities, were women have little say on the operation of traditional practices. She (2004) further makes a critical analysis of the section 4(3) is potentially contradicted not only by section 4(2) (Section 4 (2), 'An older right held by a married person is despite any law, practice, usage, or registration to the contrary, deemed to be held by all spouses in a marriage in which all which such spouse jointly in undivided shares in respective of matrimonial property regime applicable to such a marriage must on confirmation on confirmation or conversion in terms of section 18(3), be registered in the names of all such spouses) but also by the entire tenure of the Act which focuses not on current use and occupation of land, but on formalising old order rights (traditional practices) into exclusive land tenure rights held by two people. Insofar as the Act discriminates against single women who are not married. The provision of security of tenure in terms of the constitution and the ESTA (Extension of Security of Tenure Act, Number 62 of 1997) is meant to be an integral part of the process of addressing the gross inequality in land ownership and the

power relations steaming from that inequality (Roodt, 2005). There is need within the current policy programme for definite reforming and to allow room for women to participate within the decision making regarding their rights as it can direct them with education in land tenure security. Security of tenure, in private, communal ownership an encourage women to invest in the land, adopt sustainable farming practices and be better equipped to take care of other resources (Land Rights for African Development, 2008). It is stated within the land tenure security that sustainable development and poverty alleviation should be central to tenure security. The government policies such the do not express how they will be implementing these programmes and the period of land reformation seems to be delaying the process of land restitution. The government needs to step up to their promises to secure land tenure for the society and transformation has to be with the time framework stipulated by their programmes, that includes encouraging women to know their rights of tenure.

### **Human security and feminist perspective**

Human security is security that is derived from ensuring the provision of basic needs for the individual (Vale, 2006). The South African government is supposed to provide security for its citizens as a social contract that is embedded within the 1996 constitution of the country. The government should look at creating adequate sustainable development land programme targeting women those in rural areas and communal land available to be utilised by women and skills enhancement programmes available that will create security amongst them and to promote human security. McCausar and Oberhauser note an idea that there could be a creation of two types of classes amongst the group of women. Indeed those who hold the education to challenge their rights regarding land with the government and those who can negotiate their rights thought the democratic institutions and those who have their rights to speak without their fears with the traditional authorities. The aim of class is in accordance with human security. It is the economic class that will shape the social order of the women and the way in which they approach the government in the cry to be recognised even by traditional authorities. Human security discourse is relatively social in understanding social change is important in critical security studies. It is described having the link with critical security studies approach between society and the state in human needs as fundamental to the possibility of anything like secure social order (Wilkin, 1999). It is imperative for any government to adequately review their policy programmes aimed for gender equality as a critical security approach most likely to have it as a human security matter as a political concern. Not only on a theoretical

matter but also practically to make the importance of any social threat such as, land issues, diseases, and other social ills to be approached as critical issues. The South African government more importantly has pledged itself within the policies and development programmes (White Paper, 1997) on Land Reform programmes, The Land and Agrarian Reform Projects (LARP), Promoting Women's Access to Land (PWAL) and the Land and Redistribution for Agricultural Development sub-programme (LRAD) to name a few, as part of their objectives to promote gender equality. Theoretically there are pledges that is promoted by government as part of LRAD leading the certain features that includes objectives and strategies initiated by the Beijing Platform for action (1995) and the Convention on the Elimination on all forms of Discrimination against Women (CEDAW). In theory, the government of South Africa mentions and has highlighted the idea to put women in the forefront and to improve the status and promote gender equality. The land debate in South Africa should be critically assessed in that there is lack of institutions created on the grass-roots to speed up the process of restitution and redistribution. The government seemed to have given up to those commitments of promoting access of land and securing land tenure towards women.

A gender-responsive law and policy reform programme aimed at restructuring gender relations with respect to land is needed. In so doing Hussaina Abdullah (2003) articulate that 'in arguing for women's independent land rights, the role of culture including tradition and religion in the continued denial of women's inheritance rights should not be ignored'. The reform programme should therefore include, customary and traditional land allocation should be central as independent entities, gender equality in inheritance and the issue of title deeds should be established. Land rights through occupancy should be recognised with or without title deeds so that women cannot be dispossessed in divorce or widowhood, a uniform inheritance laws should be established and lastly the programme should be situated within the wider development programme of the state to ensure increased income for women' (Wanyeki, 2003). Women did not inherit land from their parents and only had the right to use lands inherited or purchased by their husbands. Thus in cases where a woman was widowed, land would revert to her sons, but the widow would retain exploitation as long as the sons were not adults or married (Benjaminsen and Lund, 2003). Much literature on feminist view, show that they have opted for a right's based systems to work with women movements to improve their security of tenure. Much evidence is recorded in Uganda, Tanzania and Zambia as governments there have placed policies to improve the access and ownership of land and security of tenure for women. These feminist movements aim to fight and support the rights of women to inherit, purchase and own land in their own names and obtain title deeds

(Tripp, 2000). On the position of inheritance of land rights by women in Southern Africa, the literature review is also dedicated to the information of women's position in this regard. Cross, Friedman and Walker (1997) supports the idea that it is women organisations that need to be strengthened as an integral part of land reform and need a fair tenure system. The priorities for women are located in different areas, home, land, corporate world, agriculture and domestic markets. Women would tend to treat land as an economic asset. "Support is obtained through production and food security, or through selling, lending and trading land in return for food or money to be used for household support" (Meer, 1997). This claim supports the definition of human security as its interest's lies on the emphasis of people centred efforts to address basic needs such as food, housing, health and education (Lee, 2003). Food security has a major impact on the relation of land and women in particular to feel secured about the asset they as a production resource. Women make it their mission those who plough on family land to produce food that the family is dependent upon.

#### **Land rights: Customary law and inheritance**

Customary law also unfairly discriminate against women in relations to the allocation of land and tenure of security. Those who are vulnerable are the mostly African women. In African customs, as captured in several literature, it is felt that generally women alone cannot hold land: a man must somehow be in charge the questions of why is regarded as being the eldest son who controls the assets is contradictory, there should be hierarchical stages that even a custom cannot skip even after the father has died leaving the land to the wife who would be considered a widow. There is no one uniform custom or practice, that perhaps this area of tenure may be in transition (Thorp, 1997). The gender studies also claim that the position of women rights to be secured is vulnerable to abuse by the state system. The approaches to women's development in the developing countries are in a manner that is socially constructed, placing women in certain position according to the roles the play within the society. It is livelihoods that the government policies should be focused on. Rural livelihoods (a source of income or revenue) in South Africa are closely related to land and natural resources (McCusker and Oberhauser, 2006).

The other analysis on this issue suggested by several authors in the literature is that there should be human rights-based approach to the use and control of land by women. The rights of women to agricultural land are treated as a human right by the South African government. The concentration in several literatures in regard to African countries is focused on the land tenure, ownership of rights by women, customary laws or traditional

rights of inheritance, an approach of development strategies to be upheld by government and secure of livelihoods (bread winners in the households). The concentration is that the traditional exclusion of women from property and land ownership on gender grounds is the most damaging global human rights violation. According to Mutangadura (2004) on a report for *Land in Africa* conducted in 2004 based on gender, land and inheritance in Southern Africa. She further makes emphasis that rights are important to women and they should know what they are as 'without rights to and, women's economic and physical security is compromised', or threatened. A further statement is the legal preference that men get as from women and that a combination of statutory and customary laws favour male ownership and disadvantage to women's rights to own land.

There is a need for legal reform of the land programmes and the constraints imposed by customary laws to allow room for women to participate within the decision making regarding their rights as it directed to them and their education in land tenure security. Walker (2003) gives the clarity on a research she conducted that at present the land projects to uplift poor rural women's position are negative. And exactly what kind of rights should we be talking about? There has been a recent shift in the policy programme from 1997 White paper on land policy and the parallel between the new policy directions. She further elaborates that the recent formulation of policy, women and in particular the rural poor women stand to lose. Women's interest and rights in land in the communal areas are also threatened by new proposals on tenure reform (Walker, 2002). There is evidence within the report on the emphasis that in the last decade to women's access to land and land tenure security in South Africa has declined {UN-HABITAT: Mechanisms For Gendering Land Tools A Framework for Delivery of Women's Security of tenure, Report 30 June 2006; Strategies and Outlines adopted at the High status Round table on gendering Land tools, Nairobi, Kenya, page 15 (Republic of South Africa)}. That the development drive approach to women's rights is driven largely by poverty alleviation agenda it has been ineffectual.

The economy is a gender based struggle over land use and how to control it is taken over by men who dislike the work involved in pit constructions, so the system is used only by women to produce food crops (Mackenzie, 1995). The standpoint is that because of the silenced African knowledge, we tended to move away from it, instead of creating environmental sustainability. Because of the discourse created by the 'settlers' the state had been termed an environmental crisis. In a realist discourse, the African case for the return of land was/is constructed with the precision upon a discourse of customary practice rights. In relation to the gendered perspective of land, the construction of land in the twentieth century has emerged as long-term sustainability discourse base and

agricultural production (ibid). There should be security of land rights to be guaranteed on the argument to increase access to land to women and their communal participation of the allocation of land.

On the other hand it is the customary practice that saw men claiming much more on the allocation of land as resource and a valuable asset to create wealth, in which in African customs women are more in the labour of domestic positions within the family. There is a sense that the laws that the government have passed to represent the allocation of land claims especially those to women on a communal base will actually be creating a class of women, two classes to be precise. The classes are those that must negotiate democratic institutions (holding the necessary education) and a class that must negotiate the "traditional" authorities. What about the class that must struggle with power relations within their households? McCusker and Oberhauser state that because the South African government will only allow for a group of women to access land. Those women who participate in the communal projects are straddling in two contradictory processes that of a transformative state intent on developing rural economies through market based reforms and that of a neo-traditional power base dedicated to maintaining its privileged position. The South Africa's rural economic development must realise and redress gender inequalities and the power and knowledge that are needed to gain access to such resource.

In this changing world and through globalisation women's position is ever changing and the way they are treated within their communities. We should try to understand their position and the way in which globalisation is occurring in of feminist way and that those feminist attempting to understand the effects of globalisation on women's security go beyond the economic emphasis of neo-liberalism and focus on a broad array of social relations and institutional structures (Tickner, 1999). It is a gender analysis that is required to be adopted and should be used especially in a capitalist country like South Africa. Rural women are most likely not to benefit from policy grant land programmes because of their inability to analyse those laws and procedures to be taken. It is necessary to utilize a feminist framework to understand and to transform capitalism in South African society so that a diverse participation of women can participate and benefit from its wealth (Williams, 2007). Gender should be a basic focus as it should be at every level whether personal, organisational and in communities. Thus the development of women's access to land and ownership should be based on the institutions to be created and implemented by the South African government. These institutions will have to look at the approaches of the land reform policies towards the gender equality regarding the access to land either for tenure security or agricultural purposes. Gender rightfully identifies the persistence of asymmetric power relations, rather than natural anatomic

differences, with women occupying a lesser of dual pairs between men and woman (Cotter, 2004). It is through the view of feminist light that gender equality should a fundamental right of women to be struggles in society and a priority on government legislation. Feminism since the 19<sup>th</sup> century is engaged in changing the world in the way women's position is seen. There are considerable differences and political strategies to be adopted in social theory between campaigns to get more women in prominent positions in public life (Ramazanoglu, 1989)

What is also more at stake are the challenges that women of South Africa are faced with regarding their empowerment skills to tackle the issue within the society. Their benefits will come once they have been empowered to take on the land reform policies within the government that actually does not focus on promoting their access and ownership to land. By empowerment meaning allowing women to be able to become providers for their families including being educated. Traditional customs is also an aspect that many women are faced with that challenge of property ownership within a marriage and the limited rights they have because of the embedded cultural norms that limits their positions. Thus the vision of land reform needs to incorporate empowerment objectives and the building of social movement, so that disposed groupings may be active agents in process of democratisation and development (Meer, 1997). The government can condone programmes and land policy plans in place but should also realise the potential of investing in women organisation and land based associations. These obligations can contribute to the economic of South Africa and sustainable development that would eradicate poverty. Thus women organisations are key area for the development of empowerment strategies (Meer, 1997) to be addressed by government legislation regarding land reform.

### **The South African government's land policies**

Land reform policy is an initiative by government to successfully restore land to those who it has been taken away from. The use of state resources to restore land to its rightful owners is central to the government's approach to land reform (White Paper, 1997). The South African government's land reform programme has three main components. Land restitution means returning land to those who were dispossessed of it under the Apartheid, or to compensate for their losses. Land redistribution is to increase black ownership (as from 2001 from 13% land owned by black population to 30% of Agricultural land within a period of 15 years by the year 2014, DLA research report no;14, 2005). The last is the tenure reform that means improvement on the security of tenure of dwellers and rural and peri-urban farmland, as well as on communal land (Land Reform South Africa June Re-

port, 2005). This means that the government will use communal land for projects aimed at agrarian, instead of protecting and encouraging tenure of security towards the community. The report conducted by the Centre for Development and Enterprise illustrates a clear structure of the challenges that the department of land affairs is faced with. Challenges include the full and final restitution for the legacy of Apartheid, of the damaged called by the Native Land Act of 1913, the 1936 Natives trust and Land Act, the Group Areas Act of 1950, and other racially discriminatory laws (Land Reform in South Africa June Report, 2005).

The White Paper (1997) states out steps government will proceed on tenure reform and how the implementation will take place and the transformation of land claims. "The Land Tenure Reform Programme will deliver security of tenure in diverse ways. For example: by the award of independent land rights and secure lease agreements; through protection against eviction; by membership of a group based system of land rights or through private ownership" (White Paper on South African Land Policy, 1997, Land Reform Programmes, under land Tenure laws, Section 4.18 and 4.19, page 115). It illustrates that there is indeed a problem that the government should be addressing through the land reform on a gender perspective for security. This could imply emancipation as food security for the community is important through that the community or a group of women who work together to produce vegetables will feel secure. Food security is key area in land tenure and sustainable development as in the case being widely adopted by African governments. "A clear factor which will determine the success of the poverty alleviation (through accessing land) components of an LRP will be the ability of the programme to target women and youths as beneficiaries" (Van Zyl, 1996).

In 2004, the Communal Land Rights Act (CLRA) Number 11 of 2004 was passed as a bill to promote the equality of gender and land and the procedure government will take to further their transformation process. So far the problem with this Act is that it fails to address the relationship of gender discrimination in the access of communal land fails to secure land rights or protect community members from the illegal sales of land, and expects unremunerated community members to take the task of land administration (Thwala and Khosa, 2008). It also does not address the individual rights to security of tenure and the accountability of forms of land administration. The important issue that the government needs not to ignore is whether or not the three stream of land policies serves to address gender roles. There is visible transformation of gender policies and the role amongst the poorest women is lagging behind and these rural women are most likely to be in government offices (the assumption is lack of education). It is the policy option adopted that the government seems to restrict poor wo-

women from being involved in the programmes.

The other programme that seems to be making progress in addressing the access of land to women is the Land Redistribution for Agricultural Development (LRAD) that is designed to represent the redistribution criteria's to the allocation of land for sustainable growth by a community. LRAD provides an excellent vehicle for redressing gender imbalances in land access and land ownership by allowing agricultural projects under LARP; women can associate themselves with to assist each other. And thus in improving the lot of rural women and the households they may support. The sub-programme will serve as a means of creating opportunities to enable women to develop skills thus giving them security against poverty and providing them with an independent economic status. By just ensuring those women participate fully in asset redistribution and agrarian reform (LRAD Programme by the DLA). Women rights in that regard to property rights is a sensitive debate under customary law. Customary law pertaining to women's land tenure (security) is based on social relations between men and women or husbands and wives. It shows that it is a structure that is patriarchal in nature from the top down, the men being in charge of assets and distribution of property within the family households (Kameri-Mbote, 2004). It is important to provide women with assets whether land or property rights that to make them feel secure in socio-economic terms (Tripp, 2000). Customary law and land tenure if looked gender perspective is written that traditional elders, politicians and clans have created insecurity for women. The movements or organisations adapted to enhance women land tenure security focus more on a rights-based approach to challenge the customary law and its practices.

The present suggestion specifically on women land tenure security detailed by several authors within the, whom have conducted field research in South Africa. Their core focus is that these points on women land rights (below) to be challenged by any government:

- Review or repeal all personal or family customs, including provisions on inheritance, which discriminate against women.
- Disseminate new laws that promote the rights of women to land so that they are widely known among government officials, NGO, media and traditional leaders.
- Support the training of legal personnel on women's land rights.
- Train and build capacity of both men and women on women's land rights.
- Provide legal processes for joint registration of customary and statutory households land rights for spouses.
- Harmonise land, married and inheritance laws.
- Develop national and local level indicators that would measure progress towards equity for women in land right

- Empower women socially and economically by increasing their awareness of their rights. This may involve literacy campaigns that target rural areas [Land tenure Systems and Sustainable Development in South Africa (no date), [www.uneca.org/ecaresource/publications/scdcs tenure systems and sustainable development in Southern Africa \(titled land tenure issues\)](http://www.uneca.org/ecaresource/publications/scdcs_tenure_systems_and_sustainable_development_in_Southern_Africa_(titled_land_tenure_issues))].

Substantial challenges remain with regard to restitution, redistribution, the implementation of CLRA. Security of tenure for people living on commercial farms, state land administration and disposal, land use and spatial planning and the implementation strategy of land and agrarian reform all need further attention. The agricultural impact of the redistribution scheme has sometimes been stunted by either an inappropriate emphasis on collective farming or a lack of beneficiary power in decision-making within the government structures, (Ministry of Agriculture and Land Affairs Report, 2005). CLRA states that the community will be represented by traditional council. In South Africa this could create problems as women do not have much say within tribal councils, also raising questions related to women's rights on access to land (Claassens, 2004). The Act further does not clarify the protection of women regarding family based nature of land rights according to section 4(3). The interpretation of the CLRA on the words such as 'usage' and 'practice' stressed in the law. This could create problems as practically women struggle to be allocated land through land reform programmes. If is through the community where they have little say about the usage of the land.

To date land delivered in South Africa by the restitution, distribution and tenure reform by the end of 2004 amounted to 3.5 million hectares that is only 4.3% of commercial agricultural land (DLA report, 2005). The South African government developed the Grant system (Version 7) promoted by the Department of Land Affairs. It gives financial assistance to (either) an individual of a community to buy land depending on the amount of money they will have to contribute towards the land projects. This Land Redistribution for Agricultural Development (LRAD) grant system will encourage non governmental organisations and other associations who are interested land for agricultural purposes for a financial assistance. According to the grant system will be a number of women who going to benefit directly from the financial service instead as individually (Grant and Services of the Land Reform Programme: DLA, Version 7). The system will enable a subsidy of R20 000 thousand to the extended R100 000 thousand by the DLA. It is the encouraged beneficiaries (mostly youth and women) that that must contribute at least R5 000 thousand towards their projects for agricultural purposes (LRAD Report, 2005; Grant System DLA, 2008). Yet it is

the project system such as LARP that will benefit the community and not precisely the ownership of land. But the government policies such as LRAD is focused on the commercialisation of communal farm land not the promotion of ownership for the community. Though it seems to encourage mostly rural women to invest in agricultural produce, the amount of capital that needed upfront to be eligible for the grant could be a challenge to some organisations if they have no support or any income and especially those rural women who have the ambition for agrarian.

The White Paper (1997) on the South African land reform it sets out certain objectives. And also shows a right based approach to develop its task and implementation of the land reform policy. The policy fails to acknowledge gender factors in addressing land reform and to provide projects for women as beneficiaries. Further the reform policy offers a process, involving compromises for land with the farmers for the sake of reconciliation. It is hard to imagine dealing effectively with the massive apartheid created disparities in land access and economic power. There is an emphasis in the document on giving land rights and opportunities to the poor and addressing gender issues in land ownership. But the impact of these intentions will be limited by the lack of fundamental reform of land ownership. The Reconstruction-Development Programme (RDP) 1994 was set on objectives of combating racially based land dispossession to providing economic growth and providing secure tenure for all as stipulated within the charter by the ANC (Nkuzi Development Association, online website, 2003). As also seemingly addressed by other land reform policies and the emphasis on the White Paper is that the document does give emphasis on land rights and opportunities to the poor and addressing gender issues in land ownership (ibid). The shortcomings of the gender policies expressed by the DLA is that there is not enough resources available to women to encourage them to buy and secure land. They had aligned their approach according to making their distinction between 'Gender and Development' (GAD) and 'Women in Development' (WID) approach. Thus, their proposed policy approach is in line with responsibilities of the GAD and using 'gender and not women as the focus' (Walker, 2003, p15). This approach raises contradictions on the hands of government as it fails to define accurately their position on gender relations and the execution of land reform policies to benefit of the marginalized group (mostly women). Through this analysis it appears that the government uses gender indirectly just as a non discrimination tool. Otherwise it struggles to even to differentiate; within its land reform policies the status and position of gender on land restitution and tenure reform. The government further introduced the Land and Agrarian Reform Project (LARP), in accordance with their land redistribution policies. It is aimed as a project plan that will be able to

assist beneficiaries (mostly women and youth) to utilise and access land on an agricultural foundation. The criterion of LARP is a comprehensive approach towards the land reform policy. It directly contributes to the overall goals of the Agricultural Plan, and the right hand policy to co-operate with the White Paper on South African land policy (LARP document, 2008). These projects proposed by government show no sign of improving ownership of land and to protect tenure security of women. Instead it just looks at women as prime beneficiaries of financial assistance for their use of land for agricultural purposes for poverty eradication only towards a group of women. This implies that women are not encouraged on the grass roots level to fight for their rights to land by government and that the land which will be utilised for these projects is communal land, land that is just under the control of government but not yet transferred or owned. It is imperative for government to adequately address tenure security and protect those women who will be vulnerable to be evicted from their houses when they are widowed or divorced.

#### **Approaches for land reform policy for women and land rights in South Africa**

The suggestion in this regard is that there should be certain approaches that the government should comprehend in order to look at the issue of women in the land reform processes. Mutangadura (2004) suggest that there should a monitoring of women to the access of land and human rights by the Committee on the Elimination of Discrimination against Women (CEDAW) into the state structures. There is a mutual feeling that women's rights should be protected as international community created standards set in different legal foundations. These include the Universal Declaration of Rights, (1948) (the Preamble stating to promote equal rights among men and women), the International Covenant on Economic, Social and Cultural Rights, 1966. She suggests the emphasis and approach to combat the lack of sufficient access to land by women on a communal base should be looked at by government on a human-rights based approach. Meaning the government of African countries should focus on securitising women and making their access to land as a human right approach. As women are the labours on the land that their husband has left them with and are inclined to produce food for their families and through that they tackle poverty and there is economic growth as land they plough on, they can produce fruits and vegetable to sell in an open market. It is likely for their basic reliable resources such as food to be deprived.

A human rights approach requires an analysis of why women still are experiencing discrimination within the society in obtaining land rights and those land rights of women specifically should be protected by the govern-



government and there should be steps taken to ensure their securitisation. Wisbog (2002) on his conclusion states that land is a human rights issue. In his essay the main points being the government should respect the procedures in redistribution and tenure reform. The opposition to this is that land is not essentially linked to human dignity and land is an only means as an asset not 'freedom' (2002, p3). What is key by in this field is that and should be raised by the South African government in their upcoming assessment of the land reform policies is for securing land tenure for women individual or communal. As long as gender rights and the question of land inheritance is not fully addressed thorough policy and legislation, the oppressive customary rights of succession may continue to sabotage the access rights of women (Workshop Report Kampala, June 2006, p16). Thus it could not view as a deliberate attempt by the South African government not to focus on strategies that could help to uplift women and access of land and tenure security. The South African government is trying to track its obligations to rectify and redistribute firstly land to those previously disadvantaged communities and trying to be neutral in addressing women's ownership to land and the land reform transformation agenda (Economic Commission for Africa, 2004).

### **What is real? Issues and Challenges**

The position of a South African woman has seen part of inequality, political and socially degrading. The rise of her position to be recognised by government has been a journey. The road that has been from abusive relationships let alone to have a legislation that is imposing on their rights to access land such as customary rights. Gender inequalities are involved in all aspects of our society, one of the key challenges will be to address gender inequalities with regard to ownership, allocation, access and use of land. There are enormous amount of challenges that women more precisely rural women in South Africa are faced with, being in a vulnerable position of domestic abuse by their spouses because of lack of education and the plight and burden poverty seems to be in their caring hands. "Caring for those with HIV/AIDS, their central involvement in food security planning and management, their role in family health care and natural resources management in general deserve more prominence in policy making" ( Thwala and Khosa, p45) . HIV/AIDS as a crisis has worsened the situation and the discriminatory practices have increased evictions of women by their status. Secure tenure would by chance be a mitigating factor for these women affected by this pandemic. It would assist those widowed by conflicts who meet legal or customary discrimination against widows inheriting land (Augustinus and Deininger, 2008).

Critical theory is open to the exploration of all referents,

historical and future-imagined and therefore must consider the range of different threats associated with them. If we imagined referents, the potential of new identities are particularly significant for critical theory because herein lies the possibility of the future reality security, community and emancipation in world politics (Booth, 2004). Critical discourse develops to a transcendental argument along the lines that, given that knowledge is possible and meaningful, structures, generative mechanisms, practices and a discourse may be an important part of reality. Society is both the ever-present material cause and the continually reproduced outcome of human agency (Joseph and Roberts, 2004). Important concerns are sheared, exposing how power works, uncovering the role of gender, giving a voice to those who are silenced in world politics, seeking to understand the general from the particular, and having a political orientation towards emancipation. Therefore gender must be a central theme on every critical theory of security. Critical Security studies is a self-consciously approach to theorizing about security issues that emerged in the 1990's. This has symbolised the fact that the states are moving away from military discourse as the only security mechanism by states and that are a threat to their citizens. But since then there is more security issues that have risen in the new global order. It aims at both theoretical re-conceptualizations of what 'security' is as well as empirical investigations of whether conventional security enhancing practices actually deliver (Booth). In the feminist perspective and theories they suggest that gender must be central theme of any critical theory of security. And thus issues that relate to gender and security or insecurity should not be ghettoized within feminist theorizing, and critical perspectives should play whatever part they can in avoiding this outcome. Gender and feminist perspectives are important to law and the legislations to combat any level of discrimination.

The ANC as a dominant party in government stressed out in the 1994 RDP programme that it will aim to fulfil a constitutional duty for restitution and redistribute land to previously disadvantaged groups. Their programme of action is a positive reflection on the significance of the land restitution since the end of apartheid. This could imply those women's land rights and their priorities in the full control and ownership of land if not through communal land will have to be delayed. The deadline that is imposed by the government by 2014 is hampered at present by the fact that budget allocated for land reform is a problem. The Deputy-General of land claims commission Mr Thozzi Gwanya, recently stated that the DLA has not enough funds to buy land for redistribution. It appears that the DLA is lacking behind with capital of about R2, 5 billion needed (LARP document, 2008), to be able to reach their target of 30% land distribution (*Sowetan*, 30 October, 2008). Although there is much evidence within the land reform policy programmes one

such as the Promotion of Women's Access to Land (PWAL) and LARP projects to promote their access to land and the rights they have in regard to property and security of tenure. It establishes a framework and methods to promote women's access to land with a critical analysis and to assess gender approach on land and agrarian. The important issue to tackle is that women in South Africa do not have a full backing from the government in on the ground in regard to rights to access of land it is not yet visible. There appeared to be no data available that shows how many women managed NGO's have benefited from the land claims policies. It is clear that their priorities won't be fulfilled until the South African government together with the department of land affairs have successfully made progress in the restitution and redistribution of communal land to those previously disadvantaged groups have been settled.

### Civil response

At present according to civil response towards the Land Tenure reform programme in South Africa has been deemed to be the slowest. The other issue in this regard is the constitutional commitment of gender equality and that it claims to address women's representation and allowing women to organise themselves in order to receive grants for land allocation to their farming projects. There had been a recent call to court by the communities of Kalkfontein, Maluleke, Makgobistad and Dixie from Limpopo and Mpumalanga. Their argument is that the Communal Land Rights Act is unconstitutional. That government will be handing over their land to a tribal council which has not been democratically elected. In the recent news paper article by (Mail and Guardian, 23 October 2008), these communities feel that their tenure will be insecure and that traditional elders have "undemocratic and unprecedented" powers and are most likely to undermine women's rights and black ownership of land. The communities also argue that the CLRA actually undermines their tenure and makes it more insecure. These issues of land claim also mentioned in the CLRA is addressed by Thwala and Khosa, these authors point out that the Act will transfer the ownership of communal land from the state to tribal authorities as it does not address the need for individual security of tenure and any accountable from of land administration. Further in a conclusion they stated that there should be attention given to access full control of land which they are obscured from (Thwala and Khosa, 2008) [See also Ben Cousins to his response of the drafting of the Communal Land Rights Bill of 2004, In Reforming Communal Land Tenure in South Africa – Why land Titling is not the answer Critical comments on the Communal Land Rights Bill, 2002: Programme for Land and Agrarian Studies (PLAAS) School of Government, University of the Western Cape].

### Conclusion

Through out the literature review there is clear emphasis that the government of South Africa lacks to promote the position for women to access land and a secure tenure system. It is clear that there are organisations representing women in areas such as Kwazulu-Natal, Eastern Cape and Western Cape (to name a few regions in South Africa) and their rights to land tenure security and agricultural advertisement in the country. What is needed is the inclusion of a criterion in which the land reform programmes will have a positive effect on those who are likely to benefit from them. Little progress has been achieved so far in the question facing land reform and preferences of gender sensitivity. The Promoting Women's Access to Land programme (PWAL) [A Land reform Programme developed in 2000, by the Department of Land Affairs, through a platform of collaboration and cooperation with women and women's movements in Across South Africa, see also Cross and Hornby Article on (PWAL)] is a great initiative that through hope it will be able to create a platform for encouraging rights of women to full control and access of land that will contribute to the economy of South Africa although at present it seems to have been neglected.

It is understandable that there should be an increase of attention placed in women rights and security on a gendered approach. Empowering women will mean sustainable development, poverty reduction, and conflict resolution and mostly they will feel secured. "Women empowerment and gender equality is central to human security" [June Zeitlin and Doris Mpoumou Women's Environment and Development Organization (WEDO) The Big issues: Reports by Commitment, 2004- No Human Security without Gender equality, online website [www.socialwatch.org](http://www.socialwatch.org), see also Walker (2003)], it is through these phrases that we should seek objectives to be incorporated and goals that should be achieved to create such platform for women to realise their rights. Within the interpretation of 'women empowerment' it will seek to encourage women young and old poor or wealthy to be acknowledged by their communities to see further what capabilities they posse and are surely to feel emancipated. The South African government in collaboration with the DLA, need to develop a coherent and achievable goals to protect women and enhance the land tenure security system and gender relations as focus point.

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