

Marital status, urbanisation, and violence: a three-pronged threat to women's land rights in South Africa.

Date: 2 December 2021

By Chilombo Musa, Mapula Mnisi, and Molatelo Mohale

South Africa's complex land question has elicited numerous enquiries into land relations in the country using various lenses. To lend to this discussion and provoke new interrogations into women's land rights in South Africa, we undertook a study in Limpopo to explore a 'silent' form of urbanisation emanating from the migration of urban elites to rural areas. Our study site, Moletjie, is approximately 30km Northwest of Polokwane City in Limpopo. To understand the implications of this urbanisation, particularly on women's land rights, we delved deeper into the phenomenon in two communities in Ceres Village and Kweni Moloto in February and March 2021 when we carried out seventeen in-depth interviews with rural women, traditional leaders, and municipal officials. We also held one focus group discussion (FGD) with seven women.

Our research revealed the intricacies of the relationship between women's access to land and marital status, traditional authority and the municipality, and urbanisation. The effects of the interaction of these factors include an introduction of land use restrictions, loss of agricultural land and livelihoods, loss of common property resources, the legibility of customary land to the markets, and proletarianisation. We explore these themes in more detail and forward the policy implications that emerge from studying this dynamic. This allows us to take a multi-layered approach to understanding women's rights on customary land and how urbanisation and authority impact these rights.

Women's access to land

Traditional authorities' perception of women's land rights determines access to land in the two villages we researched. Ceres Village is divided into two communities, one under Chief Kgabo Solomon Moloto and the other under King Kgabo Abram Matabola. The two have a long-running dispute over village boundaries and who the rightful leader should be. Beyond this conflict is a differentiation in the practices that determine women's access to land. For example, under Chief Moloto, rules pertaining to women's conduct have historically been entrenched in patriarchal practices perpetrated by both men and women. In cases where a woman loses her spouse, the widow is presented before the Chief by other widows for her to be given rules by which to live. These include rules about a widow's conduct and mobility and prohibiting her from remarrying. Although these practices have held fast historically, there has been an evolution in their application. Widows are now getting remarried with no punishment enacted on them, provided the deceased husband's family has been informed. This lends to the argument that African **customary law is not static**.

Despite the evolution of discriminatory customary practices, women are still subjected to patriarchal rules relating to access to land. Married women access land through their husbands. Under Chief Matabola, we found that married women cannot register land in their name while still married. However, single women with children faced no restrictions concerning registering land in their name, with 25 years being considered the acceptable age to register land. Only in exceptional circumstances can a married woman register land in her name. Chief Solomon Malesela Dikgale, Chairperson of Limpopo Provincial House of Traditional Leaders, said:

“Married women get a site to build a house with their husbands. This is to protect the marriage. If they want land for a project such as gardening or recycling, they can get it without a husband. Or if the woman is being abused and is not living well with the husband, she can get land in her own right.”

Some married women have little to no information on the process of accessing land and remain dependent on their husbands to make land-related decisions in their interest. This exposes and exacerbates their vulnerability to domestic violence and loss of land in the event of the death of the husband or divorce. As one woman who chose to remain anonymous told us:

“My husband has more information about the processes of acquiring land. I do not have access to the Chief as a married woman. Therefore, I do not have information regarding access to land. I just hear my husband saying we owe R6,000. I think a woman cannot register for a stand if she is not married.”

However, those who are more knowledgeable, like 56-year-old Shadi Setati, who is single with children, explain that she accessed land without a husband and attends meetings with the Induna and Chief when she wants to. Single women with children are considered more ‘stable’, hence their ability to access land is much more effortless than single women without children or married women. However, an interesting dynamic in the relationship between marital status and access to land between the genders is observed. Some single men are not ‘allowed to own land.’ In a focus group discussion with a women’s group, we found that some single men have been prohibited from acquiring land.

Divorced women are the most vulnerable group in relation to accessing land. A woman is required to leave the land after divorce. This is especially common because married women do not own land in their name. During our research, the women we spoke to supported this practice, arguing that a divorced woman cannot live with her former husband’s family, thus perpetuating the idea that **women only have usufruct and not ownership rights over land**.

Age also plays a significant role in determining women’s access to land. Those aged 25 and above can access land and participate in decision-making in the community. 24-year-old Mahlangonolo Patience Aphane explained that although she does not know the land access process, she knows that she can get land without being married. However, her age prevents her from attending meetings with the Chief, thus not having her views over land matters heard.

Despite the unequal application of rules regarding which women can and cannot access land, men and women follow the same land acquisition procedure, as Ward Councillor Elizabeth Maputi Mothata explained: “many women are not married, and they have their own homes. They access their sites with the same procedure.” A women’s group added, “unmarried women have yards in their names. They acquired the yards through the same process as everyone.” Solomon Malesela, Chairperson of Limpopo Provincial House of Traditional Leaders, confirmed this: “women follow the same process as men in accessing land. They just go to the Induna and ask for land.”

Notwithstanding the seemingly non-discriminatory acquisition processes that permit some women to access land independently, land registration remains entrenched in patriarchal norms. Such practices include traditional authorities requiring newly married women to re-register the land they acquired while single in their new husbands’ names, and married women’s names only appearing as ‘spouses’ and not as joint-owners.

Despite evidence of the differentiation in the ability of women to access land based on their marital status and age, we found that knowledge about the acquisition process and one’s relationship with traditional leaders were most paramount in determining women’s access to land.

The effect of urbanisation on women's land rights

Our research revealed that rural areas are a preferred location for residential land by some urban elites due to the non-application of municipal fees such as rates. These urban elites are thus moving to areas such as Moletjie to build their homes while commuting to work in the urban areas. They are also building their retirement homes in the rural areas as opposed to the urban areas. This has resulted in high land prices, further excluding women from accessing land. The increased legibility of customary land to the markets has created opportunities for exploitation by certain groups in Moletjie. First, traditional leaders are selling land to the urban elites while exposing the locals, particularly women, to vulnerabilities such as **violence against women's bodies** and **sextortion**. We found that men threaten and perpetrate violence against women who assert their rights over land. Women are expected to remain passive and not participate in decision-making over land issues at community and household levels. Thus, those who speak out and challenge the loss of land are exposed to violence and, in some instances, murder. This was revealed in a focus group discussion with Nandoni Complaints Resolution Committee (NCRC):

"In court cases, men know that they will lose because women talk a lot, so they end up killing the women. Despite it not being public, it has happened before. The government did not carefully consider the 50:50 law because women still depend on men. As a result, there is targeted killing of women. The government is not protecting the women because the killers get parole and return to the community. There is a need to tighten the laws to protect women."

Second, unemployed 'young boys', aged between 28 and 36 years, illegally demarcate and sell land. The residents believe that the 'boys' are affiliated with the Economic Freedom Fighters, while the police believe the land grabs are happening with support from tribal authorities. However, Chief Solomon Malesela Dikgale told us:

"In Chishane, there is a group of boys from an Induna, e.g., from Royal family (splinter group). Some people have been robbed through fraudulent sales of stands going for R5,000 each. They come to report here. Sometimes the police assist. Other times they refer them to the Small Claims Courts. These boys make parties with the money. The Traditional Council is fighting over these cases in courts. The boys are demarcating land in Seshego and selling it for R5,000. They then fence the fields. The boys call themselves SANCO."

These acts have led to the loss of mainly agricultural land that has been converted to residential use and to the miniaturisation of farms. Also, access to common property resources has been lost, as have incorporeal rights.

The expression of control over women in Moletjie extends beyond access to land and is manifested in other social and economic activities. For example, an initiative by the local women to establish savings clubs to support events such as weddings and funerals has been infiltrated by traditional leaders who seek to control the women's activities. An Induna disrupted the women's practice by confiscating their savings books leading to further conflict between women and the traditional leadership.

'Development' and dispossession

Women have also lost access to land in Moletjie in two development projects: the construction of a dam and the unrealised plans for the construction of a shopping mall. In 1998, the Department of Water Affairs approached traditional authorities to make land available to construct a dam. The 1,401 families affected were promised compensation and alternative land. The families sought fair compensation, but a valuation report prepared by a company called Black Dot has since not been made available. The Department of Water Affairs has told the families to obtain a court order to access the valuation report. In addition, owners of agricultural land lost the land when the municipality acquired it to build a mall. The mall has not yet been

built, and those who lost their land have not been compensated. The promise of a shopping mall attracted urban elites who bought land for speculative purposes, further driving up land prices and excluding the locals, especially women.

Succession conflicts and women's access to land

Protracted funeral rites, arbitrary fines, and longstanding inter and intra-clan disputes have characterised the relationship between traditional leaders and women's livelihoods and access to land. Our empirical study revealed a longstanding battle of "rightful chieftaincy" between Chief Kgabo Moloto III and the Matabola clan. Although Moloto III is the current senior traditional leader of Moletjie, he is not legally recognised. The matter is currently in the courts. These succession struggles are in addition to disputes over village boundaries between the two clans. The emerging effects of this conflict are violence against women, skewed land acquisition practices, interference with the community's beliefs, and prohibition of burial rights and related arrangements.

Traditionally, a death in the community is reported to the local headman, who informs the community by ringing a bell in the village. However, the process has been protracted and prolongs the grieving period for the bereaved family. Before the death is announced to the community, the traditional leader's troops scrutinise the family against any outstanding tribal levy payments and the camp to which the family is aligned. In instances where the family is deemed "unruly" because of non-payment of tribal levy and affiliation to the opposing camp, a fine ranging between R6,000 and R12,000 is imposed. The burial will not take place if the family fails to pay the fine. The money collected from such incidents is never accounted for. Mmeta Sekoaila, 70-year-old, a widow, explained the intimidation she faced when trying to bury her deceased relative:

"The two (King Kgabo Abram Matabola, and Chief Kgabo Moloto III) do not get along. I am under Mathebula...I live in fear because of this division. If there is death in our families, we cannot bury our loved ones. They lock the gate and pelt us with stones, they shoot and beat us. They don't want burials there because they say the land belongs to the Molotos."

Further, the Meso family have been affected by the unlawful imposition of the Moletjie Tribal Authority. The family could not afford the R12,000 fine for "disrespecting the Chief and unpaid tribal levy" in 2015. The family battled with the Moloto troops for over 24 hours as they tried to dig a grave after being denied access to the village cemetery. Subsequently, the family buried their deceased relative in their backyard following the extended standoff. Another family, the Selepe family, were in April 2021 fined R6,000 for allegedly defying the Chief's orders.

However, the disputes between the two Chiefs and the predatory practices to extort money during funeral ceremonies in Chief Moloto's community has provided an opportunity for women to exercise their agency in determining under whose traditional authority to live. Mmeta Sekoeila lost her son and was charged R3500 to access the burial site and was fined a further R3500 emanating from a dispute between her deceased husband and an Induna 22 years prior. She decided to leave Chief Moloto because of these rules. She explains, "my move from Chief Moloto was voluntary. I just went on my own with a few others who were tired of the rules. I told them that I don't belong to them anymore."

Traditional vs elected authority

The tense relationship between the elected councillors and traditional leaders does not help matters. Land in rural areas is controlled by the Traditional Council of a village. Elected officials do not have jurisdiction over rural land. Despite the misconception among some traditional leaders that the land belongs to them, the land is owned by the community, with the traditional

leader only exercising authority over its management and administration as the community leader. However, elected councillors working with women on various projects can request “no more than 5 hectares because there is no more land,” according to Solomon Malesela, Chairperson of the Limpopo Provincial House of Traditional Leaders.

The traditional leaders oppose the [Spatial Planning and Land Use Management \(SPLUMA\) of 2013](#). They argue that the Act, according to Chief Solomon Malesela Dikgale, “proposes that elected councillors can now make land-use plans. They will form task forces or committees which will exclude traditional leaders”. [The relationship between elected officials and non-elected hereditary traditional leaders](#) requires further interrogation.

What women want

In Moletjie, on the one hand, women view traditional leaders as patriarchal and corrupt authorities who sell land to outsiders and seek to control funeral rites, impose fines on ‘dissenters’, and enact violence on those who oppose their practices. On the other hand, they hold that council representatives do not hold as much power as Chiefs to act on matters. Still, some women stated that they would prefer the municipality to manage the delivery of services such as refuse collection, water, and road construction without assuming control over the management of land in the village. They argue that they trust the traditional council more than elected council officials, despite the contention over access.

Our venture into understanding the implications of the new form of urbanisation on women’s land tenure security and livelihoods in Limpopo unveiled a variegated picture of women’s challenges in accessing land. Beyond this urbanisation are festering disputes among traditional leaders, the perpetuation of violence against women, exposure to further vulnerabilities such as sextortion, and the strained relationship between elected officials, legislation, and traditional authority. We offer the following policy considerations for protecting women’s land rights in Moletjie:

1. Defining clear roles for traditional leaders in spatial planning and land use management. The contestation of power between the traditional authority and the municipality emanates from traditional leaders’ perceived threat of losing control over customary land management and administration.
2. Promoting customary practices that support women’s access to land and strengthening their adoption by traditional leaders, men, and women. Single, married, divorced, and widowed women should all have their land rights protected.
3. Strengthening the implementation of laws on gender-based violence and ensuring the stiff punishment of perpetrators of violence against women. This will require advocacy and awareness campaigns by policymakers to sensitise women on reporting domestic violence and establishing safe homes for those who are constantly exposed to it.

Chilombo Musa is a PhD candidate at the University of Cambridge and a Researcher at PLAAS, Mapula Mnisi is a Programme Officer at Nkuzi Development Association, Molatelo Mohale is a Programme Officer at Nkuzi Development Association and a Fellow at LANDac.

Note from authors: We would like to thank the [Austrian Development Agency \(ADA\)](#) for fieldwork funding. However, the views expressed here are entirely ours.

The research that informed this article is part of the Privatisation of customary land project. To learn more about this project, visit its page [here](#).