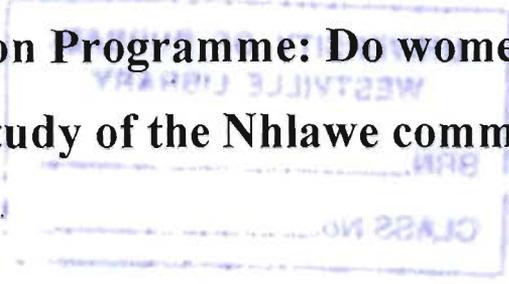


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**Gender in Policy and Practice in the Land
Redistribution Programme: Do women benefit? A
case study of the Nhlawe community.**



THANDEKA NTOMBELA

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ACCRONYMS

AFRA	:	Association for Rural Advancement
ANC	:	African National Congress
CBO	:	Community Based Organisation
CPA	:	Communal Property Association
DLA	:	Department of Land Affairs
LRGP	:	Land Reform Gender Policy
NGO	:	Non-Governmental Organisation
NLC	:	National Land Committee
PDLA	:	Provincial Department of Land Affairs
PPAC	:	Provincial Project Approval Committee
SLAG	:	Settlement/Land Acquisition Grant
WPDC	:	Weenen Peace and Development Committee
URC	:	Uthukela Regional Council

Chapter one

Theoretical and practical perspective on gender and land rights

1.1 Introduction

In this Chapter the researcher will provide some theoretical and practical perspective on gender and land rights. The chapter will start by providing background information regarding the topic, the rationale for conducting this research, the main and specific objectives of the study, and highlight the international and the South African experiences and challenges faced by poor rural women in accessing land and other resources related to land. It will conclude by presenting the dissertation outline.

1.2 Background

When a democratic government was elected in 1994, one of its objectives was to redress past injustices, and to balance racially skewed land ownership. The White Paper on South African Land Policy (1997) was developed in order to achieve this goal. There are three elements in the Government's land policy

- (1) Redistribution ;
- (2) Land Restitution ;and
- (3) Land tenure reform.

The land redistribution programme was intended to enable poor and disadvantaged people buy land with the help of the Settlement/Land Acquisition Grant. The land redistribution grant is given to household heads as beneficiaries. What normally occurs is that community members pool their resources (grants) together in order to purchase land as a collective. Once that happens, land is then owned collectively. The land is then owned or held under a legal entity such as a Community Trust or a Communal Property Association (CPA). Control and access is still vested with members of the trust or the CPA.

In the new dispensation, conditions for national democratic transformation exist that facilitate access to land without gender discrimination. The White Paper on South African Land Policy (1997) promotes gender equity as an important objective, and underlines that land should be redistributed to all adult beneficiaries and not just to 'household heads'. According to Jacobs (1998) despite these objectives, there are practices in place that seriously disadvantage most rural black women.

According to Thorp (1995), 'a potential stumbling block for the most enlightened land reform policy is lack of dissemination' Policy "on the books" and policy "on the land" are two entirely different things. People cannot exercise rights if they are unaware of them.

Black rural women are the poorest and the most marginalised group in South African society. Therefore, if there are policies in place that envisage changing and improving the status of women, it is crucial to monitor what actually takes place. A number of studies have shown that policy does not necessarily reflect what happens in reality. There are two arguments that are advanced in this regard. The first is that the policy could be well formulated and written, but implementation might actually contradict or conflict with existing cultural practices and norms. The second argument is that the policy could be ambiguous and unclear, and thus implementation is affected.

Hargreaves and Meer (1999) have argued that in order to determine the impact of policies it is necessary to know the changes that need to be measured. Yet, the Department of Land Affairs has not developed a clear strategy designed to monitor and evaluate gender equity policies. The same researchers further argue that the goal of gender equality has been made peripheral to the main thrust and emphasis of the land policy.

According to Hall (1999), if households are to be the primary beneficiary units for land redistribution then it should be acknowledged that this will privilege men's access to resources. He further argues that there should be ways of enabling women to gain direct access to land and services. Nevertheless the policy does not stipulate

how this can be addressed. The policy only states that “discriminatory customary and social practices are largely responsible for these inequalities” (DLA, 1997: 17).

According to Meer (1997), women and men have different priorities in the development process in relation to land use. Men’s priorities are advantaged, and thus all too often women’s needs are not met. The potential impact of land reform on gender equality is such that once women have land rights not only this will secure their tenure, but it will also benefit the food security of household members.

Tenure is best understood as a social and political process rather than a system of laws or rules. A large part of the content of tenure systems is determined by the values of the community, prevailing power relations and unspoken assumptions about how people ought to act, and never needs to be stated in the form of official rules (Meer, 1997:17). This basically means that, if one grouping is discriminated against socially and politically it may be difficult to resort to laws that people or communities would abide by.

According to Wildschut and Hulbert (1998) land experiences in Southern Asia indicate that women with land rights independent of male attachments, were in a better position to challenge unequal power relations within the family and the community as a whole, and were thus encouraged to participate in decision making. Independent access to land also played an important role in improving food security and alleviating poverty and overall community development.

1.3 Rationale for the study

There is great probability that despite the progressive land reform policies that were formulated post 1994, poor rural women might still not be benefiting as initially intended. It is therefore paramount to monitor whether women are benefiting in that particular period of the country’s history.

Many rural women are left behind in these remote areas when their male counterparts seek job opportunities in the urban centres. It is important for women to have land

access, control and decision making powers on the land that they utilise. According to Agarwal (1994), giving women independent land rights could result in several interconnected outcomes which have been grouped into four broad categories:

- (1) Welfare;
- (2) Efficiency;
- (3) Equality; and
- (4) Empowerment.

Each category will be briefly summarised by pointing out key important features as follows: (Agarwal, 1994: 27-38)

- *Welfare argument*

This simply means that when women have land rights, the household risk of poverty and destitution will be reduced. Productive assets will impact positively on women's health and that of their children and facilitates access to credit from financial institutions. Independent land access will increase bargaining power for women within the household.

- *The Efficiency argument*

This argument points to the fact that women are the actual cultivators of land while their husbands are away and women should have independent land rights and access. This will make it simple for women to improve agricultural technology and practices as well as to enhance their motivation, thus increasing overall production.

- *The Equality argument*

Once women are equal to men with regard to land access, they will be in a position to challenge male oppression within the home and the wider society.

- *The empowerment argument*

This is concerned with the powerlessness of women. Once they acquire land rights they will move from a subordinate economic, social and political position. Land rights strengthen their ability to challenge the existing social , political and economic gender inequalities.

The concepts of gender equality and equity are normally used interchangeably in scientific and research literature but qualitatively they have different meanings. Allen (1992) defines equality as the state of being equal, while equity refers to fairness and application of the principles of justice aimed at correcting or supplementing the law. Equality is more quantitative and concentrates on the numbers in analysis, while on the other side equity is more qualitative. The study will emphasise gender equity and concentrates on the application of justice in order to correct the law.

1.4 Main and specific objectives of the study

Main Objectives:

The main objectives of the study will be:

- To explore whether there is a gap between policy and practice in facilitating equal land access to women.
- To assess conditions under which the goal of gender equity/equality is likely to be advanced through the land redistribution programme.

Specific objectives:

The specific objectives of the study are the following:

- To establish criteria that will help to assess whether gender equity is being achieved in the land redistribution projects;
- Through the application of these criteria/indicators to identify a case study to assess whether gender equity is being advanced;

- To identify major limitations and opportunities related to the goal of gender equity; and
- To make specific recommendations for policy, procedures and practice regarding equity and land redistribution.

1. 5 Experiences of women in land access

1.5.1 International experience

It has been stated that ‘land reform experiences in Latin America and Southern Asia confirm that a legal right does not, in itself, lead to meaningful advances towards gender equality. A very important factor for effective gender sensitive reform is that women should be able to own and have access to land as women.’ (Wildschut and Hulbert 1998 : 4)

Male partners mostly mediate married womens’ access to land. A study by Fortmann has indicated that both male and female household heads were more likely to sell their produce than married women who did not have land in their own right. A further corollary is that land access through men could be catastrophic for women in the case of change in their marital status . In Zimbabwe divorced women have no right to their husbands’ land including trees which the women themselves have planted. They are not even allowed to stay in homes they themselves have built and furnished. (Fortmann: 1997)

1.5.2 The South African Experience

A number of reasons have contributed to women not having rights on the land they have access to in South Africa. Firstly past colonial and apartheid laws have been instrumental in women having been denied land rights. Patriarchal systems have ensured that land inheritance is passed through the male line.

This is commented upon by Wildschut and Hulbert who state that ‘In communal land areas, women who have access to land face a host of restrictions, such as how the land

should be used, where to settle and crop farming should be located whom to marry and so on.' (Wildschut and Hulbert, 1998: 34)

In a case study undertaken in Mgwali in the Eastern Cape it was observed that 'women sometimes act as owners of the land even though they are not registered. This is common among women who are unmarried or widowed. Some women claimed that their tenure security was threatened because male relatives wanted the land' (National Land Commission, 1998:34)

While research shows that many women participate in and reinforce male mediation, there are countervailing pressures from segments of women who want unmediated property rights and equal status and authority with men. A number of research studies suggest that the lack of access to the rights over land among African women reflects a strong patriarchal society (Marcus et al.; 1996).

Women have concerns regarding the rights and security they have when their men die, abandon them, divorce them or take other wives. Thus inheritance practices and customary law are considered as priority issues for women when the question of land is discussed. While they also have concerns regarding the rights of their daughters as well as unmarried women, it seems that their call is for the security of rights and access to the land in the long term, irrespective to what happens to the men with whom they are in relationship. (Cousins 1996: 2)

There is a great degree of powerlessness with regards to land access for women as indicated in a study undertaken in the Motaong village of the then Northern Transvaal by Small (1995). Redistribution land grants are generally only given to household heads who are often male in the majority. Unmarried women did not have land, or even homes of their own. Generally unmarried persons, males or females were not eligible for land grants but single men could inherit their parents' land, but this was unlikely for a daughter. There were some cases where sons evicted their mothers because of conflict. A divorced woman with children could apply for a stand if she produced a divorce certificate, which males were reluctant to give.

The structural factor of allocation of land to men means that women's dependence upon their husbands is exacerbated. According to Small (1995), married men have the highest status in the community and are expected to participate in all decisions regarding the general welfare of a community. She further states that women's interests would be looked after by their husbands, brothers or fathers. The exclusion from all decision-making functions has hindered women from challenging many discriminatory practices.

1.6 Dissertation outline

Chapter two provides an overview of gender in South African land policy. Firstly it highlights customary law as one of the key roots of discriminatory practices regarding land access and control for poor rural women. The White paper on South African land policy will be discussed, as well as what it entails in terms of programmes. The land redistribution programme will then be outlined in detail as one of the elements of land reform used to explore the extent to which women benefit. Land reform gender policy will be outlined in considerable detail as the basis upon which the Department of Land Affairs (DLA) deals with issues of land access and gender. In the last section of the chapter the statistical status of rural women who have benefited through the land redistribution programme will be presented.

The third chapter covers the research methodology, and explains how the project was carried out. The chapter will further describe secondary and primary sources of information gathering. The designing of the sample and its size, the approach, and the procedure followed will be outlined.

Chapter four focuses on the details of the case study, i.e. the Nhlawe community. The geographical location of the area, the historical background, and the challenges that were met during the land acquisition process will be summarised. All the phases of land acquisition that were followed will be outlined. The selection of beneficiaries and the formation of the community land trust, as well as the financial implications of land purchase will be presented. Finally in this chapter, the current status of land use in the community will be described.

Chapter five deals with women and land access in the Nhlawe redistribution project. It presents the findings of the research. The practicalities of gender dynamics from the

perspective of women will be examined. The chapter focuses on the factors and variables that play an important part in women accessing land in their own right, and when it is mediated by their relation to men. The chapter will give a brief overview of the history of the respondents. It will then focus on the role of the household heads and how that impacts on the manner in which women access, or not independent land rights. What has emerged is that household heads have provided several interpretations of the process which have various implications for land access and control for women. This chapter aims to explain the existing impediments and opportunities regarding the achievement of gender equality within the household. The chapter concludes with a discussion of the findings of the research. The analysis attempts to distil the factors that prevent women from achieving access and control of land in their own right.

Chapter six concludes the research study and considers the implications drawn from the Nhlawe case for gender in land policy. This chapter presents a set of recommendations on how women might be more proactively assisted through the land reform process in order to access land in their own right.

Chapter two

Gender in South African land policy

2.1 Introduction

In this chapter an overview of gender in South African land policy is provided. First, the chapter highlights some historical factors that contributed to existing discriminatory practices with regard to land access and control for women. The White Paper on South African Land Policy will be presented on what it entails in terms of its programmes. The Land Redistribution Programme will then be outlined in details as one of the elements of land reform that will be used in order to explore the extent to which women benefit.

There are a number of factors that contribute to poor rural women not accessing land in their own right. Some of the laws, policies and practices instituted in the past had direct and others indirect negative impacts on women's access to land. Most of the laws that were instigated by the colonial and subsequent apartheid regimes had indirect impact. These are regarded as indirect because their main purpose was based on racial and not gender bias, hence unintentionally discriminated against black rural women in terms of land ownership and control.

During the apartheid regime legislation on land rights, control, access and ownership was skewed towards the white section of the country's population and this led to racial and economic supremacy. Black people were denied ownership of land in their own rights and racial discrimination was the basis for exclusion. Even though land dispossession of black people took place prior to 1913, it only was made law through the Native Land Act of 1913. Since that time millions of black people were forced to leave their ancestral land and moved to the reserves, which were overcrowded and degraded. According to the White Paper on South African Land Policy 'racially based land policies were a course of insecurity, landlessness and poverty amongst black people, and a source of insufficient land administration and land use' (DLA: v).

The history of land discrimination lasted from the colonial to the apartheid era in the 18th and the 19th century and this resulted in 13% of the country reserved for the black population. During the apartheid era there were far reaching programmes of spatial control over the black population (Walker, 2000). These policies severely limited the availability of land as a resource and inevitably created serious political and economic dynamics within the poor rural communities.

There are factors that had direct impact in limiting women's access to land ownership and control. Traditional and customary laws regulated access to land. The inheritance of land and the customary marriage rules have, from time immemorial, been a stumbling block to women's access to land in rural areas (Sibanda and Ngubane 1996:13). In the national symposium on gender and land, three broad issues were identified as stumbling blocks to women's access to land; i.e.

- Traditional and Customary laws,
- Inheritance of Land and;
- Customary Marriage (Sibanda and Ngubane: 1996).

It will be attempted to look at each one briefly:

Traditional and Customary law

Traditional and customary laws give the husband full control over the property, land or the estate. The husband can freely dispose of the property and the wife does not have the right to approach the court for intervention. The customary law of succession still inhibits women from owning land and only allows mature male adults to inherit. The belief behind this practice is that only adult males are capable of realising the deceased person's duty to maintain the family. The Commission on Gender Equality has failed on a number of occasions to address this issue as it is protected in the Bill of Rights. Customary law plays a subordinate role in the Bill of Rights. Walker (2000:19) argues that because the question of the traditional leaders and their role in land allocation is not clarified by the ANC, this presents a challenge for the position of women and land rights. She further argues that the reasons why the role of

traditional leadership is not clarified is that there are no proposals to address the following question:

‘How can the prevailing law of succession and customary law be reconciled with the equality clause entrenched in the Bill of Rights and the Promotion of Equality and Prevention of Unfair Discrimination Act? (Walker 2000: 30)

Inheritance of Land

Under the customary law, women in most rural areas have no independent right to access or ownership of land in their own right. Should the husband die, the widow in terms of customary law is unable to inherit the land because she is regarded as a minor. Thus tradition and custom have bestowed the inheritance rights upon no one else in the family but the first born male. According to Sibanda and Ngubane(1996) it was until 1987 when the Kwazulu Code was amended that women had some recognition when it stipulated that women is a major upon turning 21. Yet, officers who are supposed to implement the Code are males who are in favour of keeping the status quo. (The Kwazulu code was only applied in the Kwazulu Natal province)

Customary Marriage

The practice has been such that a woman’s access to land is only via her husband with whom she is married under the customary law. Traditionally women are considered minors whether married, single, widowed or divorced and their male counterparts are their guardians. (Sibanda and Ngubane, 1996)

2.2 The White Paper on South African Land Policy

Immediately after South Africa had its first democratically elected government in 1994, the Department of Land affairs initiated the process of reformulating policies in order to be in line with participatory democracy and create the opportunities for security of tenure for all.

The South Africa land policy was made a public document in April 1997 by the then new democratic government. The purpose of land reform is to redress or reform past injustices of land allocation, which resulted from the ideological and economic policies of the apartheid era. The land reform policy 'sets out the vision and implementation strategy for South Africa's land policy; a policy that is just, builds reconciliation and stability, contributes to economic growth, and bolsters household welfare'. (DLA, 1997: v)

The South African land reform comprises of three sub-programmes i.e. Redistribution, Restitution, and Tenure security. There are a number of laws that have been enacted within the programmes to ensure that land reform becomes a reality. The tenure security programme has struggled thus far to enact the law that will address land insecurities which are mainly prevalent in the former homeland areas.

The land policy documents indicate that gender equity is essential so that women achieve a fair and equitable benefit. Land reform policy acknowledges that the right to equality before the law and the right to equal protection and benefit of the law which is also entrenched in section 9 of the Constitution need to be ensured. It is in this light that the Government is duty bound to guarantee the right to equal opportunities in relation to land. The Department of Land Affairs then formulated the Land Reform Gender Policy which was approved at the same time as the Land Policy in April 1997 by the Minister of Land Affairs.

2.3 The Land Redistribution programme

As one of the legs of land reform in South Africa, land redistribution programme came into effect from 1995. The purpose of land redistribution is to provide the poor with access to land for redistributive and productive uses, in order to improve their income and quality of life. The programme aims to assist the poor, labour tenants, farm workers, and women as well as emergent farmers (DLA: 1997).

The legislative tool for the Redistribution Programme is the Provision of Certain Land for Settlement Act, 126 of 1993 which provides for the designation of land for settlement purposes and financial assistance to people acquiring land and for settlement support. (DLA; 1997: 37)

2.3.1 Willing buyer - willing seller concept

The Redistribution Programme is largely based on the willing buyer willing seller arrangement. Government assists in the purchase of land but generally it is not the buyer. Government can only intervene once agreements of the sale have been reached between the parties and will make land acquisition grants available to support and finance the required planning process.' (DLA, 1997: 38)

2.3.2 Financial Apparatus

There are a number of financial apparatuses associated with the Land Reform Programme. Two of these apparatus are mainly used in the redistribution process which are:

(a) The Planning grant

The planning grant is designed to assist poor communities to plan for the acquisition, use and development of land and for the mobilisation of resources required to do this. It can assist applicants to apply for a SLAG (Settlement/Land Acquisition Plan), and enables applicants to select and appoint DLA accredited planners and other professionals. Services covered by the grant include legal and financial planning assistance, land use planning, infrastructure planning, land evaluation, as well as assistance with land purchase negotiations including the formation of a legal entity. The grant is estimated at 9% of the project cost and is intended to be disbursed in two stages 3% for feasibility study and 6% for detailed design. Provincial Departments of Land Affairs (PDLA) directorate should use their discretion in deciding how much to allocate at each stage. (Department of Land Affairs/DLA: 77)

a) Settlement/Land Acquisition Grant

Another major and significant grant on land redistribution is the Settlement/Land Acquisition Grant (SLAG). The amount of grant that the government gives to the beneficiaries is presently R16 000 per household. This was R15 000 when the programme was first initiated in 1995.

2.3.3 Legal entity

It is necessary that groups of people or communities who apply to government to purchase land through the Land Reform Programme must establish legal entities in order to take transfer of the land. The main reason for the creation of the legal entity is that since communities buy land collectively it is a requirement to enter into a legally binding contractual agreement. The agreements regarding rules, regulations and procedures are then written on a legally-binding constitution. This then allows the legal entity to sign any contract, it can be sued and can sue as a legal body. The entity is then registered and should state how its members intent to manage the land and what rights and duties the members of the entity have. South Africa has different types of legal entities, each can be employed in various circumstances for different purposes. There are two commonly used legal entities that communities employ when acquiring land as a group i.e. Communal Property Association (CPA) and a Trust.

a) Communal Property Association (CPA)

The Communal Property Association Act 28 of 1996 enables communities or groups to acquire, hold and manage property under a written constitution (DLA1997: 37). The Act prescribes the principles to be included in the constitution. These principles include fair and inclusive decision making process, equality of membership, democratic processes, fair access to the association's property and accountability and transparency. The CPA registers through the DLA and if there are problems, the Department is expected to play a key role of resolving those problems. The capacity of DLA to play that role is questionable.

b) Trust

The trust is another form of legal entity that is used to acquire, hold and manage land. This form of legal entity places the responsibility of managing acquired land in the hands of few members (trustees), who act on behalf of the whole community and its members. The powers to manage land lies on the trustees. The trust registers through the Supreme Court.

There are a number of challenges that have been identified with the above legal entities. Cousins and Hornby (2000: 7-8) have identified the following major problems:

- ❖ *Unrealistic expectations of the associations-* the legal entities have been tasked with the responsibility of performing a number of functions of which the members have no knowledge, skill or experience of performing.
- ❖ *Processes for setting up associations in land reform projects reflect a lack of understanding of tenure and of institutions.* The legal entities are not properly formulated , there is no capacity building, and the service providers do not provide enough information and training of the members.
- ❖ *The legal entities are set up in a vacuum.* Once the legal entities have been formed they are not linked to other developmental instruments e.g. local government or the tribal authority. Even though the duties to monitor progress is given to DLA there are no resources in place to ensure that monitoring occurs.
- ❖ *In the founding documents membership is frequently defined in contradictory ways.* This is mainly because it is not clear who can claim land rights. The members of the entity who appear in the documents as the beneficiaries are the heads of the household. The rights of the rest of the community members is then not clarified or mentioned.
- ❖ *Problems with the founding documents –* the constitution and other founding documents are not accessible to the membership for who they are written for, and they are mostly written in a language that is not understood by the members(i.e.English).

2.3.4 Phases of land redistribution

There are four phases through which potential beneficiaries have to undergo in order to acquire land through the redistribution programme. It is worth noting that all the phases are not followed in a linear sequence. Some activities of a phase can be executed concurrently. This section will merely give a summary of the redistribution process:

Phase One: Project Identification

In this phase, communities or groups register their interest with DLA for the assistance of land purchase or acquisition. Initial assessments of the applicants by the DLA then takes place and the explanation of land reform policies are then given. The Project Identification report is then written and submitted by the DLA official to the Provincial Project Approval Committee (PPAC) for approval. (DLA 1997)

Phase Two: Feasibility and Preplanning:

Once approved by the PPAC, applicants are notified by the DLA in writing while simultaneously the principles and the procedures of implementation process is explained to them. The Approval also means acceptance of the Settlement Planning Grant. At this phase applicants/potential beneficiaries are expected to follow a procedure with the help of the planning consultant using the planning grant. This consists of the following steps:

- Land should be identified and there should be a willing seller;
- The Legal entity must be formed;
- Business plan must be prepared;
- Application for SLAG;

Phase Three: Designation and transfer

Once the land has been identified and designated for settlement by the authorities of the DLA, the application for SLAG is then reviewed by the relevant sections of the Department. This is done in order to ensure that the project is feasible. Once the application is accepted, the land is designated under the *Provision of Certain land for Settlement Act 126*. Following this step the land rights are then registered, and a guarantee to the seller is issued by the DLA. Once the detailed planning is completed, it is approved by DLA. The implementation phase follows thereafter.

Phase Four: Implementation

Communities have to work closely with local government in ensuring that their plans are implemented. The DLA and other state organs have to play an active role in ensuring that the plans are properly implemented and are in line with the government programmes.

2.3.5 Challenges of the land redistribution programme

Broad redistribution challenges

There are various challenges that are encountered through the redistribution programme. Some of the problems that have been identified by Bonti-Ankomah (33-35:1998) are as follows:

- There is slow delivery in the redistribution phases, which is also exacerbated by poor communication between communities and the project deliveries. In other cases there are restitution claims on the land and that has to proceed through to the land claim court before any implementation can occur.
- Because of the willing buyer and the willing seller approach and the private property clause, landowners have the right to determine the selling price of the land. The prices can be high because of the high demand for land.
- Capacity of communities to articulate their needs is a major challenge, while there is also a problem of development. Once land has been transferred to the beneficiaries, the mandate of the DLA ends.

Gender related challenges

In the Land Reform White paper, it is stated that the challenge for government is to devise and implement a programme which responds even-handedly to the land market. This is to provide access to the range of clients seeking to obtain land, from the poorest, especially female-headed, single parent families to emergent black entrepreneurs. The Redistribution programme has made a clear stipulation that priority will be given to the following:

- To the marginalised and women in need;
- To projects which can be implemented quickly and effectively. (DLA, 1997: ix)

Hall (1999:24) sees these criteria as competing with each other. She sees women as less likely to know about available opportunities and mechanisms to lodge claims. This would put women at a disadvantage. Thus while the commitment to equity is stated and restated the need for land reform to deliver speedy tangible results is likely to override this commitment.

SLAG is intended for households, defined as a unit comprising two adults who are married or habitually cohabit, or a single adult with proven financial dependants (DLA, 1997: 71). When describing the practicalities of how the grant system will work the policy switches to describing beneficiaries as a single actor: "procedures will allow individuals to access the Settlement/Land Acquisition grant in order to meet their needs." (DLA, 1997:45)

According to Hall the assumption underlying the treatment of a household as a person is that the household heads will be claimants and that benefit will trickle down to other family members. She argues that the households are problematic categories and are not spheres of resource pooling and joint control. Hall (1999:24) claims that household access to land does not necessarily imply that women will benefit.

Sibanda and Ngubane (1996:34) state that under the Restitution and Redistribution programme of land reform, women feel that they are sidelined in terms of the procedure used to claim the land and the definition used to identify a beneficiary. Women are also not able to secure loans with the commercial banks and other financial institution because they do not own land that they can pledge as collateral.

2.4 Land Reform Gender Policy (LRGP)

The Land Reform Gender Policy (LRGP) was developed in April 1997. The main aim of this policy is to create an enabling environment for women to access, own, control, use and manage land as well as to access credit for the productive use of land. The premise of the LRGP is that women are poor because of lack of access to, and rights in respect of land. Factors that have been stipulated by this policy as stumbling block are:

- *discriminatory customs;
- * social practices;
- *power relations; and
- * legal restrictions.

The policy acknowledges that discrimination on land ownership, tenure and use have not only been racially based but also gender biased. This resulted in skewed land distribution of resources.

The conceptualisation of policy has been largely rooted on the “Beijing platform of action” of 1997 and the Convention on the Elimination of all forms of Discrimination Against women. One of the critical issues in the Beijing declaration is that government should commit themselves to:

‘Ensure women’s equal access to economic resources including land, credit, science and technology, vocational training, information communication and market, as a means to further the advancement and empowerment of women and girls.’

There are two approaches that seek to address gender inequality:

- Women in Development (WID) ;and
- Gender and Development (GAD).

The WID approach integrated women more effectively into the development process and gave them more access to resources for the development activities. According to the LRGP, the WID approach is limited because it reinforced inequality and widened the gap between men and women. The WID approach failed to look at relations between women and men and how those relations of dependency and subordination have limited women's opportunities to get full value out of the development process. Hence the DLA has stipulated that it would not use WID as its approach. (DLA 1997:35)

The GAD approach is significant in terms of the analysis of both men's and women's roles and needs. It assumes that an analysis of women's and men's role, and their access to resources and decision making are a critical part of improving development policy. The DLA had adopted the GAD approach in its LRGP and has recommended 'that sub-directorates responsible for policy, used gender and not women as a focus.

There are eight guiding principles that the Department of Land Affairs has developed to adhere to in order to promote gender equity. The guiding principles can be summarised as follows (DLA 1997:43-45):

Gender Equity –The LRGP says that women and men's needs are not necessarily the same and hence the manner in which women are treated should be different in order to ensure equity, and that there should be exploration of the use of the quota systems in all project cycles. An example that has been cited is that women in decision-making structures should not be less than 50%.

Facilitating awareness of women's rights and opportunities –The department should ensure that women are aware of their land rights so they can participate, and communication strategy should be developed to ensure women's access to resources and information. The DLA should develop material that is accessible locally and make it available in languages other than English.

Use of gender sensitive methodologies in the land reform project cycle. Possible training of beneficiaries should include the gender component. The department has the responsibility to inform women and men about their rights in land reform. Information should empower women to make informed choices.

Economic empowerment of women – There should be removal of all legislation that limits women from accessing credit. The Department of Land Affairs should work with other departments in order to develop mechanisms that will enable women to gain access to credit for the productive use of land. These departments should include Economic Affairs for entrepreneurship and diversification of rural economy and Trade and Industry for Small, Micro and Medium Enterprises.

Integrated approach – Gender incorporation in land reform should not operate in isolation but a gender strategy needs to be part of a broader strategy that aims to transform power relations. The department should have a close working relationship with other department such as Agriculture, Water Affairs, Housing etc.

Gender disaggregation of data – The department recognises that there should be disaggregation of land reform data by gender and other relevant indicators. The collecting, compilation, analysis and presentation of gender statistics play an important role in raising consciousness, promoting changes as well as providing an unbiased basis for policy measures.

Partnerships with NGO's – Non Governmental Organisations (NGOs) and Community Based Organisations (CBOs) have a long history of sectoral involvement in addressing basic needs of marginalised populations. The department needs to form partnership with these NGOs and CBOs in the implementation of land reform programme in order to draw skills and experiences of different gender workers.

Compliance with international instruments – In response to the Beijing Declaration , the DLA commits itself to take legislative and administrative measures to give

women and men equal rights to economic resources including access to ownership and control over land.

In the LRGP, five key issues have been identified in the creation of an enabling environment. These are as follows:

Budget implications :The department's budget should reflect the amount that is spend on women and men respectively. This does not mean that there should be a separate women's budget but processes need to be in place , so that programmes at all tiers of government be able to examine the impact on women.

Capacity :It is recognised that implementation of land reform is under- resourced in terms of staff numbers, knowledge, understanding of gender issues, and skills in integrating gender into their work. Hence the DLA needs to increase the capacity of the officials involved in dealing with gender mainstreaming within the project cycle.

Training of implementation staffers :The department is committed to the training of staff in gender sensitive approaches so that they are able to assist women who wish to draw up applications, deal with gender conflict and power struggles within the beneficiary grouping.

Legislative reform – The DLA honours the commitment to secure an enabling environment where women are empowered to take ownership of land. Discriminatory laws will be removed to enable access to and control of the land.

Monitoring and evaluation –The DLA should develop appropriate indicators to monitor and evaluate the impact of land reform programmes on the women's lives.(DLA 1997:32).

2.5 Land Reform Gender Analytical Tool

The land reform gender analytical tool was developed by the gender unit in the DLA as a means of gathering baseline information about the community throughout the project cycle. It is also aimed at ensuring that gender is incorporated in the implementation of the project cycle. This tool has been developed according to the requirements of the land reform gender policy framework, which states that gender sensitive methodologies need to be used in the land reform project cycle. The project implementation staff and planners need to record information on nine broad areas, which are as follows:

1. The gender division of labour - information on the women's and men's work and power relations.
2. Gender relations in a community – reproductive and productive activities and community work.
3. Access to and control over resource and benefit .
4. Influencing factors – involving past and present influences and an indication of shifts and trends for the future.
5. Identification of conditions and positions of women and men in a project – women's social and economic position relative to men.
6. Identification of practical needs and strategic interests – practical needs tend to be immediate and short term.
7. General questions around practical gender needs and strategic gender needs.
8. Levels of participation – of both men and women in the project cycle.
9. Potential for transformation – women's subordinate position.

The department has not as yet trained project implementation staff and planners on how to use the gender analytical tool. There have been workshops on common understanding amongst the staff on gender mainstreaming. These workshops were discussing gender case studies but the DLA is still devising methodologies on how to implement gender work (DLA 1997:39).

Conclusion

This chapter has shown that past policies and practices have played a major role in limiting women from accessing land ownership and control. It has demonstrated that post-apartheid era policies were formulated and are being implemented in trying to redress this predicament. Even though the current land reform policies attempt to tackle mainstream gender issues there are still limitations. The following chapter will describe the methodology that will be applied in order to investigate the validity of this claim.

Chapter three

Research Methodology

3.1 Introduction

This chapter will describe the research methodology that was used to conduct this study. It will outline the elements of the research methodology that were adopted in conducting the study. It is important to highlight from the onset that women were the only target social category in the process of this scientific inquiry. The research examined the experiences of women alone. As in the case study no men were interviewed. In short the study looked at women's dynamics from the women's perspectives and experiences.

Research studies on land reform and women's access to land are limited in Africa and particularly in South Africa. This has been mainly due to the complexity of the subject matter. This is one of the motivations why this research has targeted poor rural women as the reference point in order to explore the pertinent issues that are underlying gender and land reform.

3.2 Methodology

The study was able to draw upon both secondary and primary data. The methodology adopted was the systematic approach, involving firstly the process of theoretical elucidation of the research problem and then the conducting of field research to verify. There are three broad elements of the research methodology that were applied, these included the literature review, interviews with the stakeholders and the case study.

The primary data gathering entailed a case study that involved conducting face to face interviews and two focus group sessions. Face to face interviews were conducted with 33 female respondents using structured questionnaires. These interviews comprised of two categories of women i.e. i) women from the female-headed household and ii) women from the male-headed households. The face to face interviews were

qualitative in nature, and were utilised in order to compliment the limitations of the quantitative approach. Two focus sessions were conducted with women respondents from both the female-headed households and male-headed household.

The three elements of the research methodology that was applied will be outlined in the following section.

3.2.1 Literature review

The literature review started with the studying of material related to the problem at all levels. In this effort, books, journal and other research article were perused so the researcher could become familiar with the theoretical and practical aspects of the problem.

Secondary data was collected mostly in order to increase and corroborate baseline information on the community using several DLA files as main sources of information after seeking permission. The content analysis of literature review of relevant information for example the White paper on Land Policy of 1994, literature on gender, the Provision of Certain Land for Settlement Act, 126 of 1993 and so forth.

3.2.2 Stakeholder interviews

The researcher had discussions with the gender specialists from AFRA¹ and the NLC² gender co-ordinator. These were organisations that had done serious work on several aspects of the topic under investigation and it was felt they would be of assistance. There were also formal and informal discussions with other NGOs such as Lima and CAP, consultants, DLA officials and the Uthukela Regional council under which Nhlawe falls.

The key respondents formally interviewed had either direct or indirect functional role at the Nhlawe project. They are as follows:

¹ AFRA is the Association for Rural Advancement, a land NGO in KwaZulu-Natal affiliated to the NLC.

- *The Provincial Gender Co-ordinator of the DLA,
- *The DLA facilitator currently managing the implementation phase of service delivery by the regional council,
- *The Chairperson of Uthukela Regional Council and also chairperson of the Weenen Peace and Development Committee (WPDC) ,
- * The Lima officer providing capacity building to the Nhlawe land trust ,and
- * The Chairperson of the Nhlawe land trust.

There is an appendix where a full list of the key respondents appears.

3.2.3 Case study

In order to unearth the practical dynamics of women's access to land as it applies on the ground it was important to identify a study area where community members have moved and are settled on the 'new' land. This was done to firstly understand how the land was acquired through the land reform processes and mainly assess whether women have benefited or otherwise from that process. Secondly, it was considered important to see whether once women have settled on the land what was their level of access and control of the land after acquisition.

a) Case study selection

Nhlawe was selected as a study area . It is situated on the Weenen District under the Uthukela Regional Council near Ladysmith, in KwaZulu-Natal. It is one of the first pilot projects in KwaZulu Natal set aside as a presidential project.

There are three primary reasons for selecting the Nhlawe case study.

- Firstly, Nhlawe is a redistribution project where all phases of the programme had been completed, land was transferred to the beneficiaries and most people have moved to the 'new' land.

² NLC- National Land Committee is a network of eight land rights NGO's in different provinces in SA.

- The other two secondary considerations for selecting the Nhlawe project are the size of the community project and the geographical proximity of the area. The Nhlawe project has 130 beneficiaries including both males and females. It is a huge project and seemed to present different dynamics motivating the study. In terms of proximity, the area is situated approximately 150 km from Pietermaritzburg. Assistance in selecting this project was acquired from both the provincial DLA-KZN and the regional DLA planner based in the Uthukela region.

Poor rural women are the most disadvantaged grouping in our society, and research has shown that they are the most marginalised in terms of land access and control. Nhlawe is in a deep rural area and serves as a good case study of land allocation and how that has manifested itself in the land redistribution programme with regards to women's access and control of land. Full details of the case study are presented in the following chapters.

b) Gaining access to the study area

Lima consultants was contracted to build the capacity of the Nhlawe Land Trust. Subsequently after having interviewed a Lima official as one of the key respondents in the study, he was requested to introduce the researcher to the Nhlawe Land Trust members. Coincidentally on the date of the first meeting with the committee the leadership of the regional council was also meeting with the community. At the meeting the research was outlined and a request to conduct the research in the area was presented. The whole community together with the Nhlawe Land Trust made an agreement and dates for field research were set.

c) Respondents selection

In identifying female headed households the secretary of the Nhlawe Land Trust was employed to identify female headed households by utilising the DLA beneficiary list that was used in allocating grants for the land purchase. Identifying female headed households according to the DLA beneficiary list proved to be difficult for the

secretary because only the initials and their identity numbers are written on the beneficiary list, and the gender composition of the beneficiaries is not explicitly stated.

In order to solve the problem, a meeting for all the women who were registered on the beneficiary list was called. It was at that meeting that each and every woman was interviewed and questionnaires were filled in by the respondents. Thus all women in the above mentioned list participated in the study.

(d) Face to face interviews

Face to face interviews using structured questionnaires with 33 women respondents were undertaken. The interviews were conducted with two categories of women comprising the following characteristics i.e.

- * women from the female headed households (Widowed, Divorced or never married); and
- * women from the male-headed households (living with a husband, staying without a husband for whatever reason and those that are in polygamous marriages).

The selection process of women respondents has been described in section (c) earlier.

Questionnaires were used to ascertain the differences in land access and control between the two categories of women. The questionnaires were used as guidelines of probing for more information relevant to the study. One set of questionnaire was used for both categories. (Appendix A – Questionnaires). The questions covered qualitative and quantitative information. The questionnaire was constructed with the help of the initial supervisor of the thesis and serious debates with senior researcher of AFRA. It needs to be said that both qualitative and quantitative methods of analysis were utilised in the empirical section of the study.

(e) Focus groups

Focus group meetings were conducted during two consecutive days and involved various categories of women. No criteria were set for selecting women to participate in the focus group sessions. All the women who came to attend the meeting took part in the discussions. A total number of 56 participated in both focus groups. The focus group discussions were not only informative to the researcher but also provided some participants with clarity about the gender issues. It also provided an opportunity for women to share their experiences of vulnerabilities and solutions were discussed.

3.2.4 Problems encountered

The total number of persons registered on the Nhlawe beneficiary list is 130. Of these only eleven were female headed according to the DLA files. The intention of conducting two focus group sessions with separate groups was to solicit the views of different groups of women on how they encounter social dynamics differently. The two groups comprised of eleven female headed household heads reflected on the beneficiary list and eleven women whose land rights were mediated by their relation to men in terms of law and Zulu traditions. In fact the issue of the marital status turned out to be complex and ambiguous. Ultimately both women who were the heads of the households as well as those who were de facto in one or another form of marriage whether legal, customary or by tacit arrangement were interviewed in one group.

3.3 Categories of women

It is significant to highlight that rural women are not a homogenous group and as such they experience discrimination differently. Meer (1997:37) has categorised female headed households into four groups as follows:

**Widow with grown children*

This category is in the best position under most tenure systems. The family is viewed as respectable and accepted by the wider community.

** Young widow with young children*

They are seen as equivalent to abandoned wives with young children already settled on their own land holding before losing their husbands. Their chance of keeping the land are good. Their case seems to be more precarious than that of older families. When they have only daughters, the household appears weak, because she has no male heir to hold land and no resident male to speak for her in public processes. She is then vulnerable to both land use and impoverishment.

** Single mothers with children*

This is the most disadvantaged category of women as they are the heads of the household. They are not seen as eligible for land rights. Although single women do receive land in some rural areas, pressure on the system tends to squeeze out the women's claim, returning them to marginality. They constitute a very large demographic category and they are unlikely to obtain land unless they live in peri-urban areas where rates of formal marriages appear to be relatively low. Unless these single women have older sons, their rights to land is likely to be contested by male neighbours and distant relatives.

** Married women with absent husbands*

In this category husbands neglect the households or contribute little or no financial support to their family. They usually have land to live on but are disadvantaged in terms of securing access to arable land. They have very little freedom to decision making and may not be able to move house without obtaining the husband's support and permission.

Conclusion

The study relied on both primary and secondary data. It was a case study that utilised a sample of rural women and interviews with various stakeholders in the area under investigation.

Interviews , questionnaires and focus groups were the primary data collection instruments and the sample was of the judgemental variety and were selected from the DLA beneficiary list that was made available to the researcher.

There were several problems encountered in this process.

Chapter four

Land Redistribution: The case of the Nhlawe Community

4.1 Introduction

This chapter focuses on the details of the Nhlawe community case study. It covers the geographical location of the community, its historical background and the challenges that were encountered during land acquisition. All the phases of the land redistribution programme that the community followed will be outlined. The formation of the community land trust and the financial implications regarding the land purchase will be presented. Finally this chapter will highlight key issues on the current land use status.

4.2 Geographical location

The Nhlawe community is situated in the northern part of Weenen District under the Uthukela Regional Council near Ladysmith, KwaZulu-Natal in South Africa. It is situated along the Nkaseni Road and access is through Sun Valley Estate. The Nhlawe Development Plan (1998:5) indicates that the farms that were purchased by the Nhlawe community under the Redistribution programme comprise of 1739 hectares and registered under the following properties:

- Sub 1 Kromellmboog No. 1365
- Sub 2 Kromellmboog No. 1365
- Rem of Kromellmboog No. 1365
- Sub 1 Buffeelshoek No. 1931
- Rem of Buffeelshoek No. 1931
- Sub 1 Kaffirskraal No. 1309; and
- Sub 2 Kaffirskraal No. 1309.

4.3 Historical background

As a result of apartheid's policies of force removals, the majority of the Nhlawe community members were evicted in the late 1960s from the farms where they were labour tenants. The system of labour tenancy was abolished during that time. For this reason communities were forced to settle at Waaihoek approximately 70 kilometres from Ladysmith and the majority settled in the Tugela estate at Sahlumbe. Not everyone was evicted from the farms, and few families remained behind because farmers still required cheap labour. In a research conducted by the United Nations, Walker (2000:3-4) has highlighted that the living conditions at Sahlumbe were extremely poor. Relocateses were supplied with tents and expected to build their own shelters. No sanitation was laid on. The only water supply came from the Tugela River. The area was torn apart by factional violence throughout the late 1980s and into the 1990s. Sahlumbe was also overpopulated and rife with crime.

In an interview with Rouri Alcock a member of the Weenen Peace and Development Committee (WPDC), it was stated that when people were evicted and sought refuge from the neighbouring farms and townships, they were never fully accepted in those areas as full community members. They were regarded as newcomers (in isi-Zulu '*abafiki*'). Even the land allocated to them was not adequate, hence it was uneven when compared with that of their original residences. Therefore, in 1995 when people first heard about the land reform they were keen to apply to the government with that request. The first choice was obviously a plan that would enable them to return to their ancestral land. Walker (2001:23) confirms this by stating that the history of evictions and territorial conflict in the Pilot District gave a very strong restitution dynamic to the KwaZulu Natal redistribution programme from the start. Thus, instead of lodging land claims with the Land Claim Commission, many ex-labour tenants and farm workers in the Pilot district chose to work through the more accessible Pilot district office in order to use the redistribution programme to return to the land from which they or their forebears had been evicted.

4.4 Socio-economic profile

The unemployment rate in the community is very high according to interviews with major stakeholders who have knowledge of the area. The main purpose for the community members moving to the ancestral land was to gain access to more agricultural land. Yet according to ACER the land is agriculturally marginal and crop production is limited. ACER reported that economic prospects for farming was not exciting. The farm is isolated with the only access being via a private dirt road which is in a very poor condition. Although there is prime grazing land in the district ACER has mentioned that because of bad veld management by the previous owners there is a reduction in the veld carrying capacity. The farm has a carrying capacity of 155 head of cattle. This then already placed pressure on the community members/beneficiaries who number 134 which meant that the community would have to survive with only one cattle per household. The only economic benefit of the farm suggested by the above mentioned study is conservation / eco-tourism enterprises.

4.5 Legislative options

There were three pieces of legislation that Nhlawe community could employ to get the land in question i.e.

- *Restitution of Land Rights Act, 22 of 1994;*
- *Land Reform (Labour Tenants) Act 3 of 1996 ;and*
- *The provision of Certain Land for Settlement Act, 126 of 1993.*

According to Dladla the chairperson of the WPDC it was not clear whether labour tenants could apply through the Restitution process because they did not have title to the land and the process seemed cumbersome and vague. Another ideal option would be to use the Labour Tenants Act. However this route was only going to favour few people because it only catered for people who were still practising labour tenancy. Thus the farmer had to consent that the people concerned are labour tenants.

A decision was made by the community that those categories of people who were seen as belonging within the ambit of the LTA had to waive their rights so as to accommodate the other family members who did not fall within the parameters of the Labour Tenant Act. The only route that appeared to be more realistic and achievable within limited time and resources was the land redistribution process.

4.6 Phases of land acquisition at Nhlawe

This section will examine the five phases of land acquisition process as it unravelled in the Nhlawe project. The WPDC played a pivotal role in assisting the Nhlawe community to make a formal application to the Department of Land Affairs and facilitated the process in most of the phases in conjunction with a DLA planner. According to the DLA existing files on Nhlawe has undergone all five phases of the land redistribution process. The area stands now in the last phase of implementation of the developmental plans, which are presently executed by the Regional Council. The land redistribution phases that the Nhlawe community has undergone are as follows:

4.6.1 Phase one: Project Identification

(a) Registration of land needs with DLA

In October 1995 Nhlawe communities made their first application and contact with the Department of Land Affairs. At this stage most necessary information was gathered and a number of meetings were held with the community on the matter. In these meetings various important discussions and decisions regarding the whole process were arrived at.

(b) Beneficiary Selection

The only criterion that was used by the Nhlawe community to select beneficiaries was that it should be families who had been evicted and were originally from the farms.

There were persons within the community who volunteered to collect names of beneficiaries. People who volunteered to collect family names were also advised by the WPDC that the government wanted women to participate in the project. The WPDC played the very crucial role of the intermediary between the community and the government. Most of the vital information and documents were handled by the WPDC. The communities were indebted to the WPDC for its commitment to land reform. The participation of women in the land acquisition process was not fully explained. In cases where the husband was away in Gauteng or elsewhere for work, the woman would write their husband's names on their behalf. This was understood to be a temporal arrangement until the husband returned. As a result, according to the DLA files of the total of 130 household beneficiaries, only eleven were female headed. There were still more households who wished to apply for restitution, but because they were advised by the officials that the farm could only accommodate 130 some people were left behind and were forced to apply in other areas.

(c) Approval by Provincial Project Approval Committee (PPAC)

It was only in March 1997 that the final stage of this phase was reached where the Provincial Project Approval Committee officially approved Project Identification Report. It is worth noting that gender data was not acquired.

4.6.2 Phase two: Project feasibility and preplanning

In this phase three major activities were carried forward i.e.

- The legal entity structure was defined;
- The land valuation took place ;and
- The business plan was approved by the PPAC,

All these activities were completed in September 1997.

(a) Land identification

The land that the community envisaged acquiring contained portions of properties of three land owners who were not willing to sell their land. Land Redistribution stipulates clearly that the transaction of land sale should be based on the notion of willing buyer and a willing seller. This predicament proved to be complicated for the Nhlawe community, it left them at a disadvantaged position because they did not have the capacity to negotiate with the landowners.

Fortunately for the Nhlawe community the Weenen Peace and Development Committee (WPDC) a local structure that is representative of all Weenen farms and the surrounding areas existed in the area and played an important part in the process. The structure was formed in 1995 and comprised people from different traditional leaders (Amakhosi) areas and wards. The local communities established this committee as a result of serious economic exploitation of the local population by farmers. The function of the WPDC was and still is to resolve conflict pertaining to land and to facilitate the land reform processes between the farmers and the tenants.

According to Mr Dladla who is the chairperson of WPDC it was not only the Nhlawe community that was faced with land owners who were not willing to sell. Most farmers in Weenen and surrounding areas during that time were not willing to sell their land. The committee was, however, able to lobby the then Minister of Land Affairs Mr D.Hanekom so that he could intervene to solve the problems. After the minister's intervention some farmers were willing to sell their land and Nhlawe is one of those communities that benefited from that intervention.

(b) legal entity structure

The form of legal entity that the Nhlawe community chose was the trust. This meant that within the number of beneficiaries that were selected, a few were to be elected to the Nhlawe Land Trust.

After all the names of the beneficiaries were recorded, a community meeting was organised by WPDC and the DLA official at which trust members were elected. Even in that meeting the community was informed that the DLA strongly wishes women to take part in decision making. Most men were illiterate, so those women who could read and write and were seen to be active were elected. Several youths were elected since they could read and write. A few could understand English. Some people were elected on the basis that they were available all the time and could attend meetings as the trust might request. There were three women elected on the first term of office, very few when compared to men. In all meetings the WPDC would be there to assist the community and explain the legalities and the implications of the decisions that were taken by the community.

C) Business plan formulation

A consultant was contracted by the DLA to do the business plan. It was developed in 1998, and efforts took place to make it implementable.

4.6.3 Phase three: Designation and land transfer

The following steps were undertaken in the process of the third phase:

The trust document was developed and registered in October 1997. The trust was registered under the Trust Property Control Act of 1988(Act 57 of 1988). According to the Trust Deed it is subject to the terms and conditions of the Provision of Communal Property Association Act No 28 of 1996. There are fifteen members of trust who are elected annually. The present land trust was elected in August 2000. On that occasion only one woman was elected as a member of the Nhlawe Land Trust. There has never been any training on gender issues from the DLA or any other NGO. The only attempt that has been made to address the issue of gender equality on land reform in this project was the inclusion of women on the trust. There was no real effort to give women initiatives in this process as it became evident in the findings of the present project.

In February 1998 Scott Wilson was appointed by the Department of Local Government and Housing to undertake detailed planning for Nhlawe in terms of the KwaZulu Natal Land Reform Pilot Programme.

According to the Nhlawe development plan two options were presented to the community , and one of them was chosen by the whole community on the 26th of June 1998.

Beneficiary families agreed to individual homestead lots of 50m x 50m with the minimum buffer strip of 5m to allow for passage of livestock and vehicle between homesteads. The community preferred a scattered settlement pattern with homesteads located to the north of the Blaaukrantz River. The settlement would occupy approximately 100 ha with a large portion of the farm remaining for cultivation and grazing (Nhlawe Development Plan: 1998:4). According to the DLA planner, beneficiary families were given equal plots regardless of gender. Grazing land was allocated to everyone equally.

During the detailed planning a total number of six meetings were held between the planners and the beneficiaries. These meetings ranged from needs assessment workshops to Mapping of the settlement with the beneficiaries.

The land transfer, and the development plans were approved by the minister in December 1997

4.6.4 Phase four: Implementation

The transfer of funds to the regional council took place in November 1998. The regional council is still in the process of providing service .

The Nhlawe redistribution project cycle took almost four years and as yet the project is incomplete.

Lima has been contracted to run institutional capacity building programmes with the current land trust members. The Lima official interviewed confirmed that there has not been any proper or structured training on gender either for the trust, community or women. According to a Lima official the only woman elected in the trust committee does not attend the meetings. It is important to note that four years after the Gender Policy was made public, crucial issues of gender are still not discussed in this project with the beneficiaries.

Land Allocation

According to the official estimates , the farm is 1739 hectares. Approximately 100 ha have been put aside for settlement of the beneficiaries, The remaining 1639 ha is for cultivation and grazing.

It can be said that whether this land can be deemed sufficient for the usage of the local population will only become evident only after the process under investigation has reached its realisation.

4.7 Current Developmental status

When the community took over the ownership of the properties there was little existing infrastructure .There was neither electricity nor telephones, only the fencing. The Nhlawe development plans state that the community reached a consensus deciding that the monies that were left for development be used on the following (Nhlawe Development plan: 1998:2)

- the development of six new boreholes with hand pumps to provide sufficient domestic water to cater for community needs (50 lt. per person per day)
- the provision of material for VIP pit latrine;
- a multifunctional community hall and ;and
- the upgrading of the internal farm roads and a low level ‘bridge’ comprised of a concrete strip across the Blaukrantz River.

The money that was allocated for development were only enough for the construction of the boreholes and the road. (The exact amount was never revealed to the researcher). A community hall has been build from the money given by the Uthukela Regional Council (URC) .This is according to the Chairperson of the URC. The building of the school has been approved by the Department of Education and is within the current plans of the Regional Council. (Interview with Mr.Dladla)

Of all the 130 household beneficiaries, 60 have managed to settle on the land according to the DLA planner currently working in the Nhlawe project.

Having examined the processes associated with the land settlement in the area of our case , let us turn to the second part of our empirical analysis, the responses of the women to the questions posed to them.

Conclusion

This chapter examined various key aspects associated with the area under investigation It examined its geographical location and identified the exact extent of the properties set for redistribution.

It also gave a brief background to the historical circumstances prevalent in the process of redistribution, as well as the social and economic profile of the area which is characterised by high rates of unemployment.

The legislative options were outlined as well as the various phases of land acquisition in the area , the role of the DLA, the PPAC and other important stakeholders.

The processes of project feasibility and preplanning , such as the land identification, the legal entity structures and the business plan formulation were explained, together with the processes of designation and land transfer.

Finally, the implementation efforts and the present developmental status of the project were analysed.

Chapter Five

Women and land access in Nhlawe redistribution project.

5.1 Introduction

The Nhlawe community demonstrates varying dynamics in terms of land access and control for women. The study presents a number of variables that have an impact in women accessing and controlling land in their own right. This chapter will focus on the factors or variables that play an important role in women accessing land in their own right. The chapter will firstly give a brief overview of the history of the respondents. It will then focus on the perceptions and interpretations regarding the role of the household heads and how these impact on the manner in which women access independent land rights or not. What has emerged is that the role of household heads is interpreted in various ways and this has various implications for land access and control for women. This chapter aims to explain the impediments and opportunities that exist to achieve gender equality within the household as seen by the women interviewees themselves. The chapter concludes with an analysis of the findings of the research. The analysis attempts to distil the factors that prevent women from achieving access and control of land in their own right.

5.2 History of the households

The majority of the respondents were born at Nhlawe (18) and the rest were born in and around the Weenen district. All but one respondent had their parents and/ or grand parents living in the Nhlawe area. Most of the respondents' family graves were at Nhlawe. Only two had family graves in the neighbouring farm. The majority of the respondents had their families evicted from the farm and most of them did not know when the eviction took place. This is a very interesting socio-historical factor that epitomises the scars of apartheid. People of all ages interviewed did not remember when they and their families were evicted from the area. Possibly it was a long time ago, perhaps it was just a bad memory, or people just simply wanted to forget such instances.

The few that knew estimated the late 1960s, and two said 1989 and 1974 respectively, but they were not very sure. More than 70 percent of the respondents started moving back to Nhlawe between 1998 and 1999. A large number moved back in 2000, and the last in January 2001. Most of the respondents (20) interviewed for the purpose of this study, lived in Sahlumbe before returning to Nhlalwe , while nine lived in Waaihoek. The four remaining respondents had stayed on the farm as labour tenants.

5.3 Household composition

The average household composition for the respondents is six members. It should be noted that even though the average number per households is six, there are those households who have up to fifteen family members. In those households with the highest number, the study was able to reveal that that there are more than one person who qualifies as beneficiary and yet only one person has applied for the grant in all the households. This shows the ignorance of the people in relation to very important realities in their lives. The fact remains, however, that there are possibilities that even in the event of application there was no guarantee of success. It is further revealed that most people who qualify in those households, and have not applied, are women.

5.3.1 Age breakdown and education

The following table shows the age breakdown in relation to the level of Education of the respondents.

Table 1 : Educational background of respondents by age

Age Breakdown	No-Formal Schooling	Primary Schooling (Sub-A to STD 2)	Total number
29-40 years	5	2	7
41-50 years	9	4	13
51-59 years	4	1	5
60-80 years	8	0	8
Total	26	7	33

The ages of the respondents range between 32 to 80 years. Amongst them the widow's ages range between 49 to 82 years (the marital status of the women respondents appears later). The majority of the respondents (26) do not have formal schooling . Only 7 respondents attended primary school up to Std 2. The national average is 5.3 years of education. In KwaZulu Natal specifically it is 1,87 years of education. The Nhlawe case study demonstrates that respondents were below average in terms of the national averages. The majority of the respondents, approximately 79 percent, did not receive much formal education.

This signifies several fundamental truths associated with such rural populations .The legacy of apartheid, separate development and Bantu education bears very important consequences and effects .The most important of these is the lack of understanding of many present circumstances, especially the ignorance related to very crucial human factors and needs, such as housing, land redistribution , and finally survival. In such situations even simple and efficiently presented training series would be difficult to be implemented given the low literacy rate and level of understanding of the inhabitants.

Lack of education has generally a serious impact on the levels of understanding and participating in all community activities and on confidence of those who are illiterate. There appears to be a relationship between the level of education and the level of participation in the community structures and activities. This will become apparent in the process of this thesis People who have not attended school do not have the confidence to participate in meetings and community structures.

5.3.2 Employment and sources of income

Most of the respondents are not formally employed . Only two are formally employed, and twelve are employed on a part time basis. The following table illustrates the breakdown with regards to the sources of income.

Table 2: Income and employment patterns of interviewees

Source of Income	Total number	Monthly average Income
Formal Employment	2	R600
Informal Employment	12	R300
Pension	6	R 500
Remittances	5	R150
No visible income	8	-
Total	33	R300

There are broadly three sources from which beneficiaries gain income.

- Most of the respondents are presently employed on a part time basis in temporary jobs offered by the Nhlawe Land Trust as part of the infrastructure development. This is currently running in the area as part of the redistribution programme project. These projects are on a short-term basis and involve school building, road construction and the hall construction, the latter project has been mentioned earlier. The money that the Nhlawe Land Trust utilises for the infrastructural development of the area is the remainder of the R821 240 from the SLAG fund (Interview with Mr. S.Ndlandla). Most of the respondents were employed on these projects, and hence there will be a vacuum once these projects have been completed. This poses a major question for the sustainability of the redistribution projects as a whole. However this is the reality associated with such initiatives that are not related to sustainable job creation development and growth. Their duration is very short and the daily allowances that the people earn are insufficient for the short, let alone the middle and long term. In fact such remuneration barely meets the “basic needs” approach as advocated by the Redistribution and Development Programme, which was adopted by the first democratically elected government in the country. The basic problem with those who work at present and will not continue when the SLAG funds run dry, is that at



least for now they have some money to buy the bare essentials in order to survive, while they see their own future as very bleak.

- The second source of income is from pensions. This is the only stable and reliable income that is available at Nhlawe and this is a very significant part of the peoples' lives there as it is a stable source of funds monthly. Eight respondents qualify for the pension but only six get it. The remaining two did not know that they now qualify and one of them said she was still doing minor modification in her ID book because information on it was incorrect. These two old people complained about the various officials who were in charge of the pensions and registration, especially those who purported to service and deliver in the area.
- The third component of the household income is from remittances. Only 3 of the respondents are not employed in the previously mentioned jobs hence they do not have a steady income and rely on the income of their spouses who are employed, mostly in Johannesburg. Most of the spouses sent an average of R150 per month.

Across all the three broad categories of income a minority of the respondents' is involved in informal employment through selling crafts, and one of them (out of a sample of 33) was a traditional healer. The average monthly income of the respondents is approximately is R300

5.4 Marital status of the respondents

The following table presents the marital status of women who participated in the study :

Table 3: Marital status of respondents

Marital Status	Number of respondents
Civil Marriage	2
Customary Marriage	4
Polygamous Marriage	8
Separated	2
Single	2
Widow	15
Total	33

Table 3 illustrates that, theoretically, there are 14 male-headed households in the sample constituting 2 civil, 4 customary and 8 polygamous marriages. There are also 19 female-headed households made up of 2 separated, 2 single and 15 widows. This breakdown reflects the local practice of how a head of the household is defined and socially understood. This is a significant pattern in terms of migratory and other parameters and corroborates with similar findings of researchers such as Simmons et.al (1977) and Rempel (1981).

This table indicates existing social and individual realities facing rural women in the area under investigation and have a significant effect on their attitudes and to the economic and social connotations thereof.

5.4.1 Heads of the households / members on the beneficiary list

There are eleven female-headed households in the DLA files, and there are 18 respondents who believe themselves to be on the beneficiary list. There is still confusion regarding the beneficiary list and who is on it. However, in practice it appears that there are more than eleven female-headed households in the area. The manner in which they identified themselves on the beneficiary list is when at the time of the land allocation, their names were called out as proof that they are indeed on the beneficiary list. They also asserted that there is nothing on paper as proof that they are the registered beneficiaries.

This then implies that there are three interpretations of the 'household head'. These are the local interpretation, the DLA interpretation, and the factual beneficiaries who are in the DLA list.

5.4.1.1 Local interpretation

According to this interpretation the man is the head of the household. Should the man die then the son inherits the property and becomes the head of the household. If the son is still young to inherit the land, then the mother will look after the land and the

son until he is old enough to inherit the land (Interviews with Mr Dladla and AFRA personnel).

The Zulu culture is patriarchal and hence land succession takes place along the male line. This has not been different within the Nhlawe community where men are the head of the households and the owners of land. This has been the custom before the land redistribution process and continues to be the case. Practical realities have taught that custom are practiced differently within the community. Yet there is also fluidity in terms of how the custom is practiced.

5.4.1.2 DLA definition/interpretation

A person who has applied for a grant and registered on the beneficiary list is regarded as the head of the household according to the DLA. In accordance with this Department, there are two broad categories of persons who qualify for a grant. According to the White Paper on Land Policy a persons who may qualify for a grant is who is, married either through civil or customary union or habitually cohabits with any other person. The second category is understandably the single group. It further states that single person of either sex without dependants will not qualify. (White Paper on Land Policy 1997:71). In a nutshell anyone who has registered his/her names on the beneficiary list is regarded by the DLA as a household heads, whether in practice and reality they are or not.

There are people who claim to be on the beneficiary list and indirectly claim to be the household heads. Existing DLA files reflect that there are eleven female-headed households, but that was difficult to determine as the beneficiary list has only the initials and ID numbers. In the focus group session discussions there were even more respondents who claimed to be on the beneficiary list. There is a discrepancy in this matter, and two assumptions could be attributed in this regard. The first assumption could be that the DLA files are not correct in stating that there are eleven female-headed households, which might reflect a problem in the records. The second issue could be that there is a difference of seven women who believe themselves to be on

the beneficiary list while they are not registered and are not reflected on the DLA files.

There are three female-headed households who according to local practice are supposed to be male-headed households but due to the grant system they were converted. This occurred for the following reasons:

- a) In the first case the ID of the husband was not available, hence the wife was registered on behalf and instead of him and she ended up being considered the 'head' in accordance with the DLA definition.
- b) Two women who are married to the same men were mistakenly made household heads through the registration process in his absence.

In the DLA files and the ones that the trust has in its possession, the only names that appear are for the heads of the households and not the family members as it is stated in the constitution. This creates a sense of security for the other family members whose names have not been registered. This is more problematic in the case of sudden death of the beneficiary.

5.4.2 Beneficiaries of land redistribution

The table below demonstrates two distinctions of beneficiaries of land redistribution in accordance to marital status. It is important to distinguish these two typologies of beneficiaries as they have different levels of access and control of land in their own right. Primary beneficiaries refer to the group of people who have registered on the DLA beneficiary list as the household heads. The secondary beneficiaries are people who have gained land right because of their relation to the household heads.

Table 4: Marital state of respondents in relation to primary and secondary beneficiaries

Marital Status	Number of beneficiaries	
	Primary	Secondary
Civil marriage	0	2
Customary marriage	1	3
Polygamous marriage	2	6
Separated	2	0
Widowed	13	2
Single	0	2
Total	18	15

a) Primary beneficiaries

There are 18 female-headed households who claim to be on the beneficiary list. The above table demonstrates their marital status. One respondent had married through customary marriage , 2 were in polygamous marriage, 2 were separated and 13 were widows. Most of the female-headed households are widows. All the women who are on the beneficiary list claimed that their rights to the land are protected by the fact that their names appear on the beneficiary list and that their rights are protected by the trust.

b) Secondary beneficiaries

In this type access to and control of land is solely dependent on the relation to other family members. In the case of Nhlawe all the respondents' believed that secondary beneficiaries were determined by their relation with their male counterparts .

Most respondents said that their security to the land was precarious. There was a general agreement that access rights for all secondary beneficiaries were relatively secure, even though it was not the same for all respondents. Only two respondents

said that their rights to the land were secured even though their names were not on the beneficiary list. These were the mother of the head of the household and the daughter of another head.

5.4.3 Secondary beneficiaries and their relation to the household heads

The table below demonstrates that there are a total of 15 respondents who were not on the beneficiary list and their relations to the household head vary. Thus they were 2 - daughters of the head, 1 -daughter in law of the head, 9-were wives of the head, 1- mother (widowed) of the head, 1 sister of the head and 1 relative of the head.

Table 5: Relationship of respondents to the household head

Relation to H/H	Number
Daughters	2
Daughter in law	1
Wife – civil marriages	1
Wives – customary marriages	2
Wives – polygamous marriage	6
Mother	1
Relative	1
Sister	1
Total	15

The level of vulnerability to land access for all categories of women differed in accordance to their marital status and their relation to the household head. Two groups appear to be the most marginalised in accessing land and resources.

(a) The first consists of the second wives who seemed to be the most vulnerable grouping because they were discriminated against by the social practice of being treated as junior wives within the family and the community. The Nhlawe Land Trust exacerbated the discrimination by not allowing them access to employment. On the other hand other resources were also equally distributed in all households except in

those households where second wives were present. (These attitudes were corroborated repeatedly in the focus groups within the context of this research).

(b) Secondly, the group that also appeared to be vulnerable in terms of land access is those consisting of daughters-in-law. Land access in this case is mediated by the husband who is usually away working in other parts of the country and only visiting home once or twice in a year. During the focus discussions it was stated that in the past because there was an abundance of resources, daughters-in-law were treated with dignity and qualified for land allocation.

It is important to highlight that one would have expected that since there are nineteen female-headed households according to the findings that have appeared so far then there should be the same number in the beneficiary list. The paradox is that two widows, two single and separated females were not the heads of the household but had varying relationships with the heads of the household. There are various reasons for this:

- Some claim that they were not aware that women could apply in their own right independent of men. This is obviously a case of ignorance, as well as lack of communication with designated officials, limited information through existing community structures, and the lack of NGO intervention.
- Some claim that they were informed by both DLA officials and WPDC members to bring their husbands' ID book to register them on the beneficiary list. Such a claim would be most likely against the existing legal frameworks and procedures and could even possibly pinpoint some form of discrimination by the DLA and other officials against women. Given the fact that the vast majority of DLA and WPDC officials are male strong inferences may be drawn on the possible presence of discriminatory practice.

Mr Dladla the chairperson of WPDC in a personal interview supported this form of registration when he stated that most households are headed by men and besides that "it was against the Zulu culture to have a woman as the head of the household" (*"umfazi akanawo umuzi"*).

5.5 Participation in the redistribution process

Most respondents (18) claimed that they first heard about the redistribution programme from their community structures, and the remaining from their relatives, government officials and one from an IFP official. Three respondents said they first heard about the redistribution process between 1994 and 1996, while the rest did not know or could not remember when they first heard about the process.

Only 11 respondents claimed to have participated in the land redistribution process at Nhlawe from its initial stage. They also claimed to have been attending regular meetings that were called to discuss the land redistribution process. However they conceded that they were not very active at these meetings. They were mostly quiet and passive, but when they were questioned in meetings they sometimes answered. Most said that the reason why their participation was minimal is because they are illiterate and sometimes could not understand some of the discussions since only educated people can read what the government has to say. The respondents also claimed that there was no space for women to actively participate in discussions as the meetings were dominated by males. As passive participants they represented their male counterparts who were mostly away working in other parts of the country.

The response of one of them is most revealing :

“ We go to these meetings because we know they are important , government and inkosis and indunas are there. If we don't go , they come and tell us if you don't come you get nothing , when we go we still get nothing , our husbands get it, but they are not here to see what he gets. Our husbands come here in Christmas and not for a long time. They ask us questions about these meetings because they are about land, all of us care about land, we don't know what to answer. We go to the meetings because the indunas tell us we must come, because we must be there in our husbands place, because he is not here with us”

Most women (24) knew that they could apply for land independently of men. The majority of the women (28) wanted to apply for land independently of men.

Approximately two thirds of the women who were not registered in the beneficiary list wanted to apply in their own right but they could not because they were told that only men could apply.

This is illustrated by the response of one respondent :

“We were all told that the meetings were open to everyone, and that women were also part of the community with equal rights , because these are the laws. We went to the meetings and listened to what happened there with various people talked about what was to happen and the land , houses etc. It was difficult for us to say something , because all the people who controlled the meeting, the officials , those from the ministry and the indunas were all men who know these things and they were telling the meetings what must happen . We felt that when there was the agreement that only men were to get the land we could not say much because the decisions were made, that’s what we thought”

Some respondents felt that it is customary for men to apply for land as they are the head of the household.

The comment of one respondent attests to this custom:

“ I suppose this is the way they teach us from when we are young girls , until we die , that the man is the head of the house , even when he does not marry us .This is what happened at the meetings of the land issue, the question of the women as heads never came up, mainly because there were only men who run these meetings .This is why I do not understand why they called us there , because it was very clear to us what was happening. The new laws are good for women as we hear in the radio, but what is the use if it does not happen in life and women suffer as much as they suffered in apartheid? No one wants to answer this question”

However on the other hand some of the respondents stated that they did not know where to make the application while others claimed that they were not working and had very young children to care for. Hence they needed support from their male counterparts.

It becomes evident on the process that training on gender and human rights issues were really not part of this .However only three respondents mentioned they have heard about the rights of women on the radio but do not really have the facts and do not understand what gender equality actually entails.

This is supported by the view of one respondent who felt:

“ Sometime ago there was one of the male politicians on RADIO UKHOSI , who was talking about women’s issues in the rural areas, it must have been National Women’s Day , and he was saying how much the Government has done for women in the country and how many women have been trained , and that women rights are human rights . I thought that he was talking about other women , because the only training we got here was in 1994 for the elections when two people came for a day and taught us how to vote . I thought I was living in a different country, but it does not really matter, at least we have RADIO UKHOSI to keep us company” .

5.6 Process of land allocation

The majority of the respondents stated that agreements were made in the community regarding land allocation. However ,only four respondents said they did not know about agreements being made.

However in terms of how and when these agreement was made most women appeared to be confused. On the contrary only four respondents claimed to have participated in decision -making around land allocation.

It can be concluded that there are some inherent contradictions in these attitudes, which most likely may have emanated from the process of consultation, community organisation and decision making .

This is confirmed by one of the AFRA facilitators who commented:

“ Like in most cases in such rural areas, most people found the whole process tedious, long and confusing . However, in every step they were told that basic steps were to be followed so that the whole process would be acceptable to the Departments and all the bureaucrats involved. We had a land starving community on the one hand , with very rigid control, indunas and the like, the departmental officials and the men and their representatives. It became clear who the beneficiaries would be in the end , because the officials had various meetings with the nkosi and the indunas which were unknown to people. Many decisions were made there that people did not know” .

5.7 Land access and control

5.7.1 Residential land

All respondents claimed that the Nhlawe Land Trust allocated residential land to them. Twenty nine respondents claimed knowledge of the boundaries and the size of the plots that was allocated to them.

Two respondents claimed that they were allocated equal plots, three said that they were not sure whether the plots were equal or not, and most (28) claimed that the plots that were allocated to each household were not equal. Only six were able to remember the date they were allocated sites which ranged from 1998 to 2000. Most respondents claim that the land was identified by their family members and was agreed upon by the trust. Most respondents also claimed that they identified land that had been used by their forefathers or their parents. They said that they were going back to their fathers graves. In this sense the acquisition of land for many of them was not an issue of land as a resource , but also as an integral part of the peoples' historical heritage and memory which was characterised by emotion . This is confirmed by one of the respondents from one of the respondents:

“ For us old people this move to the land of the ancestors is God-given , because we always knew that at one day we will be back to this land. Things are different now from our days when we were young , because things were very bad then , and they are bad now , but the difference is that we have our own African government now , it was the Whites who threw us out away from our ancestors land. Now our government has given us the land back, but they must also help us to make a success of the liberation , but we cannot do it on our own , we need the Government to help us, the banks and other business, not for us , but for the youths who need the jobs , because they do nothing the whole day”.

5.7.2 Arable land

Six respondents claimed that they do not have arable plots, while 27 claimed that they have. The latter group positively identified the size of their arable land. Those who claimed that they did not have arable land said that they were not allocated such land

because they arrived after the allocation had been made. However, they were still hopeful that they were going to be allocated arable land in the next allocation. This hope was based on promises made to them by the *inkosi* (traditional leader) to those who were basically left out in the first round of arable land allocation.

Two respondents said they were not sure whether they were allocated equal plots, and six claimed that they believed they were allocated equal plots. However 27 respondents claimed that they were not allocated equal plots because some households were given better sites which were closer to the river. Those closer to the river were generally considered as the best plots, because of the abundance of water and other agricultural advantages. Water in these areas is an absolutely vital commodity for perhaps subsistence farming.

Thirty respondents believed that they had communal rather than individual access to the land while an equal number claimed that there are no rules governing land usage. Most of them claimed that they do not make use of the arable land, because there is no fencing between the different plots and it is difficult to access water for the plants. The feeling of a sense of community inculcates a traditional and customary sense that can in the process lead to collective cultivation and production of the fertile land on a co-operative basis.

5.7.3 Grazing land

Twenty six respondents indicated that they had no problems in accessing grazing land, while six of them claimed that they did not have livestock. It becomes evident from the focus groups that those who did have stock grazed their livestock all over the place. They did not make use of the designated site for grazing and have not yet experienced any problems. However there was a feeling amongst some leaders that this situation could create various problems in the long term, because there were feelings of jealousy between the haves and the have-nots, while owners of cattle could become a law unto their own. The same sentiments have been expressed by a series of research findings (Meyer 1980; Eades 1987; Townsend 1997)

5.8 Inheritance

Most respondents (23) said that they thought that their sons should take ownership should they die. Only two said they thought they would give their land to their daughters. Those who said they would give land to their daughters did not have sons. Only one said she would like to leave the land for her daughter because she appeared more intelligent and responsible compared to her brothers. The reasons why respondents thought it was important to give land to their sons was due to the custom. Often daughters will acquire land from their husband's family lineage.

Such attitudes and beliefs confirm a deeply rooted subjugation of the female to the dictates of a patriarchal society, where the role of the male is accepted without questioning.

5.9 Institutional arrangement

The majority of the respondents (N=27) did not know how many community structures existed at Nhlawe. In fact they were not certain about the actual number. Some thought that there are five community structures, while others assumed that there is only one such structure. Of all the respondents, only three participated in community structures as office bearers. They were members in the agriculture, school and development committees. They all claimed that women are active in these structures but could not state clearly in what way.

However one of the women who was active in agriculture had this to say regarding the non-participation of women in the community and other structures:

“ Every time we women come together some of the young ones complain that the older women think they know everything , and they don't give a chance to the younger women to do things in the community. Yet when there are community meetings to make decisions about many things like education etc, the same women don't come . The same women cannot say no to their husbands who do not treat them well and cannot stand up to do things for all of us. They don't care for the community the same way we used to care because things have change now, and although younger women have many problems, these are not as bad as they used to be ten years ago. But as I said young women refuse to participate in community things”

5.10 Participation in land management

Most respondents (N=30) said that the representatives of the Nhlawe Land Trust were elected through a big community meeting. However they could not tell the number of women who participated in the trust. All of the above could not identify women who are members of the Trust. They agreed that women's participation was useful for them, but could not think of anything tangible that could be used as the basis for their participation.

Such attitudes indicate a feeling of alienation, coupled with ignorance in respect of matters that should be of great interest to women and would call for active participation and commitment.

Twenty three respondents said that they believed that the trust did not have a constitution while six responded that they did not know whether the trust has a constitution or not. Only three interviewees said that they knew the trust has a constitution. The majority of the respondents (N=27) said they did not know how the constitution was developed and what it says. Most respondents (N=26) claim that they respected the constitution, but only three claim to have participated in developing the Nhlawe constitution .

One of those participants had this to say about the ignorance and attitude of the majority of the people in the area:

“ Its not only the women who do not know about the constitution and all the other things that happen in this area, but most people are interested for things to happen without them getting involved. There are no jobs here, those who want jobs have to go to Durban or Johannesburg . Now when the news came that the land was to be given to us there was a lot of excitement and the first meetings were full, but when the real work started and the people lost interest. Those who benefited started looking after their new interest , those who did no just wait for the next time, there is no enthusiasm for things to happen”

Every one agreed that the trust calls community meetings. Most respondents (N=25) claimed to have attended some meetings that are called by the trust but not all

meetings. Those who did not attend meetings claimed to get their information from the neighbours.

All respondents said that there is a good relation between the community and the trust. However most of them (N=27) believed that the trust does not communicate effectively with the beneficiaries on key decision making. They were not sure why this was the case.

5.11 Analysis and key issues arising from the findings

This section of the thesis will identify major impediments and opportunities towards the goal of gender equity in land redistribution programmes.

Firstly, it will present constraints that have been presented and identified in the context of the Nhlawe case study in limiting women in having independent access to land.

Secondly, it will present the opportunities that exist or are prevalent in assisting women to have independent land rights.

5.11.1 Constraints

There is a number of factors that directly and indirectly contribute to the women's limited access to and control of land. Key factors that constrain women from independent access to and control of land are as follows:

- Women do not participate in land management. This can be seen as a problem that has its roots in the legacy of apartheid and of the present patriarchal society.
- Women suffer disadvantages as a result of marital status. This despite various legislative measures designed to overcome customs and traditions embedded in rural societies continues to exist.
- The trust set up to organise and administer the land distribution is not always responsive to women's needs.

- Women who are on the beneficiary list have control and more security on the land than women who are not on the beneficiary list. This has created some friction between groups of beneficiaries and non-beneficiaries.
- Women are locked into customary and traditional beliefs and perceptions around land inheritance. This is the result of a perpetrated patriarchal socialisation process, as well the high levels of illiteracy and ignorance amongst them.
- It appears that both the DLA personnel that implemented the programme and the WPDC also contributed in limiting women from registering for land in their own right. This is so despite the Government's laws and the constitutional and other legal protection measures designed for women empowerment since 1994.
- Women did not participate fully in land redistribution process. This was due to several social, economic and ideological reasons many of which have been already outlined.
- Low level of education contribute in women not participating in community meetings. High levels of illiteracy have a direct negative effect on active participation, co-operation and enthusiasm.
- Poverty contributes significantly in women not participating in development processes as there is no money for transport in order to attend meetings
- Lack of information limit women in accessing land independent of men.
- Women are not always aware of their rights.

5.11.2 Women do not participate in land management

The study has demonstrated that the level of attendance in many meetings taking place in the community is low on the part of women. According to Pharoah (1999:33) in three case studies conducted in KwaZulu Natal, even those women who attend community meetings are inclined to talk amongst themselves rather than to other participants. It was stated that:

'Even when elected, many women noted that they attended meetings less frequently than men, for they are only able to attend in as much as their domestic duties, work and husbands allow.'

The Nhlawe sample revealed that only eleven respondents participated in the land redistribution process and even fewer attended meetings. They agreed that they were quiet and passive in meetings and only answered when asked. This means that these women have not taken their active participation seriously at all levels.

Walker (2000:27) states that 'women's presence on the committee does not translate automatically into their more active authority within the project' and further asserts that women play a junior and supportive role which does not substantially challenge gender power relations.

5.11.3 Women suffer disadvantages as a result of marital status.

Second wives in the polygamous marriages are the most disadvantaged category in terms of land control and have limited access to resources. This has been clearly illustrated in the cases where second wives in polygamous marriages have been refused access to resources because of their status. The following quotation clearly depicts this matter.

'Because I am the second wife I was informed by the trust that I won't get resources from government. I was not given a toilet, cannot get part time employment provided by government. All in polygamous marriages suffer the same problem. The first wife enjoys all the benefit/privileges. I am not sure who made this rule, I was informed by the secretary of the trust. Land is registered under the husband so both our names are written as members.'

Limited resources do not give the opportunity to both wives to be accommodated in accessing development resources. Only the first wife has the privilege of accessing developmental resources in this particular case. Such realities perpetuate discrimination amongst different categories of women and the power relation within women themselves.

In the section of principles of equity on the Nhlawe constitution it is required 'that the Trustees deal with the assets of the Trust and confer benefits thereunder only for the benefit of the participating member families, and that there is no material distinction or discrimination between member families'.

The Constitution in Clause 17.2 further states that ‘Nothing hereinbefore contained shall preclude the Trust or the trustees acting on its behalf, from entering into arrangements involving some kind of lawful differentiation between individual family members, provided a bona- fide attempt is made to equalise any ostensible disparity and ensure equity and fairness between member families to the intent and purpose of this Trust Deed.’

5.11.4 The trust is not always responsive to request from the women.

A woman was given land by a relative who no longer wants to stay at Nhlawe. The trust was informed of the changes by the male relative and then the woman, started living on the land with her dependants. According to the woman the trust acts as though she does not exist and that if it had been a man this matter would have been treated differently. According to the trust deed document if the member of the trust leaves, the trust needs to be informed immediately. In this particular case the relative approached the trust in order to inform them that he is now giving the land to the women. It is not clear to the women what the trust’s response is. This is evident in the fact that the trust does not employ her in the projects, and they act as if she does not exist.

‘They are doing this because I am a woman and they are looking down upon me, if I were a man this matter would have been dealt with differently’, she believes strongly.

Another dimension on this issue is that, it appears that this particular woman as well as other women in the community are not clear of what other step could be followed if members of the community trust are unhappy about its functioning as well as various disputes arising from dysfunction of committees etc. The procedures that need to be followed do not seem to be clear to every community member.

In a study on the legal entities it was observed that women tended to shy away from community structures ‘should a women wish to approach the authorities or to initiates a project herself, she would be rebuked, for it would be seen as jumping rank and an act of disrespect to the chairman.’ (AFRA News, 1999: 18)

5.11.5 Women who are on the beneficiary list have control and more security on the land than women who are not on the beneficiary list.

According to Lastarria-Cornhiel (1995:4) it is conceptually and empirically useful to distinguish between the tenure rights particularly between access to and control of land. There is a distinction between the women on the beneficiary list and those who are not beneficiaries in terms of land control and access. Both categories of women enjoy the same status in access rights to the land. Those on the beneficiary and those who claim to be on the beneficiary list seem to enjoy both, access to and control of land.

According to Cornhiel(1995:8) control of land is the command an individual has over a particular piece of land and over the benefits that derive from that land. This right is based on some type of recognised possession. When she has access to land a person is able to make use of the land, access does not necessarily include ownership or possession. It usually includes some decision-making powers over the production process and use of the land.

In this sense the women who have been in the beneficiary list have control and security over the land when compared with the women who are not classified as beneficiaries.

5.11.6 Women are locked into customary perceptions around the land inheritance.

From the study it is evident that women still believe that within a given household the sons are the only people that can inherit land. There is still a patriarchal system in place which dictates that women married to the men might have access to the land but not ownership rights. Pharoah (1999:16) supports this assertion when she claims that women still associate with the domestic rather the public sphere and that they support the status quo by upholding the mainstay of patriarchal system and the belief

interesting in our case study is that all the widows have sons who are old enough to register in their own rights.

- *Women who at the moment do not participate in the various project works need to organise themselves into groups in order to lobby the bureaucrats and other officials at the various levels of Government.*

It was established that many women who should be by law an integral part of the various job-creating projects undertaken by the various government departments are basically left out without reason. Hence the opportunities exist for them to utilise the proper communication and legal channels in order to incorporate themselves integrally into these job-creating projects.

* *Women need not be left out of training and other life-enriching experiences.*

It needs to be stressed that the women of this rural area are not the first or the last to lose out on many opportunities provided by existing Government or Non Governmental structures. For this to be a reality all women need to re-think their culture or tradition of non- participation in the happenings in and around their area as well as their participation in the various decision -making bodies that exist in the community and outside it.

5.11.8 Conclusion

This chapter examined the findings emanating from the interviews and the focus groups undertaken as the part of the empirical component of this project.

After the examination of the demographic characteristics of the sample, the analysis concentrated on the primary and secondary beneficiaries of the scheme under investigation and the participation in the redistribution process. The land allocation patterns were examined as well as the question of arable land, the institutional arrangements, the analysis of womens' participation, the role of the trust in the process and other significant factors associated with the land redistribution process.

Chapter Six

The implications of the Nhlawe case for gender in land policy: Conclusions and recommendations

6.1 Introduction

The research demonstrated that despite the Land Reform gender policy existing in South Africa's statute books, poor rural women generally do not gain access to and control of land in their own rights. The issue is what steps can be taken to deal with women's disadvantage in the context of projects on the ground.

6.2 Conclusions

It has been demonstrated by the study that policy on gender exists in the statute books of National and Provincial governments, but in terms of land reform the implementation has not taken root, especially in the most rural and poorer sections of the population. There has been no attempt on the side of DLA to ensure that women register in their own rights. The only attempts been monitored by government is the number of women that participate in the legal entities. The government seems not to have been listening to what the women want and need. This is mostly true of the women in the rural and semi-rural areas who are the poorest of the poor.

There is a great need to treat women differently because their needs are different. Marital status, the role and functions of customary marriages, the lack of job opportunities, illiteracy and ignorance are very important determinants of the rural women's inferior status that start with unequal opportunities in land re-allocation and redistribution.

Information is the main source that limits women from a variety of issues and interest. The staff and officials of the Department of Labour and other organisations and entities associated with the redistribution programme had not really played their role in assisting the women in their endeavours especially in relation to the list of beneficiaries, the inconsistencies of the customary laws, the traditions and the like.

There have been women who not through fault of their own have been openly victimised through their non-participation in governmental projects and the like. This is due to either traditional or customary beliefs or both combined. The same prejudices exist in relation to land inheritance. Thus especially unmarried, widowed and second wives are seen as “third class citizens” in the whole land redistribution scenario.

Because of these open and well documented prejudices there has been a serious problem of poverty and hunger amongst some groups interviewed even in this study. It became very clear that women who were no beneficiaries in the listing of land redistribution suffered serious moral, ethical and economic prejudice.

Many of the women in most rural areas are illiterate or have very low levels of education , and this creates several problems in their zest and enthusiasm related to participation in community enriching exercises , including land redistribution. Their participation in communal activities has been very scarce, especially in leadership positions. There have been examples , however of women who have emerged as leaders on several occasions , thus opening the way for more women to assert themselves in the future.

Only if such assertion becomes a reality and the participation of more women at all levels of activity take more active forms there will be chances for rural women to challenge the official and quasi-official bureaucracy in their areas.

There are open and clear seeds of victimisation against women in the area under investigation, for this there is no doubt. Our empirical study and the responses of the interviewees pinpointed this reality beyond doubt. However, this process of non-delivery leads to serious forms of marginalisation of large segments of the population .This marginalisation is political, economic and financial , because as many Cabinet Ministers have proclaimed correctly , political freedom without economic freedom means very little for the majority of South Africa’s people, especially the African majority.

People would ask seriously in our country and internationally how one can explain the fact that in 2001 two thirds of the country is still owned by 60000 white commercial farmers and land-owners , while over 15 million Africans still wait for redistribution

or try to make a subsistence living in the liberated bantustans? (These were the existing latest statistics provided to the researcher by AFRA in 2001).

Urgent steps are needed for a new dawn to South Africa's restitution and redistribution strategies, especially where poverty and degradation have become almost endemic.

6.3 Recommendations

There are several recommendations that the researcher has in mind, after the completion of the theoretical and empirical work associated with gender and land redistribution:

***Need for applications**

It has been stated in the previous chapters that in some households there are people (both men and women) who although they are qualified to apply for land in their own rights did not apply. This was based on the assumption that only one person could apply on behalf of the whole household, usually the man. It needs to be said that this is an unfair process. It is then recommended that when the beneficiary list is drawn it should not only be the head that is included there. A family tree should be drawn so that the household composition could be properly understood. In one family four or five people can benefit as land beneficiaries. In this sense it becomes evident that such a process will diminish the gender biases of authorities and women would be fairly treated in terms of land allocation and redistribution.

***There is a need for gender training and awareness for community members and the community trust in particular on gender mainstreaming.**

This is emanating from the fact that the Nhlawe trust is sometimes not responsive to the needs of women both inside and outside the entity. Women separately need to be trained on gender issues and human rights.

Poor rural women have demonstrated that they are capable of many activities after 1990. The culmination was the training and active participation of women of all walks of life, especially the rural areas during the 1994 and 1999 election. They have excelled as managers, enumerators and functionaries at all levels of this demanding democratic process.

***There needs to be training on gender implementation for DLA staff.**

The gender analytical tool has been published by the National Government since 1997 and it is clear that the personnel who implement land reform have not used it before. Walker (2000:34) has highlighted that there have been a number of training and workshops for DLA staff on gender awareness and conscientising of staff about gender policy. All workshops that have been ran by various consultants have not concentrated on the training staff of how to implement gender sensitive land reform. Walker (2000:46) further states that there is disjunction between the policy makers at national level and those who implement gender policies at provincial level.

***The need for evaluation**

* The DLA still needs to devise very clear yardsticks in assessing and evaluating whether women have benefited from land reform. Currently the DLA uses the official existing statistics in assessing women's benefits in land redistribution Walker (2000) says that the mostly used mechanism of assessing women is the number of women who participate and are members of the legal entities, as well as the number of hectares that have been redistributed by DLA. This numerical analysis of measuring women's success in land redistribution is very limited because it fails to look at the practical day to day implications.

***Assessing the categories of women**

* DLA officials should be aware of the different categories of women when implementing land redistribution. This is because women's land needs are mostly dependent on their marital status. This means that:

- In married couples land should be written in both names i.e. husband and wife. This is the only legal and practical way that will lead to the elimination of gender bias against women. This will be of significance for example in the case of the husband's death, especially if he works outside of KwaZulu -Natal province.
- In polygamous marriages the second or the third wife should have land written in their own names as nominal owners. It appears that different land constitutions have different approaches in dealing with this matter and might open a loophole for abuse. There needs to be clear guidelines from the DLA which stipulate how the implementors of land reform should deal with women in polygamous marriages so that they are not discriminated against.
- In most cases the wife must take care of the land when their husbands are away. This is of importance, as it has been shown in the context of this thesis. Unemployment, poverty and starvation are common problems, especially in rural households. If women are given secondary status of land ownership, their tenure becomes precarious and the use of land for livelihood is limited.
- Keeping of careful and gender-sensitive records. It is not clear what should happen to the woman when the husband (head) passes away, or when the husband has only paid 'lobola' and there is no proper marriage. In all these cases it is the women who suffer in the end.
- None of the three main components of the South African reform programme has produced proper and gender sensitive outcome. In this sense restitution, redistribution as well as tenure reform have been implemented in a patchy, middle-of-the road, gender insensitive way .

***Administration of land restitution**

*There is a glaring weakness on the part of the Government at all levels to address the administrative chaos of the communal land throughout the country. This has direct effects on a gender-sensitive policy , especially in the areas of the previously known bantustans . As it is well known this is where the vast majority of the poor and women live. These weaknesses need to be remedied as a matter of urgency.

*** The future legislation**

* There have been glaring impediments in the implementation of crucial laws related to land access and redistribution , due to inadequate personnel allocation as well as administrative and organisational/logistical mismanagement . Due to these women, youth and the general population in the rural areas faces poverty and starvation and the lack of job creation opportunities. These need to be rectified as a matter of urgency.

These are realities that are understood by the people. There have been serious efforts on the part of the government to produce laws that could solve many problems in the country. Women need to be in the forefront of development and growth efforts. These , however cannot signal the final victory as the Government's progressive laws are not tied up with serious and solid implementation. There cannot be good theory without excellent practice.

SUMMARY

The thesis attempted to examine gender in policy and practice in the land redistribution programme, utilising a sample of 33 women in the rural area of Nhlawe in the Province of KwaZulu –Natal .

The main aim and objectives of the project were to examine the role women play in the land redistribution and allocation , their active participation and the problems facing them in the implementation process .

After the literature review the questionnaire and focus groups were set up as the data collection instruments.

The historical and present aspects of land redistribution were examined , as well as the geographical location , socio-economic profile and legislative options associated with the implementation process in the area.

The practical / empirical analysis included various aspects uncovered during the field-work such as:

- history of the households,
- the marital status of the respondents,
- their participation in the land redistribution process,
- the process of land allocation,
- the land access and control,
- the problem of inheritance,
- the institutional arrangement, and
- participation in land management.

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APPENDIX A : QUESTIONNAIRE

Research: Nhlawe Women Land Access and Control - Questionnaire

Questionnaire Number : _____

Date of interview : _____

Respondent's name : _____

Household name : _____

Ward/ common name of the area/Isigodi : _____

Location / House number : _____

Registered Name : _____

Magisterial District : _____

Settlement pattern
(Dispersed/ close) : _____

Main Activity on the land : _____

1. Origin of household

1.1. Where were you born?

1.2. Did your parents or grand parents live here?

Yes	01
No	02

1.3. If yes, where are the graves of your family?

On the farm	01
Neighboring farm	02
Outside Weenen	03

1.4 Was your family evicted from the farm if yes when?

Yes	01
No	02
If yes when	

If yes when

1.6 In what year did you start living here?

1.5 Where did you live previously?

1.7. Who is the registered owner of the land?

1.8. What is the number of household members?

Female	Male	Children	Total

3. Participation on Redistribution process

3.1 How did you first hear about Nhlawe land redistribution project?

Relative	01
Friend	02
Government official	03
Community structure	04
Media	05

3.2 When did you first hear about Nhlawe land redistribution project?

1994	01
1995	02
1996	03
1997	04
1998	05

3.3 Were you involved in the land redistribution process?

Yes	01
No	02

3.4 If yes how did you participate and or what was your role?

3.5 Were other women actively participating, in what way?

3.7 Did you know that women could apply?

Yes	01
No	02

3.8 Did you want to apply for your own land independent of men?

Yes	01
No	02

3.9 If yes, did you apply independently?

Yes	01
No	02

3.10 If not Why?

Government involvement

3.11 Did you get any training on gender?

Yes	01
No	02

3.12 If yes, from whom?

4. Land Allocation

4.1 Were there agreements on land allocation?

Yes	01
No	02

4.2 How and when were the agreements on land allocation done?

4.3 Were you part of the decision making?

Yes 01
No 02

4.4 What land was your household allocated?

Residential	01
Arable	02
Grazing	03

4.5 Who is on the beneficiary list of this land?

4.6 Does everybody from your family know thatis on the beneficiary list?

Yes	01
No	02

4.7 Are your rights on the land protected, by whom and in what way?

5. Land Access and Control

5.1 Residential land

5.1.1 Who allocated residential land?

5.1.2 Do you know the boundaries / size of your residential plot?

Yes	01
No	02

5.1.3 Were you allocated equal plots as the other households?

Yes	01
No	02

5.1.4 When and how were you allocated?

5.1.5 How many buildings/dwellings does your household have?

6. Inheritance

6.1 Have you thought about whom will take ownership of the land should you die?

Yes 01

No 02

6.2 If yes, what is the relation to the household?

6.3 What influenced you to come to that decision?

7. Institutional Arrangement

7.1 Community structures

7.1.1 How many community structures do you have in the area, name them.

7.1.2 Which community structure are you involved in?

7.1.3 What is your role in those structures?

7.1.4 Are women active in those structures?

7.2 Nhlawe land trust

7.2.1 How were the Nhlawe land trust members elected?

7.2.2 How many women are on the trust?

Number _____

7.2.3 If there are- Is the women's participation in the trust useful?

Yes	01	No	02
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7.2.4 HOW?

7.2.5 Does the land trust have a constitution?

Yes 01 No 02

APPENDIX B : KEY RESPONDENTS

APPENDIX B**KEY RESPONDENTS**

Jabu Bhengu	:	Provincial Deputy Director Department of Land Affairs (DLA)
Busi Sosibo	:	DLA Gender Representative
Mavis Shabalala	:	DLA Planner at Nhlawe
Dladla	:	Chairperson of WPDC Uthukela Regional Councillor
Samantha Hargreaves	:	National Land Committee - Gender Co-ordinator
Sizane Ngubane	:	Association for Rural Advancement Gender Co-ordinator
Rorie Alcock	:	Committee member of WPDC
Makhosazana Madonsela	:	DLA Planner – Gender Focal Person