

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.

The pre-1994 legal dispensation in South Africa was firmly built on racial segregation and patriarchal legal structures, both statutory and customary. With the end of apartheid and the coming into force of a new constitution, land reform became one of the focal points in trying to rectify the grave injustices done to the greater majority of South Africa's people. This challenge is taking place within a legal framework that sets out to promote and protect not only racial and gender equality but also the existence and development of customary law and traditional leadership. The apartheid legacy has further left South Africa deeply segregated in terms of the overall distribution of wealth. Poverty is one of the greatest challenges to the leadership in present-day 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 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 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 should approach and implement gender equality into the customary structure, building on the view of the Constitutional Court that it is the traditional leadership that should be in charge of developing customary law in line with the constitutional right to equality. Further, policies on land reform and laws formalising communal ownership are suggested to include educational support structures. The results of the research also indicate that the success of formalised communal tenure rely on the improvement of infrastructure, to support the general state of development in the areas where communal ownership is implemented.



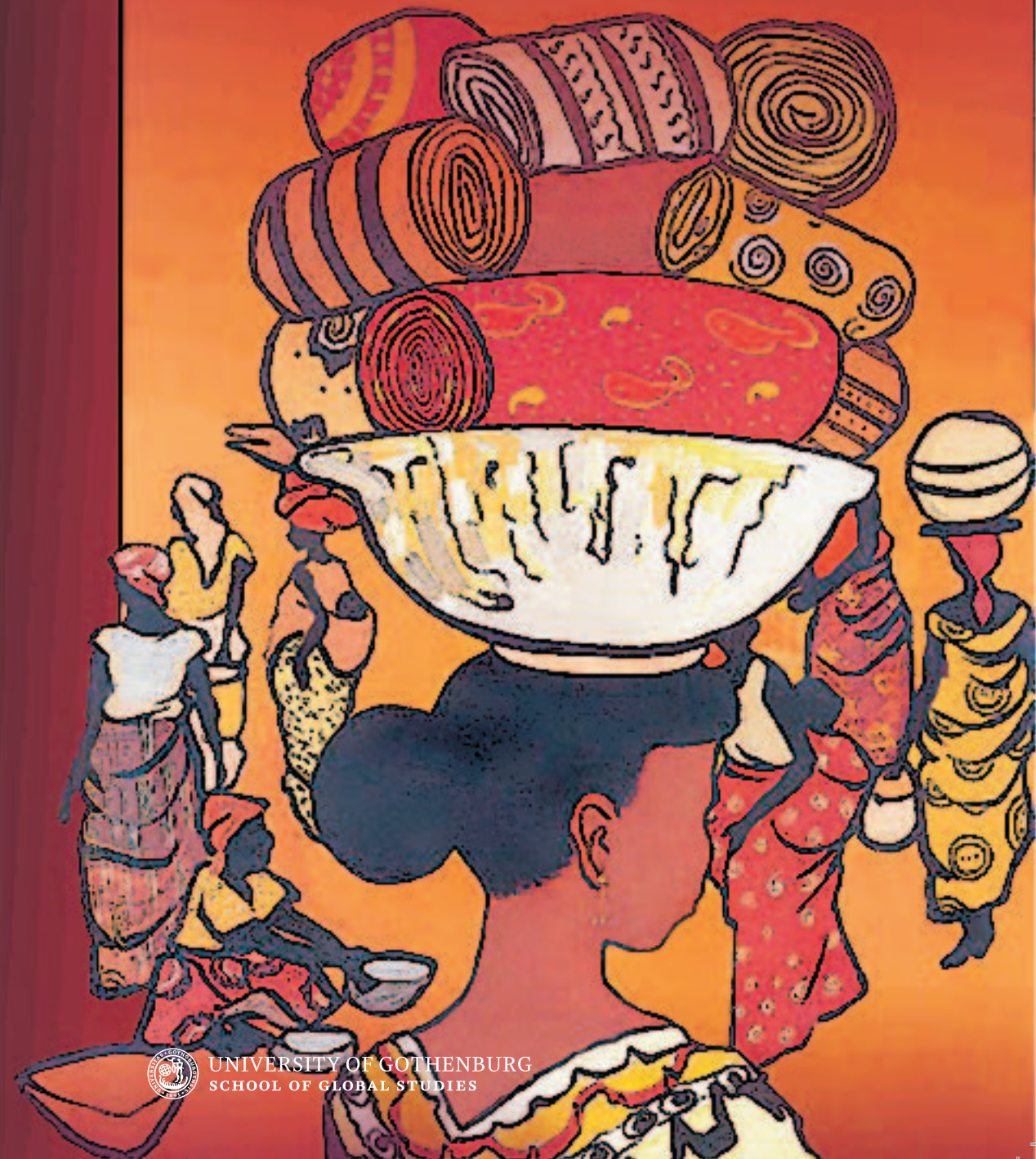
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EQUALITY BEFORE CUSTOM ? ♦ Annika Rudman

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

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