

Equality before custom?

A study of property rights of previously disadvantaged women under land reform and communal tenure in post-apartheid South Africa

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UNIVERSITY OF GOTHENBURG
SCHOOL OF GLOBAL STUDIES

Abstract

Rudman, Annika Eva Birgitta, 2009, *Equality before custom? A study of property rights of previously disadvantaged women under land reform and communal tenure in post-apartheid South Africa*. Ph.D. Dissertation, School of Global Studies, University of Gothenburg, Box 700, SE 405 30 Gothenburg, Sweden. 345 pages. English.

Based on legal primary and secondary sources as well as text based and secondary data, *Equality before custom?* explores the relationship between statutory law and customary law in relation to previously disadvantaged women's access to land through land reform, in post-apartheid South Africa. With the point of departure in this new constitutional order, the position of official customary law and living custom in land reform and communal land tenure is examined. The struggle that many previously disadvantaged women face, in trying to access and hold land under current land reform and communal land tenure structures, is further analysed. Feminist legal theories and methods are explored in search of a theoretical structure that can help us understand the legal impact that the plural South African legal system has on these women's property rights.

Further, in *Equality before custom?* the theoretical link between women's legal ability to access, own and freely transfer property, and poverty reduction is analysed. The main conclusions of the thesis are presented in the form of theoretical considerations putting the law in the context of poverty and underdevelopment as well as suggesting legal reform. The results of the research show that gender equality in terms of property rights is an important component of economic development and that the traditional leadership in South Africa has an important role to play in improving the respect of gender equality, especially in rural and semi-urban communities. Therefore it is suggested that national guidelines should be drawn up, indicating how the traditional leadership could implement gender equality into the customary structure, building on the view of the South African Constitutional Court that it is the traditional leadership that should be in charge of developing customary law in line with the equality clause in the Constitution. This approach to the promotion of gender equal property rights could help decrease the feminisation of poverty in South Africa as worsen by the impact of HIV/Aids.

Key index words: (title), Gender equality, customary law, land reform, communal tenure, South Africa, traditional leadership, formalisation of property rights, Africa, feminism, restitution of land rights, women's property rights, poverty reduction and development.

ISBN: 978-91-628-7903-7

<http://hdl.handle.net/2077/21378>