Policy Brief on Women’s Land Rights

Background and Introduction
This policy brief on women’s land rights in South Africa and their role in small-farming value chains is guided by the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), which may be referenced.

The government has been criticised for being slow in distributing land equitably through land reform and for its failure to align land reform and agricultural reform, and women in particular have been marginalised. Evidence from different developing countries shows that women contribute significantly to agriculture, yet their access to land and resources is constrained under systems that discriminate against and disadvantage them. Women make up 52% of the agricultural population; provide about 50% of the labour and produce between 60 and 80% of food in the African continent (Njobe, 2015).

A lot of discussion on land redress tends to move towards private, individual ownership through titling. However, there are different opinions on whether this can be a blanket solution to South Africa’s land question. South Africa is still largely a patriarchal society, and this means that any policy to ensure land rights for women will constantly be under threat unless it addresses patriarchy.

The state of land and women’s land rights in South Africa
The South African land scene is characterised by a well-developed and flourishing urban core juxtaposed with the mostly poor, underdeveloped countryside where many South Africans live. Realities include a racially unequal distribution of land, wealth and other resources and also the unexplored gendered distribution, particularly in communal areas.

The South African legal system is administered by formal courts alongside a customary law system, which is recognised by the South African Constitution and is administered by traditional authorities. This can cause conflict in practice when some customary systems are not formally recognised under law.

There is also a disjuncture between law and gender disparity, as unmarried women are often not allocated land in their own right, particularly in communal areas, and married women are allocated land under the authority of their husbands.

Legal Assessment of gender equity in SA Policy related to land
The following gender analysis of land policy, laws and custom follows the guidelines provided under the VGGT using the FAO Gender equitable legal framework’s Legal Assessment Tool (LAT), which may be referenced.

The South African Constitution prohibits gender discrimination. It does recognise both customary law and religious law but states that any gender-based discrimination is superseded by the principle of non-discrimination. The adoption of special measures for the advancement of women is also promoted.

Many of the South African laws recognise the right to own or control property regardless of the type of marriage. The legal framework includes provisions for the promotion of women’s rights to land, property, and/or productive resources.
Within the national and local institutions enforcing land legislation, the law sets quotas for the appointment of women in land management and administration committees as well in land dispute resolution committees.

Despite the Constitution and the laws, gender equality in land ownership is still an elusive goal.

**Gender and the South African land reform policy**

The land reform programme has three elements: restitution, redistribution, and tenure reform.

Looking at the overall policy, it appears that although there are gender considerations for redistribution and tenure reform, there is no specific gender focus on restitution: it fails to take into account the different experiences of injustice between men and women and does not take women’s needs into account.

This short review of some of the policies shows how some of the policies address gender equality while others do not, and that there is no strategy on how goals in gender equality will be realised.


The White Paper sets out a commitment to redistribute land back to those who were dispossessed. It advocates for addressing customary and social practices that discriminate against women and commits to include women in planning processes and to facilitate women’s access to resources. But some reviews highlight that this White Paper fails to address the implementation aspects in order to achieve gender equality.

**Interim Protection of Informal Land Rights Act, 1996 (IPILRA)**

This Act recognises the tenure rights of people living in former Bantustans and on Trust land who do not have documentation that secures their rights to land. However, up to now, there are no processes and procedures developed by the department to guide the implementation of the Act.

**Communal Property Association Act of 1996 and its Amendment - Communal Property Association Amendment Bill of 2017**

The Act makes provisions for communities to form legal entities (Communal Property Associations - CPAs) in order to be able to make claims under the land reform programme to land that they can own as a collective. It specifically promotes the equal rights of all members to use land and other resources belonging to the association. But a “member” is defined in different ways: it could mean the recipient of the land reform grant, or the household head, or all adults who are beneficiaries of the land reform. These varied definitions will impact on women’s rights and access to CPA resources.


The legislation makes provision for security of tenure for labour tenants and those associated with labour tenants. These might be either male or female, however the Act does not consider special conditions or circumstances that are different for men and women as labour tenants. The Act does, however, recognise spouses even under unregistered customary union.

**Traditional Leadership and Governance Framework Act, 2003 and its amendment of 2009**

The Act was passed as an attempt to “regulate” the traditional authorities, which had governed communal land under the apartheid system. It calls for the establishment of traditional councils, with conditions that 40% of the members be democratically elected and that a third of the members be women. To date, some of the areas have still not established traditional councils as required by the Act. Furthermore, some of the established traditional councils do not have the quota of women stipulated.
The Green Paper on Land Reform, 2011
The Green Paper re-configured the elements of land reform, emphasising “democratic and equitable allocation of land across race, gender and class”, but is completely silent on the issue of how women’s land rights are to be achieved under the policy.

The Land Redistribution for Agricultural Development (LRAD)
The main objective of the policy is to stimulate commercial farming activity among African farmers. It specifically commits to prioritising women by targeting projects that are led by women and setting a third of the resources aside for women. The policy, however, does not create specific interventions to advance the interests of women in this context.

Recapitalisation and Development Programme
This focuses on making “productive” entities of all land reform farms, including smallholder farms, transferred since 1994. It does not address equitable gender distribution and thus far has merely advanced the large-scale agriculture agenda.

Comprehensive Agricultural Support Programme (CASP), 2004 and the Policy on Comprehensive Producer Development Support, 2018
The programme seeks to expand support to enhance agricultural productivity among farmers, but it does not have a specific focus on gender.

The Communal Land Tenure Policy (CLTP) of 2014
The CLTP has been proposed in place of the Communal Land Rights Act (CLRA) of 2004, which was finally thrown out by the Constitutional Court. It stipulates that CPAs would not be formed in areas where traditional councils are, giving them ownership and control of land. The policy does not address any considerations of gender.

What do we learn?
The land reform policy in South Africa is set on a premise of addressing the injustices of the past, which are racial in nature. The policy in writing seems to be focused mainly on redressing the racial imbalances in terms of access to and ownership of land and other related resources, and gender seems to feature as a “secondary” issue, and almost a non-issue in implementation. When reviewing progress against targets set, the question is often how much land has been transferred to black people, which indicates the primary focus of the policy, while monitoring results show that the restitution benefited 9% females and 91% males in the period 2006/7 financial years.

The Role of Women in Small Farming Value Chains
Among small farmers, women are concentrated among vulnerable household producers (who produce primarily for household consumption and do not possess skills and resources to produce for the market) and subsistence producers (who produce for both household consumption and market the surplus to generate income). Rigorous data on women as small farmers are not available.

Women are further barred from the value chain (such as education) because their time is divided between many activities and their literacy levels tend to be lower than men. The many general farming challenges are even harder for women, with the double burden of social production and reproduction, restricted access to land and limited control over land and other resources.

Policy Considerations
Securing women’s rights to land can strengthen their socio-economic position and provide a buffer against livelihood threats. Gender-equitable land reform also transforms gender discriminatory
institutions. In order to achieve equal rights for women, South Africa should look at the following issues:

*Aligning all land policy to the Constitution and developing guidelines, processes and procedures for implementation*

There are significant gaps in the Constitution in terms of procedures and processes that determine how its gender equitable goals will be achieved. Some of the laws do not incorporate gender at all, and government should endeavour to correct these discrepancies by identifying these gaps, amend or design legislation to make gender a priority alongside race or abandon it if contravenes gender equity, and develop indicators to achieve this equity.

*Incorporating gender targets and indicators and a system of tracking them*

The current problem is that even though women feature in some of the policy, there are no clear targets set for achieving gender equality, and therefore there is no system for measuring. Consultation and collaboration with gender organisations within and outside government should help to set targets and develop a set of indicators, while civil society organisations involved in gender and land work should be enlisted to undertake monitoring functions and report back to the government.

*Transforming Institutions*

Gender discriminatory institutions, such as traditional institutions, should be transformed through a transparent and participatory process.

*A system of recognising land rights of women in communal areas*

Most women in communal areas do not have ownership and control of land on which they reside and which they use. Government should develop a system of recognising and protecting informal land rights under customary law. The government should consider how it can adapt current policy to ensure accelerated access to land for women.

Different options for securing land rights should be considered such as a leasehold option to be adapted to ensure gender equitable distribution. Women’s rights in CPAs should be strengthened through recognising all adult members of households as members.

A system of recognising tenure arrangements rights and affording women the same kinds of protection as formal rights must be developed.

*Women representation and leadership in land administration institutions*

Women are generally not fully represented within land administration structures. Clearly-defined gender objectives should be put in place so that women are included and equipped with skills to be able to play a meaningful role at all levels.

*Improve access to resources and information for women*

The government should ensure that there are tailored programmes specifically targeted at women and allocate sufficient existing resources for this purpose, as well as setting grants targeted at women, and using technology to distribute information to women.

*Research and integrated interventions*

More research is needed on the role of women in agriculture, particularly in small-scale agriculture, in order to inform policy directions. The research should look at integrating government programmes, such as how social grants and small farming on land reform projects could assist to explore opportunities that could be exploited for the benefit of women and for gender equality in general.