

# Land Reform and Gender in Post-Apartheid South Africa

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## ◆ Summary / Sommaire / Resumen

### *Summary*

Post-apartheid South Africa has embarked on a market-driven programme of land reform that can be described both as very ambitious, when measured against existing constraints, and as very modest, when measured against popular demand and need. But regardless of one's assessment of the actual programme that has been put together over the last few years, its goals are certainly impressive: to redress the injustices of a grossly skewed land distribution system, to reduce poverty, to contribute to sustainable land use and economic development, and to establish tenure security for all.

Perhaps the most radical component of the programme is the explicit policy commitment to gender equality as a long-term goal, which involves targeting women as a major category of beneficiaries in the short to medium term. Gender issues are addressed in all three components of the land reform programme: (i) land redistribution, (ii) land restitution, and (iii) tenure reform. The commitment to gender equality grows out of the recognition that rural women have been systematically marginalized from access to and control over land, as a result of past land and labour policies based on race, combined with patriarchal structures of authority. Designing and implementing the land reform strategy remains a difficult task for a number of reasons, three of which are highlighted below.

### **Lack of Capacity**

Perhaps the greatest constraint is summed up in a South African catch phrase of the 1990s — “lack of capacity” on the part of government. The seriousness of the problem is illustrated by the fact that the Department of Land Affairs (DLA) is not able to spend all the funds allocated for acquisition of land (which, according to a DLA official in 1995, amounted to only one third of one per cent of the government's entire budget). In the field of land restitution alone, there are over 23,000 claims, each of which must go through a complex process of registration, verification and negotiation. The systems required to handle these tasks must be created from scratch, with most personnel training on the job (and on the run). Implementation is further complicated by the fragmentation of the programme, distributed across different bureaucratic structures within the DLA. The pressure to get cases to the Land Claims Court is enormous, and this pushes officials to seek a quick resolution of claims.

Government employees are often not well prepared to engage in awareness raising and organizational development in sensitive areas. For example, there are no detailed guidelines on *how* to ensure that women are *not* marginalized in land reform processes. Moreover, the climate on the ground may be hostile to well-intentioned interventions. Community dynamics are usually quite complex, with counter claims and internal struggles which often erupt into serious, deeply debilitating conflicts, or are left to simmer in less dramatic but also destructive ways. Lack of policy direction and training — as well as trainers — is aggravated by low levels of sensitivity to gender dynamics among many officials, all of which weakens capacity to fulfil the gender goals of the land reform programme.

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### **Traditional Power Structures**

The second key constraint is associated with the strength of patriarchal attitudes, as well as the government's reluctance to intervene actively to curb the powers of traditional authorities at the local level. The institutions of rural local government are still transitional, with a low-level — but from a gender point of view, crucial — political struggle under way over the extent to which traditional leaders (i.e., chiefs) will continue to exercise real power over the allocation of resources, including land. There is serious tension between the government's commitment to gender equality, on the one hand, and its reluctance to alienate these neotraditionalist structures of rural local government, on the other. Although less monolithic than in the past, these patriarchal power relations are deeply entrenched in rural society. Many women uphold "tradition" as a cornerstone of orderly society and support the traditional institutions of power, such as the chieftaincy. Such support, however, is not incompatible with a real — if not strongly articulated — interest in securing improved land rights for themselves. Women may approve of the chieftaincy as an institution, but disapprove the claims of the chief to control the allocation of additional land acquired by the community.

### **Women's Organization**

The third constraint is created by the absence of a strong lobby campaigning for women's land rights in rural areas. Most rural women, like most rural men, see land primarily as a social rather than an economic resource, and look to urban jobs as the route to household economic survival and advancement. Farming is very often one element in the array of strategies that women deploy to ensure their survival and that of their children. It is not, however, one which they regard as the most rewarding in terms of income generation, nor does farming define their interest in land. The extent to which women can benefit from land reform is also limited by their lack of knowledge of the formal structures and legal opportunities being put in place. Without this, the broad policy objective of greater gender equality through land reform is likely to remain stronger at the level of principle than practice.

Given the limitations on the government's role in community development, the NGO sector has a major responsibility to educate rural women about the opportunities opening up to them and to help build women's organizations at the local level. While there are some encouraging initiatives, the overall level of organization is weak; and NGOs are themselves battling to redefine their role in the post-apartheid era in the face of reduced funding. There is also a real disjuncture between the demand for rapid land reform and the time needed to build women's capacity to maximize the opportunities that land reform undoubtedly holds for them.

It is too early to judge the success of the land reform programme, but not too early to state that there is absolutely no basis for complacency. The chances that far greater resources and political importance will be granted to the programme in the next few years are minimal, although one can anticipate an increase in the rhetoric of land reform as the elections of 1999 approach and government programmes attract closer attention.

What has already been achieved is progressive in terms of its emphasis on gender equality as a basic principle of government policy. There are real opportunities for women to improve and protect their land rights, although not enough champions to

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assist them in this process. While the constraints on implementation are very real, they are not new and should be regarded positively, as developmental challenges, rather than negatively, as intractable problems. The challenge now is to build upon what is in place.

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### *Sommaire*

L'Afrique du Sud de l'après-apartheid s'est lancée dans un programme de réforme agraire régi par le marché, que l'on peut qualifier à la fois de très ambitieux par rapport aux contraintes existantes et de très modeste par rapport à la demande et aux besoins de la population. Mais indépendamment du jugement que l'on porte sur le programme réel élaboré au cours des dernières années, ses objectifs sont impressionnants: corriger les injustices d'un système de répartition des terres manifestement biaisé, réduire la pauvreté, contribuer à une occupation viable des sols et à un développement économique durable et assurer à tous la sécurité de jouissance.

L'élément le plus radical du programme est peut-être l'engagement politique explicite de faire de l'égalité des sexes une réalité à long terme, ce qui l'amène à cibler les femmes comme l'une des principales catégories de bénéficiaires à court et à moyen terme. Les questions de parité entre les sexes sont prises en considération dans les trois composantes du programme de réforme agraire: (i) la redistribution des terres, (ii) la restitution des terres, et (iii) la réforme des régimes d'occupation. Si le gouvernement tient à la parité entre hommes et femmes, c'est qu'il s'est rendu compte que dans le passé, l'effet combiné des politiques de la terre et du travail, fondées sur la race, et des structures hiérarchiques de l'autorité, avait empêché systématiquement les femmes rurales d'accéder à la terre et d'en disposer librement. La conception et l'application d'une stratégie de réforme agraire reste une tâche difficile pour un certain nombre de raisons dont trois sont exposées ci-dessous.

#### **Le manque de capacité**

"Le manque de capacité" de la part du gouvernement, cette rengaine des années 90 en Afrique du Sud, résume bien ce qui est peut-être le plus grand obstacle. L'incapacité du Département des affaires agraires (Department of Land Affairs — DLA) de dépenser entièrement les fonds alloués à l'acquisition de terres (montant qui, selon un haut fonctionnaire du Département, équivalait en 1995 à seulement 0,33 pour cent de la totalité du budget gouvernemental) illustre bien la gravité du problème. Dans le seul domaine de la restitution des terres, il y a plus de 23.000 demandes qui, toutes, doivent suivre une procédure complexe d'enregistrement, de vérification et de négociation. Les systèmes nécessaires à l'accomplissement de

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ces tâches doivent être créés à partir du néant et la plus grande partie du personnel formée sur le tas (et avec le temps). L'exécution en est encore compliquée par la fragmentation du programme entre divers services du Département. Les pressions qui s'exercent pour que la justice soit saisie des revendications foncières sont énormes, ce qui pousse les fonctionnaires à rechercher un règlement rapide aux cas qu'ils traitent.

Souvent, les employés du gouvernement ne sont guère préparés à faire un travail de sensibilisation et à développer les capacités d'organisation dans les régions sensibles. Par exemple, ils n'ont pas de directives détaillées sur les moyens à employer pour que les femmes ne soient pas écartées des processus de réforme agraire. De plus, l'atmosphère sur le terrain peut être hostile aux interventions bien intentionnées. Les dynamiques communautaires sont généralement assez complexes, avec des contre-réclamations et des luttes intestines qui, soit éclatent au grand jour et se transforment souvent en conflits graves, aux effets profondément débilissants, soit couvent et ont des retombées moins spectaculaires mais tout aussi destructrices. Le manque de directives politiques, de formation et de formateurs est aggravé par le fait que beaucoup de fonctionnaires sont peu sensibles à la dynamique des rapports sociaux entre hommes et femmes; tous ces facteurs font obstacle à la réalisation des objectifs d'égalité entre les sexes fixés au programme de réforme agraire.

### **Les structures traditionnelles du pouvoir**

Le second obstacle de taille est lié à la force des attitudes patriarcales ainsi qu'à la réticence du gouvernement à intervenir carrément pour limiter les pouvoirs des autorités traditionnelles locales. Les institutions du pouvoir local dans les campagnes sont encore transitoires et s'accompagnent d'une lutte politique menée en sourdine — mais pourtant cruciale pour les femmes — sur le point de savoir dans quelle mesure les chefs traditionnels continueront de fait à exercer le pouvoir en décidant de l'attribution des ressources, y compris des terres. Le gouvernement est tiraillé entre sa volonté de promouvoir l'égalité des sexes, d'une part, et sa réticence à s'aliéner ces structures néo-traditionalistes du pouvoir local, de l'autre. Bien que moins monolithiques que par le passé, ces rapports de force patriarcaux sont profondément ancrés dans la société rurale. Bien des femmes défendent la "tradition" comme fondement de l'ordre social et soutiennent les institutions du pouvoir traditionnel telles que les chefferies. Certes, un tel appui n'est pas incompatible avec un désir réel, sinon exprimé haut et fort, de jouir de plus larges droits foncières. Les femmes peuvent approuver la chefferie comme institution mais désapprouver la prétention du chef de décider de l'attribution des terres supplémentaires acquises par la communauté.

### **L'organisation des femmes**

L'absence d'un groupe puissant faisant campagne pour les droits foncières des femmes dans les zones rurales constitue un troisième obstacle. La plupart des femmes rurales, comme des hommes, voient dans la terre une ressource essentiellement sociale, bien plus qu'économique, et dans les emplois qu'offre la ville, le moyen d'assurer l'existence et la promotion économiques du ménage. L'agriculture n'est très souvent qu'un élément d'une batterie de stratégies dont les femmes se servent pour survivre et faire vivre leurs enfants. Cependant, ce n'est pas la plus gratifiante à leurs yeux, ni la plus lucrative. L'intérêt qu'elles portent à la terre ne s'arrête pas non plus à l'agriculture. Les bénéfices que les femmes peuvent tirer d'une réforme agraire sont aussi limités par leur ignorance des

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structures officielles et des mécanismes légaux récemment mis en place. Sans cette connaissance, l'objectif politique général d'une plus grande égalité entre hommes et femmes grâce à la réforme agraire risque de rester au niveau des principes et de ne jamais se concrétiser.

Etant donné les limites fixées au rôle du gouvernement dans le développement communautaire, c'est aux ONG qu'il revient d'instruire les femmes des possibilités qui s'ouvrent à elles et de les aider à s'organiser au niveau local. Malgré quelques initiatives intéressantes, le niveau d'organisation générale est faible et les ONG elles-mêmes se battent pour redéfinir leur rôle après l'apartheid, alors qu'elles ne disposent plus que d'un financement réduit. Il y a aussi contradiction entre l'impératif de procéder rapidement à la réforme agraire et le temps dont les femmes ont besoin pour acquérir les moyens de maximiser les chances que leur offre cette réforme.

S'il est trop tôt pour juger de la réussite du programme de réforme agraire, il ne l'est pas pour dire que l'optimisme béat est absolument déplacé. Les chances de voir le programme disposer de ressources beaucoup plus importantes et revêtir une importance politique accrue dans les années à venir sont minimales, bien que l'on puisse prévoir une inflation du discours de la réforme agraire à l'approche des élections de 1999, qui devraient amener à examiner de plus près les programmes gouvernementaux.

Un progrès a déjà été accompli en ce sens que l'égalité entre hommes et femmes est devenue un principe fondamental de la politique gouvernementale. Les femmes ont des chances réelles d'étendre et de défendre leurs droits fonciers, bien qu'elles manquent de champions pour les y aider. Si les obstacles à la mise en oeuvre sont tout à fait réels, ils ne sont pas nouveaux et doivent être considérés d'un point de vue positif, comme des défis au développement, et non sous un jour négatif comme des problèmes insurmontables. Il s'agit maintenant d'édifier sur ce qui est en place.

**Cherryl Walker** est actuellement Commissaire régionale à la justice foncière pour la Commission du KwaZulu Natal pour la restitution des terres. Avant d'être nommée à ce poste par le Ministre des Affaires agraires, elle dirigeait le Département de sociologie de l'Université du Natal à Durban.

Le travail, dans sa première phase, du projet de recherche de l'UNRISD sur **Genre, pauvreté et bien-être**, a été réalisé avec l'appui de l'Agence suédoise de coopération au développement international (Sida) et du Programme des Nations Unies pour le développement (PNUD). L'UNRISD voudrait exprimer sa reconnaissance aux gouvernements du Danemark, de la Finlande, du Mexique, des Pays-Bas, de la Norvège, de la Suisse et de la Suède pour leur contribution aux fonds généraux.



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## ***Resumen***

La República de Sudáfrica, después del apartheid, ha emprendido un programa de reforma agraria, orientado hacia el mercado, el que se puede considerar muy ambicioso en relación con las restricciones existentes, a la vez que muy modesto en relación con las demandas y necesidades populares. Pero independientemente de la evaluación que se haga del programa establecido en los últimos años, sus metas son ciertamente admirables: enmendar las injusticias de un sistema de distribución de la tierra sumamente sesgado, reducir la pobreza, contribuir a un uso de la tierra y un desarrollo económico sustentables, y garantizar seguridad para todos en la tenencia agraria.

El componente más radical del programa tal vez sea el compromiso explícito de lograr igualdad en la distinción por género como meta a largo plazo, lo cual implica dirigirse hacia las mujeres considerándolas como una categoría fundamental de beneficiarios a corto y mediano plazos. En los tres componentes del programa de reforma agraria: (i) redistribución de la tierra, (ii) restitución de tierras, y (iii) reforma en la tenencia agraria, se incluyen aspectos relacionados con la distinción por género. El compromiso para lograr la igualdad en la distinción por género surge del reconocimiento de que a las mujeres del medio rural les ha sido negado sistemáticamente el acceso a la tierra y al control que se ejerza sobre esta misma, como resultado de políticas agrarias y laborales que anteriormente se sustentaban en la discriminación racial así como en las estructuras patriarcales de autoridad. El diseño de la estrategia de reforma agraria es difícil por varias razones, tres de las cuales se subrayan a continuación.

### **Falta de capacidad**

Es posible que la restricción más importante se resuma en una frase muy de moda en Sudáfrica, en el decenio de los 90: “falta de capacidad” de parte del gobierno. La gravedad del problema se advierte en el hecho de que el Departamento de Asuntos Agrarios (DAA) no es capaz de gastarse todos los fondos que le fueron asignados para adquirir tierras (fondos cuya suma, de acuerdo con un funcionario del Departamento, en 1995 sólo llegaba al 0.3 por ciento de todo el presupuesto gubernamental). Únicamente en el rubro de restitución de tierras hay más de 23 000 reclamaciones, cada una de las cuales debe pasar por un complejo proceso de registro, verificación y negociación. Los sistemas requeridos para llevar a cabo estas labores deben ser elaborados de la nada, con la mayoría del personal aprendiendo sobre la marcha. La ejecución se complica aún más debido a la fragmentación del programa que está distribuido entre diversas estructuras burocráticas al interior del DAA. La presión para que los casos pasen a la Corte de Reclamaciones Agrarias es enorme, y ello obliga a los funcionarios a tratar de resolver las reclamaciones con suma rapidez.

A menudo, los empleados de gobierno no están bien preparados para fomentar una mayor toma de conciencia sobre asuntos delicados. No hay, por ejemplo, lineamientos detallados sobre la forma de asegurarse de que no se margine a las mujeres en los procesos de reforma agraria. Más aún, la actitud en el campo puede ser de hostilidad hacia las intervenciones bien intencionadas. Por lo general, la dinámica de las relaciones sociales en las comunidades suele ser muy compleja, habiendo contrademandas y pugnas internas que con frecuencia estallan de manera grave y sumamente debilitadora, o quedan en condición latente, que es menos dramática pero igualmente destructiva. La falta de una dirección firme en la elaboración de políticas y en la capacitación (así como la escasez de expertos

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instructores), se agrava por los bajos niveles de sensibilidad de muchos funcionarios, en lo que se refiere a la dinámica de la distinción por género; todo lo cual debilita la capacidad para cumplir con las metas de los programas de reforma agraria.

### **Estructuras tradicionales de poder**

La segunda restricción clave se relaciona con el peso de las actitudes patriarcales, así como con la renuencia por parte del gobierno a interceder activamente para reducir el poder que tienen las autoridades tradicionales al nivel de la comunidad local. Las instituciones de gobierno rural todavía están en transición, con un nivel bajo de conflicto político (pero crucial desde el punto de vista de la distinción por género), sobre el grado de poder real que deben seguir teniendo los dirigentes tradicionales en torno a la asignación de recursos, incluida la tierra. Hay una situación de grave tensión debido al compromiso del gobierno para lograr la igualdad en lo que se refiere a la distinción por género por un lado, y su escasa disposición a enajenar esas renovadas estructuras tradicionales de gobierno rural, por el otro. No obstante que estas relaciones de poder patriarcales son menos monolíticas que en el pasado, están profundamente arraigadas en la sociedad rural. Muchas mujeres defienden la “tradicición” como un baluarte del orden social y apoyan a las instituciones tradicionales de poder, tales como el cacicazgo. Sin embargo, ese tipo de apoyo no es incompatible con el interés real que ellas tienen (aunque no esté fuertemente articulado), para asegurarse de que se les reconozcan sus derechos agrarios. Las mujeres pueden estar de acuerdo con el cacicazgo como institución pero desaprueban los reclamos del cacique para controlar la asignación de las tierras adicionales que adquiere la comunidad.

### **Organización de las mujeres**

La tercera restricción surge por la falta de una campaña enérgica de cabildeo en pro de los derechos agrarios de las mujeres en zonas rurales. La mayoría de las mujeres del campo, como la mayoría de los campesinos, consideran la tierra como un recurso social más que económico, y por ello tratan de conseguir empleos urbanos como vía de supervivencia y de mejoramiento económico del hogar. Ser agricultoras constituye frecuentemente uno de los elementos en el conjunto de estrategias que las mujeres desarrollan para asegurar su sobrevivencia y la de sus hijos. Sin embargo, no es lo que ellas consideran más benéfico por lo que se refiere a la generación de ingresos, y tampoco define la agricultura su interés por la tierra. El beneficio que las mujeres puedan obtener de la reforma agraria está condicionado también por su falta de conocimientos sobre las estructuras formales y sobre las oportunidades legales que hayan sido establecidas. Sin ello, es probable que el amplio objetivo de política, de lograr una mayor igualdad en la distinción por género mediante la reforma agraria, siga tomándose en cuenta más al nivel teórico que al de la práctica.

Dadas las limitaciones que tiene el gobierno en el desarrollo de la comunidad, las ONGs tienen una responsabilidad importante para educar a las mujeres campesinas acerca de las oportunidades que se están abriendo para ellas así como para ayudarles a establecer organizaciones femeniles a nivel local. A pesar de que hay algunas iniciativas alentadoras, el nivel de organización en general es bajo; y las propias ONGs están batallando para redefinir sus funciones en época posterior al apartheid y ante la reducción de financiamiento. Hay también un verdadero desfase entre la demanda por una reforma agraria rápida y el tiempo que se requiere para

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desarrollar la capacidad de las mujeres, a fin de que maximicen las oportunidades que sin duda la reforma agraria les ofrece.

Aunque sea demasiado pronto para juzgar el éxito del programa de reforma agraria, puede señalarse que no hay absolutamente ninguna base para estar satisfechos. Las posibilidades de que se destine el máximo de recursos a dicho programa y que se le dé una mayor importancia política en los próximos años son mínimas, aunque se puede prever que habrá un aumento en la retórica relacionada con la reforma agraria, en la medida en que se aproximen las elecciones de 1999 y los programas gubernamentales despierten una mayor atención.

Lo que ya se ha logrado es positivo por el énfasis que se le ha dado a la igualdad entre hombres y mujeres como uno de los principios básicos de la política gubernamental. Las oportunidades para que las mujeres mejoren y protejan sus derechos agrarios son reales, aunque no halla suficientes aliados para ayudarlas en este proceso. Y las restricciones a la ejecución de la reforma agraria son evidentes pero no son nuevas; tampoco constituyen problemas insalvables sino desafíos a enfrentar, construyendo sobre lo que ya se haya cimentado.

**Cherryl Walker** es actualmente Comisionada de Reclamaciones Agrarias Regionales, adjunta a la Comisión KwaZulu Natal para la Restitución de Derechos Agrarios. Antes de haber sido nombrada por el Ministro de Asuntos Agrarios para ocupar este cargo, encabezaba el Departamento de Sociología de la Universidad de Natal, en Durban.

La primera fase del proyecto de investigación de UNRISD sobre **Distinción por género, pobreza y bienestar**, fue llevada a cabo con el apoyo de la Agencia Sueca de Cooperación Internacional para el Desarrollo (Sida) y del Programa de las Naciones Unidas para el Desarrollo (PNUD). UNRISD agradece a los gobiernos de Dinamarca, Finlandia, México, los Países Bajos, Noruega, Suecia y Suiza, su aportación al financiamiento básico del Instituto.



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# INTRODUCTION\*

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Post-apartheid South Africa has embarked on a market-driven programme of land reform that can be described both as very ambitious — when measured against the constraints — and as very modest — when measured against popular demand and need. But, regardless of the assessment of the actual programme that has been put together over the last few years, the goal is certainly ambitious: to redress the injustices of grossly skewed past land dispensation, to reduce poverty, to contribute to sustainable land use and economic development, and to establish tenure security for all (DLA, 1996a:1). Although the proportion is declining, about half the South African population still lives in rural areas, the great majority in extreme poverty. Redressing this situation must be an obvious policy goal for any government committed to a more egalitarian society.

Perhaps the most radical component of the programme is the explicit policy commitment to gender equality as a long-term goal and to targeting women as a major category of beneficiaries in the short to medium term. This commitment is based on the hard-won recognition that rural women have been systematically marginalized from access to and control over land as a result of the interaction of past racial land and labour policies with patriarchal structures of authority, and that the eradication of rural poverty requires the empowerment of women.

Thus the recently published White Paper<sup>1</sup> of the Department of Land Affairs (DLA) states that:

Specific strategies and procedures must be devised to ensure that women are enabled to participate fully in the planning and implementation of land reform projects (DLA, 1997a:vii). . . . Government will uphold the provisions of the Constitution which outlaws discrimination against women. Within the redistribution programme, this will require the removal of legal restrictions on women's access to land, the use of procedures which promote women's active participation in decision-making, and the registration of land assets in the names of beneficiary household members, not solely in the name of the household head (DLA, 1997a: ix).

Designing and implementing the strategy required to give substance to these sentiments remains a difficult task. The 1996 Annual Report of the DLA, released after the White Paper, notes:

Although there is gender awareness amongst people involved in land reform implementation, there are many practical impediments that need to be overcome to ensure gender equity in the delivery process (DLA, 1997b: 26).

This paper attempts to understand these “practical impediments”, and probes whether it is only at the level of practice that the impediments appear. It reviews

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\* The views expressed in this article are the personal views of the author and do not necessarily represent the views of the Commission itself.

<sup>1</sup> “White paper” is the term given to the published document embodying government policy within government departments.

the policy framework and assesses the challenges and constraints to the effective implementation of the commitment to gender equity within the land reform programme. It also considers the prospects for land reform becoming something more than a political rallying cry, and the limited degree to which women might gain greater economic independence through the programme. It is written from the perspective of one who is, now, engaged in trying to make land reform work, and is increasingly (painfully) appreciative of how much easier it is to analyse social relationships and policy deficiencies than it is to “deliver” (one of the most popular South African catchwords of the 1990s) the solutions. One of the issues I wish to highlight in this regard is that there are limits to what government — even a well-meaning government — can do in restructuring social relationships and making policy blueprints real for rural people, especially rural women. This is not the counsel of despair but, hopefully, of a committed and rigorous pragmatism, which, in turn, has policy implications.

The paper is divided into three sections. Section 1 provides background on gender and land in South Africa, in section 2 the policy framework for land reform is outlined, and the prospects for gender equality are considered in section 3.

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## 1. BACKGROUND: GENDER AND LAND IN SOUTH AFRICA

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### ◆ The Legacy of the Past

The most obvious motivation for land reform is the unsustainability — from a political, social, economic and equity point of view — of the present distribution of the ownership of agricultural land (van Zyl et al., 1996:3).

The ferocious inequalities of racially skewed land and income dispensation in South Africa have been extensively documented and analysed, and this literature will not be recapitulated here. The conventional figure — that whites, comprising some 15 per cent of the population, own 87 per cent of the land — may be inaccurate in its finer detail, but it is descriptive of the inequity that prevails and the redistributive challenges that this poses.

One of the notable consequences of the history of struggles over land in South Africa is the precipitous decline in peasant production in the twentieth century as a result of a combination of factors flowing from state policy. These include the dispossession of black land rights, desperate overcrowding in the established “native” reserves, soil depletion, migrant labour and non-investment in black rural areas. Today the nation’s food production and food security rests in a commercial agricultural sector that consists, overwhelmingly, of white individual farmers (predominantly male) and, increasingly, white-controlled companies. This gives this sector a strategic importance beyond its numbers while ensuring its vulnerability to redistributive forces.

The decline in black peasant production was not, however, accompanied by mass proletarianization and permanent urbanization of the rural population on a large scale. Rather, South Africa’s shift from an agrarian to an industrial economy in the

twentieth century was built on a harshly repressive migrant labour system, and the legacy of this system continues to have a profound effect on rural economic and social life today. The relatively recent removal of restrictions on permanent African urbanization, with the lifting of influx control in 1986, does not appear to have altered this pattern significantly at this stage.

. . . cyclical rural-urban migration has become a way of life in South Africa, where the majority of rural households are better viewed as members of dislocated urban communities (Mbongwa et al., 1996:59).

Regional variations and isolated cash-cropping success stories notwithstanding, it is true to say that, today, as a result of these forces, in most black rural communities agricultural production — whether for subsistence or for the market — is a marginal activity and the culture of farming as the bedrock of rural social life has largely disintegrated. Agricultural production is, for good reason, seen as a high risk activity with poor returns. It enjoys low social status and holds few attractions as a way of life for the youth. The black rural areas remain dependent on incomes earned in the urban centres and/or on welfare remittances, such as state old-age pensions, and the income strategies of most households revolve around these opportunities rather than farming.

The cry for land is strong, but for many people the primary goals are land for security, for settlement, for a last-resort insurance against household unemployment, and for grazing of limited numbers of stock. Noting the regional variations across the country, as well as the importance of class in shaping household strategies, Cross (1993:10) concludes that “subsistence agriculture appears as a paradox, an option which is highly valued against emergencies but one that fewer and fewer people are willing to attempt”. Because of the high risk factor associated with it, rural households are unwilling to invest whatever money they may have in food production, even though, in many instances, this appears their only economic strategy.

In the same paper Cross makes another point with particular resonance for gender-sensitive policy-making, by highlighting labour time as a crucial factor affecting the overall viability of household (agricultural) production. Lack of land is not the only constraint on agricultural production. In addition to the “technical considerations” limiting household subsistence and commercial production (for instance access to skills, credit and transport infrastructure), lack of time for labour-intensive working of the land, in particular for weeding, is a critical difficulty.

. . . mobilizing the labor to get the weeding done thoroughly — the most labor intensive operation involved in production — is most of what accounts for reasonable yield levels: fertilizers and pesticides only begin showing results once the crop is weeded thoroughly, . . . by hand, over an extended period. Given rain, it follows that the amount of labor time invested is the single main factor in producing either respectable subsistence yields or, with chemical treatment, semi-commercial levels of return. Failing an intensive investment of labor time in production, the enterprise remains marginal or fails completely (Cross, 1993:2).

As a result, according to Cross, it may turn out that land is not the first or only limit to production, or that land and labour are co-factors (Cross, 1993:4).

## ◆ Gender

The general context of rural poverty, land degradation and high levels of landlessness among rural people in South Africa presents an internationally familiar pattern of inequality between men and women of the same class, in terms of access to and control over meagre land and other resources, including income-generating opportunities, as well as in terms of authority within households and community organizations.

This pattern is an outcome of an intricate interplay between indigenous patriarchal structures, reshaped in the interests of white settler society (see Simons, 1968 and Walker, 1990), and the social and economic forces unleashed by industrialization and urbanization under an economic system best described as one of racial capitalism. The particular deprivation of rural women as a social category relative to men has been exacerbated by the legacy of the migrant labour and bantustan policies that were developed by the apartheid and pre-apartheid white minority governments.

As a result of deeply entrenched migrant labour practices, adult African women significantly outnumber African men in the rural areas. Yet in most cases they are not independent rural producers, and their access to land is generally mediated through their relationships to men. Both custom and law have underpinned their economic marginalization. Although no longer constitutionally defined as perpetual minors in the eyes of the law, women continue to be treated as subordinate to men, and this subordination is defended by many in the name of “tradition” and African culture. Growing general land shortage and land hunger have increased women’s vulnerability. Political violence in certain areas has been accompanied by a horrific upsurge in reported incidents of male violence against women (much better documented in the urban than the rural areas), and family systems and social support networks in general are under enormous stress. High retrenchment levels in the mining industry are exacerbating these problems, with male migrants returning to their rural homes with scant hope of ever finding waged work again.

At the same time, as a result of the gendered division of labour in the rural areas, women carry the main responsibility for much of the labour associated with food production and, again, because of the gendered division of labour, women are most burdened with other labour- and energy-demanding responsibilities such as wood and water collection, cooking and child care. All of this means less time and energy for agricultural production.

Class is a variable, and several studies emphasize the importance of disaggregating “women” and not falling into a common policy trap of treating women as a homogeneous category of the equally deprived. (See, for instance, the essays in Meer, 1997a.) Nevertheless, the overwhelming number of rural women fall into the category of poor or very poor. (See, for example, the general discussion in MERG, 1993:183–186, which also stresses the paucity of reliable national data on this.) While female-headed households are often the focus of policy makers alarmed by the figures demonstrating the relative disadvantage of such households compared to male-headed households, recent studies have begun to probe income disparities within households, and to point to the gender imbalances that are



concealed there, in terms of nutritional status, decision making and spending power. (See, again, Meer, 1997a.)

Today, like most rural men, most rural women see land primarily as a social rather than an economic resource and look to the urban sector and to urban jobs as the route to household economic survival and advancement. Their specific interest in land is shaped by both their social responsibilities as women and their marginalization from the formal wage sector. A study in which I was involved in 1994 at the time of the political transition to democracy, in an African community called Cornfields, in KwaZulu Natal, found that most of the development wanted by the women related to the provision of social infrastructure — schools, clinics, roads, etc. — and was strongly linked to a desire to invest in the future of their children.

In terms of the women's perceptions of the new government's priorities, the provision of jobs was seen as far more important than attention to land issues and this theme was repeated through all the questions to do with economic and developmental priorities (Walker, 1997:71).

However, it is generally difficult for rural women to access urban and industrial jobs. Female education and skill levels are low, and the industrial sector is highly stratified — not simply by race but also by gender. Social norms, though in flux, favour male rather than female migration to town — at Cornfields both the women and the men who were interviewed were less likely to favour their daughters moving to town to take up permanent jobs than their sons. As a result, land is valued by rural women as a resource in gender-specific ways. At Cornfields in 1994, state land reform ranked higher among the women interviewed in the sample than among the men, even though it was seen as less important than job creation. Overall, Cornfields women presented themselves as more interested in preserving an agricultural subsistence base than did men. They recognized land as a major household resource in terms of supplying wood, water and thatching grass and were more interested than men in land for residential purposes (Walker, 1997:71). Secure access to land was also tied up with complex notions of “a rural way of life”, which encompassed more than specific kinds of livelihoods and material patterns of living, embracing in addition certain values and ideals about social relationships and manners of human interaction, such as respect for authority and for order, which are perceived to be dangerously absent in the urban areas.

In trying to sum up the implications for land reform of these findings, I concluded:

Land represents an opportunity for women to meet a variety of needs, including those which are socially defined as primarily their responsibility, such as running the household and child care. What emerges from the 1994 survey is that Cornfields women were straddling different economic options and working with a package of strategies for the survival of themselves and their children. Land for agricultural purposes was one element of this package. It was not, however, one which the women regarded as the most rewarding in terms of income generation, nor did farming define their interest in land (Walker, 1997:71).

It is also important to note that, although the weight of tradition, custom and the law tilts the scales heavily against women, gender relations in the rural areas are in considerable flux, buffeted by social change in both rural areas and society more

broadly. There is considerable evidence from different studies of an overall decline in patriarchal authority (seen also in relationships between patriarchs and the youth) and a concomitant opening up of social space for greater contestation and negotiation between men and women about the terms of male authority. Male-female relationships are being reshaped in different, sometimes double-edged, ways.

The Cornfields study notes:

. . . gender relations in Cornfields are not frozen in a rigid mould of “tradition” but are under negotiation. There is a tension between the traditional patriarchal values that still tend to be espoused formally by women (and, of course, by men) and the living arrangements and daily realities in many households. The case study points to significant changes in household structure and the emergence of a range of different family forms, with a general shift away from the extended patriarchal family to more nucleated, though often multi-generational forms (Walker, 1994:49).

Some of the most fascinating discussions recorded among the women in the Cornfields study involved debate about headship in families and inheritance practices. There was no unanimity about what rules and norms “ought” to prevail to protect women’s interests better, nor about what systems used to operate in the past, “traditionally”. Individual women themselves held a mix of what might be termed more or less egalitarian views with regard to the position of women. For instance, one of the women interviewed, a widowed tenant, favoured sons and daughters inheriting equally from their fathers and thought women should be eligible to own land independently of their male kin because “their needs are sometimes different from men’s.” Yet at the same time, she did not think that women should serve on the Trust Committee then being established in Cornfields to manage the additional land that the community was in the process of acquiring through a government-sponsored initiative. Her reason was that this was “a man’s job. It does not look like a good thing to involve women” (Walker, 1994:55).

From the above it should be clear that a land reform programme geared towards poverty reduction, security of tenure, sustainable land use and rural economic development must put a commitment to gender equality at its centre and target women as a key category of beneficiaries. Land reform, however, cannot operate in isolation from a broader programme of rural development — one that targets job creation and service provision as well, and in particular, services that will reduce the heavy burden of domestic labour on women, such as water provision and alternative, labour-saving systems for domestic energy. Equally, any socio-economic policy committed to gender equality cannot presume a single model of “the family” or work successfully with unproblematized notions of “tradition” and customary law.

The next section considers the extent to which the policy framework that has been put in place over the past three years is proving successful in addressing these major challenges.

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## 2. THE POLICY FRAMEWORK FOR LAND REFORM

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At the outset it needs to be stated that land reform is competing against many other compelling policy commitments, including macro-economic restructuring, job creation, housing delivery and education. Despite its clear symbolic importance in the political landscape, it is in many ways a relatively minor commitment of the new government, and this is reflected in the budgetary commitment to it and the dominance of urban issues in the national debate on restructuring the apartheid society. At the constitutional level, however, it enjoys considerable prominence, indicative of the special political significance it has carried as a symbol of dispossession under the old order and of restoration under the new.

## ◆ The Constitutional Framework

The debate on land redistribution and property rights was one of the most contentious issues at the negotiations leading up to the democratic transition in 1994. The land reform policy that emerged was a major compromise between, on the one hand, the proponents of the status quo, representing primarily white agricultural and business interests, and, on the other hand, the advocates of a radical transformation of land dispensation, representing the black majority and including the landless, the land-hungry and aspiring commercial farmers. The African National Congress (ANC) government has ruled out any dramatic programme of rapid and cheap transfer of land to the landless and the dispossessed, but did set itself an initial target (not always easy to find in the literature) of black ownership of land rising to some 30 per cent of the total in the country by the year 2000.

Thus while the South African Constitution provides a strong rights base to the land reform programme, it also underpins a market-driven programme, based on the notion of willing buyer/willing seller, which means that the rights come at a definite price.

The so-called “property clause” of the new Constitution (Clause 25 of the Bill of Rights) states that “no one may be deprived of property except in terms of law of general application”, that the state may only expropriate property for public purposes or in the public interest and that such expropriation must be subject to the payment of compensation which is “just and equitable”. This clause is, however, counter-balanced by a strong commitment to reversing the legacy of past discrimination and entrenching a human rights culture, mediated by the courts and the rule of law. The so-called “equality clause” of the Bill of Rights underpins the restitution of land rights to those dispossessed of such rights in the past, as a result of “past racially discriminatory laws and practices”, and could be used to defend land reform more generally against any constitutional challenge mounted by aggrieved, expropriated landowners. Additional sub-sections of the “property clause” specifically authorize Parliament to take “reasonable legislative and other measures, within its available resources” to foster conditions to enable more equitable access to land and, by means of an Act of Parliament, to redress the legacy of tenure insecurity.

The Constitution is also important in terms of the explicit commitment to gender equality in the equality clause, which is the foundation for the policy commitment to gender equity in land reform and the removal of discrimination against women in access to land and in tenure systems. This clause could, potentially, be used to challenge discriminatory practices against women in the way in which land reform

is implemented, for instance the conferring of new rights on men as the perceived heads of households, to the exclusion of women. Discrimination on the grounds of gender and sexual orientation is specifically outlawed, while provision is also made to shield programmes that are designed to protect or advance” previously marginalized persons from constitutional challenge on the grounds that such programmes are themselves discriminatory.

The Constitution also attempts to weight the balance it strikes between respect for individual rights and respect for “tradition” and cultural rights in favour of the rights guaranteed in the equality clause. Cultural rights are protected — the debate over this was a source of some concern to feminists during the Constitution negotiations (see Walker, 1995) — but not unconditionally. A further, as yet largely untested, provision states that when there is a conflict of interest between customary law and the Constitution, i.e., the equality clause, the Constitution must take precedence.

## ◆ Commission for Gender Equality

Finally, the Constitution also provides for a Commission for Gender Equality “to promote gender equality and to advise and to make recommendations to Parliament or any other legislature with regard to any laws or proposed legislation which affects gender equality and the status of women”.

This Commission has only recently been put in place and it is too early to assess its long-term impact or potential contribution towards gender equity in land reform. It has indicated that it sees rural women, including women living and working on commercial farms, as a primary constituency. Much concern, however, has focused on its small budget and difficulties establishing the necessary infrastructure. Questions have also been asked about the cost-effectiveness of having both a Gender Commission and a separate Commission on Human Rights, and whether South Africa, as a developing country, can afford a proliferation of government commissions with overlapping functions. It is possible that simply establishing and defending itself as a legitimate and viable organization in a climate of “fiscal discipline” and “hard choices” will consume much of the Gender Commission’s energy in the next few years and that it will, as a result, prefer to leave land issues to the land structures. It is worth noting that there has been no formal interaction between the Commission for Gender Equality and the Commission on Restitution of Land Rights to date — as there has yet to be any formal interaction between the Land Claims Commission and any of the other commissions.

## ◆ Land Reform

Given South Africa’s history of dispossession and white privilege, land reform, it has been noted, carries enormous emotional and symbolic appeal for the majority of the population and serves as a major political rallying point. Yet the contribution of commercial agriculture to the national economy is small, and declining (MERG, 1993), and the former black reserve areas are seen primarily in welfare terms. The tiny budget assigned to the Department of Land Affairs calls into question the importance the government assigns to land reform in macro-economic policy, and the scope for a market-led process. According to a DLA

official, in 1995 only one third of 1 per cent of the government's entire budget was allocated to land reform, far below the big spending on education, health and welfare, and below that allocated even to water, transport, prisons, housing and police (DLA, 1996b:29).

Restrictive budgets and constitutional pragmatism combine to produce a land reform policy that is more far-reaching in intent than in actual implementation. Nevertheless, a comprehensive package of programmes has been put together, which, even if only partially successful, will begin to turn around the major distortions of the past and could provide an important base on which to build more inclusive development policies.

The three main components are land redistribution, tenure reform and land restitution. Although these are often described in folksy style as the three legs of one pot (evoking the domestic image of the traditional iron cooking pot), one of the problems with the land reform programme is the institutional framework, with its fragmentation of staff, budgets and planning into increasingly autonomous processes that, in a time of restrictive budgets, begin to compete against each other for resources. In the case of land restitution, this fragmentation is taken further in that there is a separate Commission as well as a Land Claims Court, in addition to the Department of Land Affairs itself.

All three "legs" of the land reform programme have gender equity as an objective. To date, however, there is relatively little detailed information on the extent to which women are actually being reached in any of the three components. More research is definitely needed, and one awaits with interest the results of a research project launched by the DLA in Taung and Braklaagte, North West Province "to document the changes in customary practices with respect to the position of women and ownership of land" (DLA, 1996b:11). Existing data are skimpy and, once again, women tend to disappear into the ambiguous shelter of "the household", while gender equality tends to be equated with policies that focus on female-headed households. The 1996 Annual Report of the DLA, for instance, does not specify figures for men and women reached in the various projects, but deals with households only (see DLA, 1997b).

It is interesting and probably revealing that this report contains far more information on the breakdown of men and women working within the DLA than it does on any of the land reform projects described, with three full pages of tables showing the race and gender classification of staff in the different branches of the department and the managerial stratum. Internal "transformation" of the civil service, to make it more representative, is a major focus of government restructuring but, as important as it is, it is an area where it is easier to set and to show tangible results.

The Commission on Restitution of Land Rights would also be hard put to say how many land claimants are women at this stage, or how many of the beneficiaries of the restitution cases that have been settled thus far in the Land Claims Court are women. It has only just moved to include identification of the gender of claimants as a data field on its national database — which, as currently designed, is quite inadequate to serve as an information management tool anyway. Such information on its claimant profile as is available tends to be very impressionistic; the hard data focuses on the number of "claimants" and "households" and the relative

distribution between rural and urban claims. These figures, however, are not particularly useful because no distinction is made between individual claims and community claims; thus the single “claim unit” that shows up in the statistics could contain within it many hundreds of claimants.

In what follows I attempt to view land reform through a gendered lens, looking very briefly at the first two “legs” and then in somewhat greater detail at the third leg, restitution, the one with which I am most familiar.

## ◆ Land Redistribution

This component has by far the largest slice of the departmental budget, at 50.9 per cent of the total (Meer, 1997b:3). Its aim is

. . . to provide the disadvantaged and the poor with access to land for residential and productive purposes. Its scope includes the urban and rural very poor, labour tenants, farm workers as well as new entrants to agriculture” (DLA, 1997a:9).

This quotation makes it clear that land reform is not solely and primarily concerned with land for productive use — land for residential purposes is also an explicit aim.

The state aims to achieve redistribution by making available grants to a maximum of 15,000 rand per household; assisting impoverished communities to acquire suitable land that is either on the market already or is brought onto the market by a successful approach to the landowner; and planning for and, depending on the size of the grant, providing some subsidy for resettlement and the future development of the land.

In keeping with the general policy commitment of the DLA, women are singled out as a target group within these beneficiary categories and it is accepted that households are not solely headed by men. Translating this into practice, however, seems to be more difficult. A report on a consultative workshop on “Women’s Rights in Land”, organized by the DLA in November 1996, identified unspecified “policy issues” that were posing problems for women, and spoke of an implementation strategy that was to be developed in 1997. The report singled out as a problem the way in which “the household” was relied upon as the unit being worked with and suggested the problem lay in the way in which policy was interpreted or simply not acted upon at the local level, by both programme managers and applicants for land (rather than in policy documents).

Participants pointed out many problems around the DLA’s policy . . . of using the household as the unit of grant allocation. Women objected to the fact that community proposals for beneficiary selection criteria that included single women had been rejected by Pilot district managers. It was claimed that, as a result of this policy, in some communities single, young women have become pregnant in the hope that this would make them eligible for grants. Alternatives to this policy were, however, difficult to find, particularly in view of the budgetary restrictions in the way of making individuals eligible for grants.

Many of these problems seemed to relate not to the general principles of grant eligibility but to the way the policy was implemented and understood by potential beneficiaries. In spite of the gender neutrality of DLA definitions of “partnerships” and “dependants”, patriarchal assumptions around the nature of “normal” households had often influenced the way grants were accessed, and could easily shape the way rights were allocated. Developing strategies to monitor, detect and counteract these tendencies was of key importance (DLA, 1996b:6–7).

The biggest area of concern with the redistribution programme at this stage, however, is not the extent to which it is reaching women but the very disappointing scale and speed at which it is reaching landless or land-hungry rural communities. Although the tempo is increasing, the number of projects that have reached the stage of transfer, detailed planning and implementation is very small. By December 1996 a total of 46,617 hectares had been transferred involving 3,749 households, out of a total of 1,707,554 hectares approved for 41,537 households (DLA, 1997b:42). For now money is not the problem: at this stage the DLA is finding that it is not able to spend its full capital budget (the money allocated to it for land acquisition) — a serious situation for the Department to be in, which is attributed mainly to a “lack of capacity” to spend the money that is desperately needed and for which projects have been identified. (This is discussed further below.)

A further concern is that, in the words of the DLA (1997b:30):

Development of land after transfer has taken place is a problem. Attempts to co-ordinate government departments and to create awareness of the need to provide financial and support services are not always successful. In projects of a mixed nature, where both settlement and agricultural activities are involved, it is not clear which authority will fulfil the project management function.

## ◆ Tenure Reform

The aim of this programme is “to improve the tenure security of all South Africans and to accommodate diverse forms of land tenure, including types of communal tenure” (DLA, 1997a:9). Tenure security is understood to cover a range of possible tenure arrangements, including rights held in freehold and rights in communal land.

Potentially this aspect of land reform could have the greatest impact on rural women, by securing them independent rights in land, and freeing them from their dependence on male family members and the power of the chief in allocating land. The budget is, however, tiny: 1.3 per cent of the DLA’s 1996/97 budget (Meer, 1997b:3), and there are many problems associated with what is regarded by powerful political forces in the rural areas as a serious threat to the power of traditional authorities to allocate land. There is also a real danger that a rapid, gender-blind pursuit of tenure security could entrench existing inequalities in access to land within households, by formalizing what are today informal rights and registering such rights in the name of male household heads only, thereby fixing women’s marginality in a legal grip.

This is not policy, but the pressures propelling harried officials in this direction are strong. Participants at the DLA workshop on “Women’s Rights in Land” in late 1996 summarized the problems as follows:

There were many obstacles in the way of this goal. Most obviously, customary practice could become obstacles when it prevented women from owning land. The power of the chiefs to allocate land, and the existence of provisions in customary law that prevented widows from inheriting land were cases in point. The problem, however, went deeper than land rights. Customary practice could also become an obstacle when it prevented women from speaking in public, from participating in meetings, or when men — and women — internalized social values that belittled women or devalued their words. Often these forms of exclusion were backed up by the overt or covert threat of violence (DLA, 1996b:42).

Another important area where tenure security could improve significantly the social if not the economic circumstances of women is on commercial (overwhelmingly white-owned) farms. Legislation has recently been approved by Parliament that aims to make it far more difficult for farmers to evict workers from farms unilaterally and without addressing alternative arrangements for where they are to settle. In this way it aims to achieve greater residential security for this extremely depressed and vulnerable class of workers, whose access to land on which to live has historically been tied to their employment on that land. This would benefit especially the widows of farm workers, who, upon being widowed, often face eviction from the farm on which they may have lived for a very long time.

The opposition to this from organized commercial agriculture, which sees it as a severe threat to the integrity of land holdings and economic freedom, is fierce. In many ways it appears to be the most contested issue in land reform, because it is seen to undermine the exclusive property and economic rights previously enjoyed by commercial farmers, without the state taking on any of the compensatory responsibilities that apply to redistribution projects. In the run-up to its enactment, there were reports of an increase in the number of pre-emptive evictions as farmers moved to rationalize their labour force prior to the bill becoming law.

## ◆ Land Restitution

This component, also hard-fought at the negotiations leading up to the adoption of the interim Constitution and the first democratic elections of 1994, is intended to redress the injustices caused to the victims of the population relocation policies of the former white minority government. It has been estimated that between 1960 and 1980 alone, some 3,5 million people were dispossessed of their land and relocated, to give “spatial shape” to apartheid and to shore up white minority rule (see Platzky and Walker, 1985).

South Africa has not adopted a policy of recognizing as restitution claims those land claims dating back to the colonial period but, rather, has limited the reach of the programme to the twentieth century. The period for which dispossessions can be considered is marked off by the symbolically significant year of 1913, the year of the first Land Act. Claims going back beyond this date can only be accommodated in the redistribution programme. It is an approach predicated on the



redress of racial discrimination and hence, ultimately, on a positive notion of citizenship, and not on the restoration of indigenous title. In the view of many (but not all) commentators, pushing restitution back beyond 1913 would be a risky exercise in a country with as dense and contested a history of land ownership, occupation and conquest as South Africa. This history encompasses land struggles not only between black and white in the colonial period, but also within and across different black communities.

The provision for land restitution is specifically covered in the Constitution and has been given legislative shape by the Restitution of Land Rights Act (Act 22 of 1994). This sets out the criteria for eligibility and establishes a complicated institutional framework to achieve it, consisting of a six-person Commission (which receives and processes claims and facilitates the negotiations towards their settlement), the Department of Land Affairs (which negotiates and finances settlement on behalf of the state), and a Land Claims Court, which is the final adjudicator and gives all settlements, even negotiated ones, legal force by making them Orders of Court. Land rights themselves are broadly defined to include both registered and unregistered rights, and to include not only freehold rights but also a customary law “interest” and “beneficial occupation” of a piece of land for 10 or more years.

Land restitution thus has a fairly limited aim, that of redress for the people who were deprived of land rights (broadly defined) as a direct result of the application of racially discriminatory laws and practices in the past. The time people have to lodge claims is also limited — although it has recently been extended to the end of December 1998 — and the Commission and the Court are seen as temporary, not permanent, institutions (although no statutory date has been set for when they must close, and estimates for the length of time that they will be required are being adjusted upwards from the initial projections of five and 10 years for the Commission and Court, respectively).

Restitution is essentially a rights-based process. It is also a fundamentally conservative programme, looking back to a period when land rights were already highly circumscribed and operating within a very unequal environment. Thus in the restitution policy there is a tension between the commitment to promoting the rights of women and the commitment to restoring rights that were lost to those who formerly held them — who, in the great majority of cases, because of the patriarchal nature of land holdings in the past, were men.

There is also a tension between restitution’s emphasis on restoring rights and the new, developmental concerns of government. Restitution is increasingly being criticized by voices within government for being at odds with development, particularly in the urban context where there is tremendous pressure to develop vacant land — often the subject of complicated claims — for low-income housing and/or industrial development. This is bringing into question the value of the programme itself in the eyes of many planners and officials committed to the new South Africa and economic transformation, who are beginning to dismiss restitution as backward-looking and regressive and who view land claims with suspicion — even hostility — and feel they complicate their own programmes and vision of development. From the point of view of the Commission, however — and the many thousands of claimants — the redress of major human rights violations is

an essential requirement of social development, reconciliation and stability in this country.

Despite the gender bias inherent in the scope of such a programme, women are able to benefit through restitution and are coming forward as claimants, both in their own right and as members of communities. Given that relatively few women held rights in their own name at the time of dispossession, they are making claims mainly as the descendants of former dispossessed rights-holders. The Restitution Act provides for direct descendants to claim and specifically includes widows, including customary-law widows, in the definition of a direct descendant. Thus there are no formal barriers at this level. However, women claimants are outnumbered by men, and women generally take a backseat role in community organization around claims. Sons or brothers tend to come forward as the family representative, with widows and sisters less prominent publicly, though no less concerned about the outcome.

In the case of communally held rights, whether formal or informal, the formation of a new legal entity required by law to take ownership of the land being restored or granted in lieu of the original land, also provides women with the opportunity to gain legal recognition as new rights holders. One of the legal instruments that is promoted is the Community Property Association (CPA), which is intended as a relatively cheap and simple method of establishing a communal legal entity which can hold and administer land on behalf of its members. There are no bars to women being registered as members of the CPA; indeed, the policy supports this. For these opportunities to be realized, however, women need to engage actively with the negotiations that precede each restitution settlement. Government officials will have to be alert to the opportunities and the obstacles to incorporating women into the settlement, for instance by ensuring that women are identified as members of the CPA in their own right and not simply as appendages of male household heads.

Potentially the most important provision of the Restitution of Land Rights Act (Act 22 of 1994) with regard to the empowerment of women is the section which requires the Land Claims Court to “ensure that all the dispossessed members of the community . . . shall have access to the land or compensation in question, on a basis which is fair and non-discriminatory towards any person including a woman and a tenant”. This opens the way for court orders that do not simply restore the social relations of the past but extend rights to formerly marginalized groups such as women.

It is not, however, clear what assistance can be expected from the Land Claims Court in this regard. In general the legal profession in South Africa is a conservative body and very few lawyers are experts in the area of land rights, and even fewer in the area of gender equality and land rights. It is too early to say to what extent the Court will use its special inquisitorial powers and how active it will be in championing women’s empowerment if this has not been specifically included in the negotiated settlements brought before it or is not identified as an issue in any dispute. The Court has heard only a handful of cases to date and it is thus not possible to discern, far less declare, major trends with any confidence. Nevertheless, the little that one has seen suggests that the Court is not going to be a highly pro-active body. The indications thus far are that the Court will be judicially cautious about intervening to cross-examine or alter settlements that

come to it with the imprimatur and support of all the “interested parties” legally defined. Provided that a land claims settlement reaches it in the form of an agreement in terms of the Restitution of Land Rights Act, and unless individual women are identified as an aggrieved party in some way either by themselves or by the Commission, the Court is unlikely to probe gender or other equity concerns too deeply.

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### 3. PROSPECTS FOR GENDER EQUALITY: CONSTRAINTS AND CHALLENGES

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Certain constraints emerge as key:

- Lack of capacity on the part of government;
- The strength of patriarchal attitudes, coupled to the government’s apparent reluctance to intervene too actively to curtail the powers of traditional authorities at the local level;
- The absence of a strong lobby of women’s organizations campaigning for women’s land rights in the rural areas, coupled with the very real pressure on government to deliver quick results.

#### ◆ Lack of Capacity

Perhaps the biggest constraint is what is summed up in another South African catch phrase of the 1990s: “lack of capacity”. The seriousness of the problem is exemplified by the fact that the Department of Land Affairs is not spending its capital budget, i.e., the funds specifically allocated for the acquisition of land, despite a great deal of very hard work by many people and despite enormous pressure from the public and politicians to show results.

As moderate as the land reform programme may be, the task facing the Department of Land Affairs and the Commission on Restitution of Land Rights is enormous. In restitution alone there are over 23,000 land claims registered on the national database, each having to be run through a procedurally complex process of registration, verification, negotiation and settlement. The systems required to handle these tasks must be developed from scratch, with most personnel training on the job and on the run. The pressure to get cases to the Land Claims Court is enormous and pushes officials to seek quick resolution of projects. Community dynamics are usually very complex.

Often there are counter claims or internal power struggles, which can erupt in serious, deeply debilitating conflicts, or simmer in less dramatic but also destructive ways.

The Commission is not well placed to engage in difficult awareness raising and organizational development in sensitive areas. There are no detailed guidelines directing officials how to ensure that women are not marginalized in land processes, and the climate on the ground may well be very hostile to well-intentioned interventions. Thus the interaction around women’s participation in the settlement of claims that does take place tends to be *ad hoc* and dependent on the existing level of organization among women and the initiative and commitment of

individual officials. Lack of policy direction and training — as well as trainers — is reinforced by low levels of sensitivity to gender dynamics among many officials. All this tends to privilege the small élite of rural women who are relatively well educated and economically secure (for instance, salaried professionals such as nurses or teachers), because they are more readily visible to officials and better placed to advance themselves than the mass of very poor women.

There are also many players that have to be brought into alignment, first to negotiate a settlement and second, if the settlement involves the return or purchase of land, to support positive development of that land once restored or allocated to the beneficiaries. The South African government bureaucracy can best be described as monumentally slow and cumbersome, and still highly centralized in head offices in Pretoria or provincial capitals. The government is under pressure not only to be radically transformed and to become more representative but also to downsize or, more euphemistically, “right-size”, and a fair amount of its reformist energies are directed inward rather than outward.

Reference has already been made to the problems of fragmentation of land reforms across different, bureaucratic structures within the DLA. The problems extend beyond the internal capacity of the land-sector institutions. For serious community development to take place as part of land reform, many other departments at the national, provincial, regional or local level need to be involved (for instance, education, health, transport, agriculture). But the alignment of all these departments, with their own budgeting cycles, priorities and institutional problems, is a very difficult task. The demands for redress of past injustices, and current inequalities and deprivations are huge throughout society, with land reform but one element of the whole. Many different departments and programmes are competing for scarce resources, including well-trained and committed personnel and programme managers.

In any case, government officials are not well-placed to engage with and challenge, in a systematic and sustained way, unequal social relationships in the communities involved in land reform programmes, because of the transient and distant nature of their relationship with such communities and the limits on how they operate. Social change is underway, but its pace is not contained within departmental budget cycles nor its content determined by political objectives. Even if the government were more effective and efficient than it is, there would still be a question as to how active it should be in re-engineering social relationships in the absence of a strong demand from the people themselves, or genuine capacity by government to follow up on such initiatives in a sustained way.

## ◆ Tradition

This leads to the second constraint. Although less monolithic than in the past, patriarchal power relations are deeply entrenched in rural society and act as a powerful break on women’s opportunities with regard to land reform. This inhibits or even actively prevents women from coming forward to explore the new opportunities that are before them.

In the current political dispensation there remains a serious tension between the government’s commitment to gender equality, on the one hand, and its reluctance to alienate too strongly neo-traditionalist structures of rural local government, on

the other (see Walker, 1995). The institutions of rural local government are still transitional, with a low-level but, from a gender point of view, crucially significant political struggle going on over the extent to which traditional leaders, i.e., the chiefs, will continue to exercise real power in the allocation of resources, including land, and be prominent in the administration of local government. There appears to be a reluctance on the part of the government to bring the matter to a close and to move too decisively to democratize rural local government fully, with often conflicting statements being made by different spokespersons or to different constituencies.

This is not to say that many rural women do not uphold “tradition” as a cornerstone of orderly society and support traditional power structures such as the chieftaincy. Such support, however, is not incompatible with a real — if not strongly articulated — interest in securing improved land rights for themselves. Thus in Cornfields in 1994, many women approved of the chieftaincy as an institution but did not support the claims of the chief to authority to control the allocation of the additional land that was being acquired by the community (Walker, 1994).

The debate over tradition is highly emotive, coloured by a strong desire on the part of many to recover or assert pride in a neglected history and culture that is “African”, which is seen to have been despised and disrupted by Western imperialism and Euro-centric systems of government. What is frequently overlooked is the degree to which many of the current custodians and defenders of “tradition” are themselves implicated in that process — for instance, the many chiefs who owe their position not to their lineage but to appointments made by the former apartheid government. It is thus extraordinarily difficult to conduct a dispassionate debate on the subject.

## ◆ Weak Women’s Organization

The point has already been made that without a strong social movement among women, which will empower them to engage with and make use of the formal structures and legal opportunities that are being put in place, the broad policy objective of greater gender equality through land reform is likely to remain stronger at the level of principle than practice. This is not to say that organization is, by itself, a panacea or that more effective organization among women may not lead to stronger counter-challenges by those whose power and interests are thereby threatened. Effective women’s organizations within beneficiary communities are, however, essential elements for a land reform programme that benefits women as well as men.

Given the limitations on government’s role in community development and organization, a major responsibility rests with the NGO sector to educate rural women about the opportunities opening up to them and to help build women’s organization at local level. They can provide the more sustained, focused attention that government officials cannot. There are some encouraging signs of organization at this level, although thinly distributed and uneven. One example is the annual Gender Study Tour run by the National Land Committee (a major land-rights NGO with affiliates around the country), which is aimed at bringing women community leaders together, to empower them in their work within their own communities to advance the position of women. Overall, however, levels of

organization are weak and NGOs are themselves battling to redefine their role in the post-apartheid era, and find alternative sources of funding as the level of donor support falls off in favour of direct aid by donor countries to the government. The dominant voices in this sector tend, as could be expected, to be urban rather than rural.

A major concern here is timing. There is a serious disjuncture between the demand for speedy delivery of land reform, and the time required to build women's organizations and develop women's capacity to engage with land reform and so maximize the opportunities it presents for them. Organizing women is a slow process, but the political pressure on government ministers and departments to "deliver" is mounting, with the countdown to the 1999 general elections beginning to loom large in the minds of politicians. The demand from communities, including women, for a far more rapid transfer of land than is presently being achieved and for tangible evidence that land reform is real, is also compelling.

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## CONCLUDING REMARKS

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It is too early to make definitive judgements about the success or otherwise of the land reform programme, but not too early to state that there is absolutely no basis for complacency. The chances of a dramatic shift towards land reform in resources and political importance in the next few years are minimal, although one can anticipate an increase in the rhetoric of land reform as the elections of 1999 approach and government programmes are more closely scrutinized.

What has been achieved is a basic foundation, at the constitutional and institutional level, that is progressive in terms of its articulation of gender equality as a basic principle of government policy. Clearly the land reform programme holds out the promise of real advances in the rights of women in relation to land. There are real opportunities for women to improve and protect their land rights, although not enough champions to assist them in this process. An enabling environment has been created at the policy level, which will result in improved access to land and greater security of tenure among women than was thought possible 10 years ago. The constraints on implementation are very real, but these are not new and should be regarded positively as developmental challenges, rather than negatively as intractable problems. The challenge now is to build upon what is in place.

There are also far-reaching shifts underway in gender relations. A further challenge is thus to find ways of working constructively with these larger social forces and of maintaining the space for women to claim their rightful place in society in the longer term while not jeopardizing a faster transfer of land to those eligible for land reform in its various aspects.

It has already been noted that land reform by itself is a necessary but not a sufficient requirement for the promotion of economic development and the eradication of poverty in rural areas. For women in particular to be in a position to benefit economically from it, it has to be accompanied by greater investment in social infrastructure, such as in health and education services and the provision of water, in addition to being linked to rural development programmes. The alignment of the different structures of government and different policy

commitments to achieve this is a difficult task, but not, with the proper foresight and planning, an inherently impossible one.

But even if land reform succeeds only in delivering little more than greater residential security to rural women for themselves and their children, this will enhance their standing as independent social actors. This, in turn, should assist in unleashing their talents and energies, so that rural women themselves will be better placed to engage in the long-term project of rural development and to shape more actively the terms of their own social upliftment.

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