

# Where Women Stand in Land Reform



A Legal Resources Centre Publication





**Where Women Stand in Land Reform: how the South African  
Government's Land Redistribution and Tenure Security Programmes  
fail to meet the needs and interests of those women most in need**

*Legal Resources Centre*

*September 2024*

## ABOUT THE LEGAL RESOURCES CENTRE

The Legal Resources Centre (LRC) is a public interest non-profit law clinic in South Africa founded in 1979. The LRC uses the law as an instrument for justice for poor and marginalised persons. The LRC pursues equality, access to justice, and the recognition of constitutional rights for all through creative and effective solutions. To this end, we provide legal advice and legal representation that empowers our clients, take on strategic and impact litigation, and participate in multi-pronged advocacy and law reform.

This publication was produced by the Legal Resources Centre with input from the following persons:

*Shamim Meer*

*Ektaa Deochand*

*Sharita Samuel*

*Monty Fynn*

*Kiara Govender*

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	3
I INTRODUCTION.....	4
II CONTEXTUAL BACKGROUND .....	10
CURRENT LAND OWNERSHIP BY WOMEN .....	10
INTERNATIONAL CONSIDERATIONS .....	16
STAKEHOLDER ENGAGEMENT .....	18
III LAND REDISTRIBUTION .....	20
REDISTRIBUTION POLICY TIMELINE.....	20
The Settlement Land Acquisition Grant (SLAG) .....	21
Land Redistribution for Agricultural Development (LRAD).....	23
Proactive Land Acquisition Strategy (PLAS) and the State Land Lease and Disposal Policy (SLLDP) .....	24
One Household One Hectare .....	27
The 50/50 Policy .....	28
OVERALL IMPACT OF LAND REDISTRIBUTION .....	29
HOW WOMEN HAVE FARED IN THE LAND REDISTRIBUTION PROGRAMME .....	33
Comparison with data on restitution .....	36
State Land Lease and Disposal Policy (SLLDP) 2020 .....	37
Impact of the SLLDP land allocation from February to December 2020 on women .....	39
1 Household 1 Hectare (1HHiHA) Performance 2016 – 2020 .....	47
Recapitalisation and Development Programme (RADP) 2009 –2018 .....	51
ELITE CAPTURE.....	52
PLAAS Report.....	52



Data on Leases from the Department.....	53
Corruption.....	57
DATA TRANSPARENCY ISSUES.....	61
<b>IV TENURE REFORM.....</b>	<b>64</b>
URBAN LAND.....	66
RURAL LAND.....	71
COMMUNAL AREAS.....	74
<b>V CUSTOMARY LAW.....</b>	<b>85</b>
Customary Marriages.....	85
Succession.....	87
<b>VI CONCLUSION AND RECOMMENDATIONS.....</b>	<b>89</b>
Recommendations.....	91

## EXECUTIVE SUMMARY

This paper seeks to record the progress of land reform initiatives relating to land redistribution and tenure reform programmes within South Africa, with a targeted focus on the lived experiences of poor and working-class Black women within such programmes. These programmes speak to historic and redistributive redress, by confronting present-day inequalities that are largely a consequence of the pre-constitutional approach to land.<sup>1</sup> For women, however, these inequalities are amplified by entrenched notions of women's subordination in families, communities, the market and the state, that are difficult to overcome even when policy has the intention of achieving gender equality.<sup>2</sup> The effect is that women in former Bantustans, urban informal settlements, formal townships, rented rooms or on commercial farms, constitute the majority of those in need of land reform.

This paper sets out current discrepancies in land ownership and redistribution patterns by women in South Africa. A redistribution policy timeline is used to expand on the extent to which state measures have delivered the constitutional imperative of land reform, by incorporating evidence and statistics gathered by the LRC. The paper further details the legislative measures that are targeted towards tenure reform in the context of urban land, rural land, and communal land. The aim of these sections is to highlight the sweeping disparities experienced by women beneficiaries in land redistribution and tenure reform initiatives, that consistently fall short of government targets. The paper further explores the role of customary law in perpetuating discrimination against women and examines the developments in law seeking to affirm women's property rights. Thereafter, recommendations are made on what steps could be taken to counteract the overlapping struggles women experience when it comes to enjoying democracy and land rights in South Africa.

---

<sup>1</sup> Juanita Pienaar *Land Reform* (2014) 273.

<sup>2</sup> Kabeer, N 1994 *Reversed Realities: Gender Hierarchies in Development Thought*, Verso.



## I INTRODUCTION

The aim of this paper is to record the progress of the state in meeting the constitutional imperative of equitable access to land, particularly in relation to the land needs of poor and working-class Black women. The focus will be in respect of women who live in the former Bantustans, in formal townships, in rural and urban informal settlements or rented rooms, or on commercial farms. Whether they live in former Bantustans, among farm workers and labour tenants, or among urban shack dwellers without registered rights; women face greater challenges than men.<sup>3</sup>

These women constitute the majority of those in need of land reform, yet the records of the South African government's land redistribution and tenure security programmes fail to account on how their needs are being met vis-à-vis the needs of poor and working-class Black men.<sup>4</sup> Attention to the needs and interests of poor and working-class Black women is sorely lacking within government land reform. At best, attention to women in the land redistribution programme has been reduced to a head count of beneficiaries within some sub-programmes, in a context where the overall policy privileges elites.<sup>5</sup>

Even when the stated aim of the land reform programme is to redress the previous disadvantage of poor Black men and women, markets and the law tend to favour the more powerful groups in society, such as commercial farmers and traditional leaders, enabling them to maintain their privilege.<sup>6</sup> Race, class, and gender relations of power result in poor

---

<sup>3</sup> Walker, Cheryl, (2007), 'Redistributive land reform: for what and for whom?' in Lungisile Ntsebeza and Ruth Hall (eds) *The Land Question in South Africa: The challenge of transformation and redistribution* (Cape Town: HSRC Press).

<sup>4</sup> Meer, S. (1997) 'Introduction' in Meer, S (ed) *Women, Land and Authority: Perspectives from South Africa* (Braamfontein: National Land Committee).

<sup>5</sup> Meer, Shamim, (1994), *Understanding Gender and Access: Women's Access to Productive Resources in the Rural Bantustans*, Thesis submitted in partial fulfilment towards the Master in City Planning, MIT, Cambridge, USA.

<sup>6</sup> Nolundi Luwaya, Constance Mogale, Ruth Hall, Dineo Skosana, Wilmien Wicomb, Zenande Booï, Tshepo Fokane, Nokwanda Sihlali and Sienne Molepo, 22 August 2022, 'It is our land' – rural residents

Black women being most disadvantaged in relation to markets, the state, customary law and tradition, and in terms of community and household relations.<sup>7</sup>

There is little evidence within land reform policy and practice of a coherent understanding of poor Black women's experiences resulting from unequal gender relations. Prevailing gender relations result, in general, in women of a particular race or class having less access to authority and resources as compared with men of their race and class; and to the subordination of women in almost every aspect of life.<sup>8</sup>

Incorporating a gender analysis is more than a headcount. It is about understanding that prevailing gender power relations in intersection with class, race and other social relations shape a woman's access to resources, power, and authority.<sup>9</sup>

The significance of land for poor Black South Africans is framed by South Africa's history of colonial and apartheid dispossession through which white settlers appropriated 90% of the country's land surface and converted large numbers of indigenous people into wage labourers.<sup>10</sup>

Colonialism and apartheid dispossessed Black South Africans of land and mineral rights, excluded them from the central economy, and turned the majority of Black South Africans into labour tenants and wage labourers. Confronted by transforming the realities of the excluded majority in a post-apartheid South Africa, the ANC-led policy choices stood in the

---

reject violent dispossession and call for society-wide solidarity, in Daily Maverick <https://www.dailymaverick.co.za/article/2022-08-22-it-is-our-land-rural-residents-reject-violent-dispossession-in-bantustans/>.

<sup>7</sup> Kabeer, N 1994 *Reversed Realities: Gender Hierarchies in Development Thought*, Verso.

<sup>8</sup> *Advancing Quest for Women's Joint Ownership and Control of Marital Property* (LRC Webinar).

<sup>9</sup> Meer, Shamim, (1994), *Understanding Gender and Access: Women's Access to Productive Resources in the Rural Bantustans*, Thesis submitted in partial fulfilment towards the Master in City Planning, MIT, Cambridge, USA.

<sup>10</sup> Ntsebeza, Lungisile, (2007), 'Land redistribution in South Africa: the property clause revisited' in Lungisile Ntsebeza and Ruth Hall (eds) *The Land Question in South Africa: The challenge of transformation and redistribution* (Cape Town: HSRC Press).



way of economic redistribution due their market-oriented nature.<sup>11</sup> Land, desired by elites as a valuable commodity, and generator and marker of wealth and power, became a means to enrichment for a few, within the context of rampant corruption and a disregard for the poor.

Government's failure in redressing the poverty and inequality of the past is starkly visible in current socio-economic realities. Twenty-nine years after the end of apartheid, the majority of Black South Africans continue to live in poverty.<sup>12</sup> They are unemployed with no hope of finding employment, they survive on state grants, are forced to rely on public education and health services that are in disarray. In a recent tragedy in the Eastern Cape, a mother killed her three young children before taking her own life.<sup>13</sup> The reason is believed to be linked to the hardship of poverty.

While recording state failures, this paper also outlines actions required to redirect the focus of land reform programmes, to the needs and interests of poor and working-class women.

Ideas of women's subordination are ingrained within all institutions from the family, through to the community, the market, and the state.<sup>14</sup> So much so, that even when policy has the intent to achieve gender equality, the attitudes of officials, family and community members may get in the way of shaping policy practice in keeping with prevailing attitudes.<sup>15</sup>

Outcomes of policy and law, and their implementation, are shaped by political understandings of officials and service providers, by conflictual community dynamics and by gendered institutional cultures and practices.<sup>16</sup>

---

<sup>11</sup> Hall, Ruth and Ntsebeza, Lungisile, (2007), 'Introduction' in Lungisile Ntsebeza and Ruth Hall (eds) *The Land Question in South Africa: The challenge of transformation and redistribution* (Cape Town: HSRC Press).

<sup>12</sup> Hall, Ruth and Ntsebeza, Lungisile, (2007), 'Introduction' in Lungisile Ntsebeza and Ruth Hall (eds) *The Land Question in South Africa: The challenge of transformation and redistribution* (Cape Town: HSRC Press).

<sup>13</sup> Jolene Marriah-Maharaj, "Eastern Cape mother poisons her three children before taking her own life" *IOL* 12 September 2023, available at <https://www.iol.co.za/news/crime-and-courts/eastern-cape-mother-poisons-her-three-children-before-taking-her-own-life-5af6cdc5-61bf-4885-be44-51bfa23d36b7>, accessed on 23 October 2023.

<sup>14</sup> Kabeer, N 1994 *Reversed Realities: Gender Hierarchies in Development Thought*, Verso.

<sup>15</sup> Kabeer, N 1994 *Reversed Realities: Gender Hierarchies in Development Thought*, Verso.

<sup>16</sup> Kabeer, N 1994 *Reversed Realities: Gender Hierarchies in Development Thought*, Verso.

Every step of the policy making process is about politics and power and policy makers, technical experts and officials all represent specific interests.<sup>17</sup> There is a need for gender sensitivity at all levels of state bureaucracy: a need to understand the gender dynamics of decision-making and organisational functioning at all levels of bureaucracy. How a problem is understood, defined, who does research, how data is collected – are all political in the sense that they advance specific interests and lead to specific exclusions.<sup>18</sup>

Methodologies to implement policies determine who will benefit. As Friedman<sup>19</sup> illustrates in an assessment of the implementation of gender equity commitments within three government departments in South Africa, the people implementing these policies did not always understand the policy; budget allocators seldom spoke to policy makers; and insufficient disaggregation and inadequate documentation did not allow for effective monitoring. Institutional transformation is needed, in addition to recognising that the state constitutes and shapes gender inequalities.<sup>20</sup>

Even when they are present and explicit, gender equality goals tend to get frustrated in implementation. Among officials is a lack of commitment to social justice and gender equality, and resistance, since those who benefit from their existing place in terms of race, class and gender privilege, will resist far-reaching social change.<sup>21</sup> Resisters will include elite women whose class position gives them privilege, and men whose gender interests do not lie with gender equality.<sup>22</sup>

---

<sup>17</sup> Meer, S. (1997) 'Introduction' in Meer, S (ed) *Women, Land and Authority: Perspectives from South Africa* (Braamfontein: National Land Committee).

<sup>18</sup> Meer, S. (1997) 'Introduction' in Meer, S (ed) *Women, Land and Authority: Perspectives from South Africa* (Braamfontein: National Land Committee).

<sup>19</sup> Friedman, Michelle, 1999. *Effecting Equality: Translating commitment into policy and practice*, Introduction to Agenda Monograph *Translating Commitment into Policy and Practice*.

<sup>20</sup> Friedman, Michelle, 1999. *Effecting Equality: Translating commitment into policy and practice*, Introduction to Agenda Monograph *Translating Commitment into Policy and Practice*.

<sup>21</sup> Meer, S. (1997) 'Introduction' in Meer, S (ed) *Women, Land and Authority: Perspectives from South Africa* (Braamfontein: National Land Committee).

<sup>22</sup> Meer, S. (1997) 'Introduction' in Meer, S (ed) *Women, Land and Authority: Perspectives from South Africa* (Braamfontein: National Land Committee).



Feminists who have entered state institutions tend to get co-opted or have been marginalised to positions of minimal authority, and this has limited their effectiveness.<sup>23</sup>

Strategies are needed for women's voices to be heard; for women's lives and lived experiences to define policy. If a gender perspective is absent from analysis, as has been from the social sciences over the centuries, women's experiences will continue to be unrecorded or recorded through the distortions of male privilege; and gender bias in policy will continue.<sup>24</sup> Since gender intersects with other social relations (most crucially race and class), incorporating gender into analyses requires a commitment to understanding these intersections. Feminist researchers attempt to understand these intersections and such work needs to be drawn on in order that women's experiences are not continually hidden in gender-blind or gender-neutral formulations of experience.<sup>25</sup>

Part II of this paper will provide a contextual background to gender considerations in land reform policy and highlight the necessity of such considerations in remedying state failures relating to land redistribution and tenure security.

Part III will centre on land redistribution specifically and analyse the efficacy of policy and procedures in assisting women.

Part IV will unpack tenure reform and the implications of this programme in former Bantustans, on those who are farm workers and labour tenants and women in need of tenure security in urban areas.

Part V will explore the consequences of customary law on the land rights of women.

---

<sup>23</sup> Meer, S. (1997) 'Introduction' in Meer, S (ed) *Women, Land and Authority: Perspectives from South Africa* (Braamfontein: National Land Committee).

<sup>24</sup> Meer, Shamim, 2013. Land Reform and Women's Land Rights in South Africa in Perspectives #2.13 Women and Land Rights: Questions of Access, Ownership and Control, Heinrich Böll Foundation Southern Africa 2013.

<sup>25</sup> Meer, S. (1997) 'Introduction' in Meer, S (ed) *Women, Land and Authority: Perspectives from South Africa* (Braamfontein: National Land Committee).

Part VI will make recommendations on how best to redirect the land reform agenda so that there is a fundamental shift towards prioritising and realising the rights of poor women.





## II CONTEXTUAL BACKGROUND

### CURRENT LAND OWNERSHIP BY WOMEN

According to the Marginalised Groups Indicator Report published in 2019,<sup>26</sup> there were 9 981 000 male-headed households and 7 181 000 female-headed households in both urban and rural areas, with male-headed households being significantly more prevalent in urban areas. However, contributing to this cumulative figure was the data collected on “extended households” referring to extended family members such as aunts and uncles who live in the household. Within this category of extended households, women were more likely than men to be the heads of households in both urban and rural areas. In urban areas specifically, 42% of households were headed by women while only 21% were headed by men in these extended households.

The 2013<sup>27</sup> and 2017<sup>28</sup> Department of Agriculture, Rural Development and Land Reform land audits provide important background for assessing equitable access to land. The 2013 land audit found that women own just 18% of private land. The 2017 audit broke ownership down into three categories: i) ervens, ii) farm and agricultural holdings, and iii) section titles. Gender inequality is present in all three but is worst in farm and agricultural land where women own 4.8 million Ha, 13% of the total 37 million Ha.

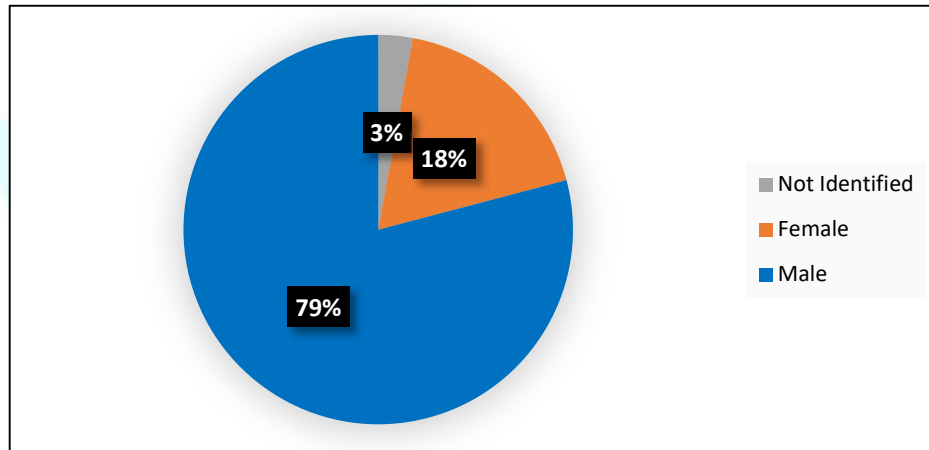
---

<sup>26</sup> Marginalised Groups Indicator Report, 2019, available at: <https://www.statssa.gov.za/publications/03-19-05/03-19-052019.pdf>

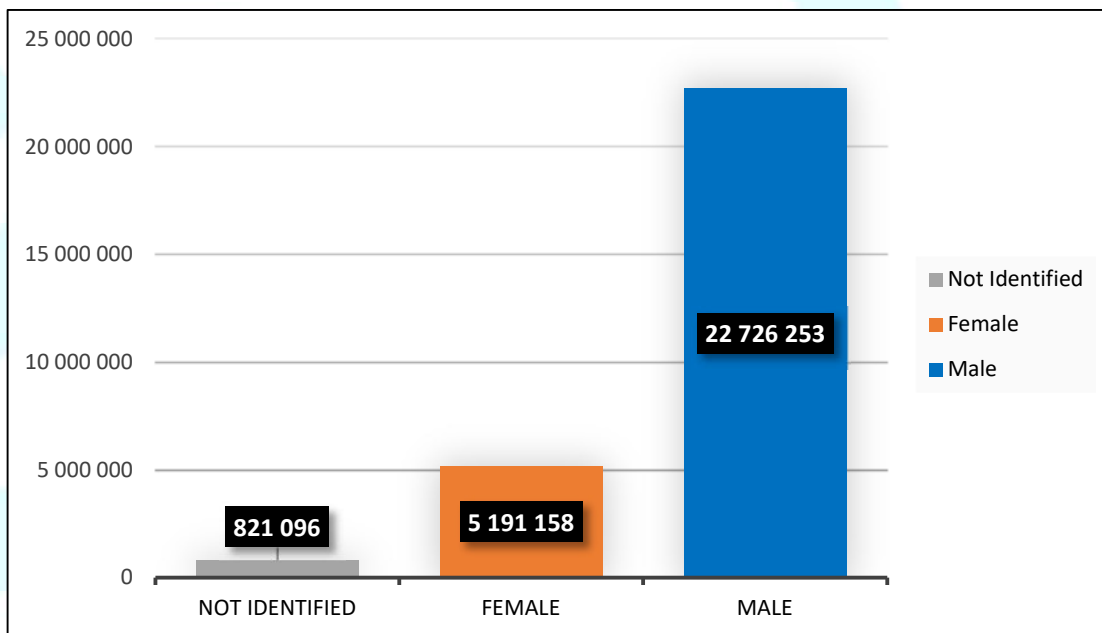
<sup>27</sup> Land Audit Report, 2013, available at: <https://s3-eu-west-1.amazonaws.com/s3.sourceafrica.net/documents/119320/South-Africa-Land-Audit-Report-2013.pdf>

<sup>28</sup> Land Audit Report, 2017, available at: [https://www.gov.za/sites/default/files/gcis\\_document/201802/landauditreport13feb2018.pdf](https://www.gov.za/sites/default/files/gcis_document/201802/landauditreport13feb2018.pdf)

Graph 1: Land audit 2013 – Private Land distribution by gender (%)



Graph 2: Land audit 2013 – Private Land distribution by gender (Ha)



Graph 3: Land audit 2013 – Private Land distribution by gender and province (Ha)

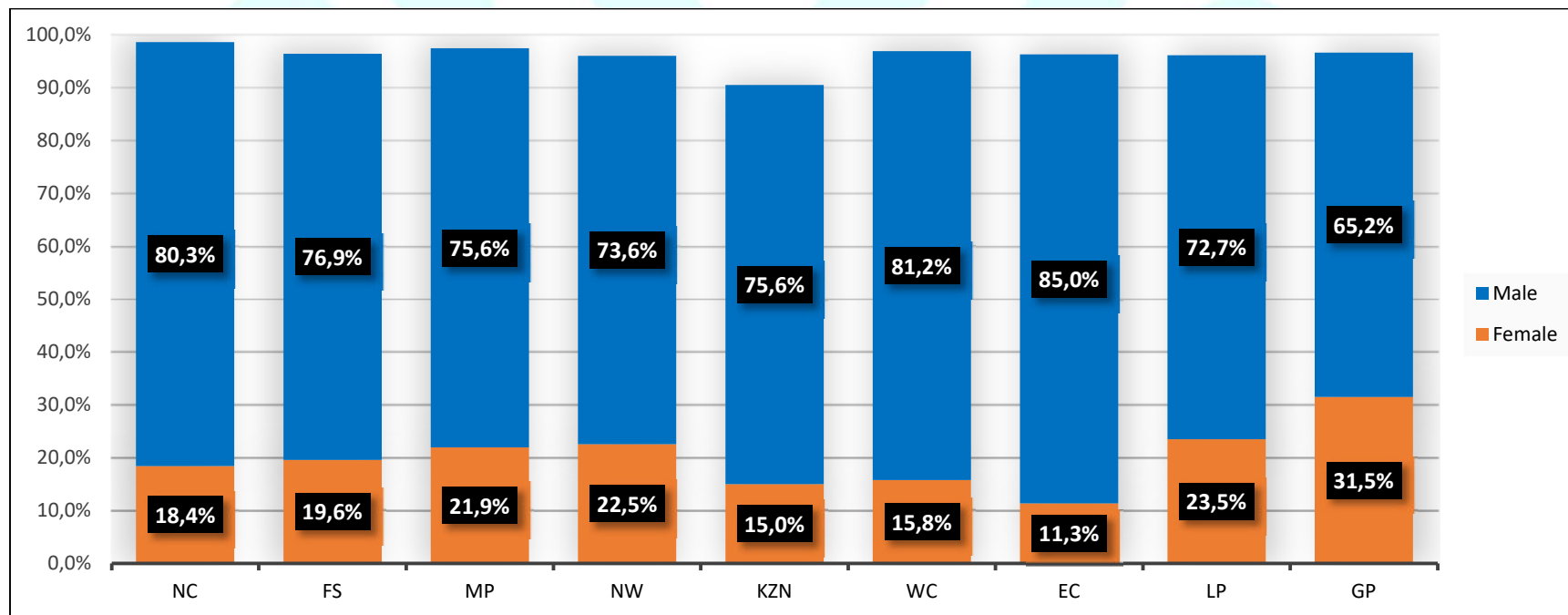


Table 1: Land audit 2013 – Private Land distribution by gender and province (Ha)

Private Land Distribution by gender (Ha)										
	NC	FS	MP	NW	KZN	WC	EC	LP	GP	Totals
<b>Not Identified</b>	146,520	139,369	28,970	96,562	111,663	92,210	144,898	49,711	11,193	<b>821,096</b>
<b>Female</b>	2,083,258	777,577	255,216	557,662	177,720	479,140	448,733	304,717	107,135	<b>5,191,158</b>
<b>Male</b>	9,080,590	3,054,269	878,623	1,821,884	896,201	2,465,129	3,364,966	942,831	221,760	<b>22,726,253</b>
<b>Total</b>	<b>11,310,368</b>	<b>3,971,215</b>	<b>1,162,809</b>	<b>2,476,108</b>	<b>1,185,584</b>	<b>3,036,479</b>	<b>3,958,597</b>	<b>1,297,259</b>	<b>340,088</b>	<b>28,738,507</b>



Graphs 4 and 5: Land audit 2017 – Erven land ownership by gender (Ha and % of total Ha)

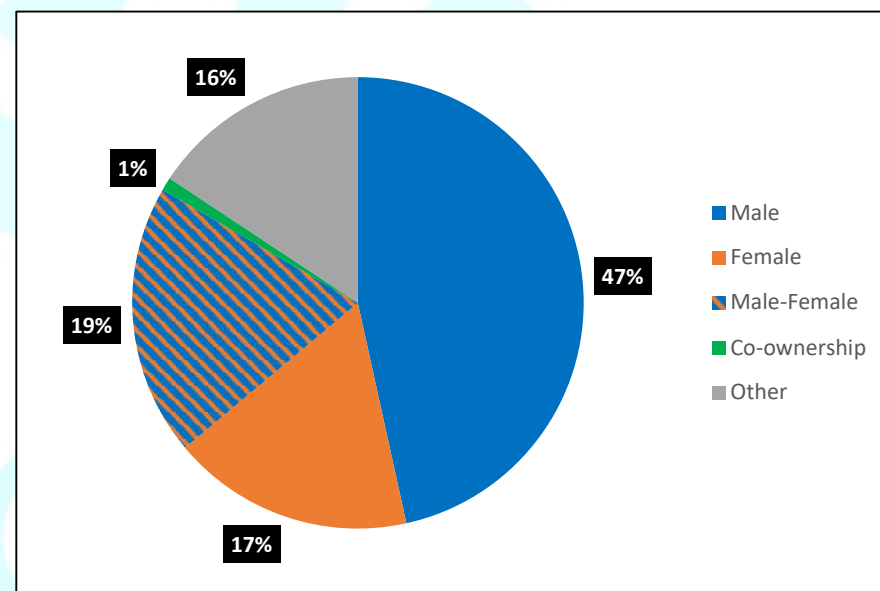
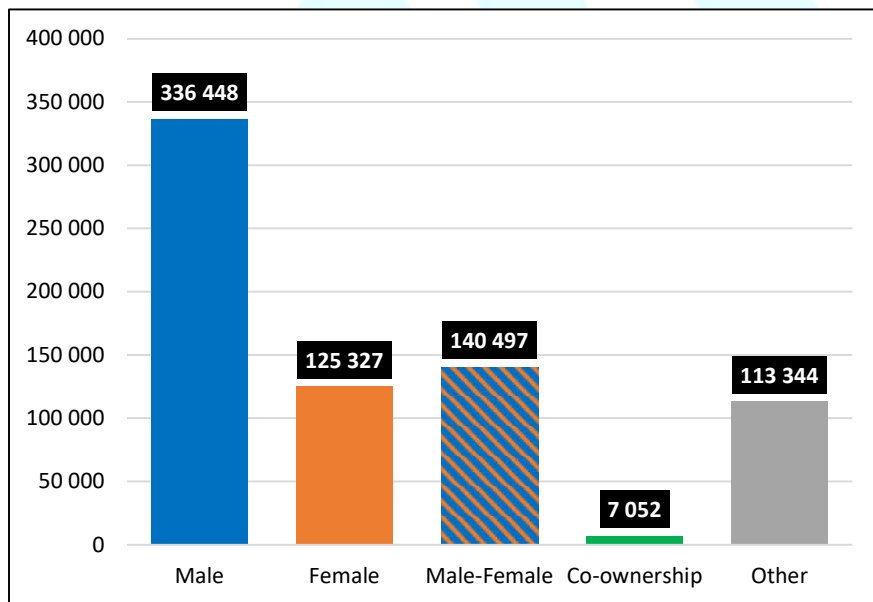


Table 2: Land audit 2017 – Erven land ownership by gender (Ha)

Individuals' erven land owners by gender and province (Ha, %)											
Province	Male	Female		Male-Female		Co-ownership		Other		Total	
EC	29,713	21%	15,553	11%	11,711	8%	1,324	1%	81,538	58%	139,839
FS	7,672	29%	8,452	32%	7,400	28%	401	2%	2,610	10%	26,535
GP	26,699	28%	23,801	25%	36,992	39%	2,144	2%	4,621	5%	94,257
KZN	28,306	36%	16,166	21%	19,937	26%	2,133	3%	11,193	14%	77,735
LMP	7,446	37%	6,090	30%	4,474	22%	185	1%	2,058	10%	20,253
MPU	7,422	36%	5,565	27%	6,524	31%	291	1%	914	4%	20,715
NW	5,004	28%	6,111	35%	5,370	30%	214	1%	989	6%	17,688
NC	137,660	75%	17,474	9%	20,062	11%	150	0%	9,057	5%	184,403
WC	86,527	61%	26,115	18%	28,026	20%	210	0%	364	0%	141,242
<b>Total</b>	<b>336,448</b>	<b>47%</b>	<b>125,327</b>	<b>17%</b>	<b>140,497</b>	<b>19%</b>	<b>7,052</b>	<b>1%</b>	<b>113,344</b>	<b>16%</b>	<b>722,667</b>

Graphs 6 and 7: Land Audit 2017 – Farm and agricultural holdings owned by individuals by gender (Ha, %)

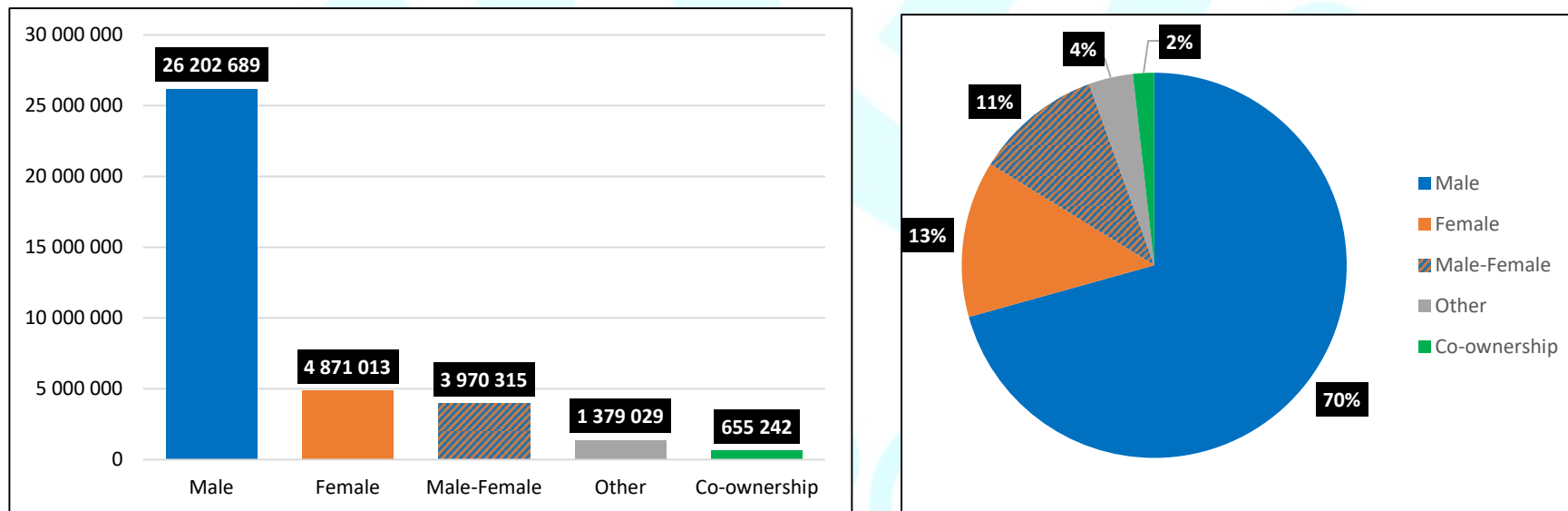


Table 3: Land Audit 2017 – Farm and agricultural holdings owned by individuals by gender and province (Ha, %)

Farm and agricultural holdings owned by individuals by gender and province (Ha, %)											
Province	Male		Female		Male-Female		Other		Co-ownership		Total
	Ha	%	Ha	%	Ha	%	Ha	%	Ha	%	
EC	3,704,812	80%	439,032	10%	229,159	5%	178,308	4%	60,218	1%	4,611,528
FS	3,518,907	70%	854,107	17%	414,059	8%	177,626	4%	44,566	1%	5,009,264
GP	235,362	51%	112,110	24%	98,483	21%	10,654	2%	6,060	1%	462,669
KZN	934,891	58%	134,896	8%	130,532	8%	330,176	20%	86,998	5%	1,617,493
LMP	1,022,742	58%	275,057	16%	315,703	18%	90,310	5%	46,164	3%	1,749,977
MPU	955,454	66%	218,791	15%	190,483	13%	49,131	3%	27,293	2%	1,441,152
NW	2,047,590	62%	487,229	15%	523,392	16%	132,914	4%	120,084	4%	3,311,210
NC	11,000,772	73%	1,882,645	13%	1,693,539	11%	267,958	2%	166,088	1%	15,011,002
WC	2,782,161	72%	467,145	12%	374,965	10%	141,951	4%	97,772	3%	3,863,994

Total	26,202,689	71%	4,871,013	13%	3,970,315	11%	1,379,029	4%	655,242	2%	37,078,289
-------	------------	-----	-----------	-----	-----------	-----	-----------	----	---------	----	------------





## INTERNATIONAL CONSIDERATIONS

South Africa has signed numerous international treaties that are binding, which reaffirm the government's commitment and obligation to end gender discrimination and act to secure women's land rights.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>29</sup> is a legally binding document ratified by South Africa in 1995 that seeks to eliminate any distinction, exclusion or restriction made on the basis of sex.<sup>30</sup> States are to take all appropriate measures to eliminate discrimination against women through legislation that addresses inequalities in public institutions, regulations, customs, and practices. States shall take into account particular problems faced by rural women, and guarantee women the right to credits, loans, and equal treatment in land and agrarian reform. Furthermore, women shall be given the right to administer property in the same capacity as men.

The African Charter on Human and Peoples' Rights stipulates that States shall ensure that all forms of discrimination against women are eliminated and shall protect the rights of women and children that are affirmed in international declarations and conventions. In conjunction with the African Charter, South Africa has also signed and ratified the 2003 Maputo Protocol, otherwise known as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Under this protocol, states are to ensure that women have access to land as part of their rights to food security. Women also have a right to equal access to housing and acceptable living conditions. Adequate housing shall be granted to women by the state regardless of their marital status.

There are varying international approaches to strengthen women's land rights. NGOs in Zambia and Burundi have held community discussions in villages to reach a consensus about

---

<sup>29</sup> Adopted in 1979 by the United Nations General Assembly.

<sup>30</sup> Gendered Analysis of Land Reform Policy and Implementation Outcomes for South Africa (2006 – 2008/09).

women's rights and create new customary laws.<sup>31</sup> An overhaul of the land tenure and registration system was conducted in Rwanda.

While Uganda and Kenya are introducing new laws to give women legal protection, there is minimal progress in practice.<sup>32</sup> In Asia, Nepal has provided tax registration discounts to women, whereas Tajikistan has established a gender consideration checklist for legislatures to use and trains community activists to assist women through the land registration process.<sup>33</sup> With the assistance of NGOs, public awareness and education campaigns were launched in India and Kosovo to change negative attitudes about women's land rights.<sup>34</sup>

Kosovo introduced gender inclusive legislation to address patriarchal attitudes in land rights. From 2015-2019, USAID implemented numerous efforts to increase education and raise awareness about women's land rights in Kosovo, as cultural attitudes about women owning, inheriting and accessing property, prevented them from exercising these legislated rights.<sup>35</sup> Efforts included creating locally sensitive media content in different languages to increase public awareness about women's property rights. Children as young as four were taught about the importance of equal rights.<sup>36</sup> Training programs were also created for judges to help recognise implicit gender biases and change attitudes to provide protection for women's land rights. At the end of the project, a survey conducted showed that the

---

<sup>31</sup> International Development Law Organization, "Strengthening Women's Customary Rights to Land" (n.d.), online: *International Development Law Organization* <https://www.idlo.int/news/highlights/strengthening-womens-customary-rights-land>.

<sup>32</sup> Leslie Hannay, "Women's Land Rights in Uganda" (23 July 2014) Landesa, online: (pdf) <https://www.landesa.org/wp-content/uploads/LandWise-Guide-Womens-land-rights-in-Uganda.pdf>

<sup>33</sup> Mustafa Ghulam Talfur, Kalayaan Constantino and Lilian Mercado, "Win in Asia – Nepal: Campaigning for Women's Land Rights" (2012), online (pdf): *Oxfam in Nepal* [https://oi-files-cng-prod.s3.amazonaws.com/nepal.oxfam.org/s3fs-public/file\\_attachments/WIN%20in%20ASIA%20Nepal%20land%20rights.pdf](https://oi-files-cng-prod.s3.amazonaws.com/nepal.oxfam.org/s3fs-public/file_attachments/WIN%20in%20ASIA%20Nepal%20land%20rights.pdf).

<sup>34</sup> USAID Property Rights Program in Kosovo and Dr. Sandra Joireman, "Endline National Survey on Property Rights in Kosovo" (March 2019), online (pdf): *United States Agency for International Development* Available online: <https://land-links.org/wp-content/uploads/2019/06/3.-National-endline-survey-on-proerty-rights.pdf>.

<sup>35</sup> USAID Property Rights Program in Kosovo and Dr. Sandra Joireman, "Endline National Survey on Property Rights in Kosovo" (March 2019), online (pdf): *United States Agency for International Development* Available online: <https://land-links.org/wp-content/uploads/2019/06/3.-National-endline-survey-on-proerty-rights.pdf>.

<sup>36</sup> USAID Property Rights Program in Kosovo and Dr. Sandra Joireman, "Endline National Survey on Property Rights in Kosovo" (March 2019), online (pdf): *United States Agency for International Development* Available online: <https://land-links.org/wp-content/uploads/2019/06/3.-National-endline-survey-on-proerty-rights.pdf>.

percentage of citizens who had negative attitudes about women's property rights decreased from 36% to 23%.<sup>37</sup>

## STAKEHOLDER ENGAGEMENT

In August 2022, the LRC hosted a stakeholder engagement with various gender and land experts and community-based organisations. The purpose of the meeting was to discuss issues with, and possible proposals for, the advancement of women's equitable access to land. Some of the issues and suggestions which emerged from the stakeholder engagement were the following:

- Identifying the political, social and economic objectives of land reform;
- Balancing productivity and poverty alleviation;
- Women in rural areas being required to pay greater rental to headmen and councillors for land;
- Finding a power balance between people making decisions relating to land and those who actually work the land – the majority of whom are women;
- There is gender discrimination by banks requiring security for loans, often to the detriment of women;
- The insufficiency of land that is not accompanied by the provision of basic services;
- The competing interests between environmental development and access to land;
- The need for increased gender disaggregated data and the implementation of gender responsive budgeting across all departmental programmes;
- Shifting the focus from commercial land uses to prioritising women in need of land for food and living;
- The inability of leases in redistribution to provide tenure security;
- Amending the one household one hectare policy to be the one woman, one hectare policy;

---

<sup>37</sup> Ibid.



- The development of a formal registration system to record women's rights in land;  
and
- The release of urban land and commonage land for woman.



### III LAND REDISTRIBUTION

#### REDISTRIBUTION POLICY TIMELINE

Since 1999, policy changes have resulted in a shift from the original objectives and the intended beneficiaries of land reform, the implications of which span across class, land use and land tenure arrangements.<sup>38</sup> Rather than prioritising secure land access for the poor for their multiple land needs, land redistribution programmes support an elite class of individuals for large-scale commercial farming, with the proviso that they lease land from the state. While several programmes have identified women as the target group of beneficiaries, this has failed to materialise. Even where women have benefited, other inequalities are not addressed, such as their access to land being conditional on shared tenancy with men.

*Table 4: Hectares redistributed 1994 - 2020 by policy programme (Ha)<sup>39</sup>*

Hectares redistributed 1994 - 2020 by policy programme (Ha)								
Farms	Settlement/Tenure Security/Communal Land			Municipality	Agricultural		Other	Total
	SLAG (Settlement, Households, Tenure)	SPLAG	TRANCRAA	Commonage / Communal Land	LRAD	PLAS	(Donation, Church Land, LASS etc.)	
5,548	721,679	63,038	22,677	850,429	1,168,219	2,259,845	24,476	5,110,363

<sup>38</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.

<sup>39</sup> This data is taken from the DALRRD's response to LRC's PAIA request in 2022. We are aware that the individual values for each programme do not sum to 5,110,363 but this is a flaw with the data as presented by the DALRRD.

Table 5: Hectares redistributed 1994 - 2020 by policy programme (%)

Hectares redistributed 1994 - 2020 by policy programme (% of total)								
Farms	Settlement/Tenure Security/Communal Land			Municipality	Agricultural		Other	Total
	SLAG (Settlement, Households, Tenure)	SPLAG	TRANCRAA	Commonage / Communal Land	LRAD	PLAS	(Donation, Church Land, LASS etc.)	
0.1%	14.1%	1.2%	0.4%	16.6%	22.9%	44.2%	0.5%	100.0%

## The Settlement Land Acquisition Grant (SLAG)

The DLA set out the objectives of land reform in its White and Green Papers in 1997 and 1996. The goals included addressing poverty alleviation and remedying historical injustices which had skewed land relations and caused poverty for the majority of Black South Africans.<sup>40</sup> The policy considered economic goals, while the main architect of land redistribution encompassed a pro-poor bias. The process was to provide grants of R15 000 (later R16 000) to households earning less than R15 000 a month, to enable them to form groups with other households with whom they could purchase land.

721,679 hectares were redistributed under the SLAG programme, 14% of the total land redistributed between 1994 and 2020. There were up to 500 households that received these grants (SLAG) who then settled on a farm together, in living conditions that were often not improved from their previous circumstances. A DLA Quality of Life Survey in 1998, showed that some beneficiaries were worse off on land acquired through the programme; in relation to access to water, electricity, sanitation, health care and education; and that there was minimal improvement in incomes. Often, land could not support such large numbers as full-time farmers, and despite additional grants being made available for planning and facilitation, rarely were these sufficient to provide for the development of roads and services.

<sup>40</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.



The 1996 and 1997 policies made specific mention of women as beneficiaries and noted the need for positive action to guarantee the provision of women's land rights. The White Paper commanded the creation of specific strategies and procedures that would ensure the full participation of women in the planning and implementation of land reform projects. Overcoming discrimination required removing legal restrictions, having grant programmes for women, clear beneficiary selection, and offering financial and support services for women.<sup>41</sup>

However, these policies were inconsistent on women's land rights and did not specify the positive actions required to ensure women's land rights. Furthermore, they did not consider societal level factors that might hinder women's access to the programme. At the level of implementation, lack of conceptual clarity and cumbersome procedures stood in the way of women's access.

Among the societal level factors were gender biases among officials and within communities, that identified men as household heads and the rightful claimants of land. Thus, women were only given access to land through the intervention of men. Given the demand-driven nature of the programme, beneficiaries were required to take the initiative to apply for grants. However, most women did not see themselves as potential holders of rights to land in a societal context that viewed men as the legitimate holders of such rights. Women were also disadvantaged compared to men in relation to access to information about the grants and about the procedures to follow in order to make grant applications.

In 1999, SLAG was put on hold and the Minister called for an internal review. In a preliminary report issued internally within the department in 1999, the Minister argued that land redistribution needed to address the needs not only of the poor but also of aspiring Black commercial farmers who wished to farm. The review process formed the basis for a two-year

---

<sup>41</sup> South African Land Policy White Paper (1997) Retrieved from:  
[https://www.gov.za/sites/default/files/gcis\\_document/201411/whitepaperlandreform.pdf](https://www.gov.za/sites/default/files/gcis_document/201411/whitepaperlandreform.pdf)

policy development process – with input from the World Bank – and gave rise to the LRAD Programme.<sup>42</sup>

## Land Redistribution for Agricultural Development (LRAD)

LRAD, instituted in 2001, marked the first shift away from poverty alleviation, by instituting a change in beneficiaries and in the main purpose of land reform.<sup>43</sup> The means test designed to target the poor, was replaced by the search for Black farmers interested in commercial farming and with access to their own contributions. Over 1 million hectares was redistributed under the programme, comprising 23% of the land redistributed between 1994 and 2020, the second most of any programme.

Grants between R20 000 and R100 000 were made available to individuals wanting to farm. Priority was given to those wanting to farm commercially, with the means to do so. Grants received depended on the size of an individual's own contribution, with those capable of making sizeable contributions being awarded larger grants.<sup>44</sup> The tension that had existed between social justice and economic production aims in the initial 1996 and 1997 policies was seemingly resolved with commercial land use commandeering priority.

The LRAD goals included economic development for rural women, encouraged women-only projects, and stipulated that one-third of transfers should go to women. In 2002, Cross and Hornby<sup>45</sup> noted that gender targets were being met, but without reaching poor women. The women benefitting from LRAD tended to be elite women, who together with their husbands were members of consultant-supported family group applications. Some progressive farmers were accessing LRAD to the benefit of their farm worker employees. However, LRAD was not benefitting temporary and seasonal farm workers, who were predominantly women, nor was LRAD benefitting women and men in the former homelands. Cross and Hornby note

---

<sup>42</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.

<sup>43</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.

<sup>44</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.

<sup>45</sup> Cross, Catherine, and Hornby, Donna, (2002), Opportunities and Obstacles to Women's Land Access in South Africa: A Research Report from the Promoting Women's Access to Land Programme.

that LRAD procedures prevented poor women and non-farm residents in general from accessing this programme, and that woman-headed households seemed least likely to benefit from LRAD.<sup>46</sup>

Furthermore, at policy level, LRAD included a food safety net category where projects were intended to allow poor beneficiaries to acquire land for food and livestock production to improve household food security.<sup>47</sup> However, this component was not developed in practice.<sup>48</sup>

LRAD was not popular amongst poor women because there were too many risks associated with participation in the programme. Poor women found it difficult to manage and receive financing without the help of local or outside assistance.<sup>49</sup> There was also concern of encountering backlash from men in the community who would be threatened by women accessing land independently.<sup>50</sup> For some poor women, there was also too much risk divesting the few resources they had into the programme.<sup>51</sup>

## **Proactive Land Acquisition Strategy (PLAS) and the State Land Lease and Disposal Policy (SLLDP)**

In 2006, 12 years into constitutional democracy, when only 4% of targeted land had been transferred through government's land reform programme, the PLAS programme was developed to meet the target of transferring 30% of White-owned agricultural land to Black ownership by 2014.<sup>52</sup> Since then, 2.2 million hectares have been redistributed under the

---

<sup>46</sup> Cross, Catherine, and Hornby, Donna, (2002), Opportunities and Obstacles to Women's Land Access in South Africa: A Research Report from the Promoting Women's Access to Land Programme.

<sup>47</sup> Cross, Catherine, and Hornby, Donna, (2002), Opportunities and Obstacles to Women's Land Access in South Africa: A Research Report from the Promoting Women's Access to Land Programme.

<sup>48</sup> Cross, Catherine, and Hornby, Donna, (2002), Opportunities and Obstacles to Women's Land Access in South Africa: A Research Report from the Promoting Women's Access to Land Programme.

<sup>49</sup> Cross, Catherine, and Hornby, Donna, (2002), Opportunities and Obstacles to Women's Land Access in South Africa: A Research Report from the Promoting Women's Access to Land Programme.

<sup>50</sup> Cross, Catherine, and Hornby, Donna, (2002), Opportunities and Obstacles to Women's Land Access in South Africa: A Research Report from the Promoting Women's Access to Land Programme.

<sup>51</sup> Cross, Catherine, and Hornby, Donna, (2002), Opportunities and Obstacles to Women's Land Access in South Africa: A Research Report from the Promoting Women's Access to Land Programme.

<sup>52</sup> Implementation Plan for the Proactive Land Acquisition Policy (2006 – 2011). Retrieved from: [https://www.gov.za/sites/default/files/gcis\\_document/201409/implandacquisition0.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/implandacquisition0.pdf)

programme, constituting 44% of the total hectares redistributed between 1994 and 2020 – the most of any programme.

The aim of PLAS is to accelerate the acquisition of quality, well-located agricultural and other land to fulfil land distributions under section 25 of the Constitution. Beneficiaries have to be Black, Coloured, or Indian and over the age of 18, but special priority is given to individuals with experience in agriculture or willingness to train.<sup>53</sup> PLAS has been amended to give special groups further priority, such as women, youth, people with disabilities, farm workers, farm dwellers, labour tenants, subsistence producers in communal areas and villages, agricultural and science graduates, and military veterans.

Currently, PLAS consists of 3 different categories of farmers. Category 1 are households with no or very limited access to land – even for subsistence production.<sup>54</sup> Category 2 are small-scale farmers who are farming or intend to farm for subsistence purposes and sell part of their production in local markets.<sup>55</sup> Lastly, Category 3 consists of medium to large-scale farmers who have been farming commercially at various scales. These farmers are disadvantaged by the location of their farms, size, and other relevant circumstances, but have potential to grow.<sup>56</sup>

PLAS intensified the goal of commercialisation by emphasising productive use of land for commercial farming and thus excluded poor women and men not interested in land for commercial farming.

Whereas LRAD provided grants to enable groups of beneficiaries to purchase land and hold the title for such land, the state derived from PLAS the ability to purchase land for individual beneficiaries and to lease state land to these beneficiaries. After the expiration of a particular lease period – linked to one production cycle of the beneficiaries' enterprises – wherein the selected beneficiaries demonstrated their farming expertise and their performance was

---

<sup>53</sup> Implementation Plan for the Proactive Land Acquisition Policy (2006 – 2011). Retrieved from: [https://www.gov.za/sites/default/files/gcis\\_document/201409/implandacquisition0.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/implandacquisition0.pdf).

<sup>54</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.

<sup>55</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.

<sup>56</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.



assessed by the Department, they were given the opportunity to exercise the option to purchase that was present in their lease agreements. However, the purchase price is often unaffordable for the emerging farmers, forcing them into perpetual tenancy.

By 2012, PLAS was the only mechanism for land redistribution in South Africa.<sup>57</sup> PLAS did not specify criteria for beneficiary selection. Officials of the Department had the discretion to decide what land should be purchased and who the beneficiaries should be. The process through which beneficiaries would be assessed in order to move from leasehold to ownership of the land was also not specified.

In 2013, the government adopted the SLLDP.<sup>58</sup> Initially intended to operationalise PLAS, the SLLDP became the flagship land redistribution programme. Beneficiaries under SLLDP are to be previously disadvantaged individuals (PDIs), who are African, Indian or Coloured South Africans.

There are four categories of farmers under SLLDP. Categories 1 and 2 mirror those in PLAS – households with minimal access to land and subsistence farmers.<sup>59</sup> Category 3 are medium-scale commercial farmers who have been commercially farming at a small scale with aptitude to expand but have been limited by their resources.<sup>60</sup> Category 4 consists of large-scale commercial farmers disadvantaged by location, size of land and other resources.<sup>61</sup> For agricultural development, women and youth who either have basic farming skills or demonstrate a willingness to acquire such skills are one of the target groups. However, commercial development does not have any target groups.

The SLLDP confirms the state leasehold model. Leases were granted for 30 years and could be extended for another 20 years, translating to a 50-year period. After 50 years, a lessee may

---

<sup>57</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.

<sup>58</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.

<sup>59</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.

<sup>60</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.

<sup>61</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.

apply for a renewal of the lease within 3 years.<sup>62</sup> There are no clear steps for beneficiaries to qualify to purchase state land.

The main critiques against PLAS and SLLDP is their failure to ensure an inclusive land redistribution programme which caters for the needs of the poor; that the Minister has sweeping discretionary powers to determine land acquisition and resource allocation;<sup>63</sup> and that state officials have discretionary powers to determine the land to be acquired, whether it should be transferred or leased, and to whom and on what terms.<sup>64</sup> As a result, the vast majority of the poor have no opportunity for ownership.

## One Household One Hectare

The aim of 1HHiHA is to provide just and equitable distribution of land as well as to advance meaningful and substantive communal tenure rights. Target groups include racialised peoples, communal areas, communities on commercial farms, and other land acquired by farm dwellers/workers and labour tenants who are to be provided with residential secure tenure. Each household is allocated one hectare of land as a means of promoting sustainable livelihood and self-sufficiency. Policy measures included redistribution in tenure reform in South Africa's 44 poorest districts and other congested communal areas. 1HHiHA does not contain any objectives or other provisions related to gender equality; however, has been the most significant policy in allocating land to women. Despite this, it seems as though the Policy was not prioritised by the Department.<sup>65</sup>

---

<sup>62</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.

<sup>63</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.

<sup>64</sup> Hall, R (2012) The Reinvention of Land Redistribution: three cycles of policy 1994 – 2012. Strategies to overcome poverty and inequality: Towards Carnegie III, 3-7 September, 2012. Cape Town: University of Cape Town.

<sup>65</sup> PMG, Former Department of Rural Development and Land Reform and Agricultural Land Holding Trading Account Annual Reports 2019/20; with Minister and Deputy Ministers (23 March 2021) <https://pmg.org.za/committee-meeting/32650/>; PMG, Ingonyama Trust Board and DRDLR 2019/2020 Quarter 3 & 4 Performance; With Minister (4 June 2020) <https://pmg.org.za/committee-meeting/30400/>

## The 50/50 Policy

The 50/50 Policy: Strengthening the Relative Rights of People who Work the Land was introduced in 2014. The aim is to have equity share schemes for commercial farms. Each farm owner will retain 50% ownership and the other 50% will be given to workers. The state will buy 50% from the owner that will then be provided to workers. However, only long-term workers who have provided 'disciplined service' qualify to receive shareholdings. Equity shares are acquired based on length of service.<sup>66</sup>

Much like 1HHiHA, the 50/50 policy does not contain any objectives or provisions about gender equality. This policy proposal was refuted by farm workers and farm owners in 2014.<sup>67</sup> There has been a shift of more casual and temporary forms of employment in the workforce, especially for women. As a result, this makes it more difficult, particularly for women, to receive any shareholding. There have been numerous other issues with the implementation of the Policy.

---

<sup>66</sup> Kepe, T. and Hall, R. (2016) Land Redistribution in South Africa, Commissioned Report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.

<sup>67</sup> Ibid.

## OVERALL IMPACT OF LAND REDISTRIBUTION

One of the difficulties in assessing the extent to which land redistribution to date has benefitted women is the lack of transparency and published data on the state's redistribution programme. A rare exception to this was a [report](#) published by the Department of Agriculture, Land Reform and Rural Development in 2018,<sup>68</sup> providing data on the outcomes of land redistribution. This report provides the most comprehensive overview of the impact of redistribution, both generally and on women in particular. However, there are three main limitations to this report. First, its time-frame is limited, as it only provided detailed data for the years 2009 – 2018. Second, it does not break down the data into each programme, so it is unclear which policy has contributed the least/most to redistribution. Third, it only provides data on the number of female beneficiaries and does not provide data on how many hectares women have received. This is significant as other data published by the Department shows that there can be a significant divergence between *how many* women receive land and *how much* land they receive, e.g. 50% of the beneficiaries may be women, but if they only receive 10 Ha each and the men receive 100 Ha each this is not equitable.<sup>69</sup> Nevertheless, the statistical report provides the best publicly available data for assessing the impact of the redistribution programme by year.

The LRC made a request to the DALRRD in October 2021 in terms of the Promotion of Access to Information Act for land redistribution data for the years 1994 to 2020. The Department provided some data in response during May 2022. Whilst the response contains data for a wider time-frame, it is not broken down by year, making it difficult to assess how redistribution varied year by year and the impact of changing policy programmes.

---

<sup>68</sup> Annual Statistical Report for Selected Service Delivery Programmes of DRDLR, available at: <https://www.dalrrd.gov.za/index.php/publications/20-evaluation-reports?download=556:annual-statistical-report-for-selected-service-delivery-programmes-of-drldr>

<sup>69</sup> This data is a spreadsheet provided by the DALRRD to the Agriculture, Land Reform and Rural Development Committee as part of a presentation in December 2020. This provides a full list of beneficiaries of the State Land Lease and Disposal Policy (SLLDP) for the period of February – December 2020. This data can be found here: <https://pmg.org.za/committee-meeting/31654/>



Table 6: 2018 report – Total land redistribution and restitution 1994/1995 – 31 March 2018

Total land redistribution and restitution 1994/1995 – 2018		
	1994/1995 until 31 March 2018	% of 1994/1995 until 31 March 2018
Restitution	3,483,269.02	42%
Redistribution	4,847,596.03	58%
<b>Total</b>	<b>8,330,865.72</b>	<b>100%</b>

Graph 8: 2018 report – Hectares transferred through redistribution 2009 – 2018

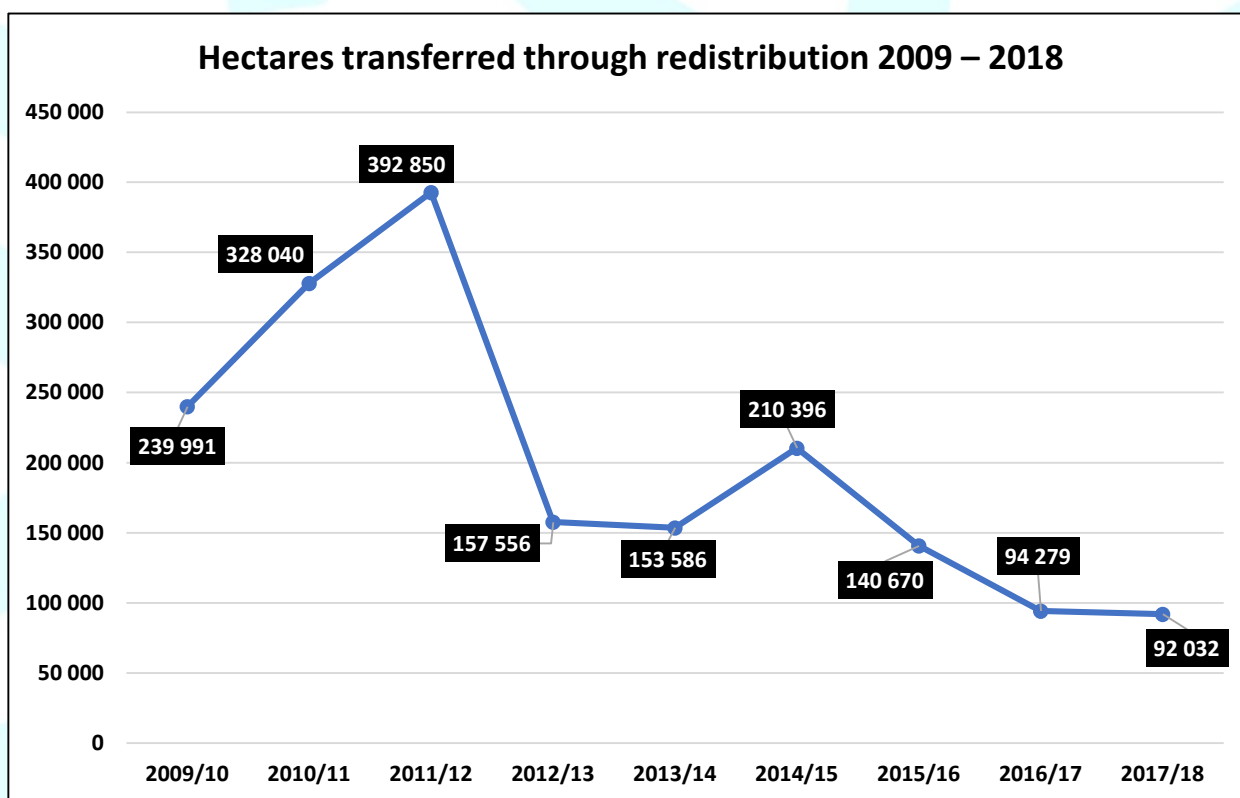


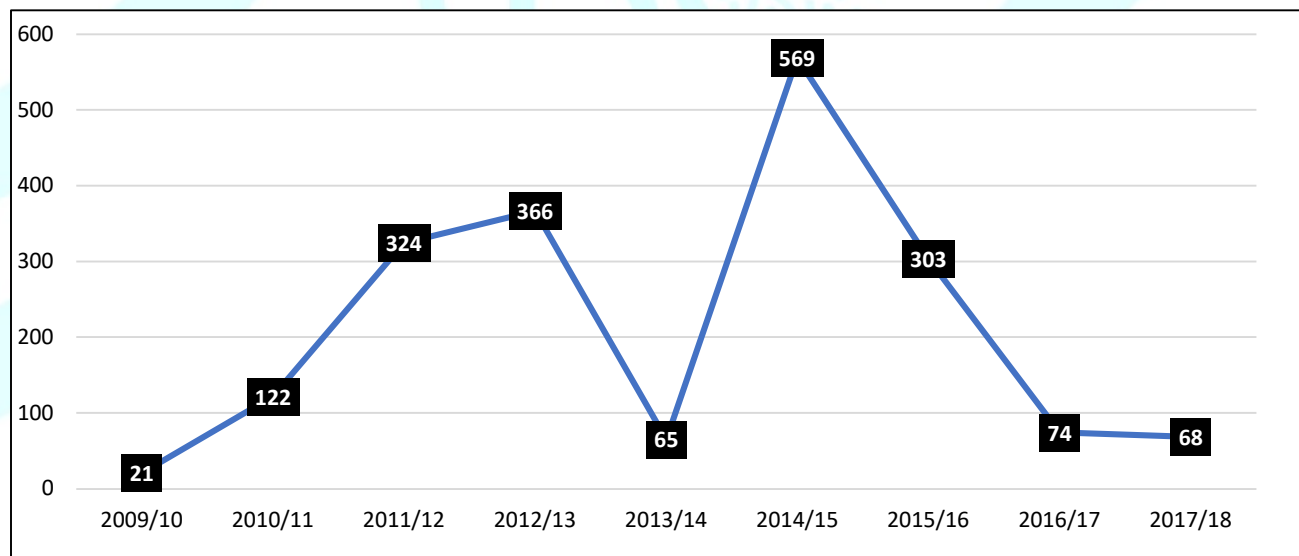
Table 7: 2018 report – Hectares transferred through redistribution 2009 – 2018

Hectares transferred through redistribution 2009 – 2018									
2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	Total
239,991	328,040	392,850	157,556	153,586	210,396	140,670	94,279	92,032	1,809,400

In total, as of March 2018, there had been over 4.8 million hectares of land transferred through land redistribution. The amount of land redistributed each year has fallen significantly from 239,991 Ha in 2009/10 to 92,032 Ha in 2017/18 which was the lowest amount in the period, a 161% decrease. The data obtained from the PAIA request states that there had been 5,110,363 hectares redistributed from 1994 to 2020.

There were 21,517 total beneficiaries of land redistribution in the period from 2009 to 2018. The number of beneficiaries decreased dramatically in this period, from 11,262 per year in 2009/10 to a low of 1,348 in 2017/18, a decrease of 88%. Redistribution has also become more concentrated, as the number of hectares given to each beneficiary has increased. In 2009/10 each beneficiary received on average 21 Ha, but this rose to a peak of 569 Ha in 2014/15 before falling to 68 Ha in 2017/18. This is a 62% decrease from 2009/10; the fact that the Ha allocation has decreased 68% compared to the 88% decrease in beneficiaries is also evidence of the increased concentration, as the number of Ha has fallen slower than the number of beneficiaries.

*Graph 9: 2018 report – Number of hectares per beneficiary 2009 – 2018*



Graph 10: 2018 report – Number of beneficiaries from redistribution 2009 – 2018

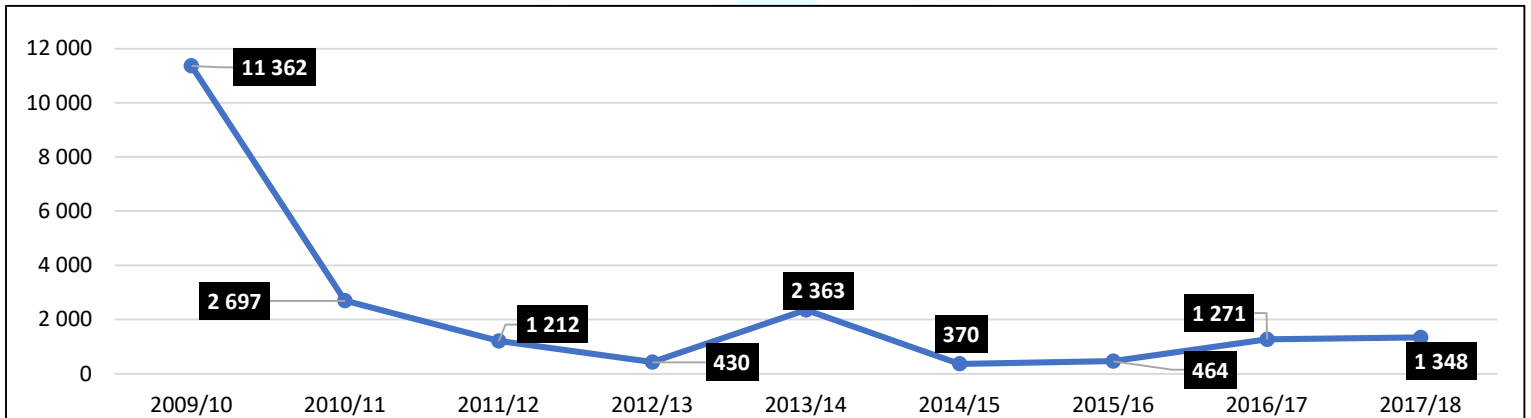


Table 8: 2018 report – Number of beneficiaries per province 2009 – 2018

Number of beneficiaries per province 2009 – 2018										
Province	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	Total
EC	844	281	148	120	81	79	82	59	31	1,725
FS	382	102	21	2	9	5	100	5	306	932
GP	74	161	0	18	16	19	18	14	114	434
KZN	4,158	1,388	873	257	85	178	104	602	736	8,381
LP	563	99	68	18	2,109	16	20	15	16	2,924
MP	1,053	152	56	0	20	4	71	220	85	1,661
NC	98	91	26	6	10	28	47	11	12	329
NW	3,117	183	0	1	32	35	11	52	39	3,470
WC	1,073	240	20	8	1	6	11	293	9	1,661
<b>Total</b>	<b>11,362</b>	<b>2,697</b>	<b>1,212</b>	<b>430</b>	<b>2,363</b>	<b>370</b>	<b>464</b>	<b>1,271</b>	<b>1,348</b>	<b>21,517</b>

Table 9: 2018 report – Number of hectares transferred per province

Number of hectares transferred per province										
Province	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	Total
EC	39,678	40,900	66,021	18,985	27,771	18,224	15,527	7,170	1,315	235,590
FS	30,212	10,404	42,690	16,168	15,385	10,790	8,275	6,513	11,736	152,172
GP	1,745	3,268	3,348	3,265	4,424	6,784	2,780	883	1,256	27,754
KZN	43,422	25,974	27,176	18,294	21,938	26,772	19,286	14,048	13,770	210,681
LP	14,704	6,558	24,555	8,297	1,971	12,215	13,180	10,992	7,337	99,808
MP	29,081	37,561	36,336	20,314	21,214	15,894	6,289	5,502	6,704	178,895
NC	56,827	165,250	148,392	36,691	39,397	59,031	46,916	36,652	34,037	623,194
NW	13,041	24,689	39,395	31,164	20,896	32,119	27,365	11,845	15,017	215,530
WC	11,280	13,457	4,936	4,378	590	28,568	1,052	674	860	65,795
<b>Total</b>	<b>239,990</b>	<b>328,060</b>	<b>392,850</b>	<b>157,556</b>	<b>153,586</b>	<b>210,396</b>	<b>140,670</b>	<b>94,279</b>	<b>92,032</b>	<b>1,809,419</b>

## HOW WOMEN HAVE FARED IN THE LAND REDISTRIBUTION PROGRAMME

Data from LRC's PAIA request shows that there were 71,488 female beneficiaries from 1994 to 2020, making up only 23% of the total beneficiaries. Between 2009 and 2018 there were 8,763 female beneficiaries, 41% of the total beneficiaries from the period. However, this sizeable share of the total is due to the high number of female beneficiaries in the years 2009/11 and disguises significant disparities. After 2009/10 there was a sharp decrease not only in the absolute number of female beneficiaries but also in relative terms, as there was a disproportionate drop in the number of female beneficiaries with women making an increasingly smaller proportion of the total beneficiaries each year.

The absolute number of female beneficiaries fell from 5,795 in 2009/10 to 334 in 2017/18. Whilst the total number of beneficiaries and hectares also decreased, the percentage decrease was far higher for women (94%) than both the decrease in beneficiaries (88%) and hectares (62%). This is significant as it shows that not only has there been a drop in the number of overall beneficiaries, but this has disproportionately affected women. In 2009/10 female beneficiaries made up 51% of the total. This plummeted to 1% in 2013/14, mostly due to there being a disproportionate number of beneficiaries in Limpopo that year compared to other provinces (2,109), only 3 of which were women. The percentage recovered after 2013/14 to 41% in 2016/17, before falling again to 21% in 2017/18.



Table 10: PAIA request – Beneficiaries of redistribution from 1994-2020 by gender

Beneficiaries of redistribution from 1994-2020 by gender					
Men		Women		Total	
Number	%	Number	%	Number	%
237,535	77%	71,488	23%	309,023	100%

Graph 11: 2018 report – Female beneficiaries from land redistribution 2009 – 2018 (number)

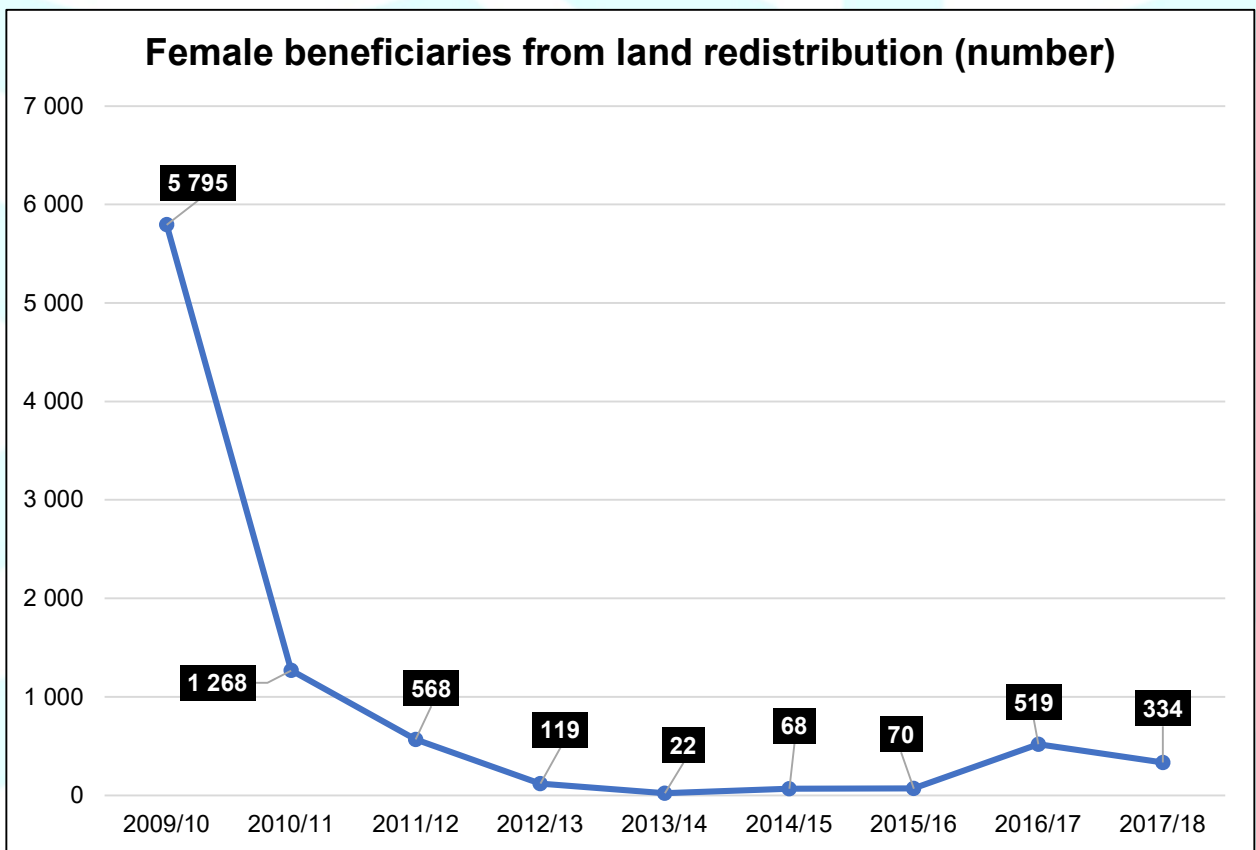


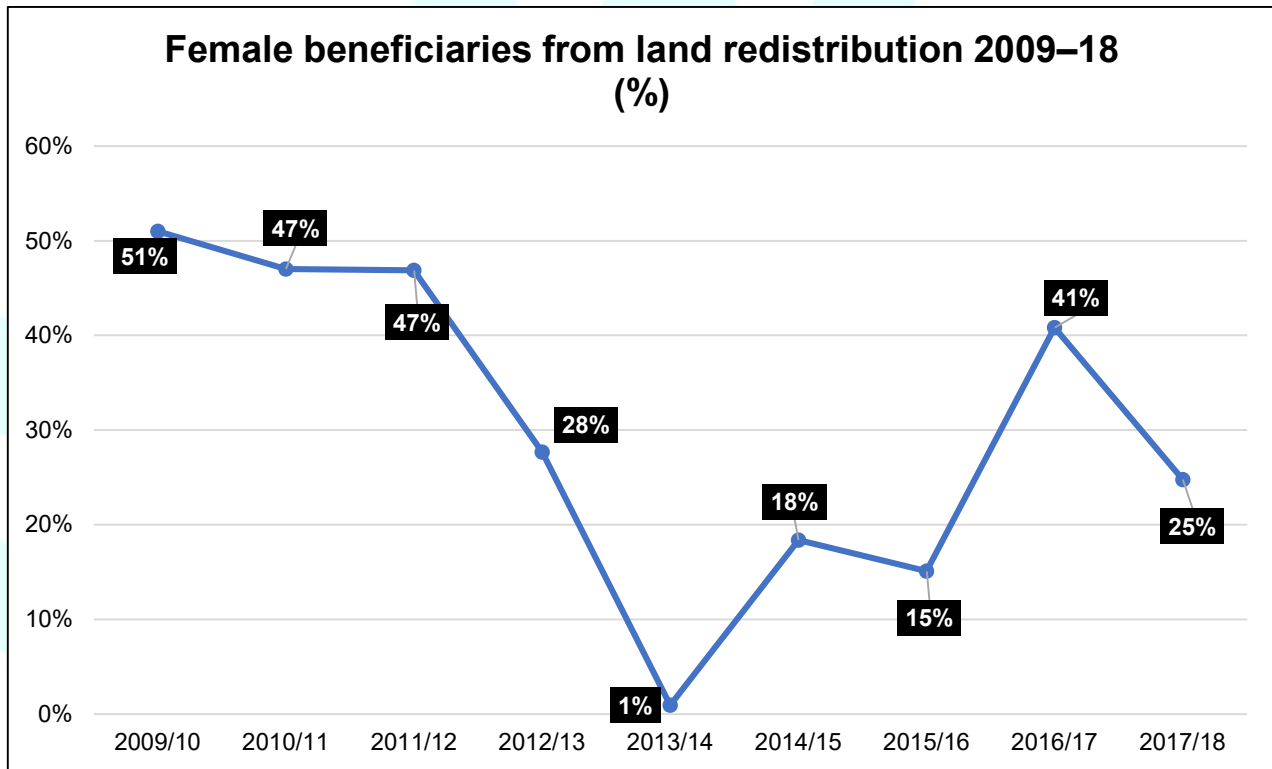
Table 11: 2018 report – Female beneficiaries from land redistribution 2009 – 2018 (number)

Female beneficiaries from land redistribution 2009 – 2018 (number)										
Province	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	Total
EC	193	122	52	60	12	30	22	19	14	524
FS	189	44	5	1	1	0	0	2	20	262
GP	26	73	0	6	2	10	7	5	5	134
KZN	2,250	732	449	48	0	16	6	242	226	3,969
LP	286	42	25	1	3	5	7	4	5	378
MP	411	56	26	0	0	0	23	99	43	658
NC	39	30	2	2	4	3	0	0	2	82
NW	1,872	85	0	0	0	2	2	25	19	2,005
WC	529	84	9	1	0	2	3	123	0	751
<b>Total</b>	<b>5,795</b>	<b>1,268</b>	<b>568</b>	<b>119</b>	<b>22</b>	<b>68</b>	<b>70</b>	<b>519</b>	<b>334</b>	<b>8,763</b>

Table 12: 2018 report – Female beneficiaries from land redistribution 2009 – 2018 (% of total beneficiaries)

Female beneficiaries from redistribution (% of total beneficiaries)										
Province	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	Total
EC	23%	43%	35%	50%	15%	38%	27%	32%	45%	30%
FS	49%	43%	24%	50%	11%	0%	0%	40%	7%	28%
GP	35%	45%	0%	33%	13%	53%	39%	36%	4%	31%
KZN	54%	53%	51%	19%	0%	9%	6%	40%	31%	47%
LP	51%	42%	37%	6%	0%	31%	35%	27%	31%	13%
MP	39%	37%	46%	0%	0%	0%	32%	45%	51%	40%
NC	40%	33%	8%	33%	40%	11%	0%	0%	17%	25%
NW	60%	46%	0%	0%	0%	6%	18%	48%	49%	58%
WC	49%	35%	45%	13%	0%	33%	27%	42%	0%	45%
<b>Totals</b>	<b>51%</b>	<b>47%</b>	<b>47%</b>	<b>28%</b>	<b>1%</b>	<b>18%</b>	<b>15%</b>	<b>41%</b>	<b>25%</b>	<b>41%</b>

Graph 12: 2018 report – Female beneficiaries from land redistribution 2009 – 2018 (% of total beneficiaries)

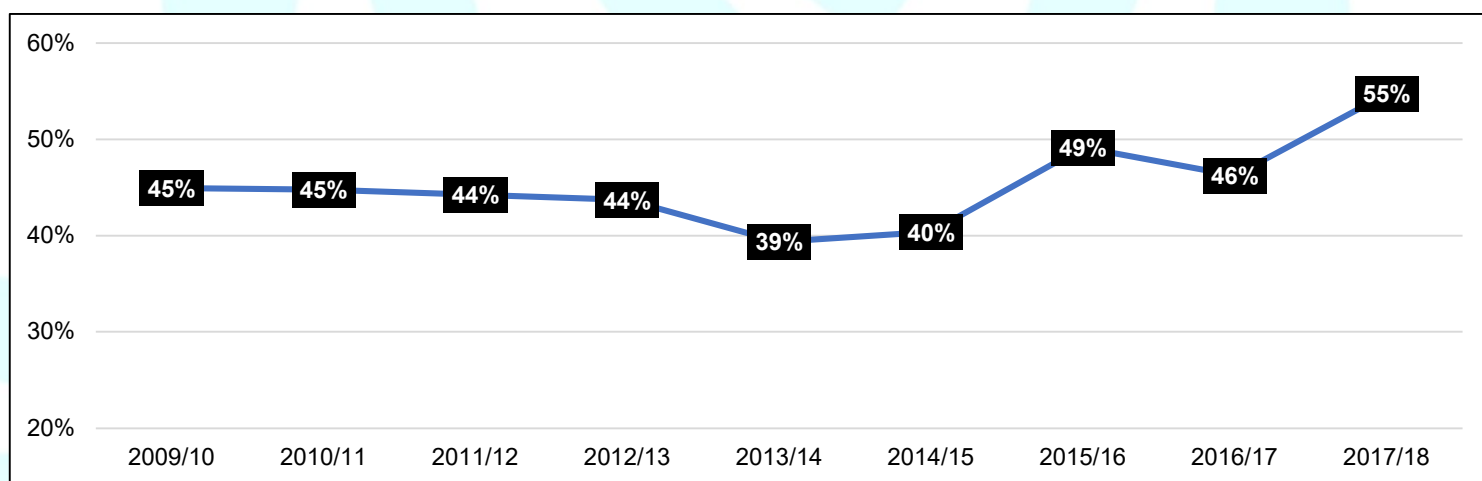


### Comparison with data on restitution

It is useful to compare the outcomes of redistribution with the restitution programme. Although redistribution has transferred a higher number of hectares – 4.8 million vs 3.2 million – the restitution programme has been far more consistent and equitable in its impact on women. The number of female-headed households benefitting from restitution has not decreased over time, with about 4200 households benefitting in both 2009/10 and 2017/18. There has been some fluctuation in-between but no consistent fall. The number of female-headed households benefitting as a percentage of the total actually increased steadily from 39% in 2013/14 to 51% in 2017/18. This is despite the fact that the number of households benefitting from restitution was lower in 2017/18 than 2013/14 (7318 vs 8132). This is the opposite of the disproportionate impact of the decrease in redistribution on women.

The divergence in outcomes between restitution and redistribution suggests that the Department's policies for redistribution may be to blame, rather than simply a failure in implementation.

*Graph 13: 2018 report – Female-headed households benefitting from restitution 2009 – 2018 (%)*



## State Land Lease and Disposal Policy (SLLDP) 2020

Another useful source relating to the statistics of women benefitting under the redistribution programme is a presentation made by the DALRRD to the Agriculture, Land Reform and Rural Development Committee on 1 December 2020.<sup>70</sup> As part of the presentation they provided a spreadsheet listing all beneficiaries of the SLLDP from February to December 2020. The spreadsheet lists:

- the name of the beneficiary,
- (where relevant) the name of the legal entity which will hold the lease on their behalf,
- their gender,
- their age,
- the name of the farm which they were allocated,

<sup>70</sup> This can be accessed here: <https://pmg.org.za/committee-meeting/31654/>.



- the number hectares of they were allocated,
- the province of the beneficiary.

The Department did not provide any detailed summary statistics of the data so this data had to be cleaned and reformatted to produce the relevant statistics. For example, a large amount of land was allocated to collectives rather than to particular individuals, e.g. the first farm in the spreadsheet (Tygerpad in Limpopo) is allocated to the Mohlapela Agricultural Primary Co-operative Limited, which comprised of 2 women and 7 men. They were collectively allocated 1272 Ha. In order to calculate how much land women/men received on average a new column was created with collective allocations split amongst the particular individuals, e.g. for the Mohlapela collective we divided the 1272 between the 9 individuals so that the spreadsheet stated each one received 141 Ha.

It was also important to distinguish between beneficiaries who received land as part of a collective or as an individual. There are significant disparities between the number of men and women who received land as an individual as well as significant disparities in the amount of land received. Therefore, another column was created which states the ownership type of the beneficiary, i.e. are they i) a man with individual ownership, ii) a man with collective ownership, iii) a woman with individual ownership, or iv) or a woman with collective ownership.

In the recording of the Department's appearance before the committee, the official explains that the data represents the first phase of the Government's programme to redistribute the 700,000 Ha of farm land it already owns.<sup>71</sup> The Government committed to do this in August 2018, but at the time they didn't even know what land they owned or who was occupying it.<sup>72</sup> The Minister explains in the presentation that most of the land is in the former homelands and was acquired under the National Party Government by the South African Development Trust.<sup>73</sup> It does not represent land that was acquired since 1994. A significant problem with this plan was that much of the land was already occupied by people who already had rights

---

<sup>71</sup> Meeting summary, 1 December 2020. Release and allocation of state land to applicants: DALRRD briefing with the Minister & Deputy Minister. Available at: <https://pmg.org.za/committee-meeting/31654/>.

<sup>72</sup>

<sup>73</sup> Ibid.

under the Interim Protection of Informal Land Rights Act, therefore this land could not be redistributed.

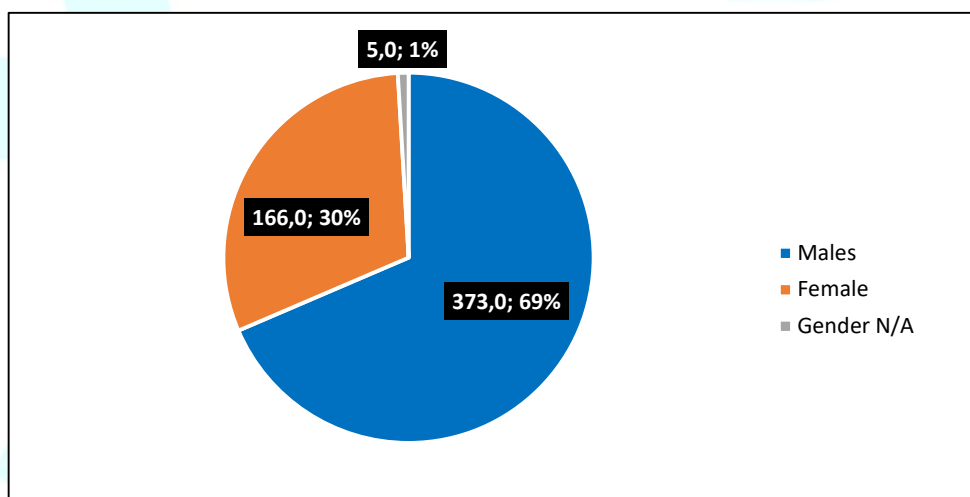
The official states that given time constraints to redistribute the land they could not properly audit the land and instead relied on “desktop research using satellite images” to understand which farms were being used.<sup>74</sup> The officials then asked their counterparts in provincial government to visit the farms and see who, if anyone, was using the land. If there were existing land users, then it may be that they were automatically selected as the beneficiaries to obtain a lease for that land.<sup>75</sup> This could explain why there are such significant gender disparities in the allocation, as it reflects existing land use in rural areas.

#### Impact of the SLLDP land allocation from February to December 2020 on women

There were 544 beneficiaries in total, with 373 men (68.6%), 166 women (30.5%), and 5 for which there was no recorded gender (0.9%). The distribution is even more unequal when the data is broken down into Ha allocation rather than just the numbers of beneficiaries: male beneficiaries received 122,216 Ha (82%), whilst women received just 25,665 Ha (17.2%).

LEGAL RESOURCES CENTRE

*Graph 14: DALRRD presentation – SLLDP Beneficiaries 2020 (Number, %)*



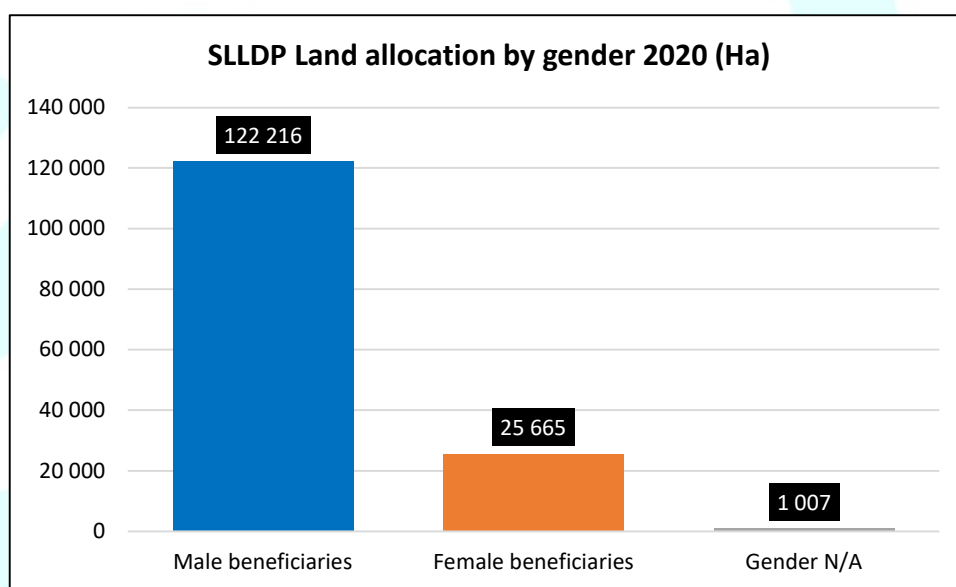
<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

Table 13: DALRRD presentation – SLLDP beneficiaries 2020 by gender

SLLDP beneficiaries 2020 by gender		
	Number	%
<b>Males</b>	373.0	68.6%
<b>Female</b>	166.0	30.5%
<b>Gender N/A</b>	5.0	0.9%
<b>Total</b>	544.0	

Graph 15: DALRRD presentation – SLLDP land allocation by gender 2020 (Ha)



Graph 16: DALRRD presentation – SLLDP land allocation by gender 2020 (%)

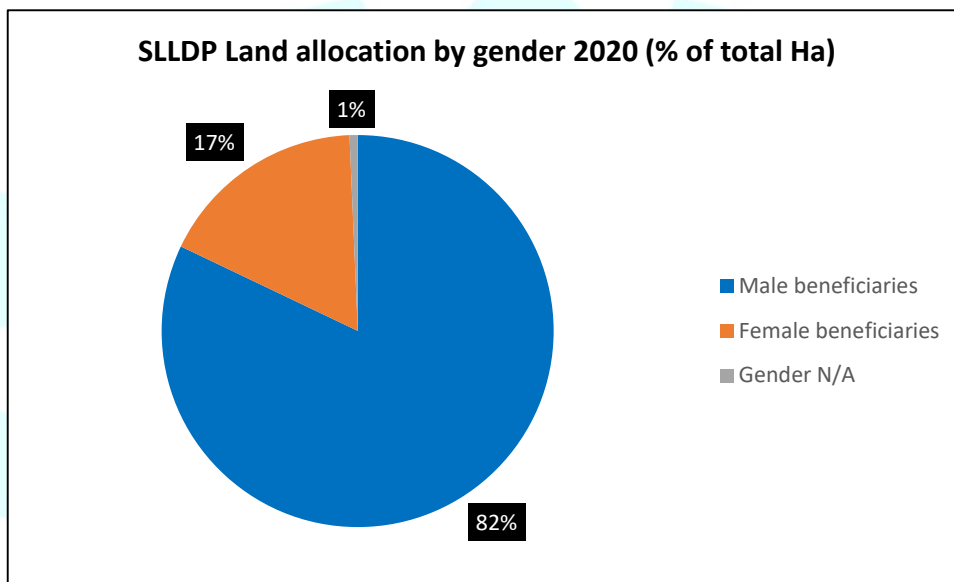


Table 14: DALRRD presentation – SLLDP land allocation by gender 2020

SLLDP land allocation by gender 2020			
	Area (Ha)	Average Ha per person	% of total land allocation
Male beneficiaries	122,216	328	82.1%
Female beneficiaries	25,665	155	17.2%
Gender N/A	1,007	201	0.7%
<b>Total</b>	<b>148,888</b>		

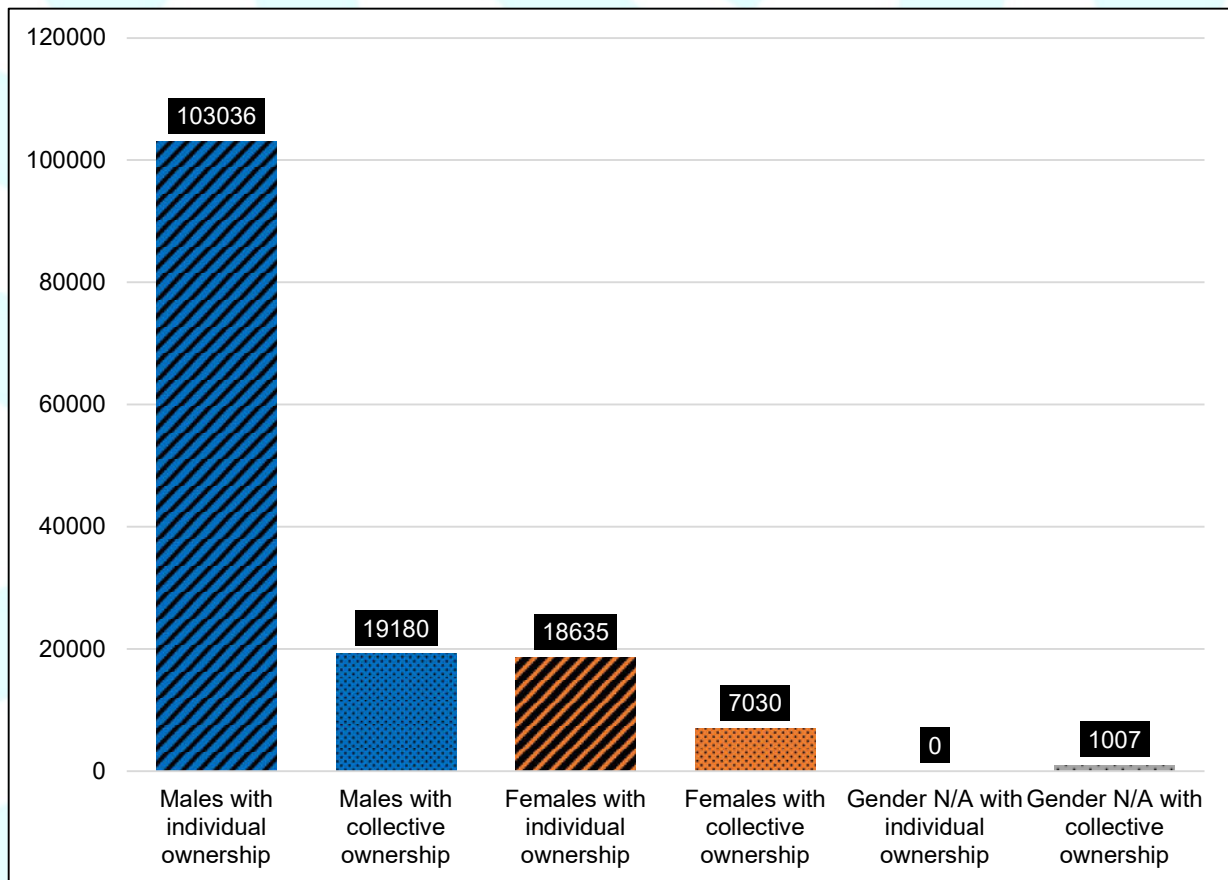
The beneficiary split and land allocation is more unequal still when it is broken down into gender and *ownership type*, i.e. into whether they are i) a man with individual ownership, ii) a man with collective ownership, iii) a woman with individual ownership, or iv) or a woman with collective ownership. Men were equally split between individual ownership (187 men, 34.4% of total beneficiaries, 50.1% of men) and collective ownership (186 men, 34.2% of total beneficiaries, 49.9% of men). In contrast, 83.1% of women had collective ownership, with all of these women part of a collective that included men. This suggests that in the vast majority of cases women were only beneficiaries when men also benefitted.

Males with individual ownership also received the vast majority of the land allocation: 10, 3036 Ha or 69% of the total allocation. In comparison, women with individual ownership received



18,635 Ha (12%) and women with collective ownership 7030 (5%). Women with collective ownership received on average the lowest amount of land (50.9 Ha on average). This emphasises the point made above that equitable access to land is not just about *how many* women benefit from redistribution but also *how much* land they receive relative to others.<sup>76</sup>

*Graph 17: DALRRD presentation – SLLDP land allocation 2020 by gender and ownership type (Ha)*



76

*Graph 18: DALRRD presentation – SLLDP Land allocation 2020 by gender and ownership type (%)*

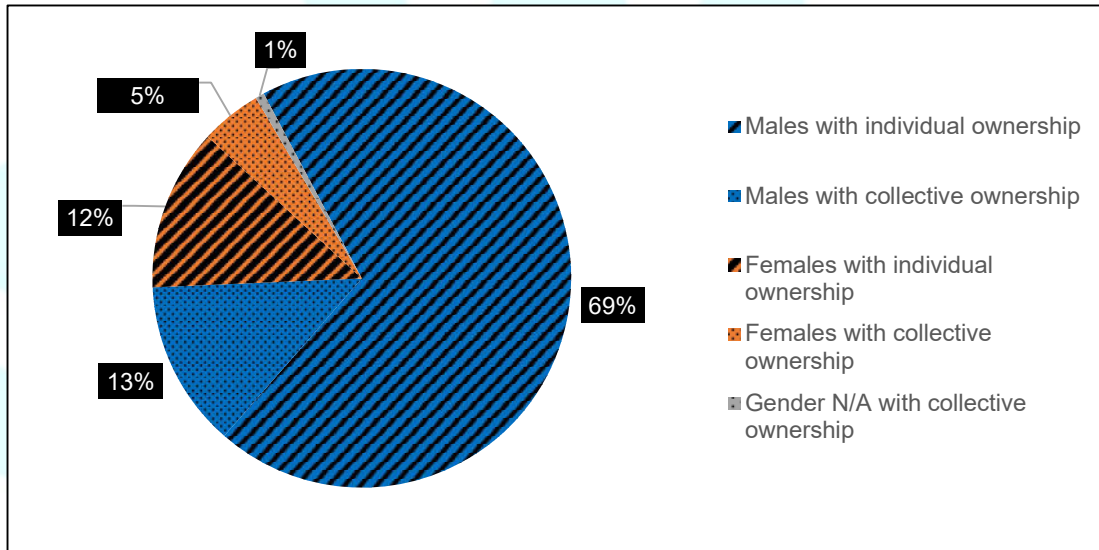
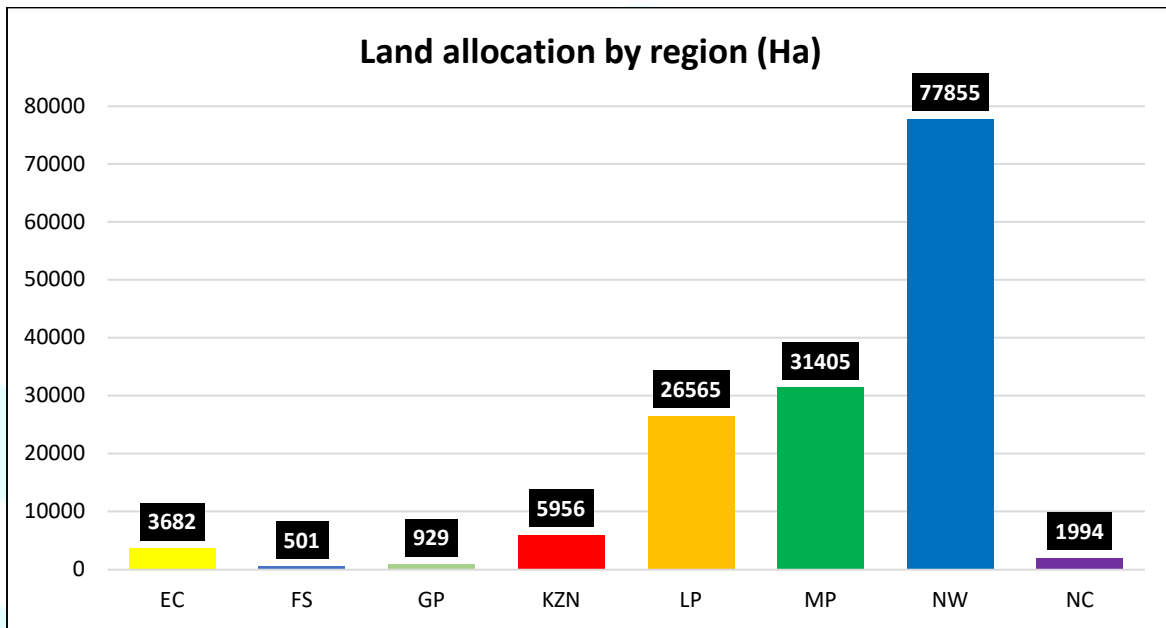


Table 15: DALRRD presentation – SLLDP land allocation 2020 by gender and ownership type

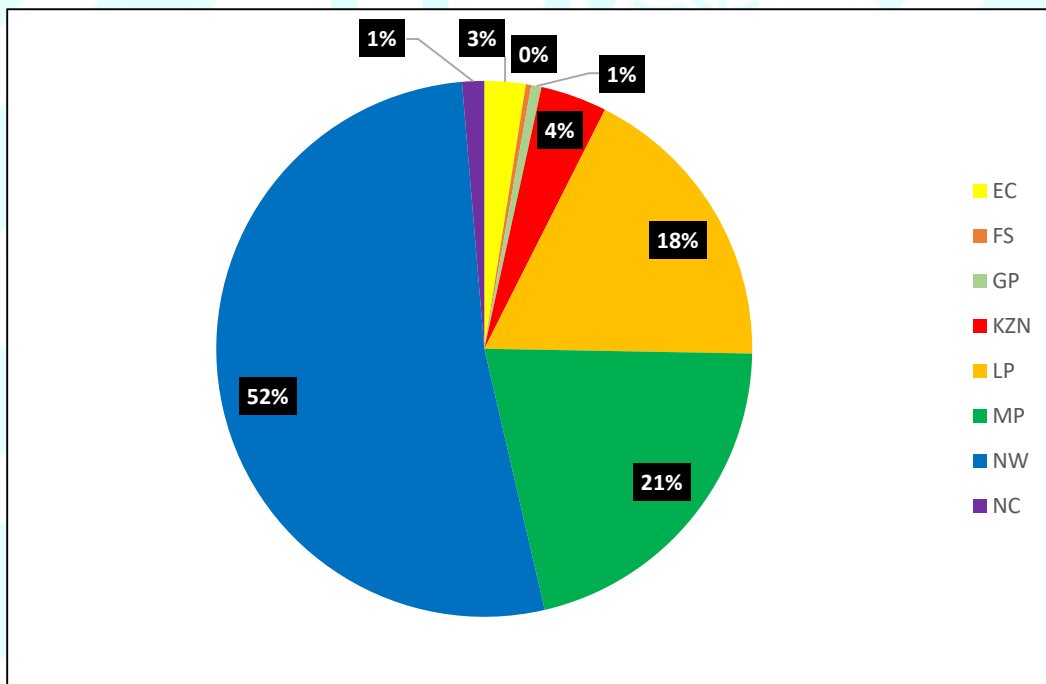
Land allocation by gender and ownership type				
	Total area allocated (Ha)	Average area per person	Area allocated as % of total allocation	Area allocated as % of allocation for that gender
Individual owner	121671	565.9		
Collective owner	27217	82.72661064		
Males with individual ownership	103036	551.0	69.2%	84.3%
Males with collective ownership	19180	103.1	12.9%	15.7%
Females with individual ownership	18635	665.5	12.5%	72.6%
Females with collective ownership	7030	50.9	4.7%	27.4%
Gender N/A with individual ownership	0	0.0	0.0%	0.0%
Gender N/A with collective ownership	1007	201.4	0.7%	100.0%
<b>Total</b>	<b>148888.0</b>			

The regional distribution of the allocation was also very concentrated with three regions accounting for 91% of the allocation: North-West (52%), Mpumalanga (21%), and Limpopo (18%). Women only received 1% of the land allocated in Mpumalanga, but did receive 47% of the land allocated in KZN where the distribution was the most equitable.

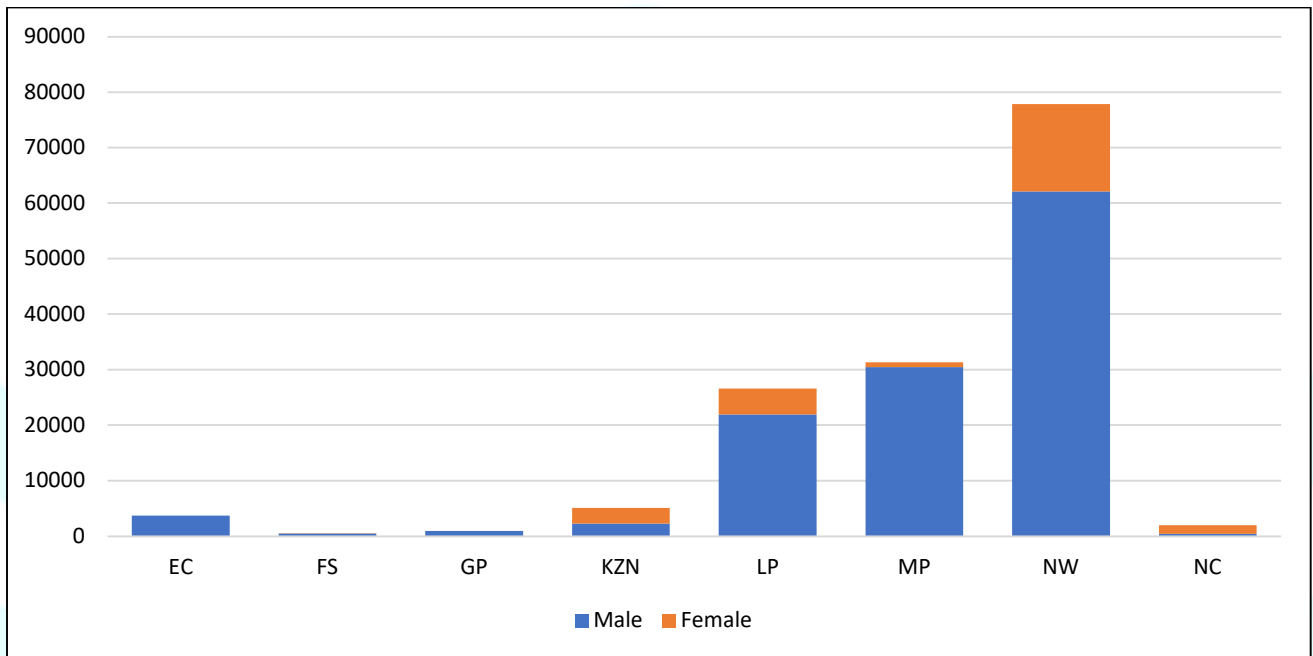
Graph 19: DALRRD presentation – SLLDP land allocation by region (Ha)



Graph 20: DALRRD presentation – SLLDP land allocation by region (%)



Graph 21: DALRRD presentation – Land allocation by region and gender (Ha)



Graph 22 and 23: DALRRD presentation – Male and female land allocation by region (% of total allocation for gender)

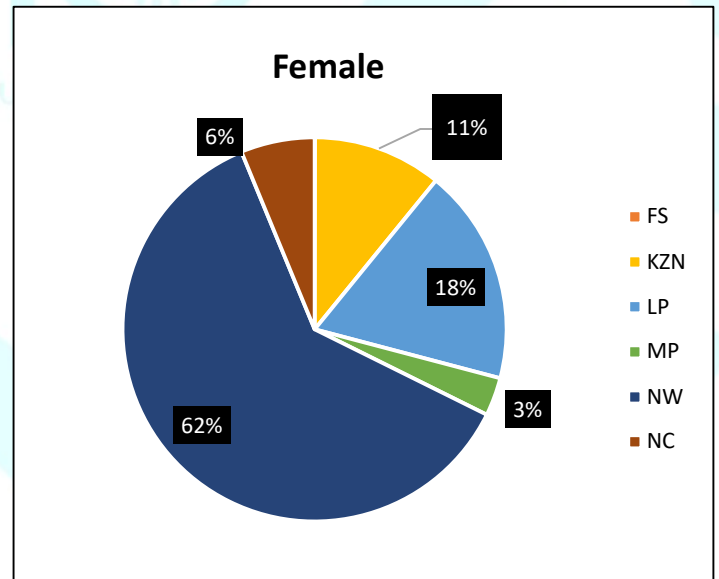
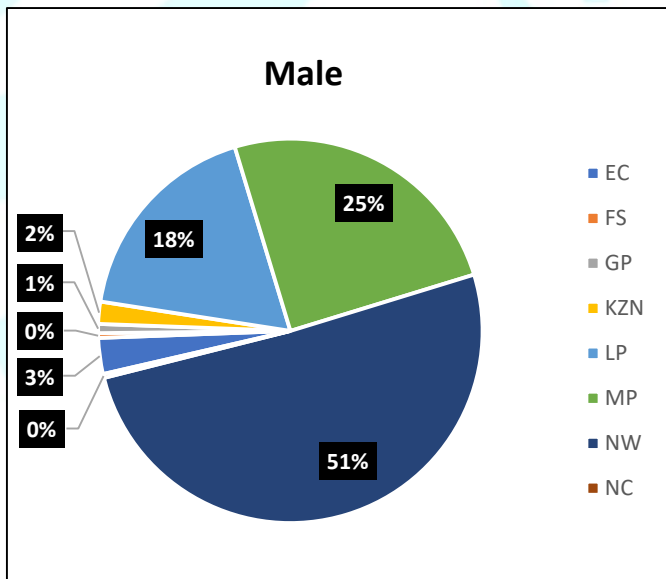




Table 16: DALRRD presentation – SLLDP land allocation by region and gender 2020

SLLDP Land allocation 2020 by region and gender								
	Male				Female			
	Area (Ha) allocated	Allocation as % of total allocation for males	Allocation as % of regional allocation	Allocation % of total area allocated	Area (Ha) allocated	Allocation as % of total allocation for females	Allocation as % of regional allocation	Allocation % of total area allocated
Eastern Cape	3682	3%	100%	2%	0	0%	0%	0%
Free State	496	0%	99%	0%	5	0%	1%	0%
Guateng	929	1%	100%	1%	0	0%	0%	0%
Kwazulu-Natal	2278	2%	38%	2%	2788	11%	47%	2%
Limpopo	21889	18%	82%	15%	4676	18%	18%	3%
Mpumalanga	30461	25%	97%	21%	826	3%	1%	1%
North West	62080	51%	80%	42%	15774	61%	20%	11%
Northern Cape	399	0%	20%	0%	1595	6%	80%	1%
<b>Total for gender</b>	<b>122216</b>			<b>Total for gender</b>	<b>25665</b>			
<b>Total Land allocated</b>	<b>147881</b>							

## 1 Household 1 Hectare (1HHiHA) Performance 2016 – 2020

Data on the impact of 1HHiHA is drawn from two sources. The first is a PowerPoint presentation by the DALRRD to the Committee on 10 September 2019.<sup>77</sup> It summarises the performance of 1HHiHA from 2016 to March 2019, breaking down into household beneficiaries by gender and province. The second is the DALRRD's Annual Report from 2019/20 which provides the total number of households beneficiaries, and the number of female-headed households, for the year 2019/20 but does not break this down into provinces. This data has been combined to create the summary tables and graphs discussed here.

There have been 7848 household beneficiaries from 1HHiHA from 2016 – 2020, with 3892 female-headed beneficiaries comprising exactly 50% of the total. The policy has equitably

<sup>77</sup> The appearance is available here: <https://pmg.org.za/committee-meeting/28844/>.

benefitted women with female-headed houses comprising 50% of the beneficiaries every year. This is reassuring given that the policy was promoted by the Commission for Gender Equality as a way of increasing gender equality in land reform.<sup>78</sup>

However, in 2019/20<sup>79</sup> there was a sharp drop in the overall number of beneficiaries, with only 60 beneficiaries. In the report the Department's explanation for this is:

*The process of beneficiary mobilisation was cumbersome, and this led to serious delays.*

*In the last Quarter of the financial year under review, the Branch took a decision not to approve new projects as it was felt that the spending would not take place by the end of the financial year.*

We assume that the policy may have been dropped for future years as the DALRRD's 2021/22 Performance Plan and the 2020-25 Strategic plan do not mention it in their target indicators, whereas it was included in previous years. Given 1HHiHA's relative success in redistributing land to women – compared to other programmes – it is perplexing why this policy has not been prioritised by the Department.

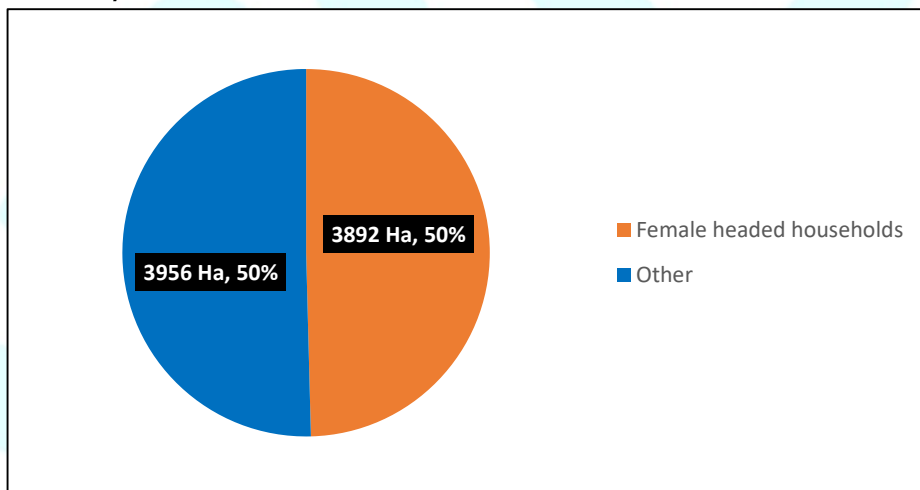
LEGAL RESOURCES CENTRE

---

<sup>78</sup> See the Commission for Gender Equality's report and briefing to the Rural Development and Land Reform Committee on 28 October 2015 where they promote the policy, on PMG [here](#).

<sup>79</sup> DRDLR Annual Report 2019/2020, available at: <https://www.dalrrd.gov.za/index.php/publications/15-annual-report?download=490:drdlr-annual-report-2019-2020>

Graph 24: DALRRD presentation – 1HH1HA: 2016 – 2020 Household beneficiaries (number, %)



Graph 25: DALRRD presentation – Number of household beneficiaries from 1HHiH 2016-2020

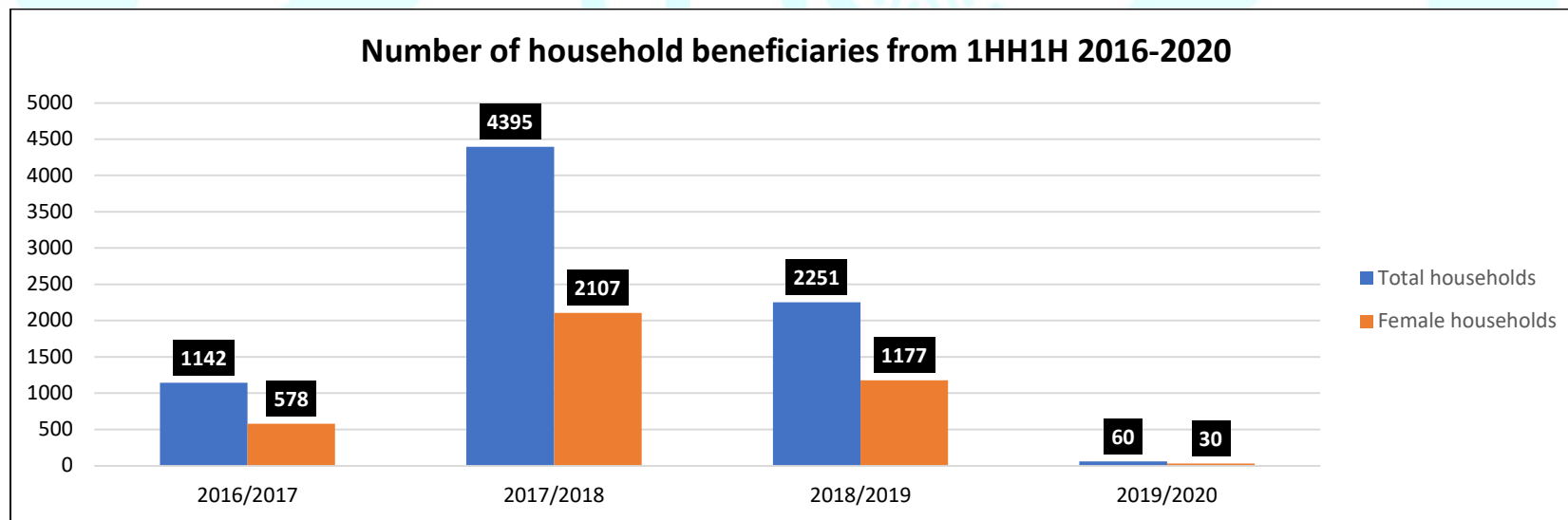


Table 17: DALRRD presentation – 1HH1H : 2016 – 2020

1 Hectare 1 Household Performance: 2016 – 2020										
Year	2016/2017		2017/2018		2018/2019		2019/2020		4 Years Totals	
Households Heads	Female	Total Households	Female	Total Households	Female	Total Households	Female	Total Households	Female	Grand Total Households
Eastern Cape	0	0	113	267	211	446	N/A	N/A	324	713
Free State	0	0	66	112	377	694	N/A	N/A	443	806
Gauteng	0	0	49	109	2	4	N/A	N/A	51	113
KwaZulu Natal	0	0	351	702	323	601	N/A	N/A	674	1303
Limpopo	578	1142	714	1408	59	113	N/A	N/A	1351	2663
Mpumalanga	0	0	375	757	0	0	N/A	N/A	375	757
North West	0	0	54	181	0	0	N/A	N/A	54	181
Northern Cape	0	0	365	826	165	293	N/A	N/A	530	1119
Western Cape	0	0	20	33	40	100	N/A	N/A	60	133
<b>Grand Total</b>	<b>578</b>	<b>1142</b>	<b>2107</b>	<b>4395</b>	<b>1177</b>	<b>2251</b>	<b>30</b>	<b>60</b>	<b>3892</b>	<b>7848</b>

Table 18: DALRRD presentation 1HHiHA: 2016 – 2020 Female households (% of total beneficiaries)

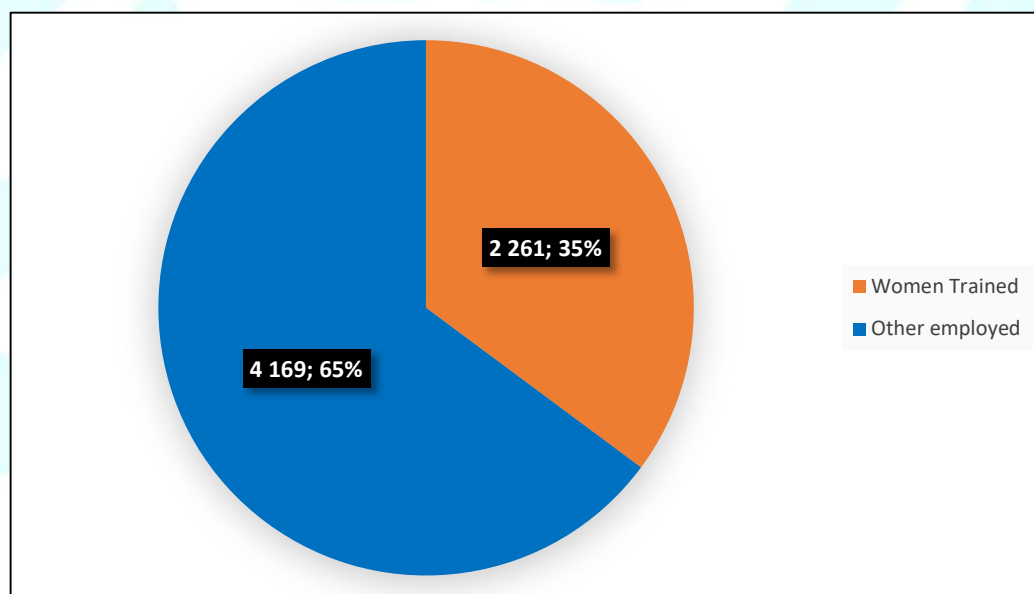
1HHiHA: 2016 – 2020 Female households (% of total beneficiaries)					
Year	2016/2017	2017/2018	2018/2019	2019/2020	4 Years Totals
Grand Total	51%	48%	52%	50%	50%

## Recapitalisation and Development Programme (RADP) 2009 –2018

The data on the RADP is taken from the same PowerPoint as the 1HHiHA statistics. A summary table is provided on how many farmers were trained and individuals given jobs through the RADP programme from 2009 – 2018. Yearly figures are not given.

The RADP’s impact has been moderately unequal with 2,261 women farmers trained, representing 35% of the 6,430 total farmers. The distribution regarding job creation is slightly better, with 5,497 women employed through the RADP, representing 40% of the total jobs created.

Graph 26: DALRRD presentation – Women trained in the RADP 2009-18 (No., %)





## ELITE CAPTURE

### PLAAS Report

In a December 2019 report, Mtero, Gumede & Ramantsima<sup>80</sup> noted that the focus of the SLLDP programme was on the commercial success of qualified, well-off beneficiaries and had the effect of redirecting state resources intended for the poor to the better off. Land reform thus provides an avenue for accumulation for those economically prosperous individuals diversifying into farming in order to accumulate more.

Mtero, Gumede & Ramantsima investigated 62 SLLDP projects in five provinces between May and November 2018 and found that most SLLDP farm beneficiaries were wealthy people interested in large-scale commercial farming to accumulate wealth.<sup>81</sup>

Beneficiaries selected had resources, knowledge, and information to engage in large-scale commercial farming; owned cattle and were able to mobilise financial and other agricultural resources; and were able to produce a viable business plan which showed potential for profits.

Smallholder producers, poor rural households and farm workers were overlooked because they lacked material resources, knowledge, and information to engage in large-scale commercial farming.<sup>82</sup> They noted that the SLLDP excluded poor men, women and youth who lacked experience and were not able to show a track record of commercial success.<sup>83</sup> It excluded the landless, the land poor, and smallholder producers. On the 62 farms, there was no possibility of subdivision to accommodate smallholder producers or landless households.<sup>84</sup>

---

<sup>80</sup> Mtero, Gumede & Ramantsima (2019) Elite Capture in Land Redistribution in South Africa. PLAAS Research Report 55.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

Mtero, Gumede & Ramantsima suggested that the exclusive focus on large-scale commercial production in land reform undermined equitable access to land. A focus on commercialisation excluded the land needs of the vast majority who do not require land for high-value, medium-scale, and large-scale commercial farming. It excluded women and men who may need land to support multiple livelihoods, enhance household food security, and alleviate poverty; and who live in communal areas, on farms or in urban areas.<sup>85</sup>

In the aforementioned study of the 62 SLLDP farms, it was found that only 19% of these farms were allocated to women while 50 (81%) of the 62 farms were allocated to men. Furthermore, half of the farms allocated to men were allocated to elite men. These were urban-based businessman, traders, and rural transport operators with significant investments outside farming. Nine farms allocated to men were allocated to farm worker groups and community cooperatives led by men. Of the 12 (19%) farms allocated to women, one farm was allocated to a community cooperative led by women and one farm to a farm workers group led by women.

*Table 19: Allocation of 62 Farms by Gender (from findings by Mtero, Gumede & Ramantsima, 2019)*

	Number of Farms	Percentage
Males	50	81%
Female	12	19%
Total	62	100%

## Data on Leases from the Department

In response to the PAIA request made by the LRC to the Department, data was provided on all lessees who are current recipients of PLAS leases and Agricultural Leases. The data

---

<sup>85</sup> Ibid.

indicates that from the PLAS leases awarded, there were 1572 Category 3 business leases awarded (77%), 181 Category 2 business leases (9%), and only 76 Category 1 business leases awarded (4%). In terms of individual leases, there were 895 Category 3 individual leases awarded (70%), 210 Category 2 individual leases (16%) and only 20 Category 1 leases (2%).

With regard to Agricultural State Land leases, there were 28 Category 3 business leases awarded (90%), 1 Category 2 lease awarded (3%) and 2 Category 1 business leases awarded (7%). There were 79 Category 3 individual leases (66%), 5 Category 2 (4%), and 4 Category 1 individual leases (3%).

According to the Proactive Land Acquisition Strategy, the categories are defined as follows:<sup>86</sup>

Category 1: Households with no or very limited access to land, even for subsistence production

Category 2: Small-scale farmers who are farming or intend to farm for subsistence purposes and sell part of their produce in local markets

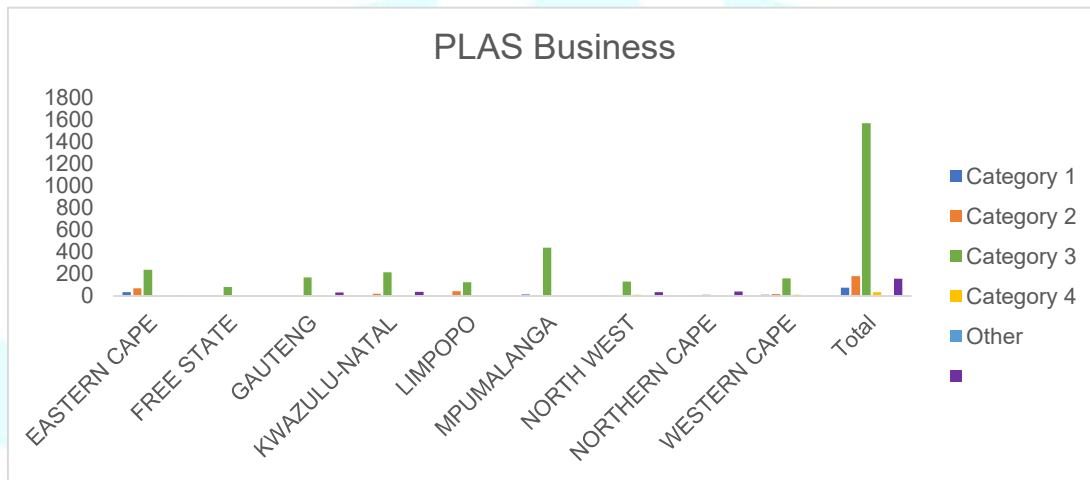
Category 3: Medium to large-scale commercial farmers who have already been farming commercially at various scales, but are disadvantaged by location, size of land and other resources or circumstances, and with real potential to grow, including small scale farmers who have been farming at subsistence level, selling part of their produce in local markets, who have gained reasonable experience to farm commercially and who intend to graduate to Category 3.

The data shows a definite bias towards medium to large-scale commercial farmers as Category 3 leases make up the vast majority of leases awarded by the State, as demonstrated in the graphics below.

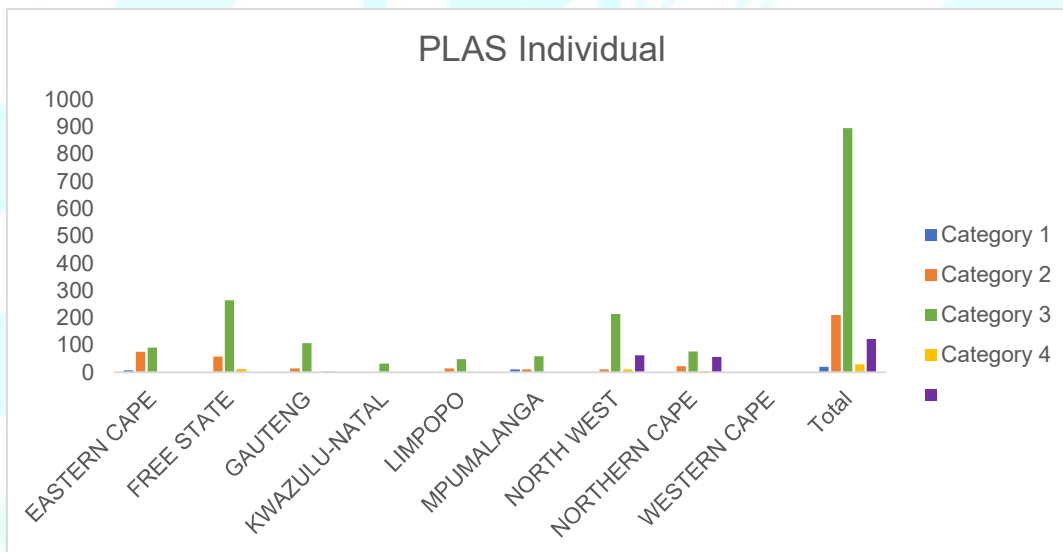
---

<sup>86</sup> Proactive Land Acquisition Policy Amended Version 2, 14 May 2019, section 2.3.

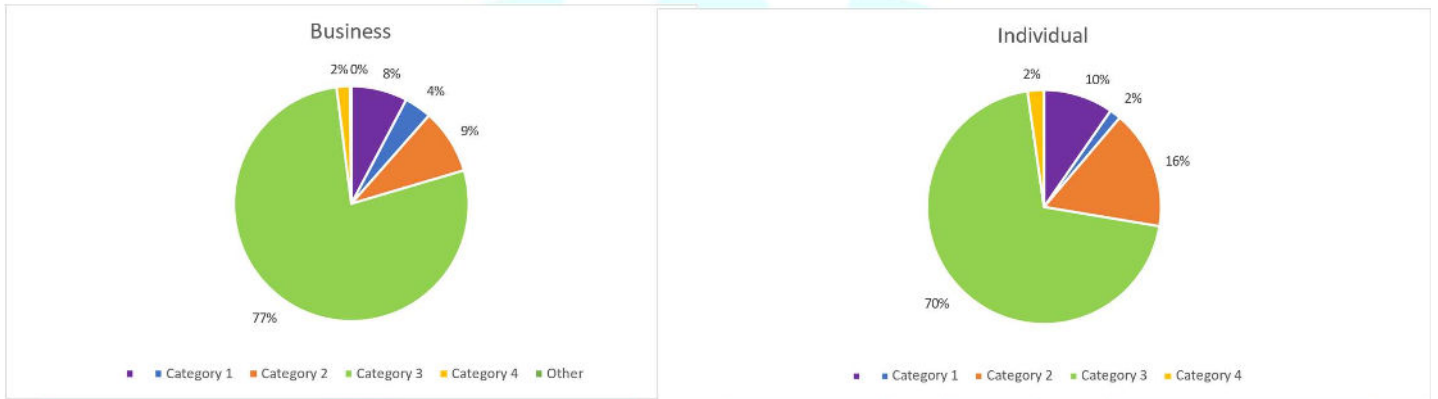
**Graph 27: PLAS Business leases per province**



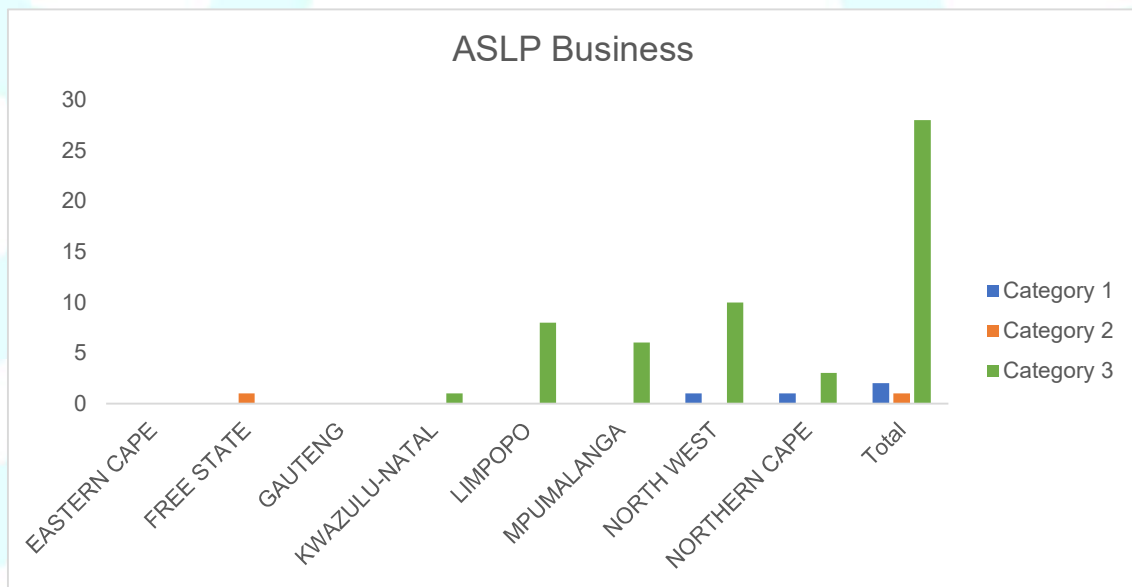
**Graph 28: PLAS Individual leases per province**



Graphs 29 and 30: PLAS Business and Individual leases (%)

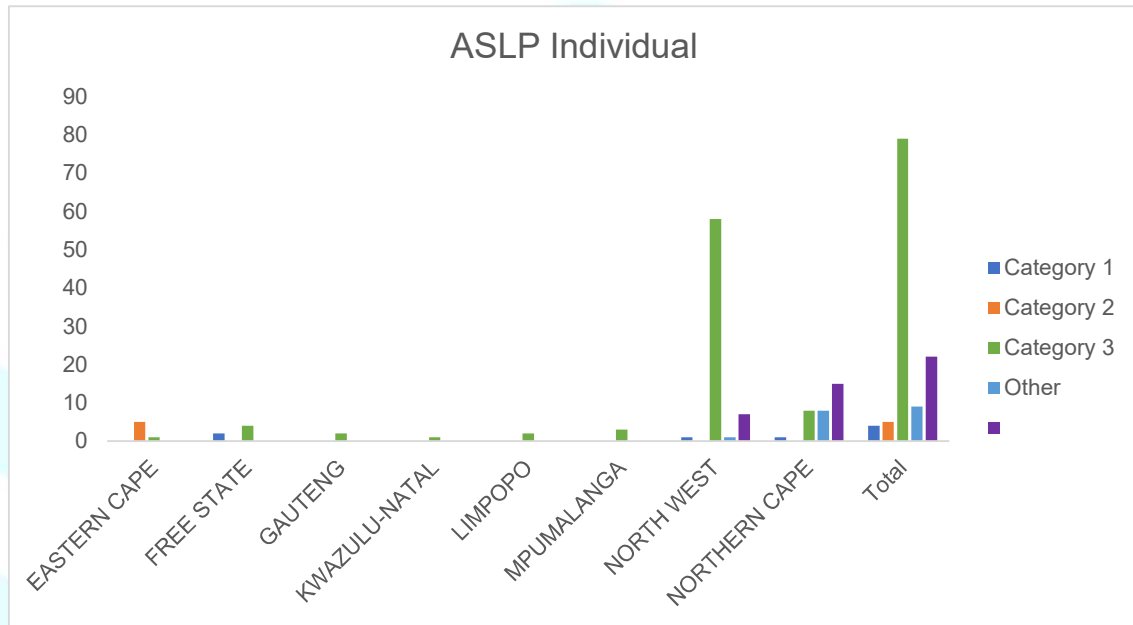


Graph 31: ASLP Business leases per province

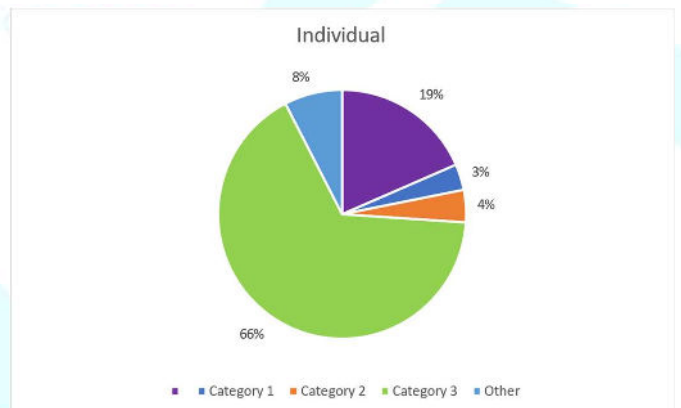
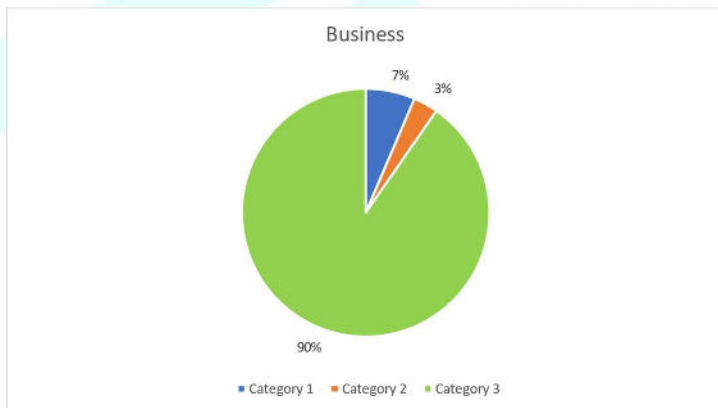




Graph 32: ASLP Individual leases per province



Graphs 33 and 34: ASLP business leases and individual leases (%)



## Corruption

Corruption in land has been highlighted by the Special Investigation Unit (SIU), Corruption Watch and Oxpeckers International – among others. Most widely reported perhaps is the shady deal of the Mala Mala Game Reserve in 2016 where the state paid

R300 million more than the highest valuation of R700 million in a Land Restitution case.<sup>87</sup> In 2018, Parliament called for a forensic investigation into this deal.<sup>88</sup> However, as at the time of writing, no investigation seems to have taken place.

The SIU, an anti-corruption statutory body, produced the Final Report to the President of South Africa in respect of the National Department of Rural Development and Land Reform in March 2018.<sup>89</sup> Out of the 148 individual land reform projects the Unit had investigated between 2011 and 2017, one in every four was fraudulent. The investigation resulted in the state recovering more than 24 farms, valued at more than R382 million. The SIU report recommended that 42 people be prosecuted for fraud.<sup>90</sup>

Based on their research of SLLDP farms, Mtero, Gumede & Ramantsima<sup>91</sup> noted that state bureaucrats and politically powerful men captured resources through soliciting and paying bribes, and through fronting. Practices of fronting involve arrangements and acts wherein an individual presents themselves as the supposed beneficiary, but the actual beneficiary is someone – often part of the elite – who is not entitled to benefit under the programme or act. Fronting has occurred under the SLLDP when the supposed beneficiary occupies a farm, but the individual is holding the farm on behalf of a state official who is the actual beneficiary not entitled to it.<sup>92</sup>

Examples of bribery include one case of a farmer who wished to sell one of his three farms to the government in order to benefit a farm manager in his employment. The farmer approached officials of the Department with his proposal. The officials attempted to

---

<sup>87</sup> Nicky Rehbock, 'Murky deals, exploited communities' available at: <https://oxpeckers.org/2016/01/murky-deals-exploited-communities/>, accessed 14 February 2024.

<sup>88</sup> Corruption Watch 30 July 2018, Forensic probe to be launched into Malamala land claim <https://www.corruptionwatch.org.za/forensic-probe-launched-malamala-land-claim/>.

<sup>89</sup> Final Report to the President of South Africa His Excellency, President MC Ramaphosa in respect of the National Department of the Rural Development and Land Reform – The application for and award of grants, the transfer of land, or the payment funds to beneficiaries and the administration thereof by the Department, under the Department's Land Reform Programme, March 2018.

<sup>90</sup> Tajna Biscevic, January 2019, South Africa: Corruption Alleged in Land Reform Scheme, <https://www.occrp.org/en/daily/9164-south-africa-corruption-alleged-in-land-reform-scheme>.

<sup>91</sup> Mtero, Gumede & Ramantsima (2019) Elite Capture in Land Redistribution in South Africa. PLAAS Research Report 55.

<sup>92</sup> Ibid.

pressure the farmer to inflate his asking price and when the farmer refused to inflate the price the sale fell through.<sup>93</sup>

In response to the recommendation by the Panel on Land Reform on beneficiary selection, the Beneficiary Selection and Land Allocation Policy was finalised by the Department in 2021. The objective of the policy is to provide a uniform, fair, credible and transparent process for beneficiary selection in land allocation.<sup>94</sup>

One of the policy principles is to advance access to land for women and youth. While all disadvantaged South Africans can apply to be a beneficiary, target groups are prioritised. Women with agricultural skills and experience, those willing to acquire such skills, and female-headed households with none or very limited access to land are among the target groups. Under the section "Rationing of Resources", the Policy proposes that 50% of land will be allocated to smallholders and that no less than 50% of this land should be allocated to women, while not less than 40% to youth, and 10% to persons with disabilities.

A reading of this policy does not indicate a shift to farm dwellers, labour tenants and subsistence farmers; and it seems to suggest that the focus on smallholder farmers is in line with commercialisation and assistance to graduate to medium and large-scale farming, hence continuing to privilege an elite.

The process of beneficiary selection was to have started at the end of 2021 and thus far there appears to be little transparency, making it difficult to ascertain whether recommendations to reduce corruption and address the various types of land demands and land users are being implemented, considered or recognised. The data received from the Department highlights a continued focus on large-scale commercial farming.

---

<sup>93</sup> Mtero, Gumede & Ramantsima (2019) Elite Capture in Land Redistribution in South Africa. PLAAS Research Report 55, 32.

<sup>94</sup> National Policy for Beneficiary Selection and Land Allocation (2020) Retrieved from: <https://www.dalrrd.gov.za/doaDev/sideMenu/Land%20Redistribution%20and%20tenure%20reform/APPROVED%20BSLAP.pdf>.

Current land reform policy, as set out in the DALRRD Strategic Plan for 2020-2025,<sup>95</sup> is framed within the Medium-Term Strategic Framework (MTSF) priority area of economic transformation and job creation and is aimed at enhancing productivity and economic development. Land Reform is defined in the 2020-2025 Strategic Plan as “the equitable allocation of land ownership and land use rights to historically disadvantaged South Africans to enhance land productivity and economic development.”<sup>96</sup>

Hence, the privileging of elites continues, with land productivity and economic development framing even the support to smallholders in the 2020-2025 Strategy. Support to smallholders is geared to assisting their commercialisation and to graduate to medium-scale producers. This will exclude the majority of women who engage in subsistence agriculture, who are not focused on commercial turnover, and might not be interested in graduating to medium-scale production.

The Strategic Plan defines a smallholder producer as “a venture undertaken by an individual or business entity for the purpose of household consumption and deriving a source of income from agriculture activities along the value chain.” These are usually new entrants with an annual turnover ranging from R50 001 – R1 million per annum. The plan notes that commercialisation “refers to where a smallholder producer graduates to a medium/large scale commercial producer.” Graduation refers to where a producer showed movement in the terms of turnover within a period of five years.<sup>97</sup>

---

<sup>95</sup> DALRRD Strategic Plan 2020-2025, available at: <https://www.dalrrd.gov.za/index.php/publications/46-strategic-plan?download=377:strategic-plan-2020-2025>.

<sup>96</sup> DALRRD Strategic Plan 2020-2025, available at: <https://www.dalrrd.gov.za/index.php/publications/46-strategic-plan?download=377:strategic-plan-2020-2025>.

<sup>97</sup> DALRRD Strategic Plan 2020-2025, available at: <https://www.dalrrd.gov.za/index.php/publications/46-strategic-plan?download=377:strategic-plan-2020-2025>

## DATA TRANSPARENCY ISSUES

The various Departments that have been responsible for land reform over the years – the DLA, DRDLR, and DALRRD – have had transparency and accountability issues highlighted in several reviews of land reform policy, laws and practices. These issues have been raised in relation to beneficiary selection and concerning inconsistent and inadequate statistics on numbers of hectares and people reached. A gender breakdown of beneficiaries has seldom been provided.

Furthermore, when disaggregation is attempted, it is difficult to decipher the information provided. The categories of disaggregation are extremely confusing, and the numbers do not seem to add up. It is as if these are deliberate measures to avoid transparency and accountability.

Apart from the statistics on 1HH1A used above, the DALRRD's Annual Reports and Performance Plans do not contain any useful statistics on the impact of land redistribution on women.

The Reports and Plans provide a set of 'indicators' for each programme that are meant to measure the Department's performance. These indicators erratically change year on year, which makes it difficult to assess performance over time. They are also missing the most important information, e.g. the absolute number of hectares transferred is not included. From a reading of the report you cannot answer the basic question 'how many hectares in total were redistributed this year?' The indicators in the 2019/20 report were:

- i. Number of hectares acquired,
- ii. Number of hectares allocated to smallholder farmers,
- iii. Number of smallholder farmers beneficiaries allocated land,
- iv. Number of smallholder farms supported through the Land Development Support Programme,
- v. Number of households supported under 1HH1A,



- vi. Number of Communal Property Associations (CPAs) supported to be compliant with legislation,
- vii. Number of labour tenants applications settled,
- viii. Number of hectares allocated to farm dwellers and/or labour tenants.

Whilst these may be relevant, they miss out key information and don't assess the Department's performance at redistributing land to any of its own target groups.

The constantly changing indicators is arguably evidence which shows that the Department has free discretion to pick and choose the criteria by which its performance is measured, and the policies which it adopts to meet these criteria.

The Performance Plans do make some superficial commitments to targeting previously disadvantaged groups. For example, in the 2020-22 Performance Plan<sup>98</sup> they have included a new indicator that will assess the percentage of hectares distributed to women and set a 50% target.

What matters is not just that the Department sets these targets, but that they actually meet them, which it has consistently failed to do in the past.

In May 2022, the DALRRD provided the following statistical information on Redistribution and Tenure Reform<sup>99</sup> represented in the table below in response to a PAIA request by the LRC.

*Table 20: Redistribution and Tenure Reform 1994 - March 2009 (from DALRRD response to PAIA request by LRC)*

	1994 - March 2009
Beneficiaries	284 351
Female	62 811

<sup>98</sup> DALRRD Annual Performance Plan 2021-2022, available at: <https://www.dalrrd.gov.za/index.php/publications/14-annual-performance-plans?download=318:annual-performance-plan-2021-2022>

<sup>99</sup> Redistribution and Tenure Reform 1994-March 2009.

Households	123 507
Youth	29 004
Disabled	707

In the case of the statistics for 1994 to March 2009, it would seem "Households" are counted as part of the total beneficiaries – although, the total of 216 029 when adding the categories "Female", "Households", "Youth" and "Disabled" falls short of the 28 4351 beneficiaries at the top of the table.

Definitions of each category are vital in order to make sense of the information and to understand the proportion of beneficiaries who are women. In other words, if "Households", "Youth" and "Disabled" also include women, then the number of females should be higher than the 62 811 listed in the category "Female". And finally, where are the men?

The DALRRD 2020-2025 Strategic Plan makes mention that the Department has adopted Gender Responsive Budgeting as proposed by the Department of Women and the Monitoring Department in the Presidency. Thus far there is little evidence of improvement in monitoring, or of improved transparency and accountability of gender responsive budgeting.

## IV TENURE REFORM

Government's Tenure Reform Programme has failed to meet its intended purpose of providing secure tenure to the estimated 16 million residents of the former Bantustans and to the estimated 3 million farm dwellers.

Existing power elites in farming areas and the Bantustans – commercial farmers and traditional leaders respectively – continue to be privileged by state policy and by custom and tradition; and are able to make the democratic order work to entrench their interests, despite civil society attempts to dislodge such power.<sup>100</sup>

The Parliamentary Portfolio Committee on Agriculture, Land Reform and Rural Development heard, in March of 2022, that farm workers were continuing to experience evictions, and that magistrates were granting farmers' requests for evictions, without following required legal provisions.<sup>101</sup>

Community activists, academics and lawyers attending the August 2022 conference on communal tenure co-hosted by the LRC, entitled "The Failed Promise of Tenure Security: Customary Land Rights and Dispossession"<sup>102</sup> noted that the customary and informal land rights of the 18 million people living in the former Bantustans continues to be under threat, as a result of state policies and legislation that favours elites, including traditional leaders.<sup>103</sup> Delegates at the conference agreed that the state is dysfunctional and corrupt and that government officials tasked with implementation collude with either chiefs or companies to dispossess people.

---

<sup>100</sup> Meer, S, 2007. Women's interests, economic liberalization and the Land Question in South Africa. Unpublished paper.

<sup>101</sup> Working and living conditions of farmworkers: stakeholder engagement Agriculture, Land Reform and Rural Development 25 March 2022. <https://pmg.org.za/committee-meeting/34671/>

<sup>102</sup> The conference was jointly convened by the Land and Accountability Research Centre (LARC) at UCT, the Legal Resources Centre (LRC), the Institute for Poverty, Land and Agrarian Studies (PLAAS) at UWC and the Society, Work and Politics Institute (SWOP) at Wits.

<sup>103</sup> Nolundi Luwaya, Constance Mogale, Ruth Hall, Dineo Skosana, Wilmien Wicomb, Zenande Booii, Tshepo Fokane, Nokwanda Sihlali and Sienne Molepo, 22 August 2022, 'It is our land' – rural residents reject violent dispossession and call for society-wide solidarity, in Daily Maverick <https://www.dailymaverick.co.za/article/2022-08-22-it-is-our-land-rural-residents-reject-violent-dispossession-in-bantustans/>

The conference highlighted that current struggles in communal areas take place over land dispossession reminiscent of apartheid and colonialism, as chiefs – in collusion with government officials – make deals with mining companies to hand over community land. In some instances, community activists have been assassinated when resisting land take-overs by chiefs and officials in collusion with mining companies. In some cases, community members have had to flee their homes when threatened with violence.<sup>104</sup>

Violent struggles take place over urban as well as rural land; and in August 2022 a community leader from the shack dweller organisation, Abahlali baseMjondolo was the third community leader to be assassinated in the urban-located eKhenana Settlement in Durban.<sup>105</sup>

In these scenarios, poor women are further disadvantaged as a result of their gender subordination, their lack of social power as compared with men of their race and class, and because of their responsibility for reproduction of families and communities. Women and youth make up the larger proportion of protestors, and in some cases, women constitute a sizeable proportion of the executive committee members of urban-based movements. However, men are the visible and vocal leaders and women are said to have little influence in decision making within these movements.

Women having security of tenure is imperative to advancing social outcomes. Evidence has shown that when women and men have equal access to assets, it improves the household and community.<sup>106</sup> Women having greater control over household resources benefit children with increased spending on food and education. For communities, there are more opportunities to create and grow businesses when women have collateral to secure financial credit.

---

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> Advancing Quest for Women's Joint Ownership and Control of Marital Property (LRC Webinar).

## URBAN LAND

Government's land reform programme has been entirely rural focused and has not addressed urban land needs to date. Yet there is a dire need for land for housing, and settlement for poor urban residents across the country.

Under the Housing Act,<sup>107</sup> there are general principles outlining that the national, provincial, and local spheres of government must promote measures in housing developments that are aligned with gender equality. These include measures that prohibit unfair discrimination based on gender by all those involved in the housing development process. The general principles of housing development further necessitate government promoting the housing needs of marginalised women.<sup>108</sup> This does not always materialise in practice.

In informal settlements, communities struggle to resist local government attempts to move them to places far from cities. In addition to housing within the city, they demand access to basic services and lives of dignity. Residents in one settlement pointed out that relocation to land 35 kilometers from the city will mean greater hardship as the wage a casual worker will earn for a day's work will be just enough to pay for transport to and from work.

In December 2020, the LRC, alongside other organisations, approached the Presidency, calling for the release of military land at Ysterplaat, Wingfield and Youngfield, which would allow for 67 000 homes to be built closer to work opportunities for working class, poor individuals. The aim of this was to dismantle apartheid legacy and reduce Cape Town's housing backlog.<sup>109</sup> Following this intervention, 32 hectares at the Wingfield Military Base have been released to the Housing Development Agency for the purpose of building mixed-use housing.

---

<sup>107</sup> 107 of 1997.

<sup>108</sup> Housing Act 107 of 1997, section 2. Retrieved from: [https://www.gov.za/sites/default/files/gcis\\_document/201409/a107-97.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a107-97.pdf)

<sup>109</sup> GroundUp, "Calls Mount for Unused Military and State Land to be Released for Housing" Available at: <https://www.groundup.org.za/article/calls-mount-for-unused-military-and-state-land-to-be-released-for-housing/> [Accessed 5 June 2023].



The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE)<sup>110</sup> was passed to prohibit unlawful evictions of unlawful occupiers and to regulate a proper procedure for evictions. An unlawful occupier is defined in the Act as a person who occupies the land without the expressed or implied consent of the landowner or person in charge.<sup>111</sup> Unlawful occupiers also include individuals who do not have any other right to occupy the land.

PIE contains provisions for special consideration for the rights of vulnerable groups including households headed by women. Under section 4, a court may grant an eviction if it is just and equitable to do so. However, all relevant circumstances must be taken into consideration, including the rights and needs of the elderly, children, disabled persons and households headed by women.

Research conducted by the Socio-Economic Rights Institute<sup>112</sup> and practical experience of the LRC has shown that the Magistrates' courts are failing to comply with the provisions of PIE which require personal circumstances to be considered and for temporary alternative accommodation to be provided in instances where eviction may result in homelessness.

Remnants of apartheid legislation still permeate urban settlements today and threaten the security of tenure of women. The Upgrading of Land Tenure Rights Act<sup>113</sup> was introduced in 1991 as a means of addressing colonial injustices by automatically converting land tenure rights to full ownership for Black South Africans. However, in the case *Rahube v Rahube*,<sup>114</sup> a woman faced eviction by her brother because the deed of grant of her home identified him as the owner. Ms Rahube and her siblings moved into a house in the 1970's. A Certificate of Occupation was issued in terms of the Black Administration Act. Mr Rahube, the brother, was subsequently named as the occupier on

---

<sup>110</sup> 19 of 1998.

<sup>111</sup> Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998. Retrieved from: [https://www.gov.za/sites/default/files/gcis\\_document/201409/a19-98.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a19-98.pdf).

<sup>112</sup> Nerishka Singh & Yvonne Erasmus, 'An analysis of eviction applications in the Johannesburg Central Magistrate's Court and their compliance with the law' (March 2022). Available at: [https://www.seri-sa.org/images/SERI\\_Mag\\_Court\\_Evictions\\_report\\_FINAL\\_HIGH\\_RES\\_FOR\\_WEB\\_UPLOAD.pdf](https://www.seri-sa.org/images/SERI_Mag_Court_Evictions_report_FINAL_HIGH_RES_FOR_WEB_UPLOAD.pdf)

<sup>113</sup> 112 of 1991.

<sup>114</sup> 2019 (2) SA 54 (CC).

the Deed of Grant. The Upgrading of Land Tenure Act automatically converted this into a right of ownership. Mr Rahube then sought to evict his sister on the basis that he was named the owner of the home. The court found that the Upgrading Act was unconstitutional as it did not allow other occupants or affected parties the opportunity to make submissions when title was converted to ownership. Therefore, as only men were previously recognised as the head of the household, their land rights were acquired under a discriminatory legislative regime and the new Act perpetuated this discrimination.

In a recent case, *Shomang v Motsose*,<sup>115</sup> the court had to deal with a family house rights agreement, in terms of which a woman faced eviction. The property was designated for black occupation in terms of the Black (Urban Areas) Consolidation Act.<sup>116</sup> Ms Shomang's late grandfather was awarded a permit for the house from the municipal council in Soweto. After the death of Ms Shomang's grandfather, the residential permit was never transferred to a specific individual within the family. Mr Moloi, the son of Ms Shomang's grandfather's wife then moved onto the property. Both Mr Moloi and Ms Shomang made a claim to the property. At a council adjudication, a "family house rights agreement" was entered into between the parties where it was agreed that Mr Moloi would be appointed as custodian of the property subject to Ms Shomang and her descendants being granted full rights to the property. Upon the passing of Mr Moloi, his son was appointed executor of his estate. The son, who had never lived on the property, then threatened Ms Shomang with eviction. The court stated that for ownership to transform, what was needed is a more comprehensive range of rights, such as a property rights in a family home that can sometimes trump ownership. The court ordered that the house be registered in the name of Ms Shomang with a caveat on the title deed that it is a family house.

Discrimination against women sometimes permeates current housing policies today. In the case *Abdullah v City of Cape Town*,<sup>117</sup> The LRC challenged the City of Cape Town's housing allocation policy, the Housing Schemes Constructed by a Local Authority, on the basis that it was discriminatory against women. Under the National Housing Policy

---

<sup>115</sup> 2022 (5) SA 602 (GP).

<sup>116</sup> 25 of 1945.

<sup>117</sup> *Abdullah vs Abdullah*, Case No. EC09/2020.

beneficiaries could apply and would qualify for state subsidised housing prior to the Constitution coming into effect. It was implemented across different local authorities during the late 1980's until March 1998. The Policy did not recognise women as breadwinners of their families, and women were not recognised as beneficiaries. When housing units became available, women were not able to sign agreements with the City, and their details were not captured on the City database or billing system. When transfer of these housing units took place, the properties were only allocated to male beneficiaries, without naming female spouses as co-purchasers where they contributed to that household. This meant that women were especially vulnerable to eviction as they had no proof of co-ownership. Ms Abdullah was divorced from her husband and attempted to have the property transferred into her name. However, she faced hurdles with the Municipality as she was not reflected on the sale agreement. In February 2023, the Equality Court declared the City's housing policy inconsistent with the Constitution and discriminatory against women, in that it did not reflect female spouses as co-purchasers of the housing units. It also ordered that the Department implement a communications campaign so that similarly situated females are aware of the order.

The understanding of the urban tenure problem provided by the HLP and the Panel on Land Reform and the recommendations made by both panels are important contributions that need to be considered in addressing urban land needs of poor women and men.

The High Level Panel<sup>118</sup> noted in its 2017 report that urban land reform has been neglected by the land reform programme, despite its potential to underpin effective human settlement programmes. The HLP recommended that well-situated urban land should be prioritised for low-cost housing and services that target the poor to address the legacy of past exclusion and spatial inequality.

---

<sup>118</sup> Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (2017)  
[https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High\\_Level\\_Panel/HLP\\_Report/HLP\\_report.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf)

The Panel on Land Reform in its 2019 report called for the state to shift its perspective and to support municipalities to work in inclusive and democratic ways with social movements and organisations of the landless, homeless, backyard and shack dwellers.<sup>119</sup>

The Panel on Land Reform noted that 65% of South Africa's population live in towns and cities, yet the land needs of the urban poor continue to be unaddressed, and land reform had been equated with rural land and agriculture. The urban poor are vulnerable to evictions, most often by the state. Current RDP projects, the Panel noted, are located at great distances from towns and cities and entrench apartheid spatial patterns, inequality, and exclusion from economic opportunities.<sup>120</sup>

Due to scarcity of material in small towns and capacity constraints of contractors, the construction process for RDP projects has been slowed down.<sup>121</sup> The quality of RDP houses is also of concern as numerous houses have collapsed and the size is often too small. Numerous houses have also been built without insulation or toilets.<sup>122</sup>

The lack of transparency and uniformity in the RDP process has resulted in corruption commonly occurring. Officials have accepted or asked applicants for bribes in order to put certain individuals ahead of the queue on housing allocation lists.<sup>123</sup> Bribes and nepotism have also resulted in officials allocating houses to their families, friends and associates who do not qualify for RDP houses. Corruption Watch has recorded incidents of women being asked for sexual favours from ward councillors in exchange for RDP housing.<sup>124</sup> Furthermore, the RDP framework differs depending on municipality or province, which has left the gaps prone to being exploited.

---

<sup>119</sup> Report of the Presidential Advisory Panel on Land Reform and Agriculture, May 2019.

<sup>120</sup> Report of the Presidential Advisory Panel on Land Reform and Agriculture, May 2019.

<sup>121</sup> Department of Housing, Eastern Cape Provincial Government, "Failed Reconstruction and Development Programme (RDP) Housing Projects are Under Housing Rectification" (2009) <https://www.gov.za/failed-reconstruction-and-development-programme-rdp-housing-projects-are-under-housing-rectification>.

<sup>122</sup> Sondre Bailey, "RDP Housing: Success or Failure" (May 2017), Catholic Parliamentary Liason Office, online (pdf): <http://www.cplo.org.za/wp-content/uploads/2017/02/BP-432-RDP-Housing-May-2017.pdf>.

<sup>123</sup> Corruption Watch, "Cracks Exposed in the RDP Housing System" (28 March 2013) online: <https://www.corruptionwatch.org.za/cracks-exposed-in-rdp-housing-system/>.

<sup>124</sup> Corruption Watch, "Cracks Exposed in the RDP Housing System" (28 March 2013) online: <https://www.corruptionwatch.org.za/cracks-exposed-in-rdp-housing-system/>.



## RURAL LAND

Since 1994, two tenure laws were passed affecting farm dwellers – the Extension of Security of Tenure Act (ESTA)<sup>125</sup> and the Land Reform (Labour Tenants) Act (LTA).<sup>126</sup> Farmers have used their power to resist these laws which were intended to strengthen the occupation and use rights of farm dwellers and to reduce the power of farmers to evict farm workers and labour tenants.

Even after these laws were passed, evictions continued to take place outside the law with impunity. Between 1994 and 2005, just under one million people were evicted from farms – a larger number than those benefiting from government’s land reform – and less than 1 percent of these involved any legal proceedings.<sup>127</sup>

A 2011 Human Rights Watch Report<sup>128</sup> documented ongoing evictions, with farmers resorting to illegal tactics such as cutting off electricity or water. The report also noted that while it is illegal for owners to evict occupiers without following required procedures, the authorities rarely initiate criminal proceedings against farmers. Even when farmers follow legal procedures, evicted farm dwellers often have no place to go. Municipal governments are generally unprepared to assist them, and some end up homeless.<sup>129</sup>

In instances where legislation empowers labour tenants to apply for access to land, the State has failed to implement these provisions. The state’s abject failure in *Mwelase and Others v Director-General for the Department of Rural Development and Land Reform*<sup>130</sup> to administer the labour tenant’s programme’s main objective to facilitate land for the benefit of labour tenants, forced litigation that demonstrated the extent of the

---

<sup>125</sup> 62 of 1997.

<sup>126</sup> 3 of 1996.

<sup>127</sup> Hall, R, “Transforming rural South Africa? Taking stock of land reform”, in Lungisile Ntsebeza and Ruth Hall (eds), *The Land Question in South Africa: The Challenge of Transformation and Redistribution*, Cape Town: HSRC Press, 2007.

<sup>128</sup> Human Rights Watch (HRW), 2011. *Ripe with Abuse: Human Rights Conditions in South Africa’s Fruit and Wine Industries*, 23 August 2011.

<sup>129</sup> Human Rights Watch (HRW), 2011. *Ripe with Abuse: Human Rights Conditions in South Africa’s Fruit and Wine Industries*, 23 August 2011.

<sup>130</sup> 2019 (6) SA 597 (CC) (20 August 2019).



incompetence within the Department, making the appointment of a special Master necessary – an office run by an independent person to assist in processing the applications.

Commercial farms have been characterised as institutions of total control where workers live and work on the farm and where violence is often used to control labour. The social and economic power built by commercial farmers under apartheid remains largely intact across commercial farming areas, based on forces and networks that transcend (but often incorporate) the political power of the local state, and including a social bloc of security forces, magistrates, and farmers.<sup>131</sup>

The lack of these resources weighs more heavily on women farm dwellers. Women are often not employed directly by farmers but as wives who live on farms with their husbands; and farmers expect their labour to be made available when necessary. This means that since they are not formally workers, these women have little recourse to laws governing farm worker rights. Under ESTA, when an occupier has died, their spouse or dependent can be given 12 months' calendar notice to leave the land.<sup>132</sup> Wives who are not considered employees are in a vulnerable position where they can be legally evicted from the farms a year after their husbands have died.

In the important 2016 case of *Klaase v van der Merwe N.O.*<sup>133</sup> the Constitutional Court found that the wife of a farm occupier was entitled to security of tenure in her own right. Mr Klaase worked as a general labourer on a farm for 38 years. His wife was a seasonal farmworker. In 2010 Mr Klaase was dismissed by the farm owner and eviction proceedings were brought against him and everyone who occupied the house through him. Mrs Klaase sought to be joined in the proceedings. She asserted that she continuously resided on the farm in her own right as a general farm employee and with consent of the owner. The Court held that Mrs Klaase qualified as an ESTA occupier in her own right and that the

---

<sup>131</sup> Greenberg S, 2004. "The Landless People's Movement and the failure of post-apartheid land reform", a case study for the UKZN Project, Globalisation, Marginalisation and New Social Movements in Post-Apartheid South Africa.

<sup>132</sup> Section 8(5) of 62 of 1997.

<sup>133</sup> 2016 (6) SA 131 (CC).

lower court finding that she occupied the premises 'under her husband' demeans her right to equality and dignity. The Court stated that many women are similarly placed and this construction would perpetuate the indignity of such women whose rights should be secured. Therefore the eviction against her was set aside.

Despite sporadic legal victories, the laws to increase security of tenure for farm workers and labour tenants (ESTA and LTA) have been weak and ineffective and, as Hall<sup>134</sup> notes, have served to regulate evictions rather than to reform tenure relations. The situation has not shifted significantly in commercial farming areas since the promulgation of such laws. Tenure for farm dwellers continues to be insecure and evictions continue.

At a privately owned farm in Simondium, Western Cape, mainly female-headed households currently face the threat of eviction. Most of the occupiers arrived on the farm during the 1980's and 1990's and were initially employed as farmworkers. They are now mostly pensioners and rely on the patch of land around their homes for subsistence farming. They lived peacefully on the farm until a new owner took over the farm in 2018 and threatened them with eviction. The occupiers are currently being assisted by the Women on Farms Project and the LRC to engage the Department of Rural Development and the Drakenstein Municipality around the Department acquiring the farm and transferring it to the occupiers so that they can have security of tenure for their living and farming needs.

At a workshop for women farmworkers attended by the LRC in June 2023, the following comments were made by the women:

*"Once your husband dies, you have to find work or one of your kids needs to drop out of school"*

*"We don't have access to electricity and water"*

*"Our inputs and voices are not heard; our rights are violated"*

---

<sup>134</sup> Hall, Ruth, (2007), 'Transforming Rural South Africa? Taking stock of land reform' in Lungisile Ntsebeza and Ruth Hall (eds) *The Land Question in South Africa: The challenge of transformation and redistribution* (Cape Town: HSRC Press).

*"We experience unfair dismissal at work"*

*"There aren't any formal processes followed when farm workers retire or are dismissed."*

*"No such thing as maternity leave/time paid off when women who are farm workers fall pregnant"*

It was also communicated that there are law enforcement officials, like SAPS, who fear land owners and recognise their rights as more superior than those of farm dwellers.

There was a point raised around traditional leaders and land owners who don't have the right skills to communicate and treat people with fairness and a suggestion was made was that they need to be capacitated.

## COMMUNAL AREAS

The rural economy today is almost totally cash driven with migration continuing to be a way of life necessary to survival. Little has changed from Cross' 1999 proposition that rural land likely has less productive value for the poor in South Africa, than in any other African country.<sup>135</sup> The apartheid policy of overcrowding the majority of Black South Africans into small areas of barely arable land in the former Bantustans has left a legacy resulting in small plots on which farming is constrained by the expense of supplies or inputs relative to potential returns.<sup>136</sup>

Women migrate to get better access to employment, entrepreneurial activities, infrastructural services, housing, health care, schools, as well as a customer base. High levels of continued migration of families and individuals destabilises communities and institutions on the ground, while breaking down social capital. These trends hit women harder than men.<sup>137</sup>

---

<sup>135</sup> Cross, Catherine, 1999. "Women and land in rural crisis" in *Agenda* No 42..

<sup>136</sup> Ibid.

<sup>137</sup> Ibid

Women's options for migration to both urban and other rural areas are more limited than men. Entry into former homelands requires contacts, resources and time to go through layers of approval which tends to discriminate against single women.<sup>138</sup> Entry into urban and rural shack settlements seems likely to be easier for those women under the protection of a male. In addition, a woman's ability to leave the rural homestead is constrained by male authority within households.<sup>139</sup>

Land access in this context is of vital importance to the survival of families and communities, its primary value being social and institutional – giving families a place to live, citizenship in a community, a platform for household accumulation, and a bargaining chip to construct social capital in the form of local alliances.

Land allocation institutions in rural South Africa are strongly patrilineal, patriarchal systems which give women little room to maneuver; and which seem unlikely to deliver and protect women's land rights, especially in the context of increased impoverishment.

The land tenure needs of residents of the former Bantustans has been an arena of struggle between rural communities who want secure land rights and traditional leaders who seek to strengthen their control over land and people. Traditional leaders have resisted the democratisation of rural areas, viewing it as a direct attack on their authority.

Women Together in Development (WTID) is an NPO based in Ntwane, Limpopo. It consists of around 28 women who are mostly caregivers and farmers. They wanted land to start farming vegetables as an organisation. They first approached the traditional council headman in 2007 to request land which they had identified on the communal area. They were told by the headman to come back (this happened several times). They were also told to approach the Municipality. When they tried approaching the local councillor, she did not know what to do. They were then told that they would have to pay levies to the headman, being a percentage of whatever money is made. The acting chief at the time

---

<sup>138</sup> Ibid

<sup>139</sup> Todes, Alison, 1995. Migration, Survival Strategies and the Gendered Impact of Regional Development Policies: The case of Newcastle' Paper presented at Gruphel 11 Workshop, Durban 8-9 December.



did not intervene and said that they would need to consult the headman. In 2022 the new headman finally gave WTID an application for a business lease for an area approximately 2 hectares. Some of the terms of the lease agreement is that the "Bantwane Traditional Authority reserves the right to approve or decline the application for a business site" and that "Traditional Authority levies shall be annually paid the value of which will be stipulated by same Authority upon approval of this application".

On 1 November 2023 the Limpopo High Court declared section 25 of the Limpopo Traditional Leadership and Institutions Act inconsistent with the Constitution and invalid in a case brought by the LRC representing seven traditional communities in Limpopo. The section empowered traditional councils to levy compulsory taxes on community members. The case is currently awaiting confirmation of the constitutional invalidity by the Constitutional Court.

In the Umnini community in KwaZulu-Natal, one woman relayed to the LRC that strangers had approached her family informing them that the traditional leader had sold them the land belonging to their family. However, the woman could not approach the traditional council as a young woman to resolve the issue. She had to have an elder male relative approach the council on her behalf.

The HLP noted in its 2017 report,<sup>140</sup> that government failure in passing legislation to provide tenure security, puts the lives and livelihoods of many rural dwellers in peril. The panel noted also that government's interpretation of customary law, centred on traditional leadership and away from living custom, has added to insecurity.

The Communal Land Tenure Bill 2017,<sup>141</sup> together with the Traditional Leadership Governance and Framework Act (TLGFA)<sup>142</sup> and Traditional Courts Bill (TCB) assume that

---

<sup>140</sup> Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (2017)  
[https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High\\_Level\\_Panel/HLP\\_Report/HLP\\_report.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf).

<sup>141</sup> Communal Land Tenure Bill  
[https://www.gov.za/sites/default/files/gcis\\_document/201707/40965gen510.pdf](https://www.gov.za/sites/default/files/gcis_document/201707/40965gen510.pdf).

<sup>142</sup> 41 of 2003.



people living in the former homelands are primarily tribal subjects, more appropriately governed by traditional leaders. These laws do not consider people in the former Bantustans as equal citizens to be governed by elected local government.<sup>143</sup>

There is no substantive legislation to defend communal land tenure. The only existing legislation is the Interim Protection of Informal Land Rights Act (IPILRA),<sup>144</sup> introduced in 1996 as a 'safety net' to ensure temporary legal protection while the state developed legislation to protect tenure of people in communal areas and give effect to Sections 25(6) and (9) of the Constitution.<sup>145</sup>

IPILRA states that no person with an informal right to land may be deprived of that right unless it is in accordance with customary law. It addresses the reality that Black people with de facto rights to land were denied any legal protection over such rights during apartheid; it provides protection from eviction and makes provision for people with informal rights to be included as stakeholders in any development and other decisions affecting their land rights.<sup>146</sup>

In tracing the trajectory of legislation relating to communal areas, the HLP notes that in 1996, the DLA began work on a Draft Land Rights Bill and introduced the Communal Property Associations Act (CPAA)<sup>147</sup> to enable group ownership of land transferred to community groups through government's land restitution programme.

The draft Land Rights Bill was based on a proposal that the people who occupy and use the land should be the owners of the land, rather than the leaders who held land in trust

---

<sup>143</sup> Ibid.

<sup>144</sup> 31 of 1996.

<sup>145</sup> Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (2017)  
[https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High\\_Level\\_Panel/HLP\\_Report/HLP\\_report.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf).

<sup>146</sup> Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (2017)  
[https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High\\_Level\\_Panel/HLP\\_Report/HLP\\_report.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf).

<sup>147</sup> 28 of 1996.

on their behalf. The White Paper stressed that this would enable people to hold leaders to account and would apply whether people chose traditional or elected structures to administer common property areas. However, this threatened the control of traditional leaders and when Minister Didiza was appointed in 1999, she responded to the concerns of traditional leaders. She stopped work on the Draft Land Rights Bill and began drafting a new Communal Land Rights Bill (CLRB), which culminated in the Communal Land Rights Act (CLaRA)<sup>148</sup> and provided traditional leaders with far-reaching powers over rural land. CLaRA enabled the Minister to endorse title deeds held by Trusts, CPAs and individuals over to the Traditional Council within whose jurisdiction they fell.<sup>149</sup>

CLaRA was concerned with the transfer of communal land from the state to communities. In terms of this law, where there are no traditional councils, land will be administered by communities in terms of registered rules. Where traditional councils exist in terms of the Traditional Leadership and Governance Framework Act,<sup>150</sup> these councils will administer land.

Concern was expressed that CLaRA reinforced the powers of un-elected tribal authorities and did not address gender discrimination in land access; that the Act did not address land congestion; and that it expected unpaid community members to take on tasks of land administration, a service that for the rest of South Africa, is provided by the public sector.<sup>151</sup>

By entrenching the powers of traditional leaders over land allocation and administration, both these laws – CLaRA and TLGFA – make it more difficult for women to access and hold on to land. As Claassens and Ngubane (2008) posit, women’s social and political power is

---

<sup>148</sup> 11 of 2004.

<sup>149</sup> Ibid.

<sup>150</sup> 41 of 2003.

<sup>151</sup> A Claassens and S Ngubane “Women, land and power: The impact of the Communal Land Rights Act”, in Aninka Claassens and Ben Cousins (eds). *Land, Power and Custom: Controversies Generated by South Africa’s Communal Land Rights Act* (2008).

weak in the face of the powers of chiefs who often do not see women as legitimate land holders.<sup>152</sup>

CLaRA was seen to discriminate against single mothers; and measures within the Act to advance women's land rights were insufficient to offset the consequences for women of entrenching and expanding the power of traditional institutions.<sup>153</sup> Measures to advance women's land rights included provision for joint titling and the requirement of 30% representation of women. However, since these women are not elected, there were concerns that chiefs could appoint malleable women, and that women could be silenced and undermined on structures within which men held the numerical majority in a context where women's institutional power is weak to begin with.<sup>154</sup>

Four rural communities represented by the LRC challenged CLaRA in 2008 and won their case in the North Gauteng High Court, on the basis that the law undermined security of tenure.<sup>155</sup> When that judgment was referred to the Constitutional Court for confirmation in 2010, the Constitutional Court found the rushed parliamentary process to be invalid and struck down CLaRA in its entirety.<sup>156</sup> However, despite the fact that CLaRA was declared invalid, government continued to support its premises, and the uncertainty around the status of land rights in communal areas continued.<sup>157</sup>

The draft Communal Land Tenure Bill (CLTB) was introduced in June 2017. One of the main differences between CLaRA and the CLTB is that the CLTB provides communities with a choice in relation to its administration body.<sup>158</sup> There must be a resolution of at least 60%

---

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> *Tongoane and Others v Minister for Agriculture and Land Affairs and Others*, Case No 11678/2006, North Gauteng High Court, Pretoria, 30 October 2009, unreported.

<sup>156</sup> *Tongoane v National Minister for Agriculture and Land Affairs* 2010 (8) BCLR 741 (CC).

<sup>157</sup> Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (2017)

[https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High\\_Level\\_Panel/HLP\\_Report/HLP\\_report.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf)

<sup>158</sup> 'High Level Panel summary sheets: March 2018' in *Custom Contested*, available at <https://www.customcontested.co.za/wp-content/uploads/2018/04/HLP-summary-Communal-tenure.pdf> accessed on 20 June 2020.

of households in the community to choose either a traditional council; a communal property association; or other entity as may be approved by the Minister to manage and administer communal land on its behalf.<sup>159</sup>

The Bill further attempts to include households in decision-making, by providing for the establishment of Household Forums to oversee the administration of land by the chosen institution, by holding such institution accountable for their functions.<sup>160</sup> The Household Forum must comprise of 50% women<sup>161</sup> and must represent the interests of vulnerable community members.<sup>162</sup>

The Bill provides that the institution chosen by the community to manage their land cannot sell, lease, or otherwise alienate their land unless through a resolution supported by 60% of households in the community.<sup>163</sup> Provisions pertaining to women in the Bill promote the general principle of gender equality and the institution responsible for management and administration of communal land must allocate land to community members including women. To date, there has been no movement on the CLTB.

Under the Communal Property Associations Act, CPAs are responsible for creating a constitution outlining how their processes and affairs will be conducted. The CPAA requires each constitution to conform to general principles, including equality of membership that does not discriminate on grounds such as gender and sex. Decision-making processes must be fair and inclusive and provide for all members to have the opportunity to participate, which includes decisions about whether to dispose of the CPA's property.

---

<sup>159</sup> Communal Land Tenure Bill, Section 28(1).

<sup>160</sup> Communal Land Tenure Bill, Section 35(1).

<sup>161</sup> Communal Land Tenure Bill, Section 33(3).

<sup>162</sup> Communal Land Tenure Bill, Section 33(4).

<sup>163</sup> Communal Land Tenure Bill

[https://www.gov.za/sites/default/files/gcis\\_document/201707/40965gen510.pdf](https://www.gov.za/sites/default/files/gcis_document/201707/40965gen510.pdf).



According to the 2020/2021 CPA Annual Report,<sup>164</sup> faults in the CPA structure have contributed to a lack of transparency, compliance, and accountability. Many CPAs do not have sufficient resources, skills, or knowledge to fulfil their functions. Internal conflict amongst members is also a prevalent issue. Executive and more senior CPA members have abused their power and influence for personal benefit by misappropriating funds. Members may have a conflict of interest when they sit on a board for a mining company yet continue to exert influence over CPA matters related to the mine. Other issues include fraud and the illegal sale of CPA assets and land.<sup>165</sup>

Other evidence on CPAs<sup>166</sup> highlights women's marginalised positions within such structures and depicts that even though CPA rules provide for quotas to ensure women's participation, gender power relations within households and communities have limited women's actual participation. Older, married women, who come from powerful families and who have authoritative personalities, are more likely to have their interests heard than women who do not possess these traits. For example, a single mother who is not from a powerful family not being able to challenge the CPA central committee's decision not to allocate land to single parents.<sup>167</sup>

One of the issues with the CPAA legal framework is that it overlooks women's demands by categorising the CPA as "community interests" which have been historically dominated by men.<sup>168</sup> CPA constitutions do not adequately address gender inequality issues. Patriarchal gender norms prevail when agricultural plots are typically allocated to male heads of households who gain the right to control land.<sup>169</sup>

---

<sup>164</sup> CPA Annual Report 2020/2021

<https://www.dalrrd.gov.za/Portals/0/Annual%20Report/Communal%20Property%20Associations%20Annual%20Report%202020%20-%202021.pdf>.

<sup>165</sup> CPA Annual Report 2020/2021

<https://www.dalrrd.gov.za/Portals/0/Annual%20Report/Communal%20Property%20Associations%20Annual%20Report%202020%20-%202021.pdf>.

<sup>166</sup> Meer, Shamim, 1999. Constraints to Land Reform and Gender Equity Goals, in Agenda AGI Monograph, Translating Commitment into Policy and Practice.

<sup>167</sup> Ibid, at 84.

<sup>168</sup> Nonyana, Maria, 2000. Communal Property Associations and their Impact on the Formation of Small Business in the Rural Sector. *Centre for Applied Legal Studies*.

<sup>169</sup> Ibid.



Traditional Councils have failed to transform as required by the TLGFA. The TLGFA requires that at least one third of the members of traditional councils are women, but this has not been enforced. COGTA has conceded that most Traditional Councils are not legally valid.

At hearings held by the HLP, residents of the former homelands testified that they were – at the time of the hearings – more vulnerable to dispossession than they were before 1994.<sup>170</sup> This was especially so in areas where mining was taking place and in areas administered by the Ingonyama Trust in KwaZulu-Natal.<sup>171</sup>

The HLP found that women's land rights were generally still more insecure than those of men, in part because of wider social prejudice, but also because the agencies tasked with vindicating these rights have not confronted these inequalities directly. In her submission to the panel in KwaZulu-Natal, Mrs S Ngubane highlighted the plight of women living in rural areas, in relation to land allocation and tenure security. She reported that in many areas, land is allocated only through men; that only two traditional leaders in KwaZulu-Natal allocated land to women in their own right; that widows suffer the loss of land and homes upon the death of their husbands; and that single women's rights are ignored when traditional leaders collude with a woman's relatives.<sup>172</sup>

Residents testified that traditional leaders saw themselves as the sole authority in handing over land to mining companies. These mining deals enrich a select few, while excluding members of the community whose land rights are at stake. These deals are possible because officials collude with elites in ignoring various oversight and accountability provisions set out in law.

---

<sup>170</sup> Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (2017)  
[https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High\\_Level\\_Panel/HLP\\_Report/HLP\\_report.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf).

<sup>171</sup> Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (2017)  
[https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High\\_Level\\_Panel/HLP\\_Report/HLP\\_report.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf).

<sup>172</sup> Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (2017)  
[https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High\\_Level\\_Panel/HLP\\_Report/HLP\\_report.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf).

In *Council for the Advancement of the South African Constitution (CASAC) and others v Ingonyama Trust and others*,<sup>173</sup> the LRC instituted an application on behalf of CASAC and other individuals residing on ITB land on the basis that the Ingonyama Trust and its Board had undermined the security of tenure of the residents and occupiers in KwaZulu-Natal. The purpose of the Ingonyama Trust is to hold the land for the benefit, material welfare, and social well-being of the tribes and communities living on the land, who are the actual owners. The ITB attempted to make individuals who held or were entitled to hold Permission to Occupy (PTO) or other informal rights to land under IPILRA enter into residential lease agreements. The Board had decided that PTOs should no longer be used and persuaded many PTO holders to convert to lease agreements that required having to pay rent to live on land. The Ingonyama Trust also deprived many women of their land rights. Ms. Lina Nkosi was told that she could not conclude a lease agreement without a male relative or partner to sign on her behalf.<sup>174</sup>

In contrast to Zulu customary law that provides strong and secure rights to residential and arable land which can be inherited for generations, leases were neither inheritable nor transferrable. The High Court found that the Ingonyama Trust and its Board had acted unlawfully and in violation of the Constitution by concluding these residential leases.

Government's privileging of the interests of traditional leaders was clear at the Communal Land Administration and Tenure Reform Summit held in May 2022. The Summit was hosted by the Department of Agriculture, Land Reform and Rural Development and the Department of Co-operative Governance and Traditional Affairs. Female activists expressing their concerns at the conference were harassed by security and not given an opportunity by the Minister to air their concerns.<sup>175</sup>

---

<sup>173</sup> 2022 (1) SA 251 (KZP) (11 June 2021).

<sup>174</sup> LRC and CASAC Welcome Landmark Ruling Declaring Actions of the Ingonyama Trust Unlawful and in Violation of the Constitution (11 June 2021) <https://lrc.org.za/11-june-2021-lrc-and-casac-welcome-landmark-ruling-declaring-actions-of-the-ingonyama-trust-unlawful-and-in-violation-of-the-constitution/>.

<sup>175</sup> Constance Mogale and Katlego Ramantsima, 7 June 2022, *Daily Maverick* "The land summit was a fiasco and reflected government's lack of commitment to land reform", available at <https://www.dailymaverick.co.za/opinionista/2022-06-07-the-land-summit-was-a-fiasco-and-reflected-governments-lack-of-commitment-to-land-reform/>.

At the August 2022 conference "*The Failed Promise of Tenure Security: Customary Land Rights and Dispossession*", it was noted that community rights to land were made subservient to the power of traditional leaders within the current framings of the Communal Land Rights Bill.<sup>176</sup> Community activists attending the conference urged the government to give them rights to secure their land and limit traditional leaders' powers, while declaring that government cannot be trusted to enact progressive land laws, let alone implement existing laws, given the profound levels of state dysfunction and corruption, bungling and inertia.<sup>177</sup>

A press release from the conference called on government to make the Interim Protection of Informal Land Rights Act permanent and to strengthen it; to stop the "Bantustan Bills" (that is the bills that entrench the powers of traditional leaders);<sup>178</sup> and to ensure that law-making starts with the people.<sup>179</sup>

---

<sup>176</sup> Zukiswa Pikoli 17 August 2022 Communal Land Rights Bill ignores community views, conference told, in Daily Maverick <https://www.dailymaverick.co.za/article/2022-08-17-communal-land-rights-bill-ignores-community-views-conference-told/>.

<sup>177</sup> Mandisa Nyathi, 22 Aug 2022, Land Conference delegates: Customary law should limit traditional leaders' powers. in Mail and Guardian <https://mg.co.za/author/mandisa-nyathi/>.

<sup>178</sup> The Traditional and Khoi-San Leadership Act was declared unconstitutional on 30 May 2023 on the basis that parliament overwhelmingly failed in facilitating public participation.

<sup>179</sup> The Failed Promise of Tenure Security: Customary Land Rights and Dispossession Land Conference 2022 Press Release 19 August 2022 <https://www.customcontested.co.za/press-release-the-failed-promise-of-tenure-security-customary-land-rights-and-dispossession-land-conference-2022/>.

## V CUSTOMARY LAW

### Customary Marriages

Colonial and apartheid efforts relegated women to the status of perpetual minors, owing obedience first to their fathers, brothers and then their husbands and sons. This has had a profound impact on women's rights to property and security of tenure.

This position has been altered in terms of matrimonial law following changes to the law brought about through recent legal interventions. Three legal challenges brought by the LRC in the cases *Gumede*,<sup>180</sup> *Ramuhovhi*<sup>181</sup> and *Sithole*<sup>182</sup> challenged the laws which discriminated against a specific class of elderly African married women on the grounds of race, gender and age. The affected women belong to a generation of African women who were born, raised and married under apartheid – during a time when laws prevented their access to freedom of movement, education, and the right to hold property.

These women often faced intersectional discrimination and were left vulnerable when their civil and customary marriages ended. This impacted on their rights to dignity, housing, and social security.<sup>183</sup>

The Recognition of Customary Marriages Act (RCMA)<sup>184</sup> was enacted in 2000 to remedy some of the past injustices perpetuated against African women. Section 2 of the RCMA recognises a marriage which is a valid marriage in accordance with customary law. Customary law is defined in section 1 of the RCMA as “the customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those peoples.”

The RCMA not only confers formal recognition on customary marriages, but also entrenches the equal status and capacity of husbands and wives in customary marriages.

---

<sup>180</sup> *Gumede v President of the Republic of South Africa* 2009 (3) SA 152 (CC).

<sup>181</sup> *Ramuhovhi and Others vs the President and Others* 2018 (2) SA 1 (CC) (30 November 2017).

<sup>182</sup> *Sithole and Another v Sithole and Another* 2021 (5) SA 34 (CC) (14 April 2021).

<sup>183</sup> Claassens A and Ngubane S. 2008. Women, land and power: The impact of the Communal Land Rights Act, in Aninka Claassens and Ben Cousins (eds). Land, Power and Custom: Controversies Generated by South Africa's Communal Land Rights Act, Cape Town: UCT Press.

<sup>184</sup> 120 of 1998.



The RCMA seemingly ended the marital power of a husband over his wife and pronounced them to have equal dignity and capacity in the marriage.

However, certain provisions of the RCMA perpetuated discrimination. Section 7 of the RCMA said that:

- (1) *"The proprietary consequences of a customary marriage entered into before the commencement of this Act continue to be governed by customary law.*
- (2) *"A customary marriage entered into after the commencement of this Act in which a spouse is not a partner in any other existing customary marriage, is a marriage in community of property and of profit and loss between the spouses, unless such consequences are specifically excluded by the spouse in an antenuptial contract which regulates the matrimonial property system of their marriage."*

This meant that in most cases the default position for marriages entered into before the commencement of the RCMA was out of community of property. Women had to bring a court application to apply for the redistribution of property if the marriage ended. However, the majority of this class of women did not have the financial resources for this process.

In *Gumede v President of the Republic of South Africa*,<sup>185</sup> the Constitutional Court declared section 7(1) of the RCMA to be constitutionally invalid insofar as it related to monogamous customary marriages. In *Ramuhovhi and Others vs the President and Others* in 2017,<sup>186</sup> the Constitutional Court found section 7(1) of the RCMA to be inconsistent with the Constitution and invalid in that it discriminated unfairly against women in polygamous customary marriages concluded before the commencement of the RCMA.

The Recognition of Customary Marriages Amendment Act was passed in May 2021. The Amendment Act now says that for a monogamous customary marriage concluded before the RCMA, the marriage is now in community of property unless specifically excluded by

---

<sup>185</sup> 2009 (3) SA 152 (CC).

<sup>186</sup> 2018 (2) SA 1 (CC) (30 November 2017).



the spouses in an ANC. If a person is a spouse in a polygamous customary marriage, then all the spouses have joint and equal ownership, management, and control over marital property. In respect of house property, these rights are held by the husband and wife of the house jointly and in the best interests of the family unit. In respect of family property, the rights are held by the husband and all the wives jointly and in the best interests of the whole family.

## Succession

Customary law has also been developed in favour of women around the issue of succession. In the case *Bhe v the Magistrate, Khayelitsha*,<sup>187</sup> the court dealt with a constitutional challenge to the rule of male primogeniture as it applied in African customary law of succession. Two minor daughters were prevented from inheriting the deceased estate of their late father as they were female. The Constitutional Court held that the customary law rule of primogeniture discriminates unfairly against women and illegitimate children. Estates which previously would have devolved according to the Black Administration Act and the customary rule of male primogeniture must now devolve according to the Intestate Succession Act.

LEGAL RESOURCES CENTRE

In the case *Shilubana v Nwamitwa*,<sup>188</sup> the Court dealt with the customary law of succession of traditional leadership. Ms Shilubana's father, the Hosi of the Valoyi community died without a male heir. The customary law at the time did not permit a woman to become Hosi, and Ms Shilubana could not succeed him even though she was the eldest child. The Hosi was instead succeeded by his brother, Richard Nwamitwa. During 1996 and 1997 the Valoyi traditional authorities passed resolutions deciding that Ms Shilubana would succeed Hosi Richard. However, following the death of Hosi Richard, his eldest son attempted to interdict the installation of Ms Shilubana and challenged her succession claiming that the tribal authorities had acted unlawfully. The Constitutional Court held that traditional authorities had the power to develop customary law. The Constitution

---

<sup>187</sup> 2005 (1) SA 580 (CC).

<sup>188</sup> 2009 (2) SA 66 (CC).

required courts to respect the right of traditional communities to develop their own law. It further held that courts must balance the need for flexibility and the imperative to facilitate development against the value of legal certainty and respect for vested rights. In the past, the succession to the leadership of the Valoyi had operated according to the principle of male primogeniture. However, the traditional authorities developed customary law in accordance with the constitutional right to equality. The value of recognising this development was not outweighed by the need for legal certainty or the protection of rights. The change in customary law did not create legal uncertainty and Mr Nwamitwa did not have a vested right to be Hosi.

## VI CONCLUSION AND RECOMMENDATIONS

Despite there being some significant legal advancements upholding the rights of women to property and land, for too many women, deprivation of their land rights remains their reality. This can be attributed to a range of legal, social and economic factors which cumulatively impact upon poor women. Government land redistribution initiatives have consistently failed to meet targets for transferring land to women. The task more broadly is to shift land redistribution away from a large-scale farming perspective of agriculture, so that land reform programmes may consider the needs for land and tenure security of women among the urban poor, among farm workers and labour tenants, and among the residents of former homelands. There needs to be a change in the policies that are drafted and their implementation to ensure that the appropriate beneficiaries are awarded, and there needs to be an effort to change cultural attitudes towards women.

The challenge is how to get these shifts to happen given the many forces that stand in the way and the many elites who currently benefit from the ways in which land reform tends to meet their interests: traditional leaders, mining companies, and corrupt officials are but some of these beneficiaries. The challenge is also how to make the necessary shifts happen given government's lack of concern for the poor and the ineptitude, lack of accountability and lack of transparency within government departments.

Ongoing struggles are being waged on many fronts in order to ensure democracy and land rights for women in South Africa, with struggles over land coinciding with other struggles.

The HLP report contains proposed principles of a possible framework for the National Land Reform Framework Bill. The Bill itself consists of general principles that land reform must provide equitable and secure access to land for historically disadvantaged people, as well as the most vulnerable which includes women.<sup>189</sup> It envisions that the allocation of

---

<sup>189</sup> National Land Reform Framework Bill of 2017. Retrieved from: [https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High\\_Level\\_Panel/Commissioned\\_reports\\_for\\_triple\\_challenges\\_of\\_poverty\\_unemployment\\_and\\_inequality/Illustrative\\_National\\_Land\\_Reform\\_Framework\\_Bill\\_of\\_2017\\_with\\_Land\\_Rights\\_Protector.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_reports_for_triple_challenges_of_poverty_unemployment_and_inequality/Illustrative_National_Land_Reform_Framework_Bill_of_2017_with_Land_Rights_Protector.pdf).

land use rights be conducted in an open and transparent manner such as due recognition of women's land access and use priorities. To further promote transparency and accountability, an annual report would be conducted which includes gender and socio-economic statistics of beneficiaries by district. The Framework Bill has never been pursued by Parliament.

The approach in Kosovo demonstrates how education and awareness of women's land rights can shift attitudes about women's land rights and give effect to progressive legal measures. These types of projects can assist women who lack knowledge about their legal protections and land rights. Regularly teaching girls and boys at a young age about the importance of women's land rights may contribute to strengthening gender equality in the future. For such projects to be done in South Africa, there will have to be nuanced media content that is locally sensitive and available in all official languages.

Current policies about land reform lack implementation steps for specifically supporting women in these initiatives. Although there are quotas for women beneficiaries, these targets are almost never fulfilled. Policies directed at benefiting marginalised groups such as women must consider the conditions and barriers that poor rural women encounter. This may include creating a land redistribution programme specifically for poor women. There must be consideration that women are not a homogenous group, but that prevailing gender power relations intersect with class, race, and other social relations, thus shaping a woman's access to resources, power, and authority.<sup>190</sup> Schemes need to address how to overcome barriers which women face, including access to financing and patriarchal norms in legislation, regulations, and policies. Such programs will require clear and transparent selection as well as regular monitoring that considers whether measures are effectively contributing to gender equity in land.

Where commercial farmers continue to wield their power, the challenges for women farm dwellers include access to land for settlement, access to services, access to a living wage

---

<sup>190</sup> Meer, Shamim (1994), *Understanding Gender and Access: Women's Access to Productive Resources in the Rural Bantustans*, Thesis submitted in partial fulfilment towards the Master in City Planning, MIT, Cambridge, USA.

and to livelihoods.

Women in the former Bantustans are challenged to improve their bargaining position within the family in relation to land and property rights, despite the power of chiefs and patrilineal, patriarchal institutions of land allocation.

South Africa's 1996 Constitution promises accountable, democratic local government and that the gender equality clause would be balanced against rights to tradition and custom. However, both of these have been compromised in rural areas by post-apartheid legal reforms which entrench the power of traditional authorities and the relative powerlessness of other social groups; and of poor rural women, in particular.

Civil society organisations have a role to play alongside people's movements in ensuring the land rights of the poor in rural and urban areas. Delegates to the conference "The Failed Promise of Tenure Security: Customary Land Rights and Dispossession" made a call for solidarity among civil society, labour movement allies, lawyers, academics, and other researchers to redress the land and tenure needs of those most in need in urban and rural South Africa. Such solidarity is crucial in addressing the challenges that plague South Africa's land reform sector.

#### LEGAL RESOURCES CENTRE

Although there is no single solution to address the multi-layered nature of disadvantage currently experienced by women in terms of their land rights, below we attempt to outline some key recommendations which we view as a starting point to addressing the current challenges.

### Recommendations

- There must be greater transparency and consistency in the data of reporting documents of the Department relating to the land which is redistributed to women.
- The Department should be held to account to meet the targets identified for female beneficiary selection under various land reform policies.



- Strategies are needed for women's voices to be heard; for women's lives and lived experiences to define policy.
- The Department and other stakeholders should spear-head interventions which raise social awareness and provide public education on women's land rights.
- The HLP report contains proposed principles of a framework for the National Land Reform Framework Bill - this Bill should be tabled in Parliament.
- IPILRA must be amended to become a permanent piece of legislation.
- There must be a shift in focus in redistribution policies from commercial land use to pro-poor land use which prioritises women in need of land for food and to support their livelihoods.
- There is a need for increased gender disaggregated data from the Department and the implementation of gender responsive budgeting across all departmental programmes.
- Strengthening and prioritisation of the one household one hectare policy; alternatively introducing a new one woman, one hectare policy.
- The development of a formal registration system to record women's rights in land. As long as the majority of South Africans have no recorded land rights; they remain vulnerable to eviction and dispossession. They also remain largely invisible to the formal economy. The rights must be recorded in a way that reflects customary understandings of land rights as family property, and lists all family members, with special protection for women.
- Municipalities should release urban land and commonage land to women for the purpose of land reform.
- There must be improved oversight and investigations to stop land-related corruption in all its forms.
- Beneficiary selection and allocation processes must be more transparent and there must be greater openness and accountability as to how these decisions are arrived at.

- There must be equal representation of women in decision-making bodies within traditional communities. This can be done by increasing the quota in the TLGFA from one third of the members of a traditional council being women to 50% and enforcing it.
- Well-situated state-owned land needs to be made available for urban settlement and housing for the poor.
- Government should use its expropriation powers more boldly to transfer land to women, in ways that test the meaning of the compensation provisions in Section 25.
- Land made available must be accompanied by the provision of basic services to ensure that the land can be productively used.



**Where Women Stand in Land Reform: how the South African Government's Land Redistribution and Tenure Security Programmes fail to meet the needs and interests of those women most in need.**

**September 2024**

Legal Resources Centre South Africa NPC

Registration No. 2022/410419/08

PBO No. 930077643

NPO No. 290-199

[www.lrc.org.za](http://www.lrc.org.za)